

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5522 of 2021

Rakesh Kumar Singh @ Rakesh Kumar son of Late Krishnandan Singh (wrongly described as Rajesh Kumar in the impugned order) son of Late Krishnandan Singh, resident of Village and P.O. Kadhan, Police Station-Keshariya, District- East Champaran at Motihari (The Pramukh of Block Panchayat Samiti), Keshariya, District- East Champaran at Motihari.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
4. Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna.
5. The District Magistrate, East Champaran at Motihari.
6. The Block Development Officer, Keshariya-cum- Executive Officer, Block Panchayat Samiti, Keshariya, P.O. and Police Station- Keshariya, District- East Champaran at Motihari.
7. Dushyant Kumar son of Late Ravindra Pratap Narayan Singh resident of Village and P.O. Tajpur Patkhauliya, Police Station- Keshariya, District- East Champaran at Motihari, presently Up-Pramukh of Block Panchayat Samiti, Keshariya, District- East Champaran at Motihari.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate Mr. Niranjan Prasad Singh, Advocate
For the Respondent/s	:	Mr. Prateek Kumar Sinha, AC to GA-5
For Respondent No. 7	:	Mr. S.B.K. Manglam, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 01-02-2022

Heard Mr. Radha Mohan Pandey, learned counsel for the



petitioner, Mr. Prateek Kumar Sinha, learned AC to GA-5 for the State of Bihar and Mr. S.B.K. Manglam, learned counsel for respondent No. 7.

2. The petitioner was an elected *Pramukh* of Block *Panchayat Samiti*, Keshariya, East Champaran. He is aggrieved by an order dated 04.01.2021, passed by the Additional Chief Secretary, Panchayat Raj Department, Government of Bihar in exercise of power under Section 44(4) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'Act'). It is the petitioner's own case that the said impugned order came to be passed two months before the petitioner's tenure as *Pramukh* was coming to an end. It is an admitted position thus that, even if the grounds raised in the writ petition to challenge the impugned order are accepted, he cannot be restored to his position, his tenure having come to an end.

3. The petitioner's challenge to the impugned order is mainly on the ground that there was no valid service of notice of the proceeding of his removal in exercise of power under Section 44(4) of the Act and, therefore, the action violating principles of natural justice, deserves to be interfered with, in exercise of the power of judicial review under Article 226 of the Constitution of India.



4. In response to the Court's query as to why the Court should entertain this application now as the petitioner may not get any relief by way of restoration of his position as *Pramukh*, Mr. Radha Mohan Pandey, learned counsel appearing on behalf of the petitioner has submitted that if the said order is allowed to continue, the petitioner shall suffer disqualification for election to any *panchayat* bodies till five years from the date of removal in exercise of power under Section 44(4) of the Act. He has accordingly submitted that this writ application cannot be said to have become infructuous with termination of the tenure of the petitioner's office as *Pramukh* of the *Panchayat Samiti*.

5. In view of the aforementioned submission, we have examined the nature of the allegation against the petitioner leading to passing of the impugned order dated 04.01.2021 and the consequence of the said order on the point of petitioner's disqualification to contest elections to *panchayat* bodies in future.

6. It is evident from the impugned order that the proceeding for taking action against the petitioner under Section 44(4) of the Act was initiated based on a complaint made by respondent No. 7 to the Principal Secretary, Panchayat Raj



Department, Government of Bihar, to the effect that the petitioner had failed to convene the requisite number of meetings of the *Panchayat Samiti* under the statutory provisions contained under Section 46 of the Act.

7. It is noteworthy that respondent No. 7 had earlier approached this Court by filing a writ application giving rise to CWJC No. 6776 of 2019 alleging inaction on the part of the Department on the application made by him for taking action against the petitioner under Section 44(4) of the Act. The said writ petition was disposed of by an order dated 21.11.2019 with a direction to the Principal Secretary, Panchayat Raj Department, Government of Bihar to look into the petitioner's grievance and pass appropriate order thereon, after hearing all concerned within three months. It is in compliance of the said order of the Court that the impugned order has been passed.

8. It is reiterated, which is evident from the impugned order, that the petitioner's removal from the post of *Pramukh* under Section 44(4) of the Act is on the ground that he failed to convene meetings of *Panchayat Samiti* as required under the provisions of the Act. Sub Section 4 of Section 44 of the Act reads as under:-

“(4) Without prejudice to the provisions under this Act, if in opinion of the Government



having territorial jurisdiction over the Panchayat Samiti, a Pramukh or an Up-Pramukh of Panchayat Samiti absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties [Disobedience of order of an authority established by law] or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Government may, after giving the Pramukh or Up-Pramukh, as the case may be, a reasonable opportunity for explanation, by order, remove such Pramukh or Up-Pramukh, as the case may be, from office;

The Pramukh or Up-Pramukh so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies till further five years from the date of such removal. The Pramukh or Up-Pramukh so removed on rest of the charges shall not be eligible for re-election as Pramukh or Up-Pramukh during the remaining terms of office of such Panchayat Samiti.

9. In our considered view, the answer to the petitioner's apprehension that he shall stand disqualified for



future elections to *Panchayat* bodies lies in the provision itself, relevant portion of which has been underlined hereinabove for emphasis. For better appreciation of this aspect, it would be useful to analyze briefly the scope of Section 44(4) of the Act.

10. Sub Section 4 of Section 44 confers upon the State Government jurisdiction to remove a *Pramukh* or *Up-Pramukh*, after giving him reasonable opportunity for explanation on following grounds:-

(i) He absents himself without sufficient cause for more than three consecutive meetings or sittings,

(ii) He willfully omits or refuses to perform his duties and functions under the Act,

(iii) He abuses the power vested in him,

(iv) He is found to be guilty of misconduct in the discharge of his duties,

(v) He disobeys any order of an authority established by law,

(vi) He becomes physically or mentally incapacitated for performing his duties,

(vii) He is absconding, being accused in a criminal case for more than six months.



11. Further, it is easily discernible, on a plain reading of Section 44(4) of the Act that a *Pramukh* or *Up-Pramukh* removed under the said provision, shall not be eligible to election of any *Panchayat* bodies till further five years from the date of such removal in following circumstances:-

(i) He has been found guilty of misuse of vested powers, or

(ii) He has been found guilty of misconduct in the discharge of his duties.

12. It is manifest that the petitioner's removal by the impugned order is not on the ground of having been found guilty of 'misuse of vested powers' or 'of misconduct in the discharge of his duties', to attract disqualification for future election by operation of any provision under Section 44(4) of the Act. Therefore, the petitioner's apprehension that he stands disqualified for future elections is, in our opinion, completely misplaced.

13. Mr. Radha Mohan Pandey, learned counsel for the petitioner, has argued that since the impugned order is in violation of principles of natural justice, inasmuch as, the notice of the proceeding under Section 44(4) of the Act was not validly served on him and, therefore, the impugned order deserves to be



set aside, being patently illegal in violation of principles of natural justice and the procedural requirement under Section 44(4) of the Act.

14. In our considered view, it would be an exercise in futility to go into the validity of the impugned order which has become inconsequential as on date, the term of the petitioner's office has already come to an end. No useful purpose would be served by going into such a dispute at this stage, given the aforementioned discussions.

15. This writ application, in our opinion, has become infructuous and stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J :- I agree.

(Madhuresh Prasad, J)

K.K.RAO/-

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