IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18126 of 2023

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Shailesh Paswan Son of Sri Budhu Paswan Resident of Village and P.O.- Modanganj, P.S.- Ghosi, District- Jehanabad, Bihar- 804432.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Lok Prahari-cum- Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Gaya.
4. The Sub- Divisional Officer, Jehanabad.
5. The District Panchayat Raj Officer, Jehanabad.
6. The Block Panchayat Raj Officer- cum- Executive Officer (Panchayat Samiti), Modanganj, Govindpur Gram Panchayat, Jehanabad.
7. The Panchayat Secretary, Modanganj, Govindpur Gram Panchayat, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Ms. Shrishti Singh, Advocate
Mr. Pranav Kumar, Advocate

For the State : Mr. Venkatesh Kirti, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 15-01-2024

Heard Mr. Y.V. Giri, learned senior counsel assisted by Ms. Shrishti Singh, learned counsel appearing on behalf of the petitioner and Mr. Venkatesh Kirti, learned AC to learned GA-2 for the State.

2. Petitioner is aggrieved by the action of the Lok Prahari-cum-Divisional Commissioner, who was required to furnish enquiry report before the Additional Chief Secretary, Panchayati Raj Department, in accordance with the provision of

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sub-section 5 of Section 152 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') and the Additional Chief Secretary, Panchayati Raj Department, was required to exercise his jurisdiction under Section 18(5) of the Act on the basis of the information given in the enquiry report submitted by the Lok Prahari. Learned counsel seeks interference of this Court for allowing the relief(s) prayed in paragraph no. 1 of the writ petition, which *inter alia* is reproduced hereinafter:

> *"(i) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the order bearing memo no. 322 dated 07.11.2023 issued under the signature of the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna, whereunder in purported exercise of power under Section 18(5) of Bihar Panchayat Raj Act, 2006, the petitioner has been removed from the post of Mukhiya, Modanganj Govindpur Gram Panchayat, Jehanabad and has been decleared in illegible for election to any Panchayat Bodies till further 5 years from the date of the order (Annexure-P7, Pg.36).*
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> *(ii) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to produce the report of the Lok Prahari-cum-Divisional Commissioner, Magadh Division, Gaya, along with the record of the entire proceedings whereunder it has been concluded that the petitioner is guilty under Section 18(5) of the Bihar Panchayat Raj Act, 2006.*
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> *(iii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the report of the Lok Prahari-cum-Divisional Commissioner, Magadh Division, Gaya, whereunder it has been concluded that the petitioner is guilty under Section 18(5) of the Bihar Panchayat Raj Act, 2006.*
>
> *(iv) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to reinstate the petitioner to the post of Mukhiya, Modanganj Govindpur Gram Panchayat, Jehanabad, with consequential reliefs.*
>
> *(v) To any other relief for which the petitioner appears to be found entitled by the Hon'ble Court."*

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3. Learned senior counsel appearing on behalf of the petitioner submitted that the petitioner had appeared before the Lok Prahari being Mukhiya of the Gram Panchayat against whom the Lok Prahari had proceeded to enquire into the matter. The proceeding books relating to the meeting held in accordance with the provision of Section 20 of the Act were possessed by the Secretary of the Gram Panchayat, which was not called for by the Lok Prahari and in absence of same to verify the functioning, the report proposing action against the petitioner is illegal. He submitted that the petitioner used to look into the day to day affairs of the Gram Panchayat, as well as, the required meeting used to be held from time to time in accordance with the provision of Section 20, as well as, the other provisions of the Act. The Additional Chief Secretary, Panchayati Raj Department, without giving any opportunity to the petitioner in accordance with the provision of sub-section 5 of Section 18 of the Act had passed an ex-parte order dated 07.11.2023 contained in memo No. 14826.

4. Learned senior counsel pointing to several discussion and the observation made in the order passed by the Additional Chief Secretary, Panchayati Raj Department, submitted that merely reproducing certain section contained in

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sub-section 5 of Section 18 and Section 152 of the Act, he proceeded to exercise his jurisdiction to remove the petitioner on imaginary accusation. He further submitted that the impugned order don't even whisper any word with respect to the report furnished before him by the Lok Prahari. Hence the petitioner has been denied the opportunity of being heard, the order contained in memo No. 14826 dated 07.11.2023 as contained in 'Anneuxre-7' is fit to be set aside and quashed.

5. *Per contra*, Mr. Venkatesh Kirti, learned counsel appearing on behalf of the State submitted that there is no infirmity in the impugned order dated 07.11.2023 contained in memo No. 14826. The Lok Prahari has exercised his jurisdiction in the manner prescribed in sub-section 5 of Section 152 of the Act and pursuant to the report submitted by him before the Additional Chief Secretary, Panchayati Raj Department, who has exercised his jurisdiction in accordance with the provision of sub-section 5 of Section 18 of the Act. The question of denial of opportunity to the petitioner is also not sustainable because petitioner has already participated in proceeding before the Lok Prahari and the denial at this stage that he was not provided with the enquiry report/ report submitted by the Lok Prahari before the Additional Chief Secretary cannot be sustained. He

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submitted that the order passed by the Additional Chief Secretary, Panchayati Raj Department, is based on materials on record and after considering the allegation made against the petitioner as contained in 'Annexure-P4' the allegation petition which was filed by the Up-Mukhiya dated 10.05.2023 having found to be true against the petitioner the Additional Chief Secretary passed order or removal. He submitted that no interference is required by this Court because the writ petition is without merit and is fit to be dismissed.

6. Heard the parties.

7. It is well settled that the Court will be slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

8. It was submitted that non-consideration of materials available on record and consideration of something which is not on record would amount to perversity and in that event this Court can very well interfere in exercise of its power under Article 226 of the Constitution with such decision making process. In the case of ***Ram Chander Vs. Union of India &***

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Ors., reported in ***(1986) 3 SCC 103***, while submitting that the word 'consider' has different shades of meaning. While assailing the order passed by the disciplinary authority and the order affirmed by the appellate authority, it was submitted that there had been clear violation of the principles of natural justice since reasons for decision had not been clearly recorded.

9. In the case of ***Union of India Vs. Mohan Lal Capoor & Ors.,*** reported in ***(1973) 2 SCC 836***, it has been held that 'reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

10. Based on the above principle of law, on bare perusal of order contained in Memo No. 14826 dated 07.11.2023, the pleadings made in the writ petition and records appended to it, it appears that there is complete violation of the manner prescribed under sub-section 5 of Section 18 of the Act by the Additional Chief Secretary- respondent no. 1 in exercising his jurisdiction to proceed against the petitioner. The requirement of the Act is that the petitioner must have been

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noticed to place his case before the Additional Chief Secretary and on the basis of the materials available and the materials which were required to be given to the petitioner to submit his defence had proceeded to pass an ex-parte order to remove the petitioner from the post of Mukhiya.

11. The record reveals that the enquiry report was not provided to the petitioner to defend his case. The order also does not give any finding with respect to the enquiry report submitted by the Lok Prahari in accordance with the provision of sub-section 5 of Section 152 of the Act.

12. The order dated 07.11.2023 (Annexure-7) don't fulfill the requirement of law and having been passed in violation of principle of natural justice is hereby set aside and quashed.

13. The writ petition is allowed.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	18.01.2024
Transmission Date	N/A

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