

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7646 of 2020**

---

---

Anuj Kumar, son of Saryug Chaudhary, resident of village- Patharaura, Post Office- Patharaura, Police Station- Chabilapur, District- Nalanda (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The Special Secretary, Panchayati Raj Department, Government of Bihar, Patna.
5. The District Magistrate, Nalanda.
6. The District Panchayati Raj Officer, Nalanda.
7. The Sub- Divisional Magistrate, Rajgir (Nalanda).
8. The Block Development Officer, Rajgir (Nalanda).

... .. Respondents

---

---

**Appearance :**

For the Petitioner/s : Mr.Chandan Kumar, Adv.  
For the Respondent/s : Mr.Pushkar Narain Shahi, Sr. Adv. (AAG)  
: Mr.Sanjeev Kr. Singh, Adv.

---

---

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**C.A.V. JUDGMENT**

**Date : 28-06-2021**

Heard learned counsel for the petitioner and learned counsel for the respondents.

The petitioner is an elected Mukhiya of Patharaura Gram Panchayat, under Rajgir Block, in Nalanda district which was held in the year 2016. He challenging the order dated 03.08.2020, passed by the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar (respondent no.2), vide letter no.4817 dated 19.08.2020 (Annexure-P10 to the writ petition) by which the petitioner was removed from the post of



Mukhiya under the provision of Section 18 (5) of the Bihar Panchayati Raj Act, 2006 (hereinafter referred to as the 'Act' for the sake of brevity) and for other ancillary reliefs.

Learned counsel for the petitioner submits that ex-Mukhiya of Patharaura Gram Panchayat, namely Ranjeet Kumar and his friend Sagar Paswan made an application dated 24.12.2018 before the District Magistrate, Nalanda, with respect to remove the petitioner from his elected post as Mukhiya under Section 18 (5) of Bihar Panchayati Raj Act, 2006, alleging of financial irregularities and accusation of bribery case. Pursuant to above application, the District Magistrate, Nalanda, forwarded to Deputy Development Commissioner, (D.D.C.), Nalanda for enquiry. Now D.D.C., Nalanda, vide Letter no.2568 dated 31.12.2018 (Annexure-P1 to the writ petition) directed Rajgir, B.D.O. to make physical enquiry and sent enquiry report to him. The Ward Member of Ward No.06 of Patharaura Gram Panchayat, who filed an application with respect to accusation of demanding bribery by the petitioner and in this regard an FIR, has been lodged under Section 7 of Prevention of Corruption Act' before Vigilance Police Station in the Patna District bearing Vigilance Case No. 34/2018 dated 06.08.2018 (Annexure-P2 to the writ petition) which is still pending before the learned court of Special Judge, Vigilance,



Patna. Petitioner has arrested and has been released on bail on 14.12.2018.

Learned counsel for the petitioner submits that the B.D.O., Rajgir sent a detailed enquiry report to the D.D.C., Nalanda, vide Letter No.89, dated 17.01.2019 in which B.D.O., Rajgir (Annexure-P4 to the writ petition), himself requested for a District Level Enquiry, since according to Rajgir B.D.O., there is an involvement of JE(Junior Engineer)/PS (Panchayat Sevak)/PRS (Panchayat Rojagar Sevak/PO (Programme Officer) (Annexure-P4). The Sub-Divisional Magistrate, Rajgir, to conduct an enquiry in this regard and sent a detailed report to the District Panchayati Raj Officer, Nalanda (respondent no.6), vide Letter No.261/Gop, dated 26.04.2019 (Annexure-P3 to the writ petition).

Learned counsel for the petitioner submits that the petitioner was served a show cause notice vide Letter No. 622/Pan., dated 27.04.2019 (Annexure-P5 to the writ petition) and filed a show cause notice in relation to the enquiry report of the B.D.O., Nalanda, and allegations of financial irregularities of his different tenures including one allegation of financial irregularities and another about vigilance case with respect to the present tenure.

Learned counsel for the petitioner submits that the petitioner submitted his detailed show cause notice on 04.05.2019



with respect to all allegations of financial irregularities of his previous and present tenure alongwith evidence in support (Annexure-P6 to the writ petition). Learned counsel for the petitioner submits that the District Magistrate, Nalanda, did not serve any notice to the petitioner and without any hearing or examination any evidentiary materials recommended for removable of petitioner from the post of Mukhiya of Patharaura, Gram Panchayat and the petitioner knew this only when a notice for hearing was sent to him by the Principle Secretary, Panchayati Raj Department, Government of Bihar, alongwith Letter no.1642/P dated 06.09.2019 wherein the District Magistrate, Nalanda, had sent a letter to the Principle Secretary, Panchayati Raj Department, Government of Bihar, recommending removal of petitioner from his post (Annexure-P7 to the writ petition).

Learned counsel for the petitioner submits that the Chief Secretary of Panchayati Raj Department (respondent no.2), Government of Bihar, vide Letter no. 4715 dated 26.07.2019 along with Letter No. 671 dated 06.05.2019 in which the District Magistrate, Nalanda, recommending for removal of petitioner under Section 18 (5) of Bihar Panchayati Raj Act, sent show cause notice on 13.08.2019 (Annexure-P8 to the writ petition).



Learned counsel for the petitioner submits that the petitioner submitted his show cause notice with regard to entire allegations of both terms as Mukhiya, as directed by respondent no.2 on 13.08.2019, it is further submitted that after submission of show cause, no hearing was conducted by the respondent no.2. However, date for the hearing was fixed and the petitioner was present either himself or through his learned Counsel (Annexure-P9 to the writ petition).

Learned counsel for the petitioner submits that the respondent no.2 passed an order dated 03.08.2020 against the petitioner to remove from his office/post and which is done with the sanction of State of Bihar. Order of removal indicates that the petitioner has been found guilty of misconduct in the discharge of his duties and abused the power vested in him on the ground that in the present tenure an allegation of taking illegal gratification has been found true. In the aforesaid removal order, respondent no.2 stated that allegation of receiving bribe is sole basis for taking actions under Section 18 (5) of the Bihar Panchayati Raj Act (Annexure-P10 to the writ petition).

Learned counsel for the petitioner submits that the following charges were framed and reported by the District



Magistrate, Nalanda, against the petitioner as then accused Mukhiya under his letters dated 06.05.2019:-

- i) Illegal withdrawal of Rs.5 lakhs (five lakhs) under MANREGA Year 2012);
- ii) Providing double benefits by changing names of 14 beneficiaries under the Prime Minister Awas Yojana (Year 2011-15);
- iii) Defalcation of funds under the Prime Minister Awas Yojana by making payment to 17 fake beneficiaries (Year 2011-15);
- iv) Illegal withdrawal under the MANREGA Scheme without boring of 55 hand pumps (Year 2012-13);
- v) Illegal withdrawal of funds by the petitioner in his present tenure as then Mukhiya time and again for the same work by changing names of the schemes some time under 4th State Finance Commission, 5th State Finance Commission, BRGF, or MANREGA;
- vi) The petitioner as then Mukhiya was arrested by the Vigilance for taking bribe of Rs.50,000/- (fifty thousand) in his present tenure.

Learned counsel for the petitioner submits that apart from the fifth and sixth allegations, rests pertain to previous term



of the petitioner as Mukhiya, in which petitioner has not been found guilty of financial irregularities and on account of order of this Court in **C.W.J.C. No. 7893/2010, Dinesh Pandey Vs. State of Bihar and others**, which has been further followed in **C.W.J.C. No. 9384/2011, Rajesh Kumar Manjhi Vs. State of Bihar** and others, allegations with respect to previous terms have been dismissed by respondent no.2.

Learned counsel for the petitioner submits that the petitioner filed a rejoinder cum reply cum show cause with respect to letter no. 2P/AA-15-18/2018/6589/P.RA., dated 17.10.2019 sent by the Authority (Annexure-P11 to the writ petition).

Learned counsel for the petitioner submit that the respondent authorities have passed an arbitrary, unreasonable and unjust order under Section 18 (5) of the Bihar Panchayati Raj Act, against the petitioner for removal from his post, citing 'guilty of misconduct in the discharge of his duties and abuses the power vested in him. It is further submitted that the petitioner has not yet been found guilty under Section 7 of Prevention of Corruption Act by the Special Vigilance Court, Patna in Vigilance Case no. 34/2018 and therefore, it is wrong interpretation by the respondent authorities to include aforesaid provision in order to remove an elected Mukhiya of Gram Panchayat, and such interpretation is



liable to be set aside by this Court. In this regard, he relied upon a decision of the Hon'ble Apex Court in the case of **Sharda Kailash Mittal Vs. State of Madhya Pradesh and Others**. Reported in 2010 (2) SCC 319, and a decision of this Court in **Maksudan paswan @ Madhusudan Paswan Vs. State of Bihar and others**, C.W.J.C. No.14207 of 2010 under para nos. 18 and 19 of the order dated 20.12.2010.

Learned senior counsel for the respondents P.N. Shahi submits that the show cause notice and sufficient opportunities were given to the District Panchayati Raj Officer, Nalanda, as well as by the Panchayati Raj Department, Government of Bihar, Patna, to the petitioner to place his case and the petitioner submitted his show cause notice before the concerned authorities, considering all material on record the final order was passed by the Panchayati Raj Department, which was under challenge in the instant writ petition.

Learned senior counsel further argued that the District Magistrate, Nalanda, sent his recommendation for removal of the then Mukhiya under Section 18 (5) of the Act, 2006 under his Letter no. 671 dated 06.05.2019 (Annexure-P8 to the writ petition) on the basis of the findings of the enquiry into the aforementioned allegation in the enquiry report submitted by the Sub-divisional



Officer, Nalanda, in his letter no. 261/Go dated 26.04.2019 (Annexure-P3 dated 05.11.2019). It is submitted that the petitioner was also asked show cause explanation by the D.P.R.O., Nalanda, vide his letter No. 622 dated 24.07.2019 (Annexure-P5). The petitioner had submitted his explanation on 04.05.2019 (Annexure-P6). The aforesaid letters/explanation were also enclosed by the District Magistrate, Nalanda, along with his recommendation letter dated 06.05.2019 (Annexure-P8).

Learned senior counsel argued that the petitioner in his reply dated 04.05.2019 & 13.08.2019 (Annexures-P6 & P9) submitted that most of the allegations against him pertain to his previous tenure, no action could be taken against him under Section 18 (5) of the Act, 2006 in the present tenure. However, the petitioner failed to submit any evidence in his defense on the two grievous charges which pertain to his present tenure as sitting Mukhiya for the embezzlement of public fund and taking bribe when he was caught and arrested by the Vigilance. It further submits that under Section 170 of the Bihar Panchayati Raj Act, 2006, Mukhia and all elected representatives of Panchayats are Public Servants, hence, under Section 170 of the Bihar Panchayati Raj Act, 2006 as also under Section 2(b) of the Prevention of Corruption Act, 1988, suitable action can be taken against the



elected representatives of the PRIs including Mukhiya of a Gram Panchayat being Public Servant.

Learned senior counsel further argued that in view of the statutory scheme, proceeding under Section 18(5) of the Act, 2006 was started against the petitioner and a show cause notice was asked from the petitioner (Annexure-P8) in order to provide the petitioner, a reasonable opportunity on the charges framed and recommended by the District Magistrate, Nalanda. The petitioner was asked to be present before the Additional Chief Secretary on 13.08.2019 for submitting his explanation on the charges. The petitioner appeared on 13.08.2019 for submitting his explanation. The explanation of the petitioner was sent to the District Magistrate, Nalanda, vide Panchayati Raj Department, vide Letter no. 5121 dated 16.08.2019 to give his opinion on the explanation submitted by the petitioner. Next date for the hearing was fixed for 27.08.2019 and communicated vide letter no. 5122 dated 16.08.2019. The petitioner was present, but the opinion of the District Magistrate was not received till then, hence, next date was fixed for 17.09.2019 and communicated under letter no. 5488 dated 02.09.2019. The District Magistrate, Nalanda, was requested to send his opinion, vide D.O. letter no. 5483 dated 02.09.2019. The opinion of the District Magistrate, Nalanda on the explanation



of the petitioner was received in the Department on 12.09.2019, vide his letter no. 1642 dated 06.09.2019. On the next date the petitioner was present along with his counsel, but the hearing could not be held on the date due to certain unavoidable reason. Next date was fixed for 15.10.2019 when the petitioner and his counsel were present. The opinion of the District Magistrate, Nalanda, was sent to the petitioner for submitting his reply on the opinion of the District Magistrate, Nalanda. Hearing on next fixed dates on 05.11.2019, 26.11.2019, 17.12.2019 and 31.12.2019 could not be held due to unavoidable reasons. The petitioner had not submitted his reply on the opinion of the District Magistrate, Nalanda, by that time, hence, the petitioner was reminded to submit his reply vide Department's letter no.7153 dated 07.11.2019 and further reminder letter no. 7832 dated 03.12.2019, then only his reply could be received in the Department on 07.12.2019.

Learned senior counsel submits that the matter has been independently perused in light of the documentary evidences and material facts available on the record. There has been enough evidence of dereliction of duty and misuse of office of the Mukhiya by the petitioner. The vital points that emerged concluding in the independent hearing on the matter apart from



other findings based on the documentary evidence are being highlighted hereunder for better appreciation of this Court as under:-

- i) The complaints/allegations from Sl. No.(i) to (iv) against the petitioner were found pertaining to the previous tenure 2011-16 of the Mukhiya which do not come under perview of the Section 18(5) of the Act, 2006 in view of the law settled by this Court vide its order dated 13.05.2010 passed in the **C.W.J.C. No.7893/2010, Dinesh Pandey Vs. the State of Bihar & Others** and also in view of the opinion of the learned Advocate General, Bihar.
- ii) The rest of the two charges were found pertaining to the current tenure of the petitioner as sitting Mukhiya. For the charge of irregularities and misappropriation of funds under the MANRGA Schemes, the District authorities could not produce sufficient evidence to prove the charges, hence no decision could be taken on this particular charge.
- iii) Arrest of the petitioner red handed by the Vigilance authorities proves that the petitioner was indulged into the grave misconduct, which was a concrete



reason to take action against a sitting Mukhiya under Section 18 (5) of the Act, 2006. Under Section 170 of the Act, 2006, Mukhiya and all elected representative of Panchayats are Public Servant. Being a Public Servant, the petitioner was indulged into corrupt practices which was serious offence under the Prevention of Corruption Act and was a grave misconduct and dereliction of duties in view of the Zero Tolerance Policy of the State Government on corruption. This grave misconduct in discharge of duties as a Mukhiya being a Public Servant was sufficient reason to take action against the petitioner under Section 18 (5) of the Act, 2006.

Learned senior counsel argued that Section 18 (5) of the Act gives ample power to the authorities to take such steps after observing due process of law and it is quite apparent from the record that the authorities concerned has adopted the proper procedure in accordance with law and only thereafter, had passed the impugned order. Hence, the authorities concerned have not committed either any illegality in law or any irregularity in procedure while passing the impugned order.



Learned senior counsel submits that based on the findings of the hearing on the charges framed against the petitioner, explanation submitted by the petitioner, opinion of the District Magistrate, Nalanda, and the documentary evidences brought on the records of the proceeding during the course of hearing under Section 18 (5) of the Act, 2006 the petitioner has been found guilty of committing gross financial irregularities and misappropriation of public fund and committing gross misconduct in discharge of duty as Mukhiya. The dereliction of duty distinctively comes under the category of gross misconduct under Section 18 (5) of the Act, 2006. The petitioner was arrested red handed in taking bribe worth Rs.50,000/- (fifty thousand) by the Vigilance authority. He has been held guilty of having indulged into financial corruption. The charges against the petitioner for gross financial corruption, dereliction of duties, misuse of office of the Mukhiya has been proved and well established. The petitioner has accordingly, been removed from the office of the Mukhiya of the Gram Panchayat Raj, Pathraura, Block Rajgir, District-Nalanda, under Section 18 (5) of the Act, 2006, vide order dated 03.08.2020 and has been communicated to all the concerned under Memo No. 4817 dated 19.08.2020 which is under challenge.



Considering the entire facts and circumstances of this case as well as the pleadings of the parties and the material on the record, it is quite apparent that at first the District Panchayati Raj Officer, Nalanda, and thereafter, the Panchayati Raj Department, had taken all due steps in the matter and impugned order had been passed after fulfilling all the formalities including issuance of show cause notice to the petitioner and also after considering the show cause of the petitioner, merely by showing the Vigilance case is still pending before the learned court of Special Judge, Vigilance, Patna, the petitioner cannot prove that the entire proceeding adopted by the authorities was illegal and baseless. In the said circumstance, this court does not find any illegality and irregularity in the process adopted by the authorities concerned.

Furthermore, it is quite apparent that inquiries were made in which was specifically found that the petitioner was arrested red handed in taking bribe worth Rs.50,000/- (fifty thousand) by the Vigilance Authorities. This was a very serious allegation against the petitioner who was the Mukhiya of the Gram Panchayat, but his action was detrimental of the interest of the people of the Gram Panchayat, which he represented. Hence, it is quite apparent that he not only committed grave



illegality/misconduct, but also eroded the confidence of the people who had elected him as their Mukhiya.

So far as decision of the Apex Court relied upon by the petitioner in the case of Sharda Kailash Mittal (supra) and order passed in C.W.J.C. No.14207/2010 is concerned, it is quite apparent that the petitioner had not committed any minor irregularity rather, he had committed a very serious illegality/misconduct detrimental to the system of Panchayati Raj and basic democracy itself. Furthermore, the allegation having been well proved as is apparent from the impugned order as well as enquiry report and the communication of the District Magistrate and other material available on record, the authorities concerned was quite justified in passing the impugned order against the petitioner.

In the said circumstance, this court does not find any illegality in the impugned order nor does find any merit in this writ application, which is accordingly dismissed.

**(Anjani Kumar Sharan, J)**

amitkumar/-

AFR/NAFR	AFR
CAV DATE	05.04.2021
Uploading Date	28.06.2021
Transmission Date	28.06.2021

