

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11437 of 2014

With

I.A. No.5177 of 2014

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Nitish Chaudhary, son of Sri Doman Chaudhary, Resident of village- Hawanpura, P.O.- Bhandari, P.S.- Rahui, District- Nalanda at Biharsharif, presently Pramukh of Block Panchayat Samiti, Rahui, District- Nalanda at Biharsharif.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Nalanda at Biharsharif, District- Nalanda at Biharsharif.
5. The Sub-Divisional Officer, Biharsharif, District- Nalanda at Biharsharif.
6. The Block Development Officer, Rahui -cum- Executive Officer, Block Panchayat Samiti, Rahui, District- Nalanda at Biharsharif.
7. Smt. Sushila Devi, wife of Sri Avinash Kumar, presently Up-Pramukh of Block Panchayat Samiti, Rahui, P.O. and P.S.- Rahui, District- Nalanda at Biharsharif.
8. Sri Ashok Prasad, son of not known to the petitioner.
9. Sri Rajiv Ranjan, son of not known to the petitioner.
10. Sri Vijay Paswan, son of not known to the petitioner.
11. Sri Uday Chandra Sao, son of not known to the petitioner.
12. Sri Pankaj Kumar, son of not known to the petitioner.
13. Smt. Sandhya Devi, wife of not known to the petitioner.
14. Smt. Uma Devi, wife of not known to the petitioner.
15. Smt. Sushila Devi, wife of not known to the petitioner.
16. Smt. Rita Devi, wife of not known to the petitioner.
17. Smt. Ajir Devi, wife of not known to the petitioner.
18. Smt. Seema Devi, wife of not known to the petitioner.
19. Sri Akhileshwar Prasad, son of not known to the petitioner.
20. Smt. Nitu Devi, wife of not known to the petitioner.
21. Sri Sujit Kumar, son of not known to the petitioner.
22. Smt. Sanjukta Devi, wife of not known to the petitioner.
23. Sri Manoj Chaudhary, son of not known to the petitioner.
24. Sri Sakaldeep Kumar, son of not known to the petitioner.
25. Sri Santu Yadav, son of not known to the petitioner.
26. Smt. Chausi Devi, wife of not known to the petitioner.
27. Smt. Sunita Devi, wife of not known to the petitioner.

Respondent No.8 to 27 are the Members of the Block Panchayat Samiti, Rahui through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Rahui, P.O. and P.S.- Rahui, District- Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam
Mr. Chandan

For the Respondent/s : Mr. Indeshwari Prasad Mandal, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-09-2015

Heard Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner and Mr. Indeshwari Prasad Mandal, learned Assisting Counsel to Government Advocate No.7.

Though served but the private respondents have not chosen to appear.

The petitioner has questioned the initiation of the no confidence motion so moved against him through requisition dated 18.6.2014, a copy of which is placed at Annexure-1 to the writ petition.

According to the petitioner, the requisition was not served in the manner prescribed under section 44(3) (i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'). The petitioner also questions the motion on grounds that the notice issued by the Executive Officer –cum- Block Development Officer, Rahui on 19.7.2014 fixing the date of special meeting on 28.7.2014 vide letter no.1052 (as modified vide Annexure-5/1) is not in tune with the provisions of section 44(3) (v) of 'the Act'. It is complaining as such that the writ petition was filed and finding substance in the submission that this Court vide order dated 24.7.2014 issued notice to the private respondents while requiring



answers from the Executive Officer. Although the Executive Officer has tried to justify the notice but prima-facie this Court is of the opinion that the justification is not free from suspicion. The Executive Officer –cum- Block Development Officer, Rahui is directed to be more cautious and careful in future.

The circumstances that exist presently are that the notice brought on record by the petitioner did not reflect the reasons and though it was argued by Mr. Manglam that the requisition placed at Annexure-1 was not presented in the manner prescribed but in view of the statement made by the Executive Officer to submit that it is only when repeated attempts to serve the requisition failed that the requisitionists have proceeded, the plea is rejected. This Court thus not finding any infirmity in the requisition or its service and considering the statement made by the Executive Officer at paragraph 4 of the counter affidavit, is of the opinion that the petitioner as a Pramukh is under a duty to discharge his obligation so cast upon him under section 44(3)(i) of 'the Act'.

For the reasons aforementioned this Court while upholding the requisition placed at Annexure-1 and finding the notice so issued by the Executive Officer on 19.7.2014 not in tune with the legal provisions and while rejecting the stand of the Executive Officer would declare the notice so issued by the Executive Officer invalid and unsustainable in law and thus set

aside the same.

Since no infirmity is found in the requisition the petitioner is directed to act thereupon as the Pramukh of the Samiti and fix the date of special meeting on or before 5.10.2015 failing which the requisitionists shall be at liberty to act in accordance with law and fix the date of special meeting in view of the powers so vested in them under section 44(3) (i) of 'the Act'.

It goes without saying that no sooner does the Pramukh or the requisitionists as the case may be, fixes the date of special meeting, that the Executive Officer –cum- Block Development Officer, Rahui shall issue notice of fixing the date of special meeting after ensuring compliance of the provisions of section 44(3)(v) of 'the Act'.

The writ petition is allowed with the directions/ observations aforementioned. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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