

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4597 of 2015

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1. Ram Padarath Mandal, S/o Late Gajendra Mandal, resident of village - Aura, P.S. Aura, P.S. Hasanpur, District – Samastipur.
 2. Mukesh Kumar, S/o Shri Krishankant Ray, resident of village- Kharhiya, P.O. Mangal Garh, P.S. Hasanpur, District – Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Samastipur.
3. The District Panchayat Raj Officer, Samastipur.
4. The Sub-Divisional Officer, District – Samastipur.
5. The Executive Officer -cum- Block Development Officer, Block - Hasanpur, District – Samastipur.
6. The State Election Commission, represented through its Secretary, State Election Commission, Bihar, Sone Bhawan, 3rd Veer Chand Patel Path, Patna- 800001.
7. Shri Bullu Das, Pramukh, S/o Shri Narayan Das, resident of village - Marachi Ujagar, P.O. Hasanpur, P.S. Hasanpur, District – Samastipur.
8. Shri Vinod Kumar Yadav, Up-Pramukh, S/o Shri Ramashish Yadav, resident of village - Sasan, P.O. Sasan, P.S. Hasanpur, District – Samastipur.
9. Shri Jai Prakash Rai, S/o not known to the petitioners.
10. Shri Jai Shankar Paswan, S/o not known to the petitioners.
11. Shri Niranjana Yadav, S/o not known to the petitioners.
12. Shri Dhaneshwar Paswan, S/o not known to the petitioners.
13. Shri Kishun Mistri, S/o not known to the petitioners.
14. Shri Dilip Das, S/o not known to the petitioners.
15. Shri Subhash Chandra Yadav, S/o not known to the petitioners.
16. Shri Madan Paswan, S/o not known to the petitioners.
17. Shri Shrawan Kumar Yadav, S/o not known to the petitioners.
18. Shri Sanjay Das, S/o not known to the petitioners.
19. Smt. Sangeeta Devi, w/o not known to the petitioners.
20. Smt. Lalpari Devi, W/o not known to the petitioners.
21. Smt. Neelam Kumari, W/o not known to the petitioners.
22. Smt. Nashima Khatoon, W/o not known to the petitioners.
23. Smt. Kanti Devi, W/o not known to the petitioners.
24. Smt. Rupam Kumari, W/o not known to the petitioners.
25. Smt. Usha Devi, W/o not known to the petitioners.
26. Smt. Sunita Devi, W/o not known to the petitioners.
27. Smt. Chandrakala Devi, W/o not known to the petitioners.
28. Smt. Tara Devi, W/o not known to the petitioners .
29. Smt. Nitu Devi, W/o not known to the petitioners.
30. Smt. Usha Devi, W/o not known to the petitioners.
31. Smt. Meera Devi, W/o not known to the petitioners.
32. Most. Shahjahan, W/o not known to the petitioners.

Respondent Nos.7 to 32 are Members of Panchayat Samiti - Hasanpur, District - Samastipur, represented through the Executive Officer - cum - Block Development Officer, Hasanpur, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shri Prakash Srivastava
For the Respondent/s	:	Mr. Pramod Kumar Singh, SC-12
For Respondent No.7	:	Mr. S.B.K. Manglam
For State Election Commission:		Mr. Amit Shrivastava Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 24-06-2015

Heard Mr. Shri Prakash Srivastava, learned counsel appearing on behalf of the petitioners, learned counsel for the State, Mr. S.B.K. Manglam, learned counsel appearing for the respondent no.7 and Mr. Girish Pandey for the State Election Commission.

The petitioners are members of Panchayat Samiti, Hasanpur in the district of Samastipur and have made a prayer to direct the respondent no.5, i.e. Executive Officer- cum- Block Development Officer, Hasanpur, District- Samastipur to convene a special meeting for consideration of the **no confidence motion** moved against the respondent no.7 who happens to be the Pramukh of the Panchayat Samiti.

The facts of the case are in a very narrow compass. Some members of the Panchayat Samiti moved a requisition against the Pramukh of the Panchayat Samiti, a copy of which is placed at Annexure-1 expressing no confidence in him. A date was fixed and the notice circulated fixing the date of special meeting on 17.3.2015. 15 members participated in the meeting of which one member namely, Nashima Khatoon left the meeting midway which left only 14 members to participate in the special meeting. One member, namely, Subhash Chandra Yadav was unanimously nominated as the presiding officer and the requisition of no



confidence was put to motion when it was discussed at the instance of Ram Padarath Mandal, a member of the Panchayat Samiti. Unfortunately since out of total 28 elected members, there were only 14 members present in the special meeting which did not constitute a majority hence apprehending the failure of the motion that the members requested the Executive Officer to fix another date. The matter has not progressed and hence this writ petition.

I have heard learned counsel for the parties and I have perused the records.

Although it has been strenuously argued by Mr. Srivastava, learned counsel appearing for the petitioners as to the failure of the Executive Officer to fix the date of special meeting but in my opinion, the prayer made in writ petition is hit by the principles of waiver inasmuch as even if there would be any infirmity in fixing the date of the special meeting, the very fact that 15 members attended the same without raising any objection and one member left leaving only 14 to participate therein, even at this stage the members did not choose to adjourn the meeting for consideration on another date rather the allegations set out in the requisition was put to motion and the allegation was discussed at the instance of the members but could not be taken to its logical conclusion for the 14 members present did not constitute a majority in the special meeting which could unseat the Pramukh. Since a

special meeting convened for consideration of a **no confidence motion** cannot be adjourned for want of quorum, hence this lack of majority in the special meeting would amount to deemed failure of the motion.

Once a Presiding Officer is nominated in a special meeting, the requisition is put into motion, and the allegations discussed on the floor of the house, the only thing which remained was casting of ballot and even if all the 14 members present would have supported the motion, yet it would not be passed since the 14 members present did not constitute a majority as the Panchayat Samiti consists of 28 elected members. The failure of the motion staring at the face of the members, they chose to adjourn the meeting but in my opinion this was an illegality for the motion having been initiated, it could not at that stage be adjourned. In fact the motion so moved against respondent no.7 had apparently failed on account of lack of majority.

In the circumstances discussed the prayer made in this writ petition is misconceived and the writ petition is dismissed accordingly.

(Jyoti Saran, J)

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