

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1606 of 2015

IN

Civil Writ Jurisdiction Case No. 4336 of 2015

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Manju Devi, Wife of Sri Kamlesh Kumar Gupta, Resident of Village
and post-Kesath, P.S. Nawanagar, District-Buxar.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
2. The Director, Panchayati Raj, Department of Panchayati Raj, Govt. of Bihar, Patna.
3. The Collector-cum-District Magistrate, District-Buxar
4. The District Panchayat Raj Officer, Buxar, District-Buxar
5. The Block Development Officer, Kesath, District-Buxar
6. Mr. Birendra Prasad Gupta, Son of not known, Member of Panchayat Samittee (B.D. C.), Region No.1, Village-Rampur, Block-Kesath, P.S. Nawanagar, District-Buxar
7. Mr. Kamlesh Kumar, son of not known, Member of Panchayat Samittee (B.D.C.), Region No.2, Village-Keshath, Block-Kesath, P.S. Nawanagar, District-Buxar
8. Pappu Kumar Singh, son of not known, Member of Panchayat Samittee (B.D.C.), Region No.4, Village-Katikanar, Block, Kesath, P.S. Nawanagar, District-Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.B.K. Manglam,

For the Respondent/s : Mr. Ritesh Kumar- SC-33

For Respondents 6 to 8 : Mr. Avanish Kumar Singh

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 15-09-2015

1. An order, dated 17.08.2015, passed by
learned Single Judge, in CWJC No. 4336 of 2015 (

Manju Devi Vs. State of Bihar and ors), is being assailed in the present *intra* Court appeal under Clause 10 of the Letters Patent of this High Court.

2. In view of an amendment introduced in Section 44(3) of the Bihar Panchayat Raj Act, 2006, which came into force through Bihar Panchayat Raj (Amendment) Act, 2015, with effect from 27.08.2015, in a date, subsequent to the date of the order under appeal, the controversy between the contesting parties, raised in the writ proceeding before learned Single Judge, in our considered opinion, no more survives, as would be evident from the discussion hereinbelow. However, we have considered it apt to refer to certain facts, in the present order, for better appreciation of the dispute in question and the effect of the subsequent amendment.

3. The appellant, who was the petitioner in the writ proceeding, was elected as Block Pramukh of Kesath Block in Buxar District and had been functioning as such with effect from 01.08.2011. Section 44 (3) of Bihar Panchayat Raj Act, 2006 (hereinafter referred as

the Act), contains provisions, *inter alia*, for removal of a Block Pramukh, after calling *no confidence motion*, by majority votes of the elected members of the Panchayat Samiti. Section 44(3), as it existed before the said amendment, which came into force with effect from 27.08.2015, read thus:-

"(3) (i) A Pramukh-Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy of the Executive Officer of the Panchayat Samiti, by not less than one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting the Up-Pramukh or one third of the total number of directly elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting

shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion;

- (ii) No confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two years period of their tenure;-
- (iii) If the motion of no confidence brought against the Pramukh or the Up-pramukh or both is once rejected, no fresh motion of no confidence against the Pramukh or the Up-pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year from the date of such rejection of the motion;
- (iv) No confidence motion against the Pramukh or Up-pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samiti as mentioned in Section 39(1) of this Ordinance;
- (v) Such reasons/charges, on the basis of which no confidence motion has to be moved against the pramukh or Up-pramukh, shall be clearly mentioned in the notice of meeting called to consider the no confidence motion;
- (vi) As soon as the meeting called under this section begins, the presiding member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it

- open for discussion. Any discussion on the motion shall not be adjourned;
- (vii) During discussion, opportunity shall be given to the Pramukh/Up-pramukh against whom no confidence motion has been moved for his defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.
- (viii) In case of no confidence motion against a Pramukh, the meeting shall be presided by the Up-pramukh; in case of motion against Up-pramukh by the Pramukh and in case of motion against both Pramukh and Up-pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting;

In case of the post of Up-pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Up-pramukh, as the case may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the Panchayat Samiti present in the meeting."

4. After the appellant had completed two years of her tenure as Pramukh, a requisition was made



against her for consideration of *no confidence motion*. This is not in dispute that she faced *no confidence motion* in a *special meeting* held on 31.08.2013. A statement to this effect has been made in I. A. No. 7303 of 2015 filed on her behalf. The said *no confidence motion*, however, failed.

5. Later on, a fresh *requisition* was made seeking *no confidence motion* against the appellant, on 03.03.2015, with joint signature of three Members of Panchayat Samiti, which was addressed to the Executive Officer, Kesath-cum-Block Development Officer, Kesath. In response to the said *requisition*, the Block Development Officer, Kesath, issued notice, dated 18.03.2015, to the appellant and other Members of the Panchayat Samiti calling a *special meeting*, at 11 A.M., on 26.03.2015, to consider the *no confidence motion* against the appellant.

6. The appellant questioned the *requisition*, dated 03.03.2015, of the Members of the Panchayat Samiti, addressed to the Block Development Officer, Kesath as also the notice, dated 18.03.2015, issued by

the Block Development Officer, Kesath, calling a *special meeting* for consideration of the *no confidence motion*, brought against the appellant, by filing a petition under Article 226 of the Constitution of India, giving rise to CWJC No. 4336 of 2015. The challenge was two fold.

7. It was the case of the appellant, in the writ proceeding before the learned Single Judge, that the *requisition* was in breach of Section 44(3) of the Act inasmuch as the *requisition* was wrongly addressed to the Block Development Officer, whereas *requisition* ought to have been addressed to the Pramukh. It was secondly asserted by the appellant that neither the *requisition* nor the notice accompanied the reasons and the charges as mandatorily required to be mentioned by Section 44(3) (v) of the Act.

8. Learned Single Judge set aside the notice, dated 18.03.2015, issued by the Block Development Officer to the appellant on the ground that it did not contain any reason or charge as contemplated under Section 44(3) (v) of the Act. Learned Single Judge, did not, however, interfere with the *requisition*, which was



brought on record by way of Annexure-A to the counter affidavit filed on behalf of official respondent, inasmuch as it contained reasons and charges and, accordingly, by order, under appeal, dated 17.08.2015 directed the appellant, being Pramukh, to discharge the obligation casts upon him under the provisions of Section 44(3) (i) of the Act and fix a date for *special meeting* on or before 24.08.2015 failing which the requisitionists shall be at liberty to fix a date by virtue of the powers conferred upon them under the Act and whereafter, the Executive Officer-cum-Block Development Officer, Kesath, would proceed to circulate the notice fixing the date of *special meeting* and shall ensure that notice of *special meeting* fulfills the statutory provisions underlying Section 44 (3) (v) of the Act.

9. Aggrieved by the order passed by the learned Single Judge by which the learned Single Judge refused to interfere with the *requisition* moved against the appellant and whereby the appellant has been directed to discharge her obligation under Section 44(3) (i) of the Act, the present appeal has been filed

on 01.09.2015.

10. In the meanwhile, Bihar Panchayat Raj (Amendment) Act, 215 (Bihar Act 15, 2015) came to be published, in Bihar Gazette (Extraordinary), on 27.08.2015, amending various provisions of the Act including Section 44. Section 44 of the Act has been amended by Section 10 of the amending Bihar Act 15,2015 in the following terms:

"10. Amendment of Section 44 of the Bihar Act 6, 2006:-(1) The following sentence shall be added at the end of the first proviso of Clause (ii) of sub-section (3) of Section 44 of the said Act, 2006:-

"Such a no confidence motion may be brought only once in the whole tenure of Pramukh/Up-pramukh."

(2) The clause (iii) of sub-section (3) of section 44 is hereby deleted.

(3) The clause (iv) of sub-section (3) of Section 44 shall be renumbered as clause (iii)."

11. It would appear from Section 1 (3) of the Amending Bihar Act 15, 2015 that the provisions of the Amending Act came into force at once excluding the amendment brought by Section 15 of the Amendment

Act, 2015.

12. It is, thus, manifestly clear that with effect from 27.08.2015, Section 44 of the Act stood amended containing specific provision that *no confidence motion* can be brought only once in the whole tenure of a Pramukh/Up-pramukh . Clause (iii) of Section 44 (3), as it existed prior to amendment, stood deleted with effect from 27.08.2015.

13. Faced with this situation, there remains no dispute over the fact that the appellant, having already faced *no confidence motion* once during his tenure, no further *no confidence motion* can, in the light of the amended provisions, be brought against him.

14. Without, therefore, going into the question of legality of the order under appeal, we hold that in view of subsequent amendment with effect from 27.08.2015, *no confidence motion* brought against the appellant, once again, cannot be sustained.

15. For the foregoing reasons, this appeal is allowed. The order under appeal is hereby set aside by holding that the instant *no confidence motion*, being

the second *no confidence motion* brought against the appellant, is not maintainable in the light of the amended provisions of the Act as noticed above. The order stands quashed.

16. No order as to costs.

(Chakradhari Sharan Singh, J)

I.A.Ansari, ACJ:- I agree.

(I.A.Ansari, ACJ.)

A.F.R.
ArunKumar/-

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