

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22040 of 2014

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Smt. Sushila Devi wife of Sri Avinash Kumar, resident of village Dekpura, P.O. Mora Talab, P.S. Rahui, District Nalanda, presently UP-Pramukh of Block Panchayat Samiti, Rahui, P.O. and P.S. Rahui, District Nalanda.

.... 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 Biharsarif.
6. The Block Development Officer, Rahui cum Executive Officer, Block Panchayat Samiti, Rahui, District Nalanda at Biharsarif.
7. Nitish Choudhary son of Sri Doman Choudhary, resident of village Hawanpura, P.O. Bhandari, P.S. Rahui, District-Nalanda at Biharsharif , presently Pramukh of Block Panchayat Samiti, Rahui, District Nalanda.
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 Choudhary 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 Nos. 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.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Sudhir Kumar, Advocate

For the State : Mr. Amar Nath Deo, SC-26

For the respondent nos.
7 to 11, 16 to 19 & 21 to 27: Mr. Amrit Abhijat, Advocate
Mr. Amit Kumar

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Heard Mr. Y.V. Giri, learned senior counsel for the petitioner and Mr. Amrit Abhijat for respondent nos. 7 to 11, 16 to 19 and 21 to 27 and counsel for the State.

This matter was considered earlier on 27.1.2015 and when this Court taking notice of the fact that the non-appearing respondent nos. 12 to 15 and 20 had not participated in the proceedings which ultimately culminated in the 'no confidence motion' passed against the petitioner on 23.12.2014, did not deem it necessary to order for issuance of notice to these respondents. The requisitionists as well as the members of the Panchayat Samiti who participated in the special meeting are represented through Mr. Abhijat.

The petitioner is the Up-Pramukh of Panchayat Samiti, Rahui in the District of Nalanda and has been ousted by the 'no confidence motion' passed on 23.12.2014. A copy of the proceedings has been placed at Annexure-7 to I.A. No. 168 of 2015.

It is the contention of Mr. Giri with reference to the proceedings of the ‘no confidence motion’ present at Annexure-7 that the mandatory requirement underlying Section 44(vi) of the



Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') which requires that on the commencement of the special meeting the Presiding Officer is to read out the motion and whereafter the motion is to be declared open for discussion on the allegation has not been followed. Sub-section (vii) thereof further enables the Pramukh / Up-Pramukh as the case may be to contest the motion by placing their defence and which would be followed by casting of vote in the secret ballot in the prescribed manner. It is submitted by Mr. Giri that no such exercise was undertaken and which has vitiated the motion. The petitioner was not present in the special meeting and thus did not contest the position.

Since Mr. Giri raised straightway a question of law, that the counsel were granted time to address the Court on this limited issue and having heard learned counsel for the parties, this Court finds substance in the argument advanced by Mr. Giri and which is supported by the proceedings of the special meeting dated 23.12.2014 placed at Annexure-7 which reflects that the participants straightway adopted the method of secret ballot without throwing the motion open for discussion as mandated under Section 44(vi) of the Act. Although it was tried to be argued by Mr. Abhijat that the records of the proceedings do not reflect a correct picture for the motion was read out and was also thrown for discussion but his arguments are not supported by the records which confirms that the participants in the meeting

straightway adopted the secret ballot without any discussion and in which the petitioner has been ousted.

In view of the facts apparent from the record and the illegality regarding violation of the statutory procedure provided under Section 44(vi) of the Act being confirmed, the motion cannot be upheld and is accordingly set aside and the petitioner stands restored to the post of Up-Pramukh.

Since I do not find any infirmity in the requisition present at Annexure-3 to the writ petition hence the Pramukh i.e. the respondent no. 7 shall be at liberty to proceed in the matter for fixing the date of special meeting in accordance with law.

The writ petition is allowed with the directions aforementioned.

The interlocutory applications bearing I.A. No. 9576 of 2014 and I.A. No. 168 of 2015 stand disposed of.

(Jyoti Saran, J)

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