

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15492 of 2015

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1. Chandrawati Devi @ Chandwati Devi W/o Sri Manoj Kumar Resident of Raghepura, P.O. Laheriasarai, P.S. Bahadurpur, District Darbhanga, presently Pramukh of Block Panchayat Samiti, Bahadurpur, District Darbhanga.

.... 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, Darbhanga, District Darbhanga.
5. The Sub Divisional Officer, Darbhanga Sadar, District Darbhanga.
6. The Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Bahadurpur, District Darbhanga.
7. Sri Tribhuwan Jha S/o Not known to the petitioner Presently Up-Pramukh, Block Panchayat Samiti, Bahadurpur, P.O. and P.S. Bahadurpur, District Darbhanga.
8. Sri Sheo Narayan Paswan S/o Not known to the petitioner
9. Smt. Vijaya laxmi W/o Not known to the petitioner
10. Sri Gopi Raman Yadav S/o Not known to the petitioner
11. Smt. Ruby Raj W/o Not known to the petitioner
12. Smt. Bimali Devi W/o Not known to the petitioner
13. Sri Lakshmi paswan S/o Not known to the petitioner
14. Sri Mantoon Kumar S/o Not known to the petitioner
15. Smt. Sushila Devi W/o Not known to the petitioner
16. Smt. Indra Devi W/o Not known to the petitioner
17. Sri Naresh Kumar Mukhiya S/o Not known to the petitioner null
18. Sri Manoj Kumar Singh S/o Not known to the petitioner
19. Sri Ram Krishna Yadav S/o Not known to the petitioner
20. Smt. Pramila Devi W/o Not known to the petitioner
21. Smt. Anita Roy W/o Not known to the petitioner
22. Md. Isrile S/o Not known to the petitioner
23. Sri Birju Mukhiya S/o Not known to the petitioner
24. Sri Ram Bihari Ram S/o Not known to the petitioner
25. Smt. Ruksana Khatoon S/o Not known to the petitioner
26. Sri Ram Baran Singh S/o Not known to the petitioner
27. Sri Manoj Kumar Paswan S/o Not known to the petitioner
28. Smt. Nilam Devi W/o Not known to the petitioner
29. Smt. Bibha Devi W/o Not known to the petitioner
30. Smt. Ram Jyoti Devi W/o Not known to the petitioner
31. Sri Manohar Lal Deo S/o Not known to the petitioner
32. Smt. Sunita Devi W/o Not known to the petitioner
33. Smt. Sabita Devi W/o Not known to the petitioner
34. Smt. Manorma Devi W/o Not known to the petitioner
35. Sri Vijay Yadav S/o Not known to the petitioner
36. Smt. Pachiya Devi W/o Not known to the petitioner
37. Smt. Mina Kumari W/o Not known to the petitioner Respondent Nos. 8 to 37 are the elected Members of Block Panchayat Samiti, Bahadurpur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Bahadurpur,

P.O. and P.S. Bahadurpur, District Darbhanga.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K.Mangalam, Adv.
 For the Respondent/s : Mr. R.R.K. Pandey, S.C. 29
 Mr. K.N.Jha, A.C. to S.C. 29
 For the private respondents: Mr. Gyanendra Shukla, Adv.
 Mr. Manish Kumar No.13
 Mr. Rohit Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-11-2015

Heard Mr. S.B.K. Mangalam, learned counsel appearing for the petitioner, learned counsel for the State and Mr. Gyanendra Shukla, learned counsel appearing for the private respondents.

The petitioner is the sitting Mukhiya of Panchayat Samiti, Bahadurpur in the district of Darbhanga. 1/3 of the members of the Panchayat Samiti moved a requisition on 13.1.2015, a copy of which is placed at Anneuxre-2 expressing loss of confidence in the Pramukh. A copy of the requisition was also endorsed to the Executive Officer-cum-Block Development Officer, Bahadurpur. No action was taken by the Pramukh thereon for whatever reason. Her attention was also drawn by the Executive Officer requiring her to discharge obligation cast under Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') and fix the date of special meeting within the period prescribed thereunder which is 15 days from the date of receipt of requisition. Records manifests that 21



signatories approached the Executive Officer on 12.9.2015 disowning filing of any such requisition and their signatures present thereon, copy of which is placed at Annexure-3. According to Mr. Mangalam the 21 applicants also included 9 persons who are requisitionists at Annexure-2. It is the stand of the petitioner that on receipt of such a letter by 21 Members she informed the Executive Officer-cum-Block Development Officer on 14.9.2015 vide Annexure-4 that in view of the withdrawal made by 9 of the 19 requisitionists the requisition being filed by 10 Members in a 32 elected member Samiti, was not maintainable since it did not constitute $\frac{1}{3}^{\text{rd}}$ of the total elected members. The Pramukh thus did not fix the date of special meeting rather rejected the requisition itself. The Executive Officer-cum-Block Development Officer in the circumstances requested the Up-Pramukh, Bahadurpur to proceed in the matter in the light of the statutory provisions underlying Section 44(3)(1) of the Act on 21.9.2015 and fix the date of special meeting. A copy of such letter is placed at Annexure-9 to the writ petition as well as Annexure-R/4 to the interlocutory application filed by the members of the Samiti. Although the letter enclosed by the writ petitioner carries no remarks but the one enclosed by the private respondents in the interlocutory application bears the decision of the Up-Pramukh fixing the date of special meeting on 28.9.2015. The decision is dated 21.9.2015 and it

is following such decision that the Executive Officer vide Annexure-10 circulated the same and which has been impugned in the present writ petition. Mr. Mangalam learned counsel for the petitioner has raised the following issues for consideration:-

- (a) Although the requisition was moved by 19 members but in view of the disclosure made by 21 members of the Samiti which included 9 of the requisitionists present at Annexure-3, the requisition had been rendered invalid and thus the Pramukh had correctly proceeded to reject the requisition.
- (b) The Executive Officer has acted in excess of jurisdiction to request the Up-Pramukh to fix the date of meeting when the statute itself casts an obligation in the Up-Pramukh/requisitionists. The decision thus should have been left on the Up-Pamukh or the requisitionists.
- (c) The notice impugned at Anneuxre-10 does not satisfy the statutory requirements present in Section 46(4) of 'the Act' since there is no clear 7 days gap in between the date of notice and the date of special meeting.

A counter affidavit has been filed by the Executive Officer and a voluminous affidavit has been filed by way of interlocutory application by the members of the Panchayat Samiti. Mr. Shukla appearing on behalf of the members has contested the arguments by



submitting that the validity of the withdrawal could not have been tested by the Pramukh unilaterally without putting the motion to test in the special meeting. With reference to the affidavits filed by the members, copies of which have enclosed at Annexure R/3 series he submits that the members have not only endorsed their loss of confidence expressed through the requisition but even the motion so passed against the petitioner on 28.9.2015 which forms part of Annexure- R/6 series confirms their view. He submits that the very fact that 18 of the 32 members have voted in support of the no confidence motion, it is clear that the letter of withdrawal relied upon by the Pramukh was not worthy of reliance. Mr. Shukla however, even while supporting the stand of the requisitionists could not justify the invalidation of the motion in view of the apparent violation in issuance of notice which leaves no clear 7 days gap and thus is in the teeth of the statutory provisions underlying Section 46(4) of 'the Act'.

Of the three issues so raised by Mr. Mangalam there is no contest that the notice impugned at Annexure-10 circulated by the Executive Officer in the light of the decision taken by the Up-Pramukh is illegal and contrary to the statutory provisions of Section 46(4) of 'the Act'. It is now to be seen whether the case is fit for a remand by giving another opportunity to the petitioner as Pramukh of the Panchayat Samiti to fix the date of



special meeting under Section 44(3)(i) of 'the Act' or as per the argument advanced by Mr. Mangalam the requisition has been rendered invalid on account of withdrawal. Apart from the fact that it is a disputed issue of fact whether the persons who are signatories to Annexure-3 are the same person who are signatories to the requisition, whatever be the nature of dispute the same stands resolved in the affidavits of 18 persons present at Annexure-R/3 series to confirm their stand and the no confidence motion so passed against the petitioner on 28.9.2015 would finally set at rest the confusion whatsoever. In my opinion once a requisition is moved by the required number of members i.e. 1/3rd members of the Panchayat Samiti, any shift in stand by any of the members signatories to the requisition, can only be resolved in the special meeting. The act nowhere vests any jurisdiction in any member to disown his signature on requisition or to file any application withdrawing from any motion. Whether the signature present in the requisition is genuine or not and/or whether the signatory member of the Panchayat Samiti has a change of heart after filing of the requisition are disputed issues of fact and since Section 44(3) (vii) of 'the Act' attaches a finality to the proceeding by cast of secret ballot, any such dispute can be best left, to be finally resolved in the outcome of such secret ballot. My opinion stands confirmed from the outcome in the present motion

where even when Mr. Mangalam has sought to rely upon an application made by 21 members/signatories out of the 32 members' Committee, the special meeting convened on 28.9.2015 was attended by 19 of the 32 members and out of them 18 supported the motion.

For the discussions so made hereinabove in my opinion, the Pramukh was not within her jurisdiction to reject the requisition at the threshold for once the requisition has been presented, she was under a duty to fix the date of special meeting within 15 days thereafter and not take refuge in any subsequent developments. That would conclude the issue No.1 so raised by Mr. Mangalam.

In so far as the conduct of the Executive Officer in requesting the Up-Pramukh to fix the date of special meeting on the refusal by the petitioner to do so is concerned, in my opinion in view of the judgment of the Division Bench passed in the case of **Munni Devi Vs. State of Bihar** reported in **2015(1) PLJR 741** there is no infirmity in the action of the Executive Officer in drawing the attention of the Up-Pramukh towards his statutory obligation. My opinion answers the 2nd issue raised.

So far as the third issue is concerned, this Court even while rejecting the arguments on the other issues raised by the petitioner, is unable to uphold the motion in view of the apparent infraction of the statutory provisions by the Up-Pramukh and the requisitionists in not



being careful in fixing the date of special meeting rather acting contrary to Section 46(4) of 'the Act'. Annexure-9 to the writ petition is the letter of the Executive Officer requesting the Up Pramukh to fix the date of meeting and which as been fixed by the Up-Pramukh on 21.9.2015 as apparent from Annexure-R/4. Its apparent that the date of special meeting on 28.9.2015 does not leave 7 clear days gap in between date of special meeting and the date of the notice.

On this ground alone the motion so passed against the petitioner on 28.9.2015 cannot be upheld and is accordingly set aside. As a consequence the petitioner is restored to the post of Pramukh and since this Court has found no infirmity in the requisition so moved against the petitioner, a copy of which is placed at Annexure-2 to the writ petition which requisition also stands supported by the majority of the elected members in the motion so passed hence this Court would give an opportunity to the petitioner to discharge the obligation cast upon her under Section 44(3)(i) of 'the Act' and fix the date of special meeting on or before 23.11.2015 failing which the Up-Pramukh/requisitionists shall be at liberty to proceed in the matter as per the powers vested in them under Section 44(3) (i) of 'the Act' and fix the date of special meeting. It is expected that the Pramukh/ the Up-Pramukh or the requisitionists as the case may be, shall abide by the statutory provisions of Section 46(4) of 'the Act' and leave 7 days

clear gap in between the date of notice and the date of special meeting and upon their failure to do so, the Executive Officer, Panchayat Samiti shall draw their attention to such violation. It is also made clear that should the Pramukh while fixing the date commits such infraction which is not corrected despite attention been drawn, then the Up-Pramukh/requisitionists shall be at liberty to proceed accordingly to fix the same. It goes without saying that the Executive Officer while circulating the notice would abide by Section 44(3)(v) of 'the Act'.

The writ petition is allowed with the directions/stipulations made above.

(Jyoti Saran, J)

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