

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13386 of 2015

Vasti Devi, wife of Late Gorakh Singh, Resident of village- Sakaddih, P.S.- Koilwar, District- Bhojpur at Ara, presently Pramukh, Block Panchayat Samiti, Koilwar, District- Bhojpur at Ara.

.... 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, Bhojpur at Ara, District- Bhojpur at Ara.
5. The Sub-Divisional Officer, Sadar Ara, District- Bhojpur at Ara.
6. The Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Koilwar, District- Bhojpur at Ara.
7. Shashi Kant Tripathi, son of Late Ramakant Tripathi, Resident of village and P.O. Kayam Nagar, P.S. Koilwar, District- Bhojpur at Ara, presently Up- Pramukh, Block Panchayat Samiti, Koilwar, District- Bhojpur at Ara.
8. Sri Vijay Sao, Son of not known to the petitioner.
9. Sri Rajendra Sao, Son of not known to the petitioner.
10. Sri Awadh Kishore Ram, Son of not known to the petitioner.
11. Sri Nagendra Yadav, Son of not known to the petitioner.
12. Smt. Chandralekha Devi, wife of not known to the petitioner.
13. Smt. Rupa Devi, wife of not known to the petitioner.
14. Smt. Shanti Devi, wife of not known to the petitioner.
15. Smt. Munni Devi, wife of not known to the petitioner.
16. Sri Amirchand Singh, son of not known to the petitioner.
17. Smt. Phul Kumari Devi, wife of not known to the petitioner.
18. Sri Chandan Rajak, son of not known to the petitioner.
19. Smt. Manoja Devi, wife of not known to the petitioner.
20. Smt. Tetra Devi, wife of not known to the petitioner.
21. Sri Abhimanyu Singh, son of not known to the petitioner.
22. Kumari Ragini, wife of not known to the petitioner.
23. Smt. Usha Devi, wife of not known to the petitioner.
24. Smt. Baijanti Devi, wife of not known to the petitioner.
25. Smt. Manju Devi, wife of not known to the petitioner.
26. Sri Lalan Kumar, Son of not known to the petitioner.
27. Sri Ranjay Singh, son of not known to the petitioner.
28. Sri Jang Bahadur Singh, son of not known to the petitioner.

Respondent nos.8 to 28 are the Members of Block Panchayat Samiti, Koilwar through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Koilwar, P.O. and P.s. Koilwar, District- Bhojpur at Ara.

29. The State Election Commission (Panchayat), through the Secretary, 4th Floor, Sone Bhawan, Birchand Patel Path, Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 13388 of 2015

Shashi Kant Tripathi, S/o Late Ramamkant Tripathi, Resident of Village + P.O.- Kayam Nagar, PS- Koilwar, District- Bhojpur, presently Up-pramukh, Block Panchayat Samiti, Koilwar, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. The Principal Secretary, Panchayat Raj Department, Department of Bihar, Patna.
 3. The Director, Panchayati Raj Department, Department of Bihar, Patna.
 4. The District Magistrate, District Bhojpur at Ara.
 5. The Sub-Divisional Officer, Sadar Ara, District Bhojpur at Ara.
 6. The Block Development Officer, Koilwar Block, District Bhojpur at Ara.
 7. Vaasti Devi, W/o Late Gorakh Singh, Resident of village Sakaddih, PS- Koilwar, District- Bhojpur at Ara, presently Parmukh, Block Panchayat Samiti, Koilwar, District Bhojpur at Ara.
 8. Vijay Sao, S/O not known to the petitioner.
 9. Rajendra Sao, S/O not known to the petitioner.
 10. Awadh Kishore Ram, S/O not known to the petitioner.
 11. Nagendra Yadav, S/O not known to the petitioner.
 12. Chandralekha Devi, W/O not known to the petitioner.
 13. Rupa Devi, W/O not known to the petitioner.
 14. Shanti Devi, W/O not known to the petitioner.
 15. Munni Devi, W/O not known to the petitioner.
 16. Amirchand Singh, S/O not known to the petitioner.
 17. Phul Kumari Devi, W/O not known to the petitioner.
 18. Chandan Rajak, S/O not known to the petitioner.
 19. Manoja Devi, W/O not known to the petitioner.
 20. Tetra Devi, W/O not known to the petitioner.
 21. Abhimanyu Singh, S/O not known to the petitioner.
 22. Kumari Ragini, W/O not known to the petitioner.
 23. Usha Devi, W/O not known to the petitioner.
 24. Baijanti Devi, W/O not known to the petitioner.
 25. Manju Devi, W/O not known to the petitioner.
 26. Lalan Kumar, S/O not known to the petitioner.
 27. Ranjay Singh, S/O not known to the petitioner.
 28. Jang Bahadur Singh, S/O not known to the petitioner.
- Respondent No.8 to 28 are elected members of Block Panchayat Samiti, Koilwar, District Bhojpur at Ara, through Block Development Officer -cum- Executive Officer, Panchayat Samiti, Koilwar, District- Bhojpur at Ara.
29. The State Election Commission through the State Election Commissioner, 3rd Floor, Sone Bhawan, Beer Chand Patel Path, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 13386 of 2015)

For the Petitioner/s	:	Mr. S.B.K. Manglam Ravi Ranjan
For the Respondent-State	:	Mr. Sanjay Kumar, AC to GA-5
For the Respondent-SEC	:	Mr. Amit Shrivastava Mr. Girish Pandey
For Respondent Nos.8 to 11	:	Mr. Harsh Singh

(In CWJC No. 13388 of 2015)

For the Petitioner/s : Mr. S.B.K. Manglam
 Mr. Ravi Ranjan
 For the Respondent-State : Mr. Mr. Kamlesh Kishore, AC to GP-2
 For the Respondent-SEC : Mr. Amit Shrivastava
 Mr. Girish Pandey
 For Respondent Nos.22 to 22 &24: Mr. Harsh Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 05-10-2015

Heard Mr. Ravi Ranjan, learned counsel appearing on behalf of the petitioners in the two writ petitions, learned counsel for the State in the respective writ petitions, learned counsel for the State Election Commission and learned counsel for some of the private respondents who have appeared through counsel. Though served the others have not chosen to contest.

The two petitioners are the Pramukh and Up-Pramukh respectively of Panchayat Samiti, Koilwar in the district of Bhojpur and have questioned the initiation of proceedings of *no confidence motion* vide requisition dated 13.8.2015, a copy of which is impugned at Annexure-1 to the respective writ petitions whereby the requisitionists have expressed loss of confidence in the petitioners. The petitioners are also aggrieved by the notice dated 20.8.2015 issued by the Executive Officer –cum- Block Development Officer, Koilwar notifying the date of special meeting on 27.8.2015 on grounds that it does not fulfill the mandate of section 46(4) of the Bihar Panchayat Raj Act, 2006

(hereinafter referred to as 'the Act') .

Since the two petitioners have questioned the same proceedings hence the matters are being heard analogous and again since the respondents are common hence notice was issued to the private respondents in CWJC No.13386 of 2015 and pursuant whereunto some of the members have appeared through counsel.

For the sake of convenience I would be referring to the pleadings and Annexures as occurring in CWJC No.13386 of 2015 unless clarified by specific reference to the other writ petition.

Apart from the issue regarding alleged violation of section 46(4) of 'the Act' another issue that was raised by learned counsel for the petitioners is that in view of the Bihar Panchayat Raj (Amendment) Act, 2015 which was enforced on 27.8.2015 section 44(3) (ii) of 'the Act' stands amended and whereunder now the elected Pramukh/Up Pramukh can be made to face motion only once in his/her entire tenure. In the present case since the motion was moved prior to the enforcement of the Amendment Act hence an issue arose whether the amendment would be covering the pending proceedings. It was stated at the Bar by learned counsel for the petitioners that such issue was pending consideration in an intra court appeal arising from L.P.A. No.1606 of 2015 (Manju Devi Vs. The State of Bihar). It is taking note of the pendency of

the issue regarding the effect of the amendment which had a bearing on the issue raised in the present writ petitions also that this Court awaited the opinion of the Division Bench in **Manju Devi** (supra).

In the case of **Manju Devi** (supra) the motion had been initiated prior to the amendment and the notice was questioned on grounds that it was bereft of reason. The learned Single Judge while setting aside the notice remitted the matter for discharging the obligation by the Pramukh to fix a new date of the special meeting and which was questioned before the Division Bench in LPA No.1606 of 2015. Since in the meanwhile the amendment was enforced hence the issue of effect of the Amendment Act on pending proceedings also came up for consideration. The Division Bench taking note of the legislative intent of the amendment has opined at paragraphs 12 to 14 of the judgment rendered in the case of **Manju Devi** (supra) as follows:

“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.”

It is not in dispute that these two petitioners have been made to face motion 12.9.2013 which failed. As per the law existing it is after lapse of one year that the present motion was initiated and was put to question before this Court when in the meanwhile amendment has taken its effect. There is no contest that the notice dated 20.8.2015 impugned at Annexure-5 to CWJC No.13386 of 2015 is in contravention of section 46(4) of ‘the Act’. In normal circumstances this Court after setting aside the notice would have required the Pramukh to fix a date of special meeting for consideration of the motion as per the law in force but the situation has changed as the law stands amended. As per the amended law now the Pramukh/Up Pramukh can face motion only once in his entire tenure.

In view of the opinion of the Division Bench as reproduced hereinabove and taking into consideration the indisputable fact that the petitioners have already faced a motion on 12.9.2013 and have come out successful they cannot be subjected to a second motion in view of the amended provisions as opined by the Division Bench in the case of **Manju Devi** (supra).

For the reasons so mentioned hereinabove the entire no

confidence proceedings initiated against the two petitioners vide requisition moved against the petitioners along with the notice dated 20.8.2015 convening special meeting cannot be upheld and are accordingly set aside.

The two writ petitions are allowed.

(Jyoti Saran, J)

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