

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17140 of 2014

With
I.A. No.7582 of 2014
With
I.A. No.8213 of 2014

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Dinesh Prasad Yadav, S/o Sri Ram Prasad Rai, R/o village - Sirhan, P.S.
Pakridayal, District - East Champaran, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. District Magistrate, East Champaran, Government of Bihar.
3. Sub Divisional Officer, Sadar Motihari, District - East Champaran, Government of Bihar.
4. The Block Development Officer -cum- Executive Officer, Block - Pakridayal, District - East Champaran.
5. Bihar State Election Commission, through its Secretary, Sone Bhawan, Patna.
6. Malti Devi, W/o Sri Ramji Ram, Member, Panchayat Samiti- 1, Block - Pakridayal, District - East Champaran.
7. Baccha Ram, S/o Jungli Ram, Member, Panchayat Samiti - 2, Block - Pakridayal, District - East Champaran.
8. Ravi Pratap Singh, S/o Ranveer Singh, Member, Panchayat Samiti - 3, Block - Pakridayal, District - East Champaran .
9. Kavita Devi, W/o Siyaram Prasad, Member, Panchayat Samiti - 4, Block - Pakridayal, District - East Champaran.
10. Umashanker Sah, S/o Dhruv Sah, Member, Panchayat Samiti - 5, Block - Pakridayal, District - East Champaran.
11. Ramesh Kumar, S/o Bhola Rai, Member, Panchayat Samiti - 7, Block - Pakridayal, District - East Champaran.
12. Pinki Devi, W/o Manoj Kumar Singh, Member, Panchayat Samiti - 8, Block - Pakridayal, District - East Champaran.
13. Ram Sakhia Devi, W/o Dugar Sahni, Member, Panchayat Samiti - 9, Block - Pakridayal, District - East Champaran.
14. Kanchan Kishori Singh, D/o Bharat Prasad Singh, Member, Panchayat Samiti - 10, Block - Pakridayal, District - East Champaran.
15. Shila Devi, W/o Nagendra Rai, Member, Panchayat Samiti - 11, Block - Pakridayal, District - East Champaran.
16. Guddu Ram, S/o Bilas Rai, Member, Panchayat Samiti - 12, Block - Pakridayal, District - East Champaran.
17. Ruplal Mahto, S/o Late Bhola Mahto, Member, Panchayat Samiti - 13, Block - Pakridayal, District - East Champaran.
18. Ashok Kumar Sah, S/o Dhenukh Sah, Member, Panchayat Samiti - 14, Block - Pakridayal, District - East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Kaushik
For the Respondent-State	:	Mr. Din Bandhu Singh, GP-9
For State Election Commission	:	Girish Pandey
For the Private Respondents	:	Mr. S.B.K. Manglam

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-01-2015

Heard Mr. Kumar Kaushik, learned counsel appearing on behalf of the petitioner, Mr. Din Bandhu Singh, learned Government Pleader No.9 for the State, Mr. Girish Pandey, learned counsel appearing for the State Election Commission and Mr. S.B.K. Manglam, learned counsel appearing for the private respondents.

Although this writ petition is listed for admission but with the consent of the parties it has been taken up with a view to its final disposal at this stage itself by way of this judgment.

The petitioner is aggrieved by the **no confidence motion** passed against him in the special meeting held on 16.9.2014 whereby he has been removed from the post of Pramukh, Panchayat Samiti, Pakaridayal in the district of East Champaran. It is following the **no confidence motion** that re-election has also taken place and in which the respondent no.8 has been elected as the new Pramukh of the Panchayat Samiti in question.

The **no confidence motion** is sought to be questioned by Mr. Kaushik on grounds of non-service of requisition on the petitioner as well as on grounds that the mandatory provisions requiring the presence of the Pramukh have not been observed. It is submitted that not only the requisition has not been presented to the petitioner but even the **no confidence motion** has been passed in his absence. Mr. Kaushik has referred to certain medical prescriptions brought on record by way of rejoinder to submit that the petitioner

was undergoing treatment at the Patna Medical College and Hospital and was advised absolute bed-rest. He submits that after recovery from ailment the petitioner returned on 17.9.2014 when he found that the **no confidence motion** had been passed against him on 16.9.2014.

Although the arguments of Mr. Kaushik has been contested by Mr. Din Bandhu Singh, learned State Counsel on grounds that the absence from the Samiti was without due intimation to the Executive Officer as well as Mr. Manglam who submits that the medical prescriptions sought to be relied upon by Mr. Kaushik did not form part of the writ proceedings but either of the contested arguments are not reflective of the fact that the petitioner was either present within the Panchayat Samiti or that the medical prescriptions are fabricated documents. In fact the process server report placed at Annexure R/4 of the counter affidavit of the private respondents shows that as on 6.9.2014 the petitioner was not present as intimated by his father to the process server and whereafter the house service had been effected.

In the circumstances taken note of hereinabove, it is manifestly clear that the petitioner was not present at the station and the **no confidence motion** has been passed in his absence. Further in the circumstances that the medical prescriptions on record are not charged with fabrication, there is no occasion to doubt its veracity.



For the reasons that the **no confidence motion** has been passed behind the back of the petitioner and in absence of proper presentation of requisition as mandated under section 44 (3) (i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') the **no confidence motion** passed against the petitioner on 16.9.2014 cannot be upheld and is accordingly set aside. The petitioner stands restored to the post of Pramukh.

At this juncture it is submitted by Mr. S.B.K. Manglam, learned counsel appearing for the private respondents that since after passing of the **no confidence motion** against the petitioner, the election has already taken place and at present the respondent no.8 holds the post of Pramukh hence even if the matter is remitted back for holding of special meeting afresh, the election to the post of Pramukh may not be disturbed rather the said election may be made subject to the outcome of the **no confidence motion** to be held now.

The submission of Mr. Manglam is reasonable and has not been objected to by Mr. Kumar Kaushik inasmuch as the election of new Pramukh obviously would be subject to the result of the fresh **no confidence motion** to be held upon fresh fixation of date of special meeting by the petitioner.

Since the **no confidence motion** has been set aside and the petitioner stands restored to the post of Pramukh he would be under duty to fix the date of special meeting on or before 4.2.2015

failing which the requisitionists shall be at liberty to proceed in the matter and fix a date of special meeting in accordance with law.

Since the order has been passed in the presence of the petitioner, he cannot take any further refuge on any technicalities. Consequent upon fixation of the date of the special meeting by the petitioner, he shall duly intimate the same to the Executive Officer and who shall circulate the notice in the manner prescribed under 'the Act' to all the Panchayat Samiti members.

The election so held in which respondent no.8 has been elected the new Pramukh of the Panchayat Samiti shall be kept in abeyance and would be governed by the final outcome of the **no confidence motion** proceedings. If the petitioner succeeds in the **no confidence motion**, the election of respondent no.8 shall be deemed to have been set aside however in case the petitioner fails in the **no confidence motion** then the respondent no.8 shall continue to hold the post of Pramukh of Panchayat Samiti, Pakaridayal.

The writ petition is allowed with the directions aforementioned. The interlocutory applications are disposed of.

(Jyoti Saran, J)

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