

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.201 of 2014**

**IN**

**Civil Writ Jurisdiction Case No. 16225 of 2013**

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Sunita Singh wife of Sanjay Kumar Singh, resident of village-Ghosi Amnour, P.O. Amnour, P.S. Amnour, Saran at Chapra, Ex. Pramukh, Block Panchayat Samiti, Amnour, Saran

... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna
3. The Director, Department of Panchayati Raj, Govt. of Bihar, Patna
4. The District Magistrate, Saran At Chapra
5. The Sub Divisional Officer, Marhaura, Saran At Chapra
6. The Block Development Officer, Amnour cum Executive Officer, Block Panchayat Samiti
7. Nawal Kishore Singh son of Naga Singh
8. Ram Nath Rai son of Late Kailash Raj
9. Akhilesh Singh son of Late Brij Kishore Singh @ Bhutkun Singh
10. Mun Bachcha Singh son of Late Raj Narain Singh
11. Viveka Nand Rai @ Vicky Rai son of Shri Bashishtha Narain Rai
12. Lal Mohan Ram son of Late Ganesh Ram
13. Lal Babu Baitha son of Shri S. Baitha
14. Smt. Raj Kumari Devi wife of Shri Arun Kumar
15. Smt. Renu Devi wife of Shri Sunil Singh
16. Ram Naresh Sah son of Shri Jethu Sah
17. Md. Hasim son of Md. Daud Hussain
18. Smt. Rani Devi wife of Shri Alok Kumar Sharma
19. Smt. Usha Devi wife of Shri Sunil Kumar Rai
20. Smt. Mina Devi wife of Shri Birendra Thakur
21. Kusum Kuer wife of Late Vishwakarma Bhagat
22. Gautam Kumar Sah son of Binda Sah
23. Smt. Kiran Devi wife of Shri Ajay Singh
24. Smt. Nasima Begum wife of Shri Samsuddin Ansari
25. Smt. Shanti Devi wife of Shri Santosh Kumar
26. Smt. Geeta Devi wife of Shri Raj Kishore Rai
27. Smt. Lalita Devi wife of Raj Kumar Mahto

... Respondents-Respondents

28. Manoj Kumar Singh son of Shri Lakhi Narain Singh
29. Manoj Kumar Singh son of Late Baleshwar Prasad
30. Radha Kumar Ram son of Shri Lal Bahadur Ram resident of village Pakari Dih P.O. Pakari Mohammad P.S. Amnour, Saran at Chapra. Respondent nos. 7 to 30 are the elected members of the Block Panchayat Samiti Amnour, through the Block Development Officer cum Executive Officer Block Panchayat Samiti, Amnour P.O. + PS Amnour Saran at Chapra

... Petitioners-/Opp parties

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**Appearance :**

For the Petitioner/s : Mr. S.B.K. Manglam  
Mr. Chandan

For the Respondent/s : Mr. S.P.Srivastava  
Mr. Rajiv Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**  
**ORAL JUDGMENT**  
**Date: 18-02-2015**

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One of the writ petitioners of CWJC No. 16225 of 2013 has filed the present application seeking review of part of the order dated 23.01.2014 passed on the aforesaid writ petition. The relevant part of the order which has been sought to be reviewed is reproduced hereinbelow:-

“ In the light of the said agreement at Bar and the view taken in such circumstances by this Court in CWJC No. 16088 of 2013, the application is allowed. Notice contained in Annexure-8 and the resolution of the special meeting held on 20-08-2013 (Annexure-9 to the I.A. No. 6410 of 2013) are quashed and set aside. The respondent Executive Officer of the Block Panchayat Samiti, Amnour shall fix a date for convening the meeting of the Panchayat Samiti on the requisition filed by the requisitioner(s)/ respondents herein within two weeks from the date of receipt/communication of this order strictly complying with the requirements of the Act as contained in Section 46(4) of the Act. On the date so fixed by the Executive Officer the no confidence motion for which requisition was filed by the respondents herein shall be put to vote.

Mr. Manglam, counsel for the petitioners has fairly stated that the petitioner no.1 will face the no confidence motion in the said special meeting of the Samiti to be convened by the respondent Executive Officer as per this order.”

The factual matrix of the case may briefly be noted.

The review petitioner was elected as Pramukh of the Panchayat Samiti. On a requisition filed by the respondent(s) requiring the Executive Officer to fix the date of the special meeting on 20.08.2013 a notice dated



10.08.2013 was issued by the Executive Officer of the Panchayat Samiti in the light whereof the special meeting of the Block Panchayat Samiti, Amnour was held on 20.08.2013 wherein the motion/requisition of no confidence was put to vote and the petitioner was unseated. The review petitioner challenged the notice dated 10.08.2013 and the resolution of the special meeting of the Panchayat Samiti unseating him from the post. The writ application was disposed of in the manner noted hereinabove. Aggrieved by the order dated 23.01.2014, a writ appeal being LPA No. 395 of 2014 was filed by the writ petitioner. The appellate court vide order dated 25.06.2014 acceding to the request of the appellant seeking permission to withdraw the appeal, disposed of the appeal as withdrawn enabling the appellant to file a review petition before the writ court. Armed with the aforesaid order, the present review petition has been filed.

Heard Mr. S.B.K. Manglam for the review petitioner and Mr. S. P. Srivastava for the requisitionists-respondents/opposite parties as also the counsel for the State.

The counsel for the review petitioner submitted that under section 44 (3) of the Bihar Panchayat Act (for short 'the Act') a procedure has been prescribed adhering to them only the elected Pramukh and Up Pramukh can be removed from his/her post(s). For better appreciation this Court would extract hereinbelow relevant part of section 44(3) of the Act on which reliance has been placed:-

“44(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 to 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....”

It has been urged that on receiving requisition for such special meeting in writing with a copy thereof presented to the Pramukh with a copy to the Executive Officer of the Panchayat Samiti by required number of elected members the Pramukh is mandated to fix a date within 15 days of the notice requiring the Executive Officer to convene the meeting of the special committee. In case the Pramukh fails to do so, the Up-Pramukh or one-third of the total number of elected members would fix a date of such meeting requiring the Executive Officer to give notice to the members of the Samiti for their presence and deliberation. In the light of the aforesaid provision it has been argued that this Court completely erred while disposing of the writ application by directing the Executive Officer of the Panchayat Samiti to fix the date for convening of



the meeting of the Panchayat Samiti on the requisition already filed by the requisitionists(s) within two weeks from the date of receipt/communication of the order. Such direction of this Court is contrary to the provision(s) of the Act. If the Act provides a procedure to be carried out in a particular manner then the same is required to be done in the same manner. Such direction of this Court even on an agreement between the parties would not vest the Executive Officer with the power to fix a date for convening the special meeting of the Panchayat Samiti unless it is so directed as per the provisions of the Act. The Executive Officer is merely the executor of the order passed on the requisition of the no confidence motion by the Pramukh and in case of failure do so by the resolution of the required number of the requisitionists fixing a date for convening of the meeting. In support of his contention he has relied on **(2009 (1) PLJR 712 (State Election Commission vs. Punam Kumari), 2014 (4) PLJR 648 (Usha Devi vs. S of Bihar)** and an unreported order passed in LPA No. 1347 of 2013 (Sanjeeta Devi vs. State of Bihar & Ors.).

Mr. Srivastava has conversely submitted that the review application does not set out a ground on which this Court can review the order passed on the writ application. The review jurisdiction of this Court lies within narrow confines and the same should not be exercised particularly when both parties had consented for fixing a date by the Executive Officer for consideration of the no confidence motion. He has in this regard relied on the portion of the writ order which is sought to be reviewed by the review petitioner. In the setting of facts in which the present review application has been filed cannot be allowed to seek review particularly when no relief was granted by the writ appeal Court on the appeal preferred against the order passed on the writ application.

Before proceeding to consider the submissions of the parties it would



be relevant to notice that in the case at hand indisputably the date of convening the special meeting of Panchayat Samiti was fixed on 20.08.2013 under the resolution of one-third elected members of the Panchayat Samiti mandating the Executive Officer to convene the special meeting of the Panchayat Samiti on that date. The Executive Officer had therefore the requisite power for summoning the special meeting on that date. In Sanjeeta Devi (LPA No. 13540 of 2013) the notice fixing the date of special meeting was challenged. The private respondents conceded before the Court that the same was not strictly in terms of section 44(3) (V) of the Act as no reason/charge on which such action was taken was mentioned therein and further required period of time was not allowed before holding the special meeting. The writ Court quashed the notice and all subsequent actions taken thereto and directed the Executive Officer to convene a fresh special meeting of the Panchayat Samiti on 20.09.2013 for which the Executive Officer was directed to issue notice. The writ appeal Court accepting the contention of the appellant that the court may issue a mandamus for exercise of the power by the statutory authority but cannot put itself in place of the statutory authority and fixed the date and held as under:-

“We therefore hold that the order under appeal is not sustainable to the extent that it fixes the date and time of the meeting. The Executive Officer shall, upon receipt of a copy of the present order, proceed in accordance with law to exercise his statutory powers under section 44(3) of the Act forthwith without any delay so that the No Confidence Motion can be tabled at the earliest opportunity in accordance with law.”

In **State Election Commissioner vs. Punam Kumari (supra) (2009 (1) PLJR 712)**, the factual compass in which the order was passed seems to be entirely different. This Court found that the State Election Commission had

no jurisdiction to decide the disqualification mentioned in section 135 and as such no such direction to the Commission to decide the same could have been passed. This is not the case. Indisputably, the Executive Officer had the jurisdiction to notify the date for summoning of the special meeting on the resolution of one-third of the elected members of the Panchayat Samiti.

In **Usha Devi** the notice issued by the Executive Officer convening the special meeting came to be challenged before the writ Court on the ground that the same did not disclose the reason/charges nor copy of the requisition was enclosed therewith and the same was in clear breach of section 44(3) (V) of the Act. Accepting the said contention the writ court set aside the proceeding of the special meeting and directed the Executive Officer to issue a fresh notice convening the special meeting without the consent of the parties. Said order was appealed against on the ground that under the relevant provision of the Act the Executive Officer has no power to decide the date of special meeting. This Court in paragraph 8 of the report noticed the legal position and having found the legal infirmity in the said direction issued by the writ Court in paragraphs 13 and 15 of the report observed/directed as under:-

“13. Having arrived at the conclusion, as indicated above, we have asked the learned counsel appearing on behalf of the requisitionists, to suggest a date of for calling a special meeting and it has been proposed by them that the special meeting may be held on 12<sup>th</sup> July, 2014. In fact, to the proposal so made, even Mr. Mangalam, learned counsel for the appellant, does not disagree.

15. Considering the matter in its entirety and in the interest of justice, it is directed that the Executive Officer of the Panchayat Samiti shall convene a special meeting(as required by the private respondents herein and

agreed to by the appellant) on 12.7.2014 and the outcome of the special meeting shall govern further rights and obligations of the parties concerned.”

This Court in the order under review noticed that the counsel representing the Pramukh had taken an unambiguous stand for participation in the proceeding of the special meeting for which the Executive Officer would fix a date. It can thus be treated as the approval of the Pramukh in permitting the Executive Officer to convene the special meeting by the Executive Officer within two weeks from the date of receipt/communication of the order. Even otherwise, the 1/3<sup>rd</sup> elected members of the Panchayat Samiti, as seen above, had resolved to convene the special meeting of the Samiti on a particular date. This Court only commanded the Executive Officer to discharge his duty within 02 weeks considering the agreement of the parties.

There is another aspect of the matter. This Court while exercising the power of review cannot sit in appeal on its own judgment and review the same. The cases on which the petitioner has relied are the cases where a writ appeal was filed against the order passed by the writ Court. The narrow jurisdiction of the Court invoked is another obstacle before the review petitioner. The legal interpretation of the provision of law by the superior court/authority having not been adhered to may be a good ground for setting aside the order but, I am afraid, the same will not be construed as a ground for review of the order. Nothing has been placed before this Court that if an order has been passed by the writ Court in oblivion of the judgment covering the field the same, on an application, can be re-appreciated and reviewed. On the contrary, it has been contended by the respondents relying on **AIR 1979 SC 1047** that the jurisdiction of this Court to review lies within narrow confines. The

review petitioner has not shown any mistake or error apparent on the face of record.

The reason(s) and deliberation(s) made hereinabove desist this Court from exercising its power of review. The review application is dismissed.

**(Kishore Kumar Mandal, J)**

HR/-

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