

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.693 of 2015

With

I.A. No.437 of 2015

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Amlesh Kumar, son of Sri Awadhesh Narayan Singh, resident of Village - Imadpur, P.O.-
Manain, P.S- Shebganj, District - Muzaffarpur.

.... 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, Panchyati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur.
5. The Sub-Divisional Officer, West Muzaffarpur, District - Muzaffarpur.
6. The Block Development Officer, Sahebganj -cum- Executive Officer, Block Panchayat Samiti, District - Muzaffarpur.
7. Sri Kanhaiya Sah, son of not known to the petitioner, Up- Pramukh of Block Panchayat Samiti, Sahebganj, P.O & P.S - Sahebganj, District - Muzaffarpur.
8. Sri Shravan Kumar, son of not known to the petitioner.
9. Sri Jag Mohan Kushwaha, son of not known to the petitioner.
10. Smt. Nasima Khatoon, wife of not known to the petitioner.
11. Sri Rajeshwar Rai, son of not known to the petitioner.
12. Sri Baidyanath Thakur, son of not known to the petitioner.
13. Smt. Rekha Devi, wife of not known to the petitioner.
14. Sri Raj Kishore Sah, son of not known to the Petitioner.
15. Sri Ram Surat Manjhi, son of not known to the petitioner.
16. Smt. Marachhiya Devi, wife of not known to the petitioner.
17. Smt. Rubey Devi, wife of not known to the petitioner.
18. Smt. Anita Devi, wife of not known to the petitioner.
19. Smt. Guddi Kumari, wife of not known to the petitioner.
20. Sri Devendra Sah, son of not known to the petitioner.
21. Smt. Nirmala Devi, wife of not known to the petitioner.
22. Sri Umesh Kumar, son of not known to the petitioner.
23. Smt. Basanti Devi, wife of not known to the petitioner.
24. Smt. Sanila Devi, wife of not known to the petitioner.
25. Smt. Veena Devi, wife of not known to the petitioner.
26. Smt. Mahabuban Khatoon, wife of not known to the petitioner.
27. Smt. Awadhesh Devi, wife of not known to the petitioner.
28. Sri Saroj Kumar Thakur, son of not known to the Petitioner.
29. Smt. Renu Devi, wife of not known to the petitioner.
30. Sri Raj Kishore Kumar, son of not known to the petitioner.
31. Smt. Meena Devi, wife of not known to the petitioner.
32. Sri Parmeshwar Paswan, son of not known to the petitioner.

Respondent Nos.7 to 32 are the elected Members of the Block Panchayat Samiti, Sahebganj through the Block Development Officer -cum-Executive Officer, Block Panchayat Samiti, Sahebganj P.O & P.S – Sahebganj, District - Muzaffarpur.

33. The State Election Commission (Panchayat) through the State Election Commissioner, Sone Bhawan, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Ranjan Mr. S.B.K. Manglam Mr. Chandan
For the Respondent/s	:	Mr. Nirbhay Kumar Singh, GP-26
For State Election Commission :		Mr. Amit Shrivastava Mr. Girish Pandey
For the private Respondents	:	Mr. Shri Prakash Srivastava

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 01-04-2015

Heard Mr. Ravi Ranjan, learned counsel appearing on behalf of the petitioner, Mr. Nirbhay Kumar Singh, learned Government Pleader No.26 for the State, Mr. Girish Pandey for the State Election Commission and Mr. Shri Prakash Srivastava for the private respondents.

Although this matter has been listed under the heading 'For orders on office notes' as regarding service of notice but since the parties have appeared hence with consent of the parties the writ petition itself has been taken up with a view to its final disposal at the present stage itself.

The petitioner who was an elected Pramukh of Sahebganj Panchayat Samiti in the district of Muzaffarpur has questioned the **no confidence motion** passed against him on 26.12.2014, whereby he stands ousted from the post. The minutes of the special meeting are present at Annexure-4 to the writ petition.

Learned counsel appearing for the petitioner has questioned the **no confidence motion** on a very limited ground and i.e. that the notice issued by the Executive Officer –cum- Block Development Officer, Sahebganj dated 16.12.2014, whereby the members were informed about the special meeting to be held on 26.12.2014 was not in tune with the provisions underlying section

44(3) (v) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') inasmuch as it is not accompanied with reasons/charges.

As the illegality in the proceedings was apparent that this Court vide order passed on 22.1.2015 issued notice to the non-appearing respondents as well as required the official respondents to file counter affidavit and which has since been filed and the infirmity has been accepted.

Mr. Shri Prakash Srivastava, learned appearing for the private respondents fairly admits to the infirmities but submits that since there is no infirmity found in the requisition hence the petitioner as a Pramukh would be directed to fix the date of special meeting.

In view of the apparent infirmity in the notice and taking note of the submission made by Shri Prakash Srivastava regarding absence of any infirmity in the requisition placed at Annexure-1 even if the motion passed cannot be upheld, yet the Pramukh is bound under section 44(3) (i) of 'the Act' to fix the date of special meeting . Having said so this Court would also remind the Executive Officer -cum- Block Development Officer, Sahebganj of his objection and caution him about the duty cast upon him while circulating the notice of special meeting and for any lapse on his part in issuing notice in contravention of the statutory provisions

underlying section 44(3) (v) of 'the Act' would be treated as deliberate violation of the present order.

In view of the admitted infirmity in the notice dated 16.12.2014 placed at Annexure-3, the same cannot be upheld and is accordingly set aside and as a consequence the **no confidence motion** convened pursuant thereto on 26.12.2014 also becomes invalidated and is set aside. The petitioner is restored to the post of Pramukh.

Mr. Ravi Ranjan, learned counsel appearing for the petitioner undertakes on behalf of the petitioner that the Pramukh would be convening the special meeting for consideration of the requisition by 8.4.2015 and would communicate the same to the Executive Officer for its circulation amongst the Members. The Executive Officer –cum- Block Development Officer, Sahebganj would notify the date of special meeting in tune with the provisions of section 44(3) (i) read with section 44 (3) (v) of 'the Act' and any failure on his part to abide by the legal procedure would be construed contempt of this Court present order.

The writ petition is allowed with the direction aforementioned. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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