

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.211 of 2015

In

LPA 168 of 2015

Sanjita Devi, wife of Sri Akhileshwar Kumar Dubey, R/O Village-
Madhubani Dubey Tola, P.S.- Sangrampur, District- East Champaran

.... (Appellant No.1)/ Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Panchayat Raj, Government of Bihar, Patna,
2. The Director, Panchayat Raj, Government of Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari,
4. The SDO, Areraj Sub-Division, Areraj, East Champaran,
5. The BDO, Sangrampur Block-cum- Executive Officer, Sangrampur Panchayat Samiti, Sangrampur, East Champaran
.... Respondent 1st/ Opposite Parties Ist set.
6. Md. N urrullah, Son of Jauwad Hussain, Resident of Village and P.S.- Sangrampur, District- East Champaran,
7. Ram Pari Devi, Wife of Nawal Singh, resident of Village + P.O. Madhubani, P.S.-Sangrampur, District- East Champaran.
8. Phul Kumari Devi, Wife of Laxman Mishra, Resident of North Bhawanipur , P.S.- Sangrampur, District- East Champaran.
9. Buni Sahani, Wife of Late Kari Sahani, Resident of North Jariyariyaria, P.S. Sangrampur, District-East Champaran,
10. Jitendra Singh, Son of Jhulfi Singh, Resident of Parsauna, P.S.- Sangrampur, District- East Champaran.
11. Aditya Kumar Pandey, Son of Nathuni Pandey, Ghusiya, P.s.- Sangrampur, District-East Champaran.
12. Bhutai Yadav, Son of Ratan Yadav, resident of Sangrampur, Maraiya, P.S. Sangrampur, District-East Champaran.
13. Ragani Devi, Wife of Bigu Sah, Resident of Uttari Bhawanipur, P.s.- Sangrampur, District-East Champaran.
14. Kumar Dhananjay, Son of Narendra Mishra, Resident of Mishra Gram, P.S. Sangrampur, District-East Champaran.
15. Yougendra Ram, Son of Vriksha Ram, Resident of Village-Dumariya, P.S.-Dumariya Ghat, District-East Champaran.
16. Bacchu Rai, Son of Asha Rai, Resident of Sangrampur Mathis, P.S.- Sangrampur, District-East Champaran,
17. Sanju Devi, Wife of Rinku Thakur, Resident of Shayampur, P.S.- Sangrampur, District-East Champaran,
18. Chitranjan Sharma, Son of Ramadhar Sharma, Resident of Bharwaliya, P.S.-Sangrampur, District-East Champaran,
19. Binod Kumar Singh, Son of Late Mahamaya Singh, Resident of Village- Sangrampur Pachariya, P.S.-Sangrampur, District-East Champaran,
20. Manju Choudhary, Wife of Wakil Sahani, Resident of Paschimi Madhubani, P.s.-Sangrampur, District-East Champaran.
21. Babita Devi, Wife of Pahari Sah, Resident of Village-Dakchani Bhawanipur, P.S.-Sangrampur, District-East Champaran,
22. Pratibha Devi, Wife of Surendra Baitha, Resident of Village-Jariharia Tola Rajpur, P.S.Sangrampur, District-East Champaran &
23. Nirmala Devi, Wife of Pramod Giri, Resident of East Madhubani, P.S.-

Sangrampur, District-East Champaran.

..... Respondents 2nd set/Opposite Parties 2nd Set.

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. Sc10 Sheo Shankar Prasad

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

3 04-01-2016

Upon hearing learned counsel for the petitioner and

learned counsel for the State delay in filing the review application is condoned.

I.A.No.8634 of 2015 is, accordingly, disposed of.

Heard learned counsels for the petitioner and for the State on the merits of the matter.

The application has been filed for reviewing the order dated 15.04.2015 passed in LPA No.168 of 2015.

Learned counsel for the petitioner seeks review of the order on the ground that under Section 44(3) of the Bihar Panchayat Raj Act, 2006, the Executive Officer himself could not fix a date rather the date could only have been fixed by the Pramukh, i.e., the petitioner himself and that was not done and upon the order passed by this Court dated 23.12.2013 in LPA No.1347 of 2013 the Executive Officer had proceeded to fix the date himself on 09.01.2014 in which the resolution of no

confidence was passed against the petitioner.

On perusal of the order dated 15.04.2015, it is evident that this Court had taken into consideration the observations made in the order dated 24.10.2013 and further the fact that the notice dated 05.07.2013 was not interfered by this Court rather there was direction to the respondents to proceed in the matter in accordance with law.

Learned counsel for the petitioner submits that the direction was to the Executive Officer to exercise his statutory power under Section 44(3) of the Act forthwith without any delay in accordance with law which meant that he ought to have referred the matter to the petitioner Pramukh for fixing the date.

We do not think that the said order is only in favour of the petitioner. While the matter had been remanded to the Executive Officer to proceed in accordance with law, there was no interference with the notice dated 05.07.2013 and thereafter the only issue was to fix the date in this regard.

Learned counsel for the petitioner relies upon a Division Bench decision of this Court in the case of Sheikh Hasamuddin v. State of Bihar and Ors : 2015(3) PLJR 203 in paras 10 and 11 of which it has been held as follows:-

“10. It is fairly well settled that an elected member is entitled to remain in office till the completion of the

term. Any mechanism that has an effect curtailing the term must be undertaken, strictly in accordance with the prescribed procedure. It is for a definite purpose that the legislature wanted the requisitionists, first to serve a copy of the notice of the want of confidence on the Pramukh, notwithstanding the fact that he will be the person to face the heat of that. The reason is that in a given case, the Pramukh may take note of the contents of the notice and initiate action, or steps to address the grievance of the requisitionists. That may lead to giving up of the further steps. Once the important step of service of notice on the Pramukh is not taken, the entire proceedings get vitiated.

11. We, therefore, allow the appeal and set aside the order dated 12.02.2015 passed by the learned Single Judge in CWJC No.14526 of 2014. As a result, the writ petition is allowed and the motion moved on 14.08.2014 against the appellants in pursuance of the notice dated 10.07.2014 is set aside and the appellants shall hold the office. The election of Pramukh and Up-Pramukh in place of the appellants, if any, shall stand set aside. It is, however, left open to the private respondents or for other members to initiate steps in accordance with law.”

Learned counsel relying upon the said decision submits that the notice ought to have been given to the Pramukh, otherwise the entire process would be invalid and, therefore, the order dated 15.04.2015 is required to be reviewed.

We are of the view that in this case the petitioner's grievance would in fact apply to the earlier order dated 23.12.2013 passed in LPA No.1347 of 2013, but no such grievance was raised by the petitioner against the said order and only after the meeting has taken place, the petitioner has again approached only after no confidence motion was passed against him by filing a fresh writ

application, but we find no reason to disagree with the view taken in the order sought to be reviewed since the notice was not interfered with in the previous round of litigation. Thus, it is not open to the petitioner to seek to challenge further actions taken in terms of the previous order.

This Court moreover under the review jurisdiction does not sit in appeal over the order sought to be reviewed and we do not find any reason to take a different view than what has been taken in the order dated 23.12.2013.

In light of the above discussions, the review application is dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

B.Kr./-

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