

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19007 of 2015

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1. Shivjee Ram aged about 32 years, son of Late Lal Bahadur Ram, Resident of village- Sukhpur, Tola- Mathurapur, Post- Kusaiya, P.S.- Warishnagar, District- Samastipur
 2. Girish Kumar aged about 43 years, son of Late Satya Narayan Prasad, Resident of village- Lakkhanpatti, Tola- Mathuaa, Post- Kasaur, P.S.- Warishnagar, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna
2. The District Magistrate, Samastipur
3. The District Panchayati Raj Officer, Samastipur
4. The Executive Officer cum Block Development Officer, Warishnagar Block, District- Samastipur
5. Smt. Daizy Devi, W/o- Sri Mukesh Kumar Singh, resident of village + Post- Balahi, P.S.- Warishnagar , District- Samastipur
6. Sri Mahesh Kumar Sah, son of Sri Yogendra Sah, Resident of village- Bahadurganj, Post- Begumpur, P.S.- Warishnagar , District- Samastipur
7. Smt. Devki Devi, W/o- Sri Basisth Raut, resident of village + Post- Rohua, P.S.- Warishnagar , District- Samastipur
8. Smt. Mridula Devi w/o- Sri Bhupendra Thakur, resident of village- Sari Tole Bishanpatti, Post- Sari, P.S.- Warishnagar , District- Samastipur
9. Smt. Sumitra Devi, W/o- Sri Rambrichh Ram, resident of village + Post- Darsur, P.S.- Warishnagar , District- Samastipur
10. Sri Sikandar Paswan, S/o- Sri Mahendra Paswan, resident of village- Moglanichak, Post- Kasor, P.S.- Warishnagar , District- Samastipur
11. Sri Kamal Kishore Rai, S/o- Sri Ramashray Rai, resident of village- Bhadoghat, Post- Bataspur, P.S.- Warishnagar , District- Samastipur
12. Sri Umesh Kumar Ram, S/o- Sri Muneshwar Ram, resident of village- Rampur Bishun, Post- Mohi, P.S.- Warishnagar , District- Samastipur
13. Sri Rajeev Kumar, S/o- Sri Mahendra Rai, Resident of village- Maniyarpur, Post + P.S.- Warishnagar , District- Samastipur
14. Sri Chhitranjan Prasad Singh, S/o- Sri Ramasray Singh, resident of village + Post- Kishanpur Baikunth, P.S.- Warishnagar , District- Samastipur
15. Sri Santosh Kumar, S/o- Sri Munsi Sah, Resident of village- Akbarpur, Post- Mathurapur, P.S.- Warishnagar , District- Samastipur
16. Sri Ramnath Choudhary, S/o- Sri Rambrichh Choudhary, resident of village + Post- Hassa, P.S.- Warishnagar , District- Samastipur
17. Smt. Nirmala Devi, W/o- Sri Dilip Narayan Mahto, resident of village- Mohdinpur, Post- Hassa, P.S.- Warishnagar , District- Samastipur
18. Smt. Shobha Devi, W/o- Sri Dukha Paswan, resident of village- Dhanhar, P.S.- Warishnagar , District- Samastipur
19. Nannu Sahni S/o- Sri Sagar Sahni, resident of village- Sajanpur, P.S.- Warishnagar , District- Samastipur
20. Lalan Bahadur Das, S/o- Late Lakhichand Das, resident of village + Post- Chhatneshwar, P.S.- Warishnagar , District- Samastipur
21. Smt. Veena Devi, W/o- Ramsudist Ram, resident of village + Post-

Sadipur Bathnaha, P.S.- Warishnagar , District- Samastipur

22. Smt. Neera Devi, W/o- Sri Shiv Shankar Mahto, resident of village + Post- Mathurapur, P.S.- Warishnagar , District- Samastipur

23. Ram Narayan Mandal S/o- Sri Umesh Mandal, resident of village- Lakhmi Vishanpur @ Gohi, Post- Gohi, P.S.- Warishnagar , District- Samastipur

24. Smt. Savita Devi, W/o- Sri Surendra Mahto, resident of village + Post- Purnahi, P.S.- Warishnagar , District- Samastipur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Chakrapani, Adv.

Mr. Sanjay Kumar Singh

For the Respondent/s : Mr. A.N. Pandey, A.C. to S.C.- 1

Mr. Madhukar Krishna Sinha, S.C.-1

For the Respondent No. 19 : Mr. Ajay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 18-01-2016 Heard Mr. Chakrapani, learned counsel for the petitioners, Mr. A.N. Pandey, learned counsel for the State and Mr. Ajay Kumar, learned counsel for the Respondent No. 19.

Though served the other respondents have not chosen to appear.

An affidavit of service has been filed by the Block Development Officer today demonstrating that in compliance of the order dated 10.12.2015 notices have been served on the private respondents and a receipt of which is also enclosed with the affidavit filed today.

The issue raised by the petitioner stands noted in the order of this Court passed on 10.12.2015.

The two petitioners herein are the Pramukh and Up-



Pramukh respectively of Panchayat Samiti, Warisnagar in the District of Samastipur and are aggrieved by the initiation of a no confidence motion under the provisions of Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'). Apart from other issues raised by the petitioners one of the issue raised is that the notice circulated by the Executive Officer-cum-Block Development Officer, Warisnagar is not in tune with the provisions of Section 44(3)(v) of 'the Act' inasmuch as it is not accompanied with reasons/charges. A copy of the notice is impugned at Annexure-5 and the argument of learned counsel stands supported. It is in consideration of the apparent illegality in the notice that this Court vide order passed on 10.12.2015 while issuing notice to the private respondents directed for stay of the special meeting which was fixed on 12.12.2015. Due to lack of communication and some confusion prevailing in absence of copy of the order of this Court and/or certification by the Counsel that the meeting proceeded on 12.12.2015 and in which the motion was passed against the two petitioners. The passing of the motion was brought to the notice of this Court by the petitioners vide I.A. No. 9683 of 2015 and considering the circumstances this Court directed for filing of a show cause by the Block Development Officer in not ensuring compliance of the order passed by this

Court on 10.12.2015. The Executive Officer-cum-Block Development Officer, Warisnagar, appeared in person on 12.1.2016 and also filed a show cause explaining the circumstances in which the special meeting was held on 12.12.2015.

Having heard learned counsel for the parties and considering the explanation given by the Executive Officer-cum-Block Development Officer, Panchayat Samiti, Warisnagar this Court vide order passed on 12.1.2016 accepted the explanation and dropped the proceedings. Since the special meeting was held in violation of the order passed by this Court on 10.12.2015 that this Court vide order passed on 16.12.2015 had stayed the motion passed in the special meeting and restored the petitioners to their respective posts and as a consequence of which they have continued on their post. The matter has thereafter been taken for consideration and with consent of the parties the writ petition is being disposed of at the stage of admission itself.

The requisition moved against the two petitioners is a part of Annexure 2 series and was communicated to the petitioner-Pramukh vide letter dated 5.11.2015 by the Executive Officer as is manifest from Page 31 of the proceedings. The requisition is in order and does not suffer from any infirmity. Further that the

requisition is now in the knowledge of the petitioner-Pramukh, he is legally bound under Section 44(3)(i) of 'the Act' to fix the date of special meeting for consideration of the motion so moved against him as well as the Up-Pramukh.

As I have observed the infirmity in the notice circulated for special meeting present at Annexure-5 is self eloquent and the notice is in clear violation of the statutory provisions of Section 44(3)(v) of 'the Act'. The illegality in the notice coupled with the fact that the special meeting was held in violation of the order of this Court passed on 10.12.2015, neither the notice nor the motion passed are capable of being upheld and in consequence the notice dated 2.12.2015 issued by the Executive Officer-cum-Block Development Officer, Warisnagar impugned at Annexure-5 along with the motion passed against the two petitioners in the special meeting held on 12.12.2015 are set aside. Since the petitioners by virtue of the order dated 16.12.2015 stand restored to their respective post and this Court has not found any infirmity in the requisition moved against the two petitioners, it shall be the duty of the Pramukh to discharge the legal obligation cast upon him under the provisions of Section 44(3)(i) of 'the Act' to fix the date of special meeting for consideration of the motion moved against him as well as the Up- Pramukh.



In the circumstances so explained above, the petitioner no. 1 who is the Pramukh of the Panchayat Samiti is directed to fix the date of special meeting for consideration of the motion so moved against him as well as the Up-Pramukh on or before 27.1.2016 bearing in mind the statutory provisions underlying Section 46(4) of 'the Act' and duly intimate the date to the Executive Officer, Panchayat Samiti for circulation of notice. No sooner does the Pramukh intimate the date of special meeting to the Executive Officer, Panchayat Samiti that he shall immediately circulate the notice bearing in mind the provisions of Section 44(3)(v) of 'the Act'. Any failure on the part of the Pramukh to fix the date of special meeting on or before 27.1.2016 would entitle the requisitionists to move as per the provisions of Section 44(3)(i) of 'the Act' and to fix the date of special meeting and accordingly intimate the same to the Executive Officer who shall discharge his obligation as spelt out hereinabove.

The writ petition is allowed with the directions/observations aforementioned. Interlocutory Application stands disposed of.

(Jyoti Saran, J)

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