

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16774 of 2014

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Upendra Pd. Singh S/o Late Radha Raman Mahto resident of Village Malpur,
Police Station Khodawandpur, District Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Panchayati Raj Department, Government of Bihar, New Secretariat, Patna-1.
2. The State Election Commission through its Chief Election Commissioner, Bihar.
3. The Divisional Commissioner, Munger.
4. The District Magistrate, Begusarai.
5. The District Panchayat Raj Officer, Begusarai.
6. The Sub Divisional Officer, Manjhaul, Begusarai.
7. The Block Development Officer cum Executive Officer, Khodawandpur, Begusarai.
8. Udyog Prasar Padadhikari, Khodawandpur, Begusarai.
9. Mithilesh Kumar Mishra S/o Late Dukhaharan Mishra Resident of Village Bidulia, Post Office Meghaul, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 10 in the District of Begusarai.
10. Jawed Ali S/o Md. Noor Hassan @ Bhagalu Resident of Village Nullahpur, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 1 in the District Begusarai.
11. Ram Chandra Das S/o Deo Narayan Das Resident of Village Tara Bariyarpur, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial constituency No. 6 in the District Begusarai.
12. Kumari Munni Devi W/o Ram Babu Yadav Resident of Village Chalaki, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 3 in the District of Begusarai.
13. Afsana Khatoon W/o Md. Manjar Alam Resident of Village Jogipur, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 4 in the District of Begusarai.
14. Bhawani Devi W/o Naresh Ram Resident of Village Tetrahi, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 5 in the District of Begusarai.
15. Vimala Devi W/o Bhola Das Resident of Village Khodawandpur, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 9 in the District of Begusarai.
16. Sanju Devi W/o Dinesh Mahto Resident of Village Tara, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 7 in the District of Begusarai.
17. Ashwini Prasad Singh S/o Late Deo Datt Prasad Singh Resident of Village Meghaul, Police Station Khodawandpur, District Begusarai, Member of Panchayat Samiti, Khodawandpur, Territorial Constituency No. 11 in the District of Begusarai.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Vijay Kumar, Advocate

For the Respondent-State : Mr. Ranjeet Kumar Pandey, A.C. to GP-23

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 11-01-2016

The petitioner is the Ex-Pramukh of Panchayat Samiti, Khodawandpur in the district of Begusarai and is aggrieved by the 'no confidence motion' passed against him on 04.9.2014, a copy of which is placed at Annexure-6 to the writ petition. The following issues have been raised by Mr. Vijay Kumar, appearing for the petitioner to question the motion namely:

- Mr. Vijay Kumar espousing the case of the petitioner on

the grounds aforementioned submits that the motion in these admitted circumstances cannot be upheld.

The argument has though been contested by Mr. Ranjit Kumar Pandey A.C. to G.P. 23 who has produced the records of the proceedings to submit that the petitioner was attempted to be served the requisition but since he was not present hence the delay.

The main opposition has come from Mr. Subodh Kumar Jha appearing for the requisitionists to submit that the petitioner had not only an avoiding attitude to face the motion but no sooner did he gather knowledge about the date fixed by the requisitionists for the special meeting that he chose to resign on 29.8.2014 only to withdraw the same after the motion was passed on 4.9.2014. He submits that even if the withdrawal came within 7 days of the submission of resignation as permitted under Section 44(1) of 'the Act' but since the motion had already been passed on the same day hence it had no meaning.

I have heard learned counsel for the parties and I have perused the records which have been produced by Mr. Kumud Ranjan, the Block Development Officer who is present with the records before the Court in compliance with the direction. He informs the Court that although he is aware of the statutory prescriptions but the notice in question was issued by his predecessor in office and which admittedly does not satisfy the



statutory prescription requiring the mentioning of reasons/allegations or the compliment of the requisitionists therewith. In so far as the presentation issue is concerned I find from the records that the requisition was attempted to be served on the petitioner on 06.8.2014 but he was not found present. The requisition was thereafter presented on the petitioner by the Executive Officer in the file but he returned with a note and direction to the Executive Officer to furnish the original copy thereof on 20.8.2014. The petitioner in fact has admitted that he received the copy of the requisition on 16.8.2014. Having received the requisition on 16.8.2014 the petitioner was required to fix a date within 7 days thereafter so as to keep a time gap of 7 days in between the notice and the date of the special meeting to satisfy the requirements of Section 46(4) of 'the Act'. The issue stands settled in the judgment of this Court passed in the case of **Geeta Devi vs. the State of Bihar** since reported in **2015(1) PLJR 790**. It was held that if the Pramukh fails to fix a date of meeting within 7 days of receipt of requisition then on the 8th day, the requisitionists become entitled to fix the date. Admittedly the petitioner did not choose to fix the date within 7 days having received the requisition on 16.8.2014 and as the result on 26.8.2014 the requisitionists informed the Executive Officer of the date they had fixed i.e. 04.9.2014. A notice was circulated vide Annexure 5 which admittedly does not



satisfy the requirements of Section 44(3)(v) of 'the Act' but in between the petitioner choose to resign on 29.8.2014, a copy of which has been placed on record by the private respondents vide Annexure-C to the supplementary counter affidavit filed today. Thus having resigned from the post of Pramukh to avoid the forthcoming motion on 04.9.2014, the petitioner waived his right to question the notice on its infirmity. It is during the period of resignation that the special meeting took place on 04.9.2014 in which the motion was declared passed and on which date the petitioner chose to withdraw his resignation. Even though the special meeting in which the motion was passed against the petitioner and the withdrawal of the resignation is simultaneous and on the same date, but in my opinion the conduct of the petitioner to avoid the motion, does not entitle him to a writ remedy. The first step for grant of indulgence in a writ jurisdiction is that a litigant should approach the Court with clean hands and his hands should not be soiled. In the present case the records reflect that not only the petitioner avoided the motion by absenting himself to receive the requisition, even when the requisition was forwarded to him by the Executive Officer in the file he returned it on a technicality of the original requisition even when the legislative intendment of Section 44(3)(i) of 'the Act' is that the intent of the members requisitionists of the Panchayat Samiti should be brought to the notice of the Pramukh or Up-Pramukh as the case

may be and a communication of the requisition in original or its copy to the Pramukh or the Up Pramukh would satisfy the requirements of a presentation under the Act. In the present case even when the requisition was presented to the petitioner in the file he first took objection on the issue of original copy and thereafter failed to discharge his obligation to fix the date. In fact having realized that the requisitionists had proceeded to fix the date of special meeting on 26.8.2014 that he chose to avoid the motion by resigning on 29.8.2014. The meeting having drawn in support of the motion, the withdrawal of resignation by the petitioner on the same day would neither make any dent therein nor is sufficient to allow him to question the motion on the infirmity in the notice which right of the petitioner stood withdrawn when he chose to submit his resignation.

For the reasons aforementioned, I am not persuaded to exercise my discretion to interfere with the outcome of the special meeting removing the petitioner from the post of Pramukh. The writ petition is dismissed accordingly.

(Jyoti Saran, J)

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