

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12754 of 2018

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1. Kokila Khatoon, wife of Late Kabiruddin, Resident of Village- Khas Kumhiya, P.O.- Lohagra Ghat, P.S.- Bahadurganj, District- Kishanganj, presently Pramukh of Block Panchayat Samiti, Dighal Bank, District- Kishanganj.
 2. Darkhasha Begum, Daughter of Late Habibur Rahman, Resident of Mal Tola, P.O.- Lohagra Ghat, P.S.- Garbhandanga, District- Kishanganj, Presently Up- Pramukh of Block Panchayat Samiti, Dighal Bank, District- Kishanganj.

.... Petitioners

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, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Kishanganj, District- Kishanganj.
5. The District Panchayat Raj Officer, Kishanganj, District- Kishanganj.
6. The Sub-Divisional Officer, Kishanganj, District- Kishanganj.
7. The Block Development Officer, Dighal Bank-cum-Executive Officer, Block Panchayat Samiti, Bahadurganj, District- Kishanganj.
8. Bablu Murmu, Son of not known to the petitioners,
9. Baleshwar Yadav, Son of not known to the petitioners,
10. Noorjahan, Wife of not known to the petitioners,
11. Tanjuma Khatoon, Wife of not known to the petitioners,
12. Md. Miftatul Haque, Son of not known to the petitioners,
13. Poonam Devi, Wife of not known to the petitioners,
14. Ramanand Singh, Son of not known to the petitioners,
15. Najefoon, Wife of not known to the petitioners,
16. Tej Narayan Giri, Son of not known to the petitioners,
17. Nand Lal Harijan, Son of not known to the petitioners,
18. Pramila Devi, Wife of not known to the petitioners,
19. Bibi Gulabi, Wife of not known to the petitioners,
20. Ghirndar Kumar Das, Son of not known to the petitioners,
21. Sanjuda Begum, Wife of not known to the petitioners,
22. Akhtari Begum, Wife of not known to the petitioners,



23. Nazim Akhtar, Son of not known to the petitioners,

24. Salna Devi, Wife of not known to the petitioners,

25. Nilam Pravin, Wife of not known to the petitioners,

26. Mistafi Begum, Wife of not known to the petitioners,

27. Sikandra Hayat, Son of not known to the petitioners,

28. Afique Farhan, Son of not known to the petitioners,

Respondent nos. 8 to 28 are the members of Block Panchayat Samiti, Dighal Bank through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Dighal Bank, P.O. and P.S.- Dighal Bank, District- Kishanganj.

... Respondents

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Appearance :

For the Petitioner/s : Mr. S. B. K. Manglam, Advocate
Mrs. Anita Kumari, Advocate

For the State : Smt. Archana Meenakshee -GP6

For contesting respondents: Mr. Pankaj Kumar Sinha, Advocate
Mr. Diwakar Sinha, Advocate
Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-07-2018

Heard Mr. S.B.K. Manglam, learned counsel for the petitioners, Mr. Pankaj Kumar Sinha, learned counsel for the 14 members of the Panchayat Samiti, who had expressed want of confidence in Pramukh and Smt. Archana Meenakshee, learned counsel for the State.

2. The prayers of the petitioners in the instant writ petition are three-fold. Firstly, the petitioners have prayed for



quashing the requisition dated 18.06.2018 addressed to petitioner no.1 but filed in the office of respondent no.7 whereby and whereunder the requisitionist members of the Block Panchayat Samiti, Dighal Bank (for short 'Panchayat Samiti') have requested the petitioner no.1 to convene the special meeting of the Panchayat Samiti to consider their want of confidence against her. Secondly, the petitioners have prayed for quashing the notice dated 27.06.2018 issued under the signature of respondent no. 7 and contained in his letter no. 702 addressed to petitioner no. 1 whereby the petitioner no. 1 has been requested to attend the special meeting of Panchayat Samiti on 06.07.2018 convened for consideration of want of confidence against her and petitioner no. 2. Thirdly, the petitioners have prayed for quashing proceedings of special meeting dated 06.07.2018 issued under memo no. 749 dated 06.07.2018 wherein the motion expressing want of confidence in the petitioners has been passed and they have been removed from their respective posts.

3. Shorn of unnecessary details, the facts of the case, in brief, are that the petitioner no.1 had contested for the post of Pramukh and the petitioner no. 2 had contested for the post of Up-Pramukh of Panchayat Samiti. They were declared elected on the respective posts on 18.06.2016. Since then, they were performing



their duties as Pramukh and Up-Pramukh of the Panchayat Samiti. A requisition was moved by 14 members of the Panchayat Samiti being respondent nos. 8, 9, 10, 13, 14, 16, 17, 18, 19, 20, 22, 24, 27 and 28 on 18.06.2018 expressing want of confidence in petitioner no. 1 and requesting therein for convening a special meeting for deliberation on the motion of no confidence. The said requisition was filed in the office of respondent no. 7 and was forwarded by the respondent no. 7 in file on 23.06.2018 before petitioner no. 1 for fixing a date for convening special meeting. The petitioner no. 1 returned the file to the respondent no. 7 on 23.06.2018 itself stating therein that because of her poor health, she is not in a position to convene the special meeting. Thereafter, respondent no.7 issued notice on 27.06.2018 to the petitioners and other members of Panchayat Samiti for holding the special meeting on 06.07.2018 to consider motion of want of confidence in the petitioners, i.e. Pramukh and Up-Pramukh. Being aggrieved by the aforestated notice dated 27.06.2018, the petitioners filed the instant writ petition on 05.07.2018 and since the special meeting was already held on 06.07.2018 in which the 14 requisitionist members participated and voted in favour of the motion expressing want of confidence in the petitioners, the motion was passed and the petitioners have been removed from their respective posts. Being



aggrieved by the requisition passed in the special meeting, interlocutory application has been filed by the petitioners challenging the proceeding of the special meeting dated 06.07.2018.

4. Assailing the requisition dated 18.06.2018, learned counsel for the petitioners submitted that the said requisition had been filed by the requisitionists in violation of the provisions contained under Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (for short '2006 Act') which mandates that 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 constituency of the Panchayat Samiti. He submitted that in the present case, the requisition expressing want of confidence in petitioner no. 1 was not presented to the Pramukh rather the same was presented to the Executive Officer of the Panchayat Samiti, who had forwarded the same before the petitioner no. 1 for convening a special meeting.

5. He submitted that the requisition was expressing want of confidence in the Pramukh only and there is no mention of want of confidence in the Up-Pramukh.

6. He further submitted that the notice dated 27.06.2018



issued by the respondent no. 7 vide letter no. 702 dated 27.06.2018 requesting the petitioner no. 1 to attend the special meeting of Panchayat Samiti on 06.07.2018 convened for consideration of no confidence motion is also bad for the reason that the same is in violation of mandatory provision contained in Section 44(3)(i) of 2006 Act which provides that if the Pramukh fails to call a special meeting, the Up-Pramukh or one-third of the total number of members elected directly may fix a date for special meeting and require the Executive Officer to give notice to the members and take such action as may be necessary to convene the meeting. The said Section 44(3)(i) of 2006 Act grants the Pramukh fifteen days time for convening special meeting in case of a valid requisition.

7. He urged that the provision prescribed under Section 46(4) of 2006 Act mandates that if a special meeting is to be held, the same should be held after giving seven days of clear notice when requisition for a special meeting is presented to Pramukh, it is he, who has to decide the date of special meeting and in terms of decision so taken by the Pramukh, the Executive Officer of the Panchayat Samiti is required to issue seven days of clear notice and when Pramukh fails to convene meeting within fifteen days of such requisition giving seven clear days notice, Up-Pramukh or one-third of total number of directly elected members of Panchayat



Samiti is vested with the right to fix date of such special meeting and require the Executive Officer to give notice accordingly to members and take such action as may be necessary to convene special meeting whereupon the Executive Officer shall issue necessary notice.

8. He contended that even if the requisition forwarded to the petitioner is treated to be a valid requisition for consideration of want of confidence against petitioner no.1, the Executive Officer could have issued notice on the instruction of one-third members of the committee only after the expiry of seven days, i.e., on 30.07.2018. But, here in the present case, the requisition was forwarded to the petitioner no.1 on 23.06.2018 and only after four days, the respondent no. 7 issued notice fixing a date for convening a special meeting which cannot be held to be sustainable in law.

9. The next ground urged by the learned counsel for the petitioners is that since there was no occasion for respondent no.7 to issue notice of special meeting for consideration of want of confidence against petitioner no.1, there was no occasion for the members to be present in the illegally convened special meeting on 06.07.2018. Again, his contention is that at no point of time, a proper and valid requisition was submitted expressing want of confidence in petitioner no. 2 and in that circumstance, the issuance



of notice for consideration of want of confidence in petitioner no. 2 by the respondent no.7 is wholly illegal and unsustainable in the eye of law.

10. On the other hand, Mr. Pankaj Kumar Sinha, learned counsel for the requisitionist members of the Panchayat Samiti submitted that the requisition expressing want of confidence in petitioner no. 1 was addressed to the Pramukh (petitioner no.1) and the same was presented to her through the Executive Officer. He submitted that though the petitioner no.1 was fully aware of the requisition, she has raised a technical issue that since the same was not presented to her, it was not in accordance with law. He contended that technically the petitioner no.1 may be right in her contention but now as she is aware of the requisition expressing want of confidence in her even if the summoning of special meeting and the decision taken therein is held to be bad, the petitioner no.1 should summon the special meeting on a date falling within fifteen days from today in order to deliberate upon the want of confidence expressed by members of the Panchayat Samiti in petitioner no.1.

11. Upon such submission, Mr. S.B.K. Manglam, learned counsel for the petitioners submitted that the petitioner no.1 has got no objection to fix the date of special meeting falling within fifteen days from today granting seven days clear notice to the



members of the Panchayat Samiti. However, he submitted that such meeting can only be held for deliberation and voting on motion of want of confidence in petitioner no.1 as the requisitionists have not submitted any requisition expressing want of confidence in petitioner no. 2.

12. On such plea of Mr. S.B.K. Manglam, learned counsel for the petitioners, Mr. Pankaj Kumar Sinha, learned counsel appearing for requisitionist respondents submitted that though the respondents represented by him before this court had also expressed want of confidence in petitioner no.2, he would not make the same an issue to further delay and complicate the matter. He proposed that the contesting respondents would file a fresh requisition expressing want of confidence in petitioner no.2 before the Pramukh of the Panchayat Samiti and on receipt of such requisition, the Pramukh should convene a special meeting on a date falling within fifteen days of such requisition in accordance with the provisions of 2006 Act.

13. Mr. S.B.K. Manglam, learned counsel for the petitioners readily agreed to such proposal.

14. Smt. Archana Meenakshee, learned counsel for the State submitted that the writ petition may be disposed of in terms of the consensus arrived at between the contesting parties.



15. Regard being had to the submissions noted above, with consent of the parties, the writ petition is disposed of on the following terms:-

(i) The impugned notice dated 27.06.2018 issued under the signature of respondent no.7 contained in his letter no. 702 for consideration of want of confidence of motion against petitioners is quashed.

(ii) Consequently, the proceedings of the special meeting of Panchayat Samiti dated 06.07.2018 issued under memo no. 749 wherein no confidence motion has been passed against the petitioners also stand quashed as a result of which the petitioners stand restored as Pramukh and Up-Pramukh of the Panchayat Samiti.

(iii) The petitioner no.1 shall convene special meeting on a date falling within fifteen days from today granting seven days clear notice in accordance with the provisions of 2006 Act for deliberation and voting on want of confidence expressed against her by 14 members of the Panchayat Samiti in their requisition dated 18.06.2018.

(iv) If the petitioner no.1 would fail to call the



special meeting as under taken by her before this Court, one-third of the total number of members elected directly shall be at liberty to fix a date for special 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.

(v) In case, a fresh requisition expressing want of confidence in the Up-Pramukh (petitioner no.2) is 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 constituency of the Panchayat Samiti, the Executive Officer shall immediately bring the requisition to the notice of the Pramukh and the Pramukh shall convene such meeting on a date falling within fifteen days of such requisition in accordance with the provisions of 2006 Act.

(vi) If the Pramukh would fail to call the special meeting, one-third of the total number of members elected directly may fix a date for such meeting and require the Executive Officer to give notice to the members and take such action as may be necessary to



convene the meeting.

(vii) No such meeting shall be postponed once the notice of the same shall be issued on any ground.

(viii) No quorum shall be required for the special meeting convened to discuss no confidence motion.

(Ashwani Kumar Singh, J.)

Kanchan/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.07.2018
Transmission Date	NA

