

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12103 of 2018

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1. Kaushari Begum wife of Sri Rafique Alam, resident of village-Jhinga Katta, P.O.-Mahish Bathna, P.S.-Bahadurganj, District- Kishanganj, presently Pramukh of Block Panchayat Samiti, Bahadurganj, District- Kishanganj

2. Afak son of Late Sagir, resident of village-Khatia Toli, Chandwar, P.O.- Bangawan Hatt, P.S.-Bahadurganj, District- Kishanganj, presently, Up-Pramukh of Block Panchayat Samiti, Bahadurganj, District- Kishanganj

.... 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, 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, Bahadurganj-cum-Executive Officer, Block Panchayat Samiti, Bahadurganj, District- Kishanganj
8. Nehal Parvez son of not known to the petitioners
9. Zahudur Rahman son of not known to the petitioners
10. Kiasar Alam son of not known to the petitioners
11. Md. Karman son of not known to the petitioners
12. Fus Lal son of not known to the petitioners
13. Anzu Alam son of not known to the petitioners
14. Radhey Shyam son of not known to the petitioners
15. Rani Begum wife of not known to the petitioners
16. Santoshi Devi wife of not known to the petitioners
17. Savitri Devi wife of not known to the petitioners
18. Hena Parveen wife of not known to the petitioners
19. Runi wife of not known to the petitioners
20. Jahroon Nisha wife of not known to the petitioners
21. Noorjahan Begum wife of not known to the petitioners
22. Sundar Lal Singh son of not known to the petitioners
23. Munna Babu son of not known to the petitioners
24. Hazra Khatoon wife of not known to the petitioners
25. Nusarat Khatoon wife of not known to the petitioners
26. Rahana wife of not known to the petitioners
27. Salim Akhtar son of not known to the petitioners
28. Md Monazir Alam son of not known to the petitioners
29. Shanti Devi wife of not known to the petitioners
30. Zavi Ara wife of not known to the petitioners
31. Hopan Murmu son of not known to the petitioners
32. Rafat Ara wife of not known to the petitioners

Respondent nos. 8 to 32 are the members of Block Panchayat Samiti, Bahadurganj through the Block Development Officer-cum-Executive Officer,



Block Panchayat Samiti, Bahadurganj, P.O. and P.S.-Bahadurganj, District-Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
: Mrs. Anita Kumari, Advocate
For the Respondent/s : Mr. Shri Prakash Srivastava, Advocate
: Mr. Santosh Bharti, Advocate
: Mr. Diwakar Sinha, Advocate
: Mrs. Anu Priyadarshini, Advocate
For the State : Mr. Kameshwar Prasad Gupta, G.P.-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 06-07-2018

Heard Mr. S.B.K. Manglam, learned counsel for the petitioners, Mr. Kameshwar Prasad Gupta, learned counsel for respondent nos.2 to 7 and Mr. Shri Prakash Srivastava, learned counsel for respondent nos.8 to 26.

2. The petitioners seek quashing of the notice dated 02.07.2018 by which the special meeting for considering no confidence motion against the petitioners, Pramukh and Up-Pramukh respectively of Block Panchayat Samiti, Bahadurganj, Kishanganj has been fixed on 07.07.2018.

3. Mr. S.B.K. Manglam, learned counsel for the petitioners raises two points in support of the case of the petitioners.

4. It is firstly submitted that the requisition for convening special meeting to consider no confidence motion against Pramukh or Up-Pramukh has to be addressed to the Pramukh and it shall be first



presented before the Pramukh by the office and only then its copy would be filed before the Executive Officer. It is urged that in the present case the requisition was filed by the respondents directly to the Executive Officer without approaching petitioner no.1 by filing their requisitions and respondent no.7 mechanically received the requisitions on 22.06.2018 itself and on the same day he sent the two requisitions with the file to petitioner no.1 to fix a date for convening special meeting. It has been submitted that subsequent presentation of requisitions before respondent no.7 addressed to petitioner no.1 and petitioner no.2 cannot cure the illegality. As such, the requisitions have to be treated as not validly presented at all and, thus, no requisition in the eye of law.

5. The second submission of the learned counsel for the petitioners is that notice dated 02.07.2018 fixing the date of special meeting for considering no confidence motion on 07.07.2018 by the Executive Officer, Block Panchayat Samiti, Bahadurganj is again in violation of mandatory provisions of Section 46(4) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act') which provides for seven clear days' notice of a special meeting specifying the time at which such meeting is to be held.

6. Mr. Kameshwar Prasad Gupta, learned counsel for the State prays for time in order to seek instructions and file counter



affidavit.

7. On the other hand. Mr. Shri Prakash Srivastava, learned counsel appearing for respondent nos.8 to 26, who had presented requisitions for convening the special meeting to consider no confidence motion, fairly admitted that the grounds on which the petitioners seek quashing of the notice dated 2nd July, 2018 are legal and valid. He admitted that the mandatory requirements prescribed under Section 44(3)(i) and 46(4) of the Act have not been complied with and, thus, the notice so issued be quashed. He admitted that Section 44(3)(i) of the Act requires members of the Panchayat Samiti to first approach the Pramukh for presentation of their requisition and only thereafter they can file its copy before the Executive Officer. However, in the present case the requisitions were presented by the requisitionists before the Executive Officer for convening the special meeting to consider no confidence motion against the petitioners. Similarly, as mandated under Sub Section (4) of Section 46 of the Act seven clear days' notice of the special meeting has not been given by the Executive Officer for convening the special meeting. However, he contended that now the petitioners are aware of requisitions of no confidence motion against them and, thus, petitioner no.1 shall treat the requisitions annexed to this petition as Annexures P-3 and P-4 as valid requisitions for convening the meeting on a date within fifteen



days from today in terms of Section 44 (3)(i) of the Act.

8. Mr. Manglam, learned counsel for the petitioners raised no objection to such proposal made by the learned counsel for the requisitionist-respondents. He submitted that treating the requisitions addressed to the petitioners, the petitioner no.1 would certainly convene a meeting within fifteen clear days from today for discussing the meeting of no confidence motion.

9. I have heard learned counsel for the parties and with the consent of the parties, the writ petition is disposed of on the following terms:-

- (i) The impugned notice dated 2nd July, 2018 issued under letter no.932 convening the meeting on 7th July, 2018 for considering no confidence motion against the petitioners is quashed.
- (ii) The petitioner no.1 shall convene the meeting within fifteen days from today on the requisitions presented earlier as Annexures P-3 and P-4 to the present application treating the same to have been presented before him today.
- (iii) If the petitioner no.1 would fail to call the special meeting, the Up-Pramukh or one-third of the total number of directly elected members shall be at liberty



to fix a date for such 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.

- (iv) No such meeting shall be postponed once the notice for the same shall be issued.
- (v) No quorum shall be required for the special meeting convened to discuss no confidence motion.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.07.2018
Transmission Date	N.A.

