

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13960 of 2018

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Smt. Babita Devi, Wife of Shri Manoj Kumar Singh, resident of Ward No. 11,
Village- Rampur Ami, Police Station- Dighawara, District- Saran.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary 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, Saran at Chhapra, District- Saran.
5. The District Panchayat Raj Officer, Saran at Chhapra, District- Saran.
6. The Sub-Divisional Officer, Sonpur, District- Saran.
7. The Block Development Officer, Dighwara-cum-Executive Officer, Block Panchayat Samiti, Dighwara, District- Saran.
8. Smt. Neha Singh, Wife of Not Known to the Petitioner, Panchayat Samiti Sadasya 01, Jhauva.
9. Smt. Sanju Devi, Wife of Not known to the Petitioner, Panchayat Samiti Sadasya 02, Jhauva.
10. Smt. Usha Devi, Wife of not known to the petitioner, Panchayat Samiti Sadasya 03, Haraji,
11. Smt. Sarita Devi, Wife of Not known to the petitioner, Panchayat Samiti Sadasya 04, Rampur Amee.
12. Smt. Reeta Devi, Wife of Not known to the petitioner, Panchayat Samiti Sadasya 06, Manupur.
13. Smt. Usha Devi, Wife of Not known to the petitioner, Panchayat Samiti Sadasya 07, Barua.
14. Smt. Manju Devi, Wife of Not known to the petitioner, Panchayat Samiti Sadasya 08, Barua.
15. Smt. Subedara Khatoon, Wife of Not known to the petitioner, Panchayat Samiti Sadasya 09, Sheetalpur.
16. Md. Usman, Son of not known to the petitioner, Panchayat Samiti Sadasya 10, Basti Jalal.
17. Smt. Putul Devi, Wife of not Known to the petitioner, Panchayat Samiti Sadasya 11, Kuraiyan.
18. Shri Vivek Kumar, Son of not Known to the petitioner, Panchayat Samiti Sadasya 12 Trilokchak,
19. Shri Mukesh Ray, Son of not known to the Petitioner, Panchayat Samiti Sadasya 13 Akilpur.
20. Smt. Sanju Devi, Wife of not known to the Petitioner, Panchayat Samiti Sadasya 14 Akilpur. Respondent nos. 8 to 20 are the Members of Block Panchayat Samiti, Dighwara, through the Block Development Officer, Dighwara-cum-Executive Officer, Block Panchayat Samiti, Dighwara, District- Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navendu Kumar, Adv.
For the State : Ms Archana Meenakshee- GP6
Mr. Harish Singh Goldie, Adv.
For Respondent Nos. 8, 10
to 13, 15 to 20 : Mr. Sri Prakash Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 29-08-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no. 8, 10 to 13 and 15 to 20.

2. In the present writ petition, the petitioner has prayed for quashing the notice dated 17.07.2018 issued under the signature of respondent no. 7 by which the special meeting for considering no confidence motion against the petitioner, Pramukh of Block Panchayat Samiti, Dighwara, Saran, had been fixed on 25.07.2018.

3. While issuing notice to the private respondents vide order dated 24.07.2018, this Court after noticing submissions of the petitioner had directed that the aforesaid notice dated 17.07.2018 shall be kept in abeyance.

4. The petitioner has challenged the notice on two grounds. The first ground for challenge is that there is infirmity in the requisition addressed to the petitioner. According to him, the requisition is not in tune with the provisions prescribed under Section 44 (3)(i) of the Bihar Panchayat Raj Act, 2006 (for short 'the Act')



inasmuch as though addressed to the Pramukh it was routed through the office of the Executive Officer. He submitted that the statutory provisions require presentation of the requisition not only to the Pramukh but a copy of the same is also required to be served to the Executive Officer and the Executive Officer is required to bring the requisition to the notice of the Pramukh immediately, but the same would not mean that the requisition to the Pramukh has to be routed through the Executive Officer.

5. The second ground taken by the petitioner is that even before expiry of 15 days, the date on which the requisition was served on him by the Executive Officer, the respondent no. 7 fixed a date for such meeting.

6. In this regard, he contended that on 02.07.2018 a requisition for convening the special meeting to consider no confidence motion against the petitioner was submitted before the concerned office assistant who presented it before the Executive Officer and, for the first time on 03.07.2018, the Executive Officer put up the matter before the petitioner requesting her to fix a date, but without waiting for 15 days, the respondent no. 7 vide letter no. 638 dated 17.07.2018 i.e. on 14th day of service of requisition hurriedly fixed time and date for convening the special meeting on 25.07.2018 at 11:30 a.m.



7. Two sets of counter-affidavit have been filed on behalf of the respondents, one by respondent nos. 8, 10 to 13 and 15 to 20 and another by respondent no.7. In the counter-affidavit, respondent no.7 has contended that the petitioner did not consider the request and demand of nine members of the Panchayat Samiti to convene a special meeting for consideration of no confidence motion and raised suspicion regarding signature of the members on their joint application dated 02.07.2018 and returned the requisition to the office without fixing any date for convening special meeting for consideration of no confidence motion. Since the petitioner failed to convene the special meeting as desired by the elected members of the Panchayat Samiti under the provisions of Section 44(3)(i) of the Act, the respondent no. 15 Smt. Subedara Khatoon, who happens to be Up-pramukh of the Panchayat Samiti, vide letter dated 17.07.2018 fixed the date for convening the special meeting for consideration of no confidence motion on 25.07.2018.

8. In the counter-affidavit filed on behalf of the respondent no. 8, 10 to 13 and 15 to 20, it has been stated that there are altogether 14 elected members in the Panchayat Samiti, Dighwara, out of which the petitioner is the elected Pramukh. The requisition of no confidence motion duly signed by 9 elected members was presented before the petitioner on 02.07.2018. The requisition filed by the requisitionists



was routed through the Executive Officer to the Pramukh. Since the Pramukh did not consider the request made by the requisitionists, who were elected members and returned the file on 14.07.2018, the respondent no. 15 fixed a date for convening the special meeting by virtue of her letter dated 17.07.2018. It is further contended that the respondent no. 15 acted within her statutory limit and fixed the date of special meeting.

9. Learned counsel appearing for the respondent no. 7 submitted that there was neither any illegality in the requisition submitted by the 9 members of the Panchayat Samiti nor in the action taken by the Up-pramukh whereby she had directed for convening the special meeting. He submitted that as the petitioner failed to convene the special meeting within the statutory time and returned the file, the Up-pramukh issued a direction to convene the special meeting and after giving seven clear days notice the meeting was fixed as per provision of the Act on 25.07.2018.

10. Mr. Sri Prakash Srivastava, learned counsel appearing for the contesting private respondents submitted that in terms of Section 44 (3)(i) of the Act, the Pramukh is required to convene the special meeting on a date falling within 15 days of such requisition. He contended that the requisition was received by the petitioner on 03.07.2018. As she failed to convene the meeting till 16.07.2018, on



17.07.2018, the Up-pramukh fixed the date for the special meeting. He contended that the requirement in law is that there should be a clear 7 days notice for convening the special meeting. Thus, the meeting was to be convened by the Pramukh within 15 days of requisition. He submitted that the Pramukh was required to call the meeting well in advance as on expiry of 15 days the requirement of seven clear days notice could not have been complied. He contended that there is neither any illegality nor any irregularity in convening the meeting by the Up-pramukh in case the Pramukh had failed to call the meeting within statutory time.

11. I have heard learned counsel for the parties.

12. So far as the second contention of the petitioner that even before expiry of 15 days from the date of presentation of the requisition before the petitioner by the respondent no. 7, the notice fixing the date for such meeting was circulated is concerned, prima facie it appears to be quite attractive, but on a close scrutiny, I find the same to be without any merit.

13. In order to appreciate the rival submissions made by the parties, at this stage, it would be apt to extract the provisions prescribed under Sections 44(3) and 46(4) of the Act, which read as under:-

44. Resignation and Removal of Pramukh and Up-



Pramukh-

(3) (i) A Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

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 territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one third of the total number of directly elected members may 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. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.



(ii) No confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure.

(iii) If the motion of no confidence brought against the Pramukh or the Up-Pramukh or both is once rejected, no fresh motion of no confidence against the Pramukh or the Up-pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year from the date of such rejection of the motion.

(iv) No confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samiti as mentioned in section 39 (1) of this Act.

(v) Such reasons/charges, on the basis of which no confidence motion has to be moved against the Pramukh or Up-Pramukh, shall be clearly mentioned in the notice of meeting called to consider the no confidence motion.

(vi) As soon as the meeting called under this section begins, the presiding member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it open for discussion. Any discussion on the motion shall not be adjourned.

(vii) During discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no confidence motion has been moved for his defence



before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.

(viii) In case of no confidence motion against a Pramukh, the meeting shall be presided by the Up-Pramukh; in case of motion against Up-Pramukh by the Pramukh and in case of motion against both Pramukh and Up-Pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting.

In case of the post of Up-Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Up-Pramukh, as the case may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the Panchayat Samiti present in the meeting.

“46. Meetings of Panchayat Samiti –

(4) Ten clear days’ notice of an ordinary meeting and seven clear days’ notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted there at shall be sent to the members and affixed at the office of the Panchayat Samiti. Such notice shall include in case of a special meeting any motion or proposition mentioned in the written request made for



such meeting.” (emphasis supplied)

14. It would be crystal clear from a reading of the aforesaid Section 44(3) of the Act that a Pramukh or Up-Pramukh of the Panchayat Samiti, as the case may be, shall be deemed to have vacated his office forthwith if a resolution, expressing want of confidence in him or her is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the purpose. The requisition for such a special meeting is required to 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 constituencies of the Panchayat Samiti whereupon the Executive Officer is required to bring the requisition to the notice of the Pramukh immediately and thereafter the Pramukh is required to convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one third of the total number of directly elected members may 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 special meeting. Thereafter, the Executive Officer is required to issue such a notice in time and convene the meeting. Thus, Section 44(3) of the Act mandates that when



requisition for special meeting is presented to the Pramukh, it is the Pramukh who has to decide the date for special meeting and in terms of the decision so taken by the Pramukh, the Executive Officer is required to issue notice and the Up-pramukh or one third of the total number of directly elected members of the Panchayat Samiti gets a right to fix a date of such special meeting only after the Pramukh fails to convene the meeting within 15 days of such requisition.

15. Further, a bare reading of Section 46(4) of the Act conveys that 7 clear days of notice of a special meeting specifying time at which such meeting to be held and business has to be transacted has to be sent to the members and affixed at the office of the Panchayat Samiti. Thus, in terms of Section 44(3) of the Act the Pramukh is required to convene the special meeting within 15 days after presentation of such requisition. Further, in terms of Section 46(4) of the Act, the special meeting is to be held only after giving 7 clear days notice.

16. A conjoint reading of Section 44(3) and 46(4) of the Act would make it crystal clear that special meeting on a date falling within 15 days of such requisition keeping in mind that the calling of such meeting would be legal and sustainable only if seven clear days notice is given to the members concerned.

17. Since the statutory provision prescribed under Section



46(4) of the Act provides for seven clear days notice for convening the special meeting, the same would mean that the notice should be exclusive of the day on which it is issued and of the meeting for computing seven clear days.

18. Thus, the Pramukh is required to convene the special meeting upon request of required number of elected members sufficiently in advance so as the notice of meeting conforms to the requirement of seven clear days notice. The requisitionist members shall not have to wait for fifteen days from the date of receipt of such request by the Pramukh. If the Pramukh fails to call a special meeting as per the statutory requirement, the Up-pramukh or one third directly elected members would have a right to fix a date of such special meeting.

19. In the instant case, since the petitioner failed to issue notice for convening special meeting for more than ten days after receipt of the requisition and returned the file no illegality can be found with the action of the Executive Officer, who convened the special meeting on 25.07.2018 pursuant to the direction of Up-pramukh vide letter dated 17.07.2018.

20. In so far as, the submission of the petitioner that the requisition was first required to be served to the Pramukh and a copy of the same was required to be given to the Executive Officer is



concerned, from a perusal of the provisions of Section 44(3)(i) of the Act, as extracted above, it would be evident that the requisition addressed to the Pramukh is required to be presented to the Pramukh with a copy of the same to the Executive Officer. Thereafter, the Pramukh is required to pass an order directing the Executive Officer to process and present the file for fixing a date of special meeting. Hence, the meeting has to be fixed by the Pramukh in the file. The law, thus, require that in addition to submission of requisition to the Pramukh the same shall also be filed before the Executive Officer. The very purpose of presentation of requisition before the Executive Officer is that he may process the file promptly and present it before the Pramukh so that he may convene the meeting on a day falling within 15 days of such a requisition. Even if the requisition addressed to the Pramukh was transmitted to the Pramukh through the Executive Officer, in the opinion of this Court, the same has caused no prejudice to the petitioner. She was made acquainted with requisition immediately on 03.07.2018.

21. The Act aims to provide and strengthen the democratic institution of Panchayat at the level of villages so that participation of the people in the affairs of Panchayat increases and their involvement in the preparation and implementation of the local developmental schemes becomes possible as well as effective. Such objective can be



achieved only if the Panchayat Samiti is headed by a person having confidence of majority of the elected members.

22. In view of what has been discussed above, I am of the opinion that no case for interference in the special meeting so convened vide letter dated 17.07.2018 was made out.

23. However, since the special meeting pursuant to the requisition scheduled to be held on 25.07.2018 had been ordered to be kept in abeyance by this Court vide order dated 24.07.2018, the interim order is vacated. The petitioner shall convene a special meeting on a day falling within 15 days from today after giving 7 clear days notice to the members of the Panchayat Samiti. In case, she fails to call such special meeting, the Up-pramukh or one third of the total number of directly elected members may 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.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31-08-2018
Transmission Date	

