

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18632 of 2018

1. Maharana Singh, Son of Bhagwan Singh @ Bhagwan Singh Yadav, resident of Village- Gazipur, Sonbhadra, P.S.- Bansi, District- Arwal. At present Pramukh of Block Panchayat Samiti Sonbhadra, Bansi Suryapur.
2. Manka Devi, Wife of Uday Prasad, resident of Village- Annuan, P.S.- Bansi, District- Arwal. At present Up- Pramukh of Block Panchayat Samiti Sonbhadra, Bansi, Suryapur.
3. Jalendra Nishad, Son of Saguna Nishad, resident of Village- Sonbhadra, Police Station- Bansi, District- Arwal.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The State Election Commission, Bihar, Patna.
3. The District Magistrate, Gaya, District- Arwal.
4. The Sub- Divisional Officer, Sonbhadra, Bansi Suryapur, District- Arwal.
5. The Block Development Officer-cum- Executive Officer, Sonbhadra, Bansi Suryapur, District- Arwal.
6. Ajay Kumar, son of not known to the petitioners,
7. Dharmendra Kumar, son of not known to the petitioners,
8. Sangeeta Devi, wife of not known to the petitioners,
9. Indu Devi, wife of not known to the petitioners,
10. Rekha Kumar, wife of not known to the petitioners,
11. Suman Devi, wife of not known to the petitioners,
12. Indrajeet Kumar, son of not known to the petitioners,
13. Shanti Devi, wife of not known to the petitioners,

Respondent Nos. 6 to 13 are members of Block Panchayat Samiti Sonbhadra, Bansi Suryapur, Arwal.

... .. Respondents



Appearance :

For the Petitioners	:	Mr. Rajeev Ranjan, Advocate Mr. Ranjeet Choubey, Advocate
For the State	:	Mr. P. N. Shahi, AAG-6 Mr. Dharendra Kumar, AC to AAG-6
For SEC	:	Mr. Amit Shrivastava, Advocate Mr. Sanjeev Nikesh Advocate.
For private respondent	:	Mr. S.B.K. Mangalam, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-11-2018

Heard learned counsel for the petitioners, learned counsel for the State, learned counsel for the State Election Commission and learned counsel appearing for respondent nos. 7 to 13.

2. The petitioners have made the following prayers in the instant writ petition :-

“I. For issuance of an appropriate writ in the nature of certiorari for quashing or setting aside the requisition dated NIL which was received on 10.08.2018 by Block Panchayat Raj Officer who is working as an Executive Officer of the Panchayat Samiti on the ground that the requisition was never served to the petitioner and it is rooted through the Executive Officer.

II. For issuance of an appropriate writ in the nature of certiorari for quashing or setting aside the notice dated 24.08.2018 vide Letter No.459 dated 24.08.2018 whereby and where



under the Executive Officer upon the direction of the requisitionist fixed the date of Special Meeting on 31.08.2018 in complete departure of sub-section 4 of section 46 of the Bihar Panchayat Raj Act.

III. For issuance of an appropriate writ in the nature of certiorari for quashing or setting aside the proceeding of the Special Meeting dated 31.08.2018 whereby and where under the no-confidence motion against the petitioner no.1 and 2 has declared as carried out because the Special Meeting was held on the basis of illegal notice and in the minutes of the meeting no discussion was made.

IV. For issuance of an appropriate writ in the nature of certiorari for quashing or setting aside Memo No.479 dated 31.08.2018 whereby and where under the Executive Officer reported the District Magistrate, Arwal about the proceeding and intimating that the post of Pramukh and Up-Pramukh of the aforesaid Panchayat Samiti fallen vacant.

V. For issuance of an appropriate writ in the nature of certiorari for quashing or setting aside the Letter No.2085 dated 10.09.2018 issued by the State Election Commission Bihar for filling up vacancy.

VI. For any other relief/reliefs to which the petitioners deemed entitled into the facts and circumstances of the case.”



3. The petitioner nos. 1 and 2 had successfully contested the election for the post of Pramukh and Up-pramukh respectively of Panchayat Samiti Sonbhadra, Bansi Suryapur Block. A no confidence motion against them was brought by respondent nos. 7 to 13 by way of filing a requisition addressed to petitioner no. 1 on 10.08.2018, which was routed through respondent no. 5. On 24.08.2018, respondent no. 5 intimated the members that special meeting for deliberation on no confidence motion brought against petitioner nos. 1 and 2 shall be held on 31.08.2018. On 31.08.2018, the motion was carried out against petitioner nos. 1 and 2. After the proceeding of the meeting, the respondent no. 5, vide letter no. 474 dated 31.08.2018, intimated the District Magistrate about the vacancy created due to removal of the petitioner nos. 1 and 2. Thereafter, the State Election Commission, vide its letter dated 10.09.2018, directed the District Magistrate-cum-District Election Officer (Panchayat), Arwal to hold election for the post of Pramukh and Up-pramukh of Panchayat Samiti Sonbhadra, Bansi Suryapur Block on 25.09.2018.

4. Being aggrieved by the requisition dated 10.08.2018, notice dated 24.08.2018, resolution taken in the special meeting held on 31.08.2018 and the direction issued by



the Election Commission vide letter dated 10.09.2018 fixing 25.09.2018, as the date for holding election for vacant post of Pramukh and Up-pramukh, the petitioners have filed the instant writ petition.

5. Learned counsel for the petitioners submitted that the requisition was never served to the petitioner no. 1 in person as required in law and, illegally, it was routed through the Executive Officer. He contended that seven clear days notice was not given to the elected members of the Block Panchayat Samiti. The notice dated 24.08.2018 whereby the elected members were intimated about the scheduled meeting on 31.08.2018 and the meeting was in complete departure of sub-section (4) of Section 46 of the Bihar Panchayat Raj Act, 2006 (for short 'the Act of 2006'). He contended that since seven clear days notice was not given, the resolution taken in the special meeting held on 31.08.2018 was also bad in law. He pleaded that the consequential letter issued by the State Election Commission for holding the election on the vacant post of Pramukh and Up-pramukh is also bad.

6. Learned counsel appearing for the State and the State Election Commission conceded that the notice of special meeting dated 24.08.2018 by respondent no. 5 to the elected



members was contrary to the statutory provisions prescribed under sub-section (4) of Section 46 of the Act of 2006.

7. Learned counsel appearing for respondent nos. 7 to 13 also conceded that since seven clear days notice was not given to the elected members of the Block Panchayat Samiti, the meeting was not in accordance with law.

8. At this stage, it would be pertinent to reproduce sub-section (4) of Section 46 of the Act of 2006.

“46. Meetings of Panchayat Samiti :-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(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 thereat 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.”

9. From a mere perusal of the aforesaid provision it would be evident that seven days of clear notice is a mandatory



requirement in statute for convening a special meeting on the request made for such meeting.

10. Since the parties are in agreement that the special meeting convened on 31.08.2018 was not in accordance with law, as seven clear days notice was not given to the elected members of Block Panchayat Samiti, any resolution taken in the said meeting would be bad in law. Thus, the resolution taken in the special meeting on 31.08.2018 cannot be sustained.

11. As the requisition though addressed to the Pramukh was not given to him by the requisitionist members and only a copy of the same was given to the Executive Officer of the Panchayat Samiti, the same would also not fulfil the requirement of the statutory provisions of Section 44(3)(i) of the Act of 2006.

12. In view of the discussions made above, the writ petition is allowed. The requisition submitted by respondent nos. 7 to 13, which was received on 10.08.2018 by the Executive Officer, the notice dated 24.08.2018 fixing the special meeting for deliberation on no confidence motion on 31.08.2018 and the resolution passed in the special meeting held on 31.08.2018 are hereby quashed. Consequently, the letter dated 10.09.2018 issued by the State Election Commission, as contained in Annexure-6 to this writ petition, is also quashed.



13. However, the members of the Block Panchayat Samiti would be at liberty to bring fresh requisition in accordance with law and submit the same to the Pramukh with a copy to the Executive Officer. In case of filing of a valid requisition, the petitioner no. 1 shall be required to summon the special meeting within time stipulated under Section 44(3)(i) of the Act of 2006.

14. The writ petition is allowed with the aforestated observations and direction.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2018
Transmission Date	NA

