

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17147 of 2018

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Sita Devi Wife of Late Ramashray Ray, Resident of Village- Kharjhakiya,
P.O.- Nimoiya, Chiraia, P.S.- Ghorasahan, District- East Champaran,
Motihari.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Director, Panchayati Raj, Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. The Sub Divisional Officer, East Champaran, Motihari.
5. The District Panchayati Raj Officer, East Champaran, Motihari.
6. Block Development Officer cum Executive Officer, Bankatwa Panchayati Samiti, District- East Champaran, Motihari.
7. The State Election Commission, Sone Bhawan, 3rd Floor, Birchand Patel Marg, Patna- 800001 through its Chairman.
8. The Secretary, State Election Commission, Sone Bhawan, 3rd Floor, Birchand Patel Marg, Patna- 800001.
9. Budhiya Devi, Wife of Late Surya Rai, Resident of Village- Jolgawan, P.S.- Jitna, P.O.- Chanari, District- East Champaran.
10. Sri Devi, Wife of Shiv Ratan Rai, Resident of Village- Bela Jeetpur, P.S.- Jitna, P.O.- Chanari, District- East Champaran.
11. Sri Panna Lal Sah, Son of Late Ram Kritya Shah, Resident of Village- Jhajhara, P.S.- Jitna, District- East Champaran.
12. Lalita Devi, Wife of Vinod Kumar, Resident of Village- Bijbani, P.O.- Bijbani, P.S.- Jitna, District- East Champaran.
13. Babiya Devi, Wife of Ram Ekbal Pandit, Resident of Village- Agarwa, P.O.- Bijbani, P.S.- Jitna, District- East Champaran.
14. Meena Devi, Wife of Chandrika Manjhi, Resident of Village- Parwa, P.O.- Jhajhara, P.S.- Jitna, District- East Champaran.
15. Manju Devi, Wife of Amod Kumar, Resident of Village and P.O.- Bankatwa, P.S.- Jitna, District- East Champaran.
16. Geeta Devi, Wife of Virendra Rai, Resident of Village- Pakahi, P.O.- Majirwa, P.S.- Lakhaura, District- East Champaran.
17. Harimangal Ram, Son of Late Deepa Mahara, Resident of Village and P.O.- Majirwa, P.S.- Lakhaura, District- East Champaran.
18. Reena Devi, Wife of Kashi Nath Rai, Resident of Village and P.O.- Mathiya Bhopat, P.S.- Lakhaura, District- East Champaran.
19. Santosh Kumar Son of Late Pashuram Thakur, Resident of Village & P.O.- Nimoiya, P.S.-Ghorasahan, District-East Champaran.
20. Lal Bahadur Kumar, Son of Late Ramchandra Ram, Resident of Village-



Sekhauna, P.O.- Bagaha, P.S.- Ghorasahan, District- East Champaran.

21. Asgari Khatoon, Wife of Danish Ansari, Resident of Village- Sekhauna,
P.O.- Bagaha, P.S.- Ghorasahan, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Senior Advocate Mr.Pranav Kumar, Advocate
For the State	:	Mr.Ajay, GA-5 Mr.Pratik Kumar Sinha, AC to GA-5
For the SEC	:	Mr.Amit Shrivastava, Advocate Mr.Girish Pandey, Advocate
For the Private Respondents :		Mr.Sanjay Singh, Advocate Mr.Anshuman Singh, Advocate Mr.Prakash Kumar No. 1, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 18-11-2019 Heard Mr. Y.V. Giri, learned Senior Counsel representing the petitioner assisted by Mr. Pranav Kumar, Advocate as also learned counsel for the State, the Executive Officer, Bankatwa Panchayat Samiti and learned counsel representing the requisitionists and the newly elected Pramukh as also learned counsel for the State Election Commission.

Initially, when the writ application was preferred the petitioner challenged the letter of requisition issued by 1/3rd members of the Panchayat Samiti, Bankatwa, Motihari at East Champaran brought against the petitioner for fixing a special meeting to discuss the 'No Confidence Motion' against her as also the Resolution dated 13.08.2018 (Annexure '5' to the writ application) by which the No Confidence Motion was passed and petitioner has been removed. The ground for challenging



the notice was that in terms of Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act of 2006'), the requisition was not presented to this petitioner and it was routed through the Chief Executive Officer.

During pendency of the writ application the election for the vacant post of Pramukh was notified and the same came to be challenged vide I.A. No. 6755 of 2018.

On 05.09.2018 this Court passed an interim order in the following terms :

“Any fresh election pursuant to Letter No.2001 dated 27.08.2018 issued under the signature of Secretary of the State Election Commission whereby the date of election of Pramukh Panchayat Samiti, Bankatwa has been fixed on 10.09.2018 shall be subject to the outcome of the present writ petition.”

In the aforementioned background of the developments, learned Senior Counsel for the petitioner has challenged the resolution as contained in Annexure '5' to the writ application mainly on two grounds. His first ground is that in complete violation of the mandate of sub-section (3) of Section 44 of the Act of 2006 the requisition for 'No Confidence Motion' was not presented to the petitioner and the requisitionists was routed through the Executive Officer-cum-Block Development Officer, Bankatwa. Learned Senior Counsel has taken this Court through the materials available on the



record and submits that in fact in the counter affidavit filed on behalf of the Panchayat Samiti (Respondent Nos. 3 to 6), there is no averment at all that the requisition for 'No Confidence Motion' was ever presented to the petitioner. Learned Senior Counsel submits that there is no allegation in the counter affidavit that this petitioner avoided service of the requisition.

It is further submitted that even before expiry of a period of 15 days when the Up-Pramukh requested the Executive Officer on behalf of the requisitionists to fix a date of special meeting on 13.08.2018, the Executive Officer fixed the date of special meeting vide Annexure '4' to the writ application vide Letter No. 327 dated 03.08.2018, the notice of the special meeting was also not served upon the petitioner.

Referring to Annexure '3' to the writ application, learned Senior Counsel submits that one office peon has stated that he had gone with the copy of the notice dated 03.08.2018 on 06.08.2018 to the house of the petitioner but she was not found there, thereafter he had pasted the notice on the wall and had got a photography done. The photography are, however not brought on record. He has further stated that none of the neighbours of the petitioner agreed to become a witness.

Learned Senior Counsel submits that it is evident



from Annexure '3' to the writ application that the petitioner was not in her house when the office peon went to serve the notice. It is his submission that in fact the petitioner was admitted in Patna Medical College and Hospital for certain treatments and was not even attending the office during the relevant period. According to him, the requisitionists and the Executive Officer-cum-Block Development Officer acted in haste and without following the established procedure of law they proceeded to convene the special meeting and pass the 'No Confidence Motion' against the petitioner. In the circumstances, it is submitted that the petitioner had no opportunity to defend herself.

Learned Senior Counsel has relied upon the judgments reported in **2006 (1) PLJR 129** (Nirmala Singh & Anr. vs. The State of Bihar & Ors.); **2015 (3) PLJR 491** (Madhubala Singh vs. The State of Bihar through the Chief Secretary & Ors); **2015 (3) PLJR 203** (Sheikh Hassmuddin & Anr. vs. The State of Bihar through Principal Secretary, Panchayati Raj & Ors.) and **2015 (3) PLJR 276** (Arti Kumari vs. The State of Bihar & Ors.) to submit that a learned Co-ordinate Bench of this Court has held that requisition for 'No Confidence Motion' should be presented to the Pramukh at first



instance and if it is found that the requisition was not served upon the Pramukh and it was routed through the Executive Officer, it will be held to be a case of violation of sub-section (3) of Section 44 of the Act of 2006 and the entire action towards holding of the special meeting and resolution, if any, passed therein shall stand vitiated.

On the other hand, learned counsel representing the Respondent Nos. 3 to 6 has relied upon the statements made in the counter affidavit particularly the statements appearing in Paragraph '6' of the counter affidavit to submit that the procedures as required in terms of sub-section (3) of Section 44 of the Act of 2006 has been followed. Learned counsel submits that the petitioner was fully aware of the ongoing process and holding of 'No Confidence Motion' but she avoided to participate in the 'No Confidence Motion', therefore, at this stage, when she has already been removed by a valid resolution, no relief need be granted to the petitioner.

Mr. Sanjay Singh and Mr. Anshuman Singh, learned counsel representing the requisitionists have also endorsed the submissions of learned counsel representing respondent nos. 3 to 6, they have not filed a separate counter affidavit as according to them they would be contesting the writ application on the



basis of materials brought by respondent nos. 3 to 6 in their counter affidavit.

In course of hearing of the writ application, this Court called upon learned counsel for the respondents to demonstrate from the pleadings available on the record that they have either made a statement that the petitioner was avoiding service of requisition or notice or from any material on the record that a copy of the requisition was sent to the petitioner, learned counsel accepts that at least on the record there is no such material.

Having heard learned Senior Counsel for the petitioner and learned counsel for the respondents, this Court finds that it is a specific case of the petitioner that copy of the requisition was not presented to the petitioner and it has been routed through the Executive Officer only. This Court finds from the statements made in the counter affidavit of respondent nos. 3 to 6 that there is no averment at all to show that copy of the requisition was ever sent to the petitioner or presented in any way or manner whatsoever. In fact this Court would take note of the statements made in Paragraph '5' of the counter affidavit of the respondent nos. 3 to 6 which reads as under :-

“5. That, Requisition for No-confidance Motion against the Pramukh of Panchayat Samiti Bankatwa was filed on 18.07.2018. The



requisition was addressed to the Pramukh. It was signed by 11 elected member of the Panchayat Samiti. Copy of the requisition was submitted in the Office of BDO -cum- Executive Officer Panchayat Samiti Bankatwa. Request to fix the date for convening special meeting was sent to the Pramukh vide letter no. 291, dated 19.07.2018. The writ petition was not available at her residence. On expiry of 15 days Up Pramukh fixed the date for convening special meeting for discussion on No-confidence Motion. The date for convening special meeting was fixed on 13.08.2018.”

A perusal of the aforesaid statements would show that the answering respondents have not made any statement with respect to the presentation of the requisition to the petitioner. They have further admitted to the extent that when the notice calling for a special meeting was sent to the petitioner, she was not available at her residence. It is not the case of the respondents that the petitioner was present in the town and was attending the office but she purposely avoided service of requisition or the notice of the special meeting. It has been argued before this Court that the Court should take a view that the petitioner was fully aware of the requisition and the date fixed for discussing the ‘No Confidence Motion’. Reference has also been made to a decision of this Court in the case of **Neetu Kumari vs. State of Bihar and Others** reported in **2019 (3) PLJR 513**. This Court is, however, unable to accept the submissions of the learned counsel for the respondent in the



facts of the present case. The Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corpn. Ltd. and Another vs. N.R. Vairamani and Another** reported in **(2004) 8 SCC 579** where it has been held that the judgment of the Court should not be cited like euclid's theorem and a slightest change in the facts of the case would make a sea difference in the judgment of the Court. This Court finds that in the present case there is no material at all to take a view that the petitioner was avoiding service of requisition and notice of the special meeting. In this view of the matter alone the judgment of this Court on which reliance has been placed on behalf of the respondents cannot help them. Since this Court has found that the 'No Confidence Motion' was held without following the established procedure of law as contained in Section 44(3)(i) of the Act of 2006 which has resulted in depriving the petitioner from her valuable right to defend herself in the 'No Confidence Motion', this Court hereby sets aside the impugned order as contained in Annexure '5' to the writ application and by virtue of the interim order passed on 05.09.2018, the election of respondent no. '16' on the post of Pramukh is hereby set aside. The respondent no. '16' shall now vacate the office of Pramukh to give way to the petitioner. The petitioner is restored. It,



however, goes without saying that the respondents shall be at liberty to bring fresh requisition for ‘No Confidence Motion’ and proceed with the same in accordance with law.

(Rajeev Ranjan Prasad, J)

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