

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13489 of 2018

1. Santosh Kumar Rai, Son of Binod Kumar Rai, Resident of Village-Simalgachhi, P.O. Pokharia, P.S. Muffasil Ranipatra, District-Purnea, Presently Pramukh of Block Panchayat Samiti, Purnea East, District-Purnea.
2. Meena Devi, Wife of Shivanand Rajbanshi, Resident of Village-Mahendrapur, P.O. Bhaga Bhatgawa, P.S. Muffasil Ranipatra, District-Purnea, Presently Up Pramukh of Block Panchayat Samiti, Purnea East, District-Purnea.

... .. 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, Purnea, District-Purnea.
5. The Sub-Divisional Officer, Purnea District-Purnea.
6. The Block Development Officer, Purnea East-Cum-Executive Officer, Block Panchayat Samiti, Purnea East, District-Purnea
7. Nageshwar Paswan, Son of not Known to the Petitioners,
8. Meena Devi, Wife of not Known to the Petitioner,
9. Hasina Bano, Wife of Not Known to the Petitioners,
10. Hasina Khatoon, Wife of Not Known to the Petitioner,
11. Fulwaque Khatoon, Wife of Not Known to the Petitioners,
12. Ruchi Devi, Wife of Not Known to the Petitioners,
13. Md. Khurshid Alam, Son of not Known to the Petitioners,
14. Jeevan Das, Son of not Known to the Petitioners,
15. Bibl Mahtari Khatoon, Wife of Not Known to the Petitioners,
16. Md. Asfaque Alam, Son of not Known to the Petitioners,
17. Liliya, Devi, Wife of Not Known to the Petitioners,
18. Lalan Kumar Singh, Son of not Known to the Petitioners,
19. Shamim, Son of not Known to the Petitioners,
20. Babuji Soren, Son of not Known to the Petitioners,
21. Mahesh Kumar Chauhan Son of not Known to the Petitioners,
22. Ashok Rishi, Son of not Known to the Petitioners,
23. Ramchandra Chauhan, Son of not Known to the Petitioners,
Respondent nos. 7 to 23 are the Members of Block Panchayat Samiti, Purnea East through the Block Development Officer-Cum-Executive Officer, Block Panchayat Damiti, Purnea East, P.O. Purnea, P.S. Muffasil Ranipatra, District-Purnea.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.S.B.K. Mangalam, Adv.
Mrs. Anita Kumari, Adv.
For the Respondent/s : Mr.Ajay -GA5
Mr. Pratik Kumar Sinha, AC to GA-5
For the Private Respondents: Mr. Mukul Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
Date : 07-03-2019

This writ application has been preferred seeking quashing of the requisition dated 04.07.2018 submitted by the requisitionists in the office of the respondent no.6 i.e. the Block Development Officer, Purnea East-cum-Executive Officer, Block Panchayat Samiti, Purnea East, District-Purnea which was originally addressed to the petitioners praying for convening the special meeting of the Block Panchayat Samiti for consideration of 'no confidence motion' against the petitioners.

2. The grounds taken for quashing of the requisition dated 04.07.2018 are (i) that in view of the provisions contained in sub-section 3(i) of Section 44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act of 2006') any such requisition has to be presented before the Pramukh with a copy to the executive officer and not vice-versa; (ii) because sub-section 3(i) of Section 44 of the Act of 2006 has prescribed a particular procedure for presentation of the requisition for



convening the special meeting to consider no confidence motion against the Pramukh and Up Pramukh the requisition has to be presented in the procedure prescribed and not in any other manner. In this connection, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Division Bench of this Court in the case of **Sheikh Hassmuddin & Anr. Vs. The State of Bihar & Ors.** reported in **2015(3)PLJR 203**. The attention of this Court has been drawn towards the observations of the Court in paragraph 10 of the said judgment. Further, the learned counsel has relied upon an order of the learned coordinate Bench of this Court in the case of **Geeta Devi Vs. The State of Bihar and Ors.** reported in **2015(1) PLJR 790** to submit that if a special meeting has been called by the requisitionists without waiting for sufficient time for calling of the special meeting giving seven days clear notice for such meeting well within 15 days time prescribed for that purpose in terms of Section 44(3)(i) of the Act, such special meeting will be illegal.

3. On the facts of the case, learned counsel for the petitioners submits that in paragraph '9' of the writ application a statement has been made that the petitioner no.1 was available in the Block Headquarter on all the seven days in the first week



of July, 2018 but no members of the Block Panchayat Samiti had ever visited the petitioner no.1 office or his residence for presentation of their requisition to convene the special meeting of Block Panchayat Samiti. He has further drawn the attention of this Court towards the statements made in paragraph 15 of the writ application wherein it is stated that “in this case, the requisition has never been presented before the petitioner no.1 in compliance of mandatory procedure as contemplated under Sub-Section 3(i) of Section 44 of the Gram Panchayat Act. Since, it was directly submitted before the respondent no.6, the requisition is not a valid requisition in the eye of law, which is fit to be set aside.”

4. Learned counsel submits that the specific statements of the writ petitioners in the aforesaid paragraphs have not been denied by the answering private respondents in their counter affidavit. It is submitted that in paragraph ‘14’ of the counter affidavit, the answering respondents have stated that the statements made in paragraph ‘9’ of the writ petition requires no comment. Further in paragraph ‘20’ of the counter affidavit the private respondents have stated that the statements made in paragraph ‘15’ of the writ petition requires no comment. Thus, the specific statements of the petitioners in



paragraph '9' and '15' of the writ application have gone uncontested.

5. It is further submitted that a counter affidavit has been filed on behalf of the respondent nos.4 to 6 wherein they have taken a plea that altogether 13 members of the Block Panchayat Samiti had submitted requisition to the petitioners, informing them about bringing of no confidence motion. It is further stated that a copy of the requisition was also given to respondent no.6 and the respondent no.6 had vide his letter no.797 dated 04.07.2018 brought the same to the notice of the petitioner no.1 and informed him that in light of the aforesaid requisition, meeting of Block Panchayat Samiti is required to be called within 15 days, hence further action need to be taken. The respondent no.6 has pointed out in his counter affidavit that in reply to the said letter of respondent no.6, the petitioner no.1 vide his letter no.31/2018 informed the respondent no.6 that the requisition made by certain members of Block Panchayat Samit, Purnea East is contrary to the Act of 2006, hence the entire records be made available to him. The respondent no.6 has stated that he sent the requisition along with complete records.

6. It is the stand of the private respondents in their counter affidavit that requisition was addressed to the petitioner



no.1 which was received in the office of the Block Development Officer on 04.07.2018 itself. The respondent no.6 in whose office the requisition was received had brought it to the notice of the petitioners vide letter no.797 dated 04.07.2018 as contained in Annexure-R2/1. The petitioner no.1 vide his letter no.31 dated 09.07.2018 informed the respondent no.6 to give information about the requisition of no confidence motion in the file, thereafter file was sent to the petitioner no.1. Immediately thereafter the petitioners filed this writ application on 11.07.2018 and on 12.07.2018 vide Annexure-R5 to the counter affidavit the requisition was rejected.

7. It is submitted that it is when the requisition dated 04.07.2018 was rejected and the same was communicated vide Annexure-R6, two members of the Panchayat Samiti had met the Executive Officer and submitted a letter (Annexure-R7) informing him that an attempt was made to serve copy of the requisition on the petitioners, but they had refused to receive the same, for this reason the requisition for no confidence motion was submitted in the office of respondent no.6.

8. It is submitted that on 17.07.2018 the requisition as contained in Annexure-R8 was submitted in the office of respondent no.6 who then convened the special meeting on



26.07.2018 at 11.00 am in the headquarter of Block for consideration. No confidence motion against the petitioners was passed on 26.07.2018 which has been affirmed by the respondent no.6 vide Annexure-R10 to the counter affidavit of the private respondents. It is further submitted that vacant posts of Pramukh and Up Pramukh were notified and the District Magistrate-cum- District Election Officer was pleased to direct the Secretary, State Election Commission to take steps for holding new election of Pramukh and Up Pramukh.

9. As soon as the respondent no.6 vide his notice dated 18.07.2018 convened the special meeting to be held on 26.07.2018, the petitioners challenged the notice by filing an Interlocutory Application being I.A. No.5453 of 2018.

10. By filing I.A. No.6201 of 2018, the petitioners prayed for stay of the election of the new Pramukh and Up Pramukh of the Block Panchayat Samiti scheduled on 20.08.2018 which was notified by the State Election Commission. It is a matter of record that on 25.07.2018 a learned coordinate Bench of this Court has passed an interim order wherein it is recorded as under:-

“ Any decision pursuant to the special meeting convened vide notice bearing letter no.831 dated 18.07.2018 issued under the signature of the Executive Officer, Block Panchayat Samiti, Purnea



informing the petitioners and other Members about consideration of no confidence motion against the petitioners on 26.07.2018 shall be subject to outcome of the instant writ application.”

11. Learned counsel for the petitioners has also relied upon a judgment of the learned coordinate Bench of this Court in the case of **Maharana Singh and others Vs. The State of Bihar and others** in **CWJC No.18632 of 2018** to submit that the learned coordinate Bench while considering the case of similar nature has taken a view that 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. As against the aforesaid submissions, learned counsel representing the private respondents submits that since the election is over, the Election Commission being a necessary party, the writ application cannot proceed in absence of the Election Commission. Learned counsel for the State has submitted that the writ petition has become infructuous. In this connection, the attention of this Court has been drawn towards Annexure-R5 issued by the petitioner no.1 addressed to



respondent no.6 wherein he has rejected the requisition dated 04.07.2018.

CONSIDERATION

13. Having heard learned counsel for the parties and on perusal of the records, this Court finds on facts that there are specific averments in the writ application in paragraph 9 and 15 of the writ application that requisition was never presented before the petitioner no.1 in compliance of the mandatory provisions as contemplated under sub-section 3(i) of Section 44 of the Act of 2006. It is also stated that the requisition was directly submitted before the respondent no.6, therefore it is not a valid requisition in the eye of law. The same plea has been taken by the petitioner no.1 in Annexure-R5 dated 12.07.2018. In the counter affidavit on behalf of the private respondents, the facts stated in paragraph 9 and 15 of the writ application have not at all been denied. In fact, while replying the paragraph 9 and 15 of the writ application, the answering respondents have stated that the averments made in these paragraphs require no comment. This being the position, this Court cannot accept the statements made in Annexure-R7 enclosed with the counter affidavit of the private respondents stating therein that the attempts were made to serve notice upon the petitioners but they refused to accept the same. This plea has nowhere been taken in



the counter affidavit filed on behalf of the private respondents.

14. In the aforementioned facts of the present case when this Court proceeds to consider the matter, it is noticed that Section 44(3)(i) of the Act of 2006 reads as under:-

“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.”

15. The aforesaid provision came to be considered by the Hon’ble Division Bench of this Court in the case of **Sheikh Hassmuddin** (supra). Paragraph 10 of the said judgment reads as under:-



“It is fairly well settled that an elected member is entitled to remain in office till the completion of the term. Any mechanism that has an effect curtailing the term must be undertaken, strictly in accordance with the prescribed procedure. It is for a definite purpose that the legislature wanted the requisitionists, first to serve a copy of the notice of the want of confidence on the Pramukh, notwithstanding the fact that he will be the person to face the heat of that. The reason is that in a given case, the Pramukh may take note of the contents of the notice and initiate action, or steps to address the grievance of the requisitionists. That may lead to giving up of the further steps. Once the important step of service of notice on the Pramukh is not taken, the entire proceedings get vitiated.”

16. Again in the case of **Geeta Devi** (supra), the learned coordinate Bench of this Court has followed the same principles, though in the said case the facts were slightly different, but the principles are the same.

17. Again in the case of **Maharana Singh** (supra), the learned coordinate Bench of this Court held in paragraph 11 as follows:-

“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.”

18. Since there is no denial on the part of the private



respondents that the requisition dated 04.07.2018 was not served on the petitioners at the first instance rather it was submitted with respondent no.6, this Court would have no hesitation in holding that the requisition dated 04.07.2018 was not served in accordance with law on the petitioners and, therefore, the mandatory provision of Section 44(3)(i) of the Act of 2006 was not followed. This being the position, the private respondents (requisitionists) could not have again on 17.07.2018 directly approached the respondent no.6 for holding the special meeting. The respondent no.6 has, thus, by holding special meeting on the request of the requisitionists, vide Annexure-R8 to the counter affidavit of the private respondents, acted illegally and without jurisdiction.

19. This Court would not accept the submissions of the respondents that the writ application has become infructuous.

20. This being the position, the writ application is allowed. The requisition dated 04.07.2018 and 18.07.2018 are quashed, as a result thereof all subsequent actions of holding special meeting and passing of no confidence motion against the petitioners stand nullified and no confidence motion passed against the petitioners on 26.07.2018 and the subsequent action



for filling up the vacancies stand quashed.

21. As this Court has quashed the requisition and subsequent action on the ground of violation of the statutory provision, it is made clear that this will not come in the way of the members of the Block Panchayat Samiti and they would be at liberty to bring fresh requisition in accordance with law. Such a fresh requisition may be brought, if so desired, by serving the same upon the petitioners with a copy to the Executive Officer and in case of valid requisition, the petitioner no.1 shall proceed to summon the special meeting within the time stipulated under Section 44(3)(i) of the Act of 2006.

22. The writ application as well as I.A. No.5453 of 2018 are allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	05.03.2019
Uploading Date	07.03.2019
Transmission Date	

