

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13972 of 2018

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Anil Kumar Singh, son of Goutam Singh, Resident of Village- Senduar, PO Dayalpur, PS Janta Bazar, District Saran at Chapra, Presently Pramukh, Block Panchayat Samiti, Lalhladpur District Saran at Chapra.

... .. 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 District Magistrate, Saran at Chapra.
 4. The Sub Divisional Officer, Chapra Sadar, District Sara at Chapra.
 5. The Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Lalhladpur, District Saran at Chapra.
 6. Smt. Babita Devi, wife of Sri Bharat Chouhan, Presently Up Pramukh, Block Panchayat Samiti, Lalhladpur, District Saran at Chapra.
 7. Anil Singh, son of not known to the petitioner.
 8. Khedan Ram, son of not known to the petitioner.
 9. Sabita Devi, wife of not known to the petitioner.
 10. Gayatri Devi, wife of not known to the petitioner.
 11. Roshan Kumar, son of not known to the petitioner.
 12. Gouri Devi, wife of not known to the petitioner.
 13. Gangajal Devi, wife of not known to the petitioner.
 14. Harendra Rai, son of not known to the petitioner.
 15. Seema Devi, wife of not known to the petitioner.
- Respondent No. 7 to 15 are elected members of Block Panchayat Samiti, Lalhladpur, District- Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate
For the State	:	Mr. Ravindra Kumar, AC to AAG 6
For Respondents No. 7, 8, 9, 10, 12, 13	:	Mr. Dinu Kumar, Advocate Mr. Mritunjay Kumar Tiwary, Advocate
For remaining Respondents :		Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-01-2020

Heard Mr. S. B. K. Mangalam; learned counsel for the
petitioner; learned AC to AAG 6 for the State; Mr. Dinu Kumar,



learned counsel for the respondents no. 7, 8, 9, 10, 12 and 13 and Mr. Sanjay Singh, learned counsel for the remaining private respondents.

2. The petitioner has moved the Court for the following reliefs:

- “i. For issuance of an appropriate writ in the nature of CERTIORARI, for quashing the requisition dated Nil and communicated to the petitioner vide Letter no. 396 dated 13-7-2018, submitted by 8 elected members of the Block Panchayat Samiti, Lalhladpur, Sara at Chapra, in the office of Respondent No.6 in which a request has been made to convene the special meeting of the Block Panchayat Samit, Lalhadpur to consider the NO CONFIDENCE MOTION against the petitioner on the ground that the said requisition is not a legal and valid requisition in the eye of law in view of the provisions contained under Subsection 3(i) of Section 44 of the Bihar Panchayat Raj Act, 2006 (herein after to be referred as the gram panchayat act) provides for presentation of such requisition before the Pramukh with a copy to the executive officer, the said requisition submitted directly in the office of Respondent No. 6 without presenting it before the petitioner in compliance of the procedure prescribed under Sub-Section 3(i) of Section 44 of the Gram Panchayat Act.*
- ii. For a declaration that since requisition itself is bad requisition in the eye of law, any special meeting if convened on the basis of said requisition would be a invalid meeting and any resolution passed thereat would be an illegal resolution in the eyes of law.*
- iii. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner is entitled under the facts and circumstances of the case.”*



3. The Court finds that a very short point is involved in the present writ application which requires consideration by the Court.

4. The main contention of the petitioner is that as per the provision of Section 44(3) (i) of the Bihar Panchayat Raj Act, 2006, which deals with requisition for convening special meeting to consider the No Confidence Motion against a Pramukh, which is required to be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti, has been complied with in the present case.

5. Learned counsel for the petitioner submitted that the only requisition which came to the petitioner, who was the sitting Pramukh at the relevant point of time of Block Panchayat Samiti, Lahladpur, in the district of Saran, was appended to letter no. 396 dated 13.07.2018, which was sent by the Block Development Officer-cum-Executive Officer, Lahladpur, to the petitioner enclosing the requisition by eight members of the Panchayat Samiti calling for a meeting for considering No Confidence against the petitioner. Learned counsel drew the attention of the Court to Annexure- P-1, which is copy of the said letter, followed by the copy of the requisition by the eight requisitionists. It was submitted that the same would clearly



indicate that it has been addressed directly to the Block Development Officer-cum-Executive Officer, Lahladpur, Saran, and not the petitioner. Learned counsel submitted that a copy of the same was marked to the Sub Divisional Officer, Sadar, Chapra, and also to the petitioner. Learned counsel submitted that the copy which was for the petitioner has been ticked and enclosed with the aforesaid letter of the Block Development Officer-cum-Executive Officer, Lahladpur, dated 13.07.2018. Learned counsel submitted that the law being specific, it is mandatorily required that the requisition has to be addressed directly to the Parmukh and served on the person concerned with a copy to the Block Development Officer-cum-Executive Officer and the Executive Officer, who is required to bring it to the notice of the Pramukh. Learned counsel submitted that from the position which is clear, it is an admitted position that the Executive Officer has forwarded copy of what was submitted before him, which is a requisition directly addressed to him and by way of a copy which has been marked to the petitioner, the same has been sent to him by the Block Development Officer-cum-Executive Officer, along with the forwarding letter no.396 dated 13.07.2018. It was submitted that the same being impermissible, no action based on such requisition can be



sustained.

6. Learned counsel for the State, from the counter affidavit filed on behalf of the respondents no. 3 to 5, which has been affirmed by the Block Development Officer, Lahladpur, Saran, submitted that the requisition by the eight members was addressed to him, which was sent by him to the petitioner under his letter no. 396 dated 13.07.2018. He further submitted that no other requisition/letter of any member of the Panchayat Samiti was submitted to the Block Development Officer.

7. Learned counsel for the respondents no. 7, 8, 9, 10, 12 and 13 submitted that after passing of the No Confidence Motion, respondent no. 9 has been duly elected as Pramukh and is continuing on such post. He has also filed a counter affidavit today and submitted that there were two requisitions submitted by the eight requisitionists. Learned counsel drew the attention to Annexure- A of the counter affidavit, which is copy of the requisition, which has been addressed to the Pramukh i.e., the petitioner at the relevant time. Copy of the same is also given to the Sub-Divisional Officer, Sadar, Chapra and the Block Development Officer-cum-Executive Officer, Lahladpur. It was submitted that the page just behind Annexure- A is a requisition, which has been addressed to the Block Development Officer-



cum-Executive Officer, Lahladpur, Saran, which has also been brought on the record by the petitioner in the writ petition being part of Annexure- P-1. Learned counsel submitted that from the aforesaid, it is clear that requirement of submitting a copy of the requisition directly to the Pramukh stands satisfied as a copy of the same was first filed before the petitioner in the capacity of the Pramukh and another requisition was filed before the Block Development Officer. Learned counsel submitted that having regard to the aforesaid, once the requisition has rightly been presented before the petitioner and he did not take steps to convene the special meeting, the requisitionists had thereafter moved before the Block Development Officer-cum-Executive Officer for convening the special meeting, which has been done and the motion of No Confidence against the petitioner having been passed, he was removed from the post of Pramukh, which was followed by election in which respondent no. 9 has been elected as Pramukh and is continuing on the said post.

8. Learned counsel for the remaining private respondents (members of the Panchayat Samit) submitted that the stand taken by the petitioner is not factually correct with regard to there being no requisition addressed to the Pramukh i.e., the petitioner. It was submitted that Annexure- A of the



counter affidavit filed on behalf of the respondents no. 7, 8, 9, 10, 12 and 13 indicates that a requisition directly addressed to the Pramukh was submitted along with a copy to the Block Development Officer and further, a requisition to the Block Development Officer with a copy to the Pramukh was submitted by the requisitionists. It was submitted that in effect the contention of the petitioner being that the requisition addressed to the Pramukh was never submitted could not be gone into by the Court as it would amount to giving a finding on an issue which is factually disputed. Learned counsel submitted that once the petitioner became aware of the meeting and chose not to participate and thereafter having being removed from office, now cannot take stand that the process is vitiated in law.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, on the basis of the admitted position, the Court finds that the entire exercise in terms of the requisition of the eight Samiti members in the present case with regard to No Confidence Motion against the petitioner stands vitiated in law.

10. The basic foundational fact which has been admitted by the State authorities is that a requisition was submitted directly addressed to the Block Development Officer-



cum-Executive Officer, Lahladpur, by the eight requisitionists of which a copy was marked to the petitioner in the capacity of Pramukh and the same was forwarded to him by the Block Development Officer under letter no. 396 dated 13.07.2018. Thus, Annexure- A of the counter affidavit filed on behalf of the respondents no. 7, 8, 9, 10, 12 and 13 which is purportedly copy of another requisition addressed directly to the petitioner, the same not being acknowledged by the Block Development Officer, cannot be relied upon as being in existence as it is not available in the official records. Another glaring discrepancy which is apparent upon comparing Annexure- A to the aforesaid counter affidavit with the requisition, which has been addressed directly to the Block Development Officer, is that both are said to have been served on 12.07.2018. It does not stand to reason that on the same day two requisitions would be submitted, one directly to the Pramukh and the other to the Block Development Officer, more importantly, when in the requisition addressed to the Block Development Officer, there is not even a whisper that attempt was made to serve it on the Pramukh, which was refused and under such circumstances it was being served on the Block Development Officer, to be communicated to the Pramukh through official channel.



11. Thus, in such circumstantial background, it is obvious and clear that Annexure- A was never brought before the authorities, much less the petitioner.

12. Be that as it may, the procedure, which has been adopted, is based on the admitted factual position where, after copy of the resolution, which was addressed directly to the Block Development Officer, was served on the petitioner on 14.07.2018, the letter of the Up Pramukh dated 23.07.2018 fixing the date of the meeting as 02.08.2018 was set into motion and events have taken place where the meeting was held on 02.08.2018 in which the No Confidence Motion against the petitioner was passed and thereafter for the vacancy of the post of Pramukh, in the subsequent election held, the respondent no. 9 has been elected.

13. Thus, when the requisition itself was not in accordance with law, the next stage of convening the meeting by the Up Pramukh or the requisitionists themselves could not have been proceeded with.

14. Section 44(3)(i) of the Acts reads as under:

“44(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



especially 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. From the aforesaid, it is clear that the requirement of presenting the requisition for such special meeting **shall** be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti.

16. Thus, once the Court has come to an undisputable finding, which has been admitted by the State authorities, specially the Block Development Officer-cum-Executive Officer, Lahladpur, who himself has filed the counter affidavit in the case, that a requisition addressed to him was only served, which was forwarded to the petitioner, and there being no



avermment in such requisition that the petitioner refused to accept the requisition addressed to him, compelling the requisitionists to submit a copy of the same before the Block Development Officer, the Court has not hesitation to hold that such requisition itself cannot be sustained in the eyes of law.

17. Once the very requisition is held to be unsustainable, entire action taken pursuant to the same, including holding of the special meeting, passing of No Confidence Motion against the petitioner and thereafter the election of respondent no. 9 to the post of Pramukh become *non est* in the eyes of law.

18. For the reasons aforesaid, the application is allowed.

19. The requisition along with all subsequent events pursuant to such requisition including holding of the special meeting, passing of No Confidence Motion against the petitioner as well as the election of the respondent no. 9 to the post of Pramukh stand set aside. As a consequence, the petitioner is reinstated to the post of Pramukh of Block Panchayat Samiti, Lahladpur in the district of Saran.

20. The Block Development Officer-cum-Executive Officer, Lahladpur, (respondent no.5) is directed to ensure



compliance of the order forthwith.

21. However, as the requisition itself has been held to be unsustainable, it shall be open to the private respondents to take steps in the matter afresh, in accordance with law.

(Ahsanuddin Amanullah, J)

J. Alam/-

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