

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7631 of 2020

Shiv Kumari Yadav (Female), aged about 46 years, wife of Prem Chandra Prasad Yadav, resident of Village- Yogwaliya, P.O.- Parsauna Madan, P.S. Ramgarhwa, District- East Champaran at Motihari. Presently Pramukh of Block Panchayat Samiti, Ramgarhwa, District- East Champaran at Motihari.

... .. Petitioner

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, East Champaran at Motihari, District- East Champaran at Motihari.
4. The Sub- Divisional Officer, Raxaul, District- East Champaran at Motihari.
5. The Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Ramgarhwa, P.O. and P.S.- Ramgarhwa, District- East Champaran at Motihari.
6. The Up- Pramukh, Block Panchayat Samiti, Ramgarhwa, P.O. and P.S.- Ramgarhwa, District- East Champaran at Motihari.
7. Ram Bahadur Pandey (Male), son of not known to the petitioner.
8. Kamal Hazra (Male), son of not known to the petitioner.
9. Priyanka Tiwary (female), wife of not known to the petitioner.
10. Ram Pukar Thakur (Male), son of not known to the petitioner.
11. Sugandhi Devi (Female), wife of not known to the petitioner.
12. Koshila Devi (Female), wife of not known to the petitioner.
13. Rita Devi (Female), wife of not known to the petitioner.
14. Sushil Mishra (Male), son of not known to the petitioner.
15. Kalimullah (Male), son of not known to the petitioner.
16. Dhani Lal Sah (Male), son of not known to the petitioner.
17. Geeta Devi (Female), wife of not known to the petitioner.
18. Anjay Kumar (Male) son of not known to the petitioner.
19. Bindu Devi (Female), wife of not known to the petitioner.
20. Rizwana Praveen (Female), wife of not known to the petitioner.
21. Kusum Devi (Female), wife of not known to the petitioner.
22. Sojara Khatoon (Female), wife of not known to the petitioner.
23. Annu Devi (Female), wife of not known to the petitioner.
24. Munni Devi (Female), wife of not known to the petitioner.
25. Gulam Rasool (Male), son of not known to the petitioner.



26. Sahnaz Begum (Female), wife of not known to the petitioner.
27. Kalawati Devi (Female), wife of not known to the petitioner.

The respondent nos. 7 to 27 are the Panchayat Samiti Members of Block Panchayat Samiti, Ramgarhwa through the Block Development Officer- cum- Executive Officer, Block Panchayat Samiti, Ramgarhwa, P.O. and P.S.- Ramgarhwa District- East Champaran at Motihari.

28. The State Election Commission (Panchayat), Bihar, Patna.
29. Md. Irfan, Member of Block Panchayat Samiti, Ramgarhwa, P.S.- Ramgarhwa, District- East Champaran at Motihari through the Executive Officer, Block Panchayat Samiti, Ramgarhwa, P.O. and P.S.- Ramgarhwa, District- East Champaran at Motihari.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Shashi Bhushan Kumar Manglam
For the State	:	Mr. Ajay, G.A.-5
		Mr. Pratik Kumar Sinha, A.C. to G.A.-5
For the Election Commission:		Mr. Amit Shrivastava, Advocate
		Mr. Girish Pandey, Advocate
For Resp. Nos. 13-19, 23-25 & 27:		Mr. Ajay Kumar Singh, Advocate
For Resp. No. 28	:	Mr. Satish Kumar Sinha, Advocate
For Resp. Nos. 20, 21,22 & 26:		Mr. Shashank Shekhar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 22-02-2021

Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the State Election Commission and learned counsel for the private respondents.

2. In the present case, the petitioner has made a prayer for directing the respondent no.5 i.e. Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Ramgarhwa, to produce the records of Ramgarhwa Panchayat Samiti, which was submitted in the office on 21.08.2020 and the



same has been addressed to the petitioner requesting to fix the date for holding the special meeting of Block Panchayat Samiti for consideration of 'No Confidence Motion' against her and on production of the records, the same may be quashed as she has claimed that the requisition itself suffers from illegality and is bad in law.

3. Thereafter, an Interlocutory Application vide I.A. No.01 of 2020 has been filed bringing on record some additional facts on account of subsequent event took place as also for addition of relief which has been mentioned in the Interlocutory Application, in which the chronologically dates have been mentioned with regard to holding of Special Meeting for 'No Confidence Motion'. Again, an Interlocutory Application vide I.A. No.02 of 2020 has been filed to implead the State Election Commission (Panchayat) as party respondent to the main writ petition. Through Interlocutory Application No.03 of 2020 prayer has been made to implead Md. Irfan as party respondent to the main writ petition. Vide order dated 28.01.2021 I.A. No. 03 of 2021 has been allowed.

I.A. No. 01 of 2020 and I.A. No. 02 of 2020 are allowed and the facts mentioned in I.A. No. 01 of 2020 will be treated to be part of the main writ petition.



4. The brief facts of this case are that in Ramgarhwa Block Panchayat Samiti, one Rita Devi was holding the post of Pramukh but, on 01.08.2018 a 'No Confidence Motion' was passed against her, whereafter the present petitioner was elected as Pramukh of said Block Panchayat Samiti. After completion of two years, the Members of said Block Panchayat Samiti were not satisfied with her work, so they have sent the requisition dated 21.08.2020 addressed to the petitioner and one copy of the requisition was also addressed to the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Ramgarhwa. In turn, the Block Development Officer-cum-Executive Officer, vide memo no.2889 dated 21.08.2020 addressed a letter to the petitioner informing her that as she has refused to take the notice from the Members, in such event, the notice has been supplied to his office and requested for holding the special meeting for 'No Confidence Motion'. However, plea has been taken in the writ petition that the petitioner was under the treatment of Dr. Ashutosh Sharan since 05th May, 2020 and in this connection she had gone to Motihari for check up and get the medicine from the doctor, so from that date she was out of her house. It has also been pleaded that she herself has informed personally to the Block Development Officer-cum-Executive



Officer, that on account of her illness she will not be available at her house, so there was ignorance of the notice for holding special meeting for 'No Confidence Motion' but, it has been mentioned that the requisition was pasted on her house and reported the matter of refusal to take the notice, which is not correct. It also appears from the averments made in Interlocutory Application that the petitioner was out of station from 15.08.2020 and was not served the notice of requisition fixing the date of special meeting and as such, the same is illegal. The requisition for holding special meeting was fixed on 27.08.2020. It also appears that the notice for requisition tried to be served upon Up-Pramukh on 25.08.2020 but, he refused to take it. Whereafter, 15 requisitionists vide letter dated 27.08.2020 fixed the date for holding special meeting on 05.09.2020 and addressed that letter to the Block Development Officer-cum-Executive Officer. Accordingly, the notices were given to each and every Members of the said Block Panchayat Samiti to join the special meeting on 05.09.2020 and also the notice was given to the present petitioner. The venue was fixed at Block Office, Ramgarhwa and accordingly, the meeting of 'No Confidence Motion' was held, the same was passed and petitioner was declared non-suited and later on, a fresh election



was conducted, in which Rita Devi has been elected as new Pramukh of said Block Panchayat Samiti.

5. Learned counsel for the petitioner has taken plea that the petitioner was not served the notice personally as it was known to the Block Development Officer-cum-Executive Officer that she was not present in the headquarter, so the requisition/ notice has no meaning. It has been submitted that the requisition for holding special meeting was dated 21.08.2020 and as per the law they should have waited for seven clear days and whereafter they could have acted upon if the petitioner failed to act upon within seven days and as per law special meeting was to be held within 15 days but, instead of waiting for seven days, the requisitionist sent the notice for 'No Confidence Motion' on 27.08.2020 for holding special meeting on 05.09.2020, which is against the provision of law.

6. Whereas, learned counsel for the respondents have submitted that the requisitionist has given the notice to the present petitioner, which he refused to take it, inasmuch as, the requisitionist approached the Up-Pramukh but, he too has not received the notice and in such a situation having no other alternative, the respondents have fixed the date for holding special meeting vide notice dated 27.08.2020 and there is no



illegality in law. It has also been submitted that the petitioner has executed the Vakalatnama on 23.08.2020, which itself belies the plea taken by the petitioner that she was out of station in connection with her treatment rather she had anticipated the 'No Confidence Motion' and started preparing to avoid to face the 'No Confidence Motion'.

7. The present case can be disposed of on the short point as to whether the action has been taken by the requisitionist suffers from illegality or not. For that Sections 44 (3) (i) and 46(4) of the Bihar Panchayat Raj Act, 2006 require to be examined, which are as follows:-

“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 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”

“46.(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”

8. On conjoint reading of sections 44(3)(i) and 46(4) of aforesaid Act, 2006, it is required to hold the meeting within 15 days from the date of receipt of requisition but, in the event he/she fails to respond then, on 7th day the requisitionist will have liberty to give the notice for holding special meeting as



just for example; if the requisition has been given on 1st day of the month then, as per the mandate of law the special meeting is to be conducted on 15th day of the month and for holding a special meeting it requires clear seven days notice to all the Members. So, if we go backward for giving seven days clear notice then, 8th day of the month will be the date and on that date the requisitionist will have liberty to act upon and call special meeting as the date of the requisition will be excluded and from onward seven days will be counted or even including that day, it will be the 7th day of the month and in the event he / she failed to react then, the liberty as per the law will be available to the requisitionist to call for special meeting. Even presuming that the petitioner has refused to take the notice then, it will be treated that notice has been served upon her and counting in this manner, the statutory provision has to work out. Reliance can be placed on a decision of this Court rendered in the case of ***Geeta Devi vs. The State of Bihar through the Chief Secretary, Government of Bihar and Ors.*** reported in ***2015(1) PLJR 790***. It will be relevant to quote paragraph nos. 12 and 13 of the aforesaid decision, which are as follows:-

“12. Now to adhere to this Schedule, unless the Pramukh issues the notice fixing date of special meeting latest by the 7th day of the receipt of the



requisition (excluding the date of receipt), he would not be able to give 7 days clear notice between the date of notice and the date of the special meeting which is to be held within 15 days of receipt of the requisition. It thus only on the 8th day of service of requisition on the Pramukh that the requisitionists would assume jurisdiction under Section 44(3)(i) of the Act, to fix up a date for special meeting and not before the 8th day.

- 13.** *Insofar as the present case is concerned even if it is assumed that the requisition was refused to be received by the petitioner on 5.6.2013 (sic-5.9.2013?) and which would amount to deemed service, he had to be given time at least until 12.6.2013 (sic-12.9.2013?) for issuing notice fixing date for the special meeting as per the mandate of Section 44(3)(i) and Section 46(4) of the Act and it is only if the Pramukh would have failed to issue notice fixing date for special meeting on or before the 12th of June, 2013 (sic-12.9.2013?) that such right would have passed on to the requisitionists to fix up the date for the special meeting and inform the concerned accordingly. It is manifest from the list of dates that the requisitionists in their hurry did not wait for statutory period to pass over before they usurped the jurisdiction which yet continued in the Pramukh to fix the date for the special meeting. The action of the requisitionists to fix the date of special meeting on 11.6.2013 (sic-11.9.2013?) even when the Pramukh was in*



seisin of the matter until 12.6.2013 (sic-12.9.2013?) is apparently illegal and usurpation of jurisdiction. The decision of the requisitionists taken in the meeting held on 11.6.2013 (sic-11.9.2013?) to fix the date of special meeting is in exercise of jurisdiction which did not vest in them on the said date.”

9. Learned counsel for the respondentd has placed reliance on a decision rendered by a co-ordinate Bench of this Court in the case of ***Neetu Kumari vs. The State of Bihar through the Chief Secretary and Ors.*** reported in ***2019(3) PLJR 513***, wherein, it has been held that even three days notice is sufficient and it does not violate any provision of law and the mandatory provision will be treated to have been waived out. However, the question remains that when statutory provision provides a particular thing has to be done in a particular manner that thing has to be done in that manner alone and not in another manner. Reliance can be placed on a decision rendered in the case of ***Pune Municipal Corpn. v. Harakchand Misirimal Solanki*** reported in ***(2014) 3 SCC 183***. Further, the co-ordinate Bench has also placed reliance on the decisions rendered in the case of ***Bharat Petroleum Corpn. Ltd. And Another vs. N.R. Vairamani and Another*** reported in ***(2004) 8 SCC 579*** and ***ITC Limited vs. Blue Coast Hotels Limited and Others*** reported in



(2008) 15 SCC 99 but, that case relates to commercial transactions but, the present matter relates to ‘No Confidence Motion’ of Pramukh and the provisions of the Rule has to be construed strictly as because in the present case a person has been elected by the Members of the Block Panchayat Samiti and notice of special meeting for ‘No Confidence Motion’ was held to remove the elected representative. So, in such a case, the mandatory provision cannot be treated to have been waived out.

10. In such view of the matter, this Court is of the view that the requisition itself is bad in law and subsequent election of Rita Devi, cannot be sustained. Hence, the requisition dated 21.08.2020 is set aside and consequently, the election of Rita Devi is not sustainable in law.

11. Accordingly, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	05.03.2021
Transmission Date	

