

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15096 of 2018

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Sunil Kumar Singh @ Sunil Singh Son of Sri Hari Charan Singh
Resident of Village- Ghenghata, P.O. Gobind Chak, P.S. Sonapur,
District- Saran at Chapra, Presently Up- Mukhiya, Gram Panchayat
Raj, Gobind Chak, Block- Sonapur, 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, District- Saran at Chapra.
4. The District Panchayat Raj Officer, Saran at Chapra, District- Saran at Chapra.
5. The Block Development Officer, Sonapur, District- Saran at Chapra.
6. The Mukhiya, Gram Panchayat Raj, Gobind Chak, Block- Sonapur, District- Saran at Chapra.
7. The Panchayat Secretary, Gram Panchayat Raj, Gobind Chak, Block- Sonapur, District- Saran at Chapra.
8. Saimul Nisha Wife of not known to the petitioner
9. Sushila Devi Wife of not known to the petitioner
10. Rajendra Kumar Son of not known to the petitioner
11. Pankaj Pandit Son of not known to the petitioner
12. Sanjay Pandit Son of not known to the petitioner
13. Sunil Singh Son of not known to the petitioner
14. Shankar Singh Son of not known to the petitioner
15. Bhupendra Singh Son of not known to the petitioner
16. Sujata Devi Wife of not known to the petitioner
17. Kushni Devi Wife of not known to the petitioner
18. Munni Devi Wife of not known to the petitioner
19. Archana Kumari Wife of not known to the petitioner



20. Indradeo Ram, Son of not known to the petitioner,

Respondent nos. 8 to 20 are the ward Members of Gram Panchayat Raj, Ghenghata, Block-Sonepur, District- Saran at Chapra through the Panchayat Secretary, Gram Panchayat Raj, Gobind Chak, P.O. Gobind Chak, P.S. and Block- Sonepur, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. S. B. K. Mangalam, Adv.
For the State	:	Mr. Satya Brat, AC to GP-10
For the Private Respondent	:	Mr. Ajay Kumar Tiwari, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 06-08-2021

The present writ petition has been filed for quashing the notice dated 26.07.2018, issued by the Panchayat Secretary, Gram Panchayat Raj, Gobind Chak, Block-Sonepur, District-Saran at Chapra i.e. the Respondent No. 7 herein whereby and whereunder the petitioner has been informed to attend the special meeting of the Panchayat to be held on 02.08.2018, which has been convened for consideration of No Confidence Motion against the petitioner.

2. The short facts of the case are that the petitioner had won the election of ward member of



the Gram Panchayat Raj, Gobind Chak and was elected as the Up-Mukhiya of the said Gram Panchayat. The case of the petitioner is that in order to remove the petitioner in an illegal manner, a requisition signed by some ward members of the said Panchayat was submitted to the Respondent No. 7 to convene a special meeting of the Panchayat for consideration of the No Confidence Motion against the petitioner. Thereafter, the Panchayat Secretary had approached the Respondent No. 5 i.e. the Block Development Officer, Sonapur, District-Saran at Chapra and on his direction, the Panchayat Secretary had fixed the date of special meeting for consideration of the No Confidence Motion against the petitioner on 02.08.2018, whereafter notices were issued to the petitioner and all other ward members of the Panchayat vide letter dated 26.07.2018, regarding holding of the meeting on 02.08.2018.

3. It appears that during the pendency of the present writ petition, the special meeting had been held on 02.08.2018 in which a No Confidence



Motion was passed against the petitioner and he has been removed from the post of Up-Mukhiya, which though has been challenged by filing an interlocutory application bearing I.A. No. 6244 of 2018, however, this Court has not allowed the said interlocutory application and in fact, the learned counsel for the petitioner has also not pressed it at the time of final arguments.

4. Nonetheless, the learned counsel for the petitioner has submitted by referring to Section 18(4)(ii) of the Bihar Panchyat Raj Act, 2006 that firstly, the Mukhiya of the concerned Gram Panchayat has to convene a special meeting for the purposes of consideration of No Confidence Motion and secondly, the meeting has to be convened in the office of the Gram Panchyat. At this juncture, it would be relevant to reproduce Section 18(4)(ii) of the Bihar Panchayat Raj Act, 2006 herein below:-

“18(4)(ii). Removal of Up-Mukhiya by no confidence motion—Every Up-Mukhiya shall be deemed to have vacated



his office forthwith if a resolution expressing want of confidence in him is passed by a simple majority of the total number of elected members of the Gram Panchayat and Mukhiya at a meeting especially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one third of the total number of elected members of the Gram Panchayat and shall be delivered to the Mukhiya. The Mukhiya shall, within 7 days from the date of receipt of the requisition, convene a special meeting of the Gram Panchayat in the office of the Gram Panchayat for discussion on the motion and shall also preside over the meeting :

Provided that during the first two year period of the tenure, no such motion of no confidence shall be moved against the Up-Mukhiya. ¹[Such a no confidence motion may be brought only once in the whole tenure of Up-Mukhiya.]:

[Second Proviso deleted vide Sec. 7 of Amdt. Act 15 of 2015]

Provided further that no motion of no confidence against Up-Mukhiya shall be brought during the last six months before



the expiry of the term of Gram Panchayat.

5. The learned counsel for the petitioner has taken this Court through the documents, annexed to the counter affidavit, to show that the requisition regarding No Confidence Motion was submitted by one third members of the Panchayat before the Block Development Officer, Sonapur, Saran at Chapra on 14.07.2018, whereafter another requisition was submitted before the Mukhiya on 04/14.07.2018, however, no order was issued by the Mukhiya regarding convening of the special meeting to discuss the No Confidence Motion. It is further submitted that another requisition appears to have been submitted before the Block Development Officer, Sonapur, Saran at Chapra on 15.07.2018, whereafter the Block Development Officer, Sonapur, Saran at Chapra had forwarded the requisition to the Mukhiya by his letter dated 16.07.2018. Thereafter, the Block Development Officer, Sonapur, Saran at Chapra, by his letter dated 21.07.2018, had requested the District Panchayat Raj Officer, Saran at Chapra to



give appropriate guidance inasmuch as the Mukhiya was not fixing the date and time for discussing the No Confidence Motion. The District Panchayat Raj Officer, Saran at Chapra, by his letter dated 23.07.2018, had then asked the Block Development Officer-cum-Executive Officer, Panchayat Samiti, Saran at Chapra, to follow the guidelines prescribed in the letter dated 16.09.2008 issued by the State Election Commission. The learned counsel for the petitioner has further submitted that the Panchayat Secretary had then informed the Block Development Officer, by his letter dated 25.07.2018, that special meeting has been convened at the Middle School, Gobind Chak on 02.08.2018 at 11:30 am to consider the No Confidence Motion against the Up-Mukhiya. The learned counsel for the petitioner has also referred to the notice dated 26.07.2018 issued by the Gram Panchayat Secretary wherein the place for holding the meeting to discuss the No Confidence Motion has been mentioned as Middle School, Gobind Chak, hence, it is submitted by the



learned counsel for the petitioner that firstly, since the special meeting convened for consideration of the No Confidence Motion against the petitioner has not been called by the Mukhiya and secondly, since the place of the meeting is not the Gram Panchayat, the notice dated 26.07.2018 is contrary to law, thus is fit to be set aside, consequently, the motion of no confidence passed against the petitioner is also required to be set aside. It is further submitted that both the Mukhiya and Up-Mukhiya were absent in the special meeting held on 02.08.2018. Lastly, the learned counsel for the petitioner has submitted that reasons / charges, on which the No Confidence Motion has been moved against the petitioner, have not been mentioned. In this regard, the learned counsel for the petitioner has relied on a judgment rendered by the learned Division Bench of this Court in the case of ***Sindhu Devi & Ors. Vs The State of Bihar & Ors.***, reported in **2002 (1) PLJR 281**.

6. Per contra, the learned counsel for the Respondent-State has submitted, by referring to



the counter affidavit filed by the Block Development Officer, Sonapur, Saran at Chapra that a requisition with certain allegations was submitted by more than one third member of the Gram Panchayat Raj, Gobind Chak, Saran at Chapra to the Mukhiya on 14.07.2018 for bringing a No Confidence Motion against the Up-Mukhiya, but he did not fix any date. A similar application signed by more than one third member was also submitted before the Block Development Officer, Sonapur, Saran at Chapra, which was also endorsed by the Mukhiya. Thereafter, yet another similar application signed by nine members of the Panchayat was submitted before the Block Development Officer, Sonapur, Saran at Chapra on 14.07.2018, which was also signed by the Mukhiya and then the Block Development Officer, Sonapur, Saran at Chapra, had requested the Mukhiya to fix a date, time and place for No Confidence Motion, however, when the Mukhiya did not fix the date, time and place for the No Confidence Motion, the Block Development Officer, Sonapur, Saran at



Chapra had informed the District Panchayati Raj Officer, Saran at Chapra and sought guidelines, to which the District Panchayati Raj Officer, Saran at Chapra, vide letter dated 23.07.2018, had replied and stated that the Block Development Officer, Sonapur, Saran at Chapra, may proceed in accordance with letter no. 2535 dated 16.09.2008, issued by the State Election Commission, Bihar, Patna. Since the Mukhiya did not fix the date for holding the special meeting, eight members of the Panchayat had fixed the date for convening of the special meeting i.e. 02.08.2018 at 11:30 am and an application to that effect was submitted before the Panchayat Secretary on 25.07.2018 to circulate the date of holding of special meeting to all concerned, whereafter the Panchayat Secretary, Gram Panchayat Raj, Gobind Chak, Block-Sonapur, District-Saran at Chapra had issued and circulated the notice with regard to convening of the special meeting on 02.08.2018 at 11:30 am, vide his letter dated 26.07.2018 and then, the special meeting was convened on 02.08.2018 and with a majority,



No Confidence Motion was passed against the petitioner.

7. The learned counsel for the Respondent-State has also submitted that no illegality has been committed by the Panchayat Secretary as is clear from Clause 5(VI) of the letter dated 16.09.2008, containing the guidelines issued by the State Election Commission. It is also submitted that the Mukhiya and the Up-Mukhiya were absconding on account of a criminal case having been lodged against them bearing Sonapur P.S. Case No. 669 of 2018 and they had also locked the Panchayat Bhawan, hence, the special meeting was fixed at the Middle School, Gobind Chak. It has also been submitted that after removal of the petitioner, a fresh election has also been held on 20.08.2018 and in the said election, Archana Kumari, has been declared as the successful candidate and certificate of her being elected as Deputy Mukhiya has also been issued by the Election Commission, Bihar, Patna, however, the same has not been challenged by the petitioner in the present



proceedings.

8. The learned counsel for the private Respondents, Sri Ajay Kumar Tiwari, has adopted the arguments advanced by the Respondent-State.

9. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent that since the Mukhiya had not only failed to convene a special meeting for consideration of the No Confidence Motion, against the petitioner, pursuant to more than one third of the Panchayat Members, having submitted a requisition regarding the same but had also subsequently locked the Gram Panchayat office and was absconding on account of a criminal case, having been lodged against him, one third members of the Panchayat had convened the special meeting by fixing the date and time as 02.08.2018 at 11:30 am, to be held at the Middle School, Gobind Chak. In this regard, it would be relevant to reproduce Section 20 (2) and (5) of the Bihar Panchayat Raj Act, 2006 herein below:-



“Section 20 (2). The Mukhiya may, whenever he thinks fit, and shall upon the written request of not less than one-third of the total number of elected members of the Gram Panchayat, on a date within fifteen days from the receipt of such request, call a special meeting.

(5). If the Mukhiya fails to call a special meeting as provided in sub-section (2), the Up-Mukhiya or, in his absence, one-third of the total number of members may call such a meeting on a day not more than fifteen days thereafter and require the Panchayat Secretary to give notice to the members and to take such action as may be necessary to convene the meeting.

10. Thus, this Court finds that one third members of the Panchayat had rightly convened the special meeting since the Mukhiya had failed to convene the special meeting, as provided for under Sub-Section (5) of Section 20 of the Bihar Panchayat Raj Act, 2006 and had also rightly required the Panchayat Secretary to give a notice to the members, which the Panchayat Secretary had duly honored by issuing a notice dated 26.07.2018,



hence, on this score, there is no illegality, especially as far as issuance of notice dated 26.07.2018 by the Panchayat Secretary, Gram Panchayat Raj, Gobind Chak, is concerned, consequently, this Court finds that the said contention raised by the learned counsel for the petitioner is thoroughly misconceived.

11. Now coming to the issue of furnishing of reasons / charges, on the basis of which No Confidence Motion has to be moved, firstly, it would be seen from the requisition of one third members of the Panchayat that the reason has definitely been mentioned in all the requisitions whether it be the one dated 14.07.2018 or the one dated 15.07.2018 or for that matter, the notice dated 26.07.2018, which specifically contains two charges leveled against the petitioner herein for the purposes of convening special meeting for considering the No Confidence Motion against the petitioner. Thus, this Court finds that the said submission of the learned counsel for the petitioner is also thoroughly incorrect and



misplaced. Nonetheless, it would be relevant to mention here that a bare perusal of Section 18 of the Bihar Panchayat Raj Act, 2006 which deals with resignation or removal of Mukhiya or Up-Mukhiya merely envisages a situation where the members of the Panchayat express want of confidence in the Mukhiya / Up-Mukhiya and does not envisage a situation where reasons / charges have to be either mentioned in the requisition or in the notice of the meeting, as is envisaged under Section 44 of the Bihar Panchayat Raj Act, 2006 and more particularly Section 44(4) of the Bihar Panchayat Raj Act, 2006, which deals with resignation and removal of Pramukh and Up-Pramukh.

12. The judgment referred to by the learned counsel for the petitioner rendered in the case of ***Sindu Devi & Ors.*** (supra) is also not applicable in the facts and circumstances of the present case since the same pertains to No Confidence Motion against Pramukh / Up-Pramukh whereas in the present case, the issue is regarding No Confidence Motion against the Up-Mukhiya. Another aspect of



the matter is that the said case pertains to the old Bihar Panchayat Raj Act, 1993 whereas this Court is concerned with the existing Bihar Panchayat Raj Act, 2006. Thus, this Court is of the view that the contention of the learned counsel for the petitioner with regard to the afore-said issue is also thoroughly misconceived, hence, is rejected.

13. At this juncture, it would also be relevant to reproduce Rule 5 and Rule 6(1) of the Bihar Panchayat Raj Institution (Conduct of Business) Rules, 2015 herein below:-

“5. Special Meetings of Gram Panchayat. - (1) The Mukhiya, whenever he deems fit, may call up special meeting of Gram Panchayat. In addition to this, the Mukhiya on the written request of at least one-third members of the total number of the members of the Gram Panchayat, shall call a special meeting on a date within fifteen days from the receipt of such request.

(2) If the Mukhiya fails to call up a special meeting under sub-rule (1), the Up-Mukhiya or in his absence, on receipt of



request of one third of the total numbers of the members, such meeting may be called up for a day within not more than fifteen days. The Panchayat Secretary shall issue notice for calling up such meeting, and take necessary action.

6. Notice for the Meetings. -(1) Notice of a general or special meeting of Gram Panchayat, specifying there in the place, date and time of such meeting and the business to be transacted thereat, shall be given in writing by the Gram Panchayat Secretary to the members and to such officers as may be specified by the Gram Panchayat, and it shall be affixed at notice board of the Gram Panchayat at a conspicuous place. The Gram Panchayat Secretary shall issue written notice for the meeting to all concerned members and government officers/employees and maintain acknowledgements thereof.”

14. Lastly, coming to the issue regarding the special meeting having not been conducted at the office of the Gram Panchayat and instead having been held at the Middle School, Gobind Chak, this Court finds that the Mukhiya and the Up-Mukhiya



had locked the office of the Gram Panchayat and were absconding on account of a criminal case having been lodged against them, hence, the meeting could not be held at the office of the Gram Panchayat, but was held at an independent and neutral place i.e. the Middle School, Gobind Chak. In any view of the matter, the provision contained in Section 18(4)(ii) of the Bihar Panchayat Raj Act, 2006 does not specifically bar conduct of special meeting at a place other than the office of the Gram Panchayat and the same only postulates that the Mukhiya shall convene a special meeting of the Gram Panchayat in the office of the Gram Panchayat, meaning thereby that the said bar is not applicable/mandatory when other members call a special meeting, in case the Mukhiya fails to convene the special meeting.

Moreover, Section 20(5) of the Bihar Panchayat Raj Act, 2006 empowers the Panchayat Secretary to give notice to the members. In fact, Section 6(1) of the Bihar Panchayat Raj Institution (Conduct of Business) Rules, 2015 also empowers the Gram



Panchayat Secretary to give notice of a general or a special meeting of Gram Panchayat, specifying therein the place, date and time of such meeting and the business / transacted thereat, to the members of the Panchayat and to other officials, hence, this Court finds that the said issue being raised by the learned counsel for the petitioner regarding the place of holding of special meeting is also bereft of any merit, thus, is rejected.

15. Having regard to the facts and circumstances of the case and for the reasons stated hereinabove in the preceding paragraphs, this Court finds that the present writ petition is not only misconceived but also bereft of any merit, hence, the same is dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	29.07.2021
Uploading Date	06.08.2021
Transmission Date	NA

