

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13513 of 2018

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Neetu Kumari wife of Sri Subhankar Kumar Resident of Village and P.O. Rupauli, P.S. Rupauli, District Purnea, Presently Pramukh of Block Panchayat Samiti, Rupauli, District - Purnea.

... .. 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 Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Purnea, District - Purnea.
5. The Sub-Divisional Officer, Dhamdaha, District - Purnea.
6. The Block Development Officer, Rupauli-cum-Executive Officer, Block Panchayat Samiti, Rupauli, Dist
7. Ajay Kumar Sharma son of not known to the petitioner Presently Up-Pramukh of Block Panchayat Samiti, Rupauli, District - Purnea.
8. Rita Devi wife of not known to the petitioner
9. Kanti Devi wife of not known to the petitioner
10. Dayanand Mandal son of not known to the petitioner
11. Dimpal Devi wife of not known to the petitioner
12. Manoj Ram son of not known to the petitioner
13. Lalita Devi wife of not known to the petitioner
14. Kanti Devi wife of not known to the petitioner
15. Dropadi Devi wife of not known to the petitioner
16. Kunti Devi wife of not known to the petitioner
17. Anjani Devi wife of not known to the petitioner
18. Israil son of not known to the petitioner
19. Meera Devi wife of not known to the petitioner
20. Rekha Devi wife of not known to the petitioner
21. Neelam Devi wife of not known to the petitioner
22. Subhash Rajak son of not known to the petitioner
23. Riyazuddin son of not known to the petitioner
24. Aasif Ali son of not known to the petitioner
25. Neelam Devi wife of not known to the petitioner
26. Karelal Mahto son of not known to the petitioner
27. Brahmdeo Mahto son of not known to the petitioner
28. Rajesh Tiwary son of not known to the petitioner



29. Vimal Kumar son of not known to the petitioner
30. Rajesh Kumar Pandit son of not known to the petitioner
31. Triveni Mandal son of not known to the petitioner
32. Pramod Kumar Mandal son of not known to the petitioner
33. Preeti Devi wife of not known to the petitioner Respondent Nos. 8 to 33 are the members of Block Panchayat Samiti, Rupauli through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Rupauli, P.O. and P.S. Rupauli, District - Purnea.
34. The State Election Commission (Panchayat) Bihar through the State Election Commissioner

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate
For the Respondent/s	:	Mr. Ajay- GA5
		Mr. Pratik Kumar Sinha, AC to GA 5
For SEC	:	Mr. AC to Mr. Amit Srivastva, Advocate
For Pvt. Respondents	:	Mr. Kumar Kaushik, Advocate
		Mr. Bijendra Kumar Singh, Advocate
		Mr. Kamlesh Kumar Maharana, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT
Date : 14-03-2019

This writ application has been preferred for the following reliefs:-

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the requisition dated Nil submitted by 18 members of Rupauli Block Panchayat Samiti which is though addressed to the petitioner but was submitted in the office of Respondent no. 6 on 03.07.2018 on the ground that whereas the provisions contained under Sub-Section-3 (i) of Section -44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act) provides for presentation of such requisition before the Pramukh with a copy of 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 issuance of an appropriate writ in the nature of CERTIORARI for quashing the notice dated 08.07.2018 issued under the signature of the Respondent no. 6 and contained in his letter no. 1256 dated 08.07.2018, whereby and where under the Respondent no. 6 has been pleased to inform all the members of Panchayat Samiti to attend the special meeting on 16.07.2018 for consideration of NO CONFIDENCE MOTION against the petitioner on the ground that if the requisition of the requisitionists was forwarded to the petitioner by the Respondent no. 6 vide his letter no. 1209 dated 03.07.2018, there was no occasion for the Respondent no. 6 to issue the impugned notice on 08.07.2018 if the date was not filed by the petitioner but by someone else encroaching upon the jurisdiction of the petitioner to take a decision on such requisition in accordance with law.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

The petitioner in the present case was declared elected for the post of Pramukh. It is the case of the petitioner that some of the Panchayat Samiti Members who had been defeated in the election were busy to provoke the Members of the Panchayat



Samiti, Rupauli for removal of the petitioner from the post. It is alleged that after confusing the Members, their signatures were obtained on a plain paper which was subsequently converted into a requisition addressed to the petitioner in which a request was made from the petitioner to convene the Special Meeting of Block Panchayat Samiti to consider Motion of 'No Confidence' against the petitioner.

The further case of the petitioner is that the requisition was submitted before the Executive officer in contravention of the provision as contained in Sub-Section (3) (i) of Section 44 of the Gram Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act of 2006'). The requisition, it is alleged, was never presented before the petitioner and it was directly submitted in the office of respondent no. 6, the Executive Officer, who thereafter forwarded the requisition to the petitioner vide letter no. 1209 dated 03.07.2018 with a request to fix the date of Special Meeting for consideration of the 'No Confidence Motion' against her.

It is stated that before 03.07.2018, the petitioner had no occasion even to see the requisition as it was directly submitted in the office of respondent no. 6. It is stated that the Special Meeting has to be convened within a period of 15 days from the date of such requisition and it has been interpreted by different Benches of



this Hon'ble Court that the Pramukh has got at least 7 days time to take a decision on such requisition whether to convene or not to convene any Special Meeting on the basis of the requisition. It is the stand of the petitioner that she had a right to take a decision to convene or not to convene a Meeting until 10.07.2018 and only in case of failure of the petitioner to take a decision until 10.07.2018, the Up-Pramukh or 1/3rd of the total Members of the Panchayat Samiti could have fixed the date of Special Meeting.

The grievance of the petitioner is that as the private respondents were in haste and had no patience to wait until the expiry of statutory period, they had themselves fixed the date of Special Meeting on 16.07.2018 and required the Executive Officer to issue the notice to Panchayat Samiti Members. The respondent no. 6 issued the impugned notice vide letter no. 1256 dated 08.07.2018 informing the Members of the Panchayat Samiti to attend the Special Meeting on 16.07.2018.

On these grounds the petitioner has assailed the impugned notice dated 08.07.2018.

It appears that during pendency of the writ application the 'No Confidence Motion' against the petitioner was passed, therefore, in the changed circumstances the petitioner has filed



Interlocutory Application No. 5972 of 2018 seeking the following additional reliefs:-

“5. (A) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the proceedings of the special meeting of Block Panchayat Samiti, Rupauli dated 16.07.2018 wherein the motion of No Confidence was passed against the petitioner and she was removed from her elected post of Pramukh in violation of statutory provision contained under Sub-Section-3(i) of Section-44 of the Gram Panchayat Act.

(B) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the notice issued by the Respondent no. 5 fixing the date of meeting of Block Panchayat Samiti, Rupauli on 10.08.2018 for the election of Pramukh for the said Panchayat Samiti, which has fallen vacant after the illegal removal of the petitioner on the ground that if the notice of special meeting issued by the Respondent no. 6 was illegal and invalid, any special meeting convened in pursuance thereof or any Resolution passed in the special meeting is bad in law.”

It is the contention of the petitioner that since the notice as contained in Annexure-P3 is an invalid notice in the eye of law, any Special Meeting convened pursuant thereof and the resolution passed thereat cannot be sustained in law.

The aforesaid submissions of the petitioner, has been contested by the private respondents by filing a counter affidavit. Attention of this Court has been drawn towards paragraph 4 of the



counter affidavit filed on behalf of respondent no. 6 and paragraph 4 of Interlocutory Application No. 8074 of 2018 filed on behalf of the private respondents. It is their case that the requisition was presented by more than 1/3rd Members of the Samiti on 02.07.2018. The petitioner was avoiding service and for that reason she purposely remained absenting from office.

It is the case of the respondents that the requisition was again tried to be served on the petitioner on 03.07.2018 vide letter no. 1209 dated 03.07.2018 contained in Annexure-‘A’ to the counter affidavit. It is stated that from Annexure-‘A’ it would appear that there is an endorsement of the Peon that the petitioner could not meet on 03.07.2018 and then had refused to accept the requisition on 04.07.2018. It is, thus, submitted that in the aforesaid circumstances, the Executive Officer had rightly requested the respondent no. 7 (Up-Pramukh) to fix the date vide letter dated 07.07.2018 (Annexure-C to the counter affidavit filed on behalf of respondent no. 6). Consequently the respondent Up-Pramukh fixed the date of Special Meeting vide letter dated 08.07.2018 which is Annexure-‘D’ to the counter affidavit of the respondent no. 6. This ensured service of seven days clear notice on all the members.



Referring to Clause (iv) and (v) of the instructions issued by the Bihar State Election Commission in its' letter dated 16th September, 2008 (Annexure 'B' to the counter affidavit of the respondent no. 6). It is submitted that in case the Pramukh avoids receipt of requisition of 'No Confidence Motion', the service of requisition upon the Executive Officer shall be taken as service on Pramukh. The Executive Officer shall inform this to Pramukh for convening Special Meeting within 15 days. It further clarifies that in case requisition is made on 10th day of a month the meeting would be convened on 24th day of the month. Information in this regard must be given to all the members by 17th day of the month. It further says that in aforesaid situation notice convening Meeting will be required to be issued within 2-3 days i.e. by 12th-13th day.

It is stated that the petitioner had written to the Executive Officer on 10.07.2018 vide Annexure-'E' to the counter affidavit filed on behalf of respondent no. 6 calling the file relating to the No Confidence Motion but she again refused to receive the letter No. 1267 dated 10.07.2018 which was written by respondent no. 6 in response to letter No. 12 dated 10.07.2018 written by the petitioner.

Learned counsel for the private respondents has submitted that the petitioner had refused to accept the requisition



which was sought to be served upon her by the private respondents as well as the Executive Officer, therefore, she would not be entitled to any relief under the equitable jurisdiction of this Court. It is submitted that even if a provision of law is mandatory in nature, the non-observance thereof may not be a ground in a given case to grant relief to the petitioner as in such cases the attending circumstances and the conduct of the petitioner would be a matter to be looked into by the Court.

It is further submitted that even a mandatory provision can be waived and in the facts of the present case, it may be held that the petitioner had waived her right to call the meeting for considering 'No Confidence Motion' by her conduct. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Jaswantsingh Mathura Singh & Anr. Vs. Ahmedabad Municipal Corporation** reported in **AIR 1991 SC 2130**, **Krishnalal Vs. State of J & K** reported in **(1994) 4 SCC 422** and **Babulal Badriprasad Varma vs. Surat Municipal Corporation & Others** reported in **2008 (12) SCC 401**. It is submitted that in this case, the respondent no. 6 has rightly acted in terms of the instructions and guidelines of the State Election Commission.



Learned counsel for the State has supported the submissions of the private respondent.

In response to the submission of learned counsel for the private respondents, Mr. Manglam, learned counsel for the petitioner, while reiterating the submissions which have been taken note of hereinabove, submits that in paragraph 5 of the counter affidavit filed on behalf of respondent no. 6, the deponent of the counter affidavit has made a contradictory statement. In one breath, it is the stand of the requisitionists that the notice dated 02.07.2018 had been served upon the petitioner which she refused to receive and the reason for refusal of service is that the petitioner was absenting from her office. It is submitted that if the petitioner was absenting from her office is true then the submission that she had refused to receive the same cannot exist together. Learned counsel relied upon a learned Single Judge Bench judgment of this Court in the case of **Geeta Devi Vs. The State of Bihar and others** reported in **2015 (1) PLJR 790**. It is submitted that the facts of the present case are quite similar to the facts noted by the learned Single Judge in the case of **Geeta Devi** (Supra).

It is his submission that from the service report of the Peon it appears that the petitioner has refused to receive the requisition on 04.07.2018 and thereafter, even if the date of service



would be treated as 04.07.2018, on 08.07.2018 i.e. only 3 days after the service of requisition upon the petitioner, the Up-Pramukh had no jurisdiction to fix the date of Special Meeting vide order dated 08.07.2018 convening the Special Meeting on 16.07.2018.

Regarding the submissions of the private respondents on the issue of waiver, learned counsel for the petitioner submits that so far as the conduct of the petitioner is concerned, assuming that the petitioner was not available in her office on 02.07.2018, nothing prevented the requisitionists either to wait for a day or two for arrival of the writ petitioner or to approach her at her house for the purpose of presentation of requisition. It is submitted that there is no averment in the counter affidavit that before 02.07.2018 the requisitionists had made any effort for presentation of requisition before the petitioner.

Consideration

Having heard learned counsel for the parties and on perusal of the records, this Court finds at first instance that even though on behalf of the official respondent (respondent no. 6) and private respondents counter affidavits and supplementary counter affidavits have been filed, the petitioner has not filed any rejoinder to the counter affidavit and supplementary counter affidavit of the



private respondents to deny the averments of the respondents on facts.

This Court finds that the requisition was brought on 02.07.2018 is not in dispute. It is also not denied by the petitioner that she was not attending the office on 02.07.2018 and thereafter when attempts were being made by the requisitionists and respondent no. 6 to serve the requisition upon her.

It is the case of the private respondents that the requisitionists who were 1/3rd in number came out with a requisition of 'No Confidence' against the petitioner. It is also found that, as per the private respondents, when the petitioner was found avoiding receipt of the requisition dated 02.07.2018, the private respondents moved before the Executive Officer -cum- Block Development Officer, Raupauli (respondent no. 6) who issued letter dated 03.07.2018 to the petitioner asking her to convene an immediate meeting of the Members of the Panchayat Samiti within a period of 15 days. The meeting was to be held by 16.07.2018 i.e. within 15 days from 02.07.2018. The petitioner refused to receive this letter dated 03.07.2018 issued by the Executive Officer -cum- Block Development Officer, a note to this effect has been made by the process server on the body of the notice as contained in Annexure-'A' to the counter affidavit of



private respondents. There is no denial of the petitioner by filing any rejoinder.

In these circumstances, the respondent no. 6 was bound to follow the instructions as contained in Annexure-‘B’ to the counter affidavit of respondent no. 6. The notice giving seven clear days to the members were required to be issued by 07.07.2018. On 07.07.2018, thus, respondent no. 6 had no option but to call upon the Up-Pramukh to convene the meeting by giving seven clear days to the Members of the Samiti. Accordingly the Up-Pramukh issued Notices on 08.07.2018 informing all the Members the convening of Special Meeting on 16.07.2018.

This Court is of the view that by refusing to receive the notice with Memo No. 1209 dated 03.07.2018, the petitioner has shown her intention to avoid service of notice. There is no denial of the fact that the petitioner was absenting from her office from before 02.07.2018. No plausible explanation whatsoever has been submitted by the petitioner to show any compelling circumstances under which she was not attending the office. It is not in dispute that the requisitionists had gone to serve the requisition/notice dated 02.07.2018 to the office of the petitioner but because she was not present, the notice was not handed over to her. This Court is of the considered opinion that the manner in which the petitioner



avoided service of notice upon her on 02.07.2018 by absenting herself from the office and then refused to receive the memo dated 03.07.2018 issued by the Block Development Officer, Rupauli as contained in Annexure-A, it can safely be concluded that because of her conduct the petitioner cannot be allowed to plead that the requisitionists had followed a procedure otherwise than prescribed under the provisions of Section 44 (3) (i) of the Act of 2006.

As noticed earlier when the petitioner refused to receive Notice on 04.07.2018 and till 07.07.2018 she did not take any step to convene the meeting by 16.07.2018, in order to ensure compliance of statutory requirements of seven clear days notice to the Members of the Samiti, the respondent no. 6 had no option but to proceed and he accordingly proceeded.

No doubt in terms of the judgment of this Court in the case of **Geeta Devi** (supra) the requisitionists has to wait till 7th day before going for a Special Meeting to be convened by the Executive Officer but on a reading of the whole judgment in the case of **Geeta Devi** (supra) it would appear that in the said case the instructions of the Bihar State Election Commission was not brought to the notice of learned Co-ordinate Bench of this Court. In this case respondent no. 6 has brought on record Annexure-‘B’ which fully explains as to how the case of avoidance of service of



Notice by Pramukh, the Executive Officer has to proceed. Annexure-‘B’ clearly provides the example giving a date-wise procedure. It emphasizes that for giving seven clear days Notice, the Notice convening Special Meeting be issued within 2-3 days from the date of service of requisition. I am, therefore, of a view that every judgment is a judgment in the facts pleaded in that case and a slightest of change in the facts would make a sea-difference. Reference in this regard, may be made to 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**.

Clause (V) of the Instruction letter as contained in Annexure-‘B’ reads as under :-

“(V) प्रमुख को अध्यक्षता हो जाने अथवा कार्यपालक पदाधिकारी द्वारा उन्हें लिखित रूप में सूचित कर दिए जाने की तिथि से 15 दिनों के अंदर प्रमुख को बैठक बुलाने हेतु एक तिथि निश्चित करनी होगी। उदाहरण के लिए, अगर अध्यक्षता 10 तारीख को दी जाती है, तो अधिकतम 24 तारीख तक बैठक बुलाना अनिवार्य होगा। चूँकि विशेष बैठक के लिए 7 दिन पूर्व की सूचना देना आवश्यक है, अतः 24 तारीख की बैठक के आयोजन के लिए अध्यक्षता प्राप्त होने के इतने दिनों के अन्दर उसे बैठक संबंधी नोटिस निर्गत करा देनी होगी कि 17 तारीख तक सभी सदस्यों को बैठक की सूचना प्राप्त हो जाए। चूँकि नोटिस तामिला होने में 2-3 दिनों का समय लग सकता है, अतः बैठक संबंधी सूचना 12-13 तारीख तक निश्चित रूप से निर्गत हो जानी चाहिए। बैठक की सूचना कार्यपालक पदाधिकारी द्वारा **परिशिष्ट-‘क’** पर रक्षित प्रपत्र में निर्गत की जाएगी, जिसमें बैठक की तिथि, समय और स्थान का स्पष्ट उल्लेख रहेगा। सूचना में वे आरोप भी अंकित रहेंगे जिन्हें अविश्वास प्रस्ताव पेश करने का आधार बनाया गया है।

अगर प्रमुख द्वारा बैठक हेतु ऐसी तिथि नियम कर दी जाती है, जिसके लिए पूरे 7 दिन पूर्व सूचना देना संभव



नहीं हो, तो माना जाएगा कि उन्होंने जान बूझकर मामले को विवादग्रस्त बना देने के उद्देश्य से ऐसा किया है और तब कार्यपालक पदाधिकारी ऐसी सूचना निर्गत नहीं करेगा, तथा उप प्रमुख/ एक तिहाई सदस्यों द्वारा नियम के अनुरूप तय की गई तिथि को बैठक बुलाने हेतु 7 दिन पूर्व तामिला की अनिवार्यता की शर्त को ध्यान में रखते हुए परिशिष्ट-‘क’ पर रक्षित प्रपत्र में नोटिस निर्गत करेगा।”

In the present case since the petitioner was not allowing the service of requisition/notice and had already refused to receive the notice when it was attempted to be served upon her through the process server, on going through the material particularly Annexure-‘B’ to the counter affidavit of respondent no. 6, this Court finds that the ratio of the judgment of the learned Single Judge of this Court in the case of **Geeta Devi** (supra) would not help the petitioner.

While it is true that the manner in which a requisition for No Confidence Motion is to be brought will be governed by Section 44 (3) (i) of the Act of 2006 and the same has been held to be mandatory, in the opinion of this Court, in the present case it cannot be said that the requisitionists had adopted a wrong procedure. The conduct of the petitioner may be an attending circumstance to be considered by a writ Court while considering the request of the petitioner to grant a discretionary relief. In this connection the Court would rely upon a recent judgment of the Hon’ble Supreme Court in the case of **ITC Limited Vs. Blue Coast Hotels Limited and Others** reported in (2018) 15 SCC 99



in which while holding that Section 13(3-A) of the Securitization and Reconstruction of Financial Assets And Enforcement of Securities Interest Act, 2002 is a mandatory provision and the Bank had not complied with the same the Hon'ble Supreme Court held that in the attending circumstances of a case taking note of the conduct of the petitioner a discretionary relief may be denied.

In the facts of the present case, this Court finds no error if the Up-Pramukh had issued notice dated 08.07.2018 convening a Special Meeting of the Panchayat Samiti on 16.07.2018 when he was directed vide letter no. 1250 dated 07.04.2018 by the Block Development Officer, Rupauli vide Annexure-‘C’ to the counter affidavit of the respondent nos. 4 to 6 to do so.

From Annexure-E series of the counter affidavit of respondent nos. 4 to 6 it would appear that all the Members of the Panchayat Samiti were duly served and the ‘No Confidence Motion’ was passed on 16.07.2018. The conduct of the petitioner only strengthens the belief of this Court that the petitioner was not acting bona fide and was only trying to avoid the holding of the Special Meeting.

For the aforesaid reasons, taking note of the conduct of the petitioner and the attending circumstances also upon finding that the reliefs under Article 226 of the Constitution of India are in



the nature of a discretionary relief, this Court is not persuaded to exercise its discretion in favour of the petitioner. The writ application has, thus, no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	AFR
CAV DATE	08.03.2019
Uploading Date	14.03.2019
Transmission Date	

