

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14023 of 2018

Sheela Devi, wife of Sri Baldeo Rai, resident of Village and P.O. Hargovindpur, P.S. Mahnar, District- Vaishali at Hajipur.

... .. 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, Vaishali at Hajipur, District- Vaishali at Hajipur.
5. The Sub- Divisional Officer, Mahnar, District Vaishali at Hajipur.
6. The Block Development Officer, Mahnar-cum- Executive Officer, Block Panchayat Samiti, Mahnar, District- Vaishali at Hajipur.
7. Kusheshwar Paswan, son of not known to the petitioner, Presently Up-Prumukh of Block Panchayat Samiti, Mahnar, P.O. and P.S. Mahnar, District- Vaishali at Hajipur.
8. Md. Nizam Raza, son of not known to the petitioner,
9. Kameshwar Singh, son of not known to the petitioner,
10. Sangita Kumari, wife of not known to the petitioner,
11. Bishwanath Patel, son of not known to the petitioner,
12. Raju Kumar Chaudhary, son of not known to the petitioner,
13. Md. Tahir, son of not known to the petitioner,
14. Putul Devi, wife of not known to the petitioner,
15. Indu Kumari, wife of not known to the petitioner,
16. Pinki Kumari, wife of not known to the petitioner,
17. Rama Devi, wife of not known to the petitioner,
18. Basanti Devi, wife of not known to the petitioner,
19. Nitu Devi, wife of not known to the petitioner,
20. Neetu Devi, wife of not known to the petitioner,
21. Khusbu Singh, son of not known to the petitioner,
22. Anju Devi, wife of not known to the petitioner,
23. Lal Babu Rai, son of not known to the petitioner, Respondent nos. 8 to 23 are the members of Block Panchayat Samiti, Mahnar through the Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Mahnar, P.O. and P.S. Mahnar, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.
Mr. Ravi Ranjan, Adv.
For the State : Mr. Anwar Karim, A.C. to GP10
for State Election Commission : Mr. Amit Shrivastava, Adv.
Mr. Girish Pandey, Adv.
For Private Respondents : Mr. S.P. Srivastava, Adv.
Mr. Arun Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 18-12-2018



Heard Mr. S.B.K. Manglam, learned counsel for the petitioner, Mr. Anwar Karim learned A.C. to GP-10 for the State, Mr. Amit Srivastava, learned counsel for the State Election Commission and Mr. Sri Prakash Srivastava, learned counsel for the private respondents.

2. In the instant writ petition, the petitioner has prayed for quashing the proceeding of the special meeting dated 13.07.2018 of the Block Panchayat Samiti, Mahnar, convened for the purpose of consideration of no confidence motion against the petitioner on the ground that the requisition for convening the said special meeting was submitted in violation of mandatory requirements as contemplated under sub-section (3) (i) of Section 44 of the Bihar Panchayat Raj Act, 2006 (for short 'the Act') and the notice issued for the said special meeting vide letter no. 1170 dated 06.07.2018 was illegal as it did not comply with the requirement of sub-section (3)(iii) of Section 44 read with sub-section (4) of Section 46 of the Act.

3. The case of the petitioner is that she had contested the election for the post of Pramukh of Mahnar Block Panchayat Samiti and was declared elected. On completion of two years in office, a requisition was filed in the office of respondent no. 6 without its presentation before her as required under sub-section



(3) (i) of Section 44 of the Act, which was forwarded to her for fixing the date of special meeting by respondent no. 6 on 05.07.2018. She returned the requisition to the respondent no. 6 on 06.07.2018 fixing the date of special meeting on 13.07.2018. Thereafter, respondent no. 6 issued notice to all the elected members of the Block Panchayat Samiti, Mahnar on 06.07.2018 and they were required to attend the special meeting of Block Panchayat Samiti on 13.07.2018 for consideration of no confidence motion against her. On 13.07.2018 the special meeting was convened, which was attended by 11 members of the Panchayat Samiti in which the motion of want of confidence was passed against her and she was removed from her post.

4. Learned counsel for the petitioner submitted that the requisition was never presented to the Pramukh in writing. The notice dated 06.07.2018 issued to the elected members whereby they were informed to attend the special meeting on 13.07.2018 was also bad as neither 7 clear days notice was given nor the reasons/charges on the basis of which no confidence motion was to be moved against the petitioner was mentioned in the notice. He contended that in view of these apparent illegalities, the resolution passed the special meeting held on 13.07.2018 is a nullity in the eyes of law and the same is



liable to be quashed.

5. On the other hand, learned counsel appearing for the State submitted that the petitioner has not come to the Court with clean hands. According to him, she has suppressed material facts. He contended that the petitioner herself had requested vide letter dated 06.07.2018 to the respondent no. 6 to fix the date on 13.07.2018 for holding the special meeting. The requisition sent to the petitioner also contained the specific reasons/proposal for no confidence motion. Thus, there was no illegality in the issuance of notice to the members on 06.07.2018 for holding the special meeting for discussion on no confidence motion.

6. However, learned counsel appearing for the State Election Commission contended that it was the responsibility of the Executive Officer to ensure that seven clear days notice is given to the members for consideration of no confidence motion. He contended that even though the petitioner had issued direction on 06.07.2018 for holding the special meeting on 13.07.2018, it was incumbent upon the Executive Officer to have ensured whether or not seven clear days notice is given to the members. Since he has failed to ensure that seven clear days not to given to the members, the resolution passed in the special



meeting cannot be sustained. He further admitted that the notice does not contain the reasons/charges on which no confidence motion had to be moved. He submitted that simply because the reasons/charges on the basis of which no confidence motion was to be moved was sent with the requisition, the same would not satisfy the requirement of law as contemplated under Section 44(3)(iv) of the Act.

7. Learned counsel appearing for the private respondents also admitted that there was apparent illegality in issuance of notice and, thus, the resolution taken on 13.07.2018 in the special meeting cannot be sustained in law.

8. I have heard learned counsel for the parties and perused the record.

9. Section 44 of the Act specifies the provisions for resignation and removal of Pramukh and Up-Pramukh. Section 44(3)(i) of the Act provides that the requisition for 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 is required to immediately bring the requisition to the notice of the Pramukh and the Pramukh is



required to 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.

10. Section 44(3)(iv) of the Act provides that reasons/charges on the basis of which no confidence motion has to be moved against the Pramukh or Up-Pramukh shall be clearly mentioned in the notice calling for special meeting.

11. Sub-section (4) of Section 46 of the Act provides that 7 clear days notice of special meeting specifying the time at which meeting was to be held and the business to be transacted there shall be sent to the members and affixed at the office of the Panchayat Samiti.

12. In the present case, neither the notice contained reasons/charges on which no confidence motion had been moved against the petitioner nor 7 clear days notice of the special meeting was given to the elected members. In that view of the matter, the resolution of no confidence motion passed against the petitioner in the special meeting dated 13.07.2018 cannot be sustained. It is set aside, accordingly.



13. However, before parting with this case, I would like to add that since the petitioner is aware of the no confidence motion brought against her by the adequate number of elected members of the Panchayat Samiti as also the reasons/charges on the basis of which no confidence motion has to be moved against her was also brought to her notice with the requisition earlier sent, she shall be required to convene a special meeting in accordance with law falling within 15 days from today. If she fails to call the special meeting, the Up-Pramukh or one third of the total number of the directly elected members would be at liberty to fix a date for such meeting and may require the Executive Officer to issue notice for convening the special meeting.

14. With the aforesaid observations and direction, the writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

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| CAV DATE | N.A. |
| Uploading Date | 21.12.2018 |
| Transmission Date | |

