

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20751 of 2018

1. Hemant Kumar, Son of Sri Suresh Prasad Singh, Resident of Village- Bhagwanpur Rati, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur.
2. Shailendra Prasad Singh, Son of Bharat Prasad Singh, Resident of Village- Panchpaika, P.O.- Abul Hasanpur, P.S.- Vaishali, District- Vaishali at Hajipur.
3. Haridwar Pandey, Son of Sri Nand Kishore Pandey, Resident of Village and P.O.- Abul Hasanpur, P.S.- Vaishali, District- Vaishali at Hajipur.
4. Amrit Paswan, Son of Shiv Nandan Paswan, Resident of Village and P.O.- Dharampur, P.S.- Vaishali, District- Vaishali at Hajipur.
5. Kishore Sah, Son of Late Nageshwar Sah, Resident of Village- Rasul Chak, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur.
6. Lalita Kumari, Wife of Sakaldeo Paswan, Resident of Village- Kamtauliya, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur.
7. Sanoj Kumar Sahani, Son of Kailash Sahani, Resident of Village and P.O.- Vaishali, P.S.- Vaishali, District- Vaishali at Hajipur.
8. Dharmendra Pandit, Son of Kamal Pandit, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
9. Manzoor Alam, Son of Mahmood Alam, Resident of Village and P.O.- Daud Nagar, P.S.- Vaishali, District- Vaishali at Hajipur.
10. Sita Devi, Wife of Subodh Paswan, Resident of Village and P.O.- Amritpur, P.S.- Vaishali, District- Vaishali at Hajipur.
All the petitioners are elected members of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
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 Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Vaishali, District- Vaishali at Hajipur.
6. Dharamsheela Kumari, Wife of Jitendra Kumar Rai, Presently Pramukh of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, District- Vaishali at Hajipur.
7. Neelam Devi, Wife of Dinesh Singh, Presently Up- Pramukh of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, District- Vaishali at Hajipur.
8. Gayatri Singh, Wife of not known to the petitioners,



9. Md. Naushad, Son of not known to the petitioners,
10. Bharat Ram, Son of not known to the petitioners,
11. Sunaina Devi, Wife of not known to the petitioners,
12. Sandhya Devi, Wife of not known to the petitioners,
13. Neelam Devi, Wife of not known to the petitioners,
14. Sulekha Devi, Wife of not known to the petitioners,
15. Meena Devi, Wife of not known to the petitioners,
16. Priya Rani, Wife of not known to the petitioners,
17. Anil Kumar, Son of not known to the petitioners,
Respondent nos. 8 to 17 are the members of Block Panchayat Samiti,
Vaishali through the Block Development Officer-cum-Executive Officer,
Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, District- Vaishali
at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. SBK Mangalam, Advocate
For the State : Mr. Kumar Alok, SC 7
Mr. Prem Ranjan Raj, AC to SC 7

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 29-01-2020

Heard Mr. SBK Mangalam, learned counsel for the petitioners and Mr. Kumar Alok, learned SC 7 for the State. Despite service of notice on respondents no. 6 to 17, only respondents no. 10 and 11 have entered appearance through learned counsel, whose name is also printed in the cause list and who has also filed counter affidavit, but did not appear when the matter was taken up and heard.

2. The petitioners have moved the Court for the following reliefs:



*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the proceedings of the special meeting dated 10.08.2018 of Block Panchayat Samiti, Vaishali in which the motion of No Confidence against the Pramukh, the Respondent no. 6 was placed for consideration and it was rejected because sufficient members were not in attendance in the special meeting whose support could have resulted in success of motion.*

(II) For a declaration that since the special meeting was convened on the request of the Respondent nos. 8 to 17, the supporters of Respondent no. 6, who ultimately did not attend the special meeting to support their motion and the writ petitioners were not permitted to vote because there was no minority in the meeting, the NO CONFIDENCE MOTION against the Respondent no. 6 has to be treated to have been passed with the support of 10 requisitionists and the writ petitioners and the office of Pramukh has to be declared vacant.

(III) Alternatively, the petitioners would seek a direction from this Hon'ble Court that the special meeting dated 10.08.2018 was convened on the request of the supporter members of Respondent no. 6 and, therefore, they had ultimately not appeared in the special meeting to support their motion, the proceedings of the said special meeting would not come in the way of the petitioners to requisition another special meeting for consideration of NO CONFIDENCE MOTION against the Respondent no. 6 as and when they so desire.

(IV) From a declaration that by their conduct and abuse of their functions, the Respondent nos. 8 to 17 does not deserve to continue as a member of Block Panchayat Samiti, Vaishali and, thereafter, their membership has to be terminated and a direction may be issued for holding fresh election to fill up the post of member of the territorial constituencies which is represented by the Respondent no. 8 to 17 in the Block Panchayat Samiti, Vaishali.



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

3. On 03.04.2019, the Court while issuing notice to the respondents no. 6 to 17 had taken note of the situation and recorded the following order:

“Mr. S.B. K. Mangalam, learned counsel for the petitioner submits that in the facts of the present case where ten members of the Panchayat Samiti signed the requisition calling upon a no confidence motion against the Pramukh but then went in collusion with the Pramukh and did not attend the meeting on the date fixed for the purpose with an intention to defeat the motion in terms of Clause (i) of sub-section (3) of Section 44 of the Bihar Panchayati Raj Act, 2006, it is to be held that those members have played a fraud upon the law.

It is submitted that under the provisions of Gram Panchayat Act under Clause (ii) of sub-section (3) of Section 44, no confidence motion shall not be moved against the Pramukh within the first two years period of their tenure and such a no confidence may be brought only once in the whole ten years of Pramukh. It is for this reason that this kind of modus operandi is adopted. This court will examine whether the conduct of the private respondents who had submitted the requisition but they did not attend the meeting amounts playing fraud upon the law.”

4. Learned counsel for the petitioners submitted that the *mala fide* of the Pramukh of Block Panchayat Samiti, Vaishali in collusion with the Block Development Officer-cum-Executive Officer of the Panchayat Samiti would be clear right from the beginning. It was submitted that the respondents no. 8 to 17



submitted a requisition to the *Pramukh* (respondent no. 6), though in the office of the Block Development Officer on 02.08.2018 at 11:50 AM asking her to convene a Special Meeting for considering a motion of No Confidence against her and the *Up-Pramukh* (respondent no. 7). It was submitted that on the same day, the Block Development Officer-cum-Executive Officer of the Block Panchayat Samiti (respondent no. 5) forwarded the requisition to the respondent no. 6 on which the respondent no. 6, in her own pen has written for convening the Special Meeting for considering the No Confidence Motion against her on 10.08.2019 at 1:00 PM, whereas, against respondent no. 7 on 11.08.2018 at 1:00 PM. Learned counsel submitted that thereafter, the respondent no. 5 issued notice to the Panchayat Samiti members on 02.08.2018 itself communicating the date of the Special Meeting through two separate notices, one each with regard to the *Pramukh* and the *UP-Pramukh*, and below the notice reasons, which had been mentioned in the notice given by the requisitionists, were indicated. Learned counsel submitted that all these developments took place after 11:50 AM, on the same day, which clearly cannot be said to be normal as the respondent no. 7 is also holding the substantive charge of Block Development Officer.



5. Learned counsel submitted that from the aforesaid itself it is clear that the entire scheme of the Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') as well as its spirit has been thoroughly misused and abused. Learned counsel submitted that when there is a common requisition for convening a Special Meeting for considering the No Confidence Motion against both the *Pramukh* and *Up-Pramukh*, a common Special Meeting should be held on the same day, as has been the general practice and precedence. It was submitted that most surprisingly, in the entire requisition, all the allegations were directed against the *Pramukh* with not even one allegation against the *Up-Pramukh*, but still the same reasons have been communicated in the notice by the respondent no. 5 with regard to the Special Meeting being convened for considering the No Confidence Motion against the *Up-Pramukh* on 11.08.2018. Learned counsel submitted that from the same, it is clear that the entire thing was stage-managed and executed with perfection and the reasons for considering the No Confidence Motion on two separate dates was to have a trial run on 10.08.2018 and thereafter, convene another Special Meeting on 11.08.2018, so that the results could be on expected lines. Learned counsel submitted that the biggest giveaway in the entire episode is the fact that all the requisitionists did not attend



the Special Meeting, either on 10.08.2018 or 11.08.2018. Learned counsel submitted that the reasons for staging such a farcical exercise is clear, inasmuch as, after bringing in one such motion, if the same fails, no further No Confidence Motion can be brought against the incumbent for the remaining term. Learned counsel submitted that both the motions did not succeed in the aforesaid background and the respondents no. 6 and 7 succeeded in their endeavour to continue on the post without fear of any No Confidence Motion in future, and in the manner as has been indicated above.

6. Learned counsel for the State could not defend the act of the respondent no. 5 on any ground. On specific questions directly put to learned State counsel, with regard to the abovenoted issues raised on behalf of the petitioners, on none of the points, learned counsel for the State could defend the same, either in law or on facts.

7. From the counter affidavit filed on behalf of respondents no. 10 and 11, which is on record, the Court finds that they were also part of the requisitionists and the stand taken at paragraph no. 10 of their counter affidavit is that due to otherwise being engaged, they could not attend the Special Meeting scheduled on 10.08.2018 and they have further taken a stand that



there is no provision to be present in the Special Meeting by the requisitionists and rather it is their choice to be present or not.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that present is a case where fraud is established. Worse, the fraud is on the system as a whole in which silence in the statute has given persons playing such fraud, a chance to act in a manner they have acted.

9. The Court would first deal with the conduct of the respondents no. 8 to 17, being 10 in number, to serve requisition on the *Pramukh* for convening a Special Meeting for considering motion of No Confidence against the *Pramukh* and *Up-Pramukh*. Reasons have also been assigned. Thus, when reasons are given and on the date the Special Meeting is fixed, none of the said 10 persons having attended, the same cannot be a mere coincidence. In fact, the stand taken by the respondents no. 10 and 11, in their counter affidavit, that they were otherwise engaged, shows their lack of respect and sincerity towards the position they are holding. They are elected members of the Panchayat Samiti and the electorate have chosen them so that they take part in the meetings, deliberate and contribute with regard to the proper functioning of the Panchayat Samiti and development of the area. If that job or



the Special Meeting held of the Panchayat Samiti is not a priority, the Court is constrained to observe that it amounts to dereliction of duty. Moreover, otherwise being engaged, cannot be even a weak justification for all of them not attending the Special Meeting, especially when it was called on the basis of their requisition. Thus, at least, the requisitionists were obliged to ensure their presence and if, barring for any emergency, they had any other engagement, such other engagement had to be rescheduled. At the cost of repetition, all 10 members not attending the Special Meeting, either on the 10th or the 11th, and on both the dates, the motions having failed, nothing remains to be understood or proved as far as lack of *bona fide* in the entire exercise is concerned. Further, the statute providing that after such a motion is defeated, no second motion for the entire remaining period of the incumbent can be moved, is also an indication as to why such farcical exercise was enacted by the persons concerned.

10. At this juncture, the Court would air its view that because the Act does not provide for any action against persons who, even after putting in a requisition and the date of the Special Meeting being fixed, choose not to appear, the authorities may not be in a position to take any effective steps, would not make the Court shut its eyes to this blatant display of such abusive tactics



by the concerned for an oblique purpose, as any attempt to misuse or abuse the law is equally to be dealt with in the manner required.

11. At this juncture, the Court would also indicate that under Section 44(3)(i) of the Act, the requisition of the Special Meeting has to be presented to the *Pramukh* in writing with a copy to the Executive Officer of the Panchayat Samiti, who, in turn, is required to immediately bring the requisition to the notice of the *Pramukh*. The role of the Executive Officer i.e., the Block Development Officer, is nothing beyond bringing such requisition to the notice of the *Pramukh*. In the present case, by Letter No. 901 dated 02.08.2018, he has communicated to the *Pramukh* with regard to him receiving a requisition by 10 Panchayat Samiti members at 11:50 AM. However, he exceeds his jurisdiction by himself also requesting her to fix the date, time and place of the Special Meeting. This, in the considered opinion of the Court, clearly indicates that he has also become party to the entire wrongdoing. Thus, his conduct, both with regard to he himself making a request for convening of the Special Meeting and the lightening speed with which the entire service of requisition in his office; forwarding of the same to the *Pramukh*; the subsequent fixing of the date of the Special Meeting by her; thereafter the same being sent back to the Executive Officer and the Executive



Officer issuing two notices to each Panchayat Samiti member, all on the same day, within a few hours from 11:50 AM, itself is required to be deeply looked into by the authorities.

12. Thus, the Court would direct the District Magistrate, Vaishali (respondent no. 4) to get a thorough enquiry conducted with regard to the conduct of the Block Development Officer-cum-Executive Officer of the Panchayat Samiti, Vaishali, who was holding the post at the relevant time.

13. Coming to the issue of the challenge to quash the proceeding of Special Meeting dated 10.08.2018, in view of the discussions made hereinabove, once the Court has arrived at the conclusion that a fraud was committed and law being settled that fraud vitiates all subsequent action, without the Court having to go into the finer details on technicalities and statutory provisions, the proceeding of the Special Meeting dated 10.08.2018, cannot be sustained as there is not even an iota of doubt in the mind of the Court that the entire episode was for the purposes of committing fraud, so as to automatically allow the incumbents to continue for the entire tenure, which clearly is a fraud - on the society; on the law of the land; the electorate as well as the statute itself. Once the Court has held that the Special Meeting dated 10.08.2018 was a pure fraud committed, the Special Meeting on 11.08.2018, being



integrally connected with the Special Meeting of 10.08.2018 and the facts, circumstances and law involved being identical, as a consequence also cannot be sustained.

14. In view thereof, the proceedings of the Special Meetings dated 10.08.2018 and 11.08.2018, by which the motions of No Confidence against the *Pramukh* and *Up-Prakukh*, respectively, were defeated, stand quashed. Once the Court has held that the holding of the Special Meetings itself was not *bona fide*, but naturally, it has to be held that after setting aside the proceedings, the same would not be hit by the bar of Section 44(3) (ii) of the Act since the entire holding of the Special Meetings and defeat of the resolutions against the *Pramukh* and *Up-Pramukh* of the Panchayat Samiti, Vaishali being vitiated, the same become *non est* in the eyes of law.

15. Learned counsel for the State shall communicate the order to the respondents no. 1 and 2, who are required to look into the matter for the purpose of ensuring that such type of machinations by unscrupulous elements are not allowed to happen, for which they are required to device ways and methods to maintain purity of the system and also eliminate the scope of such blatant abuse recurring.



16. Learned counsel for the State shall also communicate the order to the respondent no. 4, with regard to getting a thorough enquiry made by an officer of proven merit, competence and integrity, for an in-depth enquiry into the conduct of respondent no. 5, who was holding the post at the relevant time, with regard to the entire episode, and based on the enquiry report, to take appropriate action, which should also be taken to their logical conclusion, expeditiously.

17. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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