
(1990) 07 PAT CK 0007

In the Patna High Court

Case No : C.W.J.C. No. 1194 of 1990 & G.W.J.C. No. 1194 of 1990

Ambika Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1990

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 68, 68(2)

Citation : (1990) 2 PLJR 558

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : K.P. Verma and Mukesh Kumar Sinha 6 and 7, for the appearing parties; Kamal Nayan Choubey, Vidya Sagar and Ashok Kumar Singh, For the Respondent 6 and 7 and M/s J.P. Shukla and Pradeep Kumar Tiwary, For the State, for the Respondent

Judgement

U.P. Singh, J.—In this writ petition the petitioners have challenged the validity of the order of the State Government contained in Annexure-3, where by the Resolution of no confidence passed by the Samiti has been cancelled and the Respondents 6 and 7 namely the Pramukh and Up-Pramukh have been allowed to continue to hold the office. The sole question raised by Mr. K.P. Verma, learned counsel appearing for the petitioner is that before cancelling the resolution of no confidence passed by the Samiti, the provisions of section 68 (2) of the Act requiring the show cause to be issued to the Panchayat Samiti has been violated and, therefore, it is fit to be quashed.

2. Section 68 of the Bihar Panchayat Samiti and Zila Parishad Act, 1961 (Bihar Act, No. 6 of 1962) (hereinafter to be called as "the Act") reads as follows :--

Section 68.

Power to cancel or suspend resolution of a Panchayat Samiti or a Zila Parishad.--

(1) The State Government may, by order in writing cancel any resolution passed by a Panchayat Samiti or any Standing Committee thereof, or any Zila Parishad

or any Standing Committee thereof if in their opinion such resolution--

(a) is not in conformity with the provisions of this Act; or

(b) is in excess or abuse of the powers conferred by or under this Act, or any other law; or

(c) on its execution is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray.

(2) The State Government shall, before taking action under sub-section (1) give the Panchayat Samiti or the Zila Parishad, as the case may be, an opportunity for explanation.

(3) If, in the opinion of the Collector, it appears that circumstances exist which render it necessary for him to take immediate action to suspend a resolution on any of the grounds referred to in clause (c) of sub-section (1), he may, by order in writing, suspend the resolution and make a report with respect thereto through the Commissioner of the division to the State Government.

(4) The State Government may, either suo motu or on a representation made by the Panchayat Samiti or the Zila Parishad aggrieved by the order made under Sub-Section (3), call for the record of the case in which such order was made pass such order in relation thereto as they may deem fit but the State Government shall not pass any order prejudicial to the Panchayat Samiti or the Zila Parishad unless it is given an opportunity for explanation.

3. On a plain reading of section 68 it is obvious that State Government have been empowered to cancel any resolution passed by the Panchayat Samiti by a written order, if in its opinion, the said resolution is not in conformity with the provisions of this Act and so on so forth. Clause 2 therein is relevant for the purpose to consider the contention of Mr. Verma which states that before taking any such steps under clause 1 of section 68, the State Government shall give an opportunity to such Panchayat Samiti or Zila Parishad for explanation meaning thereby that before cancelling the resolution passed by the Panchayat Samiti or Zila Parishad, the State Government is required to give an opportunity for explanation to such Panchayat Samiti or Zila Parishad before cancelling the resolution passed by it and the order must be a written order expressing its opinion for such cancellation.

4. The Panchayat Samiti is a body corporate having perpetual succession and a common seal. This has been so held by a Full Bench of this Court in case of Shital Rai and many others v. The State of Bihar and others (1990 P.L.J.R.-673). It has also held that although the executive functioning of the Panchayat Samiti vested in the Pramukh but the Pramukh is not the same as the Panchayat Samiti. As regards other members of the Panchayat Samiti, section 5 of the Panchayat Samiti and Zila Parishad Act is relevant to be noticed.

5. The learned counsel appearing for respondents 6 and 7 as also the State

counsel contended that there were no surviving members in the Panchayat Samiti who could have been served with such a notice before cancelling the Resolution of the Panchayat Samiti and the only surviving members in the Panchayat Samiti were Respondents 6 and 7, i.e. the Pramukh and Up-Pramukh, who continued to function even after their tenure was over including their extended period. On consideration of various provisions of the Act, to which my attention has been drawn by Mr. Verma, the learned counsel appearing for the petitioners, the respondent's contention must be rejected. Section 5 of the Act deals with the composition of the Panchayat Samiti which shall consist of :--

A. Mukhiyas of all Gram Panchayats of the entire block.

B. Co-opted members in the manner prescribed u/s 5, which includes persons residing in the block having experience of public life or village development or administration.

C. Three persons from amongst the Scheduled Caste and Scheduled Tribe, one from the Backward Annexure-1, provided such member is not in the Samiti.

D. Each member of the State Legislative Assembly and Lok Sabha whose constituency or part of the Constituency falls in the block of the Panchayat Samiti and likewise all members of the Rajya Sabha and Bihar Legislative Council, who are residents of that area within that Panchayat Samiti.

Section 6 provides for the associate members to be included in that Panchayat Samiti. Section 7 deals with the term of the members of such Panchayat Samiti and provides the mode for filling up the vacancies. Section 7 (1) (Kha) provides that a co-opted member under sub-section 1 (v) of Section 5 shall hold the office for a period of five years from the date of his co-option.

6. Respondent No. 6 was such a co-opted member within the meaning of section 5 (i) (v) of the Act.

7. Section 8 deals with the election of Pramukh and Up-Pramukh of the Panchayat Samiti and filling of the vacancies. Sub-clause 2 of section 8 provides that Pramukh and Up-Pramukh shall hold the office for a period of five years but for the reasons to be recorded in the Notification the State Government can extend the period which shall not be beyond the period of twelve months and it further provides that such extended period shall also cease to be effective from the date the new Pramukh and Up-Pramukh are elected.

8. Undisputedly, respondents 6 and 7 ceased to be Pramukh and Up-Pramukh of the Panchayat Samiti in the year 1984. Thereafter, their period was extended by twelve months by a notification of the State Government contained in Annexure A to the counter affidavit with effect from 28.2.1985.

9. It is also relevant to notice certain provisions of the Bihar Panchayat Raj Act, 1947 and it may be noticed that section 11 (2) of the said Act provides that "the terms of office of a Mukhiya or a member of the Executive Committee shall be for

five years with effect from the date of election of that Mukhiya unless determined u/s 13 or section 79B shall include any further period which may elapse between the expiration of said five years and the date on which the another Mukhiya assumes charge of his office.

In accordance with section 5 of the Bihar Panchayat Samiti and Zila Parishad Act, 1961 the Mukhiya of all the Gram Panchayats of the Block shall be a member of the Panchayat Samiti and if the said post falls vacant then Up-Mukhiya of the said block shall be the member until the said post is filled up and in case if both the posts of Mukhiya and Up-Mukhiya fall vacant then the officiating Mukhiya as elected by the Executive Committee of the Panchayat u/s 11 (a) of the Bihar Panchayat Raj Act, 1947 shall continue as a member of this Panchayat Samiti till both/the vacant posts are not filled up.

10. Considering the effect of these various provisions, it cannot be said that there were no surviving members in the Panchayat Samiti except the Pramukh and Up-Pramukh namely Respondents 6 and 7 who were required to be given notice before cancelling the resolution of no confidence passed by the Panchayat Samiti. The notice as required u/s 68 of the Bihar Panchayat Samiti and Zila Parishad Act was a mandatory requirement and the Government could not cancel the said resolution of no confidence contained in Annexure-E without carrying out the mandate of the said provision. Therefore, the impugned order contained in Annexure 3 has to be quashed.

11. It appears, that in its meeting held on 29.7.89 the Panchayat Samiti expressed its no confidence u/s 32 of the Act and respondents 6 and 7 were removed. As against that a writ application (C.W.J.C. No. 7386 of 1989) was preferred before this Court and while dismissing the same on 5.9.1989 a Division Bench of this Court directed that recourse of section 68 of the Act should be taken before cancelling the said Resolution. In accordance with the said direction Respondents 6 and 7 filed a representation before the State Government, which took the view that since Respondents 6 and 7 were only nominated members as Pramukh and Up-Pramukh u/s 79A of the Act, the Panchayat Samiti was not competent to pass the vote of no confidence. This impugned order is contained in Annexure 3.

12. Mr. Verma, appearing for the petitioner has even challenged the vires of section 79A of the Act contending inter alia that after the extended period of the Pramukh and Up-Pramukh u/s 8 of the Act expired, section 79A would not permit the same person to continue for eternity without holding a proper election. But then, both the parties agreed that it may not be necessary at this stage to decide this question in this case and, therefore, I am not entering into any discussion on the vires of section 79A and, if any such occasion arises in future it will be open to the parties to challenge the same. Since this writ petition has to succeed on the main question raised by Mr. Verma it is not necessary to enter into any discussion on this question. It is not controverted that the Panchayat Samiti is a perpetual body and the membership of other categories did not cease in

accordance with the various provisions of the Act noticed above and the Mukhiya, the member of the Lok Sabha, Rajya Sabha, State Assembly and State Legislative Council were all continuing as a member of the Panchayat Samiti. Section 32 of the Act enables the Panchayat Samiti to pass a vote of no confidence against the Pramukh and Up-Pramukh without any distinction between an elected or nominated Pramukh or Up-Pramukh and, therefore, the resolution of no confidence passed against Respondents 6 and 7 was in accordance with the provisions of section 32 of the Act. Even earlier, while the other Writ application was disposed of, there was a direction to comply with the provisions of section 68 of the Act. The present impugned order contained in Annexure-3 does not show any such compliance of section 68 of the Act. The stand taken in the counter affidavit and the supplementary counter affidavit is that since there were no existing members, therefore, section 68 of the Act was not required to be complied with. This contention has already been rejected. In a supplementary counter affidavit filed during the course of hearing of this case certain extracts of the office notes of the Secretariat have been annexed, without stating on affidavit whether they are true copies of the originals. It is not stated how these respondents could lay their hands on the internal workings of the file of the Secretariat. Be that as it may, it does not show that notices were served as required u/s 68 of the Act. This court will not proceed on the internal workings emerging from the Secretariat files. The impugned order contained in Annexure-3 has been passed without indicating any reason whatsoever for cancelling the resolution of the Panchayat Samiti which is so required to be stated u/s 68 of the Act. Section 68 in terms provides that it could be cancelled by a written order expressing its opinion for such cancellation and that too only after giving notice to explain before cancelling such resolution. On the face of it Annexure-3 is an illegal order.

13. Mr. R.N. Choubey, learned counsel appearing for respondents 6 and 7 then contended that he can demonstrate how Annexure-E, the resolution, is itself an illegal order and, therefore, setting aside Annexure-3 will amount to restoration of an illegal order. It is difficult to accept this contention. As to whether the resolution is illegal or not can only be tested after giving due opportunity to the Panchayat Samiti to explain before cancelling its resolution unilaterally. It is difficult to presume, at this stage, that Annexure-E is an illegal order. That is yet to be tested and it will remain open to the parties to challenge the validity of Annexure-"E" before the appropriate authorities. In this view, both the contentions raised by Respondents 6 and 7 fail and Annexure-"3" is quashed. If respondents 6 and 7 make an application u/s 68 of the Act, the same shall be considered expeditiously and in accordance with law after giving due opportunity to the parties concerned to explain as required under the Act. This application is, accordingly, disposed of with the directions indicated above.