
(2014) 12 PAT CK 0066
In the Patna High Court
Case No : CWJC No. 17587 of 2014

Arti Kumari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17

Citation : (2015) 2 PLJR 595

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Mahendra Thakur, for the Appellant; Nivedita Nirvikar, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J. Heard Mr. Mahendra Thakur, learned counsel appearing on behalf of the petitioner, Ms. Nivedita Nirvikar, learned Government Advocate No. 10 for the State and Mr. Praveen Kumar, learned counsel appearing for the private respondents. Although this writ petition is listed for admission but with consent of the parties it has been taken up with a view to its final disposal at this stage by way of this judgment.

2. The Pramukh of Panchayat Samiti, Fatehpur in the district of Gaya has questioned the no confidence motion passed against her on 26.9.2014, whereby she has been unseated from the post of Pramukh, inter alia, on grounds that the requisition was not served upon her in the manner prescribed under Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act").

3. The facts of the case briefly stated is that the petitioner is the elected Pramukh of Panchayat Samiti, Fatehpur. A no confidence motion was earlier passed against the petitioner on 30.7.2013 on the basis of a requisition dated 4.7.2013. The stand of the requisitionists was that since the petitioner was not

willing to accept the requisition hence it was forwarded to the Executive Officer and since even thereafter the Pramukh did not fix the date of special meeting hence the requisitionists decided to fix the date and the Executive Officer-cum-Block Development Officer, Fatehpur vide letter No. 942 dated 20.7.2013 communicated the date of special meeting which was fixed on 30.7.2014. On the date so fixed the no confidence motion was passed against the petitioner. In between the petitioner resigned from the post of Pramukh on 25.7.2013 and after passing of the no confidence motion on 30.7.2013, she chose to withdraw her resignation on 31.7.2013. The petitioner thereafter chose to question the no confidence motion passed on 30.7.2013 in CWJC No. 16317 of 2013, inter alia, on grounds that the requisition itself was not as per the prescription of law as provided under Section 44(3)(i) of "the Act" inasmuch as it had been routed through the Block Development Officer-cum-Executive Officer and had not been presented before the Pramukh as mandated under "the Act". This Court considering the issue raised by the petitioner by the judgment and order passed on 25.8.2014 allowed the writ petition and while quashing the requisition as well as the no confidence motion passed thereon on 30.7.2013, granted liberty to the requisitionists to proceed in accordance with law, if they so choose. It so appears from the records of the proceedings that a requisition was again moved against the petitioner by the requisitionists on 5.9.2014, a copy of which is enclosed at Annexure-R/1 to the counter affidavit filed on behalf of the respondent No. 5. Proceeding on the requisition, a notice was issued on 17.9.2014 intimating the date of special meeting fixed on 26.9.2014 and on which date the no confidence motion was passed against the petitioner which is impugned at Annexure-2 to the writ petition and being aggrieved the petitioner is before this Court.

4. Mr. Mahendra Thakur, learned counsel appearing on behalf of the petitioner has chosen to question the motion, inter alia, on grounds of absence of service of requisition on the petitioner. He submits that since the requisition itself was never served upon the petitioner hence she has no information about the motion moved against her and which invalidates the entire proceedings. It is taking into consideration the issue raised by the petitioner that the records of the proceedings, was directed to be produced and accordingly the same is produced before this Court.

5. Ms. Nirvikar, learned Government Advocate appearing for the State with reference to the records as well as the counter affidavit, a copy of which was served on learned counsel for the petitioner on 25.11.2014, has submitted that it is only after repeated attempts by the office of the Samiti and since the petitioner chose to avoid the service of requisition, that the requisitionists themselves fixed the date and following which a special meeting was held on 26.9.2014 wherein the no confidence motion was passed. In support of her submission learned State Counsel has referred to the report of the process server placed at Annexure-A to the counter affidavit in which it is stated that he visited the residence of the petitioner on 7.9.2014 and tried to serve the requisition which was read over by the husband of the petitioner but he returned the same

and on enquiry he informed the process server that the petitioner had gone to Patna. The process server further mentions that he again made attempt on 8th of September and 9th of September, 2014 when he met the petitioner who refused to accept the requisition. Learned counsel has referred to the second attempt made by another peon on 18.9.2014 to get the requisition served and since again he could not meet the petitioner that a copy of the same was affixed on her house in the presence of her husband and to support the contention a copy of photograph affixing the notice has been placed on record. It is again with reference to the postal Peon's report present at Annexure-B it is stated that the same was sent by registered post on 18.9.2014 but in absence of the petitioner the same was returned on 1.10.2014. It is with reference to those documents submitted that after several attempts were made to serve the requisition when there was a conscious attempt by the petitioner to avoid this service that the requisitionists and the Up-Pramukh decided the date of special meeting which was fixed on 26.9.2014 and whereafter the meeting was held and the petitioner has been voted out. It is thus submitted that there is no laches on the part of the office of the Samiti in making attempt for service of notice.

6. The same stand has been taken by learned counsel appearing for the requisitionists to submit that since the petitioner avoided the receipt of the requisition hence they have no option but to proceed in accordance with law.

7. I have heard learned counsel for the parties and I have perused the records.

8. The documents enclosed with the counter affidavit as well as the records clearly reflect that there was every attempt by the petitioner to avoid service of requisition. The requisitionists had earlier moved a motion against the petitioner which did not succeed in view of the statutory infraction and which led to the invalidation of not only the no confidence motion as well as the requisition which was the basis of the said no confidence motion passed on 30.7.2013. By order passed on 25.8.2014 in CWJC No. 16317 of 2013 a liberty was granted by this Court to the requisitionists to again move in accordance with law and thus the petitioner cannot feign ignorance that the Samiti members were dissatisfied with her functions and were contemplating a motion against her. Annexure-A to the counter affidavit reflects not less than three attempts by the process server with the fourth attempt coming on 18.9.2014 when the notice was affixed on the house of the petitioner in the presence of her husband and which was substantial compliance of service of notice as envisaged under Order V rule 17 of the Code of Civil Procedure. In these circumstances in view of the earlier round of litigation, it would be difficult for this Court to accept the contention advanced by Mr. Thakur, learned counsel appearing on behalf of the petitioner that she had no inclination about the motion moved against her. On the contrary the records manifests that there was a deliberate attempt by the petitioner to avoid service.

9. In the circumstances noted hereinabove, it is obvious that the requisitionists had no other option but to proceed in accordance with the legal right granted to them under the provisions of "the Act" and which having been duly followed, the

no confidence motion passed thereon requires no interference. For the reasons
aforementioned, I find no reason to interfere with the no confidence motion and
this writ petition is accordingly dismissed.