
(2014) 08 PAT CK 0045

In the Patna High Court

Case No : CWJC No. 16317 of 2013 and I.A. No. 6608 of 2013

Arti Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2015) 3 PLJR 276

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Mahendra Thakur and Sudhir Kumar Sinha, Advocate for the Appellant; Suman Kumar Jha, Advocate for the Respondent;

Final Decision : Allowed

Judgement

Jyoti Saran, J.

1. Although this matter has been listed under the heading "For orders on petitions" but with consent of the parties it has been taken up for consideration with a view to its final disposal at this stage itself. Heard Mr. Mahendra Thakur, learned counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. S.B.K. Manglam, learned counsel appearing for the private respondents.

2. The petitioner has questioned the motion of no confidence dated 30.7.2013 whereby the petitioner has been removed from the post of Pramukh of Panchayat Samiti, Fatehpur in the district of Gaya.

3. The requisition is dated 4.7.2013 and is placed at Annexure-1 to the writ petition. Since according to the requisitionists, the petitioner did not accept the requisition hence it was forwarded by the Executive Officer-cum-Block Development Officer vide Annexure-2 on 19.7.2013 and again since no decision was taken by the Pramukh in terms of the provisions underlying Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") fixing the date of special meeting hence on the basis of decision taken by the

requisitionists the Executive Officer-cum-Block Development Officer vide letter No. 942 dated 20.7.2013 communicated the date of special meeting which was fixed on 30.7.2013 to all concerned. A copy of the notice is placed at Annexure-3 to the writ petition. The petitioner on 25.7.2013 resigned from her post and filed an application to that effect before the Sub-Divisional Officer, Sadar, Gaya, a copy whereof is placed at Annexure-4. On 30.7.2013 in the special meeting held, the motion of no confidence was passed and the petitioner lost confidence of the house. A copy of the minutes of the special meeting is placed at Annexure-6 to the writ petition. Within seven days of filing of the resignation on 25.7.2013 the petitioner sought to withdraw her resignation on 31.7.2013 vide Annexure-5 but in the meantime the motion had been passed and hence this writ petition.

4. I have heard learned counsel for the parties and I have perused the materials on record.

5. What has happened on the request made by the petitioner in withdrawing her resignation on 31.7.2013 vide Annexure-5 is not the question before this Court for the matter remains before the Sub-Divisional Officer. It is stated by Mr. Thakur, learned counsel appearing for the petitioner that no order has been passed by the Sub-Divisional Officer on the prayer for withdrawal of resignation made vide application dated 31.7.2013 placed at Annexure-5 and perhaps rightly so in view of the no confidence motion passed on 30.7.2013. The issue in this writ petition is whether the no confidence motion can be upheld for if the answer is in affirmative then the issue of resignation loses its relevance.

6. Although extensive arguments have been advanced on behalf of the contesting parties but in the opinion of this Court the petitioner would succeed on a short point and which is that the requisition itself is invalid as instead of being addressed directly to the Pramukh it has been routed through the Block-Development Officer-cum-Executive Officer which is contrary to the provisions underlying Section 44(3)(i) of "the Act" which requires the requisition to be presented to the Pramukh with copy to Executive Officer.

7. A requisition which though addressed to the Pramukh but if routed through Executive Officer-cum-Block Development Officer to be presented to the Pramukh has been held to be an illegal procedure adopted by the requisitionists in a number of orders passed by this Court and for the same reason it cannot be upheld and is held invalid. There may be circumstances where a Pramukh avoids service and in which situation the requisition may be filed in the Samiti office for its transmission to Pramukh or other mode or manner of service can be effected as provided under law but such is not the circumstance in the present case rather the requisition is addressed to the Pramukh through the Executive Officer. This is not the prescription of law and which single infraction has rendered it invalid. The consequence of invalidation of the requisition is obvious and in result the notice convening special meeting dated 20.7.2013 as contained in Annexure-3 as well as the no confidence motion passed on 30.7.2013 in the special meeting as contained in Annexure-6 are rendered illegal and are

accordingly set aside.

8. The writ petition is allowed. Interlocutory Application stands disposed of.

9. This order, however, would not preclude the requisitionists to proceed in accordance with law.

10. Since no opinion has been expressed by this Court on the issue of withdrawal of resignation by the petitioner which is pending consideration before the Sub-Divisional Officer, Sadar, Gaya, he shall take appropriate decision in that regard in accordance with law. With the observation and directions aforementioned the writ petition is allowed.