

(1976) 12 PAT CK 0009
In the Patna High Court
Case No : Civil Writ Jur. Case No. 347 of 1975

Awadhesh Kumar Sahu and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 23-12-1976

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 32(2), 78(2)

Citation : AIR 1977 Patna 228

Hon'ble Judges : K.B.N. Singh, C.J; S. Ali Ahmad, J

Bench : Division Bench

Advocate : Narayan Singh, for the Appellant; S. Shamsul Hassan, N. Hoda, B.K. Prasad and Y.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

1. In this application under Articles 226 and 227 of the Constitution of India, the petitioners have prayed for quashing an order of the State Government, staying the operation of the no-confidence motion of the Panchayat Samiti, Naugachia, dated the 14th December, 1974, against its Pramukh, Chandradeo Thakur, respondent No. 4, and directing the said respondent to function as Pramukh till further orders of the State Government, a copy of which, has been filed as Annexure "4".

2. Necessary facts for the disposal of this writ application need be stated. Respondent No. 4, Chandradeo Thakur, was elected as the Pramukh of the Naugachia Panchayat Samiti in, the year 1967. On the 19th November, 1974, petitioner No. 1 proposed a no-confidence motion against respondent No. 4, on the grounds mentioned therein, which need not be stated. The notice was supported by 11 members, the requisite one-third of the total strength of the Panchayat Samiti, which was 26, including the Pramukh and the Up-Pramukh, as provided u/s 32 (1) of the Bihar Panchayat Samitis and Zilla Parishads Act, 1961 (Bihar Act VI of 1962), hereinafter referred to as the Act. The notice was received by the Secretary of the Panchayat Samiti on the 5th December, 1974. A

meeting to consider the no-confidence motion was held on the 14th December, 1974, and was attended by 22 members. The no-confidence motion was supported by 16 members, being the requisite two-thirds majority for passing a no-confidence motion, as required under Sub-section (1) of Section 32 of the Act. A copy of the said resolution has been filed as Annexure "2". Thereafter, a notice duly signed by the President, Shree Jaikant Kumar, and the Secretary of the Samiti, the Block Development Officer, Naugachia, to the effect that a no-confidence motion was passed against respondent No. 4, and that he ceased to be the Pramukh of the Naugachia Panchayat Samiti, was affixed on the notice Board of the office of the Panchayat Samiti, u/s 32 (2) of the Act. A copy of the said notice has been filed as Annexure "3". It is alleged in the writ application that thereafter respondent No. 4 approached the State Government u/s 78 (1) of the Act and the State Government stayed the operation of the no-confidence motion and also directed that respondent No. 4 will continue to function as Pramukh until further orders, a copy of which has been filed as Annexure "4", which is under challenge In this application.

3. A counter-affidavit has been filed on behalf of respondent No. 4.

4. Learned Counsel appearing on behalf of the petitioners has submitted that the resolution of no-confidence passed against respondent No. 4 on the 14th December, 1974, became effective after it was duly published on the notice board of the office of the Panchayat Samiti, on the same date, as required under Sub-section (2) of Section 32 of the Act. Thereafter, the State Government had no power under Sub-section (2) of S, 78 of the Act to stay something which had already taken effect.

5. Learned counsel appearing on behalf of the State, as well as Mr. Braj Kishore Prasad, appearing on behalf of respondent No. 4, however, submitted that u/s 78 of the Act the State has power to set aside resolution of no-confidence, and, therefore, the State must be deemed to have the requisite power of stay and the order passed by the State Government in the instant case is within the power conferred on the State Government u/s 78 of the Act. These rival contentions of the parties now need to be examined.

6. Section 32 of the Act deals with the motion of no-confidence that can be passed against a Pramukh or Up-Pramukh and the relevant Sub-section (2) reads as follows:--

"(2) If the motion is carried with the support of not less than two-thirds of the members of the Panchayat Samiti present and voting the Pramukh or the Up-Pramukh as the case be, shall cease to hold the office as such and shall be deemed to have vacated the same on and from the date on which the fact of the motion having been carried is affixed on the notice board of the office of the Panchayat Samiti."

On a reference to the aforesaid provisions, it is manifest that after the no-confidence motion is passed, the Pramukh or the Up-Pramukh shall cease to hold

office as such, and after a notice about the fact of the motion having been carried is affixed on the notice board of the office of the Panchayat Samiti he shall be deemed to have vacated the same. In the instant case, there is no dispute that the fact of the no-confidence motion having been passed against respondent No. 4 was notified the same day, i.e., on the 14th December, 1974, by affixing a notice to that effect, duly signed, on the notice board of the office of the Panchayat Samiti. Its effect will be that respondent No. 4 will also be deemed to have vacated the office of Pramukh from the date, it was so notified on the notice board of the office of the Panchayat Samiti, i.e., the 14th December, 1974.

7. Relevant, provisions of Section 78 of the Act, on which reliance has been placed on behalf of the respondents, run as follows:--

"(1) The State Government may, either suo motu or on an application made by any person interested, call for and examine the record of a Panchayat Samiti or a Zilla Parishad or of its Standing Committee in respect of any proceeding to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and, if in any case it appears to the State Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, it may pass orders accordingly:

Provided that the State Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation,

(2) The State Government may stay the execution of any such decision or order pending the exercise of its powers under Sub-section (1) in respect thereof." Sub-section (1) of Section 78 of the Act no doubt is in a wide term, and authorises the State Government to call for and examine the records of a Panchayat Samiti or of its Standing Committee in respect of any proceeding to satisfy itself as to the regularity of such proceeding or the correctness or propriety of any orders passed therein, and, in appropriate cases, to modify annul or remit for reconsideration, if it appeared to the State Government that any such order should be modified, annulled, reversed or remitted for reconsideration. This is subject to the condition that an order prejudicial to any party should not be passed without giving the party concerned an opportunity of making a representation. So far as the power of stay under sub-el, (2) is concerned, the State Government, no doubt, has power to stay execution of any such order, pending its consideration by the Government under Sub-section (1) of Section 78 of the Act, but the question is whether by staying the execution of the resolution, the State Government could direct the Pramukh, against whom a no-confidence motion has been passed, to continue as a Praniukh or not, when the resolution has become effective. Annexure "4" not only stays its execution, but also directs that respondent No. 4 will continue to function as the Praniukh. The power of the State Government under sub-s. (2) of Section 78 of the Act has not to be construed in isolation but has to be construed in the context of the provisions of Sub-section (2) of Section 32 of the Act. As already pointed out, Section 32, in

explicit terms, states that after the no-confidence motion is, carried out and notified on the notice board of the office, the following consequences will happen:--

- (i) The Pramukh will cease to hold office, and,
- (ii) He shall be deemed to have vacated the office from the date on which the fact of the no-confidence motion having been carried out is notified on the notice board of the Panchayat Samiti.

In face of the peremptory nature of this provision, it is difficult to hold that in exercise of the powers under Sub-section (2) of Section 78 of the Act, the State Government could direct that the Pramukh who has already vacated the office, will continue to function as the Pramukh while the validity or otherwise of the no-confidence resolution is under consideration of the State Government. Even if the State Government could stay the execution of the no-confidence resolution, all that that order of stay would connote would be to stay the holding of fresh election of Pramukh. The effect of the stay order passed by the State Government could not undo what has already become effective, as a result of the operation of the statutory provisions contained in Sub-section (2) of Section 32 of the Act.

8. We are accordingly satisfied that the direction of the State Government contained in Annexure 4 that respondent No. 4 would continue to function as Pramukh, as before, cannot be sustained and must be quashed.

9. The writ application is accordingly allowed and the order contained in Annexure "4" in so far as it directs respondent No. 4 to continue as the Praniukh, is quashed. In the circumstances of the case, we make no order as to costs. The State Government may now expeditiously dispose of any matter that may be pending in this connection with it, if not already disposed of.