
(2009) 02 PAT CK 0055
In the Patna High Court

Chandradutt Prasad Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 44(3)(i), 46

Citation : AIR 2009 Patna 104 : (2009) 3 PLJR 100 : (2010) 8 RCR(Civil) 2714

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Datta, J.—The Interlocutory applications have been filed for quashing the memo No. 583 dated 5-8-2008, by which the resolution of the special meeting held on that date, in which no confidence motion was passed against the petitioner, was communicated by the Executive Officer of the Panchayat Samiti to the District Magistrate, Nawada and also for amendment of the prayer in the main writ petition on account of subsequent development.

2. In the facts and circumstances of the case, the amendments having been necessitated on account of subsequent developments are allowed.

3. I.A. Nos. 4849/2008 and 7367/2008 are, accordingly, disposed of.

4. Heard learned Counsel for the petitioner and learned Counsel for the State.

5. The petitioner has filed the present writ petition for quashing the requisition, by which the second no confidence motion was initiated against him as also the subsequent notice for convening the special meeting and the resolution for no confidence motion passed against the petitioner as well as the letter dated.5-8-2008 of the Executive Officer, by which the same has been communicated to the District Magistrate, Nawada.

6. It is submitted by learned Counsel for the petitioner that one third of the directly elected members of the Panchayat Samiti sent a requisition before the

petitioner on 25-6-2008 for convening the special meeting for considering no confidence motion against him. However, by his letter dated 7-7-2008, the District Panchayat Raj Officer informed that the initiation of no confidence motion within a period of two years is contrary to the provisions of Section 44(3) of the Act. Thereafter, the second requisition was given on 9-7-2008 by as many as eight members of the Panchayat Samiti which was presented before the petitioner, according to the said members, but the petitioner refused to receive the same upon which a copy of the same was presented to the Executive Officer on the same day to be sent to the petitioner. The petitioner rejected the requisition stating that it has not been directly presented to him. The Executive Officer, thereafter, drafted a letter to be sent to all the members of the Panchayat Samiti regarding the said rejection and directed them to file the requisition before the petitioner Pramukh himself. It is alleged by learned Counsel for the petitioner that the said letter was never sent to the members and, on the other hand, on the basis of the further requisition of one third directly elected members addressed to the Up-Pramukh, the matter was placed before the Up-Pramukh who fixed the date of the meeting on 5-8-2008, on which date no confidence motion was passed against the petitioner.

7. Learned Counsel for the petitioner submits that the entire matter has been manipulated by the Executive Officer and he has deliberately not sent his letter dated 17-7-2008 to the members, rather on his instigation the members of the Panchayat Samiti sent a letter dated 24-7-2008 to the Up-Pramukh before whom the matter was put up for fixing a date and, accordingly, the date was fixed by him for convening the special meeting in which the petitioner was removed by no confidence motion. It is submitted that the Executive Officer ought to have issued the said letter and the members ought not to have presented the requisition before the Up-Pramukh.

8. On a consideration of the facts and circumstances of the case, it is evident that the members had on the first occasion on 25-6-2008 duly presented the requisition before the petitioner-Pramukh and only on account of the rejection of the same by the District Panchayat Raj Officer on 7-7-2008 on the ground of initiation of no confidence motion within a period of two years, they were compelled to submit another requisition. In view of what is stated by the members in the letter dated 24-7-2008, it is evident that the members had again sought to present the requisition before the petitioner-Pramukh and only upon his refusal, they had no option but to inform the same to the Executive Officer and also as per the requirement of Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 gave a copy of the requisition to the Executive Officer who, in turn, placed the same as per the requirement of the Act before the petitioner.

9. It is evident from the provisions of the Bihar Panchayat Raj Act that the Pramukh is duty bound to receive the requisition when it is presented before him and there is no justification for the petitioner to have refused to receive the requisition on one hand and thereafter to have rejected the requisition sent

through the Executive Officer on the ground that the same has not been directly presented before him. Such failure of the statutory duty on the part of the Pramukh to receive the requisition left no option before the directly elected members than to send a copy of the said requisition to the Executive Officer to be sent to the Pramukh through him. This Court does not find any Illegality in such action, rather the situation is the petitioner's own creation.

10. So far as the grievance of the petitioner that a fresh requisition should have been presented before him and not before the Up-Pramukh is concerned, there is no justification for the said grievance. The requisition having been presented on 9-7-2008, it was the petitioner who was duty bound to have fixed the date of the special meeting latest on 24-7-2008 after complying with the mandatory provisions of seven days clear notice as prescribed u/s 46 of the Act. The petitioner having thus failed to act by 16th July, 2008 in the matter of fixing the date for special meeting for considering no confidence motion, the members had rightly approached the Up-Pramukh for the same. The fixation of date for convening the special meeting on 5-8-2008 by the Up-Pramukh is clearly as per the stipulation u/s 44(3) of the Act itself and no illegality can be attached to such action. The resolution of no confidence motion passed against the petitioner in the meeting that held on the date fixed by the Up-Pramukh on 5-8-2008 also, therefore, does not suffer from any illegality.

11. Thus, there is no merit in the writ petition and it is, accordingly, dismissed.