
(2003) 08 PAT CK 0120

In the Patna High Court

Case No : C.W.J.C. No's. 11945 and 11946 of 2002

Chandrakanti Devi and Khurshid Alam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 42, 44, 44(3)

Citation : (2003) 4 PLJR 429

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Niranjana Kumar, for the Appellant; J.R Kishore, for State, Navaniti Prasad Singh, Nadeem Seraj for Respondent No. 7, Navin Sinha, for Respondent Nos. 19 and 23 and Sanjay Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—In both the writ petitions similar questions are involved. They have been heard together and are being disposed of by this common order.

2. The Petitioner in C.W.J.C. No. 11945/ 2002 is Up-Pramukh and the Petitioner in C.W.J.C. No. 11946/2002 is Pramukh of Mainatand Panchayat Samiti, district West Champaran, Bettiah. They filed their nominations for the members of the Panchayat Samiti. Election was held and they were elected members of the Panchayat Samiti. Thereafter, election of Pramukh and Up-Pramukh was held. The Petitioners thereafter, were elected Up-Pramukh and Pramukh respectively of the Panchayat Samiti on 13.6.2001. A petition expressing no confidence was filed before the Pramukh for convening special meeting. However, no special meeting was called. Thereafter, some of the members filed application on 27.9.2002 before the Block Development Officer-cum-Executive Officer of the Panchayat Samiti for convening special meeting expressing no confidence against the Petitioners. The Executive Officer passed order fixing 9.10.2002 as the date for special meeting. The special meeting was held on 9.10.2002 under the

Chairmanship of Up-Pramukh. In the meeting members of the Panchayat Samiti started quarrelling amongst themselves due to which some of the members of the Panchayat Samiti left the meeting. However, the Executive Officer vide letter dated 10.10.2002 forwarded copy of the proceeding of the meeting dated 9.10.2002 to the Sub-divisional Officer, Narkatiyaganj and the District Panchayat Officer, Bettiah intimating to them that motion of no confidence against the Petitioners has been passed by 12 votes out of total 22 elected members, Annexure-1. The Petitioners have challenged the proceeding wherein it has been said that no confidence motion against the Petitioners has been passed.

3. A counter-affidavit has been filed on behalf of the Block Development Officer-cum-Executive Officer stating therein that there are 22 elected members in the Panchayat Samiti. The Petitioners were elected Up-Pramukh and Pramukh respectively. 12 members of the Panchayat Samiti filed a petition to the Pramukh on 12.9.2002 asking either to resign their posts for their lapses or convene a special meeting to consider no confidence motion against them but no action was taken. On 27.9.2002 a petition signed by 12 members was sent to the Executive Officer to convene special meeting. The Executive Officer on receipt of the petition convened a special meeting on 9.10.2002 for debate and discussion on no confidence motion against the Petitioners. All the 22 elected members attended the meeting and also put their signatures on the register. The Up-Pramukh was presiding over the special meeting. However, she left the meeting hall assuring the members that she would sign on the Register of proceeding, but she did not sign the register. However, no confidence motion was passed by majority of votes.

4. Rest of the Respondents also appeared and filed counter-affidavits but those are not necessary to be dealt with in view of their stand.

5. Learned Counsel for the Petitioners pointed out that only 12 members of the Panchayat Samiti out of total forty members of the Panchayat Samiti filed petition for convening special meeting, although the provision of law required that one-third of the total number of the members of the Panchayat Samiti may request for convening special meeting. No petition was filed before the Up-Pramukh for convening special meeting. More-over, Annexure-1 was not signed by the Up-Pramukh who was presiding over the special meeting. Learned Counsel for the Respondent-State and private Respondents could not dispute the fact that no requisition was made before the Up-Pramukh for convening special meeting on the question of no confidence, the petition for convening special meeting was signed by only 12 members which is less than one-third of total number of members of Panchayat Samiti i.e. 40 and also that Annexure-1 the proceeding was not signed by the Up-Pramukh who was presiding over the meeting.

6. Section 44 of the Bihar Panchayat Raj Act, 1993 deals with the meeting of the Panchayat Samiti. Sub-section (3) says that the Pramukh may when-ever he thinks fit, shall, upon written request of not less than one-third of total number

of the members convene special meeting within 15 days from the date of receipt of such request. The request shall specify the object for which the meeting is proposed to be called. If the Pramukh fails to call special meeting the Up-Pramukh or one-third of total number of the members of the Panchayat Samiti may call special meeting within 15 days after presentation of such request and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting Section 42 of the Act deals with resignation and removal of Pramukh and Up-Pramukh. Sub-section (3) says that Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office if the resolution expressing want of confidence in him is passed by majority of total number of the elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

7. On consideration of the submission made by the learned Counsel for the parties and the materials on record this much is evident that the requisition for convening special meeting signed by 12 members of the Panchayat Samiti was filed before the Pramukh. The total number of members of the Panchayat Samiti was 40. The Pramukh did not convene the meeting. Thereafter, no petition was filed before the Up-Pramukh as required under Sub-section (3) of Section 44 of the Act. The meeting was convened on the petition signed by 12 members of the Panchayat Samiti filed before the Executive Officer though under Sub-section (3) of Section 44 of the Act the Executive Officer is not an authority to convene special meeting. In case Pramukh and Up-Pramukh both fail to call special meeting, one-third of the total number of the members of the Panchayat Samiti may convene special meeting themselves and intimation of the meeting is to be circulated amongst the members by the Executive Officer but the said procedure was not followed. More-over, in the counter-affidavit filed on behalf of the Executive Officer it has been admitted that the petition was filed which was signed by only 12 members when the total number of the members of the Panchayat Samiti is 40. Learned Counsel for the rest of the Respondents also admitted the said fact. Learned Counsel for the State produced the register of the special meeting wherefrom it appears that there is no signature of Up-Pramukh in the register who was presiding over the special meeting. The register was shown to the learned Counsel for the parties. Thus it is evident that the mandate of the law was not satisfied before convening special meeting. In this regard a decision in the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, was relied upon by the learned Counsel for the Petitioners. He produced certified copy of the judgment in which myself was also party. In the said case it has been held that the requisition must be signed by one-third of total number of the members of the Panchayat Samiti and the requisition must contain specific reasons for convening special meeting. Obviously special meeting to consider no confidence motion was requisitioned by only 12 out of 40 members of the Panchayat Samiti i.e. less than one-third of the total number of the members of the Panchayat Samiti, no requisition was made before the Up-Pramukh for convening special meeting. The meeting was convened by the

Executive Officer of the Panchayat Samiti who was not the authority under the law to convene special meeting.

8. Thus on consideration as discussed above I find that the provision of law has been contravened in convening special meeting. Since convening of special meeting itself was bad in law, consequent result of the special meeting cannot be held to be legal. Thus the writ petitions are allowed. The order/resolution contained in Annexure-1 in both the writ petitions is hereby quashed but without cost.