
(2010) 03 PAT CK 0141
In the Patna High Court

Dharmendra Rai and Ashok Kumar Sharma APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Bihar Panchayat Raj Act, 1947 — Section 44(1), 44(3)(v)

Citation : (2010) 03 PAT CK 0141

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—By these two writ applications what in question effectively is the removal of the Pramukh of Taraiyan Block Panchayat Samiti in the district of Saran. The petitioner, in the first writ application, is the Pramukh himself and the petitioner in the second writ petition is one of the members of the Panchayat Samiti. All parties have appeared and with their consent, as pleadings are complete, the writ petitions are being disposed of at this stage itself.

2. There are 18 elected members in the Panchayat Samiti. Out of the 18, 9 of the elected members filed a requisition before the Pramukh on 04.07.2008 expressing no confidence against him and requesting him to call for a meeting to discuss the said motion against him. The only reason for calling such a meeting was that the Pramukh is not functioning in accordance with law and is carrying out the functions at his will. The requisition is Annexure-1. Pursuant to the aforesaid requisition, on the directions of the Pramukh, the Block Development Officer, Taraiyan, who is the Executive Officer, notified the date of meeting for consideration of no confidence on 18.07.2008. On 17.07.2008, the petitioner of the first writ application that is the Pramukh against whom no confidence motion was to be taken up on 18.07.2008, resigned from the post of Pramukh. Nevertheless the meeting was held on 18.07.2008. Pramukh, the writ petitioner in the first writ petition, did not participate. The reason whereof would be

indicated later. In the meeting, it was discussed that the Pramukh had resigned but as he had seven days' time to withdraw his resignation, the Panchayat did not consider this aspect as material and carried the motion through with 12 votes for the no confidence motion and 5 votes against it. It is this result that is being challenged.

3. Mr S.B.K. Mangalam, learned Counsel in support of the writ application has raised a single issue that the notice convening meeting for consideration of no confidence motion containing no charges was against Section 44(3)(v) of the Bihar Panchayat Raj Act and, as such, the meeting cannot be held to be valid. Having considered the matter, in my view in the peculiar facts of the present case, the writ petitions lack merit and are fit to be dismissed.

4. Before proceeding further, I must notice that undisputedly, the Pramukh did not participate in the meeting in which no confidence against him was considered and passed with adequate majority. He had resigned on a day earlier. In the writ petition, his pleadings are thus:

12. that, it is stated that when the special meeting was started, the Executive Officer informed the members about the letter of Sub-Divisional Officer, Marhaura by which the fact of resignation of the petitioner from the post on 17.07.2008 was communicated. Yet the said Hari Shankar Singh did not wait for the consequences of resignation and a motion for No Confidence was moved against the petitioner from the post of Praukh from which the petitioner had already resigned on 17.07.2008 itself and got it passed keeping the members in dark.

13. That, the moot question, therefore, would fall for consideration by this Hon"ble Court is that whether the motion of No Confidence passed against the petitioner in the special meeting dated 18.07.2008 is legal and proper when the petitioner had already resigned from the post on 17.07.2008 itself?

14. That, it is stated that by virtue of resignation of the petitioner from the post of Pramukh on 17.07.2008 itself, no person including the petitioner was occupying the post of Pramukh on 18.07.2008 and thus the motion of No Confidence passed against an occupant of a post, who had already resigned from the post cannot be said to be a valid motion and thus the removal of the petitioner by way of No Confidence motion passed in a special meeting dated 18.07.2008 cannot be sustained in the eye of law.

15. That, it is stated that since even after resignation of the petitioner from the post of Pramukh of Taraiyan Block Panchayat Samiti, the special meeting was convened and a motion of No Confidence was passed against the petitioner, in view of the provisions contained in Sub-section 1 of Section 44, the petitioner had withdrawn his resignation from the post of Pramukh on 23.07.2008 to fight legal battle before the Court of law as to what would be the consequence of a No Confidence motion passed against a person, who was not holding the post when a motion of No Confidence moved and passed against him.

5. From these facts, it is abundantly clear that petitioner did not participate in the meeting not because he was of the view that the meeting was wrongly convened but because he was of the view that the meeting itself would be infructuous as he had already resigned. This aspect was considered in the meeting by the members. They were clearly of the view that in terms of Section 44(1) of the Act, the petitioner had seven days' time to reconsider the matter and withdraw his resignation, which he could do at any time. Having resigned only a day before, the members took no chance especially when they could not accept the resignation before expiry of seven days. Thus, it is clear that petitioner's absence was voluntary on the ground that he was no more the Pramukh and he chose not to face the House. It was not as a matter of protest. These facts, in my view, clearly preclude the petitioner from taking benefit of the situation that he had abstained from the meeting.

6. Now coming to the question about validity or invalidity of the meeting. In my view, when a requisition is made to call a meeting for considering no confidence motion, the requisition itself must contain charges contrary to what is submitted by the Counsel at the Bar. My reasons are that it is based on this requisition that a meeting is called. The meeting may be called by a notice issued either by the Pramukh or by the Up Pramukh or by the members. In all these, by virtue of provisions of Section 44(3)(v), the charges have to be specified. If in the requisition, charges are not specified then which is to supply and then the charges to be supplied in the notice obviously the charges have to be thus in the requisition itself. Here, there were no charges in the requisition still it is not in dispute that Pramukh, the writ petitioner himself ordered for convening the meeting. He would have been well within his rights to refuse to convene the meeting on the ground that there were no specific charges and, as such, requisition was invalid but he chose to ignore the same and ordered for requisition of the meeting. The meeting being requisitioned, thus, without charge at his own instance and he having found out that he could not face the House, he chose to resign in honour rather than face the disgrace of no confidence. It is in these facts that the pleadings in the writ petition have been made, as quoted above. It is in these facts that this Court is of the view that even though neither the requisition nor the notice convening meeting, which contained no charges, would not vitiate the ultimate proceedings. Had the petitioner not appeared in the proceedings on protest that the proceedings were illegal, it would have totally been a different matter. He tried to short circuit the proceeding by his resignation and now he cannot be permitted to contend otherwise having failed to short circuit the proceeding.

7. Before closing, I must refer to some of the decisions which have been referred at the Bar. To begin with, I would refer to the judgment of this Court in the case of Sanjay Singh Som Vs. The State of Bihar and Others wherein this Court categorically held that any interference by this Court in petitioner's favour will give a very wrong message to the public. To a layman, it would appear that taking advantage of some loophole in the law, the petitioner was able to

persuade the Court to reinstate him in the office of Pramukh even though he lost the election in full public gaze. The situation here is identical. There the writ petition on that ground alone was dismissed. I do the same. Then we come to the recent decision of Division Bench of this Court in the case of Meena Yadav and Anr. v. State of Bihar and Ors. being CWJC No. 12611 of 2008 and analogous cases which was decided by a Division Bench by judgment dated 03rd February, 2010. In that case, the issue was whether stating of grounds/charges in the notice convening meeting for consideration of no confidence motion is mandatory or not. There can be little dispute about this proposition. The Division Bench has held that it was mandatory. In my view, the issue, as has been raised in the present case, was not decided in that case that is whether petitioner having lost the confidence of the House and having wilfully abstained for reasons other than protest against the meeting on grounds of illegality in the notice, can he take advantage of the said default. That was neither an issue raised nor considered nor decided. That issue, in my view, came squarely for consideration before this Court in the case of Smt Shamshad Khatun v. State of Bihar and Ors. This Court, in CWJC No. 18104 of 2009, which was disposed of on 07.01.2010, held that where the petitioner herself had called the meeting giving less than seven days" mandatory notice and having lost the confidence of the House, in such a meeting, she was precluded from challenging the result of such a meeting. Petitioner being dissatisfied, by judgment of this Court, took the matter in appeal before the Division Bench. The Division Bench considered the matter in great detail and affirmed the judgment of this Court in the case of Smt. Shamshad Khatun Vs. State of Bihar and Others . The Division Bench considered at length whether there could be waiver in respect of a mandatory statutory requirement. The answer was in the affirmative as it was well established that seven days" notice was mandatory yet the Division Bench held that as the petitioner had herself issued the notice giving less than seven days" time, she herself cannot now turn around and challenge the validity of the said notice and the proceedings thereon.

8. Facts are similar in the present case. A requisition without charges was made to the petitioner who was the Pramukh. Petitioner did not reject the requisition but ordered calling for a meeting. As there were no charges in the requisition, there can be no charges in the notice issued calling for the meeting which was issued, as noticed above, repeatedly at the instance of the petitioner himself. Having lost the confidence of the House, he cannot now be permitted to turn around and challenge the notice itself. The game that the petitioner was playing is apparent. Having seen that it was a fate accompli, a day of the confidence taken, he tendered his resignation and then wanted the meeting to be dropped because there was no Pramukh. The meeting held otherwise and passed the no confidence motion.

9. Thus, in my view, the writ petitions merit no consideration and are dismissed accordingly.