
(2004) 02 PAT CK 0070
In the Patna High Court
Case No : C.W.J.C. No. 119 of 2002

Jai Lal Yadav and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Citation : (2004) 02 PAT CK 0070

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of certiorari for quashing the notice dated 5-12-2001 (Annexure-5) whereby a notice in regard to the date and time to consider the no confidence motion against the petitioners has been given. Further prayer made by the petitioners is to quash the resolution dated 12-12-2001 whereby motion of no confidence has been passed against them.

2. Shorn of unnecessary details facts giving rise to the present application are that the petitioners were elected as Pramukh and up-Parmukh of Arrah Panchayat Samiti for which the election was held on 11-6-2001. A requisition to convene the meeting of the Panchayat Samiti was given and ultimately by the impugned notice dated 5-12-2001 the Secretary of the Panchayat Samiti issued notices intimating that the meeting of the Panchayat Samiti shall be held on 12-12-2001 to consider the motion of no confidence against the petitioners. Meeting as scheduled was held and by the impugned resolution dated 12-12-2001, motion of no confidence has been carried out against the petitioners.

3. By order dated 10-1-2002 this Court allowed the election of the Parmukh which was scheduled to be held on 16th of February, 2002 but directed that the election of the Parmukh shall abide by the final decision in the case. It was also directed that all financial matter of the Panchayat Samiti shall be transacted by the Executive Officer and not by the petitioners or the persons who may be elected on 16th of January, 2002.

4. Learned counsel appearing on behalf of the petitioners has raised several points to assail the notice and the ultimate resolution carrying out the no confidence motion but as the writ application is to succeed on a very short point. I do not consider it expedient either to incorporate or answer the same. Undisputedly the Executive Officer had issued the notice on 5-12-2001 and the date of the meeting fixed is 12-12-2001. The meeting to consider the no confidence motion has to be considered in a special meeting. Section 44(4) of the Bihar Panchayat Raj Act clearly stipulates that seven clear days" notice of a special meeting has to be given. In the present case seven clear days notice of the special meeting has not been given and thus the notice is vitiated on account of infraction of Section 44(4) of the Bihar Panchayat Act. Consequently the resolution passed on such an illegal notice cannot be allowed to stand. The view which I have taken finds support from an unreported decision of this Court dated 20-11-2003 passed in CWJC No. 5326 of 2003 (reported in Arun Kumar Singh Vs. The State of Bihar and Others, , wherein this court has held as follows at page 25-26 of AIR :--

"Having answered this, the next question which falls for determination is as to how the period of seven clear days" notice is to be calculated. It is well settled that when a statute provides for stated period of notice to be given, this requirement must be met, otherwise the meeting will be invalid. In the present case, Section 44(4) of the Act had in no uncertain term provided for seven clear days" notice which would obviously mean that the notice shall be exclusive of the day on which it is issued and of the meeting. Applying the aforesaid principle, I am of the opinion that the notice to hold the meeting is invalid in the eye of law as seven clear days" notice was not given."

5. However, quashing of the requisition as also the resolution shall not stand in the way of the members in bringing a fresh motion of no confidence against the petitioners in accordance with law.

6. In the result, the application is allowed, impugned notice dated 5-12-2001 (Annexure-5) and the resolution dated 12-12-2001 stand quashed. No cost.