

(1984) 03 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5115 of 1982

Jauhari Prasad Mandal and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-03-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1984) PLJR 638

Hon'ble Judges : Chaudhary Sia Saran Sinha, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma and Uma Shankar Verma, for the Appellant; Mani Lal S.C. IV and M.M. Prasad Singh No. 2 J.C. to S.C. IV and Brahamanand Singh and S.B. Pathak, for the Respondent

Judgement

Chaudhary Sia Saran Sinha, J.—In this application under Articles 226 and 227 of the Constitution of India the petitioners, two in number, petitioners No. 1 being duly elected Pramukh and petitioner No. 2, said to be a representative of village Pirnagara falling within the Block in question, have prayed for the quashing of Annexure-3 which is a proceeding dated 11.12.1982 of the Panchayat Samiti evidencing the passing of a resolution of no confidence against petitioner No. 1.

Respondent No. 1, the State of Bihar, contested this application by filing a counter-affidavit.

Certain facts are undisputed and they are Petitioner No. 1 was duly elected Pramukh of Beldaur Block Panchayat Samiti. Being dissatisfied with the working of petitioner No. 1 as the Pramukh, certain members of the Panchayat Samiti, 18 in number, made a request to petitioner No. 1 to convene a meeting for passing a resolution of no confidence against petitioner No. 1. This application was received by petitioner No. 1 on 3.12.1982. Petitioner No. 1 issued a notice on 8.12.1982 for convening a meeting on 15.12.1982. As the Pramukh did not convene a meeting within 7 days of 3.12.1982, respondent No. 2, the Block Development Officer, was approached, and on 9.12.1982, he issued a notice that

a meeting would be convened on 11.12.1982. This meeting was held on the scheduled date and the resolution of no confidence was passed against petitioner No. 1, which is evidenced by Annexure-3.

2. Rule 7(1) of the Bihar Panchayat Samitis and Zila Parishads (Conduct of Business) Rules, 1963 (hereinafter to be referred to as "the Rules") enjoins, inter alia, that the Pramukh shall call for a special meeting including the meeting for considering no confidence motion against the Pramukh "within seven days of the receipt of the request in writing signed by not less than one-third of the total number of members of the Samiti" specifying the resolution which it proposes to pass. There is a proviso to rule 7(1) which states that where the Pramukh does not call a meeting within the time limit, the Block Development Officer shall call the meeting "within 3 days thereafter". It is not in dispute that the requisition (annexure-1) was issued by the requisite number of the members of the Samiti. It is also not in dispute that it was received by petitioner No. 1 on 3.12.1982. Under rule 7(1) of the Rules the Pramukh was duty bound in law to call the meeting within seven days from 3.12.1982. This he did not do, as he called the meeting on 15.12.1982. This attracted the provision of the proviso to rule 7(1). The Block Development Officer came in picture. He issued notice for convening the meeting on 9.12.1982 directing the meeting to be held on 11.12.1982, when the meeting was held. The requisition (annexure-1) is dated 3.12.1982. The Pramukh was to hold the meeting within seven days, i.e., by 10.12.1982. The Block Development Officer convened the meeting on 11.12.1982, i.e., within 3 days of the time limit fixed for the Pramukh to hold the meeting. There is no irregularity much less any illegality in this respect.

3. The only submission of Shri Yogesh Chandra Verma, learned counsel for the petitioners, was that the holding of the meeting on 11.12.1982 was rendered illegal as the Block Development Officer issued notice on 9.12.1982, within the period of 7 days from 3.12.1982. This submission of Shri Verma is unsound and it must be rejected. As pointed out above, the action of the Block Development Officer in calling for the meeting to be held on 11.12.1982 is within the ambit of the provision laid down in the proviso. What is important in this connection is the holding of the meeting and not the issue of the notice for holding of the said meeting. Sri Verma failed to point out any provision in the Bihar Panchayat Samitis and Zila Parishads Act, 1961 to show that any period had been prescribed for the issue of notice for a meeting to be held under the provisions of section 7(1) of the Rules. He relied on a decision of this Court reported in *Rajendra Singh Vs. State of Bihar and Others*, This decision cannot help the petitioners. It was nowhere decided in this decision that if the meeting is held within the time prescribed in rule 7, it will be rendered illegal if the notice for holding of such meeting is issued within the period of 7 days, referred to in sub-rule (1) of rule 7 of the Rules. A meeting for the passing of a no confidence motion is to be viewed somewhat seriously. This is which led the legislature to fix a time limit for the pramukh to convene the meeting. Petitioner No. 1 failed to do so within, the time prescribed. The Block Development Officer held the meeting

by issuing a notice within the period of 7 days. In such a situation, technicality, if any, should not be allowed to prevail if there is a substantial compliance of the provisions of law. The contention of Sri Verma, therefore, fails. The result is that the application is dismissed. In the facts and circumstances of this case, however, there shall be no order as to costs and the parties shall bear their own costs.