

(2024) 02 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1439 Of 2024

Kiran Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 12-02-2024

Acts Referred:

Citation : (2024) 02 PAT CK 0035

Hon'ble Judges : Purnendu Singh, J

Bench : Single Bench

Advocate : Ravi Raj, S. K. Mandal, Bipin Kumar, Girish Pandey, Kumar Harshvardhan

Final Decision : Disposed Of

Judgement

1. Heard Mr. Ravi Raj, learned counsel appearing on behalf of the petitioner; Mr. S. K. Mandal, learned SC-3 along with Mr. Bipin Kumar, learned AC to SC-3 for the State; Mr. Girish Pandey, learned counsel for the State Election Commission and Mr. Kumar Harshvardhan, learned counsel for the respondent nos. 8 and 9.

2. It is informed by learned counsel appearing on behalf of the petitioner that the special meeting of 'No Confidence Motion' was held on 19.01.2024 and altogether five elected persons, namely, Shabina Khatoon, Faiz Akhtar, Kiran Devi, Afsana Praveen and Savita Devi were present out of fifteen and in accordance with the clarification made by the Division Bench of this Court in the case of Dharamsheela Kumari Vs. Hemant Kumar & Ors. (L.P.A.No.113 of 2020) in Paragraph Nos. 58 and 59, voting has to be conducted among the members who were present on 19.01.2024.

3. Mr. Kumar Harshvardhan, learned counsel appearing on behalf of respondent nos. 8 and 9 has tried to clarify the clarification made in Paragraph Nos. 58 and 59 of the Dharamsheela Kumari (supra) and particularly referring to Paragraph No.59, he submits that if five elected members whose names have been mentioned by the petitioner would be allowed to vote in the house, then in that

case, that will be against the democratic process. He submits that "majority means total elected members constituting Panchayat Samiti and not the elected members present in the meeting".

4. Mr. S. K. Mandal, learned SC-3 appearing on behalf of the State submits that a clear statement has been made in the counter affidavit that no interference has been made by the Block Development Officer cum Executive Officer in any manner while deliberation of special meeting was being held on 19.01.2024 as it would appear from the records.

5. Having considered the rival submissions made on behalf of the parties, the contention on behalf of the respondent nos. 8 and 9 to the effect that 'majority' means total elected members who are members of the particular Panchayat Samiti and participation of entire members is required in deliberation of 'No Confidence Motion', this Court finds that he has not properly understood the clarification made by the Division Bench in Paragraph No.59, which specifically clarifies therein that "it becomes essential to read the phrase 'majority of total elected members present in the meeting'. Hence, it is clarified that there is no requirement of 'majority of total elected members' to form a 'Quorum.' For ready reference, paragraph nos. 58 and 59 of the judgment are re-produced hereinafter : -

"58. The expression used "majority" in Section 44 has to be read in the context of 'total number of members of the Panchayat Samiti' for only such of those members who are elected members have a right, not only to move a motion of no confidence but also to participate, i.e. to discuss and vote thereupon. The expression 'requisition for such a special meeting' in the second part of sub-section (3) of Section 44 has to be read in the context of moving a resolution of no confidence as envisaged therein and not a special meeting envisaged under Section 46 (3). On reading the words in conjunction with one another, it can be said that the majority required is the majority of 'total number of elected members of Samiti "at" a meeting specially convened for the purpose.' Explaining through an illustration, if five members present in the meeting out of an elected body of twenty-two members, the majority required is three, not twelve. Meaning thereby, that it is not a majority qua the total number of elected members in the Samiti, but a majority qua the total number of members of the elected member of the Samiti present in the meeting convened for the purpose. In other words, the majority required to pass a resolution is a simple majority from amongst those present and voting. Similar is the position for electing the Pramukh and the Up-Pramukh [Section 40]. This interpretation is also supported by the last phrase used as ingredient (6), which specifies that 'No quorum is required for such a special meeting'. If the ingredient (7) is interpreted as "majority of the total body of elected members", that ingredient is rendered nugatory and otiose.

59. It also needs to be noted that as voting cannot be adjourned in such a meeting, the majority of the total body's prescription and the non-requirement of

quorum, on the other hand, is a clear and apparent conflict. Therefore, to read these two provisions harmoniously, it becomes essential to read the phrase 'majority of total elected members present in the meeting'. Hence, it is clarified that there is no requirement of 'majority of total elected members' to form a 'Quorum.'

(emphasis supplied)

6. Considering the aforesaid fact, the matter requires to be interfered by this Court so far as the action of the Block Development Officer is concerned who had interfered in the special meeting of 'No Confidence' as it would appear from the record of the writ petition and evidence in support of the same.

7. Since the finality of meeting dated 19.01.2024 has not been attained, it would be in the interest of justice that the five members whose names have been mentioned above and were present on 19.01.2024 must proceed to hold special meeting.

8. In light of the clarification made in Dharamsheela Kumari (supra), the meeting of 'No Confidence Motion' must be held among the five members, who were present on 19.01.2024 among whom they are required to nominate Presiding Officer, who will ensure to maintain the democratic process by declaring the result without further delay.

9. The writ petition stands disposed of.

10. Since the order has been passed in the open Court, learned counsel appearing on behalf of the State is directed to communicate this order to all the respondents for the needful without waiting for the order to be pronounced.