
(2009) 11 PAT CK 0020
In the Patna High Court
Case No : LPA No. 1478 of 2009

Lalmati Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 157, 70

Citation : (2009) 4 PLJR 1033

Hon'ble Judges : Shiva Kirti Singh, Acting C.J.; Shyam Kishore Sharma, J

Bench : Division Bench

Advocate : Bindhyachal Singh and Umesh Kumar, for the Appellant; Mithilesh Mowar for the State, Mr. Nikesh Kumar for Respondent 5, Mr. Sanjeev Nikesh for Respondent 6, M/s Prakash Srivastava and Shyam Kishore Das for Respondent No. 14, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellants, learned counsel for the State and learned counsel for some of the respondents in both the appeals. After examining the provisions of Section 70 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Act") the learned Writ Court had deprecated the action or inaction of the District Magistrate, Arwal in doing nothing after cancelling the earlier notice for convening special meeting to consider a request for no confidence against Adhyaksha and Upadhyaksha. Zila Parishad, Arwal. We are in agreement with the views of the learned Writ Court that the District Magistrate had statutory duty to convene the meeting in the scheme of things provided u/s 70 of the Act. The Writ Court has directed the Collector to remove the defects in the earlier notice and issue fresh notice for convening the special meeting which is scheduled for being held today.

2. On behalf of the appellant it has been submitted that the Collector had the power not to call the special meeting in view of provisions in Section 157 of the Act. On going through the provisions of Section 157, we find that it vests him

with the incidental and ancillary power for convening a special meeting for considering the no confidence motion. The use of the words "...is of the opinion that any irregularity or mistake is being committed...." in our view, qualifies the further provision "...so far as provisions related to conduct of any special meeting of a Panchayat to consider a no confidence motion is concerned...." This provision does not give power to the District Magistrate to sit as an appellate authority and frustrate the views of the majority of the elected members to convene a special meeting for considering a motion of no confidence.

3. It was next submitted on behalf of the appellants that the Adhyaksha and Upadhyaksha should have been given a notice by the Writ Court before issuing directions to the District Magistrate by the order under appeal. On going through the- directions, we find that it does not decide anything against Adhyaksha and Upadhyaksha except asking the District Magistrate, Arwal to proceed in accordance with law. In our view, such technicality cannot be allowed to stand in the way of fair play of democratic principle provided in the Act so that views of the majority of the elected members is ascertained by holding a special meeting in accordance with law.

4. Lastly, it was submitted that reasons for no confidence motion are vague. If such type of plea is left in the discretion of the Collector, then no Adhyaksha or Upadhyaksha will ever be satisfied that the reasons are good. Such matters must be left to be debated by the members themselves. Only important thing is that specific reasons be known to the office bearers before the meeting is convened so that they may be ready for debate.

5. We find no merit in these appeals which are accordingly dismissed. The appellants have received notice of proposed meeting on 25th November, 2009. It is not proper to permit them to assail that notice in the present appeals. The validity of such notice, if occasion arises, may be questioned by affected parties through appropriate proceeding in accordance with law.