

(2010) 09 PAT CK 0121
In the Patna High Court
Case No : CWJC No. 13332 of 2010

Madan Sahni

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 70, 70(4)

Citation : (2011) 1 PLJR 496

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Judgement

S.N. Hussain, J.—Heard learned Counsel for the Petitioner, learned Counsel for the State of Bihar, learned Counsel for the Darbhanga Zila Parishad and learned Counsel for the private Respondent No. 6 Lal Babu Yadav.

2. In this writ petition the Petitioner has challenged order dated 11.8.2010 (Annexure-4) by which the District Panchayat Raj Officer, Darbhanga (Respondent No. 2) fixed the date of special meeting of the Zila Parishad for considering No Confidence Motion on 18.8.2010 against the Chairman, Darbhanga Zila Parishad (Petitioner).

3. The election of the aforesaid Zila Parishad was held in the year 2006 and the Parshads (Members) of the Zila Parishad (District Board) elected the Petitioner as its Chairman on 28.7.2008. It transpires that subsequently a requisition was made by some Parshads of No Confidence Motion against the Petitioner on 19.8.2009 which was sent to the District Panchayat Raj Officer, Darbhanga (Respondent No. 2), who vide order dated 3.9.2009 (Annexure-3 series at page 25) rejected the said requisition on the ground that according to Section 70(4) (iv) of the Bihar Panchayat Raj Act, 2006, no such motion can be allowed within two years of the election of the Chairman and it was also observed that the period of 2 years would be completed on 28.7.2010.

4. It transpires that in accordance with the aforesaid direction fresh requisition

was filed by the parshads on 28.7.2010 (Annexure-2) before the Chairman for special meeting for considering No Confidence Motion against the Petitioner. Thereafter direction was issued by the District Panchayat Raj Officer, Darbhanga (Respondent No. 2) dated 11.8.2010 (Annexure-4) to the Chief Executive Officer-cum-Deputy Development Commissioner, Darbhanga (Respondent No. 3) to issue notice in that regard in compliance of which on the same date the Chief Executive Officer issued notice dated 11.8.2010 (Annexure-B) to all the members of the Parshads specifying the allegation against the Petitioner fixing 18.8.2010 as the date of meeting. The said notice according to the Petitioner was received by him on 15.8.2010.

5. The Petitioner is aggrieved by the said order and notice and has specifically claimed that the earlier requisition was rejected on 3.9.2009 and hence no special meeting for No Confidence Motion can be held within one year thereafter as per the provision of Section 70(4)(vii) of the Act. He further claimed that the authorities did not even give seven clear days notice for the special meeting for No Confidence Motion.

6. Although learned Counsel for the Petitioner has stated that the term used in the aforesaid provision of law is that if the motion of No Confidence Motion against Adhyaksha or Up-Adhyaksha or both was rejected no fresh motion of No Confidence Motion against Adhyaksha or Up-Adhyaksha shall be brought within a period of one year from the date of rejection of such motion. He further states that the term motion includes requisition and notice both.

7. However, from the settled principles of law as well as from the aforesaid provision of Section 70 of the Act and the relevant circumstances it is quite apparent that the word "rejected" is used in the said provision not for any rejection of requisition by the authority on technical ground rather it is used with respect to rejection of the motion by the Parshads in their meeting. Here in the instant case the earlier motion had not been rejected by the parshads rather it was rejected by District Panchayat Raj Officer, Darbhanga (Respondent No. 2) on a technical ground that two years had not lapsed since the election of the Petitioner.

8. Furthermore in the said order dated 3.9.2009 the District Panchayat Raj, Officer, Darbhanga (Respondent No. 2) had specially stated that the period of two years would be completed on 28.7.2010. Hence the Parshads were entitled to file requisition for fresh No Confidence Motion on 28.7.2010 and accordingly they have filed the requisition on 28.7.2010 (Annexure-2) which was thus quite legal and proper and the authorities concerned were quite justified in fixing the date of special meeting for holding No Confidence Motion on the basis of the said requisition.

9. So far as the question of seven days clear notice to be given for holding the meeting is concerned, it is not in dispute that notice was dated 11.8.2010 and was received on 15.8.2010 in which the date of special meeting had been fixed

on 18.8.2010, hence seven clear days notice was not given. But by order dated 16.8.2010 this Court stayed the operation of order dated 11.8.2010 (Annexure-4) on the basis of which notices were issued, till further orders, hence no special meeting has been held on 18.8.2010.

10. In the aforesaid facts and circumstances the impugned order is quashed and this writ petition is disposed of with a direction to the Executive Officer of the Zila Parishad (Respondent No. 3) to issue notice in accordance with law stating the allegation and to send it to all the parshads including the Petitioner within 15 days from the date of receipt/production of a copy of this order giving seven days clear notice for holding special meeting for No Confidence Motion against the Chairman of the Zila Parishad (Petitioner) as per the requisition of the Parshads dated 28.7.2010.