

(1983) 01 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. No. 3371 of 1980 & Civil Writ Journ. Case No. 3371 of 1980

Maksudan Raut and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-1983

Acts Referred:

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 32

Bihar Panchayat Samitis and Zila Parishads (Conduct of Business) Rules, 1963 — Rule 29, 43, 5, 7, 7(2)

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 115, 116

Citation : AIR 1983 Patna 186

Hon'ble Judges : Hari Lal Agrawal, J

Bench : Single Bench

Advocate : Shyam Nandan Pd. Sharma and U.K. Choudhury, for the Appellant; K.P. Verma, General, Ratan Prasad Sinha, (for Nos. 1 to 4), Tara Kant Jha, Ramanand Kumar and Satish Chandra Jha, (for Nos. 5 to 24), for the Respondent

Final Decision : Dismissed

Judgement

Hari Lal Agrawal, J.—This writ application has been filed for quashing the resolution dated 9-8-1980 (Annexure 1) of the Panchayat Samiti, Andhara Tharhi Prakhanda, adopting a motion of "No confidence" in the Pramukh and Up-Pramukh (petitioners 1 and 2) and the orders of the respondent No. 2, the Director-cum-Joint Secretary, Panchayat Rajya, Directorate of Rural Development, Government of Bihar, contained in Annexures 6 and 7, which were passed on the petition filed by petitioners Nos. 1 and 2 u/s 78 of the Bihar Panchayat Samitis and Zilla Parishads Act, 1961 (for short "the Act") to quash the proceedings of the meeting dated 9-8-1986.

2. The question of law to be decided in this case is as to whether there was any invalidity in convening and conducting the said meeting for consideration of the motion, and the effect of the subsequent participation of the petitioners 1 and 2 in the election which followed the defeat of the said petitioners in the meeting.

Facts

3. The aforesaid Panchayat Samiti consisted of 24 members but one of them had died and, therefore, at the relevant time there were only 23 members. The notice of "no confidence" motion, copy of which is Annexure 4 was issued, by the Pramukh on the requisition of the members of the Samiti in accordance with Section 32 of the Act and a notice under Rule 7 of the Bihar Panchayat Samitis and Zilla Parishads (Conduct of Business) Rules, 1963 was also issued calling for a special meeting on 9-8-1980, stating therein that the said meeting would consider the application of Sri Sukhlal Mahto and others. The convenor of the meeting was the aforesaid Sukhlal Mahto, who was later on transposed from the category of petitioners to that of the respondents 18 members of the Samiti participated in the said meeting and 12 of them supported the motion of "no confidence". The motion thus having been carried with the Pramukh ceased to hold the said office in accordance with the provisions mentioned in Sub-section (2) of Section 32 of the Act which says that "if the motion is carried with the support of not less than two-third of the members of the Panchayat Samiti present and voting, the Pramukh or the Up-Pramukh, as the case may be, shall cease to hold the office as such and shall be deemed to have vacated the same on and from the date on which the fact of the motion having been carried is affixed on the notice board of the office of the Panchayat Samiti."

It may also be mentioned that on 13-1-1981 a new Pramukh (respondent No. 5) and Up-Pramukh (respondent No. 12) were elected in the vacancies caused on the above account in which petitioners 1 and 2 had participated so much so that petitioner No. 1 had also sought for his re-election and was defeated. It has been stated in the petition filed on 28-4-1981 for vacating the order of interim stay that respondent No. 5 was thereafter also elected as the Member of the Madhubani District Board and that in the subsequent meetings of the Panchayat Samiti after the election of respondents Nos. 5 and 12, all the petitioners attended and participated. However, an election petition has been filed by petitioner No. 1 before the Election Tribunal challenging the said election held on 13-1-1981.

4. The grounds of the petitioners for challenging the proceeding of the meeting held on 9-8-1980, as pressed before me by their counsel Mr. Shyam Nandan Pd. Sharma, were mainly as follows:

(i) The notice of the meeting (Annexure 4) did not contain the necessary agenda as required by Rule 29 of the Rules, according to which any matter requiring the decision of the Samiti/ Parishad is to be put in the form of a resolution, which should clearly and precisely express and raise a definite issue (Rule 31).

(ii) Notice was not served upon four members of the Samiti, including two of the writ petitioners, namely, petitioners Nos. 3 and 4, as well as Dr. Jagannath Mishra, the Chief Minister of Bihar and Shri Dhanik Lal Mandal, M. P.

(iii) The meeting was held in violation of Rule 5 (1) which requires a notice to be

given ".....at least ten clear days before the date of the meeting....."

5. A counter-affidavit has been filed on behalf of respondents 1 to 4 where it has been asserted that notice on all the members were duly served and a copy thereof was also hung on the notice board and thus there was no irregularity.

6. Mr. T. K. Jha, appearing on behalf of the contesting respondents, on the other hand, contended that the petitioner No. 1 himself had prepared the agenda for the meeting and therefore, even if there was any irregularity or infirmity in the said agenda it could not be relied upon by the petitioners to avoid the result of the meeting convened by the Pramukh and that in any event, the facts mentioned in the notice were sufficient to inform the members of the proposed purpose of the meeting. It was further argued that the petitioners having taken no objection on this account either at the meeting or thereafter, and having participated in the subsequent election, were estopped in law from challenging the proceedings of the meeting aforesaid.

7. The learned Advocate General, who appeared for the official respondents, on the other hand, argued that the four members of the Samiti aforesaid had no complaint regarding the non-service of the notice and two of them were already petitioners 3 and 4 (petitioner No. 4 subsequently transposed).

8. Now I shall take up the points debated before me. I had the occasion of deciding one case under the provisions of this Act In *Rajendra Singh v. State of Bihar* (1982 BBCJ (HC) 129) : AIR 1982 NOC 178 where, however, the question was as to in what circumstances a meeting far considering the motion of no confidence in the Pramukh could be adjourned and subsequently convened. After considering the various provisions of the Act and the Rules, I had said that a no confidence motion has to be considered in a special meeting called for and conducted u/s 32 read with Rule 7 and not according to the procedure for convening an ordinary meeting. Postponement of a meeting of Samiti or Parishad is contemplated, in one circumstance, namely, absence of the requisite quorum within half an hour of the appointed time of the meeting. The motion has to be considered with speed and the meeting has to be called for positively within seven days" time by the Pramukh and on his failure the Block Development Officer or the Secretary has to call for the meeting within three days thereafter. Reliance was placed on this judgment on behalf of the respondents and it was contended that "special meeting" contemplated u/s 32 of the Act must be held within seven days" time which was the outer limit for holding the meeting and it was not necessary that there should be a ten clear days" notice before the date of the meeting. I meant by that observation and reiterate it here, that the meeting could be convened any time within that period of seven days as might be thought by the Pramukh to be practical.

9. I find myself in complete agreement with the learned counsel for the respondents. The provisions of Section 32, which have been quoted above and as held by me in the reported decision to be directory in nature, clearly contemplate

that the motion of no confidence has to be dealt with in the prescribed procedure, which has been done under Rule 7 of the Rules. It prescribes that special meeting has to be called for within seven days of the receipt of the request in writing. The provision of ten clear days' notice is mentioned in Rule 5 and Sub-rule (2) of Rule 7 makes applicable the procedure of Rules 29 and 43 and not Rule 5. The provision of Rule 5 is, therefore, wholly outside the purview of such meetings.

The next objection regarding the absence of a clear resolution also has got no substance as the notice clearly indicated that the requisition initiated, by Sri Sukhlal Mahto was for consideration. It has been seen that the notices for the motion of no confidence in the Pramukh and Up-Pramukh have to be signed by not less than one-third of the total number of the members of the Panchayat Samiti. Therefore, the notice which was forwarded for convening the meeting was already signed by not less than one-third of the members and as such the matter was already known to a sufficient number of persons and even assuming that there might be any ambiguity, the members must have known the matter before they had proceeded to participate in the meeting.

10. I also find great substance in the argument of the learned counsel for the respondents that the petitioners were estopped from challenging the proceeding of the meeting on account of the fact that the meeting was convened by the defeated Pramukh himself and if he is allowed to raise this point after having lost in the meeting, then it is bound to result in miscarriage of justice inasmuch as every Pramukh who has been made responsible for convening the meeting against himself would cause some kind of infirmity in a meeting and avoid, the consequences of his misdeeds for which a motion of no confidence is carried out later on. I would, therefore, refrain from giving such interpretation which would be against the rule of prudence.

The participation of petitioners 1 and 2 at the subsequent election for the offices also must be deemed to be an additional circumstance to shut them out from disputing the validity of the meeting and, the business carried therein on account of their participation in the fresh, election that took place on 13-1-1981. Petitioners 1 and 2 must be deemed to have taken for granted that the offices had fallen vacant in law and after having lost they cannot turn round and challenge the same.

I find support for the above proposition from several decisions. In the case of *Bindhyachal v. S. C. Mukherji* ILR 1954 Pat 905 where the election of the Councillors of the Patna Municipal Corporation was challenged, one of the points raised on behalf of the respondent was that the petitioner was not competent to maintain the writ application for the reason that the petitioner was aware of the alleged illegality and still acquiesced or concurred in the election of the Municipal Councillors. This case was referred to with approval in *Raghuni Nayak and Others Vs. Dist. Magistrate and Others*, . In this case the writ petitioners had participated in an election and thereafter had challenged the same. It was held

that the petitioners when knowing the illegality of the election had participated therein, they would be deemed to have acquiesced or concurred in the election and would be estopped from challenging the validity of that election after having lost.

There are large number of reported and unreported cases on the principles of acquiescence and estoppel and I need not multiply them and would refer only to the cases of *Jadunandan Puri v. President, Board of Secondary Education, Bihar Patna* 1976 BLJR 373: AIR 1976 Pat 58 and *Ram Lakhan Singh v. State of Bihar* 1964 BLJR (SOC) 56 .

11. I would accordingly hold that in any view of the matter, the petitioners are estopped from maintaining the petition and seeking any relief, on account of their acquiescence by participating in the meeting and the subsequent election. The application has got, therefore, no substance and it must fail. It is dismissed with costs. Hearing fee is, however, assessed at Rs. 150/- only.