

(2010) 02 PAT CK 0065
In the Patna High Court

Manju Devi and Bipendra Dutt Mishra	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 44(3)(i), 44(3)(iii)

Citation : (2010) 02 PAT CK 0065

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—The two petitioners, in this writ petition, were elected as Pramukh and Up-Pramukh of Bikramganj Panchayat Samiti, District Rohtas. They challenged the validity of "no confidence motion" as passed against them on 22.8.2009 (Annexure 10). The members eligible to vote in the Panchayat Samiti are sixteen and on that fateful date, twelve were present and all of them voted against the petitioners. Thus 75% of the members voted in favour of "no confidence" against the two petitioners. The challenge to the said proceeding is primarily on two grounds, firstly, that the said meeting is in contravention of Section 44(3)(iii) of the Bihar Panchayat Raj Act, 2006 and is thus liable to be set aside having been called within one year of rejection of "no confidence motion" and secondly that the meeting was not fixed within fifteen days of the requisition and there was no clear seven days notice of the date fixed for the meeting. Thus there was violation of Section 44(3)(i) and Section 46(4) of the Act. The meeting was thus invalidly called.

2. Heard the parties and with their consent this application is being disposed of at this stage itself.

3. The facts are not in dispute. On 28.7.2008 (Annexure 2) in a meeting specially requisitioned, vote of no confidence was passed against the two petitioners by eight members voting in favour of no confidence and six members voting against

no confidence. As noted earlier, total strength of eligible voters for this purpose being sixteen, 50% voted against the petitioners and about 35% in favour of the petitioners. Upon this, resolution being sent to the State Election Commission for holding fresh election of Pramukh and Up-Pramukh, the Election Commission on 12.8.2008 held that the petitioners would not be deemed to have suffered disqualification as consequence of no confidence motion in terms of Section 44(3) (i) of the Act, inasmuch as, the membership of the house was sixteen and only eight had voted in favour of no confidence, which was 50% but not more than 50%. Upon this declaration by the State Election Commission, on 14.8.2008, petitioners alleged that they were reinstated and continued to function as such.

4. On 31.7.2009, a fresh requisition was made for considering "no confidence motion" against the two petitioners. It was addressed to the Pramukh and copy thereof was marked to the Executive Officer, who is the Block Development Officer. The requisition is Annexure 1. On the same day i.e. 31.7.2009, as the copy of requisition was also marked to the Executive Officer, he noted in the file (Annexure 6) that requisition had been sent to the Pramukh directly, a copy was marked to the Executive Officer and as such the copy, as marked to the Executive Officer, is being sent to the Pramukh by this file and appropriate decision to call a meeting, may be taken immediately. The file noting is dated 31.7.2009. Petitioners alleged with reference to Annexure-13 that, in fact, this file was received by the Pramukh (Petitioner No. 1) on 7.8.2009. It is not in dispute that Pramukh did not fixed the date for meeting inspite of having received the said requisition on 7.8.2009. Thus, admittedly, the Executive Officer then fixed 22.8.2009, as the date for consideration of no confidence motion, by his memo dated 14.8.2009 (Annexure 7). This memo was served on all members on 15.8.2009. Two members were served on 17/18.8.2009 with the said notice. It is not in dispute that there is no objection rather they have voted in favour of "no confidence motion" as against the petitioners on the fateful day. The said meeting was held on 22.8.2009 (Annexure 10) wherein out of total members eligible to vote being sixteen, twelve voted in favour of no confidence motion and four persons abstained, which includes the two petitioners as well.

5. On these facts, it is first submitted that the meeting for consideration of "no confidence motion" has been held in violation of Section 44(3)(iii) i.e. within one year from the date of rejection of the motion. To this learned Counsel for the petitioners states that the date for rejection of "no confidence motion" earlier taken up would be 12.8.2008 when the State Election Commission held the motion not to have been passed. In my view, this is not acceptable. The reasons are two folds. Firstly, as noted by this Court in the case of Orsil Paswan Vs. The State of Bihar and Others, , the State Election Commission has no role to play in such matter. It is no authority to declare whether motion has been rightly or wrongly carried. Secondly, the motion was taken up on 28.7.2008 and that is the relevant date, irrespective of any such declaration. Even if it be considered that the motion was wrongly carried through, then taking 28.7.2008, as the date of rejection of no confidence motion, the meeting now being held on 22.8.2009 is

beyond one year. Even if it be accepted, as learned Counsel for the petitioners submitted, the relevant date to be the date of requisition of meeting to which Court is not in agreement, that being 31.7.2009 even that is beyond one year. In my view, the date of the first meeting and deliberation and the date of second meeting and deliberation are only the two relevant dates for the purpose of Section 44(3)(iii) of the Act and there must be one year period between the two. That being so, the first contention, as raised by the petitioners, cannot be accepted.

6. Coming to the second contention of the petitioners is that in terms of Section 44(3)(i) of the Act, meeting must be called within fifteen days of the requisition and if this is read with Section 46(4) of the Act, there must be seven clear days notice for the special meeting both of which are alleged to be violated in the present case rendering the meeting nonest.

7. From the facts, as noted above, it would be seen that it is on 31.7.2009 that the fresh requisition for special meeting is moved. Petitioner No. 1, who is the Pramukh takes no action. A copy of the said requisition having been sent to the Executive Officer, as required by Section 44(3)(i), he then sent it to the Pramukh as well. On his own showing, Pramukh received it on 7.8.2009 but called no meeting leaving no option but to the Executive Officer to call a meeting, which the Executive Officer did by his memo dated 14.8.2009 fixing 22.8.2009. This notice is duly served on all members but two on 15th itself. The meeting being fixed for 22nd August 2009, in my view, in these facts, is on notice of seven clear days. With regard to meeting being called within fifteen days, it is to be noted that Pramukh and Up-Pramukh, on their own showing inspite of notice, failed to call for meeting and it is thereafter that the Executive Officer had to take over. For their own default in complying with the provisions and the obligation cast upon them, they cannot themselves take advantage. It is well settled principle of law that no one can be permitted to take advantage of his own default. Pramukh and Up-Pramukh were the defaulters and for their own default, they want to take advantage to get the meeting nullified as being called beyond fifteen days, that cannot be permitted.

8. There is yet another reason for not invalidating the meeting of 22.8.2009. It is presumed that as the Executive Officer is supposed to be aware of the law so is the Pramukh and Up-Pramukh supposed to be aware of the law. If they were of the view that the meeting, as called for, was in contravention of law, for any reason, then it was their duty to raise a point of order at the meeting and get the meeting adjourned. They had to register their protest at the meeting. They did not do so and permitted the meeting to be held and having lost the confidence of the house, on technical plea seek to get the same set aside.

9. In these situations, this Court is not persuaded to interfere. It would virtually amount to throttling democracy and democratic process on hyper technical grounds.

10. In view of the aforesaid, the writ petition merits no consideration and it is accordingly dismissed.