
(2004) 04 PAT CK 0085
In the Patna High Court
Case No : CWJC No. 11778 of 2002

Mithelesh Pati Tiwari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0085

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the no confidence motion dated 10.10.2002 passed against the petitioner removing him from the office of Parmukh of the Panchayat Samiti and notice to that effect dated 10.10.2002 (Annexure-1).

2. In the thicket of facts pleaded, facts which are necessary for the decision of the present application are that the petitioner was elected as Parmukh of Panchayat Samiti, Bagha-I, hereinafter referred to as the Samiti, Members of the said Samiti gave notice dated 18.9.2002 requesting the petitioner to convene the special meeting of the Samiti to consider the no confidence motion brought against him. Ultimately the Executive Officer issued notice dated 3.10.2002 (Annexure-2) conveying that the special meeting of the Samiti shall be held on 10.10.2002 and the item of agenda would be the motion of no confidence brought against the petitioner. Meeting was so held and the motion of no confidence has been carried out against the petitioner.

3. Mr. S.S. Dvivedi appearing on behalf of the petitioner has raised several points to assail the motion of no confidence passed against the petitioner but as the writ application is to succeed on a very short point, I deem it inexpedient either to incorporate or answer the same. He submits that the notice dated 3.10.2002 fixing 10.10.2002 as the date for holding the special meeting to consider the motion of no confidence against the petitioner does not conform to the requirement of seven clear days notice as provided u/s 44(4) of the Bihar Panchayat Raj Act (for short the Act). Mr. S. Alamdar Hussain appearing on

behalf of respondents 1 to 5 and Mr. Md. Nadim Seraj appearing on behalf of respondent No. 6, however, contend that the notice conforms to the requirement of seven clear days notice and the submission made on behalf of the petitioner is misconceived.

4. This submission was advanced before me in CWJC No. 702 of 2002 *Rambhaa Sinha v. State of Bihar and Ors.*, disposed of on 12.4.2003 wherein I had held as follows :--

I had the occasion to consider this question on first principle in the case of *Arun Kumar Singh Vs. The State of Bihar and Others*, wherein I have held as follows :--

8. Having answered this, the next question which falls for determination is as to how the period of seven clear days notice is to be calculated. It is well settled that when a statute provides for stated period of notice to be given, this requirement must be met, otherwise the meeting will be invalid. In the present case, Section 44(4) of the Act had in no uncertain term provided for seven clear days notice which would obviously mean that the notice shall be exclusive of the day on which it is issued and of the meeting. Applying the aforesaid principle, I am of the opinion that the notice to hold the meeting is invalid in the eye of law as seven clear days notice was not given."

Further in the case of *Umesh Chandra Prasad Vs. State of Bihar and Others*, , I have held, as follows :--

"6. Having appreciated the rival submissions, I find substance in the submission of Mr. Singh. The notice for holding the meeting on 30.9.2003 was issued on 23rd September, 2003. Thus seven clear days notice was not given to hold the meeting. This itself vitiates the notice. Consequently, the business transacted on 30th of September, 2003 is not in accordance with law. Resultantly the motion of no confidence passed against the petitioner is non-est in the eye of law, which cannot be allowed to stand."

"The frequency with which this question is coming for adjudication before this Court, I decided to deal with this question in little detail and I have come to the conclusion that the long line of precedents also support the view which I have taken."

Thereafter I have observed as follows :--

"The aforesaid discussion leads me to come to the same conclusion which I have reached in the case of *Arun Kumar Singh (supra)* on first principle that Section 44(4) of the Act which had in no uncertain term provided for seven clear days notice would mean that the notice shall be exclusive of the day on which it is issued and of the meeting."

"Bearing in mind the purpose of the meeting and the object of the notice I have no manner of doubt that the requirement of giving seven clear days notice is mandatory in nature. I had the occasion to consider this question in the case of

Arun Kumar Singh (supra) wherein I have held in paragraph 7 of the judgment as follows :--

"The use of the word "shall" raises a presumption that this provision is imperative. The agenda of the special meeting is to consider the no confidence motion. No confidence motion is brought against an elected person by elected representative and in a democratic country governed by the rule of law, policies and programmes are criticised or defended in such meeting and in such circumstances the legislature has provided for seven clear days notice so as to enable the elected representatives to deliberate and defend the motion. In my opinion if the provisions of Section 44(4) of the Act is held to be directory, same, may in a given case, will not provide to the office-bearer sufficient time to convince the member the futility of the no confidence motion. Hence I have no manner of doubt that provision of Section 44(4) of the Act requiring seven clear days notice is mandatory in nature."

5. In the present case undisputedly notice is dated 3.10.2002, whereas the meeting was fixed for 10.10.2002 and in case the days of the notice and the meeting are excluded, it does not conform to the requirement of seven clear days notice as provided u/s 44(4) of the Act. The aforesaid requirement has been held to be mandatory and as such the motion of no confidence passed in such a meeting has to be held as illegal and cannot be allowed to stand. However, this will not preclude the members from bringing a fresh motion of no confidence against the petitioner in accordance with law.

6. In the result, the application is allowed. Motion of no confidence dated 10.10.2002 passed against the petitioner as also the notice conveying the said information (Annexure-1) are quashed with the observation aforesaid. In the facts and circumstances of the case, there shall be no order as to cost.