

(2020) 01 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 490 Of 2020

Neelam Devi And Anr

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Bihar Panchayat Election Rules, 2006 — Rule 96, 96(a)(d)
Bihar Panchayat Raj Act, 2006 — Section 44(3)(i), 44(3)(iv)

Citation : (2020) 1 PLJR 619

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : S.B.K. Manglam, Ajay, Pratik Kumar Sinha, Girish Pandey

Final Decision : Dismissed

Judgement

1. Heard Mr. S. B. K. Manglam, learned counsel for the petitioners; Mr. Ajay, learned GA 5 for the State and learned counsel for the State Election Commission.

2. The petitioners have moved the Court for the following reliefs:

"(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the proceedings of the special meeting dated 23.12.2019 of Block Panchayat Samiti, Pratapganj in the District of Supaul interalia on the ground that:-

(a) The notice for holding the said special meeting dated 23.12.2019 was issued by the Executive Officer, the Respondent no.5 in violation of the Statutory Provision as contained under Section 44 (3)(iv) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act);

(b) The No Confidence Motion against the petitioners in the special meeting dated 23.12.2019 was declared to have been passed against the petitioners and they were removed from the post even though there were only 06 invalid votes polled in favour of the No Confidence Motion and the seventh (7th vote) which was taken into account for the success of motion against the petitioner was

invalid vote in view of the provisions contained under Rule-96 of the Bihar Panchayat Election Rules, 2006 as also the instruction issued by the State Election Commission under its letter no. 2535 dated 16.09.2008.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission not to publish any schedule for holding fresh election to the post of Pramukh and Up-Pramukh which was fallen vacant due to illegal removal of the petitioners and for reinstatement of the petitioners in their respective offices after setting aside the proceeding of special meeting dated 23.12.2019.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case."

3. The brief facts relevant for consideration of the present writ application are that the petitioners were the elected Pramukh and Up-Pramukh of Block Panchayat Samiti, Pratapganj in the district of Supaul. On presentation of a notice before the petitioner no. 1 by 7 members of the Panchayat Samiti, which comprises of 12 members on 06.12.2019, the petitioner no. 1 had fixed the date 23.12.2019 for holding of the Special Meeting to consider the 'No Confidence Motion'. On the said date, the motion was passed against both the petitioners and they were removed from their post.

4. Learned counsel for the petitioners submitted that the foremost requirement of law is valid service of notice strictly in accordance with Section 44 (3) (iv) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'). It was submitted that from the notice sent by the Executive Officer to the petitioners, copy of which has been brought on record as Annexures P-3 and P-3/1, does not contain any reason nor was accompanied by the notice sent so as to disclose the reason and the charges against the petitioners. It was submitted that such non-disclosure of reasons is impermissible and would lead to vitiating the entire subsequent procedure of holding the meeting and any passing of No Confidence Motion in such meeting. For such proposition, learned counsel relied upon decisions of the Division Bench of this Court in Meena Yadav vs. State of Bihar reported as 2010 (2) PLJR 389 as well as in Sheikh Hassmuddin vs. State of Bihar reported as 2015(3) PLJR 203. It was further contended that even in the said meeting which was attended by 9 members, including the petitioners, in the voting held, the motion was carried by 7 in favour of the motion and 2 against. It was submitted that for passing of the motion, as per Section 44 (3) (i) of the Act, it should be passed by a majority of the total number of elected members of the Panchayat Samiti, holding office at that point of time. Learned counsel submitted that in such view of the matter, the number required to carry for the motion was 7. It was submitted that when the ballots were being counted, despite Rule 96(a)(d) of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as the 'Rules') one member had put a plus (+) mark instead of cross (x) mark which was required to be put on the ballots and when the same was

objected, the member who was chairing the special meeting overruled the same and held it to be valid and under such circumstances, 7 votes were held to have been cast in support of the motion. It was submitted that had the one plus (+) mark ballot been rejected, the motion would have failed and this would have changed the entire scenario. Learned counsel submitted that if the statute requires a particular mode of exercise, any violation or deviation from the same has to be held to be fatal to the exercise. It was submitted that the cross (x) and plus (+) are two separate and distinct marks and cannot be held to be one and the same. It was submitted that if specifically the statute provides the making of cross (x) mark but the person still prefers to put plus (+) mark, it has to be held that either it is for the purpose for being identified or that no cross (x) mark has been made on it and, thus, it would come under the category of invalid vote in terms of the aforesaid Rule 96(a)(d) of the Rules read with the instructions issued by the State Election Commission contained in Letter No. 2535 dated 16.09.2008, specifically Clause 3(i) of the same. Learned counsel in support of such contention relied on a decision of the Hon'ble Supreme Court in *Dr. Anup Singh v. Abdul Ghani* reported as AIR 1965 Supreme Court Cases 815, the relevant being at paragraphs no. 8 to 14.

5. Learned counsel for the respondents submitted that the contentions of learned counsel for the petitioners are super- technical and further are not correctly borne from the facts of the case. It was submitted that once the original notice sent to the petitioner no. 1 contained in detail reasons on which the requisitionists proposed to bring a motion of No Confidence, which admittedly was served on the petitioner no. 1 based on which she had fixed the date of special meeting, and copy of such notice having been also served on the petitioner no. 2, plea cannot be taken that they were unaware of the charges so as to be able to defend himself in the special meeting. It was submitted that the decision relied upon by learned counsel for the petitioners with regard to service of notice containing the reasons is not applicable to the facts of this case as such reasons were already in the knowledge of the petitioners prior to the meeting. Learned counsel submitted that the main contention of the petitioners relating to the mark plus (+) having been appended instead of mark cross (x) is also not worth considering for the reason that between both the marks, there is a thin line of distinction.

6. Learned counsel for the State further contented that in the facts and circumstances of the present case, the issue stands settled by the judgment of the Hon'ble Supreme Court in *Padmini Singha v. State of Assam* reported as (2018) 10 Supreme Court Cases 561 where under more or less similar circumstances when the office bearers had participated in the meeting, it was held that once having participated in the meeting and the resolution being passed against her, after losing in the voting process, challenge being made to the procedure for calling of meeting would not hold and further that had the person not participated in the meeting the matter would have been absolutely different but having participated it had to be held that such condition precedent

stood waived, so far invalidity of notice is concerned.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ application.

8. With regard the contention of learned counsel for the petitioners relating to deficiency in the manner and mode of notice issued for the special meeting, the Court finds that the issue stands covered by the judgment of the Hon'ble Supreme Court in Padmini Singha (supra). In this connection, it would be relevant to quote paragraph no. 13 of the said judgment which reads as under:

"13. From the foregoing, it is quite vivid that the meeting was held to discuss the motion of no- confidence. Respondent 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact situation, no public interest was affected. The BDO presided over the meeting and everyone knew that the meeting was called for passing a resolution either in favour of or against the no- confidence motion. Respondent 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to think, had Respondent 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that Respondent 6 had waived the condition precedent."

9. Coming to the issue of mark plus (+) which learned counsel for the petitioners has contended was made by one of the voters instead of mark cross (x), even if it is assumed that the sign appeared to be plus (+) instead of cross (x), the Court finds that the difference between the two being so fine, a person putting such mark in his own pen cannot be held liable or penalized for not having put the two straight lines at an angle so as to make a cross (x) or to put two lines perpendicularly at 90° angle so as to make a plus (+). Moreover, for a person making in his own pen a mark of plus (+) or cross (x) can easily be read as either in view of the angle of the paper on which he or she puts the mark and the style in which he or she puts the mark, and when even a slight angle can make the mark look as plus (+) or cross(x), the fact that the mark was made is a clear proof of the intention of the person putting the mark that he or she was against the motion. Thus, when the intention is clearly and undisputedly clear, such intention should not be overridden or interpreted in a manner which is contrary to the obvious intention and desire of the voter. Thus, when such variation is totally natural and no prudent man can make any objection with regard to the

same and there being no other mark on the ballot paper and most importantly, there being no question of any identification, it has to be held that the said mark was clearly an intention to vote against the motion and even otherwise it has to be held that it came within the category of a cross mark (x).

10. The decisions relied upon by learned counsel for the petitioners in Meena Yadav (supra) and Sheikh Hassmuddin (supra) related to non furnishing of reasons to the incumbent who were holding the posts whereas in the present case admittedly the detailed reasons in the notice was already served on the petitioners and they were fully aware of the same and, thus, the principles laid down in the aforesaid two cases do not apply in the present case.

11. For reasons aforesaid, the application stands dismissed.