

(2020) 11 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8083 Of 2020

Nilopher Yashamin

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 04-11-2020

Acts Referred:

Citation : (2020) 11 PAT CK 0012

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Surendra Kishore Thakur, P N Shahi, Dhirendra Kumar, P K Shahi, Prabhat Kumar Singh, Brajesh Kumar Singh, Amit Srivastava, Girish Pandey

Final Decision : Allowed

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. The matter was mentioned by Mr. P K Shahi, learned senior counsel indicating that in terms of the order dated 29.09.2020, the case had to be listed on 19th October, 2020, among the top five cases, but has been listed down below and accordingly, the Court had allowed such plea subject to all the parties being informed about the case being fixed for out of turn hearing today. Pursuant to the same, the parties have appeared and the Court has proceeded to hear the matter.

3. Heard Mr. Surendra Kishore Thakur, learned counsel for the petitioner; Mr. P N Shahi, learned AAG 6 along with Mr. Dhirendra Kumar, learned AC to AAG 6 for the State; Mr. Amit Srivastava, learned counsel along with Mr. Girish Pandey, learned counsel for the State Election Commission; Mr. P K Shahi, learned senior counsel along with Mr. Prabhat Kumar Singh,

learned counsel for some of the private respondents and Mr. Brajesh Kumar Singh, learned counsel for some of the private respondents.

4. The petitioner has moved the Court for the following reliefs:

"(i) For issuance of writ in the appropriate nature for quashing of the resolution taken by members of Panchayat Samiti, Kurhani in its no-confidence meeting dated 1.9.2020 whereby no-confidence motion has been succeeded against the petitioner without securing attendance of the petitioner who was suffering from pandemic Covid-19 and in utter violation of the order dated 31.8.2020 passed by this Hon'ble Court in CWJC No. 7275/2020.

(ii) For further direction to the Respondents authority to issue fresh notice for no-confidence motion fixing the date.

(iii) For further direction to the Respondents authority not to take any further steps for re-election of Pramukh of Kurhani Block till disposal of the writ application.

(iv) And for any such other relief/reliefs for which the petition"

5. In view of the previous orders of the Court as well as the stand taken by the private respondents, the Court had called upon the contesting parties to come up with a common date for holding of a fresh 'Special Meeting' for considering a motion of 'No Confidence' against the petitioner. As all the private respondents had not initially appeared, the Court had directed that notices be served on them through the respondent no. 7. In terms thereof, counter affidavit has been filed on behalf of respondent no. 7 bringing on record material which indicates that all the private respondents who had not appeared in the present case earlier have been duly served in the first week of October, 2020.

6. In the aforesaid background and in view of the stand taken at the outset by the parties that they were amenable to convening of a 'Special Meeting' on a fresh date for consideration of a motion of 'No Confidence' as also what has been recorded in the earlier order in the present case dated 28.09.2020, especially the fact that the petitioner had submitted an application before the respondent no. 4 for postponing the date of the 'Special Meeting', scheduled for 1st September, 2020, on the ground that she was suffering from COVID-19 and he being required to examine the issue and take a decision as per the direction of the Court in CWJC No. 7275 of 2020 under order dated 31.08.2020, which admittedly was not complied with, the Court has not gone into the merits of the matter.

7. Accordingly, based on the opinion of all concerned, including the State and the State Election Commission, and a consensus having been arrived at, the writ petition stands disposed off in the following agreed terms.

8. The 'Special Meeting' for consideration of a motion of 'No Confidence' against the petitioner shall be held on 28th November, 2020 at 11 AM in the Block Office, Kurhani in the district of Muzaffarpur. As all the parties have been duly served in the present case and all required materials, including the grounds on which the proposed 'Special Meeting' is to be convened, are on record, the Court does not

find that there is any technical requirement of serving the grounds on which such motion is sought to be brought on all the members once again.

9. The Court would pause here to indicate that the parties have also consented to this modality agreeing that all materials which was required to be available with the members for effectively participating in the 'Special Meeting' are available with them. The meeting shall proceed in the manner prescribed in terms of the provisions of the relevant statute under the supervision of the State Election Commission which shall depute an observer, who shall be a senior officer, to be present in the meeting. The proceeding shall also be video-graphed and the same shall be kept with the State Election Commission and the respondent no. 4, for any future use/reference.

10. The authorities, especially respondents no. 4 to 7 and 59, shall ensure that necessary arrangements are in place for the said meeting on the date and time indicated hereinabove.

11. On the concern and apprehension expressed by Mr. P K Shahi, learned senior counsel for some of the private respondents that technical pleas like non maintainability of the motion of 'No Confidence', due to efflux of time etc. may be raised by the petitioner, the Court would only observe that in the eyes of law, the Court having interfered in the matter only on the stand taken by all concerned, including the petitioner, that they were agreeable to a fresh meeting for considering a motion of 'No Confidence' against the petitioner, the issue shall be discussed and taken to its logical conclusion on merits, as the proposed fresh meeting is, for all practical purposes, an extension /continuation/ substitution of the previous meeting held on 1st September, 2020, in which the motion of 'No Confidence' against the petitioner was passed, and, thus, in the fresh meeting on 28th November, 2020, it shall be open to the parties to take all issues and points which were available to them on that day, i.e., 1st September, 2020, except the plea that the requisition and reasons for convening of such 'Special Meeting' for considering a motion of 'No Confidence' was not served/made available to the petitioner or any of the parties/members and the procedure prescribed for fixing the date of such 'Special Meeting' was not followed, for the reason that all the parties have agreed to this consent order.

12. As a consequence, the resolution passed for removal of the petitioner from the post of Pramukh of Block Panchayat Samiti, Kurhani in the district of Muzaffarpur, in the 'Special Meeting' held on 1st September, 2020, and all subsequent orders/actions pursuant thereto, are set aside.

13. It goes without saying that the parties concerned shall be at liberty to take steps in accordance with law and in terms of the provisions of the relevant statute, based on the result/outcome of the motion of 'No Confidence' against the petitioner to be considered in the 'Special Meeting' scheduled for 28th of November, 2020.