

(2024) 02 PAT CK 0032

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2776 Of 2024

Rakesh Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 13-02-2024

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 44, 44(3)(i), 44(3)(v), 44(3)(vi), 157

Citation : (2024) 02 PAT CK 0032

Hon'ble Judges : Purnendu Singh, J

Bench : Single Bench

Advocate : Arun Kumar, Pushpendra Kumar Singh, Ravi Ranjan, Girish Pandey, Md. N.H. Khan, Fazle Karim

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.
2. The petitioner is aggrieved by the order dated 31.01.2024, passed by the District Magistrate, Sitamarhi in exercise of power under Section 157 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act 2006') allegedly without giving any finding on the nature of allegation and on this ground he has also challenged the consequential notice dated 05.02.2024 communicated by the Executive Officer, Bokhra Block Panchayat Samiti the schedule date of special meeting of 'No Confidence' to be held on 13.02.2024.
3. Learned counsel for the petitioner has informed, that the petitioner had earlier moved before this Court by filing CWJC No. 1432 of 2024 on the ground that the requisition does not contain clear and specific charges, however, and upon liberty sought by the petitioner to file application under Section 157 before the District Magistrate, Sitamarhi, who without giving his finding with regard to the allegation made against the petitioner in the requisition, has proceeded to pass order dated 31.01.2024 contained in Memo No. 250 dated 01.02.2024 directing the requisitionist and the Pramukh to proceed in accordance with Section 44(3)

(vi) of the Act, 2006 holding that the charges against the UP-Pramukh (the petitioner) can be discussed in the special meeting in course of deliberation.

4. Learned counsel appearing on behalf of the State admits that there is no specific discussion in the order dated 31.02.2024 passed by the District Magistrate, Sitamarhi with regard to the charges levelled against the petitioner and in absence of the said discussion specific direction of this Court cannot be said to have been not complied with. He further proceeded to refer to requisition dated 16.01.2024 contained in Annexure-P-2 to inform that the charges are clear and it cannot be said that the charges against the petitioner are vague. The District Magistrate has rightly observed in his order that the Pramukh and the elected members, who will remain present in the special meeting on 13.02.2024, can very well discuss and deliberate on the charges to which the petitioner cannot say that he was not acquainted with the charges levelled against which he had filed CWJC No. 1432 of 2024 challenging the requisition dated 16.01.2024 containing charges on the similar ground of challenge in the present writ petition.

5. Mr. Ravi Ranjan, learned counsel for the State Election Commission informs this Court that a coordinate Bench of this Court in CWJC No. 14526 of 2014 (Sheikh Hassmuddin & Anr. vs. The State of Bihar & Ors.) had deliberated the ground on which the petitioner has challenged the order of the District Magistrate in the present writ petition.

In the said writ this Court had rejected the contention of the writ petitioner of the said case by holding that "whether the charges levelled against him are held to be good or not, is a matter to be discussed in the special meeting". He, accordingly, proceeded to submit that "provision of Section 44(3)(vi) gives an opportunity to the elected member or the Pramukh and the Up-Pramukh to participate in deliberation." (Emphasis supplied)

6. Having heard the rival submissions made on behalf of the parties, the question, which is to be considered by this Court, is as to whether the order dated 31.01.2024 contained in Memo No. 250 dated 01.02.2024 passed by the District Magistrate is in accordance with the provision of Section 44(3)(i) of the Act, 2006 for the District Magistrate having not made any discussion in his order on point of charges contained in the requisition and his specific finding on the said point.

7. Before I proceed to answer on this point I find it apt to reproduce the provision of Section 44 of the Act 2006, which is as under :-

44. Resignation and Removal of Pramukh and Up- Pramukh-

(1) The Pramukh may resign his office by writing under his hand and addressed to the Subdivisional Magistrate and the Up-Pramukh may resign his office by writing under his hand addressed to the Pramukh and in the absence of Pramukh to the Subdivisional Magistrate and the said office shall be deemed to be vacant on the expiry of seven days from the date of such resignation unless within the

said period of seven days he withdraws such resignation by writing under his hand addressed to the Subdivisional Magistrate or the Pramukh, as the case may be.

(2) A Pramukh or Up- Pramukh shall vacate office if he ceases to be a member of the Panchayat Samiti.

(3) (i) A Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti, by not less than one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one third of the total number of directly elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting shall be postponed once the notice for 46 the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.

(ii) No confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure.

(iii) If the motion of no confidence brought against the Pramukh or the Up-Pramukh or both is once rejected, no fresh motion of no confidence against the Pramukh or the Up-pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year from the date of such rejection of the motion.

(iv) No confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samiti as mentioned in section 39 (1) of this Act.

(v) Such reasons/charges, on the basis of which no confidence motion has to be moved against the Pramukh or Up-Pramukh, shall be clearly mentioned in the notice of meeting called to consider the no confidence motion.

(vi) As soon as the meeting called under this section begins, the presiding member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it open for discussion. Any discussion on the motion shall not be adjourned.

(vii) During discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no confidence motion has been moved for his defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.

(viii) In case of no confidence motion against a Pramukh, the meeting shall be presided by the Up-Pramukh; in case of motion against Up-Pramukh by the Pramukh and in case of motion against both Pramukh and Up- Pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting.

In case of the post of Up-Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the Up-Pramukh, as the case may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the Panchayat Samiti present in the meeting.

(4) Without prejudice to the provisions under this Act, if in opinion of the Commissioner having territorial jurisdiction over the Panchayat Samiti, a Pramukh or an Up-Pramukh of Panchayat Samiti absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Commissioner may, after giving the Pramukh or Up-Pramukh, as the case may be, a reasonable opportunity for explanation, by order, remove such Pramukh or Up-Pramukh, as the case may be, from office;

The Pramukh or Up-Pramukh so removed shall not be eligible for re-election as Pramukh or Up-Pramukh of Panchayat Samiti during the remaining term of office of such Panchayat Samiti;

Appeal shall lie before the Member, Board of Revenue against the order of the Commissioner.

(5) A Pramukh or Up- Pramukh removed from his office under sub-section (4) may also be removed by the Government from membership of the Panchayat Samiti." (Emphasis supplied)

8. From perusal of the above provision, it is abundantly clear that Section 44 of the Act 2006 is a code in itself dealing with the manner in which special meeting of no confidence motion is required to be held and Pramukh or Up-Pramukh deemed to vacate his office or removal in the prescribed manner. This Court in case of Dharmsheela Kumari vs. Hemant Kumar & Ors. reported in 2021(3) PLJR 346 has clarified in paragraphs 58 and 59 with respect to the manner in which

deliberation and no confidence motion is required to be held and by clarifying that the special meeting is required to be carried out among the members, who are present in the meeting on the date fixed for the said purpose and the voting is required to be done among the elected members who are present in the meeting. Paragraph 62 of the judgment in case of Dharamsheela Kumari (supra) reads thus :-

"62. Principles of natural justice are necessary to be complied with since the reasons/ charges forming the basis of the no-confidence motion are clearly required to be mentioned in the notice of the meeting and to be read out before declaring it open for discussion. Even here, the law mandates that such a discussion shall not be adjourned. The Pramukh or the Up- Pramukh against whom the no- confidence motion is moved have a right of defence in the meeting. After discussion, the motion must be put to be vote by way of a secret ballot in the prescribed manner. The expression used "shall be put to vote on the same day after discussion" as used in sub-section (vi) makes it amply clear that the process of voting shall be exercised and completed with promptitude and on the same day. Principles laid down in Laxmi Singh (supra); Banwari Dass(supra); Rajendra Chaudhary would fully endorse our opinion."

9. Referring to the provision of Section 44 (3)(vi), the Division Bench of this Court has again clarified that in course of the special meeting the person against whom motion has been moved must be acquainted with the charges levelled against him to follow the principle of natural justice and in the present case it is premature before any deliberation is held and petitioner without participating in the meeting has no cause of action as the meeting has been fixed to be held today. It is, however, gainful to record that the petitioner can only be put to vote by way of secret ballot in prescribed manner once open discussion and deliberation is concluded and the elected members attending the meeting are satisfied. The provision of clause (i), (v) and (vi) of sub-section (3) of Section 44 makes it amply clear that, under no circumstances, the meeting is to be adjourned and the motion must be put to the vote by way of a secret ballot on the same day.

10. In the light of the discussion made hereinabove to interfere with respect to the special meeting of no confidence motion, which is to be held today i.e. on 13.02.2024, considering the charges as alleged against the petitioner, cannot be held to be vague, and to stall the meeting dated 13.02.2024 will only amount to impede the democratic process. The petitioner being the elected member, and he has been removed from the post of Pramukh, will remain as the member of the Panchayat Samiti. If the petitioner, so desires, may participate in the special meeting of no confidence motion which is to be held today.

11. The writ petition is accordingly disposed of.

12. Since the order has been passed in the open Court, learned counsel for the State is directed to communicate this order to all the state respondents for the

needful without waiting for the order to be pronounced.