
(2003) 09 PAT CK 0088
In the Patna High Court
Case No : C.W.J.C. No. 5204 of 2003

Ranjeet Singh @ Ranjeet Kumar Singh and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Bihar Panchayat Raj Act, 1993 — Section 68(4), 68(5)

Citation : (2003) 3 BLJR 2143 : (2004) 1 PLJR 246

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Ashutosh Ranjan Pandey, Rajeev Kumar Singh and Niranjana Kumar Anshuman, for the Appellant; Shantanu Kumar, J.C. to S.C. VI, Ganesh Prasad Singh, for the Respondent Nos. 7 and 8, Chandra Shekhar L.B. Singh, for Respondent No. 9, R.B. Mahto Md. Kamludin, Ashok Kumar and Ravi Kumar for the Eighteen Respondent, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Prasad, J.—The petitioners have challenged the requisition for convening the special meeting dated 22-5-2003, Annexure 4, and also letter No. 57 dated 1-6-2003 issued by the respondent No. 3 convening the special meeting of Aurangabad Zila Parishad, Annexure 9.

2. Petitioner No. 1 was elected Chairman and petitioner No. 2 was elected Vice-Chairman of the Aurangabad Zila Parishad on 10-6-2001. Since then they have been working as Chairman and Vice Chairman of the Zila Parishad. On 22-11-2001 some members of the Zila Parishad filed a petition expressing no confidence in the petitioners and requested for convening the special meeting. The special meeting was convened on 6-12-2001 and after voting the no confidence motion failed. On 22-5-2003 sixteen members of the Aurangabad Zila Parishad filed a petition before the petitioner Nos. 1 stating reasons for expressing no confidence in the Chairman and Vice-Chairman, the petitioners, and requested to convene the special meeting, Annexure 4. The petitioner No. 1

on 28-5-2003 stated in the file that since Chandramani Devi, Sanju Devi, Rameshwar Bhuiya and Jag Narayan Singh had stated before him on the date of filing the requisition itself that their signature on the requisition for convening the special meeting was not genuine he constituted a five member-committee for verifying their signature fixing 5-6-2003, for their appearance, Annexure 5. On 29-5-2003, the District Magistrate, respondent No. 3, sent a letter to the Chief Executive Officer of the Zila Parishad, respondent No. 5, to inform him as to whether in the light of Section 68(4) of the Bihar Panchayat Raj Act, 1993, for brevity "Act 1993 special meeting has been convened or not, Annexure 6. The respondent No. 5 on the same day i.e. 29-5-2003 informed the respondent No. 3 that requisition for convening special meeting was filed by sixteen members of the Zila Parishad on 22-5-2003. The petitioner No. 1, the Chairman, constituted a committee for verification of the signature of Chandramani Devi, Sanju Devi, Rameshwar Bhuiya and Jag Narayan Singh and asked them to appear before the committee on 5-6-2003, Annexure 7. The respondent No. 5 on the same day again wrote a letter to respondent No. 3 intimating that petition for convening the meeting was filed on-22-5-2003 and within seven days of filing the petition no notice has been issued for convening the meeting, Annexure 8. The respondent No. 3 vide letter No. 57 dated 1-6-2003 convened the special meeting of the Aurangabad Zila Parishad on 14-6-2003, Annexure 9. The father of Chandramani Devi lodged an information before the Superintendent of Police, respondent No. 4 that his daughter has been confined for the purpose of vote by Raghvendra Pratap Singh, respondent No. 22. The aforesaid Raghvendra Pratap Singh also in connivance with the police made petitioner Nos. 1 and 2 and others accused in a case and the petitioner No. 1 was arrested in false case. The petitioners have challenged Annexure 4 and also the letter of respondent No. 3 convening the special meeting, Annexure 9.

3. An I.A. bearing No. 3763 of 2003 was filed during the pendency of the writ petition stating therein that the Division Bench in L.P.A. No. 488 of 2002 considered Sections 18, 42 and 68 of the Bihar Panchayat Raj Act and it was of the view that during the period of two years of election to the offices motion of no confidence should not be brought against the Mukhiya, Pramukh, Up-Pramukh, Chairman and Vice-Chairman. Section 68(5) of the Act says that if no confidence motion fails then a fresh no confidence motion can be brought after one year. The provision as indicated is highly illegal and as such prayer was made to declare Section 68(5) of the Act as ultra vires.

4. A counter-affidavit has been filed on behalf of respondent No. 3 denying the allegation made in the writ petition and stating therein that requisition for convening the special meeting was filed after one year six months and eighteen days of the first no confidence motion which failed on 6-12-2001. There is no provision under the Act to the effect that no such meeting can be called within two years. No petition was filed by any signatories of Annexure 4, the letter of convening the special meeting, that their signatures had been forged. Moreover, there is no provision under the Act to hold enquiry with respect to signature of

the members of the requisition for convening the special meeting. Annexure 4, the letter for convening the special meeting, contains allegation of various omissions and commissions by the Chairman and the Vice Chairman, the petitioners. The petitioner No. 1 when failed to convene the special meeting within seven days as required under the law, the respondent No. 3 convened the special meeting on the petition filed before petitioner No. 1. There was no need to file petition afresh by the members of the Zila Parishad. An occurrence took place at village Ketaki for which Deo P.S. Case No. 35 of 2003 was registered in which one member of the Zila Parishad, Raja Ram Chaudhary sustained gun shot injury and the Chairman and the Vice-Chairman were made accused in the said case. The petitioner No. 1, the Chairman, is in jail and the Vice-Chairman, petitioner No. 2, is absconding.

5. A separate counter-affidavit has been filed on behalf of Superintendent of Police, respondent No. 4, denying the allegation made against the local police. In the counter-affidavit it has been stated that the father of Chandramani Devi filed a petition alleging that his married daughter had been kidnapped by Raghvendra Pratap Singh, a member of the Zila Parishad. After enquiry allegation was found false. The complainant after talking to his daughter withdrew the petition without any pressure or coercion. The complainant under the pressure of the petitioners had filed a complaint as indicated above. It is wrong to say that the local police are in connivance with Raghvendra Pratap Singh.

6. A separate counter-affidavit has been filed on behalf of respondent Nos. 11, 12, 14, 15, 16, 18, 19, 21 to 25, 27, 28, 30 and 31 stating therein that more than 1/5th of the members of the Zila Parishad filed a petition for requisition of the special meeting expressing no confidence in the Chairman and the Vice-Chairman. There is no provision in the Act to the effect that no special meeting shall be requisitioned/ convened within two years in case no confidence motion was brought against the Chairman and the Vice-Chairman earlier. The petitioners were not interested in the development work. The detailed reasons have been mentioned in the petition of requisition for convening special meeting. The petitioners have no authority to raise any objection in respect of convening special meeting. The specific allegations/ charges have been levelled against the petitioners in Annexure 4. The petitioners were acting like a monarch and threatening members of the Zila Parishad. A frivolous allegation has been made against Raghvendra Pratap Singh, respondent No. 22. In the meeting dated 17-5-2003 the members wanted to express no confidence in the petitioners, they were prevented to do so. Explanation is not required before convening special meeting. The petition for convening the meeting was filed before petitioner No. 1 but when no meeting was convened by him, the Chairman; the District Magistrate sought information from the Chief Executive Officer of the Zila Parishad and convened the special meeting on 14-6-2003. There was nothing wrong in convening the special meeting by respondent No. 3. The petitioners kidnapped respondent No. 31 with the help of criminals for which Deo P.S. Case No. 35 of 2003 was registered against them. No one was confined by respondent

No. 22.

7. The respondent Nos. 11, 12, 14, 15, 16, 18, 19, 21 to 25, 27, 28, 30 and 31 also filed additional counter-affidavit separately stating therein that they had filed a petition expressing no confidence in the petitioners, Chairman and the Vice-Chairman and had signed the petition. A supplementary counter-affidavit has also been filed on behalf of respondent No. 22 denying the allegation made against him in the writ petition.

8. A separate counter-affidavit has been filed on behalf of respondent Nos. 7 and 8 stating therein that respondent No. 22 approached the respondent Nos. 7 and 8 for bringing no confidence motion against the petitioners and these respondents came to know that charges were prepared with the consultation of an Advocate. The charges are related with the powers of the Chief Executive Officer-cum-D.D.C. and as such the petitioners cannot be held responsible for any charges. u/s 68(4) of the Act the District Magistrate will convene the meeting in case of failure to convene the meeting by the Chairman and the members have to file fresh requisition before the District Magistrate which has not been done in this case.

9. A separate counter-affidavit has been filed on behalf of respondent No. 9 wherein stand has been taken that the District Magistrate has convened the special meeting in a highly illegal and wrongful manner as no fresh requisition was filed before him.

10. A rejoinder to the counter-affidavit has also been filed on behalf of the petitioners denying the statement made in the counter-affidavit filed on behalf of respondents.

11. The undisputed facts are that petitioner No. 1 is Chairman and petitioner No. 2 is Vice-Chairman of Aurangabad Zila Parishad since 10-6-2001. The total number of the members of Zila Parishad is 48. The total number of elected members of the Zila Parishad is 28. On 22-11-2001 some members of the Zila members filed a petition expressing no confidence in the petitioners and requested for convening the special meeting. The special meeting was convened on 6-12-2001 and after voting the no confidence motion failed. On 22-5-2003 sixteen members of the Zila Parishad filed petition before petitioner No. 1, the Chairman, expressing no confidence in him and the petitioner No. 2, Vice-Chairman making allegations against them and requested to convene special meeting, Annexure 4. Nothing was done on the petition for convening special meeting till 27-5-2003. On 28-5-2003 petitioner No. 1, the Chairman, constituted a five man-committee for verification of signatures of four persons, namely, Chandramani Devi, Sanju Devi, Rameshwar Bhuiya and Jag Narain Singh as they on the day of filing petition i.e. 22-5-2003 itself had said about genuineness of their signature, Annexure 5. On 29-5-2003 the District Magistrate, respondent No. 3 sought information from the Chief Executive Officer, respondent No. 5, as to whether special meeting has been convened within

seven days in the light of Section 68(4) of the Act, 1993, Annexure 6. The respondent No. 5 on the same day i.e. 29-5-2003 informed the respondent No. 3, the District Magistrate, that requisition for convening special meeting was filed on 22-5-2003. The petitioner No. 1 on 28-5-2003 constituted a five man-committee for verification of signature of Chandramani Devi, Smt. Sanju Devi, Rameshwar Bhuiya and Jag Narain Singh directed them to appear before the committee on 5-6-2003, Annexure 7. On the same day the respondent No. 5 informed the respondent No. 3 that no special meeting has been convened within seven days from the date of receipt of requisition for convening special meeting, Annexure 8. The respondent No. 3 on receipt of the aforesaid letters from respondent No. 5 on 1-6-2003 convened a meeting to be held on 14-6-2003 but special meeting on 14-6-2003 was not held because of stay granted by a Bench of this Court on 12-6-2003.

12. Before advertng to the question raised by the learned counsel for the petitioners I would like to deal with the relevant provisions of the Act, 1993. Section 68 is relevant and it deals with resignation or removal of Chairman and Vice-Chairman of the Zila Parishad. Sub-section (4) of Section 68 deals with no confidence which is quoted herein below:

"Adhyaksha and Up-Adhyaksha 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 territorial constituencies of the Zila Parishad, at a meeting specially convened for the purpose. The requisition of such a special meeting shall be signed by not less than 1/5th of the total member of the Zila Parishad and shall be delivered to the Adhikshyas. The Adhikshya shall within seven days from the date of receipt of the requisition convene a special meeting of the Zila Parishad. The meeting shall be held on a day not later than 15 days from the date of issue of the notice of the meeting. The meeting shall be presided over by the Akhyaksha if the motion is against the Upadhyaksha, if it is against the Adhyaksha the Upadhyaksha shall preside over the meeting and if it is against Adhyaksha and Upadhyaksha both then the District Magistrate shall preside over the meeting. In case of failure to convene the meeting by the Adhyaksha the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided by him."

13. It is evident from the aforesaid provision that requisition for convening a special meeting expressing no confidence in the Chairman and the Vice-Chairman must be signed by 1/5th of the total members of the Zila Parishad. It must be delivered to the Chairman; the Chairman shall convene special meeting within seven days from the date of receipt of requisition; the meeting shall be held not later than fifteen days from the date of issue of notice of the meeting; in case of requisition expressing no confidence in the Chairman and the Vice-Chairman both, the meeting shall be presided over by the District Magistrate; in case of failure to convene the meeting by the Chairman, the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided

by him.

14. In the instant case, the requisition expressing no confidence in the petitioners, the Chairman and the Vice-Chairman was handed over to petitioner No. 1 on 22-5-2003 as admitted by the petitioners in paragraph 13 of the writ petition. The requisition was signed by sixteen members of the Zila Parishad i.e. more than one fifth of total members of the Zila Parishad. The reason for convening special meeting was also stated in the petition, Annexure 4. The special meeting was to be convened by petitioner No. 1 within seven days from the date of receipt of requisition i. e. by 28-5-2003. The petitioner No. 1 did not convene special meeting till 28-5-2003 rather on 28-5-2003 he constituted a five man-committee to verify the signature of four persons, who signed the requisition and fixed 5-6-2003 for their appearance before the committee on the ground that they on the day of filing the petition for requisition of special meeting stated about genuineness of their signature. Sub-section (4) of Section 68 of the Act, 1993 does not envisage any such verification by the Chairman, rather from the language of the aforesaid provision it appears that mandate of the law is to convene special meeting within seven days from the date of receipt of requisition. The reason behind it is that everything has to be discussed in the special meeting before voting on the no confidence motion. After voting "no confidence motion" may not be passed.

15. In the instant case, sixteen members of the Zila Parishad signed the requisition. Even if four persons, as it has been alleged by petitioner No. 1 that they disputed their signature over the requisition, are deducted then also it comes to twelve in number which is more than 1/5th of the total members of the Zila Parishad i.e. 48. Moreover, all the sixteen signatories had filed affidavit that they had signed the requisition, Annexure 4. It has been stated by petitioner No. 1 in Annexure 5 while constituting a five man-committee that they disputed their signature over requisition on the day of handing over the requisition to him itself, but surprisingly before 28-5-2003 he did not take step with respect to verification and as such his action cannot be said to be in conformity with the provision contained in Sub-section (4) of Section 68 of Act, 1993.

16. In case of failure to convene special meeting within seven days from the date of receipt of requisition for convening special meeting by the Chairman the District Magistrate acquires right to convene special meeting u/s 68(4) of the Act, 1993. Obviously, in the instant case respondent No. 3, the District Magistrate, sought information on 29-5-2003 from the Chief Executive Officer of the Zila Parishad, respondent No. 5 and the respondent No. 5 intimated the respondent No. 3 that no such special meeting has been convened within seven days vide letter, Annexure 8. The respondent No. 3, in the circumstances, on 1-6-2003 convened special meeting to be held on 14-6-2003, Annexure 9. It is thus, evident that respondent No. 3 on failure of petitioner No. 1 convened special meeting as required under the law and as such he has discharged his legal obligation which cannot be said to be contrary to law.

17. Learned counsel for the petitioners, however, contended that in requisition allegations have been made only against petitioner No. 1, the Chairman, and not against the Vice-Chairman and also that allegations made are not sustainable against the petitioners as those allegations are with respect to function of the Chief Executive Officer and in support of his contention he drew my attention to Annexure 4. It is evident from Annexure 4 itself that subject of Annexure 4 has been mentioned "no confidence motion" against the Chairman and the Vice-Chairman. It has further been stated in Annexure 4 that no confidence motion is being brought against the Chairman and the Vice-Chairman because of their arbitrary action against the law, acting like a monarch and like an irresponsible persons, the details of which have been mentioned in the requisition. It has also been stated in the requisition that on 16-5-2003 and 17-5-2003 there was a general meeting of the Zila Parishad from which many members walked out as the Chairman behaved like a director and he threatened Sri Sanjay Sajjan Singh being aggrieved by his letter. The information to the aforesaid effect was given to the District Magistrate. In the last but one paragraph it has further been stated that because of his irresponsible, dictatorial and arbitrary action supported by the Vice-Chairman directly or indirectly requisition for convening special meeting expressing no confidence in them is being made. It is to be noticed that function of the Chief Executive Officer has been mentioned in Section 86 of the Act, 1993 which says that the Chief Executive Officer shall carry out the policies and directions of the Zila Parishad, control the officers and servants of the Zila Parishad subject to general superintendence and control of the Chairman, have custody of papers etc. It does not mention that the Chief Executive Officer has power to convene special meeting or take any decision with respect to policies of the Zila Parishad/development of Zila Parishad and if the Chief Executive Officer does not perform his work in accordance with law it is the Zila Parishad and the Chairman, who have to look after the same and take a decision with respect to function of the Chief Executive Officer. Section 67 of the Act, 1993 mentions powers and duties of the Chairman and it says that he has to convene, preside over and conduct meetings; exercise supervision and control over the Chief Executive Officer; exercise such other powers which may be given to him by resolution of the Zila Parishad or the Government by rule. In absence of Chairman, the Vice-Chairman shall perform all the works/duties of the Chairman. It is thus, evident that the Chairman and the Vice-Chairman are responsible for work of the Zila Parishad/development/policies/convening meeting etc. If it is not done then the allegation cannot be shifted to the Chief Executive Officer. Moreover, mere allegations have been made in the requisition which are not final. The allegations/ counter allegations are to be discussed in the special meeting. The Chairman and the Vice-Chairman will get an opportunity to explain the position and rebut the allegations made against them. Therefore, the Court is of the opinion that there is no substance in the submission of the learned counsel for the petitioners.

18. Learned counsel for the petitioners, respondent Nos. 7, 8 and 9 contended

that Section 68(4) of the Act, 1993 says that in case of failure to convene the meeting by the Chairman, the District Magistrate shall convene the meeting in the same manner, according to them, afresh requisition is required by 1/5th of the total number of the members of the Zila Parishad for convening special meeting. The submission has no force of law. The same manner cannot be interpreted to the effect that a fresh requisition is required. From perusal of Sub-section (4) of Section 68 of the Act, 1993 it is evident that no such intention has been expressed by the legislature. The same manner is to be explained that in case of failure to convene the meeting by the Chairman within seven days the District Magistrate shall convene the special meeting within fifteen days from the date of issue of notice. The law does not envisage a fresh requisition and if it is interpreted otherwise as contended by the learned counsel for the petitioners, it would be mockery of democracy.

19. Learned counsel for the petitioners lastly contended that Sub-section (5) Section 68 of the Act, 1993 be declared ultra vires on the ground that a Division Bench in the case of Smt. Shyama Devi v. State of Bihar and Ors., 2002(2) PLJR 765, has held that "no confidence motion" within two years from the date of election to the offices should not be brought against the Chairman and the Vice-Chairman. The relevant portion of the judgment is quoted herein below:

"Thus, all that the Court recommends now is that while prescribing for changes or amendments to legislation (Sections 18, 42 and 68 of the Act) and provide symmetry within the State for all the three categories, Mukhiyas, Pramukh and Up-Pramukh and Adhyaksha and Up-Adhyaksha, until the revision of the law is considered and provided for, local Government at the level of Panchayats is not frustrated and set to naught again with indiscriminate motion of no confidences. Now found local Government will then be short lived. This will be against the spirit of the Constitution of India which has proved for Panchayats (and Municipalities) as a going concern with continuity. It is easy to loose this new found democracy until the fabric is woven with experience. The Court directs that it would not be appropriate to bring in a motion of no confidence against the Mukhiyas, Pramukh and Up-Pramukh and Adhyaksha and Up-Adhyaksha if it is brought within two years of their being returned to their offices. Further, the Court also directs that after a motion of no confidence fails, then, one year from the date of such a motion of confidence being rejected, another motion of no confidence may not be considered. As mentioned earlier some of these preventive steps have been provided for, but not as a standardised measure of compatibility for all Panchayat level elected offices."

20. The aforesaid judgment was challenged before the Supreme Court in SLP (Civil) (CC 6459/02)72002. After hearing, the Apex Court held "in our view the observations made by the High Court in the impugned order are mere suggestions." The aforesaid judgment has been annexed as Annexure "A" to the counter-affidavit filed on behalf of respondent Nos. 11, 12, 14, 15, 16, 18, 19, 21 to 25, 27, 28, 30 and 31.

21. Furthermore, the Constitution of India does not provide with respect to confidence and no confidence rather under Article 243(G) the Legislature of the State has been authorised to legislate law, make regulation, endow power and fix responsibility with respect to Panchayats and accordingly the Legislature has enacted Sub-section (5) of Section 68 of the Act, 1993 providing immunity in the circumstances mentioned therein. Thus, on consideration as discussed above, the Court finds no merit in the submission.

22. Thus, on consideration as discussed above, the Court finds no merit in this writ petition. Accordingly, it is dismissed but without cost. The District Magistrate, respondent No. 3, is directed to convene the special meeting.