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**(2002) 07 PAT CK 0116**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 4514 of 2002**

Sanjay Singh Som

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 25-07-2002

**Acts Referred:**

**Citation :** (2002) 07 PAT CK 0116

**Final Decision :** Dismissed

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### **Judgement**

Aftab Alam, J.—The petitioner was the Pramukh of Daudnagar Panchayat Samiti. The total number of members in this Samiti is 40, out of which 21 are elected members. In a special meeting held on 25.3.2002 a majority of the elected members voted in favour of a motion of no confidence against the petitioner. The motion was thus passed and the petitioner was purported to be removed from the office of Pramukh in terms of Section 42(3) of the Bihar Panchayat Raj Act, 1993. He filed this writ petition on 5.4.2002 challenging the resolution adopted in the meeting of 25.3.2002, removing him from the office of Pramukh.

2. Mr. S.N.P. Sharma, learned Senior Counsel appearing in support of this writ petition submitted that the requisition to convene the special meeting was signed only by 12 members of the committee. The requisition was, therefore, insufficient and the action of the Sub-divisional Magistrate in fixing the date for the special meeting on the basis of that requisition was violative of Sub-section (3) of Section 44, according to which a special meeting may be called by no less than 1/3rd of the total number of members of the Samiti. Mr Sharma submitted that the 12 members signing the requisition clearly did not constitute 1/3rd of the total number (40) of members of Daudnagar Panchayat Samiti.

3. The submissions made by Mr. Sharma cannot be said to be without substance and this Court might have considered the submission favourably but for a development taking place during the pendency of this writ petition which so far as this Court is concerned disentitles the petitioner to any relief on equitable considerations.

4. As noted above, this writ petition was filed on 5.4.2002. It was taken up for admission on 15.4.2002 when notices were directed to be issued to the respondents but no interim order was passed on that date in the petitioner's favour. While this matter was pending before this Court a meeting of the Samiti was held on 6.5.2002 for electing a new Pramukh following the petitioner's removal in the special meeting of 25.3.2002. In that meeting the petitioner contested in the election and was defeated; respondent No. 11 who secured the majority votes was elected as Pramukh.

5. Mr. Sharma submitted that the petitioner was practically forced into taking part in the election and he took part in the election on 6.5.2002 under protest. In this regard he relied upon the statements made in paragraphs 10 and 11 of the supplementary affidavit and a petition filed by the petitioner before the District Magistrate, a copy of which is at Annexure-9.

6. It may be noted that the supplementary affidavit was itself filed on 19.7.2002 long after the petitioner had contested and lost the election. As regards the petition filed by him before the District Magistrate that was indeed on 3.5.2002 i.e. before the election was held on 6.5.2002. But in that petition there was no unequivocal protest against the election being held even while the earlier resolution removing him from the office was under challenge before this Court. In that petition after stating about the filing of this writ petition the petitioner made the following requests before the District Magistrate:

ATAH AAGRAH HAI KI UPARUKTKE AALOKMAIN PANCHAYATI RAJ BAIWASTHA KE ADHINIYAMO AWAM SAMBAIDHANIK PRABDHANO KE TAHATAGAR SAMBHA V HO TO AAGLA TITHINIRDHARIT KI JAI YA APNI UPASTHITHI MAI CHUNAO SAMPAN KARAI JAI. YA MANNIYE UCHH NAYAYALAY KE FAISHLE TAK ISHKO ASTHAGIT RAKHA JAI. IN SARE SUJHAO KE AALOK MAIN JO AAP UCHIT SAMJHE NAYAYOCHIT KADAM UTHANE KI KIRPA KARNA CHAHENGE.

7. The petitioner thus made the request for fixing another date for the election or for holding the election in presence of the District Magistrate or postponing the election till a decision by this Court.

8. Even if the election was held disregarding the petitioner's request there was no compulsion for him to take part in the election. Had the petitioner not participated in the election of 6.5.2002 or even if he had participated in the election putting it clearly on the record that his participation was under protest and without prejudice to his claim and subject to the result of his writ petition in the High Court, the matter might have been different. But the petitioner did not do any such thing. He participated in the election unconditionally, with his eyes open and took a chance of winning the election. Now having been defeated in that election he may not be allowed to question the earlier resolution removing him from the office of Pramukh.

9. Mr. Sharma further submitted that the subsequent development will not disentitle the petitioner to the relief claimed in this writ petition and in support of

his submission he relied upon a constitution bench decision of the Supreme Court in *The United Commercial Bank Ltd. Vs. Their Workmen*, That case was under the Industrial Disputes Act and on an entirely different set of facts and I see no application of that decision to this case.

10. In the facts and circumstances stated above, any interference by this Court in the petitioner's favour will give a very wrong message to the public. To a layman it would appear that taking advantage of some loop-hole in the law the petitioner was able to persuade the Court to reinstate him in the office of Pramgkh even though he lost the election in full public gaze in the meeting of 6.5.2002.

11. For the reasons, discussed above I am of the considered view that it would be a sound exercise of discretion for this Court to decline to intervene in this matter in favour of the petitioner.

12. This writ petition is dismissed but with no order as to costs.