
(2010) 02 PAT CK 0005
In the Patna High Court
Case No : CWJC No. 11058 of 2009

Shakuntala Devi and Others

APPELLANT

Vs

The State Election Commission and Others

RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Bihar Municipal Act, 2007 — Section 18(1), 377(1), 49

Citation : (2010) 02 PAT CK 0005

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The three writ Petitioners were the Ward Councilors of Sugauli Nagar Panchayat and pursuant to the orders of the State Election Commission passed in terms of Section 18(1)(n) on a complaint by Respondent No. 5, Lal Babu, having been removed from the Council, have filed this writ petition. Section 18(1)(n) of the Bihar Municipal Act, 2007 provides that if a Councilor is absent in three consecutive meetings without permission of the Councilors or abandon at a meeting then he is liable to be removed. Counter affidavits have been filed including on behalf of the State Election Commission. Respondent No. 5 has appeared. Having heard the parties at length this writ petition is being disposed of at this stage itself.

2. Mr. S.B.K. Mangalam who appears on behalf of the Petitioners, pressed short issues, though a number of issues have been raised in the writ petition. He refers to the supplementary show cause as was filed before the State Election Commission, which is Annexure-4 to the writ petition. It is not in dispute that this supplementary show cause was indeed filed. In the supplementary show cause, it was specifically averred that so far as meeting dated 28.11.2008 is concerned, they had no valid notice. If this fact be correct then the very foundation for an action u/s 18(1)(n) vanishes. In support of the said assertion in the supplementary show cause, grounds are clearly mentioned. In respect of

one, it is pointed out that the notice is shown to have been served on Izhar Alam, who is 11 years old nephew, in another case, the notice was served on Ajit Kumar, who is a nephew living separately. So far as Tab as urn Ara is concerned, there is specific denial that lady is an adult member of the family. The notice is thus invalidly served and, as such, there cannot be infraction and Section 18(1)(n) would not apply. With reference to the order of the State Election Commission, it is submitted that nowhere these issues have at all been noticed, much less discussed. All that is discussed is that notice was issued 72 hours prior to the date of meeting.

3. Firstly, I must notice that in terms of Section 377(1)(d), unlike other statutory provisions, a notice served on an adult male member of the family is a valid service of notice. If the Respondents state that notice was validly served then it was for them to establish that the three said persons were the adult male members of the family. Having not said anywhere that being the position and there being categorical denial even before the authority in this regards, it cannot be said that Section 377(1)(d) is complied with, as such, notices cannot be deemed to be validly served. Thus, if this be the finding of the Court, which it is, then Section 18(1)(n) has no application and cannot be invoked. The order, thus, cannot be sustained in law and has to be quashed as such.

4. Here, I may also notice one other contention. Section 49 of the Act provides for issuance of notice 72 hours before the date and time of meeting. Mr. Mangalam rightly submitted that the true import and meaning of this provision is that notice must be served at least 72 hours before the meeting is convened. Why this Court feel that Mr. Mangalam is right, can be easily illustrated. If mere issuance of notice was sufficient, then it really serves no purpose because a person attending a meeting is supposed to comply with the notice for meeting only when he is served a notice. The answer is No. In such a situation would mere issuance of notice be enough? Why 72 hours prior notice is necessary is that the Municipal Councilors are not entitled to remuneration unlike members of legislatures. They have to give up their jobs or their work for which they have to take time to arrange. If on the last moment when they have their urgent private work they are told to turn up for meeting they may not even be in the town. They are not obliged under any law for the time being to be in the town 24 hours, 7 days a week and 365 days a year. They have better things to do also. It is in this view of the matter that legislature has provided for a 72 hours notice. The State Election Authority has proceeded on a totally tangent, which is incorrect. Mere issuance of notice is not enough unless it is shown that it is duly served at least 72 hours prior to the meeting. 6. In view of the facts noted above, I have no option but to allow this writ petition. The decision of the State Election Commission cancelling the membership of the Petitioners is thus illegal and is quashed. The writ petition is allowed.