
(2016) 03 PAT CK 0031

In the Patna High Court

Case No : Letters Patent Appeal No. 1538 of 2015 in Civil Writ Jurisdiction Case No. 6871 of 2015

Sheikh Hassmuddin and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 03 PAT CK 0031

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Abdul Manan Khan and Harun Quareshi, Advocates, for the Appellant; Anshuman, SC-14, for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.—1. An order, dated 30.06.2013, passed by a learned single Judge in a proceeding under Article 226 of the Constitution of India, whereby he has dismissed the writ application registered as CWJC No. 6871 of 2015, is being assailed in the present appeal under Clause 10 of the Letters Patent of this High Court. The appellant Nos. 1 and 2, herein, who were the writ petitioners before learned single Judge, were elected to the posts of Up-pramukh/Pramukh of Panchayat Samiti, Ramnagar in the District of West Champaran (hereinafter referred to as "Panchayat Samiti"). Consequent upon motion of no confidence brought against them, having been passed by operation of Section 44(3) (i) of the Bihar Gram Panchayat Raj Act, 2006 (hereinafter referred to as the "Act of 2006"), they have been deemed to have vacated their offices. The appellants had, in the writ proceeding before learned single Judge, questioned the legality of the very requisition, presented by the members of the Panchayat Samiti, calling for a special meeting, to move no confidence motion. The plea of the appellants did not find favour with the learned single Judge and accordingly the writ application filed by the appellants came to be dismissed, by

the order under appeal.

2. The cardinal point which is required to be addressed to in the present case is as to whether before calling special meeting for moving no confidence against the appellants, there has been proper compliance of statutory requirements of Section 44(3) (i) of the Act or not. Before coming to the main issue, the facts of the case are essentially required to be taken note of which are as under:--

As it emerges from the materials on record over which there is no dispute, the Members of the Panchayat Samiti had earlier presented a requisition to the Block Development Officer-cum-Executive Officer of Panchayat Samiti (hereinafter referred to as the Executive Officer) on 10.07.2014, calling for special meeting in order to move no confidence motion against the appellants. The Executive Officer had sent the said requisition to the appellants on 11.07.2014 and since the Pramukh (Appellant No. 2), did not convene the meeting, he fixed 14.08.2014 as the date of special meeting, for moving no confidence motion. In the meeting held on 14.08.2014, the Panchayat Samiti passed no confidence motion against the appellants. The passing of the motion of no confidence against the appellants was thereafter, questioned by the appellants by filing an application under Article 226 of the Constitution of India, which had given rise to CWJC No. 14526 of 2014. The challenge was based mainly on three grounds. The main ground of challenge was that requisition was not presented to the Pramukh in the manner prescribed under Section 44(3) (i) of the Act. They also asserted that the charges for moving no confidence motion against them were vague and there was no discussion on the allegation. By an order, dated 10.02.2015, a learned single Judge of this Court had dismissed the writ application. The appellants thereafter, had preferred an appeal under Clause 10 of the Letters Patent of this Court against the said order, dated 10.02.2015, passed by the learned single Judge, which had given rise to LPA No. 484 of 2015. A Division Bench of this Court upheld the contention on behalf of the appellants that requisition for convening special meeting or introducing no confidence motion was not presented in the manner prescribed under the Act. The Division Bench, accordingly, by an order, dated 01.04.2015, set aside the judgment and order of learned single Judge and left it open for the requisitionists, to take fresh steps for convening meeting in this regard, in accordance with law.

3. The Members of the Panchayat Samiti are again said to have presented requisition for convening special meeting, a copy of which was attempted to be served upon the appellant No. 2, in his capacity as Pramukh of the Panchayat Samiti as required under Section 44(3) (i) of the Act. It is the case of the contesting respondents that the Pramukh was not found present in the office, right from the date when a Division Bench of this Court by an order, dated 01.04.2015 had set aside no confidence motion passed against him. A copy of the said requisition was sent to the Executive Officer, as per the mandate of Section 44(3) (i) of the Act.

4. On the other hand, it is the case of the appellants that they received certified

copy of the Division Bench order, dated 01.04.2015, only on 10.05.2015 and in the meanwhile, despite their repeated requests, the Executive Officer of the Panchayat Samiti did not allow them to join their respective posts. It is their further case that the appellant No. 2 joined the office of Pramukh on 16.04.2015 and that none of the requisitionists had ever visited the office of Pramukh for presenting the requisition for no confidence motion to the Pramukh as required under Section 44(3) (i) of the Act.

5. It has come on record, that in the absence of the Pramukh (Appellant No. 2), the requisition was filed in her office, a copy of which was duly received by an employee, in the office of the Pramukh.

6. As the Pramukh did not fix a date of special meeting on the request of the Members of the Panchayat Samiti, the Executive Officer-cum-Block Development Officer notified 13.05.2015 as the date of special meeting, through a communication, dated 02.05.2015.

7. As has been noted above, the requisition of Members of the Panchayat Samiti, for convening a special meeting, a copy of which was forwarded to the Executive Officer, was sent by the Executive Officer to the Pramukh. The appellant No. 2, i.e., the Pramukh, again, despite the fact that she was in receipt of the requisition on 16.04.2015, when she is said to have joined the office after the Division Bench decision of this Court had setting aside the passing of no confidence motion against the appellants, had not convened meeting.

8. Before the Executive Officer issued the said letter, dated 02.05.2015, convening special meeting on 13.05.2015, the appellants approached this Court by filing an application under Article 226 of the Constitution of India, on 30.04.2015, seeking quashing of the requisition, dated 13.05.2015 itself, sent by the Executive Officer, on the request of the Members of the Panchayat Samiti. They asserted that earlier also the requisition of the Panchayat Samiti was presented directly to the Executive Officer which was acted upon by the Executive Officer by convening a special meeting in which no confidence motion was illegally passed against the appellants; which was set aside by a Division Bench of this Court, vide order, dated 01.04.2015. With a case that oblivious of the reasons assigned by the Division Bench of this Court for holding no confidence motion passed against the appellants to be illegal, the requisitionists/ Members of the Panchayat Samiti again directly presented their requisition to the Block Development Officer without presenting it to the appellant No. 2 (Pramukh) in writing.

9. On the date fixed for special meeting vide notice, dated 02.05.2015, i.e., 13.05.2015; the motion of no confidence was again passed against the appellants No. 1 and 2 unseating them from the post of Up-pramukh/Pramukh respectively. It would be suitable to mention here that during the pendency of the writ application, i.e., CWJC No. 6871 of 2015, fresh election for the post of Pramukh and Up-pramukh was held. Smt. Jonia Devi and Smt. Nirmala Devi

came to be elected as Pramukh/Up-pramukh of the concerned Panchayat Samiti. By way of seeking amendment of relief, the appellants questioned their election through I.A. No. 4915 of 2015 filed in CWJC No. 6871 of 2015.

10. The appellants questioned the legality of the process adopted by the Members of the Panchayat Samiti requisitioning a special meeting mainly on the ground that since it was not presented to the Pramukh as required under Section 44(3) (i) of the Act, the entire process stood vitiated which included convening of the special meeting, on 13.05.2015, passing of no confidence motion in the said meeting and subsequent election of Smit Jonia Devi and Smt. Nirmala Devi as Pramukh/Up-pramukh respectively. The other plea which was taken on behalf of the appellants in the writ proceeding was to the effect that the Executive Officer interfered with the proceedings of the special meeting held on 13.05.2015.

11. Learned single Judge by order, dated 30.06.2015, under appeal, negatived both the pleas and accordingly dismissed the writ application.

12. In this background, the present appeal under Clause 10 of the Letters Patent of the High Court has been preferred by the appellants against the said judgment and order of learned single Judge.

13. We have heard Mr. Abdul Mannan Khan and Mr. Harun Quareshi, learned Counsel, appearing on behalf of the appellants, and Mr. Ravindra Kumar and Dr. Anshuman, learned Counsel, appearing on behalf of the contesting respondents.

14. Before we come to the grounds taken on behalf of the appellants to assail the judgment and order under appeal, we consider it proper to reproduce Section 44(3) (i) of the Act, which reads thus:--

"44. Resignation and Removal of Pramukh and Up-Pramukh- (1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(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 the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion."

15. It can be easily culled out from careful reading of the aforesaid provision as embodied under Section 44(3)(i) of the Act that first part of it prescribes deemed vacation of the office of Pramukh/Up-pramukh in the event a resolution expressing want of confidence is passed by a majority of the total number of elected members of the Panchayat Samiti, at a meeting specially convened for the said purpose. The second part of the said provision deals with the manner in which requisition is to be presented by at least one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti and the manner in which the special meeting is required to be convened by the Pramukh or the Executive Officer. Following are the steps and requirements which are prescribed in the second part of Section 44(3) (i) of the Act which need be taken and fulfilled:--

"(i) The requisition has to 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.

(ii) A copy of such requisition is to be sent to the Executive Officer of the Panchayat Samiti.

(iii) The Executive Officer is required to immediately bring the requisition to the notice of the Pramukh.

(iv) The Pramukh is to convene such meeting on a date falling within fifteen days of such representation.

(v) In the event of failure on the part of the Pramukh to call the special meeting, the Up-pramukh or one third of the total number of directly elected members may fix date for such meeting and require the Executive Officer to give notice to the members and take such action as may be necessary to convene the meeting.

(vi) It is obligatory on the Executive Officer to issue such notice in time and convene the meeting.

(vii) No such meeting can be postponed once the notice for it has been issued."

16. Having noticed the statutory requirement as enshrined under Section 44(3) (i) of the Act, we find that the sole ground on which the appellants have questioned convening of special meeting and the resolution expressing want of confidence in them passed by majority of members of Panchayat Samiti is that whereas, presentation of requisition to the Pramukh for convening special meeting for the said purpose is mandatory, in the present case the requisition was directly presented to the Executive Officer, thus, vitiating the entire process.

17. Mr. Abdul Mannan Khan, learned Counsel, appearing on behalf of the

appellants, has vehemently argued that similar was the situation when earlier resolution expressing want of confidence in the appellants was passed by a majority of the elected members of the Panchayat Samiti and that was the ground why a Division Bench of this Court by the judgment and order, dated 01.04.2015, had declared passing of the said resolution, contrary to the provisions of Section 44(3) (i) of the Act. He submits that the requisitionists and Executive Officer, this time also committed the same illegality. He has argued, accordingly, that the resolution passed in the special meeting held on 13.05.2015 expressing want of confidence against the appellants and, thus, unseating them from the post of Pramukh and Up-pramukh suffers from the same illegality and ought to have been interfered with by learned single Judge.

18. We notice from the judgment under appeal that learned single Judge has considered and noticed the order of the Division Bench, dated 01.04.2015, wherein the Division Bench dealt with the facts and circumstances of that case and arrived at a conclusion that service of presentation of notice to the Pramukh was a mandatory requirement under Section 44(3) (i) of the Act, which was not adhered to, rendering all consequential acts to be illegal.

19. Considering the rival pleadings and materials on record, learned single Judge arrived at a definite conclusion that unquestionably, the requisition was presented on 13.04.2015 in the office of Pramukh as the Pramukh (Appellant No. 1) had remained continuously absent right from the date of Division Bench judgment and order, dated 01.04.2015, of this Court. Distinguishing the situation which had existed in previous no confidence motion passed against the appellants, referring to the Division Bench decision of this Court, dated 01.04.2015, learned single Judge recorded that since the appellant No. 2 (Pramukh) remained absent from his office for a period of fortnight, in the light of liberty granted by Division Bench of this Court, the requisitionists had no other choice but to file the requisition in the office of the Pramukh which was done on 13.04.2015 and which was received by the Peon in the office of the Pramukh. Conforming to the requirement of Section 44(3) (i) of the Act, the requisitionists endorsed a copy of the said requisition to the Executive Officer also, who in turn brought it to the notice of the Pramukh through letter, dated 13.04.2015. We find that the Pramukh refused to take notice of the said requisition as is apparent from the Peon's report which was brought on record by way of Annexure-H to the counter affidavit filed on behalf of respondent Nos. 6 to 18 in CWJC No. 6871 of 2015. When second attempt of service of notice was made, on 16.04.2015, she again raised an objection that requisition/notice was not in accordance with the order passed in LPA No. 484 of 2015. Learned single Judge, accordingly recorded that this time there was enough evidence to establish that the requisition was attempted to be served on Pramukh and as he was not personally available, it was served in the office of the Pramukh with a copy of the Executive Officer. Learned single Judge, with these reasonings dismissed the writ application.

20. Upon perusal of the materials on record, we have noticed that the appellants, in order to defeat the very purpose of statutory prescriptions embodied under Section 44(3) (i) of the Act, firstly attempted to avoid service of notice/ requisition for the sole purpose of raising a technical plea that without presentation of requisition to the Pramukh, no resolution expressing want of no confidence motion could be passed.

21. We find in the present case that there are materials to indicate that attempts were taken to present the requisition to the Pramukh and when he was not found present personally in her office, a copy of it was presented in his office. Even if, it is accepted that the appellants got a certified copy of the order, dated 01.04.2015 on 10.04.2015, there is no explanation as to why they did not resume their office immediately thereafter. In any event, plea on their behalf that requisitionists did not meet the Pramukh to present the requisition to her and, therefore, the entire exercise of passing of resolution against the appellants is illegal, cannot be accepted. There are evidence on record that at least on 13.04.2015, the requisition was presented in the office of the Pramukh. It was a legal duty cast upon the Pramukh to convene a meeting within fifteen days of such requisition. When he joined on 16.04.2015, he could have convened a meeting within the statutory time prescribed under the Act as has been noted above which could have shown his bona fide. He failed to do so.

22. We do not find any illegality in the action of the Executive Officer by issuing notice on 02.05.2015, convening the meeting in accordance with the provisions contained in Section 44(3) (i) of the Act. We, therefore, find no substance in the submissions advanced on behalf of the appellants in the present case.

23. We do not find any error in the findings recorded by the learned single Judge, nor any legal infirmity in the judgment and order under appeal.

24. This appeal stands, accordingly, dismissed.

25. There shall, however, be no order as to costs.

I.A. Ansari, Actg. C.J.

I agree.