
(2015) 04 PAT CK 0041

In the Patna High Court

Case No : LPA No. 484 of 2015 in CWJC No. 14526 of 2014

Sheikh Hassmuddin and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Citation : (2015) 3 PLJR 203

Hon'ble Judges : L. Narasimha Reddy, C.J.;Vikash Jain, J

Bench : Division Bench

Advocate : Manan Khan and Irshad, for the Appellant; R.B.N. Singh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

L. Narasimha Reddy, C.J.

1. This appeal is preferred against the order dated 10.2.2015 passed by the learned Single Judge in CWJC No. 14526 of 2014. The petitioners are the appellants. The facts, in brief, are as under:--

The appellants were elected as Pramukh and Up-Pramukh of the Ram Nagar Panchayat Samiti in the District of West Champaran, in the year 2011. One-third members of the Samiti intended to move no confidence motion against the appellants. They are said to have addressed letter dated 10.7.2014 to the 2nd appellant as well as the Executive Officer-cum-Block Development Officer, Panchayat Samiti, Ramnagar-the 5th respondent herein. Alleging that no date was fixed for no confidence motion, they submitted a representation to the 5th respondent. Thereupon, the 5th respondent proposed to convene a meeting for taking up the motion of no confidence on 5.8.2014. Assailing the notice, the appellants filed CWJC No. 13829 of 2014. The same was dismissed on 13.8.2014. Thereafter, motion of no confidence was carried out on 14.8.2014. Challenging the result thereof, the present writ petition, was filed. The learned Single Judge dismissed the same. Hence, this appeal.

2. Sri Md. Manan Khan, learned counsel for the appellants submits that nowhere in the entire proceedings, the requisitionists or the officers of the State have established that the notice for no confidence motion was served on the 2nd appellant, the Pramukh as required under Section 44(3) of the Bihar Panchayat Raj Act, 2006 (for short, "the Act") and still the no confidence motion was carried out. He submits that procedure stipulated for a meeting, to express want of confidence motion is to be followed strictly and any lapse in that behalf must result in annulment of the proceedings.

3. Mr. Anil Kumar Jha, learned senior counsel for the private respondents, on the other hand, submits that the prescribed procedure was followed and even the appellants have admitted in the correspondence, particularly in Annexure-5 in the writ petition the factum of receipt of notice.

4. The entire controversy turns around the question as to whether the motion of no confidence was moved against the appellants, in accordance with the prescribed procedure.

5. Section 44 of the Act reads 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 Sub-Divisional 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 Sub-Divisional 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 Sub-Divisional 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 the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion. (remaining part of the Section omitted as not necessary for this case.)

6. Sub-section (3) of Section 44 of the Act becomes relevant in this context. A perusal of the same reveals that as a first step in the process of initiating the motion of no confidence, the notice/requisition must to be served on the Pramukh; though it is against him that the motion is proposed. In addition to that, the requisitionists must mark a copy to the Executive Officer. On receipt of the notice, the Pramukh is placed under obligation to convene the meeting within a period of 15 days. If he fails to do that, one-third members of the Samiti or the Up-Pramukh, as the case may be, can require the Executive Officer to convene a meeting within the stipulated time.

7. In the instant case, the consistent case of the appellants has been that the notice of no confidence motion was not served upon the second appellant at all. That plea could have been met with by the respondents, only by stating that the manner in which they have served it. The entire record is silent on this aspect. The learned Single Judge took note of Annexure-5 addressed by the 2nd appellant and has drawn inference to the effect that the appellants have the notice of the no confidence motion.

8. We have carefully perused Annexure-5. The 2nd appellant addressed that to the 5th respondent stating that she did not receive any notice proposing to move a motion of no confidence against her either directly or through post and for the first time she received a letter addressed by the 5th respondent through post. From this it is difficult, if not impossible, to infer that the 2nd appellant has accepted that she received a copy of notice of no confidence motion. For all practical purposes, the knowledge of the developments was treated as a service of notice, contemplated under proviso to sub-section (3) of Section 44 of the Act.

9. It is fairly well settled that an elected member is entitled to remain in office till the completion of the term. Any mechanism that has an effect curtailing the term must be undertaken, strictly in accordance with the prescribed procedure. It is for a definite purpose that the legislature wanted the requisitionists, first to serve a copy of the notice of the want of confidence on the Pramukh, notwithstanding the fact that he will be the person to face the heat of that. The reason is that in a given case, the Pramukh may take note of the contents of the notice and initiate action, or steps to address the grievance of the requisitionists. That may lead to giving up of the further steps. Once the important step of service of notice on the Pramukh is not taken, the entire proceedings get vitiated.

10. We, therefore, allow the appeal and set aside the order dated 10.2.2015 passed by the learned Single Judge in CWJC No. 14526 of 2014. As a result, the writ petition is allowed and the motion moved on 14.8.2014 against the appellants in pursuance of the notice dated 10.7.2014 is set aside and the appellants shall hold the office. The election of Pramukh and Up-Pramukh in

place of the appellants, if any, shall stand set aside. It is, however, left open to the private respondents or for other members to initiate steps in accordance with law. Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.