
(2009) 02 PAT CK 0105
In the Patna High Court

Smt. Kiran Sinha		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 46(4)

Citation : (2009) 4 PLJR 225

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Heard learned Counsel for the parties.

2. The petitioner has come to this Court for quashing the notice dated 11.12.2008 as also the requisition on the basis of which the said notice has been issued for considering no confidence motion against him as the Pramukh of the Panchayat Samiti.

3. The first ground raised by learned Counsel for the petitioner is that the notice is contrary to Section 46 (4) of the Bihar Panchayat Raj Act, 2006, since the notice dated 11.12.2008 had fixed the date for convening the special meeting on 18.12.2008 and thus no clear seven days notice has-been given. The second ground raised by learned Counsel for the petitioner is that the reasons/charges mentioned in the requisition and the notice are vague and non-specific and thus the same is contrary to Section 44 (3) (v) of the said Act.

4. So far as the second ground is concerned this Court, on a consideration of the various reasons/charges mentioned in the notice and requisition, is not in agreement with the submission of learned Counsel for the petitioner.

5. Considering the fact that these reasons/charges are with respect to the discussion which is to take place in the special meeting for considering the no confidence, they cannot be expected to have the same degree of specificity as

required in respect of the charges, etc. either in a departmental proceeding or in a criminal matter. The members of the Panchayat Samiti are not required to prove the charges against the Pramukh either beyond reasonable doubt or on a preponderance of probabilities. The charges/ reasons are only there for the purpose of discussion by the members of the Panchayat Samiti and to enable the Pramukh or Up Pramukh to explain his stand with regard to them before the members during the course of discussion. On considering the reasons/charges enumerated in the notice it is evident that a discussion with respect to them is reasonably possible in such a meeting and it is possible for the Pramukh to show that the said reasons charges are not justified. The statute does not use the word charges exclusively, rather the reference is to "reasons/charges" and thus the intention is clearly not to refer to charges in the sense of allegations required to be proved, but more in the sense of reasons in support of the resolution. The only requirement of Section 44 (3) (v) of the Act is that the reasons/ charges in the said sense should be clearly mentioned in the notice.

6. Applying the said Yard-stick, this Court does not find the reasons/charges, contained in the notice/requisition, to be not clearly mentioned. The, said submission of learned Counsel for the petitioner is, accordingly, rejected.

7. So far as non-compliance of Section 46 (4) of the Act is concerned, the same is writ large in the notice itself that no clear seven days notice has been provided as per the requirement of the Act.

8. The writ application is, accordingly, allowed and the notice dated 11.12.2008 is quashed.

9. It is pointed out that with respect to the notice dated 11.12.2008, the petitioner had herself wrongly fixed the date on 11.12.2008 for convening the special meeting on 18.12.2008. Therefore, it would now be open to the Up-Pramukh or 1/3rd of the directly elected members of the Panchayat Samiti to fix a fresh date of the meeting complying with the requirements of the Act and direct the Executive Officer to issue notice accordingly.