
(2008) 08 PAT CK 0153
In the Patna High Court
Case No : CWJC No. 9004 of 2008

Sweety Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 66, 70(4)(ii), 72(1)

Citation : (2009) 2 PLJR 342

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Bindhyachal Singh, Umesh Kumar and Prashant Sinha, for the Appellant; Binod Kumar for the State, M/s Ajay Kumar Singh and Diwakar Sinha for the Private Respondents Nos. 5 to 21, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Kr. Datta, J.—I.A. No. 4012 of 2008 has been filed for addition of certain prayers and reliefs. It is submitted that the same has been necessitated because during the pendency of the writ application, the meeting of the Zila Parishad was convened on 10.7.2008 in which the resolution of No Confidence Motion was passed against the petitioner which is proposed to be challenged and further consequential reliefs have been prayed. I.A No. 4539 of 2008 has been filed for addition of further prayers/reliefs in view of the meeting held on 31.7.2008 in which one Sri Faiyaz Alam, respondent No. 11 has been elected as Chairman of the Zila Parishad and for further consequential reliefs.

2. On a consideration of the facts and circumstances of the case and considering that the interlocutory applications have been necessitated on account of subsequent developments, the prayer for amendments made in both the interlocutory applications are allowed.

3. I.A. Nos. 4012 of 2008 and 4539 of 2008 are accordingly disposed of.

4. Heard learned counsel for the petitioner, learned counsel for the respondent

Nos. 6, 8 to 17 and 19 to 21 and learned counsel for the State.

5. In the present writ application, read with the subsequent prayer added on the basis of the aforesaid interlocutory applications, the petitioner seeks quashing of the proposal for no confidence brought against her on 18.6.2008 and the subsequent removal in the special meeting convened on 10.7.2008 as the Chairman of Zila Parishad, Kishanganj and also for quashing of the subsequent election of respondent No. 11 as the Adhyaksha of the Zila Parishad in the meeting dated 21.7.2008.

6. The facts relevant to the decision of the present matter are that the petitioner alongwith the private respondents was elected as member of the Zila Parishad and thereafter on 17.6.2006, the petitioner was elected by the elected members of the Zila Parishad as the Adhyaksha. On 18.6.2008 a requisition was made by which the petitioner was requested for holding a special meeting of the Zila Parishad for passing a no confidence motion against the Adhyaksha. The petitioner did not convene a meeting pursuant to the said requisition and accordingly the District Magistrate by his memo dated 27.6.2008 fixed the date of the special meeting on 10.7.2008. On the said date all the 17 other members except the petitioner voted in favour of the No Confidence Motion and the petitioner was accordingly removed from her office of Adhyaksha, Zila Parishad. Subsequently, on 21.7.2008 respondent No. 11 has been elected on the said post.

7. Learned counsel for the petitioner in support of the application has pressed only two points. It is firstly submitted that the reasons given in the requisition are vague and on the basis of the same, it was not possible for the petitioner to reply to the said allegations and accordingly the resolution passed in the meeting on the basis of such vague allegation must be held to be contrary to law and fit to be set aside. In this regard, learned counsel has referred to the various reasons/allegations contained in requisition dated 18.6.2008.

8. The second ground of challenge by learned counsel for the petitioner is that the requisition as well as the meeting in which the No Confidence Motion was passed have taken place within the first two year period of tenure of the Adhyaksha and for this reason it is in violation of the provision of Section 70(4) (ii) of the Bihar Panchayat Raj Act, 2006 and therefore non est in the eyes of law. It is stated that the tenure of the Adhyaksha has to be counted from the date appointed for the first meeting of the Zila Parishad, that is, 10.7.2006, in terms of Section 66 of the Act since the duration of Zila Parishad itself is for a term of five years from the date appointed for its first meeting. It is argued that if any other interpretation given to the provisions of Section 70(4)(ii) of the Act then the provisions of Section 66 shall become nugatory and the term of the Adhyaksha shall start from a period from before which the term of Zila Parishad itself comes into being in terms of Section 66(i) of the Act.

9. Learned counsel appearing for the private respondents on the other hand points out that the statement that the charges are not specific is not correct. It is

submitted by learned counsel that on perusal of the reasons/charges mentioned in the requisition at the very outset, it is evident that charge Nos. 5, 2 and 3 are of specific nature and it is not open to the petitioner to state that she could not be in a position to answer the said charges in the form it was made. It is pointed out that charge Nos. 2 and 3 related to the allegation that the petitioner has made excess allocation to her own constituency in the Zila Parishad with respect to the Employment Guarantee Scheme and National Rural Employment Guarantee Scheme and even if specific figures are not mentioned, it would be very easy for the petitioner to show on the basis of facts and figures available with her that she has not made any excess allocation to her own constituency vis-a-vis the others. Similarly charge No. 5 relates to misuse of bodyguard by the petitioner in respect of which Kishanganj P.S. Case Nos. 127/2008 and 132/2008 have been referred which in no circumstance can be said to be vague allegations.

10. With respect to the second submission of learned counsel for the petitioner, it is argued by learned counsel appearing for the private respondents as well as learned counsel for the State that Section 70(4)(ii) clearly states that during the first two years period of the tenure No Confidence Motion shall not be made against the Adhyaksha/Upadhyaksha. It is, therefore, contended that the provisions of the statute are very clear that the tenure of the Chairman of the Zila Parishad is to be taken into consideration for counting the period of two years within which the No Confidence Motion cannot be brought against him/her. It is pointed out by learned counsel for the respondents that the petitioner was elected as Adhyaksha on 17.6.2006 and on that very date assumed office as the Adhyaksha and it is she who had called for a meeting of the Zila Parishad on 10.7.2006 and had also presided over the said meeting. It is, thus, submitted that the petitioner could not have performed all these acts unless she had already assumed the office of the Chairman of the Zila Parishad and started exercising its power. In the said circumstances, it is argued that the petitioner had become an Adhyaksha and had rightly started exercising power from 17.6.2006 itself and thus the requisition made on 18.6.2008 would be beyond the period of two years as also the special meeting which had been held on 10.7.2008. It is further urged by learned counsel for the respondents that the provisions of Section 66 relates to the duration of the Zila Parishad which is quite distinct from the provision of Section 70(4)(ii) of the Act which relates to the No Confidence Motion being brought within a period of two years of the tenure of the Adhyaksha. Hence, it is submitted that there is no question of any conflict between the two provisions and therefore of any harmonious construction to avoid any provision becoming otiose.

11. On a consideration of the rival submissions of learned counsel for the petitioner and of the respondents, this Court does not find any force in the submission of learned counsel for the petitioner. So far as the contention regarding the reasons/charges in the notice is concerned, this Court is in agreement with learned counsel for the respondents that at least charges/reasons Nos. 2, 3 and 5 are not at all vague in nature and therefore neither the

petitioner nor any member of the Zila Parishad could have taken that stand that they are not in a position to answer them without anything more being supplied. The proceedings of a No Confidence Motion being merely discussions by a legislative body and not in the nature of disciplinary proceedings for removal of an employee in which charges have to be proved before any action can be taken, this Court does not find any force in the contention of learned counsel for the petitioner that on the basis of the charges/ reasons given in the notice, it was not possible for the petitioner to effectively participate in the said proceedings and refute the same.

12. With respect to the contention regarding the requisition as also the meeting for passing the resolution of no confidence having been held within a period of two years of the tenure of the petitioner, this Court is also not in agreement with learned counsel for the petitioner. It is evident from the provisions of the Act and the Rules that after the Zila Parishad is constituted on the election of its directly elected members a meeting is to be convened by the District Magistrate over which he presides and in the said meeting the members initially take oath as members and thereafter in the same meeting the election of the Adhyaksha and Upadhyaksha takes place and the results are declared by the District Magistrate. Section 72(1) of the Act provides that the first meeting of the newly constituted Zila Parishad shall be held on the date, time and place fixed by the District Magistrate who will also preside over the same. It is evident from the Bihar Panchayat Election Rules, 2006 also that the District Magistrate presides only over the meeting after the constitution of the Zila Parishad so as to conduct the proceedings for holding the elections to the posts of Adhyaksha and Upadhyaksha. From Annexure-2 also it is evident that the subsequent meeting held on 10.7.2006 was called by the petitioner who also presided over the said meeting which cannot therefore be considered the first meeting of the Zila Parishad. Be that as it may, according to me the question as to which is the first meeting of the Zila Parishad as raised by learned counsel for the petitioner does not directly arise for consideration in the present matter, hence no final view is expressed regarding the same. That the duration of the Zila Parishad has no relevance in this regard, is also borne out by the fact that the Adhyaksha/ Upadhyaksha are elected not only after the election of the members of the Zila Parishad but may subsequently also be elected upon the death of the Adhyaksha/ Upadhyaksha or their removal by no confidence motion and in all such eventuality the benefit of the said provision of No Confidence Motion not to be moved within two years of their tenure shall accrue to such subsequently elected Adhyaksha/Upadhyaksha also. Thus in the light of the aforesaid discussions, this Court does not find any merit in the writ application and it is accordingly dismissed.