

Gajendra Narayan Singh Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-10-2004

Judge : R.S. Garg, J.

Acts : Bihar Panchayat Raj Act, 1993 - Sections 44(3)

Appeal No. : C.W.J.C. No. 10633 of 2003

Appellant : Gajendra Narayan Singh

Respondent : The State of Bihar and ors.

Disposition : Application allowed

Prior history : R.S. Garg, J. 1. Heard learned counsel for the parties. 2. The petitioner who was holding the office of Pramukh of Supaul Panchayat Samiti is before this Court with the submission that contrary to provisions contained in Sub-section (3) of Section 44 of Bihar Panchayat Raj Act, 1993 instead of serving a notice of no confidence upon the Pramukh it was produced before the Sub-Divisional Officer, who forwarded the same to the Block Development Officer and the Block Development Officer in his turn

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the parties.

2. The petitioner who was holding the office of Pramukh of Supaul Panchayat Samiti is before this Court with the submission that contrary to provisions contained in Sub-section (3) of Section 44 of Bihar Panchayat Raj Act, 1993 instead of serving a notice of no confidence upon the Pramukh it was produced before the Sub-Divisional Officer, who forwarded the same to the Block Development Officer and the Block Development Officer in his turn opened the file and thereafter the same was brought before the Pramukh. The petitioner says that if the notice is not served upon the Pramukh in accordance with law that is Sub-section (3) of Section 44 no meeting can be conducted to consider the said motion of no confidence. In support of his submission the petitioner has filed the copy of the motion of no confidence to show and say that the notice in fact was sent to the Sub-Divisional Officer. The respondent No. 6 in his counter affidavit and the respondents No. 7 to 25, 28, 30 to 43, 48, 63, 64, 67 and 68 in their separate counter affidavit have submitted that the notice of no confidence was sent to the Pramukh. He refused to receive the same therefore, the notice was submitted before the Sub-Divisional Officer to send the same to the Block Development Officer and the Block Development Officer after opening the file sent the said notice to the Pramukh.

3. On the last date learned counsel for the petitioner submitted that the notice in original did not bear the words, 'Pramukh, Panchayat Samiti, Supaul' but in the documents filed by the respondent No. 6 and other respondents such interpolations have been made to show that in fact the notice of no confidence was sent to the Pramukh of the Panchayat Samiti. I had called for the original records. The records are before me. After going through the notice which was sent to the Sub-Divisional Officer learned counsel for the respondent No. 7 and others started submitting that in fact the original notice was given to the petitioner much before it was sent to the Sub-Divisional Officer and as he refused to give the receipt etc. The notice was given to the Sub-Divisional Officer so that the matter is proceeded further. When this Court required him to show any covering letter or document he submitted that there was none. When he was confronted with the proceedings dated 15.9.2003 learned counsel for the respondent No. 7 and others started submitting that after this notice was given to the Sub-Divisional Officer another notice was given to the Pramukh. He informed the Court that identical notices

were prepared in duplicate one was sent to the Sub-Divisional Officer and the other after deletion of the words 'Sub-Divisional Officer' and addition of the words 'Pramukh, Panchayat Samiti' was sent to the petitioner. When this Court asked the learned counsel he submitted that both the notices were prepared in original. Page No. 22 of the affidavit of the respondents No. 7 and others is the photocopy said to be, of the notice sent to the Pramukh, Panchayat Samiti. The original records contain the letter dated 1.9.2003 sent to the Sub-Divisional Officer, Supaul. Page 22 annexed to the counter affidavit of respondents No. 7 and others in fact is a true photocopy and page 13 of the show cause/counter of the respondent No. 6 in fact are true photocopy of the original. It would clearly appear that the letter was prepared for Sub-Divisional Officer, Supaul and thereafter certain deletions were made and the document contained at page 22 and page 13 was later on prepared. If two documents are prepared on the same day and are signed and counter signed by certain persons even on the same day, they would not be identical in every detail. It is to be seen that barring the dates mentioned as 1.9.2003 and 2.9.2003 every detail is identical and photocopy.

4. It will also have to be seen that there is nothing on the record to show or suggest that the notice was ever served upon the present petitioner before 1.9.2003 or on any date subsequent to that. It appears that the notice was sent to the Sub- Divisional Officer. He was asked to hold the meeting of no confidence and when the matter came to this Court certain interpolations were made in the photocopies and the same had been produced in the Court to give a different colour to the said document and to raise a plea that in fact the notice was sent to the petitioner. Even if I assume that the document at page 22 or at page 13 was in fact sent to the petitioner then too these documents would not help the respondents because these documents bear the date as 2.9.2003 much before that date i.e. on 1.9.2003 the notice was already sent to the Sub-Divisional Officer and on basis of said notice on 15.9.2003 the Block Development Officer started the proceedings.

5. Sub-section(3) of Section 44 of the Bihar Panchayat Raj Act, 1993 provides that the Pramukh may whenever he thinks fit, shall upon the written request of not less than one-third of the total number of members and on a date within fifteen days

from the receipt of such request, call a special meeting. The consideration of the no confidence motion would always be in a special meeting. A meeting is to be convened and called by the Pramukh on a written request made to him by not less than one- third of the total number of the members. If the Pramukh fails to call a special meeting the Up-pramukh or one-third of the total number of members may call the special meeting for a date not more than 15 days after presentation of such request and require the Executive Officer to give the notice. In the present case as no notice was ever given to the Pramukh to hold or convene a special meeting the question of failure on the part of the Pramukh would not arise. In a case where somebody sought to be uprooted then the law requires every formality to be observed in a sacrosanct manner. True it is that the democracy has lost its shape but that does not mean that anybody can concoct, create or manufacture any document and may come to this Court saying that in accordance with law the process was taken and the person so uprooted was uprooted in accordance with law.

6. The proceedings dated 15.9.2003 recorded by the Block Development Officer even do not say that prior to 15.9.2003 any notice was ever served upon the present petitioner, no covering letter was ever sent to the Sub-Divisional Officer nor a complaint was ever made to him that the notice was served upon the petitioner who was not ready and willing to give the acknowledgement of the same. If the notice was served on the Sub-Divisional Officer on 1.9.2003 who in his turn referred the matter to the Block Development Officer and the Block Development Officer started proceeding on 15.9.2003 then there is no scope to hold that the petitioner was ever served with the notice. The respondents in fact have created and concocted forged documents to mislead this Court.

7. As no notice was served upon the petitioner the respondent Up-Pramukh or any one else could not convene the meeting. If the meeting was illegal and was summoned and convened without authority or jurisdiction then any resolutions passed in the said meeting would also be illegal and without jurisdiction. The motion of no confidence carried in the said meeting for the reasons aforesaid deserves to and is accordingly quashed.

8. Let original records be kept in a sealed cover with these records.

9. Issue notice to Nand Kumar Choudhary, respondent No. 6 and Surya Narayan Sudhanshu, respondent No. 36 to show cause why they be not dealt with under the provisions of the Contempt of Courts Act for filing forged and concocted documents in the Court and they be also not directed to be prosecuted for swearing false affidavits.

10. The application for amendment was earlier allowed but it appears that the counsel for the petitioner could not find time to incorporate the amendment in the body of the writ application. This is required to be done today itself. Let it be done before the Joint Registrar (Judicial).

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