

Smt. Phoolmanti Devi and ors. Vs. State of Bihar and ors.

Smt. Phoolmanti Devi and ors. Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/135172

Court : Patna

Decided On : Sep-01-2004

Judge : R.S. Garg, J.

Acts : Bihar Panchayat Raj Act, 1947 - Sections 44(4)

Appeal No. : CWJC Nos. 8037 and 10636 of 2003

Appellant : Smt. Phoolmanti Devi and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Rajendra Prasad, Sr. Adv., Praveen Kumar and Rajeshwar Prasad, G.P. VI

Advocate for Pet/Ap. : Ram Janam Ojha and Rajendra Prasad Singh

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the parties.

2. Petitioner Smt. Phoolmanti Devi was elected as Pramukh of Noorsarai Panchayat Samiti. It appears that certain members of the Panchayat Samiti were aggrieved by her conduct, therefore, they submitted a letter to convene a meeting on 5.6.2003 making certain allegations against the present petitioner and

expressing their no confidence. The meeting was requisitioned but unfortunately was adjourned. Thereafter, on 18.7.2003 some of the members of the Panchayat Samiti again submitted a no confidence requisition and required the Pramukh/ authority to requisition the meeting. The meeting was directed to be held on 26.7.2003. A notice was issued on 19.7.2003. From Annexure 1 it appears that the meeting was convened on 26.7.2003. The present petitioner and the UP Pramukh Smt. Renu Kumari (petitioner in CWJC No. 10636 of 2003) came to take part in the meeting but after some time, they left the meeting. With the consent of the majority, one Bhikhari Prasad was nominated to chair the meeting and thereafter the resolution was considered and ultimately no confidence motion was carried out. On the very same day, the UP Pramukh Renu Kumari was also removed from her office. Each of the persons so removed, being aggrieved by their removal are before this Court. At the instance of Smt. Phoolmanti Devi CWJC No. 8037 of 2003 has been filed and CWJC No. 10636 of 2003 has been filed by Renu Devi and another.

3. Learned counsel for each of the petitioners have submitted that the requisition to convene the meeting was received on 18.7.2003, and notices were issued on 19.7.2003 directing that the meeting would be held on 26.7.2003. According to them, in accordance with Sections 44 (4) of the Bihar Panchayat Raj Act, (hereinafter referred to as the Act) seven clear days' notice was not issued, therefore, conduction and convening of the meeting was bad and any resolution taken in that meeting was also illegal. It is also submitted that action taken against the petitioners is bad and is motivated, therefore, it deserves to be quashed.

4. Learned counsel for the contesting respondent No. 6 in CWJC No. 8037 of 2003 has submitted that though Sub-section (4) of Section 44 of the Act says about seven clear days notice but either the date of issuance of notice or the date of the meeting are to be excluded and if that is done then excluding 19.7.2003, if the meeting is held on 26.7.2003 after seven days, it would be valid and if the date of meeting is excluded, then issuance of notice on 19.7.2003 would be giving seven clear days notice.

5. In the opinion of this Court, the arguments raised by the learned counsel for the respondent are contrary to the judgment of this Court. In the matter of Arun Kumar Singh v. State of Bihar and Ors., 2004(2) PLJR 367 in an identical situation, the High Court had observed that under Section 44(4) of the Act, seven clear days notice is to be given. The High Court has observed that the date of issuance of notice and the date of convening the meeting are to be excluded. If that is the law then 19.7.2003 and 26.7.2003, the date of issuance of notice and date of convening the meeting both are to be excluded and under the circumstances we are left with six clear days notice.

6. in the opinion of this Court, the notice was not good because it did not give seven clear days notice. As the meeting was convened contrary to the mandatory provisions of Section 44(4) of the Act, the meeting must be held to be void and any resolution passed in the said meeting must be held to be illegal and the proceedings recorded under Annexure 1 so far as they relate to the removal of the petitioners Smt. Phoolmanti Devi and Renu Devi are illegal and the same are quashed.

7. Learned counsel for the contesting respondents submitted that if the meeting is held to be bad because of the bad notice, then their requisition would stand revived and the Pramukh or in her absence or on her failure, the person competent under the law should requisition the meeting.

8. The petitioners have opposed the prayer by submitting that in the matter of Arun Kumar Singh (supra) the High Court has observed that a disgruntled person is entitled to bring a fresh motion of no confidence.

9. In the opinion of this Court the question that on the meeting becoming non est and the proceeding becoming void whether the requisition wherein no confidence is expressed would also become non est has not been considered in the said judgment. Under the law, if the requisition of no confidence is moved then meeting is to be requisitioned in accordance with law. Under Section 42 of the Act a Pramukh may be removed from his office or shall be deemed to have vacated his office forthwith if a resolution expressing no confidence in him is passed by majority of the total elected members of the Panchayat in a meeting specially

convened for the purpose under Section 44 of the Act. If for some lapse on the part of the Pramukh or any officer of the Panchayat Samiti, the meeting is not convened in accordance with law then the requisition itself would not become infructuous. When the proceedings of the meeting and the notice directing convening of the meeting would become non est, then the parties would be relegated to stop or from where the matter has started.

10. Under the circumstances, I must observe that requisition made on 18.7.2003 would stand revived. If the Pramukh does not requisition the meeting giving clear seven days notice then in accordance with law any other authority who is competent to requisition the meeting shall do so on expiry of 15 days from the date of submission of a copy of this order to the Pramukh herself. It is made clear that Pramukh shall observe that seven clear days notice is issued to the parties and this time no lapses are committed either by the Pramukh, Up Pramukh or the officer who is to convene the meeting. It is expected of the Pramukh that the meeting shall be convened within a period of 15 days from the submission of a copy of this order and she would not be allowed to enjoy chair without facing the no confidence, if she fails to requisition the meeting.

11. As a result of the discussions aforesaid, the proceedings of the meeting are quashed. Respondent No. 7 has been elected during the pendency of this writ application subject to final outcome of this application. As the removal of petitioner Smt. Phoolmanti Devi is held to be bad, election of respondent No. 7 cannot be held to be good. It is expected of Smt. Phoolmanti Devi that after occupying the chair of Pramukh she would requisition the meeting in accordance with law without causing any heart burn to others who want no confidence to be decided on the floor. The position of the Up Mukhia is also restored.

12. Both the applications are accordingly disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com