

Arun Kumar Singh Vs. the State of Bihar and ors.

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SooperKanoon Citation : sooperkanoon.com/135538

Court : Patna

Decided On : Nov-20-2003

Judge : Chandramauli Kr. Prasad, J.

Acts : Bihar Panchayat Raj Act, 1993 - Sections 44(4); [General Clauses Act, 1897](#)
- Sections 10

Appeal No. : C.W.J.C. No. 5326 of 2003

Appellant : Arun Kumar Singh

Respondent : The State of Bihar and ors.

Advocate for Def. : Ganesh Pd. Singh, Sr. Adv., Sajit Salim, Adv. for Private Respondents and J.P. Kishore, J.C. to S.C.

Advocate for Pet/Ap. : Sadanand Jha, Sr. Adv., Ashutosh Ranjan Pandey, Anshuman, Jaishankar Pathak and Rakesh Narayan Singh, Advs.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the notice dated 20-6-2003 issued by the Executive Officer of the Panchayat Samitee, Kutumba whereby a meeting

of the Panchayat Samitee was convened on 26-6-2003 to consider the motion of no confidence against the petitioner.

2. Short facts giving rise to the present application are that the petitioner Was elected as member of the Panchayat Samittee, Kutumba (hereinafter referred to as the Samitee) and subsequently elected as its Parmukh. Certain members of the Samitee wrote to the petitioner to convene a special meeting, to consider the no confidence motion. A copy of the said requisition was also sent to the Block Development Officer, Kutumba who happens to be the Executive Officer of the Samitee. He in turn wrote to the petitioner to convene a special meeting to consider the no confidence motion. Ultimately the Executive Officer, gave notice (Annexure-9) of the special meeting to be held on 26-6-2003 to consider the no confidence motion against the petitioner. Said notice was given on 20-6-2003. In this application prayer of the petitioner is to quash this notice.

3. It is relevant to state in the writ application petitioner has stated that he was elected as Parmukh on 18-6-2001 and within a period of two years requisition was made to consider the motion of no confidence which is in the teeth of the decision of the Division Bench of this Court dated 6-5-2002 passed in the case of Smt. Shyama Devi v. The State of Bihar, (2002) 2 Pat LJR 765). It is common ground that the petitioner was elected as Parmukh on 10-6-2001 and according to the petitioner the date 18-6-2001 is an inadvertent error whereas according to the respondents same has been purposely stated to mislead the Court and hence the writ application deserves to be dismissed on this ground alone.

4. Mr. Ganesh Pd. Singh, Sr. Advocate appearing oh behalf of the private respondents submits that the petitioner having not approached this Court With clean hand and stated untrue fact to mislead this Court, the writ application deserves to be dismissed on this ground alone. Dr. Sadanand Jha. Senior Advocate appearing on behalf of the petitioner submits that the answering respondents are reading more than what deserves to be read in inadvertent error in the petition that the petitioner was elected on 18-6-2001 instead of 10-6-2001 as Parmukh. In my opinion the error in the application is not of such nature which disentitles the petitioner the relief claimed in the present application on this

ground. Hence I overrule this submission of Mr. Singh.

5. In support of the application Dr. Jha has raised several points but as the writ application is to succeed on a very short point, I deem it inexpedient to refer to all the submissions of Dr. Jha. Dr. Jha contends that under Section 44(4) of the Bihar Panchayat Raj Act, 1993 (hereinafter referred to as the Act) seven clear days notice of a special meeting to consider the motion of no confidence is required to be given and in the present case undisputedly the notice was given on 20-6-2003 fixing 26-6-2003 as the date of special meeting, which does not fulfill the requirement of seven clear days notice. Mr. Singh however submits that a special meeting to consider the no confidence motion is to be held within 15 days from the date of receipt of such request under Section 44(3) of the Act and when this provision is harmoniously construed with Section 44(4) of the Act, the impugned notice cannot be held to be bad as it had not given seven clear days notice of the special meeting. He highlights that Section 44(3) of the Act mandates holding of the special meeting within fifteen days from the date of receipt of the request and in case the meeting instead of being convened on 26-6-2003 to any later date the same should not have within 15 days as required under Section 44(3) of the Act and in order to avoid that 26-6-2003 was the date fixed for the meeting.

6. Rival submission necessitates examination of Section 44(3) and (4) of the Act. Same reads as follows :--

'44. Meetings of Panchayat Samiti :--

(1) xx xx xx

(2) xx xx xx

(3) The date, of the first meeting of the Panchayat Samiti, after its constitution shall be fixed by the Sub-Divisional Magistrate who shall preside at such meeting and date of each subsequent ordinary meeting shall be fixed at the previous meeting of the Panchayat Samiti, provided that the Pramukh may for sufficient reasons, alter the day of the meeting to a subsequent date. 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. Such request shall specify the object for which the meeting is proposed to be called. 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 day not more than fifteen days after presentation of such request and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting.

(4) Ten clear days' notice of an ordinary meeting and seven clear days' notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted thereat, shall be sent to the members and affixed up at the office of the Panchayat Samiti. Such notice shall include in case of a special meeting any motion or proposition mentioned in the written request made for such meeting.'

xx xx xx

xx xx xx

7. From a plain reading of Section 44(3) of the Act it is evident that the Pramukh is obliged to call a special meeting on a date within 15 days from the date of receipt of a request to call such meeting, whereas Section 44(4) provides for seven clear days notice to hold the special meeting. Section 44(4) of the Act provides that seven clear days notice for a special meeting shall be sent to the members and shall also be affixed at the office of the Panchayat Office. The use of the word 'shall' raises a presumption that this provision is imperative. The agenda of the special meeting is to consider the no confidence motion. No confidence motion is brought against an elected person by elected representative and in a democratic country governed by the rule of law, policies and programmes are criticised or defended in such meeting and in such circumstances the legislature has provided for seven clear days notice so as to enable the elected representatives to deliberate and defend the motion. In my opinion if the provisions of Section 44(4) of the Act is held to be directory, same, may in a given case, will not provide to the office bearer sufficient time to convince the member the futility of the no confidence motion. Hence I have no manner of doubt that provision of Section

44(4) of the Act requiring seven clear days notice is mandatory in nature. Once it is held so, the Pramukh who has to convene the meeting within fifteen days of the notice under Section 44(3) of the Act shall have to act in a manner that the meeting is held within 15 days and the decision is taken within such time so that sufficient time is left out to give seven clear days notice to hold the meeting.

8. Having answered this, the next question which falls for determination is as to how the period of seven clear days notice is to be calculated. It is well settled that when a statute provides for stated period of notice to be given, this requirement must be met, otherwise the meeting will be invalid. In the present case, Section 44(4) of the Act had in no uncertain term provided for seven clear days notice which would obviously mean that the notice shall be exclusive of the day on which it is Issued and of the meeting. Applying the aforesaid principle, I am of the opinion that the notice to hold the meeting is invalid in the eye of law as seven clear days notice was not given.

9. It may be stated here that by order dated 24-6-2003 this Court stayed the notice (Annexure-9). Notwithstanding the same it is the stand of the private respondents that motion of no confidence has been carried out whereas this fact has been disputed by Dr. Jha appearing on behalf of the petitioner. I am not going to dilate into this issue as even if the special meeting was held, any decision taken thereon shall be non-est, being in breach of the order of this Court. Mr. Singh points out that in view of the fact that the meeting held in pursuance of the impugned notice has been held to be non-est, requisite number of members shall have the liberty to bring a fresh motion in accordance with law. Dr. Jha states that nothing prevents the members to bring an appropriate motion against the petitioner in accordance with law. It is clarified that the meeting, if at all, held in pursuance of the impugned notice shall be deemed to be non-est and shall not be taken into account for any purpose to bring a fresh motion of no confidence.

10. In the result, the application is allowed and the impugned order as contained in (Annexure-9) is quashed.