

Sitaram Singh and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-04-2004

Judge : Chandramauli Kr. Prasad, J.

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

Appeal No. : CWJC No. 2595 of 2003

Appellant : Sitaram Singh and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : Navendu Kumar, JC to SC VI and Amresh Kumar, Adv. for the respondent No. 6

Advocate for Pet/Ap. : Pushkar N. Shahi and Onkar Nath, Adv.

Disposition : Application allowed

Judgement :

Chandramauli Kr. Prasad, J.

1. Initially this writ application was filed for quashing the notice dated 22.2.2003 issued by the Executive Officer communicated to the members that a special meeting to consider the no confidence motion brought against the Pramukh and Up-Pramukh shall be held on 28.2.2003. Thereafter, the no confidence motion has

been passed and their prayer is to quash the said resolution.

2. Shorn of unnecessary details, facts giving rise to the present application are that the petitioner's are Pramukh and Up- Pramukh of Panchayat Samiti Narhat. A notice was given by the members to convene special meeting to consider the no confidence motion against the petitioners. The Executive Officer, by the impugned notice dated 22.2.2003 (Annexure-3), conveyed to the members that the meeting to consider the no confidence motion shall be held on 28.2.2003. In the meeting so held, no confidence motion was passed against the petitioners and during the pendency of the application, it is common ground that other members have been elected as Pramukh and Up-Pramukh of the Panchayat Samiti.

3. In the writ application, several points have been raised but when the matter is taken up, learned counsel for the petitioners submits that the notice informing to the members about the date of the special meeting to consider the no confidence motion, does not conform to the requirement of Section 44(4) of the Bihar Panchayat Raj Act, hereinafter referred to as the Act. It is pointed out that the notice issued on 27th of February, 2003 conveying holding of a special meeting on 28.2.2003 does not give seven clear days notice as required under Section 44 (4) of the Act. In support of his submission, reliance has been placed on a decision of this Court in the case of Smt. Rambha Sinha v. The State of Bihar and Ors., 2004 (2) BLJR 1408, in which it has been held as follows ;--

'18. The aforesaid discussion leads me to come to the same conclusion which I have reached in the case of Arun Kumar Singh (supra) on first principle that Section 44 (4) of the Act which had in no uncertain term provided that seven clear days notice would mean that the notice shall be exclusive of the day on which it is issued and of the meeting.'

4. Junior Counsel to Standing Counsel VII and Mr. Amresh Kumar Sinha appearing on behalf of respondent No. 6, however, contend that as the fresh election to the office of the Pramukh and Up-Pramukh has been held, no interference is called for by this Court in exercise of its writ jurisdiction.

5. Having appreciated the rival submission, I find substance in the submission of the learned counsel for the petitioners and the issue stands concluded by the judgment of this Court in the case of Rambha Sinha. Undisputedly, seven clear days notice for the special meeting was not give and the aforesaid provision being mandatory in nature the motion of no confidence necessarily has to be held to be illegal.

6. But in the peculiar facts of the present case, I am of the opinion that the petitioners shall not be inducted as Pramukh and Up-Pramukh till fresh decision on the no confidence motion is taken. Hence, I direct the Executive Officer to issue fresh notice giving seven days clear notice within two weeks from the date of receipt of a copy of this judgment to consider the no confidence motion against the petitioners and in case, the same is defeated, persons so elected shall vacate the office and the petitioners shall continue as Pramukh and Up-Pramukh of the Panchayat Samiti. However, in case, the motion is carried out by required majority, the persons elected as Pramukh and Up-Pramukh shall continue. For the purpose of the said meeting petitioners shall be deemed to be Pramukh and Up-Pramukh and exercise such powers as are conferred on them on the said date and the status of the persons elected subsequently shall not be that of the Pramukh or Up-Pramukh.

7. Writ application stands allowed in the aforesaid terms. No cost.

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