

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6871 of 2015

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1. Sheikh Hassmuddin son of Sheikh Wasiuddin, resident of village- Jogia Police Station- Ramnagar, District- West Champaran, at present Prakhand Up-Pramukh Ram Nagar,
 2. Mansha Bharti wife of Ashok Ram, resident of village - Pachrukha, Police Station-Ramnagar, District-West Champaran, at present Prakhand Pramukh Ram Nagar.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Panchayat Raj, Bihar, Patna.
 2. The District Magistrate, West Champaran.
 3. The Sub-Divisional officer, Ram Nagar, West Champaran.
 4. The executive Officer-cum-Block Development Officer, Panchayat Samittee, Ram Nagar, West Champaran.
 5. The District Panchayat Officer, District-West Champaran.
 6. Mr. Sanjay Kumar Rao, son of not Known,
 7. Mr. Lakhna Ram, son of not known,
 8. Mr. Binod Mahto son of not known,
 9. Mr. Ramesh Mahto, son of not Known,
 10. Mr. Suresh Prasad, son of not known,
 11. Mr. Sheikh Sarfuddin, son of not known,
 12. Mr. Binod Ram, son of not known,
 13. Mr. Chandsi Pandit, son of not known,
 14. Mrs. Dhupa Devi, wife of not known
 15. Mrs. Sarita Devi, wife of not known
 16. Mrs. Indu Devi, wife of not known,
 17. Mrs. Usha Devi, wife of not known
 18. Mr. Nami Ram son of not known,
- Respondent Nos 6 to 18 are members of Ram Nagar Panchayat Samittee Ram Nagar through the B.D.O. -cum- Executive Officer, Ram Nagar (West Champaran).

.... Respondent/s

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Appearance:

For the Petitioner/s :	Mr. Y.V. Giri, Sr. Advocate Mr. Md. Irshad, Advocate
For the private Respondent:	Mr. Anil Kumar Jha, Sr. Advocate Mr. Rabindra Kumar, Advocate
For the Respondent/s :	Dr. Anshuman, SC-14 Mr. Kuber Pathak, A.C. to SC-14

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 30-06-2015

This writ petition has been filed under Article 226 of the
Constitution of India praying for issuance of a writ in the nature of




certiorari for quashing the requisition dated 13.4.2015 moved by the 13 members of the Panchayat Samiti, Ram Nagar in the district of West Champaran expressing ‘no confidence’ in the petitioners who happen to be the Up-Pramukh and Pramukh respectively and which was communicated to the Pramukh who is the petitioner no. 2 herein by the Executive Officer-cum-Block Development Officer, Ram Nagar vide letter dated 13.4.2015, copies of which are placed at Annexure-1 to the writ petition.

Facts of the case briefly stated is that a ‘no confidence motion’ were moved against these two petitioners by the members of the Panchayat Samiti and was passed in a special meeting held on 14.8.2014. The motion was questioned by these petitioners before this Court in CWJC No. 14526 of 2015 *inter alia* on the following grounds:

- (a) The requisition was not served on the Pramukh in the manner prescribed under Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as ‘the Act’)
- (b) The charges are vague and;
- (c) That there is no discussion on the allegations.

This Court after hearing the parties upheld the service of requisition on the petitioners and also rejected the contention advanced regarding vagueness of charges and absence of discussion



vide judgment and order passed on 10.2.2015. The two petitioners questioned the judgment passed by the writ court by filing an intra court appeal giving rise to L.P.A. No. 484 of 2015 and the Division Bench upheld the contention of the Pramukh regarding non presentation of the requisition in the manner prescribed under 'the Act' and set aside the judgment and order of the writ court leaving it open for the requisitionists to initiate fresh steps in accordance with law.

The judgment and order of the writ court has been placed on record by the petitioners vide Annexure-5 to the supplementary affidavit filed in I.A. No. 3853 of 2015 and the judgment of the Division Bench dated 1.4.2015 is on record at Annexure-2 to the writ petition.

It is following the disposal of the Letters Patent Appeal on 1.4.2015 that 13 members of the Panchayat Samiti again moved a requisition against the Pramukh and the Up-Pramukh of the Panchayat Samiti who are the petitioners before this Court on 30.4.2015 which was also communicated to the Pramukh vide letter no. 780 dated 13.4.2015 placed at Annexure-1. Since the Pramukh did not choose to fix a date of special meeting that on the request of the Panchayat Samiti members the date of special meeting was notified by the Executive Officer-cum-Block Development Officer, Ram Nagar vide letter dated 02.5.2015 notifying 13.5.2015 as the date of special

meeting vide notice present at Annexure-4. The special meeting was held on 13.5.2015 in which the motion has been passed against the two petitioners thus unseating them from the post of Up-Pramukh and Pramukh respectively and being aggrieved the two petitioners are before this Court.

Mr. Y.V. Giri, learned senior counsel has appeared for the petitioners while the State including the Executive Officer is represented by learned State counsel and the members of the Panchayat Samiti are represented by Mr. Anil Kumar Jha, learned senior counsel.

The sum and substance of the argument of Mr. Giri has been that the procedural lapse which infringed the earlier 'no confidence motion' continues to plague even the present proceedings. According to Mr. Giri even in the present proceedings, the requisition has not been presented to the Pramukh i.e. the petitioner no. 2 in the manner prescribed under 'the Act' and despite the issue being settled by inter party judgment rendered by the Division Bench in the Letters Patent Appeal preferred by the petitioner being L.P.A. No. 484 of 2015 (Annexure-2), neither the Panchayat Samiti members nor the Executive officer have bothered to correct themselves. Mr. Giri, with reference to the requisition placed at Annexure-1 has submitted that there being complete absence of any material on record to show whether the requisition was ever admitted to be presented to the


petitioner, as mandated under Section 44(3)(i) of the Act, again it is being communicated through the Executive Officer vide Annexure-1.

Mr. Giri also tried to question the requisition on its veracity by pointing out the discrepancies in the copy enclosed with Annexure-1 and the copy brought on record by the Panchayat Samiti members vide Annexure-B insofar as the signature of the member Dhupa Devi at Item No. 9 is concerned. It has been further argued that even the so called attempt by the Panchayat Samiti members to serve the requisition by Post is in fact a manufactured document since no such letter was received by the petitioner at any stage. He thus submits that since the lapse which was subject matter of earlier round of proceedings has continued even in the present proceedings, the motion passed on 13.5.2015 impugned at Annexure-7 cannot be upheld and is fit to be set aside.


Mr. Giri next with reference to a decision of this Court reported in **2014(4) PLJR page 723** (Vijay Kumar vs. State) submits that there has been unnecessary interference in the proceedings of the special meeting by the Executive Officer and which interference is sufficient to invalidate the entire proceedings. Concluding his argument it was submitted that even when the petitioner protested on the manner of service of requisition vide letter dated 20.4.2015 before the Executive officer, a copy of which is placed at Annexure-3 but the procedural lapse was not corrected and the Panchayat Samiti members

as well as the Executive Officer who are hand in gloves with each other, have proceeded on the motion which is not only infringed by the procedural infirmity but is in the teeth of the judgment passed by the Division Bench.

The argument of Mr. Giri has been contested by counsel for the State as well as the private respondents although the charge has been led by Mr. Jha who stands in support of the private respondents. It was argued by Mr. Jha that all attempts made by the requisitionists to serve the requisition have completely failed as the Pramukh i.e. the petitioner no. 2 was not willing to receive the requisition in person. Mr. Jha, learned counsel with reference to the receipt issued by one Mohan Azad stated to be a peon in the office of the Pramukh present at Annexure-A of the counter affidavit filed on behalf of the private respondents submits that although vide judgment of the Division Bench passed in the Letters Patent Appeal on 1.4.2015, the petitioners had been restored to their respective posts and the Panchayat Samiti members were given liberty to move afresh in the matter it is following the liberty that a requisition was again moved by the 13 members of the Panchayat Samiti on 13.4.2015 but due to absence of the Pramukh it could not be personally served upon her and thus it was filed in the office of the Pramukh on 13.4.2015 as is manifest from Annexure-A and thus the presentation to the Pramukh stood confirmed. It is next submitted by Mr. Jha that since a copy of the



requisition in terms of Section 44(3)(i) of the Act is also to be endorsed to the Executive officer, the copy so endorsed to the Executive Officer was also forwarded to the Pramukh by the Executive officer vide letter no. 780 dated 13.4.2015 but whereas on the first attempt made on 15.4.2015, the Pramukh refused to acknowledge the file as is reflecting from the peon's report dated 15.4.2015 present at Annexure-A, the next attempt on 16.4.2015 was met with an objection lodged by the Pramukh as is manifest from the recordings in the peon book as well as Annexure-1 to the writ petition. Mr. Jha next with reference to the letters present at Annexure-C and D to the counter affidavit submits that the Panchayat Samiti members also tried to serve the requisition by registered post with A/D at the official as well as the residential address of the Pramukh but the letters could not be served despite four attempts made by the postal authorities. Mr. Jha next with reference to the news paper notice present at Annexure-F submits that as a last resort, a notice was also published in the local news paper on 01.5.2015 but with no result and thus the requisitionists in exercise of powers vested under Section 44(3)(i) of the Act and upon failure of the Pramukh to fix the date of special meeting took a decision themselves and which was duly notified on 02.5.2015, a copy of which is placed at Annexure-4 notifying the date of special meeting on 13.5.2015. In the special meeting the petitioners have been unseated, the proceedings of which



are impugned at Annexure-7. Mr. Jha with reference to these documents has tried to canvass that there was a conscious avoidance by the Pramukh to receive the requisition with sole object to avoid the motion and the Panchayat Samiti members had taken all steps that was possible to serve the requisition on the petitioner. He submits that in absence of the petitioner, the requisition was filed in his office on 13.4.2015 vide Annexure-A to the counter affidavit and was again presented by the Executive Officer vide Annexure-1, which would satisfy the mode and manner of presentation of requisition and the petitioner cannot make any complaint. Responding to the alleged interference by the Executive Officer it is argued that the allegations are misconceived. Mr. Jha next questioned the maintainability of the writ petition inter alia on grounds that the petitioners having been unseated and even a re-election has taken place in which one Jonia Devi as been elected as Pramukh and one Nirmala Devi has been elected as Up-Pramukh but their election is not put to challenge. He thus submits that in absence of any challenge to the said election, the writ petition has become infructuous and academic.

Mr. Giri responding to the argument has submitted that even in absence of any challenge to the election of a new Pramukh and Up-Pramukh, if the contentions advanced by the petitioners finds merit, the setting aside of the election would only be a consequence of upholding the claim of the petitioners and thus on such technicalities


the writ petition cannot be dismissed.

I have heard learned counsel for the parties and I have perused the materials on record. As I have already indicated hereinabove the proceedings is being sought to be questioned on two grounds; namely:

- (a) Non-service of the requisition on the petitioner no. 2 who happens to be the erstwhile Pramukh in the manner prescribed under Section 44(3)(i) of the Act; and
- (b) Interference by the Executive Officer in the proceedings of the special meeting held on 13.5.2015.

I shall be dealing with each of the issue raised by Mr. Giri one by one.

Insofar as the issue of presentation is concerned, although the opinion expressed by this Court in the previous round of litigation arising from CWJC No. 14526 of 2014 has been negated by the Division Bench vide judgment passed in L.P.A. No. 484 of 2015 inter alia on grounds that there was no substantive piece of evidence available on record to support the service of requisition but whether the same situation exists even in the present round, is a matter to be discussed. The Division Bench while discussing the legal intendment underlying Section 44(3)(i) of 'the Act' on the issue of presentation of the requisition in the backdrop of the evidence available on record has held as follows:




“....In the instant case, the consistent case of the appellants has been that the notice of no confidence motion was not served upon the second appellant at all. That plea could have been met with by the respondents, only by stating that the manner in which they have served it. The entire record is silent on this aspect. The learned Single Judge took note of Annexure-5 addressed by the 2nd appellant and has drawn inference to the effect that the appellants have the notice of the no confidence motion.....”

Thus in the earlier round of litigations the plea of the petitioners regarding non-presentation of requisition had been upheld in absence of documents on record. Whether the same situation exists today in the present case has to be tested in the backdrop of the documents on record. In my opinion there are sufficient documents on record which support that the requisition was attempted to be served on the Pramukh and in fact also been served though not personally but then the legal intendment underlying Section 44(3)(i) of ‘the Act’ simply requires a presentation of the requisition on the Pramukh with no specifications that it should be personally served on him/her. In fact the statutory provisions merely provides that a requisition for such special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti by not less than one third of the total elected members and the Executive Officer has been cast with a responsibility to immediately

bring the requisition to the notice of the Pramukh who is mandated to convene such meeting within 15 days of service of such requisition. It is now to be seen whether this procedure has been followed in the present case.

Annexure-A to the counter affidavit of the private respondents manifests that the requisition was filed in the office of the Pramukh and it is stated that since the Pramukh was absent on the said date that it was filed in the office. The absence of the Pramukh from office on the said date has been fairly admitted by Mr. Giri when he submitted that the Pramukh only took charge of the post on 16.4.2015 although the date of judgment was passed by the division bench on 01.4.2015 itself. Meaning thereby for a complete fortnight, the Pramukh was absent from his office. In the circumstances and in view of the liberty granted by the Division Bench to the requisitionists to move afresh in the matter, they were left with no choice but to file the requisition in the office of the Pramukh and which they have done on 13.4.2015 as manifest from Annexure-A which is the receipt granted by the peon in the office of the Pramukh and which statement has not been controverted by the petitioners by filing a rejoinder to the counter affidavit. The requisitionists abiding by the statutory provisions have also endorsed, a copy of the requisition to the Executive Officer who in turn immediately brought the requisition to the notice of the Pramukh vide letter no. 780 dated



13.4.2015 present at Annexure-1 in tune with the responsibility cast upon him under the statutory provisions but the same was refused by the Pramukh as is manifest from the peon report present at Annexure-H on 15.4.2015. The second attempt made on 16.4.2015, resulted in an objection raised by the Pramukh. The objection is entered in the peon book present at Annexure-H dated 16.4.2015 as well as in the letter of the Executive Officer dated 13.4.2015 present at Annexure-1. The objection of the Pramukh is that the service is not in tune with the Division Bench judgment.

In my considered opinion, in the circumstances discussed, there was no infirmity in the presentation of the requisition on the Pramukh which could not have been done in any other manner. In fact in addition thereto, the requisitionists by way of an abundant precaution also attempted to serve the requisition by post which attempt again was unsuccessful. A paper notice had also been issued inviting the attention of the Pramukh. The evidences on record are sufficient indication that the presentation of requisition on the Pramukh was in tune with the statutory requirement but the Pramukh tried all avenues available to her to avoid the motion.

Obviously, since the Pramukh failed to convene the special meeting despite presentation of the requisition vide Annexure-A to the counter affidavit of the private respondents and Annexure-1 to the writ petition, that the requisitionists decided to fix the date of special

meeting in exercise of power so vested under the Act and the date of special meeting was notified on 02.5.2015 by the Executive Officer vide Annexure-4 on 13.05.2015 and on which date the special meeting was held and the petitioners have been unseated.

This Court having negated all arguments of Mr. Giri insofar as the service of requisitionists is concerned, it is to be seen whether the argument that there was undue interference by the Executive Officer in the special meeting merits any consideration. The proceedings of the special meeting are present at Annexure-7 and the recitals thereof merely shows that no sooner the members of the Panchayat Samiti assembled in the Block office that they were welcomed by the Executive Officer and the motion was drawn upon for discussion. Now this welcoming of the members by the Executive Officer is being charged with interference in the proceedings of the special meeting by Mr. Giri. In my opinion, the argument is misconceived and is only taken to be rejected. The provisions of Section 61(2) of 'the Act' mentions the duty of the Executive Officer who is mandatorily required to attend every meeting of the Panchayat Samiti and take part in the discussion but with the exception that he shall have no right to move any resolution or to vote. Apparently there was no such attempt by the Executive Officer to interfere with the process.

The minutes of proceedings itself is sufficient to reject the

argument of Mr. Giri regarding interference by the Executive Officer.

In view of my discussion hereinabove, the two issues raised by Mr. Giri to contest the proceedings are held lawfully not sustainable and the writ petition is dismissed accordingly. The interlocutory applications are disposed of.

(Jyoti Saran, J)

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