

(2005) 05 PAT CK 0023  
Patna High Court  
Case No: CWJC No. 5375 of 2005

Rajendra Mehta

APPELLANT

Vs

The State of Bihar and  
Others

RESPONDENT

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Date of Decision: May 10, 2005

Citation: (2005) 3 PLJR 439

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Sathish Ch. Jha, Bhaskar Jha and Ravi Shankar, for the Appellant; S.K. Ghosh, for the Respondent

Final Decision: Dismissed

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### Judgement

#### @JUDGMENTTAG-ORDER

Barin Ghosh, J.

Heard both the parties. Petitioner was the erstwhile Pramukh of the Panchayat Samiti. He has been removed from the said post of Pramukh. In this writ petition, it is not the contention of the petitioner that the meeting which was convened to remove him from the post of Pramukh, was an invalidly convened meeting, for such contention is pending determination in yet another writ petition.

2. In the instant case, the petitioner has challenged the meeting held on 9th April, 2005 on three grounds. It appears that the notice was issued by B.D.O. on instruction of S.D.O. It appears that the notice was sent to all elected members but not to any of the non-elected members namely, the local Lok Sabha member, who is a member for being the current Lok Sabha member, or the member, who is a member for being the current Bidhan Sabha member, or the members, who are members by reason of being Mukhiyas of Gram Panchayats under the Samiti. It was contended that since notices had not been sent to those non-elected members, the meeting is bad. Inasmuch as those non-elected members were not issued notice

and accordingly, since none of them was present, it was contended that the meeting had no required quorum of 50% of the members and lastly, it was contended that in any event S.D.O could not preside the meeting for sub-section (3) of Section 44 authorizes him to preside the first meeting and this meeting was not the first meeting of this Samiti and as it appears that the S.D.O. did preside the meeting.

3. Section 38 of the Act authorizes only the elected members of the Panchayat Samiti to elect Pramukh and Up-pramukh thereof. None of the non-elected members has any right of any nature in the matter of election of Pramukh and Up-pramukh. In such view of the matter, their presence is not required at all.

4. The election of Pramukh and Up-pramukh by elected members should be done at a meeting. Sub-section 3 of Section 44 says that such meeting, which should be construed as the first meeting, shall be convened by the Sub-Divisional Magistrate and thereupon all other meetings shall be convened by the Pramukh of the Samiti. That itself suggests that at the first meeting the Pramukh and the Up-pramukh shall be elected. In addition to that in terms of the said sub-section Pramukh and upon his failure two thirds of the total number of members of the Samiti may call a special meeting.

5. In any event, neither Section 44 nor any other section authorizes any non-member to elect a Pramukh or Up-pramukh. It is only the elected members who can do so.

6. In such view of the matter for all practical purposes upon removal of the Pramukh and Up-pramukh, it shall be deemed that the slate is clean requiring the first meeting to be convened by the S.D.O. in order to enable the elected members to chose their Pramukh and Up-pramukh. That formula has been adopted in the instant case and accordingly, I see no reason to interfere with the matter. The writ petition fails and the same is dismissed.