(2005) 4 PLJR 675

Patna High Court

Case No: CWJC No. 13111 of 2002

Malti Gupta		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision: July 28, 2004

Acts Referred:

- Bihar Panchayat Raj Act, 1947 - Section 68(4)

Citation: (2005) 4 PLJR 675

Hon'ble Judges: Chandramauli Kr. Prasad, J

Bench: Single Bench

Advocate: Vinod Kumar Kanth and Ashutosh Ranjan Pandey, for the Appellant; Rajeshwar Prasad, for the Respondent

Final Decision: Dismissed

Judgement

Chandramauli Kr. Prasad, J.

This writ application was initially filed for quashing the notice dated 20.11.2002 (Annexure-11) issued by the Deputy Development Com-missioner-cum-Chief Executive Officer of the Zila Parishad, Kaimur convening the meeting of the Zila Parishad on 30.11.2002 to consider the no confidence motion passed against the petitioner. After filing of the writ application, in the meeting convened on 30.11.2002, no confidence motion has been passed against the petitioner and by way of amendment, the prayer of the petitioner is to quash the resolution of the Zila Parishad whereby the no confidence motion has been passed against the petitioner. Shorn of unnecessary details facts giving rise to the present application are that the petitioner was elected as the Member of Zila Parishad, Kaimur and thereafter in the first meeting of the Zila Parishad held on 10.6.2001, she was elected as its Chairperson. By communication dated 26.7.2001 addressed to the Chairperson of the Zila Parishad, with a copy to the District Magistrate some members of the Zila Parishad brought the motion of no confidence against the Chairperson and Vice Chairman of the Zila Parishad. The Deputy Development Commissioner-cum-Chief

Executive Officer of the Zila Parishad, hereinafter referred to as the Chief Executive Officer, issued notice conveying to the members that the Chairperson had fixed the date for holding the special meeting on 28.8.2001 to consider the no confidence motion brought against her and the Vice-Chairman. In the meeting so held the motion of no confidence was defeated against the Chairperson but passed by required majority against the Vice-Chairman.

2. After one year of the defeat of the no confidence motion against the petitioner, some members of the Zila Parishad by letter dated 13.11.2002 (Annexure-6) addressed to the petitioner informed her that they are not satisfied with her functioning and hence they bring the motion of no confidence against her. The motion brought by the members of the Zila Parishad was considered by the petitioner and she rejected the same by her minute dated 20.11.2002 inter alia on the ground that in letter referred to above, no request was made to convene the special meeting to consider the no confidence motion. After the petitioner rejected the prayer to convene the meeting, some members of the Zila Parishad wrote to the District Magistrate by letter dated 20.11.2002 (Annexure-C) that they had submitted the motion of no confidence to the Chairperson on 13.11.2002 being dissatisfied with her work but she had not convened the meeting and in the aforesaid premises a request was made to convene the meeting. The Chief Executive Officer put up a note before the District Magistrate that the action of the petitioner in not convening the special meeting to consider the no confidence motion is not in conformity with the spirit of law. The District Magistrate by its note dated 20.11.2002 (Annexure-B) directed to convene the special meeting of the Zila Parishad to consider the no confidence motion. In pursuance of the aforesaid direction of the District Magistrate the Chief Executive Officer by the impugned letter dated 20.11.2002 addressed to Chairperson and the members communicated the decision of the District Magistrate for holding the meeting of the Zila Parishad on 30.11.2002 to consider the no confidence motion against the petitioner. Accordingly, the meeting of the Zila Parishad was held and the motion of no confidence has been passed against the petitioner.

3. Mr. Vinod Kumar Kanth, Senior Advocate appears on behalf of the petitioner. State is represented by Mr. Rajeshwar Prasad, Standing Counsel No. VI. Although in the writ application several points have been urged but when the matter is taken up Mr. Kanth confines his submission on the following points only.

4. Mr. Kanth submits that only in the case of failure to convene the meeting by the Chairperson, the District Magistrate gets the authority to convene the meeting. He submits that u/s 68(4) of the Bihar Panchayat Raj Act, hereinafter referred to as the Act, the requisition for holding a special meeting to consider the resolution expressing want of confidence is to be delivered to the Chairperson and only on her failure, the District Magistrate has been conferred with the authority to convene the meeting. He points out that by communication dated 13.11.2002 in fact no request was made to convene the special meeting to consider the no confidence motion and in the absence of such prayer being made before the Chairperson, the District Magistrate had no authority to convene

the meeting and consequently the meeting convened by the District Magistrate is illegal and natural corollary of the same is that the resolution passed in the meeting illegally convened by the District Magistrate is vitiated on that account only.

5. Mr. Rajeshwar Prasad, Standing Counsel No. VI however, submits that the whole assumption of the petitioner that the Chairperson was not requested to convene the special meeting to consider the no confidence motion is unfounded on fact.

6. Rival submission necessitates examination of Section 68(4) of the Bihar Panchayat Raj Act, hereinafter referred to as the Act:-

68. Resignation or removal of Adhyaksha and Up-Adhyaksha:-

(1) X X X X

(2) X X X X

(3) X X X X

(4) Adhyakasha and Up-Adhyaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the territorial constituencies of the Zila Parishad, at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by no less than one-fifth of the total number of the Zila Parishad and shall be delivered to the Adhyaksha. The Adhyaksha shall within seven days from the date of receipt of the requisition convene a special meeting of the Zila Parishad. The meeting shall be held on a day not later than 15 days from the date of issue of the notice of the meeting. The meeting shall presided over by the Adhyaksha if the motion is against the Up-adhyaksha if it is against the Adhyaksha the Up Adhyaksha shall preside over the meeting and if it is against Adhyaksha and Up-Adhyaksha both then the District Magistrate shall preside over the meeting. In case of failure to convene the meeting by the Adhyaksha the District Magistrate shall convene the meeting in the same manner and the meeting shall be preside by him.

7. From a plain reading of Section 68(4) of the Act, it is evident that a resolution expressing want of confidence is to be considered on a meeting specially convened for the purpose. Said provision further requires that the requisition of such a special meeting shall be signed by not less than 1/5th of the total members of the Zila Parishad and shall be delivered to the Adhyaksha. The Adhyaksha in turn is obliged to convene a special meeting within seven days which is required to be held on a day not later than fifteen days from the date of issue of the notice of the meeting. However, in case of failure to convene the meeting, by the Adhyaksha, the District Magistrate is obliged to convene the meeting.

8. Here in the present case the required number of members of the Zila Parishad have stated that they are dissatisfied with her functioning hence bring a motion of no confidence against her. In the said letter they have also stated about the acts of omission and commission committed by her. However, members have not specifically stated to convene the special meeting to consider the no confidence motion. In that situation can it be said that the members made no requisition. In my opinion, the letter delivered to the petitioner is nothing but a requisition to convene the special meeting to consider the no confidence motion. It is relevant here to state that no particular format has been prescribed for bringing a motion of no confidence. The communication addressed to the petitioner in so many words had stated that the members being dissatisfied with the functioning of the Chairperson bring a motion of no confidence against her. Said letter is in Hindi and the relevant portion thereof reads as follows:-

Adhyaksha Zila Parishad ke nimn Karyakalopo se Assantosh hokar ham sabhi Zila Parisad apake prati Abiswas Prastav late hai.

9. From plain reading of the aforesaid letter it is evident that required number of members of the Zila Parishad had brought a motion expressing want of confidence in the petitioner. Such a resolution has to be considered in the meeting specially convened for the purpose and requisition for such a special meeting is to be delivered to the Adhyaksha. Although the members of the Zila Parishad have not in so many words asked for holding the special meeting but they have expressly brought a motion of no confidence against the petitioner and it has to be understood in the contest it was given. The emphasis has to be not on the form but the substance and there cannot be two opinion about the fact that when the motion of no confidence is brought, what the members expected from the petitioner was to convene the special meeting for that purpose. It is worthwhile mentioning here that earlier by communication dated 26.7.2001, the members had used the same expression and on that basis the petitioner herself has convened the meeting. I am of the considered opinion that the content of the impugned communication dated 13.11.2002 (Annexure-6) addressed to the petitioner clearly made request for convening the meeting and no fault can be found out in the same. Hence I reject the submission of Mr. Kanth.

10. Mr. Kanth then submits that on the basis of requisition dated 13.11.2002 the District Magistrate on 20.11.2002 ought not to have directed for holding the meeting on 30.11.2002. He submits that the same is beyond the period prescribed u/s 68(4)of the Act and this also vitiates the impugned resolution. I do not find any substance in the submission of Mr. Kanth. Section 68(4) of the Act obliges the Adhyaksha to convene a special meeting within seven days from the date of the receipt of the requisition and the meeting is required to be held on a date not later than fifteen days from the date of issue of the notice of the meeting. The petitioner i.e. the Adhyaksha had rejected the prayer to convene a special meeting and thereafter the District Magistrate on 20.11.2002 directed to hold the special meeting on 30.11.2002. In my opinion, under the scheme of the Act meeting is required to be held on a day not later than fifteen days from the date of the

issue of the notice of the meeting. Thus, in the present case the date of issue of the notice being 20.11.2002 the meeting held on 30.11.2002 is on a day not later than fifteen days from the date of the issue of the notice and thus the meeting held on 30.11.2002 in which the no confidence motion has been passed against the petitioner cannot be said to be illegal. In the result, I do not find any merit in the application and it is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to cost.