

MANU/BH/0402/2005

Equivalent Citation: [2006(2)JCR55(Pat)], 2006(1)PLJR474

IN THE HIGH COURT OF PATNA

CWJC No. 15551 of 2001

Decided On: 25.11.2005

Appellants: **Chandeshwar Prasad and Ors.**

Vs.

Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:

Dr. J.N. Bhatt , C.J., Barin Ghosh and Syed Md. Mahfooz Alam , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Uma Kant Shukla, Adv.

For Respondents/Defendant: Ram Balak Mahto and Rajeshwar Prasad, Adv.

ORDER

1. This Reference is necessitated on account of the observations made by the learned Single Judge in CWJC. No. 15551 of 2001, recorded on 19.3.2002, in a petition under Article 226 of the Constitution of India questioning the proceedings recorded in Minapur Panchayat, on 26.11.2001, relating to the consideration of 'No Confidence Motion' initiated against the then pramukh and the then up-pramukh. The learned Single Judge in an elaborate reasoned judgment while concluding passed the following observations in the penultimate paragraph and the last paragraph of the said judgment.

Let the matter be placed before My Lord, the Chief Justice for issuing proper directions to place the matter before a larger Bench. The Division Bench may also like to issue instructions/directions to the State Government to issue instructions or to frame rules in relation to form, submission and consideration of No Confidence Motion, specially that if pramukh himself fixes the date of such meeting to consider the No Confidence Motion, he shall be obliged to fix the meeting giving a clear margin of seven days between the date of issuance of notice and the date of the meeting so also to give the details of No Confidence Motion and nature of allegations if made against the pramukh or up-pramukh or annexing copy of No Confidence Motion with the notice enabling all concerned to know that what are the allegations and what is to be faced by the pramukh or up-pramukh, and, in a case where a date is fixed by the Executive Officer, to fix a date giving clear margin of seven days between the above said two dates and give fullest details of the No Confidence Motion and the charges, if levelled against erring pramukh and/or up-pramukh or in the alternative to annex a copy/copies of the No Confidence Motion/ Notice moved/submitted against the pramukh and/or up-pramukh.

The matter may accordingly be placed before my Lord, the Chief Justice.

2. During the course of submissions before us by learned counsel appearing for the

parties, there was a consensus that in view of the amendments subsequently incorporated in the Bihar Panchayat Raj Act, 1993, the Reference shall become infructuous. In view of the aforesaid statement, the Reference on hand, therefore, shall become infructuous while accepting the said consensual statement.

3. One more point which comes to sharp focus is as to whether in view of the last and penultimate paragraphs of the judgment, quoted above, and the underlying design and desideratum, the policy and philosophy of making a reference to a larger Bench in terms of the Rule provision, as well as, jurisprudentially, the Reference would be incompetent.

4. Again, it has been stated in penultimate paragraph of the judgment of the referee Court that the ratio propounded in the judgment of the Division Bench in the matter of *Sindhu Devi v. The State of Bihar and Ors.* MANU/BH/0724/2001 : 2002 (1) PLJF 281, needs reconsideration in the light of the observations and the discussions in the earlier part of the judgment of the referee Court.

5. Again, a question which needs to be examined is as to whether, when a Division Bench decision is doubted by Single Judge Bench would it be appropriate or competent to observe to direct the reference for reconsideration or for resolution of the difference, if any, directly to a larger Bench or first to the concurrent Bench whose judgment is doubted. In other words, if the learned Single Judge questions the wisdom or has any doubt about the proposition of law enunciated by the Division Bench decision first whether it has to be referred to the Division Bench or the learned Single Judge could directly make a reference for adjudication of such a controversy by the larger Bench (more so a Bench of three Judges) from the jurisprudential point of view, and also from settled proposition of law. In our opinion, the Reference in such a situation directly to the larger Bench in the present case of a Bench of three Judges is itself incompetent.

6. Upon consideration of all the relevant and material aspects, the aforesaid consensual statement and our discussions, we answer the Reference from both the angles. Firstly, in view of the change in the legislative frame of the Rule provision of the Act subsequent, to the referee decision, the Reference has become infructuous and, therefore, it has to be ended on that count. Secondly for the grounds stated in the later part of our this order, the reference is not competent.

7. Therefore, from both the points of view the Reference shall stand disposed of accordingly. The matter shall now be placed before the learned Single Judge for disposal in accordance with law, expeditiously, since the time lag in between is inordinate.

8. The Reference shall stand disposed of.

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