

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15691 of 2014**

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Kasina Khatoon, Wife of Abdul Sattar, Resident of Village - Bairiya, P.S. - Shahodara,  
District - West Champaran.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Bihar.
2. The Divisional Commissioner, Tirhut, Muzaffarpur.
3. The District Magistrate, West Champaran, Bettiah.
4. The Sub Divisional Officer, Narkatiaganj, West Champaran.
5. The Executive Officer, Panchayat Samitee, Gaunaha, West Champaran -cum-Block Development Officer, Gaunaha, West Champaran.
6. Md. Haszzam, Executive Officer -cum- Block Development Officer, Gaunaha, West Champaran.
7. Smt. Vidya Devi, Member Panchayat Samitee, Gaunaha Area No. 19.
8. Sri Bharat Kharbar, Member Panchayat Samitee, Gaunaha Area No. 17.
9. Smt. Ruksana Praveen, Member Panchayat Samitee, Gaunaha Area No. 15.
10. Laxmina Devi, Member Panchayat Samitee, Gaunaha Area No. 12.
11. Maya Devi, Member Panchayat Samitee, Gaunaha Area No. 25.
12. Tara Devi, Member Panchayat Samitee, Gaunaha Area No. 13.
13. Ramesh Kaji, Member Panchayat Samitee, Gaunaha Area No.....
14. Jai Prakash Mahto, Member Panchayat Samitee, Gaunaha Area No. 1.
15. Babulal Rai, Member Panchayat Samitee, Gaunaha Area No. 11.
16. Satyanarayan Prasad, Member Panchayat Samitee, Gaunaha Area No. 22.
17. Devanti Devi, Member Panchayat Samitee, Gaunaha Area No. 9.
18. Devanti Devi, Member Panchayat Samitee, Gaunaha Area No. 06.
19. Shivganja Devi, Member Panchayat Samitee, Gaunaha Area No. 08.
20. Gayatri Devi, Member Panchayat Samitee, Gaunaha Area No. 07 cum Deputy Block Pramukh, Panchayat Samitee, Gaunaha.

.... .... Respondent/s

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**Appearance :**

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|-----------------------------|---|--------------------------------|
| For the Petitioner/s        | : | Mr. Shekhar Singh              |
| For the Respondent/s        | : | Mr. Manish Kumar, AC to GP-21. |
| For respondent Nos.14 to 20 | : | Mr. Ashutosh Ranjan Pandey     |
|                             |   | Mr. Mukesh Kumar               |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 05-10-2015**

Heard Mr. Shekhar Singh, learned counsel appearing

for the petitioner, learned counsel for the State and Mr. Ashutosh

Ranjan Pandey, learned counsel appearing for the private

respondent nos.14 to 20. Though served the other respondents have

not chosen to appear.

The writ petition was filed questioning the notice

dated 4.9.2014 issued by the Executive Officer –cum- Block Development Officer, Panchayat Samiti, Gaunaha in the district of West Champaran, whereby the date of special meeting was notified on 9.9.2014. A copy of the notice is impugned at Annexure-1 to the writ petition.

While the writ petition was pending consideration that the special meeting took place on 9.9.2014 and in which the motion has been passed against the petitioner. The Pramukh of the Panchayat Samiti did not participate in the special meeting which has been questioned by way of I.A. No.7058 of 2015. Considering the consequential nature of action complained of, the petitioner is permitted to question the motion in the present proceeding.

The short issue raised by Mr. Shekhar Singh, learned counsel appearing for the petitioner to question the motion is that there is no clear seven days gap in between the notice convening special meeting which was issued on 4.9.2014 and the date of special meeting which was fixed on 9.9.2014 as mandated in section 46(4) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') and which has invalidated the entire proceedings. It is in consideration of the issue so raised that notices were issued to respondent nos.5 to 20 and some of the respondents have appeared as already discussed above.

In between the Bihar Panchayat Raj (Amendment)



Act, 2015 has been enacted which came into force with effect from 27.8.2015 and under section 44(3) (ii) of the amended provisions, a *no confidence motion* can be brought only once in the entire tenure of a Pramukh. It is in consideration of the amended provisions that a situation arose whether the matter is fit for remand for fresh consideration of the motion or it is to be brought to an end.

Since it was stated at the Bar that a similar issue was pending consideration before the Division Bench in L.P.A. No.1606 of 2015 (Manju Devi vs. The State of Bihar & others) hence this Court adjourned the present proceeding awaiting the opinion of the Division Bench and which has since been pronounced on 15.9.2015 whereunder the provisions has been interpreted to cover even the pending proceedings. Meaning thereby if the Pramukh in question has already faced a *no confidence motion* and has succeeded, he cannot be subjected to a second motion in his tenure and even if any such proceeding was initiated prior to the amendment .i.e. prior to 27.8.2015 but if it has not reached its conclusion then the motion as a whole fails and there would be no requirement for the Pramukh to now face the *no confidence motion*.

Mr. Ashutosh Ranjan Pandey, learned counsel appearing on behalf of some of the private respondents with reference to the provisions of section 8 of the Bihar and Orissa General Clauses Act attempted to distinguish the Division Bench



opinion by submitting that Clause-8 of the Bihar and Orissa General Clauses Act has not been taken note of by the Division Bench and which clearly provides that the statute would be prospective in nature unless made retrospective and since in the present case the amended provision are made effective prospectively, hence the motion already initiated prior to the enforcement of the Amendment Act on 27.8.2015 has to be taken to its logical conclusion notwithstanding the change in law. He further submits that even if the notice convening the special meeting and consequently the motion stands invalidated but in absence of any challenge to the requisition, the motion has to be taken to its logical conclusion and which cannot be stopped midway under the cover of the amendment.

I have heard learned counsel for the parties and I have perused the records.

It is not in dispute that the Pramukh-petitioner has already faced one motion earlier and which did not pass. It is also not in dispute that the motion was moved against the petitioner vide requisition dated 19.8.2014, a copy of which is enclosed to the notice placed at Annexure-1. The motion has also been passed on 9.9.2014 i.e. prior to the enforcement of the Amendment Act which came into force on 27.8.2015. However, while the matter has remained pending consideration before this Court that the law has

changed and section 44(3) (ii) of 'the Act' now enables the requisitionists- members of the Panchayat Samiti to move against the Pramukh so elected by them only once in his/her tenure.

In the circumstances discussed and considering the change in law it is to be seen whether the prayer of Mr. Pandey that even if the petitioner would succeed in the writ petition, the matter requires to be remitted for consideration of the requisition as per the law in force on the said date, merits consideration. I would not detain myself long as the answer is present at paragraphs 12 to 14 of the judgment of the Division Bench rendered in the case of **Manju Devi** (supra) which leaves no room for confusion that the amendment takes within its fold even the pending proceedings.

Paragraphs 12 to 14 of the judgment in the case of **Manju Devi** (Supra) runs as follows:

“12. It is, thus, manifestly clear that with effect from 27.08.2015, Section 44 of the Act stood amended containing specific provision that *no confidence motion* can be brought only once in the whole tenure of a Pramukh/Up-pramukh . Clause (iii) of Section 44 (3), as it existed prior to amendment, stood deleted with effect from 27.08.2015.

13. Faced with this situation, there remains no dispute over the fact that the appellant, having already faced *no confidence motion* once during his tenure, no further *no confidence motion* can, in the light of the amended provisions, be brought against him.

14. Without, therefore, going into the question of legality of the order under appeal, we hold that in view of subsequent amendment with effect from 27.08.2015, *no confidence motion* brought against the appellant, once again, cannot be sustained.”

Even in the case in consideration before the Division Bench the motion had been initiated prior to the amendment and the learned Single Judge while setting aside the notice remitted the matter requiring the Pramukh to fix the date of special meeting in accordance with law without interfering with the requisition. The order of the learned Single Judge was appealed against by the petitioner in the Letters Patent Appeal in question and since in the meanwhile the amendment in question had taken its effect that the effect of amendment also came up for consideration before the Division Bench whose opinion has been reproduced hereinabove.

In view of the expression of the Division Bench, I am unable to go with the arguments advanced by Mr. Pandey and in result, the entire *no confidence motion* proceedings initiated against the petitioner inclusive of the requisition, the notice and the motion passed which are impugned at Annexure-1 to the writ petition and Annexure-3 to I.A. No.7078 of 2014 cannot be upheld and are accordingly set aside.

The writ petition is allowed. Interlocutory applications stand disposed of.

**(Jyoti Saran, J)**

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