

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1305 of 2015
IN
Civil Writ Jurisdiction Case No. 3821 of 2014

- =====
1. Pankaj Kumar, Son of Maheshwar Prasad resident of Village - Hatisar, P.O. - Basantpatti, Area No. - 09, P.S. + Block - Purnahiya, District - Sheohar.
 2. Asha Devi, Wife of Chandrika Sah, resident of Village and P.O - Basant Jagjivan, Area No. - 3, P.S.+ Block, Purnahiya, District - Sheohar.

.... Respondents-Appellants.

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The Director, Panchayat Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Sheohar, District - Sheohar.
5. The Sub-Divisional officer, Sheohar, District - Sheohar.
6. The Block Development Officer, Purnahiya-Cum-Executive Officer, Block Panchayat Samiti, Purnahiya, District - Sheohar.

.... Respondents-Respondents 1st Set.

7. Sudama Devi, Wife of Mahendra Paswan, resident of Village + P.O. - Basantpatti, Area No. - 04, P.S. + Block - Purnahiya Panchayat Samiti Member, District - Sheohar.
8. Krishnanand Thakur, Son of Ram Ekbal Thakur, resident of Village - Kasopur, P.O. - Abhirajpur, Bairiya, Area No. - 11, P.S. + Block - Purnahiya , Purnahiya Panchayat Samiti Member, District - Sheohar.
9. Mukesh Paswan, Son of Ram Balak Paswan, resident of Village

+, P.O. - Dostiya, Area No. - 8 P.S. + Block - Purnahiya, Purnahiya Panchayat Samiti Member, District - Sheohar.

10. Rajesh Kumar Mishra, Son of Jot Narayan Mishra, resident of Village - Barahi Mohan, P.O. - Barahi Jagdish, Area No. - 5, P.S. + Block - Purnahiya, Purnahiya Panchayat Samiti Member, District - Sheohar.

11. Bindu Devi, Wife of not known, Purnahiya Panchayat Samiti Member, District - Sheohar.

12. Anita Devi, Wife of not known, Purnahiya Panchayat Samiti Member, District - Sheohar.

13. Upendra Patel, Son of not known, Purnahiya Panchayat Samiti Member, District - Sheohar.

.... Respondents-Respondents 2nd Set.

14. Susita Devi, Wife of Subodh Kumar Yadav, resident of Village - Dostiya, P.O. - Dostiya, P.S. - Purnahiya, District - Sheohar.

15. Faiyaza Hussain, Son of Zahir Hussain, resident of Village and P.O. - Barahi Jagdish , P.S. - Purnahiya, District - Sheohar.

.... Writ Petitioners-Respondents 3rd Set.

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Appearance :

For the Appellants : Mr. Y.V. Giri, Sr. Adv.
Mr. Ashish Giri, Adv.

For the State : Mr. Ashok Kumar, S.C.-11

For the Respondent Nos.14 and 15 : Mr. S.B.K. Mangalam, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

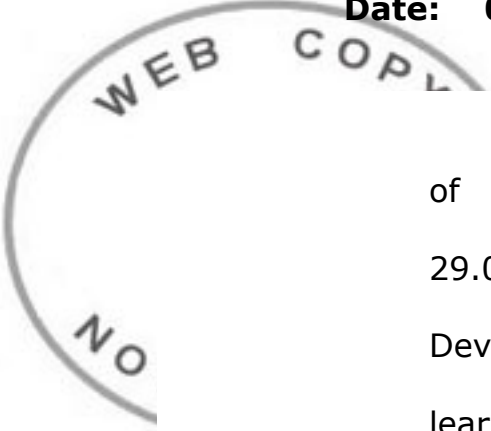
And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 09/10/2015



This appeal, under Clause-10 of the Letters Patent of Patna High Court, arises out of an order, dated 29.06.2015, passed in C.W.J.C. No.3821 of 2014 (Susita Devi & Anr. vs. The State of Bihar & Ors.), whereby a learned single Judge of this Court has allowed the writ petition and has set aside the *no confidence motion*, passed against respondent Nos.14 (Pramukh) and 15 (Up-Pramukh), on 18.02.2014, of Purnahiya Panchayat Samiti, Sheohar, and in consequent thereof, elections and appointments of appellant Nos.1 and 2, as Pramukh and Up-Pramukh respectively of the said Purnahiya Panchayat Samiti have also been set aside.

2. From the order, under appeal, it transpires that relying upon a xerox copy of letter No.59, dated 27.01.2014, brought on record, on 29.06.2015, by respondent Nos.4, 5 and 6, in the writ proceeding, by way of Annexure-7 to the rejoinder to their counter affidavit, the learned single Judge has arrived at the conclusion that the *requisition*, given by the Members of the said Panchayat Samiti calling *special meeting* for no confidence motion, was not served upon the respondent Nos.14 and 15. The learned single Judge, upon comparison of the said



Annexure-7, as brought on record by the respondent Nos. 14 and 15 (writ-petitioners) with Annexure-C to the counter affidavit, filed by the Block Development Officer-Cum-Executive Officer, Panchayat Samiti, Purnahiya, concluded that there was apparent *interpolation* in the said Annexure, which also bore letter No.59, dated 27.01.2014, wherein it was incorporated that the requisition, calling for *special meeting*, was being enclosed. A typed copy of the said letter was brought on record by way of Annexure-1 to the writ petition.

3. Before we deal with the legal and factual aspects of the case, we must point out at the very outset that Annexure-7 to the rejoinder to the counter affidavit, filed on behalf of the writ-petitioners in the writ proceeding, who are respondent Nos.14 and 15 herein, is a *xerox* copy of letter No.59, dated 27.01.2014, written by the Block Development Officer-Cum-Executive Officer, Prakhanda Panchayat Samiti, Purnahiya, addressed to the Pramukh of the said Panchayat Samiti. Following statement was made in Paragraph-4 of the said rejoinder by the writ petitioners:-

"4. That, fortunately, the petitioner is in possession of an original copy of Annexure-"1", which does not mention about any enclosure and, therefore, it is a disparate attempt of Executive Officer to frustrate the

grievance of the writ petitioners."

4. The contents of the said rejoinder affidavit have been described to be "***true to the best of knowledge and belief***" of the deponent, namely, Susita Devi.

5. In course of hearing of the present appeal, since the question arose as regards genuineness of the *xerox* copy of the said letter No.59, dated 27.01.2014, we had requested Mr. S.B.K. Mangalam, learned counsel, appearing on behalf of the contesting respondent Nos.14 and 15, to produce before this Court the original copy of said Annexure-7, the typed copy of which was filed as Annexure-1 to the writ petition and which, according to the deponent, was in their possession.

6. However, despite sufficient opportunity given to Mr. Mangalam, learned counsel, appearing on behalf of the writ petitioners-respondent Nos.14 and 15, he failed to produce before this Court the said original copy of Annexure-7 for our satisfaction.

7. At the cost of repetition, it is being pointed out that the conclusion — arrived at by the learned single Judge that a copy of *requisition*, shown to have been served upon the writ-petitioners, through letter No.59, dated 27.01.2014, and as pleaded by the respondent Nos.4, 5 and 6 of the writ petition in their counter affidavit by way of Annexure-C, to be an act of *interpolation* — is based solely

on photostat copy of the said letter brought on record by way of Annexure-7 by the writ-petitioners.

8. It is also to be kept in mind that rejoinder affidavit to the counter affidavit, including photostat copy of the letter No.59, dated 27.01.2014, was filed by the writ-petitioners on 29.06.2015. On the same day, i.e., 19.06.2015, believing the photostat copy of the said letter, dated 27.01.2014, to be true copy of the original — and photostat copy of the same letter, brought on record by the official respondents in their counter affidavit, containing an endorsement of enclosure to the requisition, calling *special meeting* for no confidence motion, to be *interpolated* one — learned single Judge allowed the writ petition.

9. It is in this background that a question has arisen as to whether, in absence of any basis for determination as regards genuineness of the copies of the same letter, was it permissible for the Court to have treated one copy to be correct copy and the other one to be product of an act of *interpolation*. The other question, which has arisen in the present case is as to whether the disputed questions of facts could have been adjudicated upon in the writ petition, under Article 226 of the Constitution of India, which is decided on the basis of affidavits and admitted facts. Yet another question, which has cropped up in the present appeal, is as to whether the respondent Nos.14 and



15 (writ-petitioners), on the basis of their pleadings before the learned single Judge, could be said to have conclusively made out a case that the requirement of service of *requisition*, as contemplated under Section 14 (3) (5) of the Bihar Panchayat Raj Act, 2006 (*hereinafter referred to as the "Act"*), was not complied with and, therefore, the very *special meeting*, seeking *no confidence motion*, held on 18.02.2014, was illegal.

10. Before we address the issues, as above, it would be apt to take into account the facts, giving rise to the present appeal, which are as follows:-

(A) Respondent Nos.14 and 15 were elected as Pramukh and Up-Pramukh respectively of Purnahiya Block Panchayat Samiti in the district of Sheohar. This is not in dispute that the Block Development Officer-Cum-Executive Officer, Purnahiya Block Panchayat Samiti, got served upon respondent No.14 a letter, bearing No. 59, dated 27.01.2014, requesting him to fix a date *for special meeting*, in terms of *requisition* of the Members of said Samiti, for considering *no confidence motion*.

(B) It was the case of respondent Nos.14 and 15 before the writ Court that though in the said letter No.59, dated 27.01.2014, it was mentioned that a copy of the proposal was being enclosed,

there was, in fact, no such enclosure alongwith the said letter No.59, dated 27.01.2014. In view of the nature of dispute involved, the statement made, in this regard, in Paragraph-9 of the writ petition, is relevant and is being extracted hereinbelow:-

"9. That, in the said letter though it is mentioned that a copy of the proposal is being enclosed but in fact there was no enclosure along with letter no.59 dated 27.01.2014."

(Emphasis added)

(C) Before proceeding further, we need to point out that the averments, made in paragraph 9 clearly, show that according to the writ petitioners-respondent Nos. 14 and 15 herein, it was mentioned in the said letter No. 59, dated 27.01.2015, that a copy of the *proposal* calling for *special meeting* was being enclosed, but, in fact, no such *proposal/requisition* was enclosed with letter No. 59, dated 27.01.2015.

(D) It would be relevant to mention, in quick succession, that paragraph-8 of the writ application reads, " **true photostat copy of the letter No.59, dated 27.01.2014, is annexed**



herewith and marked as Annexure-1", no such photostat copy of letter No.59, dated 27.01.2014, was brought on record by way of Annexure-1; rather, Annexure-1 to the writ application is a typed copy of letter No.59, dated 27.01.2014, which does not contain an endorsement as regards enclosure of copy of the *proposal* as stated in paragraph-9 of the writ application.

(E) From a reading of paragraph-9 of the writ application, it appears that it is admitted, even by the respondent Nos.14 and 15, that there was an endorsement to the effect in the said letter, dated 27.01.2014, that a copy of the *requisition* was being enclosed with the letter No. 59, dated 27.01.2015.

(F) As the respondent Nos.14 and 15 failed to convene *special meeting* for considering *no confidence motion*, respondent No.6, through letter, dated 06.02.2014, convened, on 18.02.2014, a meeting for discussion on *no confidence motion* against respondent Nos.14 and 15.

(G) A *special meeting* was, accordingly, held on 18.02.2014, wherein *no confidence motion* came to be passed against respondent Nos.14 and 15.

(H) In the meanwhile, on 17.02.2014,

respondent Nos. 14 and 15 approached this Court by filing writ petition, giving rise to C.W.J.C. No.3821 of 2014, seeking quashing of the notice, dated 06.02.2014, whereby the *special meeting* to consider *no confidence motion* against them was convened.

(I) Following *no confidence motion*, having been passed against respondent Nos.14 and 15, re-election to the said post, on 12.03.2014, pursuant to a notice of the State Election Commission, dated 22.06.2014, was held. In the re-election, the appellant Nos. 1 and 2 of the present appeal came to be elected as Pramukh and Up-Pramukh respectively of the said Panchayat Samiti.

(J) From the order, dated 12.01.2015, passed by the learned single Judge in the writ proceeding, it would appear that the limited issue, which was raised before him, was of non-service of *requisition* on the writ petitioners. The Block Development Officer-Cum-Executive Officer of the concerned Panchayat Samiti (respondent No.6) was asked, accordingly, to file a counter affidavit. Pursuant to the said order, respondent No.6 had filed a counter affidavit bringing on record a photostat copy of the said letter No.59, dated 27.01.2014, by way of Annexure-C, in order to contend that a copy

of the *requisition* was enclosed along with letter No.59, dated 27.01.2014.

(K) From the order, dated 22.06.2015, passed by the learned single Judge, in C.W.J.C. No.3821 of 2014, what transpires is that the correctness of Annexure-C to the counter affidavit was questioned by learned counsel, appearing on behalf of the respondent Nos.14 and 15, on the ground of *interpolation* alleging that the enclosure, mentioned in the said letter, had been incorporated later on and is manifest from a copy of the same letter, which was in the possession of the writ-petitioners, which he wished to bring on record.

(L) Here, we may revert back to the statement made in paragraph-9 of the writ application, as quoted above, wherein the respondent Nos.14 and 15 had themselves admitted that it was mentioned in the said letter that a copy of the proposal was being enclosed, but there was, in fact, no enclosure with the said letter No.59, dated 27.01.2014.

(M) Thus, we find here a clear departure in the stand of respondent Nos.14 and 15 inasmuch as it was, for the first time, on 22.06.2015, before the writ Court, that they (respondent Nos. 14 and 15)

contended that there was no mention of *requisition* as enclosure in the letter No.59, dated 27.01.2014, and this contrary to their own statement, made on oath, in paragraph-9 of their writ petition, which we have already pointed out above.

(N) A rejoinder affidavit to the counter affidavit was filed, in the writ proceeding, on behalf of the respondent No.6, bringing on record Annexure-7 describing it to be a photostat copy of the original of letter No.59, dated 27.01.2014, which did not contain any endorsement with respect to enclosure of the *requisition* made by the members of the Committee for calling *special meeting* to consider *no confidence motion*.

(O) Relying upon Annexure-7 to the said rejoinder and concluding *interpolation* in Annexure-C to the counter affidavit, filed on behalf of respondent No.6, the learned single Judge, by order, under appeal, dated 29.06.2015, allowed the writ application holding that because of non-service of *requisition* upon respondent Nos.14 and 15 as required under Section 44 (3) (i) of the Act, the proceedings of the *no confidence motion* stood invalidated and the *no confidence motion*, passed on 18.02.2014, could not be sustained. As a

consequence of setting aside the *no confidence motion* passed on 18.02.2014, the learned single Judge has also set aside the re-election of the appellants herein, as Pramukh and Up-Pramukh, with a direction that respondent Nos.14 and 15 be restored to their respective posts of Pramukh and Up-Pramukh.

11. These are the background facts, giving rise to the present appeal filed by the appellants, who were re-elected as Pramukh and Up-Pramukh, and whose election and appointment, as Pramukh and Up-Pramukh, came to be set aside by the order, under appeal, dated 29.06.2015.

12. We have heard Mr. Y.V. Giri, learned senior counsel, appearing on behalf of the appellants, Mr. S.B.K. Mangalam, learned counsel, appearing on behalf of the respondent Nos.14 and 15 and Mr. Ashok Kumar, learned S.C.-11, appearing on behalf of the State of Bihar.

13. Mr. Y.V. Giri, learned Senior counsel, appearing on behalf of the appellants, has submitted that the learned single Judge fell in error, while holding that there was *interpolation* in Annexure-C to the counter affidavit, filed on behalf of the official respondents, on the ground that there was no mention of any enclosure in the photostat copy of the same letter brought on record by way of Annexure-7 to the rejoinder affidavit filed on behalf of the respondent



Nos.14 and 15. He has submitted that the official respondent specifically stated in the counter affidavit, while bringing on record Annexure-C, that the statements, made therein, were true to his knowledge as derived from the records maintained in the office. It is the contention of Mr. Giri that the learned single Judge placed undue reliance upon Annexure-7 to the rejoinder affidavit and, without any valid reason and due verification, held *interpolation* having been committed in Annexure-C to the counter affidavit filed on behalf of the official respondents.

14. According to Mr. Giri, the issue of *interpolation* could not have been adjudicated upon by the learned single Judge in the manner it has been done in a proceeding under Article 226 of the Constitution of India, inasmuch as such an adjudication was possible only after adducing evidence in an appropriate proceeding.

15. Mr. Giri, learned Senior counsel, has placed reliance upon a Division Bench decision of this Court in the case of ***Munni Devi vs. The State of Bihar & Ors.***, reported in ***2015 (1) P.L.J.R. 741***, in order to contend that disputes, regarding service or otherwise of *requisition* upon the petitioners, could not have been looked into under Article 226 of the Constitution of India, the same being purely disputed questions of fact. This apart, Mr. Giri has contended that there had been compliance of mandatory



provisions, as contemplated under Section 44 (3) of the Act, inasmuch as the *requisition* was served on respondent Nos. 14 and 15 and the learned single Judge was in error, while coming to the conclusion that the *no confidence motion* passed against the respondent Nos.14 and 15 was bad for *non-service* of *requisition* upon them and, therefore, consequent re-elections of the appellants were also not sustainable.

16. Mr. S.B.K. Mangalam, learned counsel, appearing on behalf of the respondent Nos.14 and 15, on the other hand, submits that the appellants herein, despite having been given opportunity by the writ Court to file their counter affidavit, failed to controvert and dispute the facts, as alleged in the writ application, and they, thus, waived their right to question the legality of the order passed by the learned single Judge. He has further contended that non-filing of appeal by the State-respondents, more particularly, the author of Annexure-C, amounts to acceptance by the concerned respondents of the conclusive finding of fact recorded by the learned single Judge. Mr. Mangalam has vehemently argued that since respondent No.6 has not filed any appeal and, thus, impliedly accepted the finding, arrived at by the learned single Judge, that there was *interpolation* in the letter, dated 27.01.2014, the appellants, who did not file any counter affidavit before the

writ Court, cannot raise any issue in the present appeal against such a finding of fact recorded by the learned single Judge.

17. As has been taken note of at the very outset, the dispute, in the present appeal, revolves around the finding, recorded by the learned single Judge in the order, under appeal, to the effect that there had been *interpolation* in the letter No.59, dated 27.01.2014, brought on record by way of Annexure-C to the counter affidavit.

18. It is manifest from the order, under appeal, and the pleadings on record that the finding, which is the basis for allowing the writ petition by the order, under appeal, is based on the fact that in the photostat copy of letter No.59, dated 27.01.2014, brought on record by way of Annexure-7 to the rejoinder affidavit filed on behalf of the respondent Nos.14 and 15 on 29.06.2015, there is no mention that a copy of the *requisition* of the Members of the Committee was being enclosed, whereas in the photostat copy, brought on record by way of Annexure-C to the counter affidavit by respondent No.6, there is a reference of enclosure of *requisition*, made by the Members of the concerned Panchayat Samiti, calling for *special meeting* to consider *no confidence motion*.

19. In our considered view, since the petitioners themselves had admitted, in paragraph-9 of the writ



application, that it was mentioned in the letter No.59, dated 27.01.2014, that a copy of the proposal was being enclosed, it was not open to them to contend that the letter No. 59, dated 27.01.2014, did not mention that *proposal* was being enclosed. The typed copy of the said letter was, however, annexed as Annexure-1 to the writ application, which did not contain this fact and it, therefore, appears to have been withheld by the petitioners that it was mentioned in the letter No. 59, dated 27.01.2014, a copy of the proposal was being enclosed. It was their specific case, as pleaded in the writ application, that though there was an endorsement to this effect in the said letter No.59, dated 27.01.2014, the *requisition* was, in fact, not enclosed with the said letter.

20. It bears repetition that respondent Nos.14 and 15 of the writ application, in the writ petition, took a clear stand that *requisition* made by the Members of Panchayat Samiti, seeking convening of *special meeting* to consider *no confidence motion*, was not enclosed with letter No.59, dated 27.01.2014, though it was mentioned in the said letter that the *requisition* was being enclosed. Further, in paragraph-4 of the rejoinder filed by the petitioners, on 29.06.2015, the contesting respondent Nos.14 and 15 had taken specific plea that the petitioners were in possession of original copy of Annexure-1, which did not mention any



enclosure and alleged that respondent No.6 incorporated this fact by way of *interpolation*, that a copy of *requisition*, seeking convening of *special meeting*, was being enclosed. The stand, taken by the respondent No.14 and 15 in paragraph-4 of their rejoinder affidavit to the counter affidavit in the writ proceeding, is manifestly contrary to their own pleadings in paragraph-9 of the writ application. Annexure-C to the counter affidavit, filed in the writ proceeding by respondent No.6, containing endorsement that a copy of the *requisition/proposal* was enclosed with the letter No.59, dated 27.01.2015, stands corroborated by their own statements of respondent Nos.14 and 15 made in paragraph-9 of the writ application.

21. As has been mentioned above, we repeatedly requested Mr. S.B.K. Mangalam, learned counsel, appearing on behalf of the respondent Nos.14 and 15, to produce before us the original copy of Annexure-1, to the writ application, said to be the typed copy of and Annexure-7 to the rejoinder affidavit, said to be photostat copy of letter No.59, dated 27.01.2015, for our perusal and satisfaction as regards, the stand taken in the writ proceeding by respondent Nos.14 and 15. Though there is specific statement, in the said rejoinder affidavit, that the petitioners are in possession of the original copy of the said Annexure, learned counsel, appearing on behalf of the

respondent Nos.14 and 15 (writ-petitioners), has failed to produce before us the original of letter No.59, dated 27.01.2014, which was served upon the writ-petitioners.

22. We, accordingly, draw an adverse inference against respondent Nos. 14 and 15, the adverse inference being that respondent Nos. 14 and 15 had received the letter No. 59, dated 27.01.2014, wherein it had been mentioned that a copy of *requisition*, given by the members of the Panchayat, was enclosed and that the respondent Nos. 14 and 15 had failed to produce the letter No.59, dated 27.01.2014, in original, despite direction issued in this regard.

23. Because of the discussion held, as above, we are of the considered view that the finding, arrived at by the learned single Judge, holding *interpolation* in Annexure-C to the counter affidavit filed on behalf of the respondent No.6, in the writ proceeding, on the basis of its comparison with photostat copy of a document, brought on record by way of Annexure-7 to the rejoinder, cannot be sustained, particularly, as the respondent Nos.14 and 15 have failed to produce before us the original of Annexure-7 asserted to be the photostat copy of its original. While coming to this conclusion, we have taken into account the stand of respondent Nos.14 and 15 in paragraph-9 of the writ application as also the fact that subsequent stand, taken by

them in their rejoinder affidavit, based on the said Annexure-C, is just contrary and opposed to their earlier stand taken in the writ application.

24. Mr. Y.V. Giri, learned Senior counsel, appears to be right in his submission, while placing reliance upon Division Bench decision of this Court in the case of **Munni Devi** (*supra*), that the learned single Judge ought not to have adjudicated upon the disputed questions of fact as regards service of *requisition* as contemplated by Section 44 (3) (i) of the Act.

25. Before we part with, we are constrained to observe that the conduct of respondent Nos.14 and 15 in taking vacillating and contradictory stands at different stages, in the writ proceeding, and withholding of original document, is highly reprehensible. We deprecate their conduct.

26. We are, thus, left with no other option, but to interfere with the order, under appeal, dated 29.06.2015. We, accordingly, set-aside the said order, dated 29.06.2015, passed by the learned single Judge in C.W.J.C. No.3821 of 2014 (Sushita Devi & Anr. vs. The State of Bihar & Ors.).

27. The appeal stands accordingly allowed and C.W.J.C. No.3821 of 2014 (Sushita Devi & Anr. vs. The State of Bihar & Ors.) stands dismissed.

28. Interlocutory applications, if any, stand disposed of.

29. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, ACJ. :- I agree.

(I. A. Ansari, ACJ.)

N.A.F.R.

Praveen-II/-

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