

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15373 of 2016

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1. Mukesh Kumar Pandey, Son of Late Ram Surat Pandey. Resident of Village and P.O. Sain, P.S. Kanti, District- Muzaffarpur.
 2. Anita Devi, Wife of Sri Awadhesh Kumar, Resident of Village- Kolhua Paigambarpur, P.S.- Ahiyapur, District- Muzaffarpur.
 3. Sheela Devi. Wife of Sri Ram Kishore Bhagat. Resident of Village and P.O Damodarpur, P.S. Kanti, District- Muzaffarpur.
 4. Sajjan Sah, son of late Nandu Sah, Resident of Village- Bahuara, P.O. Bishunpur Mahanand, P.S. Kanti, District- Muzaffarpur.
 5. Vikash Kumar Pandey, Son of Sri Mani Bhushan Pandey, Resident of Village- P.O., P.S. Kanti, District- Muzaffarpur.
 6. Kumod Ojha, Son of Late Kishundeo Ojha, Resident of Village- Madhukar Chapra, P.O. Sain, P.S. Kanti, District- Muzaffarpur.
 7. Rahul Kumar, Son of Late Vinay Kumar Singh, Resident of Village- Mani Fulkahan, P.O. Raksa, P.S. Kanti, District- Muzaffarpur.
 8. Pramod Kumar Pandey, Son of Late Kapildeo Pandey, Resident of Village- Maisaha, P.O. Sringar Fulkahan, P.S. Kanti, District- Muzaffarpur.
 9. Meena Devi, Wife of Sri Bipin Kumar Singh, Resident of Village- Balahan, P.O. Haridaspur, P.S. Kanti, District- Muzaffarpur.
 10. Ajit Kumar, Son of Sri Premchandra Shahi, Resident of Village- Shyampur Bhoja, P.O. Kabilpur, P.S. Kanti, District- Muzaffarpur.
 11. Rani Devi, Wife of Sri Amod Kumar Singh, Resident of Village- Mithansarai, P.O. Mustufapur, P.S. Kanti, District- Muzaffarpur.
 12. Champa Devi, Wife of Sri Ram Ekbal Thakur, Resident of Village- Arara, P.O.- Haridaspur, P.S. Kanti, District- Muzaffarpur.
 13. Asha Devi, Wife of Sri Birendra Sah, Resident of Village- Sarmaspur, P.O. Kalwari, P.S. Kanti, District- Muzaffarpur.
 14. Rekha Kumari, Wife of Parmeshwar Sah, Resident of Village and P.O. Mahratha, P.S. Kanti, District- Muzaffarpur.
 15. Arun Kumar Srivastava, Son of Late Maheshwar Prasad. Resident of Village- Chandraman , P.O. Kalwari, P.S. Kanti, District- Muzaffarpur.
 16. Pinki Devi, Wife of Sri Anil Kumar Singh, Resident of Village and P.O. Panapur Kariyat, P.S. Kanti, District- Muzaffarpur.
 17. Dinkar Singh, son of Sri Ram Paltan Prasad Singh, Resident of Village- Suratpur, P.O. Panapur Kariyat, P.S. Kanti, District- Muzaffarpur.
 18. Pramila Devi, Wife of Sri Ashok Sah, Resident of Village- Sadatpur, P.O. Kolhua Paigambarpur, P.S. Kanti, District- Muzaffarpur.
 19. Raj Kumar Pandit, Son of Sri Bishwanath Pandit, Resident of Village and P.O.- Chapra Dharampur Yadu, P.S. Kanti, District- Muzaffarpur.
 20. Ramashish Ram, Son of Late Julum Ram, Resident of Village- Dhebha, P.O. Kanti, P.S. Kanti, District- Muzaffarpur.
 21. Veena Devi, Wife of Sri Gobind Prasad, Resident of Village- Khajuri, P.O. Sadikpur, P.S. Kanti, District- Muzaffarpur.
 22. Tahrin Nisha, Wife of Abdul Kayum, Resident of Village- Bakarpur, P.S. Kanti, District- Muzaffarpur.
 23. Jitendra Kumar, Son of Ram Prit Ram, Resident of Village- Chapra Manorath, P.O. Sirisiya, P.S. Kanti, District- Muzaffarpur.
 24. Chandra Kala Devi, Wife of Jagdish Paswan, Resident of Village- Sahwajpur, P.S.- Kanti, District- Muzaffarpur.



.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
 2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
 3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
 4. The District Magistrate-cum-District Election Officer (Panchayat), Muzaffarpur, District- Muzaffarpur.
 5. The Sub- Divisional Officer, West Muzaffarpur, District- Muzaffarpur.
 6. The State Election Commission (Panchayat), through the State Election Commissioner Sone Bhawan, Birchand Patel Path, Patna.
 7. Sri Mukhtar Ahmed Lone, Son of Md. Mehendi Hasan Resident of Village- Narsand, P.O. and P.S. Kanti, District- Muzaffarpur, presently Pramukh of Block Panchayat Samiti, Kanti through the Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Kanti, District- Muzaffarpur.
 8. Sri Bipin Jha, son of Late Shyamnandan Jha, Resident of Village- Madhuban, P.O. Kalwari, P.S. Kanti, District- Muzaffarpur. presently Up-Pramukh of Block Panchayat Samiti, Kanti through the Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Kanti, District- Muzaffarpur.
 9. Md. Hussain Ansari, son of not known to the petitioners,
 10. Rupam Shahi, wife of not known to the petitioners,
 11. Rinki Kumari, wife of not known to the petitioner
 12. Pramila Devi, wife of not known to the petitioners,
- Respondent nos. 9 to 12 are the elected Members of Block Panchayat Samiti, Kanti through the Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Kanti, P.O. and P.S. Kanti, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam and Mr. Ravi Parmar, Advocates
For the State	:	Mr. Patanjali Rishi, A.C. to A.A.G. 6
For the SEC	:	Mr. Amit Shrivastava and Mr. Girish Pandey, Advocates
For the Respondents No. 7 & 8	:	Mr. Y. V. Giri, Sr. Advocate Mr. S. P. Srivastava, Advocate Mrs. Anu Priyadarshi, Advocate
For the Respondent No. 9	:	Mr. Amit Bhushan, Advocate
For the Respondent No. 10	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondents No. 11 & 12	:	Mr. Rajiv Ranjan and Mr. Navin Anand, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 19-06-2017

Heard Mr. S.B.K. Mangalam along with Mr. Ravi



Parmar, learned counsel for the petitioners; Mr. Patanjali Rishi, learned AC to AAG-6 for the State; Mr. Amit Shrivastava along with Mr. Girish Pandey, learned counsel for the State Election Commission; Mr. Y.V. Giri, learned senior along with Mr. S.P. Srivastava, learned counsel for the respondents no. 7 and 8; Mr. Amit Bhushan, learned counsel for the respondent no. 9; Mr. Gautam Kumar Kejriwal, learned counsel for the respondent no. 10 and Mr. Rajiv Ranjan along with Mr. Navin Anand, learned counsel for the respondents no. 11 and 12.

2. The petitioners have moved the Court for the following reliefs:

- “ (I) *For issuance of an appropriate in the nature of CERTIORARI for quashing the proceedings of meeting dated 29.06.2016 of the Block Panchayat Samiti, Kanti, so far it relates to election of Pramukh and Up-pramukh of the said Panchayat Samiti.*
- (II) *For issuance of an appropriate in the nature of CERTIORARI for quashing the order dated 18.08.2016 passed by the Respondent no. 4 in Case No. 1 (Misc.)/2016-17 whereby and where under the Respondent no. 4 has been pleased to reject the petition filed by the petitioners for quashing the proceedings of the meeting of Block Panchayat Samiti, Kanti dated 29.06.2016 including the election held for the post of Pramukh and Up-Pramukh of the aforesaid Block Panchayat Samiti in the aforesaid meeting on the ground that the election for the post of Pramukh and Up-Pramukh was not conducted by the Respondent no. 5 in the manner as provided under the Act i.e. Bihar Panchayat Raj Act, 2006*



(hereinafter referred to as the Gram Panchayat Act), the Rules framed there under i.e. the Bihar Panchayat Election Rules (hereinafter referred to as 2006 Rules) and the instructions issued in this regard by the State Election Commission.

- (III) For a declaration that on the date scheduled for the first meeting of Block Panchayat Samiti, Kanti after its constitution through the General Elections held in 2016, since 24 out of total 30 elected members were absent from elected members were absent from the meeting for the reasons or the other though they were crying at the gate of meeting hall while the election was being conducted inside, in view of the circumstances stated and/or in view of the provisions contained under Rule-87 of the Bihar Panchayat Election Rules, 2006, the election of the Respondent nos. 7 and 8 for the post of Pramukh and Up-Pramukh respectively cannot be sustained in the eye of law and is, therefore, fit to be set aside.*
- (IV) Consequent upon quashing of aforesaid proceeding dated 29.06.2016 of Block Panchayat Samiti, Kanti and the election of Respondent nos. 7 and 8 as the Pramukh and Up-Pramukh of the said Block Panchayat Samiti, the Respondents may further be directed to hold a fresh meeting of Block Panchayat Samiti, Kanti for the election to the post of Pramukh and Up-Pramukh of the Panchayat Samiti in accordance with law.*
- (V) For issuance of any other appropriate writ/writs, order/ orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”*

3. The petitioners are elected members of Panchayat Samiti, Kanti in the district of Muzaffarpur and pursuant to their election were called upon to take oath of their office and also in turn



to elect the Pramukh and Up-Prakukh, which was scheduled to be held on 29.06.2016 at 10.00 A.M. It appears that out of the 30 elected members only six i.e., respondents no. 7 to 12 turned up within time, whereas the petitioners could not reach the venue and thus were not able to attend the meeting, in which, after administering oath of office to the members present, the election of Pramukh and Up-Pramukh was held as per schedule. The petitioners contend that they had reached the venue prior to the actual election having taken place but were denied entry and thus, such election stands vitiated. The complaint made to the respondent no. 5, i.e., the Returning Officer, on the same day, was forwarded to the respondent no. 4. Thereafter, a formal complaint was filed before the respondent no. 4 on 04.07.2016, which has been rejected by order dated 18.08.2016 (Annexure-5) which is impugned in the present writ application.

4. Learned counsel for the petitioners submitted that the full strength comprised of 30 members and only six members having participated in the election is an abuse of the entire process as a minority has elected the Pramukh and Up-Pramukh whereas the majority has been debarred by the official respondents and thus, the Court may interfere in the matter. He submitted that the petitioners, due to genuine reason, could not reach the venue at the scheduled



time but were informing the Returning Officer i.e., respondent no. 5 of their predicament and had requested for allowing some time to reach the venue so as to take oath of their office and participate in the election for the post of Pramukh and Up-Pramukh. It was contended that though the meeting was scheduled to begin at 10.00 A.M. but the Returning Officer herself reached the venue after 11.00 A.M. and thus, the meeting was in any case differed and did not begin on the time which was indicated in the notice and accordingly, the Returning Officer could very well have waited for some more time, moreso in view of the fact that due to some unavoidable reason, the petitioners could not reach the venue and were keeping the Returning Officer informed of their situation. It was submitted that the schedule fixed for the meeting was itself vitiated for the reason that it is the District Returning Officer i.e., the District Magistrate, who is to fix the time, which was not done and the same was done by the Sub Divisional Officer i.e., the Returning Officer only at the time of meeting which is not proper. Learned counsel submitted that the proceeding recorded of the meeting would also indicate that there is manipulation with regard to the time mentioned therein which clearly indicates that the meeting was not held in a fair and transparent manner. Learned counsel submitted that the video recording made of the meeting would also indicate that the petitioners had arrived at the



venue prior to the election being held and them being denied entry shows that the official respondents deliberately prevented the petitioners from attending the meeting and to take part in the election of Pramukh and Up-Pramukh. Learned counsel submitted that they were not allowed to meet the Returning Officer and the moment she came out they made a complaint to her but their *bona fide* grievance was not redressed. Learned counsel submitted that the petitioners had reached the venue at 11.35 A.M. on 29.06.2016 but entry was denied and at that time, the process of administration of oath was still going on. It was thus submitted that the process of election had not started and therefore it was incumbent upon the Returning Officer to allow them to take oath and then she should have proceeded with holding of the election in which the petitioners would obviously have had the right to vote. Learned counsel submitted that the District Magistrate despite being made aware of such happening formally by filing of a compliant has also not appreciated the matter correctly and has also wrongly rejected the contentions of the petitioners by his order dated 18.08.2016. Learned counsel further submitted that notice on at least three of the petitioners were not served which would be clear from the service report itself where other persons have received the notice.

5. Mr. Y. V. Giri, learned senior counsel for the respondents no. 7 and 8 submitted that the writ petition besides being



misconceived is based on incorrect facts. He submitted that in the pleadings the petitioners have categorically taken the stand that after the election, because of there being broad division among the elected members of the Panchayat Samiti, Kanti, the petitioners had gone outside to keep themselves united. It was submitted that the stand of the petitioners kept changing before various authorities inasmuch as before the Returning Officer on 29.06.2016 itself when she came out of the meeting venue, in the first objection filed before her, there was no grievance against the Returning Officer and also no mentioning that they had reached in time and had wanted entry which was denied. However, in the application filed before the District Magistrate under Section 40(4) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'), the stand was that 21 members among the petitioners had gone to a religious place in a group and some members had gone on celebration and when they were informed that the Returning Officer had fixed the date of meeting, they started to return in order to reach the place of meeting in time. Learned counsel submitted that such stand before the authorities was totally incorrect and even before this Court, the petitioners had not honestly disclosed that actually they had gone with the petitioner no. 1 to the Civil Court, Muzaffarpur for him to surrender and obtain bail in Complaint Case No. 2290 of 2013 (Trial No. 960 of 2016) in



which non bailable warrant of arrest had been issued against him. Learned counsel submitted that the ordersheet of the case dated 29.06.2016 discloses such fact and the petitioners not stating the same before this Court in the present writ application amounts to misleading the Court where a plea has been taken that they had gone outside for religious purposes. It was submitted that such fact being in the personal knowledge of all the petitioners since they were with the petitioner no. 1 was required to stated, which has deliberately been suppressed. Learned counsel submitted that the issue of non service of notice on 3 of the writ petitioners was never mentioned in the representation filed by the petitioners and thus cannot be pleaded by them at this stage. Learned counsel submitted that the instructions of the State Election Commission dated 03.06.2009 as published in the extraordinary issue of the Bihar Gazette dated 31.08.2010, the procedure for calling of a meeting for the purposes of administering oath to the newly elected members and for election to various posts has been detailed and as per the provisions, especially, 3(1)(2), 12(1), 17 and 19(v)(cha) thereof, the meeting had been convened by the Sub Divisional Officer after notice having been published in form 24 specifying the date, place and time of the meeting. It was submitted that in the statutory form, the date time and venue of the meeting, as is required, has been mentioned. Learned counsel submitted that the



District Magistrate after fixing the date had given the authority to the Returning Officer to get the meeting conducted and the manner in which it has been done is reasonable, fair and transparent. Learned counsel submitted that as per the instructions from the time fixed for the meeting, the authorities were required to wait for one hour for the members to arrive after which no other person is allowed to take part in the meeting. Learned counsel submitted that in the present case, the meeting was fixed for 10.00 A.M. and after waiting for one hour, the process of administration of oath was started on 11.00 A.M. and by that time only six members had reached the venue and even otherwise on the basis of the time reflected from the SMS made by the petitioners to the Returning Officer, it was established that they had not reached the venue prior to 12.30 P.M. i.e., much after the process of administration of oath and holding of election for Pramukh and Up-Pramukh has been concluded. Learned counsel submitted that the petitioners were required to satisfy the authorities as to why despite being aware of the place, date and time of the meeting, they were not vigilant enough to ensure that they reached the venue in time. Learned counsel submitted that from the pleadings also it is indicated that 21 out of 24 petitioners have taken the stand that when they were on way to the place of the meeting, due to there being a breakdown of their vehicle, they could not reach the venue whereas



with regard to three of the petitioners it has been stated that they were at their native place and upon being informed by the rest of the petitioners, they had come to the place of the meeting by 11.00 A.M., cannot be believed since from the SMS made to the Returning Officer by one of the petitioners, it has been stated that all 24 were together and would be reaching the place after some delay. Learned counsel has referred to the provisions of the Bihar Panchayat Election Rules, 2006 (hereinafter referred to as the 'Rules') more specifically Rules 87, 97 and 100 to emphasize that the procedure adopted by the Returning Officer i.e., the Sub Divisional Officer, West, Muzaffarpur is in accordance with the statutory requirement. He submitted that in any view of the matter, the facts being so hotly contested, the writ Court is not the proper forum for adjudication. For such proposition he referred to a decision of a Division Bench of this Court in the case of **Sunita Devi vs. State of Bihar** reported as **2016(1) PLJR 182**, the relevant being at paragraph-9. Learned counsel submitted that the petitioners not being present in the meeting and not taking part in the election, the same cannot be challenged by them for they had admittedly not reached the place of venue within one hour from the time fixed for the meeting and as per the instructions issued by the State Election Commission, which has the force of law, they stood barred from any participation. It was submitted that once the



petitioners have disintitiled themselves from participating in the meeting, their right to stand or contest the subsequent election for the post of Pramukh and Up-Pramukh automatically stands waived and thus they have no *locus standi* to maintain the present writ application. It was submitted that the order of the District Magistrate, Muzaffarpur dated 18.08.2016 is a detailed and speaking order and does not require interference for the reason that the petitioners have moved the Court for issuance of writ of certiorari and if the view taken by the authority is not incorrect or perverse and is a possible view, just because there may be a another point of view, the order shall not ordinary be interfered with.

6. Learned counsel for the State and State Election Commission have opposed the writ petition and had submitted that the election was conducted as per the legal and statutory requirements in accordance with law and even the admitted factual position as per the recording may indicates that the petitioners had not reached the venue prior to 12.30 P.M.

7. At this juncture, learned counsel for the respondent no. 10 adopted the arguments advanced by learned counsel appearing on behalf of the respondents no. 7 and 9.

8. Having considered the rival contentions, this Court does not find any merit in the present writ application. It is admitted



position that notices were duly and validly served on 21 of the petitioners and even with regard to three of the petitioners, who claim that notice had not been served on them, they not having filed such objection before any authority, for the first time such a purely factual matter cannot be raised before this Court. Moreover, from the SMS sent to the Returning Officer by one of the petitioners, it is clear that they were engaged elsewhere and could not have reached the venue before 12.30 P.M. and they had also made it clear that all 24 of them were together. Thus, all the petitioners being together and not being able to reach the venue prior to 12.30 P.M. and the meeting having been fixed for 10.00 A.M., the Returning Officer proceeding with the said meeting cannot be faulted. It is immaterial as to how many persons take part in the meeting as the meeting has to proceed as per the schedule, which has been done in the present case. The Court would like to indicate here that upon Forensic verification of the videography made available, both officially by the district administration as well as on behalf of the petitioners, it is clear that the petitioners had not reached the place of venue at least by the time the elections were held and results declared. Further, the Court would not repeat what it has already recorded in the earlier order dated 01.05.2017 in this regard relating to the video recording showing the sequence of events which clearly goes against the petitioners. The



Court would also like to observe that once the petitioners were aware that 29.06.2016 was the date fixed for the meeting where they were to be administered oath and then election was to be held for the post of Pramukh and Up-Pramukh, it was incumbent on them to reach on time. The Court is surprised on their conduct when they have chosen to accompany petitioner no. 1 while he had gone to obtain bail for himself rather than take part in the meeting. Be that as it may, it was the discretion exercised on behalf of the petitioners where they gave priority to accompanying the petitioner no. 1 when he went to surrender and obtain bail before the Court concerned rather than attending the meeting on the time scheduled. This is also proved by the numerous SMS sent to the Returning Officer by one of the petitioners where it has categorically been written that all 24 petitioners were together and there would be delay in reaching the venue of the meeting. Once the petitioners have chosen to give priority to them accompanying the petitioner no. 1, the consequences flowing out of such decision cannot be challenged on the ground that the Returning Officer was required to wait for the petitioners to reach the meeting. Further, as has been pointed out by learned counsel for the private respondents, the Civil Courts were functioning from 10.30 A.M. on 29.06.2016 and thus, the petitioner no. 1 surrendering before the Court could not have been prior to 10.30 A.M. and thereafter



upon arguments being advanced and order being passed, him furnishing bail bonds and then being released on bail, would naturally take time and therefore the petitioners can in no way reach the venue in time. Moreover, the petitioners were aware that the meeting was fixed for 10.00 A.M. and the Civil Court starts functioning at 10.30 A.M., there could not have been any confusion that either they could attend the meeting on time or accompany the petitioner no. 1 and they having chosen to take the second recourse, i.e., accompanying the petitioner no. 1 to the Civil Court shows that they had not cared to attend the meeting for taking oath and thereafter take part in the election. Further, from the copy of the minutes on record, the Court does not find that there is any manipulation of the nature which would indicate any fraud or their being any suspicious circumstance to show that there was any wrong doing on the part of the authorities concerned. From the situation and scenario emerging, as enumerated above, the Court is concerned at the fact as to why 23 of the petitioners had to accompany the petitioner no. 1 when he went to take bail and did not attend the meeting. In such background, the contention of learned counsel for the respondents that all of them were taken by the petitioner no. 1 as he did not want them to go alone to the place of meeting being not sure of their role, finds credence. This is an alarming trend in grass-root democracy where the free will



of the elected representatives is not reflected from their conduct, which is directly relatable to extraneous considerations.

9. The Court also finds substance in the contention of learned counsel for the respondents that once facts are hotly contested and disputed, writ Court may not be a proper forum for adjudication. In this connection it would be relevant to quote paragraph-9 of the decision relied upon by learned counsel for the respondents no. 7 and 8 in the case of **Sunita Devi** (supra)

“9. We do not find that the observations made, the conclusions reached and the directions given by the learned Single Judge suffer from any infirmity, factual or legal; more so, when we notice that it is a question of fact as to whether the requisition had or had not been given to the appellant and whether the appellant had or had not refused to accept the requisition. Such disputed question of fact, we emphasize, could not have been decided in a writ petition inasmuch as such an intensely disputed question of fact can be determined only by recording evidence, which is, ordinarily, neither permissible nor desirable in a proceeding under Article 226 of the Constitution of India. The remedy, therefore, with the appellant, lied in instituting appropriate suit in a Civil Court of competent jurisdiction, for redressal of her grievance, if any. This apart, if a requisition is given to a Chief Councillor and he/she refuses to accept the requisition, it cannot defeat the right of the requisitionist to call a special meeting if the special meeting is not convened by the Chief Councillor in accordance with law. Whether the requisitionists had given requisition to, the appellant, as a Chief Councillor, seeking convening of a special meeting to discuss the motion of no confidence against her, is a matter



of fact and since this fact is disputed, a writ proceeding is not the appropriate proceeding for determination of such dispute.”

10. In view of the discussions made hereinabove, the writ petition stands dismissed.

11. Before parting, the Court would reiterate its directions/observations made in paragraphs no. 17 to 23 of the order dated 01.05.2017 passed in the present case. Any deviation would be viewed seriously and would also amount to contempt. Learned counsel for the State and the State Election Commission have assured the Court that measures have already been initiated in view of the directions/observations made by the Court and it shall be ensured that the same are duly implemented so as to achieve the object envisaged.

(Ahsanuddin Amanullah, J.)

P. Kumar

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