

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18559 of 2018

1. Rita Devi @ Rita Yadav wife of Sri Shambhu Prasad Yadav, Resident of Village- Nayagaon Bariarpur, P.O.- Taiyabpur, P.S.- Desari, District- Vaishali at Hajipur.
2. Mustari Khatoon, Wife of Md. Sanjar, Resident of Village and P.O.- Paharpur Toi, P.S. Sahdei O.P., District- Vaishali at Hajipur.
3. Kiran Kumari, Wife of Shri Anuj Kumar, Resident of Village and P.O.- Mansai, P.S. Sahdei O.P., District- Vaishali at Hajipur.
4. Kavita Kumari, Wife of Sri Navin Kumar Sharma. Resident of Village- Chak Jamal P.O.-Sahdei , P.S. Sahdei, O.P., District- Vaishali at Hajipur.
5. Umesh Rai, Son of Sri Ram Ekbal Rai, Resident of Village and P.O. Sultanpur, P.S. Desari, District- Vaishali at Hajipur. All the petitioners are elected members of Block Panchayat Samiti, Sahdei Bujurg, P.O. and P.S. Sahdei Bujurg, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, 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, Vaishali at Hajipur, District- Vaishali at Hajipur.
5. The Sub-Divisional Officer, Mahnar, District- Vaishali at Hajipur.
6. The Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Sahdei Bujurg, District
7. Smt. Renu Devi, Wife of Sri Vijay Kumar Rai, presently Pramukh of Block Panchayat Samiti, Sahdei Bujurg, P.O. and P.S.- Sahdei Bujurg, District- Vaishali at Hajipur.
8. Mala Devi, Wife of Hareshwar Singh, Presently Up- Pramukh of Block Panchayat Samiti, Sahdei Bujurg, P.O. and P.S.- Sahdei Bujurg, District- Vaishali at Hajipur.
9. Shivji Sah, Son of not known to the petitioners,
10. Janardan Paswan, Son of not known to the petitioners,
11. Sanju Kumari, Wife of not known to the petitioners,
12. Sabita Kumari, Wife of not known to the petitioners,
13. Sharmila Devi, Wife of not known to the petitioners,
14. Surendra Chaudhary, Son of not known to the petitioners,
15. Renu Devi, Wife of not known to the petitioners.
16. Ram Kumar Rai, S/o not known to the petitioners. Respondent nos. 9 to 16 are the members of Block Panchayat Samiti, Sahdei Bujurg, through the



Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Sahdei Bujurg, P.O. and P.S.- Sahdei Bujurg, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.S.B.K. Mangalam, Advocate
For the State	:	Mr.Anwar Karim, AC to GP 10
For the Respondents	:	Mr. Sri Prakash Srivastava, Advocate Mr. Sanjay Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 23-04-2019 Heard learned counsel for the parties.

The petitioners in the present case are seeking the following reliefs :-

(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the proceeding of the special meeting of Block Panchayat Samiti, Sahdei Bujurg dated 13.07.2018 convened for consideration of NO CONFIDENCE MOTION against the Respondent no. 7 on the following grounds :-

(a) The requisition filed for the said purposes and addressed to the Respondent no. 7 was not in tune with the statutory provisions as contemplated under Sub-Section-3(i) of Section-44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act).

(b) The notice issued for the said special meeting vide letter no. 1153 dated 06.07.2018 of the Respondent no. 6 was not in consonance with the statutory provisions as contained under Sub-Section-4 of Section-46 of the Gram Panchayat Act since there was no seven clear days notice to the members as contemplated by Sub-Section-4 of Section-46 of the Gram Panchayat Act; and

(c) The aforesaid special meeting was since convened by the Respondent no. 7 on the request of Panchayat Samiti members, who were supporters of Respondent no. 7 to frustrate the provisions of the Act and deprive other members from their statutory right, the



impugned special meeting was not a valid meeting in the eye of law.

(II) For a declaration that since the said special meeting was convened to deprive the other to have an occasion to remove the Respondent no.7 from the post of Pramukh when majority decides to vote against her, the special meeting dated 13.07.2018, in which NO CONFIDENCE MOTION against the Respondent no.7 was rejected for want of support by the majority, would not come in the way of other member if they do feel that the Respondent no.7 has to be removed from the post of Pramukh for a genuine and valid reason.

(III) For issuance of an appropriate writ in the nature of MANDAMUS to declare that since by virtue of their action to summon a special meeting for consideration of NO CONFIDENCE MOTION against the Respondent no.7 and when the meeting was convened they had absented themselves from a special meeting to get their motion rejected, the requisitionists members have committed a misconduct and they do not deserve to continue as a member of Panchayat Samiti any further.

(IV) For issuance of any other appropriate writ/writs, order/order, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.

Learned counsel for the petitioners submits that in this case the special meeting was convened by respondent no. 7 on the request of the *Panchayat Samiti* Members but while doing so the requirement of seven clear days notice as envisaged under Clause (iii) of sub section (3) of Section 44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act of 2006') read with Section 46 (4) of the Act of 2006 has not been complied with, hence, all subsequent action including holding of the meeting on



13.07.2018 and the resolution passed in the said meeting would be liable to be quashed.

A counter affidavit has been filed on behalf of respondent nos. 4 to 6 in which they have submitted that the special meeting for the purpose of No Confidence Motion was fixed on 13.07.2018 as per law but the petitioners and others preferred not to participate in the said meeting as a result of which the No Confidence Motion has been dropped in accordance with law.

A counter affidavit has also been filed on behalf of respondent nos. 7 to 16. In Paragraph-6 of the counter affidavit it has been admitted by the answering respondents that the notice dated 06.07.2018 bearing letter No. 1153 (Annexure – P/2) is contrary to the mandate of Section 44(3)(iii) and 46(4) of the Act of 2006. The private respondents again stated in Paragraph-7 of their counter affidavit that the requisition of No Confidence Motion and outcome of the special meeting dated 13.07.2018 stand defeated. They have also accepted that the notice dated 06.07.2018 bearing letter No. 1153 (Annexure – P/2) was in complete departure to Section 46(4) of the Act of 2006, hence, the same is illegal.

Considering the facts and circumstances of the case



and the stands of the private respondents, this Court finds that there is no contest on the point that the notice in question was issued in contravention of statutory provision as contained in Clause (iii) of sub section (3) of Section 44 read with Section 46 (4) of the Act of 2006. This being the position and in view of the judicial pronouncement holding that the said provision is mandatory in nature, the impugned notice and all consequential action taken pursuant thereto stand quashed.

This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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