

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 24482 of 2019

Komal Anita Singh (Female), aged about 30 years, Wife of Sri Amit Kumar Singh, Resident of Village-Baradih, P.O. Baragandhar, P.S. Gaya Muffasil, District-Gaya, Presently Pramukh of Block Panchayat Samiti, Manpur, District-Gaya.

... .. 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, Gaya District-Gaya.
5. The Sub-Divisional Officer, Sadar Gaya, District-Gaya.
6. The Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, District-Gaya.
7. Anju Kumari (Female), Wife of Anil Rajak Presently Up-Pramukh of Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur, District-Gaya.
8. Umesh Manjhi (Male), Son of Late Govind Manjhi the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
9. Sita Devi (Female), Wife of Ashok Mistri, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
10. Rina Devi (Female) Wife of Ashok Thakur, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
11. Saraswati Devi (Female) Wife of Ajay Kumar Das, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
12. Rajendra Chaudhary (Male) Son of Chandar Chaudhary, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
13. Ashutosh Kumar (Male), Son of Ramanugrah Singh the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
14. Rimsha Jaween (Female), Wife of Md. Sharim Ali, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block



- Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
15. Anwari Khatoon (Female), Wife of Md. Aalamgir the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 16. Nusrat Khatoon (Female), Wife of Md. Gamib the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 17. Meena Devi (Female), Wife of Ranjit Singh, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 18. Jitendra Kumar Singh (Male), Son of Chamroo Singh, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 19. Sushma Kumari (Female), Wife of Munib Yadav the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 20. Sharda Devi (Female), Wife of Akhilesh Chaudhary the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 21. Akhtar Hussin (Male), Son of Md. Islam, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.
 22. Rita Devi (Female), Wife of Chandrika Paswan, the Panchayat Samiti Member of Block Panchayat Samiti, Manpur through the Block Development Officer-Cum-Executive Officer, Block Panchayat Samiti, Manpur, P.O. and P.S. Manpur District-Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S B K Mangalam, Advocate
For the Requisitionists	:	Mr. Sandeep Kumar and Mr. Pramod Kumar, Advocates
For the State	:	Mr. Prabhat Ranjan, AC to GP 6

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 10-12-2019



Heard Mr. SBK Mangalam, learned counsel for the petitioner; learned AC to GP 6 for the State and Mr. Sandeep Kumar, learned counsel for the requisitionists.

2. The petitioner has moved the Court for the following reliefs:

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the requisition dated Nil signed by Seven elected members of Manpur Block Panchayat Samiti which is addressed to the petitioner but it was directly filed in the office of Respondent no. 6 on 06.11.2019 through which a request has been made from the petitioner to convene the special meeting of Block Panchayat Samiti, Manpur for consideration of No Confidence Motion against the petitioner on the following ground:-

(a) The requisition of requisitionists is barred under Sub-Section- 3 (ii) of se-44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act) since a No Confidence Motion was already brought against the petitioner on 03.09.2018 in which No Confidence Motion was passed against the petitioner but it was set aside by this Hon’ble Court vide judgment and order dated 02.09.2019 passed in C.W.J.C. No. 18751 of 2018 but no liberty was granted to the requisitionists to bring another No Confidence Motion against the petitioner in accordance with law : and

(b) The requisition was not presented before the writ petitioner by the requisitionists as per the mandatory requirements as contemplated under Section 44 (3) (i) of the Gram Panchayat Act, rather it was directly submitted in the office of Respondent no. 6 and it is the Respondent no. 6, who had Forwarded only the “photo stat copy” of the requisition to



the petitioner on 07.11.2019 for fixing the date of special meeting.

(II) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the notice dated 28.11.2019 issued under the signature of the Respondent no. 6 by which he has informed the members of Block Panchayat Samiti that the special meeting of Block Panchayat Samiti has been convened on 14.12.2019 for consideration of No Confidence Motion against the petitioner and, therefore, they have been requested to attend the said meeting on the ground:-

(a) The impugned notice has been issued by the Respondent no. 6 on the basis of a requisition which is thoroughly illegal in view of the provisions contained under Sub-Section-3 (i) and 3 (ii) of se-44 of the Gram Panchayat Act:

(b) The impugned notice has not been addressed to the petitioner; and

(c) The impugned notice does not fulfill the requirements of a valid notice as contemplated under the Act.

(iii) For a declaration that the Executive Officer of a Panchayat Samiti would be competent to forward a requisition for fixation of date of special meeting for consideration of No Confidence Motion against a Pramukh only when a requisition is submitted in his office according to the mandatory procedure prescribed under the Act and not otherwise. The petitioner would further seek a declaration that if an Executive Officer has forwarded a requisition to a Pramukh for fixing the date of special meeting, he is bound to meet the queries of the Pramukh, if the Pramukh has raised any objection about the validity or bonafidy of the requisition and / or the procedure adopted by the requisitionists for preparation of their requisition.

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



3. The controversy relates to whether the requisition by the requisitionists was ever served or attempt made to serve it directly on the petitioner who is the elected Pramukh of Block Panchayat Samiti, Manpur in the district of Gaya as required under Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act').

4. Learned counsel for the petitioners straightway drew the attention of the Court to copy of the communication made by the Block Development Officer, Manpur, Gaya dated 07.11.2019, by which he has forwarded the requisition of the requisitionists to the petitioner for fixing the date for special meeting for considering a motion of No Confidence against her. It was submitted that in reply thereto, the petitioner had written clearly that though she had attended the office in November, 2019, or was at home but the requisitionists had neither made any attempt to serve the requisition to her either in the office or her residence. Learned counsel submitted that many other points have also been raised but on this short point, as admittedly the application not being served or attempt made to serve it directly on the petitioner, any subsequent action stands vitiated in law. In this connection, learned counsel referred to the decision of a Division Bench of



this Court in **Sheikh Hassmuddin vs. State of Bihar** reported as **2015(3)PLJR 203**, especially at paragraph no. 9, where it has been held that mere knowledge of the development cannot be treated as service of notice.

5. In support of the fact that the requisition was not sent to the petitioner and even what was sent was a mere photocopy of the requisition submitted in the office of the Block Development Officer, learned counsel referred to the communication of the Block Development Officer himself in which he has stated that the requisition which was submitted in his office, copy of the same was sent to her, which she refused to accept. Thus, it was submitted that without there being any requirement of any further proof, the violation of the mandatory pre-requisite of law being service of notice directly to the petitioner, which has not been done, the requisition itself and all subsequent action being vitiated, are required to be interfered with.

6. Learned counsel for the State submitted that from the materials on record, it appears that the Block Development Officer had sent the copy of the requisition received in his office to the petitioner. He submitted that the law is clear and has also been interpreted in **Sheikh Hassmuddin** (supra).



7. Learned counsel for the requisitionists submitted that the petitioner had refused to accept the notice which is a reality in the present times and can also be presumed as no person would receive a notice which ultimately may harm his or her interest. At this juncture, when the Court made a specific query as to whether they had communicated such fact to the Block Development Officer or what happened to the original requisition addressed to the petitioner as it has not come even by the Block Development Officer that the requisition in the original addressed to the petitioner was sent to her, learned counsel could not controvert the submissions made on behalf of the petitioner.

8. Having regard to the aforesaid, in view of the undisputed and non controverted fact that the original requisition addressed to the petitioner was neither served nor any attempt made to serve it to the petitioner and only copy of the same addressed to the Block Development Officer having been submitted in the office of the Block Development Officer and one such copy being forwarded to the petitioner by the Block Development Officer, in the considered opinion of the Court, is absolutely no compliance of the mandatory and basic requirement relating to service of notice/real attempt to serve the notice personally on the incumbent i.e., the petitioner.



9. Thus, on the aforesaid short point, the application succeeds. The requisition of the requisitionists, purportedly dated 06.11.2019, as well as all consequent actions, including fixing of the date of the special meeting for 14th December, 2019, stand set aside.

10. However, before parting, the Court would only observe that since the earlier requisition had also been interfered by the Court and the same had been set aside, even the setting aside of the present requisition, in the eyes of law, no requisition shall be deemed to be submitted for removal of the petitioner from her post. Thus, the technical barrier of filing of a requisition in terms of Section 44(3)(ii) shall not come in the way of the required number of elected members from moving a fresh requisition with regard to convening of a special meeting for considering a motion of No Confidence against the petitioner, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	
T	

