

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6574 of 2020**

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Inamul Haque son of Izhar Ahamad resident of Jamalpur Ward No. 04,  
Jamalpur, District- Darbhanga, Bihar- 847203.

... .. 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, Darbhanga.
5. The District Panchayati Raj Officer, Darbhanga.
6. The Sub- Divisional Officer, Biraul, Darbhanga.
7. The Block Development Officer cum Chief Executive Officer, Prakhand Panchayat Samiti, Kiratpur, Darbhanga.
8. Md. Kamal Hussain, son of not known to the petitioner, at present Member Panchayat Samiti, Kiratpur, Darbhanga
9. Pintu Sadanad, son of not known to the petitioner, at present Member Panchayat Samiti, Kiratpur, Darbhanga
10. Sakhari Begum, wife of not known to the petitioner, at present Member Panchayat Samiti, Kiratpur, Darbhanga
11. Ram Prakash Rai, son of not known to the petitioner, at present Up Pramukh cum Member Panchayat Samiti, Kiratpur, Darbhanga
12. Sakina Parveen, wife of not known to the petitioner, at present Member Panchayat Samiti, Kiratpur, Darbhanga
13. Leela Devi, wife of not known to the petitioner, at present Member Panchayat Samiti, Kiratpur, Darbhanga  
All resident of Kratpur Panchayat, Block Kiratpur and Member of Panchayat Samiti, Kiratpur, Darbhanga.

... .. Respondent/s

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**Appearance :**

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|-----------------------------------|---|------------------------------------------------------|
| For the Petitioner/s              | : | Mr.Anand Kumar Ojha, Adv.                            |
| For the State                     | : | Mr.Pratik Sinha, A.C. to G.A.5                       |
| For the State Election Commission | : | Mr. Amit Srivastava, Adv.<br>Mr. Girish Pandey, Adv. |
| For the respondent No.10          | : | Mr. Manindra Kishore Singh, Adv.                     |
| For the respondent No.8           | : | Mr. Sameer Ranjan, Adv.                              |

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

5      17-09-2020

Heard Mr. Anand Kumar Ojha, learned counsel for the



petitioner, Mr. Pratik Sinha, learned A.C. to G.A.5, Mr. Amit Srivastava duly assisted by Mr. Girish Pandey, learned counsel for the State Election Commission, Mr. Manindra Kishore Singh, learned counsel for the respondent No.10 and Mr. Sameer Ranjan, learned counsel for the respondent No.8.

The petitioner in this writ petition seeks quashing of the requisition contained in letter No.308 dated 13.03.2020 directly sent by the Block Development Officer-cum-Chief Executive Officer, Prakhand Panchayat Samiti, Kiratpur, Darbhanga(Annexure-1) asking the petitioner to take steps on the notice/resolution expressing want of confidence in him.

During the pendency of this writ petition, the petitioner filed I.A. No.1 of 2020 for amendment in the relief part of the application seeking relief to quash letter No.974 dated 11.06.2020 issued by the District Panchayat Raj Officer(respondent No.5) to Block Development Officer, Kiratpur(respondent No.7) and to quash letter No.486 dated 12.06.2020 issued by the Block Development Officer, Kiratpur-respondent No.7 asking the petitioner to decide the date of special meeting and also to restrain the authorities from seeking special meeting in view of large number of covid-19 positive cases. The petitioner further seeks quashing of the resolution



dated 27.06.2020 as contained in memo No.549 duly signed by the Executive Officer removing the petitioner from the post of Pramukh.

The admitted facts of this case is that petitioner was holding the post of Pramukh in Kiratpur Panchayat Samiti. Five members out of ten elected members of the Panchayat Samiti had made complain in writing on 12.03.2020 alleging that Pramukh was acting arbitrarily without taking the committee in confidence. The Executive Officer vide letter No.308 dated 13.03.2020 sent the requisition to the petitioner asking him to take steps for convening a meeting for discussion of no confidence motion brought against him. Even during the lockdown period to prevent the spread of covid-19 cases, the authorities were bent upon to convene a meeting. The petitioner filed this writ petition for stay of meeting on the ground that notice was not served on him in accordance with the provisions as contained in Section 44(3) of the Panchayati Raj Act, 2006. The notice is further assailed on the ground that the same does not contain any specific, unambiguous and definite charges as required under Section 44(5) of the Panchayati Raj Act, 2006.

Mr. Anand Kumar Ojha, learned counsel for the petitioner submits that a Division Bench of this Court in the



case of Meena Yadav and Anr. vs. The State of Bihar and others in CWJC No.12611 of 2008 and analogous cases reported in 2010(2) PLJR 389 considered the question as to what should be content of notice requiring for convening a meeting. It is held that provision of Section 44 of the Act, 2006 has now cast an explicit obligation upon the authority issuing the notice of meeting, be it the Pramukh or the Executive Officer to mention the reasons/charges in the notice and it is held that if the notice does not contain the charges or the allegations in explicit, unambiguous and clear terms, the same shall be bad, illegal because the Pramukh or other elected representative who faces no confidence motion could not reply the charges properly and vagueness of charges shall vitiate the notice as well as the resolution taken pursuant to the notice in the meeting. It is further submitted that in the case of Sindhu Devi vs. State of Bihar, 2002(1) PLJR 281 it has also held that lack of mention of charges/allegations in the notice will render the notice invalid and void and the subsequent resolution on the basis of such notice shall also vitiate and, therefore, the notice/requisition as contained in Annexure-1 as well as the resolution dated 27.06.2020 of the meeting as contained in Annexure-H are fit to be quashed.



Mr. Pratik Sinha, learned A.C. to G.A.5 submits that the notice does not contain the definite charges/allegations on the basis of which the special meeting to be convened for discussion of no confidence motion but it is not mandatory. It is submitted that even if the notice and resolution is held to be illegal, the members of the Panchayat Samiti should be allowed to serve fresh notice on the Pramukh containing definite, unambiguous, clear and explicit allegation of his misconduct and malafide intention and illegal act of the Pramukh.

Mr. Manindra Kishore Singh, learned counsel for the respondent No.10 and Mr. Sameer Ranjan, learned counsel for the respondent No.8 have very candidly and fairly submitted that of course notice/requisition for holding special meeting does not contain definite, unambiguous, certain and explicit charges and it is submitted that in view of the law laid down by the Division Bench judgment of this Court in the case of Sindhu Devi(supra), the notice/requisition as well as the resolution are liable to be quashed but the opportunity should be given to the members of the Panchayat Samiti to serve fresh notice with clear, unambiguous and certain charges against the Pramukh.

Mr. Amit Srivastava, learned counsel for the State Election Commission has submitted that in the case of Ravi



Yashwant Bhoir v. District Collector, Raigad and others, 2012(4) SCC 407, the Supreme Court has clearly and explicitly defined malafide, fraud, forgery, misconduct on the part of elected members of panchayats. The panchayat has got constitutional status by Constitution(74th Amendment) Act, 1992 and it is basic democratic units and as such exercise of executive power affecting efficacy of such institutions would destroy a basic feature of the Constitution. Therefore, it is required that the charge or notice must contain the allegation in definite, unambiguous and certain terms so that the elected members against whom such meeting is required to be held for no confidence motion should answer effectively and in proper manner.

The sole question arises “what contents are required to be mentioned in the notice calling for convening a special meeting for discussion of no confidence motion either against Pramukh or Up Pramukh of Panchayat Samiti or any other elected bodies?”

Sub-section (3) of Section 44 clearly says that such reasons/charges, on the basis of which no confidence motion has to be moved against the Pramukh or Up-Pramukh, shall be clearly mentioned in the notice of the meeting called to consider



the no confidence motion. In the case of Meena Yadav(supra) Division Bench of this Court held in para 13 of the judgment which is reproduced as follows:

“13. There is no vagueness or ambiguity in the language of the statute, be it Sub-section (3) (b) of Section 44 or Sub-section (4) (i) of Section 70 of the Act so as to call for any interpretation. The relevant provisions in categorical terms require that the reasons/charges for no confidence motion shall be clearly mentioned in the notice of the meeting. Besides serving the twin purpose indicated above, the provision serves to protect and promote the meaning and purpose of true Democracy which requires meaningful debates and discussions. They improve the understanding and capability of the elected members and also educate the grass root constituents of Democracy i.e. the voters. Such laudable purpose which is sure to promote larger public good needs to be protected by all the constitutional authorities including courts. Hence, it must be held that the relevant provisions noticed above are mandatory.



Whether the notice of meeting called to consider “no confidence motion” has been issued by the elected office bearers or in default by the concerned officials, it must clearly mention the reasons/charges, failure to do so will render the notice and the consequent meeting void. Such clear and purposive provision by text and context should not be made ineffective by holding it directory so as to be violated with impunity. Violation of such a provision can not be condoned on the ground that somehow the reasons/charges were known to the persons concerned or they did not care to know the reasons/charges. Allowing such a state of affairs to develop would go against the clear mandate of law and shall run counter to good and basic tenets of Democracy.”

In view of the law laid down by the Division Bench of this Court in the case of Meena Yadav(supra) as well as Sindhu Devi(supra), the question what the notice should contain requiring the Pramukh/Uppramukh to convene a special meeting for discussing no confidence motion is not res. If the notice does not contain clear, unambiguous and certain allegations, the same



is bad and illegal and the resolution taken in such meeting shall also vitiate.

In view of the aforesaid discussion and findings, I find that the impugned notice/requisition as well as the resolution dated 27.06.2020 held in pursuance of the aforesaid notice(Annexure-1) must be held to be illegal because the same admittedly did not contain any definite charges what are required under the law. Hence, the notice/requisition contained in letter No.308 dated 13.03.2020 and the resolution dated 27.06.2020 removing the petitioner from the post of Pramukh are illegal and bad in law.

In the result, the notice/requisition dated 13.03.2020 and the resolution dated 27.06.2020 taking in the meeting are quashed. This writ petition is allowed accordingly.

It is needless to say that members of the Panchayat Samiti, if they feel so, may bring the fresh notice containing the charges as required under the law for convening a meeting for discussion on no confidence motion.

**(Prabhat Kumar Jha, J)**

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