

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.113 of 2020**

**In**

**Civil Writ Jurisdiction Case No.20751 of 2018**

Dharamsheela Kumari, W/o- Shri Jitendra Kumar Rai, Presently Pramukh of Block Panchayat Samiti- Vaishali, P.O. and P.S.- Vaishali, District- Vaishali at Hajipur.

... ... Respondent No.6-Appellant/s  
Versus

1. Hemant Kumar, Son of Sri Suresh Prasad Singh, Resident of Village Bhagwanpur Rat, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
2. Shailendra Prasad Singh, Son of Bharat Prasad Singh, Resident of Village Panchpaika, P.O.- Abul Hasanpur, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
3. Haridwar Pandey, Son of Sri Nand Kishore Pandey, Resident of Village and P.O.- Abul Hasanpur, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
4. Amrit Paswan, Son of Shiv Nandan Paswan, Resident of Village and P.O.- Dharampur, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
5. Kishore Sah, Son of Late Nageshwar Sah, Resident of Village- Rasul Chak, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
6. Lalita Kumari, Wife of Sakaldeo Paswan, Resident of Village- Kamtauliya, P.O.- Balukaram, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
7. Sanoj Kumar Sahani, Son of Kailash Sahani, Resident of Village and P.O.- Vaishali, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.
8. Dharmendra Pandit, Son of Kamal Pandit, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajpura, P.S.- Vaishali, District- Vaishali at Hajipur.



9. Manzoor Alam, Son of Mahmood Alam, Resident of Village and P.O.- Daud Nagar, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajipura, P.S.- Vaishali, District- Vaishali at Hajipur.
10. Sita Devi, Wife of Subodh Paswan, Resident of Village and P.O.- Amritpur, P.S.- Vaishali, District- Vaishali at Hajipur. Elected Member of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajipura, P.S.- Vaishali, District- Vaishali at Hajipur.

All the petitioners are elected members of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, Resident of Village and P.O.- Hajipur, P.S. Vaishali, District- Vaishali at Hajipur.

**.... Petitioner No.1 to 10  
... Respondent 1<sup>st</sup> Set.**

11. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
12. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
13. The Director, Panchayati Raj Department, Government of Bihar, Patna.
14. The District Magistrate, Vaishali at Hajipur, District- Vaishali at Hajipur.
15. The Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Vaishali, District- Vaishali at Hajipur.
16. Neelam Devi Wife of Dinesh Singh Presently Up- Pramukh of Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, District- Vaishali at Hajipur.
17. Gayatri Singh, Wife of not known to the petitioners
18. Md. Naushad Son of not known to the petitioners
19. Bharat Ram Son of not known to the petitioners
20. Sunaina Devi Wife of not known to the petitioners,
21. Sandhya Devi Wife of not known to the petitioners,
22. Neelam Devi Wife of not known to the petitioners,
23. Sulekha Devi Wife of not known to the petitioners,
24. Meena Devi Wife of not known to the petitioners,
25. Priya Rani Wife of not known to the petitioners, the member of Block Panchayat Samiti, Vaishali through the Block
26. Anil Kumar Son of not known to the petitioners,

Respondent Nos.16 to 26 are the members of Block Panchayat Samiti, Vaishali through the Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Vaishali, P.O. and P.S.- Vaishali, District- Vaishali at Hajipur.

**... .. Respondents No.1 to 5 & Respondent No 7 to 17  
Respondents 2<sup>nd</sup> Set.**



**Appearance :**

For the Appellant/s : Mr. Yogesh Chandra Verma, Senior Advocate  
Mr. Prakash Srivastava, Advocate  
Ms. Apporva Jyoti, Advocate  
Ms. Anu Priyadarshi, Advocate

For the Respondent Nos.1 to 10: Mr. Shashi Bhushan Kumar Manglam, Advocate  
Mrs. Anita Kumari, Advocate

For the Respondent Nos.11 to 15: Mr. Lalit Kishore, Advocate General  
Mr. Vikash Kumar, SC 11

For the Respondent Nos. 19 & 20: Mr. Anil Kumar, Advocate

---

---

**CORAM: HONOURABLE THE CHIEF JUSTICE  
and  
HONOURABLE MR. JUSTICE S. KUMAR**

**C.A.V. JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 28-06-2021**

The following issues arise for consideration in this

**Appeal:**

- (i) Whether Section 44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Act) is independent and standalone Section, i.e., a complete code in itself?
- (ii) Whether the condition provided under sub-section (4) of Section 46 of the Act stipulating a minimum period of seven days clear notice for convening a special meeting can be applied for or read into the provisions of Section 44(3) of the Act?
- (iii) Whether Section 44(3) mandates any quorum for



the special meeting convened to discuss and vote a no-confidence motion?

- (iv) Whether Section 44(3) mandates a motion of no confidence to be put to the vote by way of a secret ballot?
- (v) If so, then as to whether the action impugned, subject matter of the writ petition, is ultra vires the said provision?
- (vi) Whether Section 44(3) mandates the requisitionists to be present in the special meeting called to discuss and put to vote the motion of no confidence?
- (vii) If not, then whether the Requisitionists' absence has resulted in the act of fraud with an endeavour of defeating the laudable object of the Statute?
- (viii) Whether the Requisitionists' absence was deliberate and in collusion with the Pramukh and Up-Pramukh resulting in violation of the law?
- (ix) Whether in the absence of the motion put to the vote, the bar stipulated under sub-section (3) (ii) of Section 44 would come in the way of moving a new motion of no confidence?



- (x) Whether the acts of the Executive Officer in issuing direction asking the Pramukh to fix a meeting for discussing a no-confidence motion by giving seven days clear notice would amount to "dereliction of duty" warranting initiation of an enquiry concerning his act and conduct?

### **FACTS**

2. The facts leading to the filing of the present Appeal are short and simple.

3. In the year 2016, Mrs. Dharamsheela Kumari (Appellant herein- Respondent No.6 in the writ petition, referred to as the Pramukh) was elected as a Pramukh and Mrs. Neelam Devi (Respondent No.16 herein-respondent no.7 in the writ petition, referred to as the Up-Pramukh) was elected as an Up-Pramukh of Panchayat Samiti, Vaishali. On 2<sup>nd</sup> August of 2018, 10 out of 22 members of the Panchayat Samiti, Vaishali (referred to as the Samiti) submitted a requisition to the Pramukh (Annexure-1 Page-16-17) for convening a special meeting to discuss the motion for no-confidence both against the Pramukh and the Up-Pramukh, copy of which was endorsed to the Block Development Officer-cum- Executive Officer, Panchayat Samiti, Vaishali. The same day, the Block



Development Officer, Vaishali, sent a letter to the Pramukh and the Up Pramukh (Annexure- 1/1 page-18) asking them to fix a meeting by giving seven days prior notice to all concerned. Immediately, in fact, the very same day, the Pramukh called for two separate meetings to discuss the no-confidence motion against herself (the Pramukh) on 10<sup>th</sup> August 2018 and against the Up-Pramuh on 11<sup>th</sup> August 2018. Also, very same day, notices in terms thereof (Annexure- 2 Series, Page-19-20) were issued to all the elected members of the Samiti.

4. None objected to the date; time, and place of the meeting, save and except one member, namely Hemant Kumar (writ petitioner no.1), who alleging collusion between the Pramukh and the Requisitionists an attempt to thwart the provision of the Bihar Panchayat Raj Act, 2006, vide a written communication dated 09.08.2018 (Annexure-4 page 29-30) expressed his concern with the District Magistrate, Vaishali.

5. In the special meeting held on 10<sup>th</sup> August 2018, only ten out of twenty two elected members of the Samiti participated in the proceedings in which the Requisitionists, the Pramukh or the Up Pramukh were not present.

6. From the record of the proceedings of the meeting of the No-confidence motion dated 10<sup>th</sup> August 2018



(Annexure-3, Page 21-28), it is apparent that Sri Amrit Paswan, amongst the elected members present, was chosen to preside over the meeting. In the said meeting, seven members by voice vote supported the motion; one member, while supporting the motion, requested a secret ballot; one member, while neither supporting nor opposing the motion, requested a secret ballot. Amrit Paswan, the Presiding Member, opined that since only ten out of twenty two members were present and affirmation of the resolution required at least twelve votes, thus the motion could not be put to the vote and as such, he rejected the same.

7. The allegations forming the basis for calling for the motion are quoted here: “1) You give differential treatment among the members and do not maintain dignity. 2) You don’t ensure disbursement of the development amount in equal share. You allot your dear ones in greater proportion and in smaller proportion to some members. 3) Members of your family, who are not the members of Panchayat Samiti, try to control the proceeding and behaviour of the members. 4) You don’t convene the meeting of the Panchayat Samiti in time, coerce the officers/officials posted under you, insult them and we are compelled to bear all this.”

8. Significantly, no other allegation was made in



the said meeting, and none including Hemant Kumar (writ petitioner no.1) or Amrit Paswan (Writ Petitioner No.4) expressed any collusion between the Pramukh, the Up-Pramukh and the Requisitionists. In fact, no reason for the absence of the Requisitionists or the Pramukh and the Up-Pramukh is recorded in the resolution. Moreover, it is also not the case of the writ petitioners that the proceedings were not correctly recorded.

9. Assailing the said proceeding dated 10<sup>th</sup> August 2018 of the Block Panchayat Samiti, Vaishali, all the ten members present in the meeting, including Amrit Paswan, who presided over the meeting, filed a writ petition praying for:

- a) quashing of the proceedings of the meeting dated 10.08.2018;
- b) holding that No-Confidence Motion against the Pramukh be treated to be passed with the support of 10 requisitioners and the Petitioners.
- c) Alternatively, proceedings dated 10.08.2018 would not come in the way of the petitioners to requisition another special meeting for consideration of a No-Confidence Motion.
- d) Declare that by the conduct and abuse of the functions of the Requisitioners, their membership stands terminated and fresh election be held to fill up their vacancies.

#### **FINDINGS OF THE LEARNED SINGLE JUDGE**

10. Vide impugned judgement dated 29<sup>th</sup> January,



2020 the learned Single Judge not only quashed the resolution dated 10.08.2018 in reference to the proceeding of the motion of No confidence against the Pramukh but also the resolution dated 11.08.2018 in reference to the proceeding of the motion of no confidence against the Up Pramukh, by further holding that- (i) The Requisitionists had colluded with the Pramukh and the Up-Pramukh and by not appearing had become a party to a fraud only to subvert the provisions of the Act; (ii) The Requisitionists exhibited “lack of respect and sincerity towards the position” they were holding; (iii) Even though the Statute mandatorily did not require their presence, but their absence amounted to establishment of “fraud” and “dereliction of duty” as they were obliged to ensure “presence” barring any emergency; (iv) The Pramukh and Up-Pramukh as also the Requisitionists resorted to “abusive tactics” for an “oblique purpose as an attempt to misuse or abuse the law”; (v) The Block Development Officer “exceeded his jurisdiction” in directing “to fix date, time and place of the meeting” and as such had become “party to entire wrong doing” rendering his conduct to be a matter of enquiry warranting initiation of proceedings; (vi) Since “fraud was committed” in as much the resolution was allowed to be defeated purely on technicality,



with an intent of thwarting any future resolution, as such the action based on fraud would vitiate the resolution dated 10<sup>th</sup> August, 2018 and 11<sup>th</sup> August, 2018 both against the Pramukh and the Up Pramukh; (vii) a fresh motion could be moved against the Pramukh and Up- Pramukh for the provision of Section 44 (3) (ii) of the Act would not attract.

### **SUBMISSIONS OF THE COUNSEL**

11. The learned Advocate General, while supporting the Appellant, argued that there is always a presumption of constitutionality in favour of the Statute; there being no ambiguity in the language of the Statute; the Court ought not to have substituted its views with that of the legislators; with prior notice a meeting is necessarily required to be convened within fifteen days from the date of receipt of requisition; there being no requirement of the Statute for the requisitionists to participate, findings to a such effect are erroneous; mere apprehension or misuse of a statute cannot be a ground for holding it to be unconstitutional; equally immorality cannot be a ground resulting into such an effect. In support, he referred to and relied upon the decisions rendered in **Govt. of A. P. v. P. Laxmi Devi, (2008) 4 SCC 720; Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764; State of**



**Rajasthan v. Union of India, (1977) 3 SCC 592; Union of India v. Elphinstone Spg. And Wvg. Co. Ltd. (2001) 4 SCC 139; Burrakur Coal Co. Ltd. v. Union of India AIR 1961 SC 954; U. K. Magor and St. Melons Rural District Council v. Newport Corporation (1951) 2 All ER. 839 (HL); The State of Rajasthan v. Mrs. Leela Jain and others AIR 1965 SC 1296.**

12. Emphasizing the erroneous interpretation of the statutory provisions as also findings of fact, Sri Yogesh Chandra Verma, learned Senior Counsel appearing for the Appellant argued that- the learned Single Judge ought not to have returned findings of mala fides and fraud, more so without either issuing notice, hearing or arraying the parties committing the fraud; petitioners themselves participated and never raised any objection of requisitionists absence, and in the absence of quorum a meeting could not have been adjourned and as such the motion was rightly rejected. In support, he referred to and relied upon the decisions rendered in **B. Premanand and ors. v. Mohan Koikal and Ors. AIR 2011 SC 1925; State of Bihar and another v. Shri P.P. Sharma and another AIR 1991 SC 1260; E. P. Royappa v. State of T. N. and another AIR 1974 SC 555; Manju Devi v. The State of Bihar & Ors. (LPA no.**



**1606 of 2015 decided on 15.09.2015).**

13. Arguing in support of the judgment, Sri S. B. K. Manglam, learned counsel appearing for the respondents (writ petitioners) argued that by colluding with the Pramukh and Up-Pramukh, the requisitionists committed fraud on Statute and the "basic principle of the democracy". Any member having lost confidence cannot be allowed to lead as a body of public representatives; No-confidence motion ought to have been voted; only purposive constructive can be given to the Statute; fraud and collusion vitiates everything, including rejection of the motion in the house. He further referred to and relied upon the decision rendered by this Court in **Sindhu Devi & Ors. Versus The State of Bihar & Ors. (2002) 1 PLJR 281** and the decisions rendered by Hon'ble the Apex Court in **Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661(Para 22)**; **Shrisht Dhawan (Smt) Vs. M/s Shaw Brothers (1992) 1 SCC 534 (para 20)**; **Reserve Bank of India v. Peerless co. (1987) 1 SCC 424**; **Central Bank of India v. State of Kerala (2009) 4 SCC 94**; **Dharani Sugars & Chemicals Ltd. v. Union of India (2019) 5 SCC 480**; **Bhaurao Dagdu Paralkar v. State of Maharashtra (2005) 7 SCC 605**; **Ram Chandra Singh v. Savitri Devi (2003) 8 SCC 319**; **State of**



**Maharashtra vs. Dr Budhikota Subbarao (1993) 2 SCC 567;**  
**State of Maharashtra vs. Digambar (1995) 4 SCC 683; ITC**  
**Limited v. Blue Coast Hotels Ltd.(2018) 15 SCC 99.**

**JUDICIAL PRECEDENTS**

14. The Judgments cited at the bar and the ones we refer to by way of our own research are now being dealt with. The endeavour being to examine the position in law and cull out the principles, topic-wise.

**(I) DEMOCRATIC FUNCTIONING**

15. The Constitution Bench (Five Judge) of the Hon'ble Apex Court in **State (NCT of Delhi) Vs. Union of India, (2018) 8 SCC 501**, while elaborately dealing with the concepts of democracy; democratic spirit; representative participation; constitutional morality and values; constitutional governance and executiveness; parliamentary democracy and collective responsibility of cabinet; democracy and federalism; constitutional objectivity; constitutional responsibility; collaborative federalism; pragmatic federalism; constitutional renaissance, inter alia observed that:

“The main purpose of a representative Government is to represent the public will, perception and the popular sentiment into policies. The representatives, thus, act on behalf of the people at large and remain accountable to the people for their activities as lawmakers.



Therefore, representative form of governance comes out as a device to bring to fore the popular will. The Constitution of India has embraced the representative model of governance at all levels i.e. local, State and the Union. Thus perceived, the people are the sovereign since they exercise the power of adult franchise that ultimately builds the structure of representative democracy.”

“Thus, democratic set-up has its limbs firmly entrenched in the ability of the people to elect their representatives and the faith that the representatives so elected will best represent their interest. Though this right to vote is not a fundamental right, yet it is a right that lies at the heart of democratic form of Government. The right to vote is the most cherished value of democracy as it inculcates in the people a sense of belonging.”

“Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals.”

“Fundamental human freedoms limit the authority of the State. Yet the role of institutions in achieving democracy is as significant. Nations fail when institutions of governance fail. The responsiveness of institutions is determined in a large measure by their ability to be receptive to differences and perceptive to the need for constant engagement and dialogue. Constitutional skirmishes are not unhealthy. They test the resilience of democracy. How good a system works in practice must depend upon the statesmanship of those who are in decision-making positions within them.”

## **II FUNDAMENTAL PRINCIPLES**

16. (A) To declare an Act invalid it must be



violative of Constitution of India. [**Government of Andhra Pradesh and others versus P. Laxmi Devi (Smt) (supra) (para 46)**]; (B) If the provision is arbitrary, ultra vires or unconstitutional it can be declared as such, notwithstanding the underlying laudable object. [**Ajit Kumar Nag (supra) (para 37)**]; (C) Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. [**Ganga Prasad Verma (Dr.) v. State of Bihar, 1995 Supp (1) SCC 192, para 5**]; (D) Merely because a question has a political colour, the Court cannot fold its hands in despair and declare “Judicial hands off”. [**State of Rajasthan Versus Union of India, (1977) 3 SCC 592 (Para 147)**]; (E) Preamble is key to understanding the Act. However, only when language of the Statute is not clear, the same be referred to. [**M/s. Burrakur Coal Co. Ltd. Versus The Union of India (supra) (Para 5)**]; [**Union of India Versus Elphinstone Spinning and weaving Co. Ltd. (supra) (Para 17)**]; (F) Mimansa Principle of Literal Rule would prevail over all other principles. Presumption is in favour of a correct legislation. [**B Premanand (supra) (para 16,19,20,28,30,32,33)**]; (G) Heydon’s Rule of Construction-



Common law before the Act; Mischief or defect not provided for in common law. [**Bengal Immunity Co. Ltd. (supra) (para 22)**]; (H) Interpretation must depend on the text and the context. A statute is best interpreted when we know why it was enacted. No part of a statute and no word of a statute can be construed in isolation. [**Reserve Bank of India v. Peerless Co., (supra) (para 33)**]; (I) Statutes are “always speaking.” Intention of the legislature must prevail. Unless contrary interpretation appears, words should be interpreted if they can be comprehended. [**Dharani Sugars & Chemicals Ltd. (supra)**]; (J) The question as to whether a statute is directory or mandatory would not depend upon the phraseology used therein. The principle as regards the nature of the statute must be determined having regard to the purpose and object the statute seeks to achieve. This view stood reiterated in **Rajan v. T.P.M. Sahir [(2003) 8 SCC 498]**; **Chandrika Prasad Yadav v. State of Bihar [(2004) 6 SCC 331]**.

(K) In **Afjal Imam v. State of Bihar, (2011) 5 SCC 729**, Hon’ble the Apex Court while dealing with the provisions of the Bihar Municipal Act, 2007, culled out the following principles for interpreting the Statute:

(i) Interpretation must depend on the text and the



context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual.

(ii) No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

(iii) Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them

(iv) It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a 'dead letter' is not harmonious construction.

(v) But when on a construction of a statute, two views are possible, one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.

(vi) It is permissible to read words such as "subject to", etc. in order to reconcile two apparently inconsistent provisions.



### **III INTERPRETATION OF ELECTION LAWS**

17. (A) The Full Bench comprising (N V Ramana, Sanjiv Khanna & Krishna Murari, JJ.) of the Hon'ble Apex Court in **Laxmi Singh v. Rekha Singh** [(2020) 6 SCC 812] elaborated on the importance of secret ballot with respect to Panchayat Raj Institutions holding that the process of voting by secret ballot is "an important postulate of constitutional democracy whose aim is the achievement of this goal." The Court was considering this issue wherein some of the members had violated this rule of secrecy in a no confidence motion meeting. The Court did consider the decisions rendered by the Apex Court in **Kuldip Nayar v. Union of India, (2006) 7 SCC 1**, and **S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra, 1980 Supp SCC 53**, dealing with the issue of citizen's right to vote, maintaining all secrecy. The Court held the procedure of voting by way of a secret ballot only to be mandatory.

(B) In **Banwari Dass v. Sumer Chand, (1974) 4 SCC 817**, referring to the Delhi Municipal Corporation Act, 1957, it was observed that an election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. Therefore, even



in cases involving election provisions to prevent corrupt practices, the court and the tribunal must act judicially and not in an inquisitorial manner. The court cannot bridge the gap and supply an apparent omission by applying principles of common law and equity. Further, the Court observed that “It is to be observed that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. The principle of secrecy of the ballots is an important postulate of constitutional democracy whose aim is the achievement of this goal.”

(C) In the case of **Rajendra Chaudhary v. The State of Bihar (CWJC No. 252/2009, decided on 18.03.2009)**, while deciding a case of no confidence motion against the Pramukh under the Bihar Panchayat Raj Act, 2006 wherein motion was passed by mere show of hands, this Court held it to be a violation of Section 44(3)(vii) contravening the mandate of a secret ballot.

#### **IV CONFLICTING PROVISIONS IN THE SAME STATUTE**

18. (A) It is a settled principle of law that general provisions must yield to the specific provision within the very same statute. [**J. K. Cotton Spinning and Weaving Mills Co.**



**Ltd. v. State of Uttar Pradesh, AIR 1961 SC 1549; D. Sanjeevayya, v. Election Tribunal, Andhra Pradesh and others, AIR 1968 SC 1211]**

(B) The intent of the legislature in the matter of placement of sections also needs to be gone into since a later section will carry its effectiveness in the event of “contraintention” expressed in an earlier provision of the statute.

**[Govt. of T.N. v. Park View Enterprises, (2001) 1 SCC 742]**

(C) In **Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373**, the Hon’ble Apex Court held as under:-

“15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. *This is the essence of the rule of “harmonious construction”.*

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.



(5) To harmonise is not to destroy any statutory provision or to render it otiose.”  
(Emphasis supplied)

**V STANDALONE SECTION/PROVISION IN THE VERY SAME STATUTE/SECTION**

19. (A) In **Canara Bank v. DRP Sundharam** (2016) 12 SCC 724, the Apex Court read clause (iii) of Regulations 20(3) of Canara Bank (Officers’) Services Regulations, 1979, independently of clauses (i) and (ii). It was held that this clause (iii) is a stand-alone provision and is not to be read in continuation of clauses (i) and (ii).

(B) In **M. Aamira Fathima & Others v. Annamalai University** (2018) 9 SCC 171 interpreted a definition clause (Section 2(b) - “Educational Institution” - Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992) where it read the section in two parts and held that one part of the definition may be read independent of the other as a standalone provision. While doing so, the Court observed that:

“17. ....It is well settled that whenever a legislation deems, by way of legal fiction that a particular state of affairs has to be assumed, that legal fiction has to be given full effect. After quoting famous passage of Lord Asquith in *East End Dwellings Co.*



*Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109, pp. 132-33 : (1951) 2 All ER 587, p. 599 B-D (HL):*

“If you are bidden to treat an imaginary state of affairs as real, you must ... also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it; [and if] the statute says that you must imagine a certain state of affairs, it [cannot be interpreted to mean] that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”] .....

(Emphasis supplied)

## **VI INTERPRETATION OF SURPLUSES WORDS IN THE STATUTE**

20. (A) In **Gurudevdatla VKSSS Maryadit v. State of Maharashtra, (2001) 4 SCC 534**, the Hon’ble Apex Court observed as under:

**“26.** Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning.



irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute..."

(Emphasis supplied)

(B) Here only with profit we may reproduce what the Hon'ble Apex Court held in **CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57:**

**"14.** A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See *Broom's Legal Maxims* (10th Edn.), p. 361, *Craies on Statutes* (7th Edn.), p. 95 and *Maxwell on Statutes* (11th Edn.), p. 221.]

**15.** A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See *Whitney v. IRC* [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in *CIT v. S. Teja Singh* [AIR 1959 SC 352 : (1959) 35 ITR 408] and *Gursahai Saigal v. CIT* [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)

**16.** The courts will have to reject that construction which will defeat the plain



intention of the legislature even though there may be some inexactitude in the language used. (See *Salmon v. Duncombe* [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, *Curtis v. Stovin* [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in *S. Teja Singh case* [AIR 1959 SC 352 : (1959) 35 ITR 408] .)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Doncaster Amalgamated Collieries* [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in *Pye v. Minister for Lands for NSW* [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India* [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath v. State of Karnataka* [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a



section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum v. Prem Chand Jain* [(1997) 1 SCC 373: AIR 1997 SC 1006] .)

**20.** Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

**21.** The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a “useless lumber” or “dead letter” is not a harmonised construction. To harmonise is not to destroy.”

(C) In construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill any gaps disclosed. If a gap is disclosed, the remedy lies in an amending Act and not in a ‘usurpation of the legislative function under the thin disguise of interpretation.  
[U.K. Magor (Supra)]

## **VII COMPARISION OF ONE PART OF STATUTE WITH ANOTHER**

21. (A) The Hon’ble Court in **Philips India Ltd. v. Labour Court** [(1985) 3 SCC 103] observed in para 15 as under: (SCC p. 112)

“15. No canon of statutory construction is



more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as ‘elementary rule’ (see *Attorney General v. Bastow* [(1957) 1 QB 514 : (1957) 2 WLR 340 : (1957) 1 All ER 497] ) and as a ‘settled rule’ (see *Poppatlal Shah v. State of Madras* [AIR 1953 SC 274 : 1953 SCR 677] ). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke [Ed.: In *Lincoln College case*, (1595) 76 ER 764 : 3 Co. Rep 58b] laid down that: ‘it is most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers’. [Quoted with approval in *Punjab Beverages (P) Ltd. v. Suresh Chand* [(1978) 2 SCC 144: 1978 SCC (L&S) 165 : (1978) 3 SCR 370] .]”

(B) Again a Constitution Bench of the Hon’ble Apex Court in **Union of India v. Elphinstone Spg. and Wvg. Co. Ltd. (supra)** in para 21 has made the following observations: (SCC p. 169)

“21. ... though it is no doubt true that the court would be justified to some extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting the statute would get frustrated. But by no stretch of imagination, would it be open for a court to expand even the language used in the



Preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enacting the statute. As has been stated earlier...”

This view stands reiterated in **Subramanian Swamy v. Election Commission of India, (2008) 14 SCC 318.**

(C) In **Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., (1973) 1 SCC 813, (Para 35)** Hon’ble the Apex Court observed that:

“...It is well settled that in construing the provisions of welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature..”.

### **VIII PURPOSIVE CONSTRUCTION**

22. (A) In **UCO Bank v. Rajinder Lal Capoor, (2008) 5 SCC 257**, the Court referred to its earlier decision in **New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008)**



**3 SCC 279**, wherein it stood observed that with a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations. All the regulations must be given a harmonious interpretation. A court of law should not presume a *casus omissus* but if there is any, it shall not supply the same. If two or more provisions of a statute appear to carry different meanings, a construction which would give effect to all of them should be preferred.

23. When the words in the statute are reasonably capable of more than one interpretation, the object and purpose of the statute, a general conspectus of its provisions and the context in which they occur might induce a court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose.



**[The State of Rajasthan v. Mrs. Leela Jain, (supra) (para 11)]**

**STATUTORY PROVISION**

24. Moving further, we deem it appropriate to deal with the provisions of the Bihar Panchayat Raj Act, 2006 (already referred to as the Act).

25. The Act comprises of VIII Chapters.

26. Chapter I deals with the definition clause; Chapter II deals with the constitution and functioning of Gram Sabha; Chapter III deals with the constitution and functioning of Gram Panchayat; Chapter IV deals with the constitution and functioning of Panchayat Samiti; Chapter V deals with the constitution and functioning of Zila Parishad; Chapter VI deals with establishment, powers, duties and procedure of Gram Katchahary and Benches thereof; chapter VII deals with the elections; and chapter VIII deals with Miscellaneous matters.

27. For the adjudication of the instant *lis*, we are concerned with the provisions contained in Chapter-I and Chapter IV.

28. Under Chapter I, Panchayat Samiti is defined to be the one constituted for every Block under the Act [2 (y)]; Pramukh is defined to mean a Pramukh of a Panchayat Samiti



[2(ad)]; Up-Pramukh is defined to mean a Up-Pramukh of a Panchayat Samiti [2(ak)]; and the Executive Officer is defined to mean an Executive Officer of a Panchayat Samiti [2(l)].

29. Chapter IV (Panchayat Samiti) comprises from Section 34 to Section 61 (28 Sections).

30. The mandate of Section 34 postulates the constitution of every Block of Panchayat Samiti declared by the State Government under Section 35. The composition of the Panchayat Samiti is mixed, both of elected and non-elected members, evident from Section 36, which reads as under:

**“36. Composition of Panchayat Samiti-**

(1) A Panchayat Samiti shall consist of (a) directly elected members from the Panchayat Samiti’s territorial constituencies, as determined under this Act;

(b) members of Lok Sabha and members of the Legislative Assembly of the State, representing constituencies which fall either wholly or partly in the Panchayat Samiti area;

(c) members of Rajya Sabha and members of the State Legislative Council, who are registered as electors within the Panchayat Samiti area;

(d) All the Mukhiyas of the Gram Panchayats falling within the Panchayat Samiti area.

(2) Every member of the Panchayat Samiti shall have the right to vote in its meeting, but in case of election and removal of Pramukh and Up-Pramukh, only members elected under clause (a) of sub-section (1) shall have the right to vote.”

31. Significantly, even though a directly elected



member is not defined anywhere, even under the definition clause (Chapter-I), but Section 37 does indicate such person to be the one elected in the territorial constituency of the Samiti. Section 38 stipulates reservation of seats; Section 39 lays down the duration of Panchayat Samiti; Section 40 deals with the election of Pramukh and Up-Pramukh; Section 41 deals with allowances to the Pramukh and Up-Pramukh and other members. Section 42 and 43 deal with the power, function and duties of the Pramukh and Up-Pramukh, respectively.

32. Section 44 deals with resignation and removal of Pramukh and Up-Pramukh and reads as under:

**“44. Resignation and Removal of Pramukh and Up- Pramukh-** (1) The Pramukh may resign his office by writing under his hand and addressed to the Subdivisional Magistrate and the Up-Pramukh may resign his office by writing under his hand addressed to the Pramukh and in the absence of Pramukh to the Subdivisional Magistrate and the said office shall be deemed to be vacant on the expiry of seven days from the date of such resignation unless within the said period of seven days he withdraws such resignation by writing under his hand addressed to the Subdivisional Magistrate or the Pramukh, as the case may be.

(2) A Pramukh or Up- Pramukh shall vacate office if he ceases to be a member of the Panchayat Samiti.

(3) (i) A Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Panchayat



Samiti at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti, by not less than one-third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such a meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one-third of the total number of directly elected members may fix a date for such a meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss the no-confidence motion.

(ii) No-confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure. Such a no-confidence motion may be brought only once in the whole tenure of Pramukh/Up-Pramukh.

(iii) No-confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samiti as mentioned in section 39 (1) of this Act.

(iv) 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 meeting called to consider the no-confidence motion.

(v) As soon as the meeting called under this Section begins, the presiding member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it open for discussion.



Any discussion on the motion shall not be adjourned.

(vi) During discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no-confidence motion has been moved for his defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.

(vii) In case of no-confidence motion against a Pramukh, the meeting shall be presided by the Up-Pramukh; in case of motion against Up-Pramukh by the Pramukh and in case of motion against both Pramukh and Up- Pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting.

In case of the post of Up-Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the Up-Pramukh, as the case may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the Panchayat Samiti present in the meeting.

(4) Without prejudice to the provisions under this Act, if in the opinion of the Government having territorial jurisdiction over the Panchayat Samiti, a Pramukh or an Up-Pramukh of Panchayat Samiti absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Government may, after giving the Pramukh or Up-Pramukh, as the case may be, a reasonable opportunity for explanation, by order, remove such Pramukh or Up-Pramukh, as the case



may be, from office.

Provided when a system of Lok Prahari, instituted under sub-section (5) of Section 152 comes into force by a valid notification of the State Government, the Government may only pass order of removal of such Pramukh/Up-Pramukh, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.

The Pramukh or Up-Pramukh so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any Panchayat bodies till further five years from the date of such removal. The Pramukh or Up-Pramukh so removed on rest of the charges shall not be eligible for re-election as Pramukh or Up-Pramukh during the remaining term of office of such Panchayat Samiti.

(5) A Pramukh or Up- Pramukh removed from his office under subsection (4) may also be removed by the Government from membership of the Panchayat Samiti.”

(Emphasis supplied)

33. Here only, we may note three amendments brought in Section 44 (3) by the Bihar Panchayat Raj (Amendment) Act, 2015. The said amendment reads as under:

“10. Amendment of Section 44 of the Bihar Act 6, 2006 ( 1) The following sentence shall be added at the end of the first proviso of clause (ii) of sub-section (3) of Section 44 of the said Act, 2006:

“Such a no confidence motion may be brought only once in the whole tenure of Pramukh/Up-Pramukh.”

(2) The clause (iii) of subsection (3) of Section 44 is hereby deleted.

(3) The clause (iv) of subsection (3) of Section 44 shall be renumbered as clause (iii).”



34. The relevant un-amended provision of the said Section 44 reads as under:

**“44. Resignation and Removal of Pramukh and Up- Pramukh- (1) .....**

**(2) .....**

**(3).....**

(ii) No-confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure.

(iii) If the motion of no confidence brought against the Pramukh or the Up-Pramukh or both is once rejected, no fresh motion of no confidence against the Pramukh or the Up-pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year from the date of such rejection of the motion.”

35. So effectively, clause (iii) of sub-section (3) of Section 44 was deleted and, one-sentence, “Such a no confidence motion may be brought only once in the whole tenure of Pramukh/Up-Pramukh.” was added to clause (ii) of the said sub-section.

36. Section 45 deals with the resignation of members.

37. Section 46 deals with the meeting of the Panchayat Samiti and for ready reference, the provisions are reproduced as under:-

**“46. Meetings of Panchayat Samiti – (1) A Panchayat Samiti shall hold a meeting for the**



transaction of business at least once in two months (hereinafter in this Section called the ordinary meeting) and shall subject to the provisions of the following sub-sections, make regulations in conformity with this Act or with any rules made thereunder with respect to the day, hour, notice, management and adjournment of its meetings and generally with respect to the transaction of business thereto.

(2) Every meeting of the Panchayat Samiti shall ordinarily be held at the headquarters of the *Panchayat Samiti*.

(3) The date of the first meeting of the Panchayat Samiti after its constitution shall be fixed by the Sub-divisional Magistrate who shall preside at such meeting and date of each subsequent ordinary meeting shall be fixed at the previous meeting of the *Panchayat Samiti*:

Provided that the Pramukh may for sufficient reason alter the day of the meeting to a subsequent date. The Pramukh may, whenever he thinks fit and upon the written request of not less than one third of the total number of members and on a date within fifteen days from the receipt of such request shall call a special meeting. Such request shall specify the object for which the meeting is proposed to be called. If the Pramukh fails to call a special meeting, the Up-Pramukh or one-third of the total number of members may call the special meeting for a day not more than fifteen days after presentation of such request and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting.

(4). Ten clear days' notice of an ordinary meeting and seven clear days' notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted thereat shall be sent to the members and affixed at the office of the *Panchayat Samiti*. Such notice shall include in case of a special meeting any motion or proposition mentioned in the written request made for such meeting.

(5) Half of the total number of members of



the Panchayat Samiti shall form a quorum for transacting business at a meeting of the Panchayat Samiti. If at the time appointed for the meeting a quorum is not present, the person presiding shall wait for one hour and if within such period there is a quorum, proceed with the meeting, but if within such period there is no quorum, the person presiding shall adjourn the meeting to such hour on some future day as he may deem fit. He shall similarly adjourn the meeting at any time after it has begun if his attention is drawn to the want of quorum. At such adjourned meetings, a quorum of at least one fifth of the total number of member shall be required, and the business which would have been brought before the original meeting shall be transacted.

(6) Every meeting shall be presided over by the Pramukh or if he is absent by the Up-Pramukh and if both are absent or if the Pramukh is absent and there is no Up-Pramukh the members present shall elect one from among themselves to preside.

(7) All questions shall, unless otherwise especially provided, be decided by a majority of votes of the members present and voting. The presiding member, unless he refrains from voting, shall give a vote before declaring the number of votes for and against a question and in case of equality of votes, he may give his casting vote.

(8) No member of a Panchayat Samiti shall vote on, or take part in the discussion of, any question coming up for consideration at a meeting of the Panchayat Samiti, if the question is one in which, apart from its general application to the public, he has any pecuniary or personal interest and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

(9) If the person presiding is believed by any member present at the meeting to have any such pecuniary or personal interest in any matter under discussion and if a motion to that effect be carried, he shall not preside at the meeting during such discussion or vote on or take part in it. Any member of the Panchayat Samiti may be chosen to



preside at the meeting during the continuance of such discussion.

(10) No proposition shall be discussed at any ordinary meeting unless it has been entered in the notice convening such meeting or in the case of a special meeting in the written request for such meeting. A member may propose any resolution connected with or incidental to the subjects included in the list of business. The Pramukh may propose any urgent subject of a routine nature not included in the list of business if no member objects to it. No permission shall be given in the case of a motion or proposition to modify or cancel any resolution within three months after passing thereof except in accordance with subsection (12). The order in which any business or proposition shall be brought forward at such meeting shall be determined by presiding authority who in case it is proposed by any member to give particular proposition shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

(11) Any ordinary meeting may with the consent of a majority of the members present, be adjourned from time to time, but no business shall be transacted at any adjourned meeting other than that left or undisposed at that meeting.

(12) No resolution of Panchayat Samiti shall be modified or cancelled within six months after passing thereof except by a resolution passed by not less than one-half of the total number of members at an ordinary or special meeting the notice whereof shall have been given fulfilling the requirements of subsection (4) and setting forth fully the resolution which it is proposed to modify fully or cancel at such meeting and motion or proposition for modification or cancellation of such resolution.

(13) The proceeding of every meeting shall be recorded in the minutes book immediately after the deliberations of the meeting and shall, after being read over by the presiding authority of the meeting, be signed by him. The action taken on the decisions of the Panchayat Samiti shall be reported



at the next meeting of the Panchayat Samiti. The minutes book shall always be kept in the office of the *Panchayat* Samiti. The Executive Officer shall be the custodian of the minute book.

(14) The Panchayat Samiti may require the presence of Government officers at its meeting. If it appears to a *Panchayat* Samiti that the attendance of any officer of the Government having jurisdiction over an area of a district or part of a district and not working under the Panchayat Samiti is desirable at a meeting of the Panchayat Samiti, the Executive Officer shall by a letter addressed to such officer not less than fifteen days before the intended meeting request that officer to be present at the meeting and the officer shall, unless prevented by sickness or other reasonable cause, attend the meeting :

Provided that the officer on receipt of such letter may if he for any of the reasons aforesaid is unable to be present thereat himself, instruct his deputy or other competent subordinate officer to represent him at the meeting.”

(Emphasis supplied)

38. Section 61 deals with the powers and functions of the Executive and other officers.

39. It is thus seen that under Section 36, Panchayat Samiti consists of four types of members: (i) directly elected members; (ii) ex-officio members (Member of Parliament, Member of Legislative Assembly, etc.). the State Legislative Council, registered as electors within the Panchayat Samiti area; (iii) members of Rajya Sabha and members of the State Legislative Council, registered as electors within the Panchayat Samiti area; (iv) All the Mukhiyas of the Gram Panchayats



falling within the Panchayat Samiti area. In addition, directly elected members are required to elect from amongst themselves two members as Pramukh and Up-Pramukh under Section 40.

40. The Act provides 3 ways in which Pramukh/Up-Pramukh can resign or be removed from office:

- (i) Pramukh, by submitting resignation to the Sub-Divisional Magistrate and Up-Pramukh by submitting resignation to the Pramukh [Section 44(1)].
- (ii) by members of Panchayat Samiti 'expressing want of confidence' against Pramukh/Up-Pramukh by following procedure laid down in section 44(3).
- (iii) Removal by the State Government under Section 44 (4) on non-performance or abstention from duties, etc.

41. We are only concerned with the removal based on motion expressing no confidence. Hence, it is vital to cull out the ingredients of the process mentioned under Section 44(3) to determine its legality and the impugned action.

**INGREDIENTS OF SECTION 44(3)**

42. *Per* Section 44(3), a Pramukh/Up-Pramukh shall be deemed to have vacated his office forthwith if:

- (1) The requisition for such meeting: (a) is presented in writing, assigning reasons, to the Pramukh; (b) by not less than 1/3rd of the total number of elected members; (c) with a copy to the Executive Officer;



- (2) The Executive officer shall immediately bring such fact to the notice of the Pramukh.
- (3) Meeting is to be convened: (a) by the Pramukh mandatorily within 15 days of requisition; (b) On his failure, by the Up-Pramukh or 1/3rd of the directly elected members; (i) In such an eventuality and for such purpose, the Executive Officer is to give notice and take necessary actions; (ii) and convene the meeting.
- (4) Meeting to be presided by- (a) Up-Pramukh, in case of motion against Pramukh; (b) Pramukh, in case of motion against Up-Pramukh; (c) Member elected amongst the members present in the meeting, in case of motion against both or if either of the seats is vacant.
- (5) Meeting cannot be postponed once notice is issued.
- (6) No quorum shall be required to discuss motion in such a special meeting.
- (7) A resolution expressing want of confidence is passed by a majority of - (a) the total number of elected members; (b) of the Panchayat Samiti; (c) at a meeting specially convened for such purpose.
- (8) In the notice called to consider the motion, reasons/charges against the Pramukh/Up-Pramukh are to be mentioned necessitating the moving of such a motion.
- (9) At the beginning of a specially convened meeting:  
(a) Presiding member shall read out the motion and declare it open for discussion; (b) Any discussion on



the motion shall not be adjourned; (c) In defence, an opportunity is required to be afforded to the Pramukh/Up-Pramukh, as the case may be.

(10) The motion is to be put to the vote the same day.

(11) Voting is to be by way of secret ballot.

(12) No-Confidence motion: (a) shall not be moved within the first two year period of Pramukh/Up-Pramukh's tenure; (b) may be brought only once in the whole tenure of Pramukh/Up-Pramukh, and (c) shall not be brought during the last six months of the term of the *Panchayat Samiti*.

**Now Issue Nos. (i) –(iv) and (ix)**

**PREVIOUS JUDGMENTS OF THIS COURT**

43. The interplay between Section 44 and Section 46, or whether Section 44 is a standalone provision, a complete Code itself, independent of Section 46, was never a matter of scrutiny by any Court for the issue to have arisen for consideration only for the first time in the instant proceedings.

44. We have gone through several decisions rendered by this Court (Division Bench and Single Bench) and find the issue, subject matter in hand, neither raised nor considered therein, for the parties pre-supposed applicability of Section 46(4) stipulating a minimum period of seven days for convening a special meeting, also to be a requirement for



convening a special meeting envisaged under Section 44. Hence, the Rule of *stare decisis* is inapplicable. Such decisions are **Smt. Shamshad Khatun vs. The State of Bihar & Ors., 2010 (1) PLJR 929; Md. Alamgir Vs. The State of Bihar & Ors., 2014(1) PLJR 562; Sheikh Hassmuddin & Anr. vs. The State of Bihar & Ors., 2015 (3) PLJR 203; Sabita Khatoon & Ors. vs. The State of Bihar & Ors., 2017(2) PLJR 29; Neetu Kumari Vs. State of Bihar & Ors., 2019 (2) BLJ 688; Sanju Kumar Vs. The State of Bihar & Ors. 2019 (4) PLJR 1069; Gopal Prasad Singh Vs. The State of Bihar & Ors. 2019(4) PLJR 579.** The decisions not being binding precedents in any manner, we proceed to decide the questions and the issues urged before us.

45. Conjoined reading of the provisions of Sections 36, 44 and 46 of the Act, in our considered view, leads only to one compelling conclusion that Section 44 is a standalone Section operating in a different context, for a separate and distinct purpose.

46. On standalone provisions, the Hon'ble Apex Court has held that even two parts of a definition may be read independently of one another [(**M. Aamira Fathima (supra); also Canara Bank (supra)**)]. Where one clause, clause (iii) was



read independent of (i) and (ii), of the Regulation 20(3) of Canara Bank (Officers') Services Regulations, 1979. By same logic, the Section in question (Section 44) is a standalone provision, and it is good in law, as held by the Hon'ble Supreme Court, to read it so.

47. Section 36 prescribes that the Panchayat Samiti consists of *inter alia* directly elected members from the Panchayat Samiti's territorial constituencies. Whereas the object and purpose of Section 44 is restricted and limited to the resignation and removal of the Pramukh and Up-Pramukh, it is in this framework that the legislature in their wisdom, unlike Section 46, confined the right to requisition a special meeting for a no-confidence motion only to the directly elected members from the Panchayat Samiti's territorial constituencies.

48. Section 44 not only lays down the procedure for resignation or removal but also the mode and manner in which such process is required to be followed and taken to its logical conclusion.

49. Section 44 presents itself as a complete code that deals with the procedures required to be completed to remove a Pramukh or Up-Pramukh of the Panchayat Samiti.

50. Section 46, however, provides a more general



framework for conducting meetings of the Panchayat Samiti, which deal with the transaction of all other business of the Samiti. This Section envisages specific meetings such as the "first meeting of the Panchayat Samiti after its constitution", subsequent "ordinary meeting" and a "special meeting" evident from a reading of sub-section (3) of Section 46. It does not mention the meeting for holding a no-confidence motion or the removal of the Pramukh or Up-Pramukh as under Section 44. The pre-requisite of the minimum period of notice, whether ten days for an ordinary meeting or seven days for a special meeting, is limited to the context of meetings called under Section 46(4). A quorum requirement for these meetings as prescribed under Section 46(5) is also limited in its application to meetings called for under Section 46, having no bearing on Section 44. Sub-section (7) of Section 46 does not prescribe the manner of a vote to be by way of a secret ballot, unlike subsection (3) of Section 44.

51. This further indicates that procedures under Section 44 and 46 are to be considered separately and independent of each other. As per the issue at hand, we are only concerned with the interpretation of sub-section (3) of Section 44, and have already culled out its essential ingredients in the



earlier part of our opinion.

52. As per Section 44(3), the requisition for convening a special meeting must be presented in writing to the Pramukh, with a copy to the Executive Officer of the Panchayat Samiti. Such a requisition must be by not less than one-third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer is under an obligation to bring the requisition to the notice of the Pramukh immediately. Notice here would mean bring to the attention of the Pramukh, who is under a duty to convene a meeting on a date falling within fifteen days of such requisition. The expression used is 'shall', which is mandatory in nature, making the call for a mandatory meeting.

53. The Section does not stipulate a minimum period of notice for convening such a special meeting.

54. The Section itself stipulates a situation where a Pramukh fails to convene such a special meeting, in that eventuality, either the Up-Pramukh or one-third of the total number of directly elected members "may" fix a date for such meeting and "require" the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The expression "shall," makes it



mandatory for the Executive Officer to issue such notice in time and convene the meeting. The expression "in time" is to be read in the context of what is fixed by the Up-Pramukh or one third of the total number of directly elected members and not what is stipulated under sub-section (5) of Section 46. The Section mandates that a special meeting convened for discussing the no-confidence motion shall, under no circumstances, with the issuance of notice be postponed. This is the mandate of the Statute. The language is phrased in the negative, which reads, "No such meeting shall be postponed once the notice is issued." In fact, no quorum is required for the special meeting convened to discuss a no-confidence motion.

55. The principles of law laid down in **Philips India Ltd.(supra); Elphinstone Spg. and Wvg. Co. Ltd. (supra); J. K. Cotton Spinning and Weaving Mills Co. Ltd. (supra); D. Sanjeevayya (supra); Sultana Begum (supra); Canara Bank (supra); M. Aamira Fathima (supra)** are fully applicable to the instant case.

56. On the first brush, the provision of the part (i) of sub-section (3) of Section 44 leads to an impression that the resolution required to be passed must be by the majority of the total number of elected members of the Panchayat Samiti.



Whereas, a careful reading of the entire sub-section dispels such an impression. The words "*passed by a majority of the total number of elected members of the Panchayat Samiti*" must be read in the context of not only the words "*at*" "*a meeting specially convened for the purpose*", but also the latter part of the Section which prescribes explicitly that "*no quorum shall be required for the special meeting convened to discuss the no confidence motion.*"

57. As the Hon'ble Supreme Court held, interpretation must depend on the text and the context. A statute is best interpreted when we know why it was enacted. No part of a statute and no word of a statute can be construed in isolation. [**Peerless Co. (supra), (para 33)**]

58. The expression used "majority" in Section 44 has to be read in the context of 'total number of members of the Panchayat Samiti' for only such of those members who are elected members have a right, not only to move a motion of no confidence but also to participate, i.e. to discuss and vote thereupon. The expression 'requisition for such a special meeting' in the second part of sub-section (3) of Section 44 has to be read in the context of moving a resolution of no confidence as envisaged therein and not a special meeting



envisaged under Section 46 (3). On reading the words in conjunction with one another, it can be said that the majority required is the majority of 'total number of elected members of Samiti **“at”** a meeting specially convened for the purpose.' Explaining through an illustration, if five members present in the meeting out of an elected body of twenty-two members, the majority required is three, not twelve. Meaning thereby, that it is not a majority qua the total number of elected members in the Samiti, but a majority qua the total number of members of the elected member of the Samiti present in the meeting convened for the purpose. In other words, the majority required to pass a resolution is a simple majority from amongst those present and voting. Similar is the position for electing the Pramukh and the Up-Pramukh [Section 40]. This interpretation is also supported by the last phrase used as ingredient (6), which specifies that **‘No quorum is required for such a special meeting’**. If the ingredient (7) is interpreted as **“majority of the total body of elected members”**, that ingredient is rendered nugatory and otiose.

59. It also needs to be noted that as voting cannot be adjourned in such a meeting, the majority of the total body's prescription and the non-requirement of quorum, on the other



hand, is a clear and apparent conflict. Therefore, to read these two provisions harmoniously, it becomes essential to read the phrase 'majority of total elected members present in the meeting'. Hence, it is clarified that there is no requirement of 'majority of total elected members' to form a 'Quorum.'

60. To us, these two clauses of the part (i) are not in contradiction. Assuming it to be so, applying the principles of interpretation, i.e., the last will of the legislature that no quorum is required for the special meeting would prevail over the first part of the said Section that such a resolution must be passed by a majority of the total number of elected members.

61. We reiterate the principles of law laid down in **Afjal Imam (supra)** as under:

“(i) Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual; (ii) No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place; (iii) Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them; (iv) It is a cardinal principle of construction of a statute



that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a 'dead letter' is not harmonious construction; (v) But when on a construction of a statute, two views are possible, one which results in an anomaly and the other, not, it is our duty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies; (vi) It is permissible to read words such as "subject to", etc. in order to reconcile two apparently inconsistent provisions."

62. Principles of natural justice are necessary to be complied with since the reasons/charges forming the basis of the no-confidence motion are clearly required to be mentioned in the notice of the meeting and to be read out before declaring it open for discussion. Even here, the law mandates that such a discussion shall not be adjourned. The Pramukh or the Up-Pramukh against whom the no-confidence motion is moved have a right of defence in the meeting. After discussion, the motion must be put to the vote by way of a secret ballot in the prescribed manner. The expression used "shall be put to vote on the same day after discussion" as used in sub-section (vi) makes



it amply clear that the process of voting shall be exercised and completed with promptitude and on the same day. Principles laid down in **Laxmi Singh (supra); Banwari Dass (supra); Rajendra Chaudhary** would fully endorse our opinion.

63. Hence, the conjoint reading of the provision of clause (i), (v) and (vi) of sub-section (3) of Section 44 makes it amply clear that under no circumstances, the meeting is to be adjourned, and the motion must be put to the vote by way of a secret ballot on the same day.

64. Our reading of the limitation prescribed under clause (ii) of sub-section (3) of Section 44 concerning the number and timing of moving a no-confidence motion must be in consonance with the context of clause (iv) of sub-section (3) of Section 44 and would operate only once the motion is put to vote by way of a secret ballot, reaching its logical conclusion.

65. We may reiterate and add that Section 44 of the Act deals with the specific purpose of resignation and removal of Pramukh and Up-Pramukh and no other purpose, unlike the business conducted by the Panchayat Samiti in terms of and under Section 46 of the Act.

66. Significantly, “meeting” or “special meeting” is not defined in the definition clause. Chapter IV, Section 46



refers to different types of meetings, whereas Section 44 stipulates only one meeting, i.e., discussing and putting to vote the no-confidence motion against the Pramukh and the Up-Pramukh. As per the language of the Section, such a meeting can be construed to be a special meeting. However, when we look at Section 46, it refers to different meetings, i.e. (i) Ordinarily meeting to be held at least once in two months; (ii) the first meeting of the Panchayat Samiti to be convened by the Sub-divisional Magistrate of the Panchayat Samiti; (iii) a special meeting to be convened on the written request of not less than one-third of the total number of members of the Panchayat Samiti [(Proviso to sub-section (3))].

67. Unlike Section 44, Section 46 stipulates ten days clear notice for convening an ordinary meeting and seven days clear notice for convening a special meeting [(sub-section (4))].

68. Also, the quorum for transacting the business of a meeting stipulated under sub-section (5) of Section 46 has to be half of the total number of Panchayat Samiti members. In the event of lack of quorum, the said sub-section itself prescribes the procedure to be followed, as at the last of the adjourned meetings, the quorum of at least one-fifth of the total



number of the members is required. This is not the position in so far as Section 44 is concerned.

69. The object of convening a meeting, be it by whatever name, both under Section 44 and 46 is distinct and separate, and as such, the expression 'special meeting' under Section 44 cannot be read to be the very same meeting as envisaged under Section 46(3) or Section 44(5).

70. The principles laid down by Hon'ble the Supreme Court in **Sultana Begum (supra)** being fully applicable are again referred to as under:

**“15.** On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. *This is the essence of the rule of “harmonious construction”.*

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.



(5) To harmonise is not to destroy any statutory provision or to render it otiose.”  
(Emphasis supplied)

71. The amendment brought in the year 2015 also throws light on the issue. The Legislators themselves wanted to restrict the number of no-confidence motions which could be brought in the whole tenure of Pramuh/ Up-Pramukh. What perhaps necessitated such an amendment was the disruption of work leading to non-functioning democratic institutions at the grassroots level, preventing the chosen representative from discharging their obligations and functions mandated under the Statute. Earlier, there was no restriction on the number of motion that could be brought in against the Pramukh and the Up-Pramukh, for the only stipulation was that no such motion could be brought in within one year from the date of rejection of such a motion. Perhaps, to bring instability in the functioning of the democratic institutions, such an amendment was brought in. But equally, colluding with the Pramukh and the Up-Pramukh to bring about a resolution during happier times with an intent of ensuring prevention of any such resolution in future, the provision can be misused. But then, it cannot be interpreted with such apprehension and assumption, and any lacuna therein is for the Legislators to take a call. [**Ganga Prasad Verma (supra)**;



**State of Rajasthan (supra)]**. In this backdrop, the meaning of the expression “shall not be moved”, as referred to in clause (ii) of sub-section (3) of Section 44, would only mean the motion to have been taken to its logical conclusion, including voting, in terms of the entire process laid down in of sub-section (3) of Section 44. However, on this issue, we shall elaborate later.

**Issue Nos.(vi), (vii) & (viii)**

72. It was alleged in the Writ Petition that the Pramukh had colluded with the ten requisitioners to ensure that they would absent themselves on the day of such a special meeting, resulting in the threat of no-confidence motion being thwarted for the remainder of her tenure. It was alleged that the Appellant took signatures of the ten requisitioners on a plain sheet of paper, which was later used in the said requisition.

73. The learned Judge, in his order, seems to have taken these allegations at face value. However, the record nowhere facilitates such presumption being drawn because accusations have not been substantiated through any cogent material, nor are they based on admitted facts.

74. The Constitutional Bench of the Hon’ble Supreme Court in **Bishundeo Narain and Ors. vs. Seogeni Rai**



**and Jagernath** AIR 1951 SC 280, with Vivian Bose J., writing, has observed with respect to this rule that “Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however strong the language in which they are couched may be.”

75. In **Mutha Associates v. State of Maharashtra, (2013) 14 SCC 304**, the Supreme Court observed that the allegations of malice of fact have to be specific and supported by necessary particulars in a Writ Petition. Vague and general statements are not sufficient. The burden of proof rests heavily upon the person making the charge. Though there is a presumption favouring bona fide, it can be rebutted on cogent and satisfactory proofs, direct or circumstantial. This is required since the charges of mala fide are considered to be quasi-criminal in nature. It is only on high proof that Court can strike down action on mala fide.

76. The burden of establishing mala fides lays very



heavily on the person who alleges it. [**E. P. Royappa vs. State of Tamilnadu (supra) (para 92)**] and mala fide or bias of an informant is of secondary importance if at the trial impeccable evidence disclosing the offence has been brought on record. [**State of Bihar and another etc. v. Shri P.P. Sharma and another, (supra) (para 56)**]

77. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Fraud is proved when false representation is made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false. [**Shrisht Dhawan (supra) (para 20)**] Fraud is an intention to deceive, deliberate deception to take unfair advantage. [**Bhaurao Dagdu Paralkar (supra) (para 9-16)**] Party cannot unjustly enrich itself on the basis of fraud. [**Ram Chandra Singh (supra) (para 34-38)**] Fraud must be strictly pleaded and proved. [**State of Maharashtra Versus Dr Budhikota Subbarao, (supra) (para 3)**] Recently in the case of **General Manager, Electrical Rengali Hydro Electric Project, Orissa and Ors. vs. GiridhariSahu and Ors. (2019)10 SCC 695**, the Hon'ble Apex Court observed as under:

“An allegation of fraud is a matter of a grave nature. So is the allegation of undue influence and misrepresentation. The intention underlying Order VI Rule 4 of the Code of Civil Procedure is that the



opposite party is to be put on sufficient notice as to the case which he is called upon to meet. The law loathes, parties to the lis being taken by surprise resulting in the violation of the basic principle of justice that a party should be able to effectively meet the case set up against him.”

78. In the instant case, no such particulars could be found either in the Writ record or in the reply submitted in this LPA.

79. However, the presumption of facts pleaded by the writ petitioners needs to be substantiated, and the findings of collusion cannot be said to be borne out from the record.

80. The learned Judge has also observed that it was the duty of the requisitioners to ensure their presence in the meeting since they were the requisitioners of the no-confidence motion. Such obligation was one that is saved only by an emergency that may have befallen the requisitioners. It may be noted that only two requisitioners submitted in their counter-affidavit that they were 'otherwise engaged', which according to the learned Judge, displayed a callous attitude towards their duty as an elected official.

81. However, a perusal of the Statute does not exhibit any such obligation on the Samiti members, including the requisitioners requiring them to mandatorily attend meetings of the Samiti. Rule 15(3) of the Bihar Panchayat Raj Institutions



(Conduct of Business) Rules, 2015, simply provide that only the elected members that shall participate in the meeting convened in case of no-confidence to discuss the said motion. There is no direct or indirect obligation supported by the words of the Act or Rules, upon such elected members. The conclusions of the learned single Judge are therefore not supported by law.

82. Had the allegation of fraud been proved, it would have vitiated all subsequent consequences affected by it. However, in the present case, such an allegation is not in conformity with the law laid down by the Hon'ble Apex Court. Therefore, the findings recorded by the learned single Judge accepting the plea of fraud cannot be said to be good in law.

83. The requirement of a quorum for the purposes of a special meeting to discuss a motion of no confidence has been dealt with in the earlier part of the opinion; nonetheless, we dialect thereupon in reference to the given facts.

84. In the present case, it was stated by the presiding member Shri Amrit Paswan in the meeting dated 10.08.2018 that the motion of no-confidence could not be voted upon due to want of quorum as only ten members out of twenty-two elected members were present. It needs to be examined whether in the provisions of the Statute such requirement of



quorum is determinant of a Motion being voted upon?

85. The language of Section 44(3)(i) brings out the following essentials:

*“(1) A resolution expressing want of confidence in him [Pramukh/Up-Pramukh] is passed*

*(i) By a majority of*

*(a) the total number of elected members*

*(b) of the Panchayat Samiti*

*(c) at a meeting specially convened for the purpose. “*

\*\*\*

*“(6) No quorum shall be required to discuss motion in such a special meeting.”*

*“(9)(b) Any discussion on motion shall not be adjourned.”*

86. As it was contended by the Presiding Member that since ten members did not form a 'Majority of the total elected members of the Panchayat Samiti' (12 in this case) which was a pre-requisite, such motion could not be put to the vote for want of quorum. This reading of the statutory provision in question would render one part of it meaningless- 'At a meeting specially convened for the purpose' would become moot as the minimum quorum required in any case would be twelve.

87. To ensure that the unfavourable conclusion of rendering one part of a section moot as opposed to the other



part, one must employ the canons of interpretation to give meaning to the entire Section as a whole. The Apex Court in **Maulvi Hussein Haji Abraham Umarji v State of Gujarat (2004) 6 SCC 672** has observed that:

“The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided.”

88. The Hon’ble Apex Court has adopted the understanding of structural interpretivism in **Government of Tamil Nadu v. Park View Enterprises, (2001) 1 SCC 742**, in relation to the interpretation of the Stamp Act, 1899 and observed that:

*“8. The intent of the legislature in matter of placement of sections also needs to be gone into since a later section will carry its effectiveness in the event of contra intention expressed in an earlier provision of the Statute. ”*

89. Significantly in the record of the proceedings, i.e. the minutes of the House, dated 10.08.2018, there is no whisper of the requisitionists’ collusion with the Pramukh and the Up-Pramukh. In fact, 2 out of 10 elected members present in the meeting did not express any opinion against the opposite



parties, who also were not called upon for discussing the motion. Communication addressed by one of the writ petitioners, namely Hemant Kumar (writ petitioner no.1) to the District Magistrate, Vaishali (Annexure-4-page 29-30), one day prior to the meeting, i.e. 09.08.2018, was neither placed nor discussed in the House, nor is there any reference thereof. He ought to have expressed his apprehension in the House. There is no acknowledgement of such a communication by any one, save and except, it being placed on the record. Be that as it may, he failed to pursue the matter any further.

90. That it is mandatory for the motion to indicate the charges of misconduct and misdemeanor against the Pramukh and the Up-Pramukh, failing which, the action would be rendered nugatory in law stands settled by a Coordinate Bench of this Court in **Sindhu Devi (supra)**. With profit, we reproduce what the Court further held in the said decision:-

"The nuances of democracy come with experience and long-standing usage and practices. Democracy is a phenomenon which is absorbed by a political system. It cannot be injected as a wonder drug to give an instant effect. Losing the experience of democracy is as dangerous as losing democracy itself. The present case is an example which shows the aftermath of Bihar not having self Government for three decades, and its effect. Mob majority has been misunderstood as democracy.

7. The Court is afraid that it does not agree with the counsel for the appellants that



majority is a democracy. If this be so, would it not be mobocracy? After all democracy functions on sanctions, sanctions of the law. Democratic institutions follow, respect and protect the Rule of Law. Otherwise, the majority is not democracy but anarchy. Brute majority cannot belittle democratic institutions. Such bad practises lend themselves to dictatorships."

91. The collusion, if at all, appears to be that of the petitioners, for Amrit Paswan (writ petitioner no.4), who as an elected member presided the meeting ought to have put the motion to vote. He was the one who rejected the resolution and yet joined hands with the others to be a party challenging his very own action. This *ipse dixit* remains unexplained by him.

92. The learned Single Judge erred in concluding that the requisitionists colluded with the Pramukh or the Up-Pramukh by absenting themselves, resulting in a fraud only to subvert the Act's provisions. The requisitionists not mandated by law had the freedom to participate or recuse. Their mere non-appearance cannot be held to be a lack of "respect and sincerity" "towards the position" they had. Significantly, there are no allegations of misappropriation or defalcation of any amount. Allegations are only of power used arbitrarily. Of course, there can be a situation where in the first instance, the Requisitionists having a genuine grievance may initiate a motion for removal,



but then, as an afterthought, not pursue the same. But then the law does permit such an option, even if it is, frowned upon, looked upon with suspicion and circumspection, is unethical. And immoral apart.

93. The learned Single Judge erred in holding that save and except, barring an emergency, the requisitionists are obliged to remain present in the special meeting convened for discussing and putting the motion to vote.

94. Similarly, the finding that the requisitionists resorted to abusive tactics for an oblique purpose as an attempt to misuse or abuse the law is not borne from the record.

95. It cannot be said that the resolution was moved only to overcome the prohibition contained in clause (ii) of subsection (3) of Section 44 of the Act.

**Issue Nos.(v) and (ix)**

96. The requirement of a quorum for the purposes of the special meeting to discuss a motion of no confidence and to be put to the vote has been dealt with in the earlier part of the opinion. Nonetheless, we dialect thereupon in reference to the given facts.

97. In this case, the dispute is whether ‘motion may



be brought' includes motion of discussion *simpliciter* or means motion that is voted upon (either passed or defeated). Thus, the two possible meanings of the word 'motion may be brought' in the above clause are - either this phrase means that once the Samiti discusses *a motion*, it is 'brought' or unless the motion is ultimately voted upon by the *Samiti*, only then it is considered as 'brought'.

98. When interpreted through the lens of the literal rule of the statutory interpretation, the phrase 'motion brought' implies that once the requisition is submitted and a special meeting is called for this purpose, it takes the form of motion and is after that considered for the Statute to have been brought.

99. However, such a meaning that arises out of the literal rule causes conflict with the statute's purpose, democracy and electoral politics. Moreover, if a motion is considered brought when there is no action (not deliberation) taken on such a motion, it leaves wide-open possibilities for misuse of such provision. There are two reasons for possible misuse. Firstly, that such a motion can be brought only once, after which the tenure of the *Pramukh* is secure from any such proceeding. Secondly, according to Section 44(3)(i), the quorum requirement for a special meeting convened to discuss the no-



confidence motion is dispensed with. Thereby, a no-confidence motion may be considered brought even when out of 22 membered *Samiti*, only a small fraction of the members are present, ensuring that the *Pramukh* is free from the threat of no-confidence motion for the remainder of his tenure.

100. To understand the meaning of the words 'motion' and 'brought', which are not defined under the Act, meanings can be taken from the Black's Law Dictionary and P. Ramanathan Aiyer's Law Lexicon.

101. The word 'Motion' as defined by *Black* is:

*"The formal mode in which a member submits a proposed measure or resolve for the consideration and action of the meeting. "*

*P. Ramanathan Aiyer* provides the following definition:

*"Motion (in local assemblies.) A motion is a proposal made to evoke action on the part of the council or other assembly, and when acted upon, it becomes the formal expression of the will or resolution of the city council."*

102. In *Words and Phrases* (Volume 27-A), one of the meanings attributed to the word 'Motion' is 'proposal or suggestion looking to action in a deliberative assembly, this definition is reproduced in the case of **Asbirbad Behera v. State of Orissa** AIR 1980 Ori 79.

103. The word 'brought' is defined by *Black* as:



*“BROUGHT. Taken; carried.”*

104. The same definition can also be found in *P Ramanathan Aiyar’s Law Lexicon*.

105. According to the definitions mentioned hereinabove, ‘Motion’ can be understood as a proposal that requires “consideration” and “action”. Therefore, a 'Motion brought' will mean when a proposal is brought, discussed, voted upon, and 'carried' to a logical conclusion.

106. This interpretation of the word ‘motion may be brought’ can also be inferred from the following two Judgments, one of this Court and one from the Bombay High Court.

- (i) **Manik Lal Prasad v. State of Bihar** (LPA No. 838/2019, decided on 16.08.2019) - While considering the interpretation of Section 25(4) of the Municipality Act which provided that a no-confidence motion against Chief Counsellor/Deputy Chief Councillor shall not be brought again within one year of the first no-confidence motion, the Division Bench stated that “We may, however, observe that the initiation of a process of a no confidence motion is a mere proposal made through a requisition for the consideration of the removal of a person against whom the no confidence motion is sought to be tabled. It was, therefore, a notice of intention to do so, and not the actual culmination of the act of carrying out of the no



confidence motion. The sending of a requisition is only a step in aid under the statutory provision which is the procedure to be followed for the purpose of tabling a discussion on the issue of a no-confidence motion. The word 'requisition' to our understanding means to make a request by way of a proposition or a proposal for consideration of a resolution which is to be deliberated upon. **The mere requisition, therefore, in our opinion, would by itself not amount to a defeat or the passing of a resolution of a no confidence motion. This has to be understood in the light of the bar under the proviso which is attracted only if a motion is brought about and defeated.** It is in the said contingency only that the proviso intends to restrain bringing about a fresh no confidence motion within the period that has been provided for in both the provisos.”

- (ii) **Baburao Atmaramji Lande v. Collector, Chandrapur** (1981 SCC OnLine Bom 133): In the case, a special meeting was convened to consider the motion of no-confidence against chairman of *Panchayat Samiti* in which requisition was withdrawn by the proposer who was only present in the meeting. After that meeting, a month later, another meeting was convened by the Collector to consider the requisition given by 12 requisitionists. This meeting was challenged, saying that it was statutorily barred under s. 72(7) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 - “if the motion of no-confidence is rejected, no fresh motion of no confidence shall be brought within a period of six



months from the date of such rejection of the motion.”

The Court while holding that unless the motion is actually voted upon, bar is not attracted observing thus:

"11. The motion cannot be said to be carried or passed unless requisite number of members exhibit their approval of the motion by exercise of their votes, so also the motion cannot be said to have been rejected unless a requisite number of members exhibit their disapproval of the motion by exercise of their votes. It may be that there may not be any deliberation in the meeting on the motion, but exhibition of approval or disapproval by exercising votes is absolutely necessary before a motion becomes a resolution or it is rejected.

\*\*\*

16. It is thus clear that when used with reference to a motion, which is expected to be considered by a body of persons, it implies a positive expression of denial or disapproval of what is sought to be moved. Hence unless a motion is put to vote in a properly held meeting and defeated by requisite majority, it cannot be said to have been rejected."

107. Both the above-stated judgments clearly hold that no confidence is a process that has individual and sequential steps. Expressions of want of confidence can happen only when the motion is actually voted upon. Therefore, mere tabling of requisition or discussion will not amount to the motion being carried to a logical conclusion. The letter and the spirit of the law will be done to justice only when the motion is put to the vote.

108. Responsibility of the elected representatives



and responsiveness of the institutions being paramount, is what Hon'ble the Apex Court emphasised in **State (NCT of Delhi) (supra)** in the following terms:

“Mere existence of a Constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals.”

“Fundamental human freedoms limit the authority of the State. Yet the role of institutions in achieving democracy is as significant. Nations fail when institutions of governance fail. The responsiveness of institutions is determined in a large measure by their ability to be receptive to differences and perceptive to the need for constant engagement and dialogue. Constitutional skirmishes are not unhealthy. They test the resilience of democracy. How good a system works in practice must depend upon the statesmanship of those who are in decision-making positions within them.”

109. As this fact is undisputed, that no-confidence motion discussed at the special meeting convened on 10.08.2018 was not voted upon; in other words, expression of want of confidence was absent hence the bar under Section 44(3) (ii) is not attracted in this case.

**Issue No.(x)**

110. The learned Single Judge held that the Executive Officer had overstepped his jurisdiction as



prescribed under Section 44(3) (i) of the Act by requesting the Pramukh to fix a date, time and location for a special meeting, with a clear seven days notice, to discuss the no-confidence motion against her and the Up-Pramukh. He further directed District Magistrate Vaishali to conduct an inquiry against the Executive Officer, investigating his conduct in this matter.

111. We are of the considered opinion that under the provisions of the Act, it was the prerogative of the Pramukh to convene a meeting to consider a no-confidence motion against her, which includes fixing date, time and location for such a meeting. However, in the case when the Pramukh abdicates her responsibility to do so, the Up-Pramukh or the 1/3rd of the elected members of the Committee may prescribe a date and convey it to the Executive Officer to make suitable arrangements, which was not the case in the instant matter.

112. As it is apparent from the record, a request was made by the Executive Officer to the Pramukh to fix a date, time and place for such a meeting. One may say that such a request may perhaps, transgresses his own authority as provided as his function is merely to 'bring the requisition to the notice of the Pramukh' and then subsequently issue a notice of the particulars of the meeting as decided by the Pramukh in her



prerogative under Rule 15 & 16 of the Bihar Panchayat Raj Institutions (Conduct of Business) Rules, 2015.

113. However, it cannot be said that the Block Development Officer was "a party to the entire wrong doing" to fix the date, time and place of the meeting. He only requested the Pramukh to do so, but even though the learned Single Judge has not noticed, we are of the view that his direction of giving seven days clear notice was beyond the scope of his power and competence envisaged under Section 44 of the Act.

114. This Court finds the learned Single Judge's direction for an enquiry to be set up against the Executive Officer for his overstepping his jurisdiction to be harsh and unwarranted.

115. The word *mala fide* means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose as held by the Supreme Court in **State of Bihar v. P.P.Sharma** (supra). The use of the word 'request' in the communication of the Executive Officer indicates deference to the authority of the Pramukh, and while such request itself may be an overstep, the same cannot be said to be *mala fide*. Therefore, the Officer's action may simply be an inadvertent error and not an intentional act warranting an inquiry.



116. Power of High Court under Article 226 of the Constitution, if discretionary, shall be judicious and reasonable. Relief under Article 226 of the Constitution shall rest upon the conduct of the person seeking relief. [**State of Maharashtra Versus Digambar, (1995) 4 SCC 683 (para 19); ITC Versus Blue Coast Hotels Limited and others, (2018) 15 SCC 99 (para 54)**]

### **CONCLUSION**

117. Having gone through the submissions put to this Court in detail, the Court finds that the allegation of fraud was not established and the Pramukh and the Requisitionists could not have been said to have committed a fraud on the system; the words of Section 44(3)(i) have to be read in conjunction with one another and the majority required to put a motion to vote is from amongst the members of the Samiti present and voting; the logical conclusion of a motion is 'voting upon' the same, and since no vote took place in the meeting dated 10.08.2018, the motion cannot be said to have been 'brought' and consequently, the bar of Section 44(3)(ii) is not attracted.

118. Thus the questions are answered as under:

**Issue No.(i):-** The provision of Section 44 of the



Bihar Panchayat Raj Act, 2006 is an independent and stand alone Section, a complete code in itself.

**Issue No.(ii):-** The procedure prescribed under the provisions of Section 46 of the Act for convening a special meeting is neither applicable nor can it be read into for the meeting stipulated under Section 44 of the Act.

**Issue No.(iii):-** Under Section 44(3) of the Act majority required to put the motion to vote is amongst the members of the Panchayat Samiti present and voting. No minimum quorum is required for putting the motion of no confidence to vote.

**Issue No.(iv):-** Section 44(3) of the Act mandates a motion of no confidence to be put to vote by way of a secret ballot.

**Issue No.(v):-** The impugned action, i.e. resolution dated 10.08.2018 is in fraction of the provisions of the Act and as such is quashed and set aside.

**Issue No.(vi):-** Section 44 of the Act does not mandate the Requisitionists necessarily to be present in the meeting called to discuss and put to vote the motion of no confidence.

**Issue Nos. (vii) & (viii):-** In the given facts,



absence of the Requisitionists cannot be said to be an act of fraud with an endeavour of defeating the provisions of the Statute.

**Issue No.(ix):-** In the absence of the motion being put to vote, the legal bar of moving a fresh motion of no confidence stipulated under Section 44(3)(ii) would not be attracted.

**Issue No.(x):-** In the attending facts and circumstances, it cannot be said that the acts of the Executive Officer are deliberate leading to dereliction of duty warranting initiation of an enquiry with regard to his act and conduct.

119. Also how was it that both the resolutions dated 10.08.2018 and dated 11.08.2018 were quashed by the learned Single Judge is not clear from the record.

120. As the motion initiated by the Original Requisition dated 02.08.2018 tabled in the proceedings dated 10.08.2018 was necessarily to be voted upon, which did not take place, hence all resulting consequences stand vitiated. Also subsequent election of Pramukh and Up-Pramukh are declared to be null and void.

121. Resultantly, Mrs. Dharamsheela Kumari is restored as Pramukh and Mrs. Neelam Devi is restored as Up-



Pramukh.

122. Further, it is hereby directed that the first requisition of no-confidence dated 02.08.2018 against the Pramukh be carried to a logical conclusion by putting it to the vote within next fifteen days. Similarly placed, directions would apply also to the resolution qua the Up-Pramukh.

123. The Pramukh and the Executive Officer are directed to take necessary action to ensure that the directions of the Court are complied with forthwith.

124. The Appeal stands allowed.

125. No order as to costs.

126. Interlocutory Application, if any, shall stand disposed of.

**(Sanjay Karol, CJ)**

**S. Kumar, J.            I agree.**

**( S. Kumar, J)**

sujit/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | 17.02.2021 |
| Uploading Date    | 28.06.2021 |
| Transmission Date |            |

