

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7758 of 2020

Krishna Kumar Choudhary, Male, aged about 57 years, son of Late Shivjee Chaudhary, resident of village and P.O. Kalyanpur Basti Purb, P.S. Mohiuddin Nagar, District Samstipur, presently Pramukh of Block Panchayat Samiti, Mohiuddin Nagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate, Samastipur, District- Samastipur.
4. The Sub-Divisional Officer, Patori, District- Samastipur.
5. The Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar, P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
6. Babita Devi, wife of not known to the petitioner, presently Up- Pramukh of Block Panchayat Samiti, Mohibuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
7. Jawahar Lal Rai, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
8. Alka Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
9. Nirmala Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
10. Manoj Kumar Das, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
11. Jyoti Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
12. Ram Briksha Paswan, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
13. Usha Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block



- Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
14. Lalita Singh, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 15. Parwati Devi, wife of not known not he petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 16. Dharmendra Kumar Rai, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 17. Manju Kumari, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 18. Babita Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 19. Baby Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 20. Jaishar Rana Amrish, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 21. Gautam Pandit, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 22. Nasima Khatoon, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 23. Md. Seraj, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
 24. Indu Devi, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.



25. Babita Kumari, wife of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.
26. Pawan Singh, son of not known to the petitioner, Panchayat Samiti Member of Block Panchayat Samiti, Mohiuddin Nagar through the Block Development Officer - cum- Executive Officer, Block Panchayat Samiti, Mohiuddin Nagar P.O. and P.S. Mohiuddin Nagar, District- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Res. No.1 to 5 : Mr. Pratik Kumar Sinha, A.C. to G.A.5

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 28-01-2021

Heard Mr. Shashi Bhushan Kumar Manglam, the learned counsel for the petitioner and Mr. Pratik Kumar Sinha, the learned A.C. to G.A.5. Nobody appears on behalf of the private respondents.

2. The petitioner seeks following reliefs:

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the requisition dated 25.08.2020 received by the petitioner through the Respondent no.5 on 27.08.2020 bearing signature of 17 members of Block Panchayat Samiti, Mohiuddin Nagar and addressed to the petitioner under which a requisition has been made from the petitioner to fix the date of special meeting of the Block Panchayat Samiti for consideration of No Confidence Motion against the petitioner on the ground that if the said requisition has not been



brought before the petitioner in the manner as contemplated under Sub-Section -3 (i) of Section 44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act).

(II) For a declaration that if he has not received the impugned requisition in the manner as contemplated under Sub-Section -3 (i) of Section -44 of the Gram Panchayat Act, the petitioner is not obliged to fix the date of special meeting in discharge of his statutory function as contemplated under Gram Panchayat Act.

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

3. During the pendency of this writ petition, the petitioner filed I.A. No.1 of 2020 and further prays additional reliefs, but from perusal of the reliefs enumerated in the I.A. petition, it appears to me that the relief sought for is same and similar to what is sought for in the main petition.

4. Facts in brief are that the petitioner was initially elected as Up-Pramukh of Mohiuddin Nagar Panchayat Samiti and later on the petitioner was elected as the Pramukh after removal of the then Pramukh, Jawahar Lal Rai by a No Confidence Resolution and since 19.08.2018 after being elected as Pramukh, the petitioner is working as Pramukh.



5. Mr. S.B.K. Manglam, the learned counsel for the petitioner has raised primarily following issues:

(i) Whether the impugned requisition signed by 17 elected members of Block Panchayat Samiti is duly served on the petitioner in the manner and the mode prescribed under Sub-Section 3(i) of Section 44 of the Gram Panchayat Act?

(ii) Whether the requisitionists of notice asking for moving the No Confidence Motion against the Pramukh is justified in presenting the requisition along with its copies directly to the Block Development Officer and if not the service of notice by the Block Development Officer is legal?

(iii) Whether the requisitionists or the Up-Pramukh would be competent to fix the date of special meeting on the basis of the impugned requisition even when the same has not been served by the requisitionists to the Pramukh, the petitioner as mandated under Sub-Section 3(i) of Section 44 of the Gram Panchayat Act.

(iv) Whether the requisition shall be deemed to have been served according to the records on the petitioner on 04.09.2020 and before expiry of the prescribed period as contemplated under Section 46(4) of the Act and, as such, fixing of the date of special meeting by the requisitionists or the Pramukh



before expiry of the stipulated time is not illegal and, as such, the resolution of No Confidence Motion against the petitioner in the aforesaid special meeting is illegal?

6. Mr. S.B.K. Manglam, the learned counsel for the petitioner submits that apart from the facts that the respondent no.5 is on inimical term with the petitioner as the petitioner being Pramukh of the Block Panchayat Samiti was objecting his illegal acts, a requisition bearing the signatures of required numbers of elected members of Panchayat was prepared and it is said that the elected members gave requisition for the purpose of No Confidence Motion and its presentation before the petitioner in his office as alleged but when the petitioner was not found available in his office on 25.08.2020 itself the requisitionists gave the resolution to respondent no.5, the Block Development Officer, Mohiuddin Nagar at 12.35 P.M. The respondent no.5 after having received the requisition processed the same with lightning speed and prepared the file for forwarding of requisition to the petitioner. On 25.08.2020 itself, the file was handed over to a peon of the office on respondent no.5 for its service upon the petitioner. The peon came to the residence of the petitioner on 25.08.2020 for serving the requisition on the petitioner along with the forwarding letter of respondent no.5 but since the petitioner was out of his



residence, it was not served. It is further submitted that when the petitioner came back to his house in the late hour of 26.08.2020, the peon came to the petitioner for service of requisition and petitioner received the requisition on 27.08.2020. The respondent no.5 also sent photo copy of the requisition to the petitioner through the registered post, which was also delivered to the petitioner on 27.08.2020, but the petitioner never received any requisition in the manner as contemplated under Sub-Section 3 of Section 44 of the Gram Panchayat Act (hereinafter referred to as 'the Act).

7. It is further submitted that the requisitionists has neither presented the original requisition before the petitioner nor the petitioner has received the original requisition through the respondent no.5 as required under Sub-Section 3(i) of Section 44 of the Act. The records would show that since the petitioner had returned the file to respondent no.5 with certain queries on 29.08.2020 and on 02.09.2020, the petitioner has rejected the request of the requisitionists to convene the special meeting vide his Letter No.120, dated 02.09.2020. Mr. Manglam further submits that the records with comments of the petitioner in file and Letter No.120, dated 02.09.2020 were received in the office of respondent no.5 on 02.09.2020 itself. The concerned file and the



requisition further show that the respondent no.5 had received the original requisition and the file was with the photo stat copy of requisition. The Head Clerk again wrote notes on the file for forwarding the file to the Pramukh for his necessary action with original requisition. Thereafter the petitioner received the file once again on 04.09.2020 along with the original requisition. The petitioner was considering the request of the requisitionists according to the statutory provision as the petitioner being Pramukh after having received the requisition in its original is to fix the date of special meeting within seven days excluding 04.09.2020 with clear seven days notice to the members of the Panchayat Samiti for convening a meeting but the respondent no.5, the Block Development Officer usurped the power of the petitioner and fixed the date of special meeting on 18.09.2020. Notice in this regard was issued to all the elected members of the Panchayat Samiti vide Letter No.1190, dated 09.09.2020. The respondent no.5 issued another letter being Letter No.1191, dated 09.09.2020 addressed to Sri Krishna Kumar Choudhary, Panchayat Samiti Sadasya requesting the petitioner to attend the meeting but this fact itself shows the mala fide intention and manipulation of the respondent no.5 that he did not even address the petitioner who was Pramukh on that day as Pramukh and the respondent no.5



assumed him a simple member of Panchayat Samiti. It is submitted that the entire process for serving the requisition requesting for calling for special meeting to the Pramukh and holding special meeting before expiry of statutory period and for fixing the date of special meeting before expiry of the statutory period within which the Pramukh after having received such requisition may call the special meeting amounts to usurping the power vested in Pramukh under law and, as such, convening a special meeting by the respondent no.5 is illegal. Mr. Manglam placed his reliance on the judgment of this Court reported in 2015 (1) PLJR 790, *Geeta Devi vs. State of Bihar* and submits that, therefore, the resolution removing the petitioner from the post of Pramukh is illegal and not sustainable. Mr. Manglam, the learned counsel for the petitioner further submits that the provision of Sub-Section 3 of Section 44 of the Act provides that the notice/requisition must be served on the Pramukh in the manner prescribed therein. The requisition must mark a copy to the Executive Officer. On receipt of such notice, the Pramukh is obliged under the Act to convene a meeting within a period of 15 days. If the Pramukh fails to do, the requisitionists or the Up-Pramukh can require the Executive Officer to convene a meeting within the stipulated time. From the records of the case, it would



show that notice was not ever served according to the manner as prescribed under the Act to the petitioner. If the petitioner was not found present in his office on 25.08.2020, the original requisition is to be duly served on the petitioner in the prescribed manner and no in any other way. The original requisition was only served on the petitioner on 04.09.2020 and, therefore, the petitioner may call the special meeting till 11.09.2020. Non-service of notice in the prescribed manner came for consideration before this Court in the case of *Sheikh Hassmuddin & Anr. Vs. State of Bihar (LPA No.484 of 2015 in CWJC No.14526 of 2014)*, reported in *2015 (3) PLJR 203* and a Division Bench of this Court has clearly held that if notice is not served in the prescribed manner, the resolution removing the elected members is illegal.

8. Mr. Pratik Kumar Sinha, the learned A.C. to G.A.5 contending the submissions of Mr. Manglam submits that it is admitted fact that the requisitionists having signature of required number of elected members of Panchayat Samiti went to serve the notice/requisition on the petitioner in the office of the petitioner but the petitioner was not present. The requisitionists handed over the copy of the notice/requisition along with a copy to the Block Development Officer, respondent no.5 on the same day. The respondent no.5 took steps for service of notice on the petitioner



through different modes. The notice/requisition was duly sent to the petitioner through Whatsapp message on the mobile number of the petitioner and the petitioner saw the Whatsapp message on the same day. The petitioner has not denied the receipt of notice through Whatsapp on 25.08.2020 itself.

9. Mr. Sinha further submits that the respondent no.5, the Block Development Officer processed the file and handed over the requisition to the peon for serving the same to the petitioner. The peon went to serve the requisition and he came across with the petitioner near a Chowk but the petitioner after having gone through the requisition refused to accept the same. The peon put down his notes about the refusal of service of notice by the petitioner. The file was again placed before the petitioner on 27.08.2020, but the file was kept by the petitioner after putting some notes and petitioner however admits the fact that he got the notice on 04.09.2020 although he received the notice in file on 02.09.2020. Notice was also sent to the petitioner by registered post on 26.08.2020.

10. It is further submitted that as per the mandate of Section 44(3) of the Act, 2016, the Pramukh is obliged to convene a special meeting within 15 days of the receipt of the requisition but the petitioner fails to convene the meeting and only thereafter



the record was sent to Up-Pramukh on 09.09.2020 for fixing the date to convene special meeting. For all practical purposes the notice was served on the petitioner on 25.08.2020 itself through Whatsapp. The Bihar State Election Commission laid down certain directions as contained in Letter No.2535 dated 16.09.2008 and it has been held in Sub-Clause (iv) that when the Pramukh refused to receive the requisition to convene special meeting for No Confidence Motion, the copy served on the Executive Officer of the Panchayat Samiti shall be deemed to have been served on the Pramukh. Thereupon the Executive Officer shall serve the notice through its letter as well as through the file to the Pramukh requesting him to convene special meeting within stipulated time. Sub-Clause (v) of the aforesaid letter clearly stipulates about convening of meeting by the Pramukh after having received notice through this mode. Mr. Pratik Kumar Sinha further submits that on the similar facts, this Court in the case of *Neetu Kumari Vs. The State of Bihar & Ors.*, reported in 2019 (3) PLJR 513 has clearly held that the notice was duly served on the Pramukh and, therefore, any irregularity, as alleged by the Pramukh, in the manner of service of notice cannot frustrate the ends of justice.

11. Mr. Pratik Kumar Sinha further submits that from perusal of the resolution dated 18.09.2020 when the special



meeting was convened and resolution of No Confidence Motion was passed resulting in removal of the petitioner from the post of Pramukh, the petitioner participated in the meeting and raised objection. The petitioner cannot impeach the same order as he has waived the condition precedent for impeaching the impugned resolution and the notice. The learned counsel in support of his contention placed reliance on the judgment of the Hon'ble Supreme Court in *Padmini Singha Vs. The State of Assam & Ors.*, reported in *AIR 2018 SC 4590*. Relying on the same judgment, this Court also held in the case of *Neelam Devi & Ors. Vs. The State of Bihar & Ors.*, reported in *2020 (1) PLJR 619* that once the petitioner, who impeached the resolution moved against him, participated in the meeting, he shall be deemed to have waived his right to impeach such resolution and even if very mandatory provisions with regard to service of notice is not strictly adhered to, the same would be immaterial.

12. On the basis of the submissions of both sides, the dispute turns around the manner and mode of service of the notice/requisition for bringing No Confidence Motion against an elected member, such as, Pramukh/Up-Pramukh of Panchayat Samiti. Answers of all the questions raised on behalf of the petitioner depends upon the interpretation of Sections 44(3)(i) and



46(4) of the Act and for that it would be appropriate for sake of convenience to firstly reproduce Section 44 and Section 46 of the Act. It is also appropriate to reproduce the directions as contained in Sub-Clause (iv) and (v) of Letter No.2535, dated 16.09.2008 issued by the Bihar State Election Commission with regard to manner and mode of service of notice. When the Bihar State Election Commission felt that certain substitute mode of service of notice are required to be adopted when the elected member, such as, Pramukh, Up-Pramukh and other elected members of Panchayat refuses or avoids to take notice or requisition duly prepared by the 2/3 elected members of the Panchayat in order to bring No Confidence Motion.

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

(2).....

***(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 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 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 no confidence motion.”

“46. Meetings of Panchayat Samiti.-

(1).....

(2).....

(3).....

(4) *Ten clear days’ notice of an ordinary meeting and seven clear days’ notice of a special meeting specifying the place, date and time of 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.”

13. Sub Section-3 of Section 44 of the Act makes it amply clear that 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. The requisition is required to be signed by at least one third of the total number of members elected directly and on such the Executive Officer shall immediately bring the requisition to the notice of the Pramukh. This provision further makes it clear that firstly the requisition for such special meeting is required to be presented to the Pramukh with a copy of it to the Executive Officer of the Panchayat Samiti but this provision does not visualize the situation that how the notice can be served on the Pramukh when the Pramukh or other elected member against whom such requisition/notice is proposed to be brought and he refuses to accept such notice and he was not present in his office. From clause (iv) and (v) of the directions as contained in Letter No.2535, dated 16.09.2008, it is crystal clear that the Bihar State Election Commission, who is a statutory body for holding Panchayat and other local bodies election, was confronted with such situation for the manner and mode of service of notice on the Pramukh and Up-Pramukh against whom such motion is proposed and if the Pramukh or Up-Pramukh who even after having



received such notice convened the meeting violating the specific provisions and the time for convening such meeting as provided under Sub-Clause (4) of Section 46 of the Act and only thereafter issued certain directions as contained in the aforesaid letter with regard to the manner and mode of service of notice and the manner of convening such special meeting to consider No Confidence Motion. The directions appear to be supplemental to the provisions of the Act.

14. It further transpires that Sub Section (3) (i) of Section 44 of the Act only says that requisition for for such special meeting shall be presented to the Pramukh but it does not speak that how such representation shall be presented to the Pramukh or in what manner or mode such requisition should be brought to the notice to the Pramukh particularly when the Pramukh is not present in his office or he refuses or avoids to receive such notice. In such situation, this Court finds that the object and purpose of presenting such requisition to the Pramukh is primarily to bring the notice of such requisition for requesting him to convene such special meeting to the Pramukh. The mode and manner of bringing such notice to the Pramukh of such notice/requisition can be different. The requisition can be sent to the Pramukh through Whatsapp or any electronic modes, which are permitted under the



procedure for sending notice to the concerned. It has come in the present case that on 25.08.2020 itself, the requisition was communicated to the Pramukh through Whatsapp message and the Pramukh saw Whatsapp message on the same day. The petitioner did not refute or deny the manner of receiving notice through Whatsapp either in the reply to the counter affidavit or rejoinder to the reply of the counter affidavit filed by the State. The petitioner also received the notice through the registered post. The petitioner himself stated that he perused the file on 27.08.2020 itself but the original copy of the resolution was not with the file. On this fact, this Court finds that the petitioner wants to avoid or scuttled the resolution proposed to be brought against the petitioner on one pretext or the other. Thus, I find that the notice is properly served on the petitioner through different modes on 25.08.2020 itself as well as on 27.08.2020 when the petitioner himself perused the file and, therefore, the contention of the petitioner that the notice or requisition for convening a special meeting is not duly served on the petitioner in the manner as prescribed under Sub-Section (3) (i) of Section 44 of the Act, is not acceptable.

15. From the facts of the case in hand, it is crystal clear that the requisition was duly served on the petitioner on 25.08.2020 itself through Whatsapp message. According to the



admission of the petitioner himself that he perused the record on 27.08.2020 and put some notes thereon directing the Executive Officer to serve the original copy of the requisition as the petitioner claimed that he could not testify the genuineness of the signature of the requisitionists. At the time of serving of the requisition, the petitioner is not legally entitled to refuse to convene the meeting on the ground that the signatures of some of the requisitionists are not genuine. The petitioner had no material before him to refuse to convene such special meeting on such ground. Sub-Section (4) of Section 46 stipulates and mandates that the special meeting for consideration of No Confidence Motion shall be convened within 15 days from the date of receipt of such requisition excluding the date on which the Pramukh or Up-Pramukh received such requisition. It is also mandated that the meeting must be convened giving 7 days clear time for participation of elected members and, therefore, the notice for convening such meeting is to be issued on 8th day and not thereafter for convening such special meeting from the date of receiving such requisition. The petitioner received Whatsapp message on 25.08.2020 itself and he also perused the relevant file on 27.08.2020, according to his own assertion, therefore, the petitioner should have convened the special meeting within 8 days



from the date on which he perused the relevant record/requisition for convening a special meeting brought by the requisitionists and when the petitioner fails to convene such special meeting only thereafter the Block Development Officer-cum-Executive Officer placed the file before the Up-Pramukh who fixed the date of convening special meeting on 18.09.2020, therefore, I find that neither the Block Development Officer-cum-Executive Officer nor the Up-Pramukh has usurped the power of the Pramukh to convene the special meeting rather when the Pramukh against whom the requisition for bringing No Confidence Motion is brought failed to convene such special meeting within the stipulated time, the Up-Pramukh ordered the Executive Officer to convene such special meeting on 18.09.2020.

16. In the case of *Geeta Devi (supra)*, a Single Bench of this Court clearly found that on 05.09.2013 when the requisition was presented before the petitioner but was refused. On 06.09.2013 when the requisition was sought to be served on the petitioner through the peon was refused as appeared from the service report but on 11.09.2013 was the date when the requisitionists ordered to hold special meeting, therefore, it was found that clear 7 days was not given to the Pramukh or Up-Pramukh against whom such requisition was brought to convene a



special meeting for consideration of No Confidence Motion. It was found that within the stipulated time as mandated under Sub-Section (4) of Section 46, the Up-Pramukh usurped the power of the Pramukh and convened to hold special meeting but the facts of the present case are quite different and not at all helpful to the petitioner.

17. In the case of *Sheikh Hassmuddin (supra)*, the Division Bench found that the notice to move a motion of No Confidence Motion against the appellant was not directly or in any other manner were served, therefore, the facts of the aforesaid case are quite different and slight difference of facts makes a sea change in the judgment, thus, I find that the cases on which the petitioner has placed reliance are not at all helpful.

18. From the facts of the case in hand, it further transpires from the counter affidavit filed by the respondent-State that the petitioner participated in the discussions and ballot was also allotted to the petitioner, but he did not cast his vote. Elected members of the Panchayat Samiti who are more than $\frac{1}{2}$ of the elected members of the Panchayat Samiti cast their votes in favour of No Confidence Motion and the resolution was passed through and petitioner was removed from the post of Pramukh. Mr. Manglam submits that the petitioner did not participate in the



discussion but only he raised objection but the resolution of the meeting clearly shows that the petitioner participated in the discussions and he abstained from voting and resolution was passed, therefore, in view of the law laid down by the Hon'ble Supreme Court in the case of *Padmini Singha (supra)*, the petitioner once participated in the resolution cannot impeach that certain mandatory provisions of law has not been complied with although I find that no such mandatory provision of the Act convening the special meeting in bringing the requisition for discussions of No Confidence Motion is violated.

19. Having considered the facts and discussions made above, I find no merit in this writ petition. Accordingly, the same is dismissed. However, no order as to costs.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	NA
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