

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.618 of 2024

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Shailendra Prasad Singh S/o Late Bharat Prasad Singh, R/o Village-Pachpaika, P.S.-Belsar O.P., District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
3. Director, Department of Panchayati Raj, Government of Bihar, Patna.
4. District Panchayati Raj Officer, Vaishali (Hajipur).
5. Block Development Officer-cum-Executive Officer, Block-Vaishali, District-Vaishali.
6. Up Pramukh, Block-Vaishali, District-Vaishali.
7. Rekha Devi, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
8. Shalu Kumari, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
9. Sandhya Kumari, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
10. Mukesh Kumar, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
11. Mahesh Kumar Singh, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
12. Sanjay Kumar, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
13. Seema Devi, wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
14. Md. Murtaza, Son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
15. Babniya Gupta, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
16. Mukesh Bhagat, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
17. Anil Kumar, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
18. Md. Naushad, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
19. Manibhushan Kumar Sah, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
20. Harishchandra Kumar, son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.



- 21. Rinku Devi, wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 22. Shobha Devi, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 23. Geeta Prakash, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 24. Surendra Ram, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 25. Soni Kumar, Wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 26. Nirmala Devi, wife of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.
- 27. Prabhash Kumar, Son of not known, Member Panchayat Samiti, Vaishali Block through the Block Development Officer.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. B. Mishra, Advocate
	:	Mr. Anish Kumar, Advocate
	:	Mr. Alok Kumar, Advocate
	:	Mrs. Sakshi Sinha, Advocate
	:	Mr. Gunjan Kumar Jha, Advocate
For the Respondent/s	:	Mr. Government Pleader 3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-01-2024 Heard Mr. B. Mishra along with Mr. Anish Kumar, Mr. Alok Kumar, Mrs. Sakshi Sinha and Mr. Gunjan Kumar Jha learned Counsels appearing on behalf of the petitioner and Mr. Government Pleader 3 appearing on behalf of the respondent/s.

2. The petitioner has filed the present writ petition for the following relief(s):

- (i) For issuance of an order, direction or writ including writ in the nature of certiorari quashing notice of no confidence motion dated 6/1/2024 contained in letter no 29 issued by the Executive Officer cum Block Development Officer, Vaishali, District- Vaishali.
- (ii) For issuance of an order, direction or



writ including writ in the nature of Certiorari quashing the order contained in letter no- 26, dated 05-01-2024 whereby the Respondent No.- 5 asked to fix a date of the special meeting of the Panchayat Samiti for the discussion on no confidence motion.

(iii) For issuance of an order, direction or writ including writ in the nature of Certiorari quashing the order contained in letter no.- 01, dated 01-01-2024 whereby and whereunder the Respondent no. 5 asked the petitioner to fix the date for special meeting of the Panchayat Samiti and communicate the same to him.

(iv) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents not to give effect to notice of no confidence motion dated 6/1/2024 contained in letter no. 29 issued by the Executive Officer cum Block Development Officer, Vaishali, District- Vaishali.

(v) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents not to disturb the petitioner in any manner and allow him to continue and discharge his duties.

(vi) For issuance of an appropriate declaration holding that the impugned action of the Respondent No.5 is illegal, arbitrary and unsustainable in the eye of law.

3. Learned counsel appearing on behalf of the petitioner submitted that eight members of the Panchayat Samiti expressed their dissatisfaction and a requisition was submitted before the petitioner, who is the Pramukh. Petitioner rejected the said requisition on the ground that the same is not required under Section 43 (3) (v) of the Bihar Panchayat Raj Act, 2006 (hereinafter to be referred as the 'Act'). Thereafter, the Up-pramukh along with other members made requisition before the



petitioner, however, he did not hold the meeting and the Block Development Officer – cum – Executive Officer having found that there are charges against the petitioner proceeded to fix the date of meeting on 15.01.2024. The notice dated 06.01.2024 was received by the petitioner on the same day. He further submitted that the action of the Block Development Officer – cum – Executive Officer in not following the mandatory provision of Section 44(3)(iv) of the Act. As such, the same is fit to be quashed.

4. Learned counsel appearing on behalf of the State submitted that the reasons have been assigned in the notice and the same notice is in continuation of first notice dated 30.12.2023, therefore, the requirement, as contained in Section 44 (3) (iv) of the Act, is fulfilled and no interference so far as date is concerned is required. He further submitted that the petitioner can not challenge in this regard and call for no confidence motion at this stage. As such, no interference of this Court is required.

5. Learned counsel appearing on behalf of the petitioner in reply to the objection raised by the learned state counsel submits that maintainability of the writ petition and to invoke writ jurisdiction have been decided by the Division



Bench of this Court in the case of **Smt. Shamshad Khatun Vs. The State of Bihar & Ors.** reported in **(2010) 1 PLJR 929** applying principle of law laid down in the said case. The learned counsel further submitted that once the petitioner waves his right to take advantage of situation then in that case after he faces no confidence motion, he does not have right to challenge the same before this Court and in that case, the principle of estoppel will also apply. It is made clear that the meeting, which is proposed to be convened, will also lose its force.

7. Having considered the rival submissions made by the parties, as well as, the acquisition as contained in notice dated 06.01.2024, which was not the part of the first notice, can only amount to develop the fact. Under the circumstances, I am of the opinion that such additional charges will only amount to after thought, which is not permissible under the Act. The notice, as contained in Annexure-1, does not fulfil the mandatory requirement of Section 44 of the Act. The second notice is also fit to be quashed because the provision of 15 days' notice is not in accordance with Section 44(3)(i) of the Act as having not fulfilled the 15 days' clear notice

8. The parties may take steps in accordance with law.

9. With the above observation/direction, the writ



petition stands allowed.

(Purnendu Singh, J.)

Chn/-
Ashishsingh/-

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