

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1521 of 2024

1. Sheela Devi @ Sheela Kumari Wife of Sri Shashi Ranjan Kumar, resident of village - Kalhua @ Kolhua, P.O. Kolhua, P.S. Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
2. Bhagwan Rai, Son of Gariba Rai, Resident of Village - Rajauli, P.O. Berui, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
3. Mokhtar Rai, Son of Bhairav Rai, resident of village- Dhauri, P.O. Sarmi, P.S. Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
4. Gulab Thakur, Son of Gudri Thakur, resident of village- Shreepur, P.O. Maricha, P.S. Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
5. Pintu Kumar Pandit, Son of Mahanth Pandit, resident of Village and P.O. - Pipra, P.S. - Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
6. Santosh Rai, Son of Pancham Rai, Resident of village - Ibrahimpur, P.O. Harpur, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
7. Pawan Kumar, son of Om Prakash Sharma, resident of village - Bhumihara, P.O. - Harpur, P.S. - Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
8. Anil Kumar Sharma, Son or Rameshwar Sharma, Resident of village - Katsa, P.O. Madarpur, P.S. - Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
9. Ramawati Devi, Wife of Manindra Mahto, resident of village- Chhapiyan, P.O. Isuapur, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
10. Sarita Devi, Wife of Janak Kumar Singh, resident of village and P.O. Bhithi Sahabuddin, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
11. Urmila Devi, Wife of Vikas Kumar Thakur, resident of village - Khabsa, P.O. Khabsi, P.S. - Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.



12. Punkali Devi, Wife of Bindhyachal Sah, resident of Village and P.O. Laubakala, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
13. Bhairav Pandey, Son of Janardan Pandey, resident of village and P.O. Usti, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
14. Umrawati Devi, Wife of Amardeo Kumar Pandit, resident of village and P.O. Piparpati, P.S. Sahajitpur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
15. Gayatri Devi, Wife of Murari Kumar Singh, resident of village - Karah, P.O. Harpur, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
16. Nirmala Devi, Wife of Raj Kumar Sah, resident of village - Ramdhanaw, P.O. - Dhanaw, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
17. Arti Devi, Wife of Bhuar Ram, resident of village - Bhusaon, P.O. Hariharpur, P.S. Baniyapur, District - Saran at Chapra. The elected member of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate, Saran at Chapra, District - Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra, District - Saran at Chapra.
5. The District Panchayat Raj Officer, Saran at Chapra, District - Saran at Chapra.
6. The Sub-Divisional Officer, Chapra Sadar, District - Saran at Chapra.
7. The Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, District - Saran at Chapra.
8. The Block Panchayat Raj Officer, Baniyapur, District - Saran at Chapra.
9. The Station Head Officer, Baniyapur, District - Saran at Chapra.
10. Smt. Manjusha Ojha, Wife of Sri Mani Bhushan Ojha, presently Pramukh of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
11. Sri Diwakar Kumar Tiwary, son of not known to the petitioners, Presently Up-Pramukh of Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.



12. Mani Bhushan Dubey, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
13. Ashok Kumar Gupta, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
14. Tribhuwan Sah, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
15. Braj Nandan Prasad, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
16. Uttam Kumar Singh, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
17. Raj Kumar Ram, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
18. Nitish Kumar Prasad, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
19. Paramshila Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
20. Suthari Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
21. Bhagmani Devi, Wife of Rajdeo Ram, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
22. Julekha Praveen, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
23. Baby Khatoon, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O.



and P.S. Baniyapur, District - Saran at Chapra.

- 24. Anita Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
- 25. Dhanita Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
- 26. Usha Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.
- 27. Sheorato Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Baniyapur through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Baniyapur, P.O. and P.S. Baniyapur, District - Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. SBK Mangalam, Advocate
		Mr. Awnish Kumar, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27
For the Resp. No. 10	:	Mr. Piyush Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

8 05-08-2024 Heard the parties.

2. The present writ petition has been preferred for the
grant of following relief/s:-

“(I) For issuance of an appropriate writ in the nature of CERTIORARI 02.01.2024 for quashing the notice dated issued under the signature of the Respondent no.7 and contained in his letter no.4 dated 02.01.2024, whereby and where under the



Respondent no.7 has been pleased to inform the elected members of Block Panchayat Samiti, Baniyapur to attend the special meeting of Block Panchayat Samiti, Baniyapur scheduled to be held on 11.01.2024 for consideration of No Confidence Motion against the Pramukh of the Block Panchayat Samiti, Baniyapur on the ground that since under the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act) power to fix the date of special meeting is vested in Pramukh and on failure of the Pramukh in the Up-Pramukh or one-third elected members of Block Panchayat Samiti, the Respondent Executive Officer does not have any jurisdiction to fix the date of special meeting and since the date of special meeting has been fixed by the Executive Officer himself impugned notice issued on 02.01.2024 by the Executive Officer cannot be sustained in law.



(II) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent no.7 to postponed the special meeting of the Block Panchayat Samiti, Baniyapur dated 11.01.2024 convened for No Confidence Motion against the Pramukh (Respondent no.10) on the ground that it has been convened by the Pramukh in connivance with the requisitionists and to frustrate the right of the aggrieved members in future, if they desire to bring No Confidence Motion against the Pramukh as also on the ground that the husband and father-in-law of the Pramukh have been made accused in Baniyapur P.S. Case No.06 of 2024 dated 05.01.2024 for kidnapping of one of the elected members of Block Panchayat Samiti to complete her majority amongst the total elected members of Block Panchayat Samiti.

(III) For issuance of any other appropriate writ/writs, order/ orders,



direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3. The facts of the case is/are as follows:-

4. On 02.01.2024, a requisition was made by the elected members for convening special meeting to discuss ‘No Confidence Motion’ against the respondent no. 10, the Pramukh, Baniyapur Panchayat, Saran (Annexure P-1 to the writ petition).

5. This followed the request made by the respondent no. 7, the Executive Officer, Baniyapur Block, Saran to the respondent no. 10 vide memo no. 04 dated 02.01.2024 (Annexure P-2 to the writ petition).

6. The respondent no. 10 was kind enough to fix the date as 11.01.2024 (Annexure P-5 to the writ petition). A meeting took place on 11.01.2024 in which 15 elected members appeared but as per the minutes of the proceeding, no voting took place and the Executive Officer declared the motion to have been defeated (Annexure P/6 to the Interlocutory Application No. 01 of 2024).

7. Learned counsel for the petitioner submits that admittedly, the motion was not put to vote and in that background, they are at liberty to move afresh requisition in the



light of the decision of **Dharamsheela Kumari vs Hemant Kumar and Ors. (LPA No. 113 of 2020) reported in 2021 (4) BLJ of 194** particularly issue no. ix according to which there is no bar of fresh motion under the Act, if motion was not put to vote.

8. Learned counsel appearing on behalf of the respondent no. 10 submits that a meeting was taken up on 11.01.2024 and since no voting took place, the same was declared defeated. There is no need for a second meeting.

9. He further submits that the petitioner is talking about a hypothetical situation inasmuch as there is nothing on record to show that any such requisition has been preferred by anyone much less the petitioner herein warranting any order/direction.

10. Learned State counsel also echoes the same view that for the present, the petitioner only challenged the meeting so held on 11.01.2024 beside the requisition made by the members.

11. This Court has taken note of the submissions put forward by the parties, as also **issue no. ix** of the **Dharamsheela Kumari** (supra) order.

12. The paragraph nos. 117 and 118 of the



Dharamsheela Kumari (supra) judgment read as follows:

“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 Statue.

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.”



13. Thus the **issue no. ix** is very clear: **any meeting which came to an end without the motion being put to vote, the legal bar of moving a fresh ‘Motion of No Confidence’ stipulated under Section 44 (3)(ii) of the Bihar Panchayat Raj Act, 2006 would not be attracted.**

14. However, here, admittedly, no such situation has arisen warranting any comment from this Court and as such, the Court stops at that.

15. The writ petition is disposed of with the aforesaid observation.

(Rajiv Roy, J)

Adnan/-

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