

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.760 of 2024

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Usha Devi @ Usha wife of Vihari Mishra Jogia Resident of village and P.O. Jogia, P.S. Brahmpur, District - Buxar, presently Pramukh of Block Panchayat Samiti, Brahmpur, District -Buxar.

... .. 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 Buxar, District-Buxar.
4. The District Panchayat Raj Officer, Buxar, District-Buxar.
5. The Sub-Divisional Officer, Dumraon, District-Buxar.
6. The Block Development Officer-cum- Executive Officer, Block Panchayat Samiti, Brahmpur, District-Buxar.
7. The Block Panchayat Raj Officer, Brahmpur, District Buxar.
8. Smt. Shivratri Devi wife of not known to the petitioner Presently Up-Pramukh of Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District-Buxar.
9. Mangri Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
10. Pratibha Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
11. Gayatri Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
12. Nagendra Singh Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
13. Anju Kumari Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
14. Rama Shankar Tiwary Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.



15. Ramavatar Thakur Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
16. Deo Narayan Ram Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
17. Arvidn pal Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
18. Munni Kumari Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
19. Kanchan Kumar Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
20. Bindu Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
21. Soni Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
22. Lakshmi Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
23. Ripu Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
24. Mira Singh Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
25. Asha Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
26. Sima Kumari Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S.



Brahmpur, District - Buxar.

- 27. Pramila Devi Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
- 28. Harendra Pandey Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
- 29. Sanjay Kumar Pandey Son of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.
- 30. Gunja Kumari Wife of not known to the petitioner Elected members of Block Panchayat Samiti, Brahmpur through the Block Development Officer -cum- Executive Officer, Block Panchayat Samiti, Brahmpur, P.O. and P.S. Brahmpur, District - Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awnish Kumar
For the Respondent/s : Mr.Standing Counsel 13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-01-2024 Heard Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner and Mr. Shankar Kumar Thakur, learned counsel for the respondent/s.

2. Learned counsel appearing on behalf of the petitioner submitted that requisition for ‘no confidence motion’ was received in his office on 03.01.2024. He further submitted that the petitioner is aggrieved by the illegal action of the Block Development Officer-cum-Executive Officer, who, in spite of the requisition having been rejected on his own had proceeded to fix the date of special meeting to be convened on 16.01.2024.



Learned counsel further submitted that the notice was issued on 09.01.2024 and the minimum requirement of 15 days' in accordance with the provision of Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as "the Act") and also in accordance with the provision of Section 46(4), 7 clear days' notice of special meeting specifying the time at which such meeting is to be held and the business to be transacted shall be sent to the members and affixed at the office of Panchayat Samiti. The provision also requires such notice shall include in case of special meeting in motion or proposition mentioned in the writing request made for such meeting. On these grounds, learned counsel submits that the notice dated 09.01.2024 is without jurisdiction, as having not fulfilling the mandatory requirement of Section 44 (3)(i) and Section 46(4) of the Bihar Panchayat Raj Act, 2006. Learned counsel in this regard, has also relied upon a judgment of the co-ordinate Bench of this Court in case of ***Smt. Kiran Sinha vs. the State of Bihar & Ors.*** reported in ***(2009) 4 PLJR 225***.

3. *Per contra*, learned counsel appearing on behalf of the state submitted that the requisition of 'no confidence motion' moved by 19 members of the Panchayat Samiti was communicated to the petitioner on his personal mobile and he



has received the notice and considering the modern technology and mode of notice after the amendment brought in the Code of Civil Procedure, the same is considered to be valid service of notice to the petitioner. Petitioner was under obligation to fix the date of 'no confidence' however, he failed for his own gain and now he cannot turn around and seek quashing of the notice contained in 'Annexure-7'.

4. Having considered the rival submissions made on behalf of the parties, it would be gainful to reproduce provisions of Sections 44 and 46 of the Act.

“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 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.

(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 brought only once in the whole tenure of Pramukh/Up-Pramukh] (emphasis supplied)

(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 opinion of the Commissioner 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 Commissioner 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 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 the enquiry and recommendation of Lok Prahari for the removal.]

[The Pramukh or Up-Pramukh so removed shall not be eligible for re-election as Pramukh or Up-Pramukh of Panchayat Samiti during the remaining term of office of such Panchayat Samiti;]

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

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 Subdivisional 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. (emphasis supplied)

(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 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 sub-section (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 sub-section (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."



5. The question relating to clear notice of seven days came before this Court in case of ***Smt. Kiran Sinha (Supra)***. This Court after discussing the facts of the said case, had observed that the notice dated 11.12.2008, fixing the date for convening the special meeting on 18.12.2008 cannot be considered to be giving seven clear days' of the notice and had held it to be violative of mandatory provision of Section 46(4) of the Act and had quashed the notice dated 11.12.2008.

6. Having heard the rival submissions made by the parties, as well as, the fact that the provision of Bihar Panchayat Raj Act, 2006, particularly, Section 46(4) mandates for clear 7 days notice and in this case, the Block Development Officer-cum-Executive Officer, has issued notice on 09.01.2024 fixing the date of special meeting on 16.01.2024, I am of the opinion that facts of this case are identical to the case of ***Smt. Kiran Sinha (Supra)***. The notice dated 09.01.2024 does not fulfill the mandatory provision of Section 46(4) of the Act and as such the notice dated 09.01.2024 is hereby set aside and quashed.

7. So far as the contention of the State is concerned with respect to the valid service of requisition to the petitioner and his knowledge to that effect on 03.01.2024 is concerned on



perusal of the Bihar Panchayat Raj Act, 2006 is a complete code in itself and procedure prescribed therein are mandatory in nature and the same is therefore, required to be followed in accordance with the provision contained therein.

8. The writ petition is allowed.

(Purnendu Singh, J)

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