

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2128 of 2024

Rinki Kumari Wife of Sri Santosh Kumar, resident of Village-Raipur, Block-Ujiyarpur, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, District-Samastipur.
3. The District Panchayati Raj Office, District-Samastipur.
4. The Sub Divisional Officer, Sub Division-Dalsinghsarai, District-Samastipur.
5. The Executive Officer cum Block Development Officer, Block-Ujiyarpur, District-Samastipur.
6. The Panchayat Samiti, Block-Ujiyarpur, District-Samastipur through its Executive Officer.
7. The Pramukh Panchayat Samiti, Block-Ujiyarpur, District-Samastipur.
8. The Up-Pramukh Panchayat Samiti, Block-Ujiyarpur, District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Sr. Advocate
		Mr. Ujjwal Kumar, Advocate
For the State	:	Mr. Standing Counsel 24
For the Resp. No. 5	:	Mr. Bindhyachal Singh, Sr. Advocate
For the Resp. No. 7	:	Mr. Vinay Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 13-08-2024

Heard Mr. Ashok Kumar Choudhary, learned senior counsel for the petitioner assisted by Mr. Ujjwal Kumar, learned counsel, Mr. Bindhyachal Singh, learned senior counsel appearing on behalf of the respondent no. 7, Mr. Vinay Ranjan, learned counsel appearing on behalf of respondent no. 5 as well as learned counsel for the State.

2. The present writ petition has been filed for the



following reliefs:-

a) To hold and declare that the omission on part of the Respondent Authorities in not putting the no confidence motion to vote against the Pramukh and Up-Pramukh of the Panchayat Samiti, Ujiyarpur (District-Samastipur) in the special meeting dated 12.01.2024 is illegal, arbitrary and contrary to the provisions of the Bihar Panchayati Raj Act, 2006 (as amended from time to time) as well as judicial pronouncements of the Hon'ble Court.

b) Consequently, to hold and declare that in the absence of the motion of no-confidence being put to vote against the Pramukh and Up-Pramukh of the Panchayat Samiti, Ujiyarpur (District- Samastipur) in the special meeting dated 12.01.2024, the legal bar of moving a fresh motion of no confidence stipulated under Section 44(3) (ii) of the Bihar Panchayati Raj Act, 2006 (as amended from time to time) would not be attracted.

c) To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.

3. Learned counsel for the petitioner submits that the petitioner has prayed in this writ petition to hold and declare that the omission on part of the respondent authorities in not putting the no confidence motion to vote against the Pramukh and Up-Pramukh of the Panchayat Samiti, Ujiyarpur (District-Samastipur) in the special meeting dated 12.01.2024 is illegal, arbitrary and contrary to the provisions of the Bihar Panchayati Raj Act, 2006.

4. Learned counsel for the petitioner submits that the



petitioner was elected as member (constituency no. 21) of the Panchayat Samiti, Block- Ujiyarpur, District- Samastipur on 10.10.2021 and other members of the Panchayat Samiti of Block- Ujiyarpur were also elected along with the petitioner. The Pramukh, namely, Ranju Kumari was also elected under Section 40 of the Bihar Panchayati Raj Act, 2006.

5. Learned counsel for the petitioner submits that there is statutory bar on moving a no confidence motion against an elected Pramukh of the Panchayat Samiti within the first two year period of the tenure. The statute further provides that once such motion for no confidence is rejected no further motion can be moved for the remaining tenure. As per the Act, 2006, a motion for no confidence can be brought only once in the whole tenure of a Pramukh of the Panchayat Samiti. In the present case, just after completion of two years, under a deep rooted conspiracy of the Pramukh and her associates in the Panchayat Samiti, Block- Ujiyarpur, a requisition for convening a meeting of the Panchayat Samiti for discussing no confidence motion against the Pramukh was filed with a purpose to get the same rejected/failed so that no motion can be moved, thereafter, the Pramukh could enjoy her post freely till the end of her tenure. He further submits that the requisition dated 02.01.2024 under



Section 44(3) of the Act, 2006 for convening a special meeting to discuss was sent to the Pramukh. The said requisition dated 02.01.2024 is purportedly signed by 17 members of the Panchayat Samiti, Ujiyarpur. The petitioner has received notice as contained in letter no. 24 dated 05.01.2024 issued by the Executive Officer (Respondent No. 5) regarding calling of the meeting for discussing the no confidence motion against the Pramukh on 12.01.2024 at 12:30 pm. The petitioner and other members of the Panchayat Samiti submitted a detailed representation dated 11.01.2024 to the Respondent No. 2 with a prayer to cancel the meeting dated 12.01.2024 as it was pointed out that the meeting was called under a conspiracy by Pramukh and other associates to defeat the purpose of no confidence motion. But no action was taken by the respondent authorities to stop the illegal meeting scheduled for 12.01.2024. He further submits that despite objection by the petitioner, the respondent authorities proceeded to hold a special meeting on 12.01.2024 and no confidence motion against the Pramukh and Up-Pramukh were discussed in presence of 13 members who were present including the petitioner. But the respondent authorities failed to hold voting for the no confidence motion and held that the no confidence motions against the Pramukh and Up-



Pramukh stands defeated.

6. Learned counsel for the petitioner submits that the Division Bench of this Hon'ble Court in judgment/order dated 28.06.2021 passed in LPA No. 113 of 2020 has categorically held that “ *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 ...*”. Moreover, the Hon'ble Court also held that the Act, 2006 does not mandate the Requisitionists necessarily to be present in the meeting called to discuss and put to vote the motion of no confidence. He further submits that in light of the declaration of law by this Hon'ble Court, the action of the respondent authorities in not putting the no confidence to vote and holding the no confidence motion to be defeated is illegal, arbitrary and against the mandate of law. The statutory provision clearly provides “... *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*”.

7. Learned counsel for the petitioner relied upon the paragraph nos. 20, 33, 40 and 41 of the judgment of this Court passed in LPA No. 125 of 2024 (Full Bench) and its analogous



cases which are quoted hereinbelow:-

“20. The afore-noted two such provisions are not mere surplusage; but specific indication that in the absence of any quorum provided, the majority would mean only the members present and voting and not the majority of the total number of elected members.

33. The right to vote lies at the heart of any democratic set-up, but it ought not to be forgotten that the very purpose to have a seamless functioning of the Zila Parishad or any other body, cannot be put on hold by preventing people to come and vote for or against the motion or concern them to vote in any manner.

*40. With utmost deference, we say that in **Sarita Kumar** (supra), perhaps, the entire scheme of Section 70 (4) of the Act was not gone into. It has succinctly been explained in **Dharamsheela Kumari** (supra), which dealt with the “no confidence” motion of Pramukh and Up-Pramukh under Chapter-IV, which provision, namely, Section 44 (3) is exactly similar to Section 70 (4) of the Act.*

41. We, thus, conclude that for a motion of “no confidence” to be carried out successfully, the requirement is of the majority of the members present and voting and not majority of the total of the elected members of the Zila Parishad.”

8. Learned counsel for the petitioner submits that in view of the above statutory provisions and authoritative judicial pronouncement by the Full Bench of this Hon’ble Court (supra), it is submitted that omission on part of the respondents to put the no confidence motion to vote is clearly in violation of the statute and cannot be sustained in the eyes of law as there was



no quorum required under Section 44(3) of the Bihar Panchayati Raj Act, 2006 and direction may be issued to hold a fresh meeting wherein only such 13 members, who participated in the earlier meeting dated 12.01.2024 as the statute clearly provides that meeting once called cannot be postponed and as such the fresh meeting must be deemed to be in continuation of earlier meeting dated 12.01.2024.

9. Mr. Vinay Ranjan, learned counsel appearing on behalf of the respondent no. 5 submits that as per the provision under Section 44(3) of Bihar Panchayati Raj Act, 2006 “*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.*” He further submits that in the present case after receiving the requisition for calling no confidence motion which was filed by 17 members of the Panchayat Samiti, the respondent no. 7 i.e. Pramukh immediately fixed the date for holding special meeting discussing on no confidence motion on 12.01.2024. On the date of meeting i.e. on 12.01.2024, only 13 members were present but none of the requisitionists were present meaning thereby those who have grievance against the Pramukh were not present. The Officer Respondents after considering the situation,



meeting has been postponed, however, the Executive Officer should have allowed to put the no confidence motion to vote. In compliance of the order dated 18.03.2024 in the present case, the District Magistrate has appointed the District Transport Officer, Samastipur for conducting Special Meeting of No Confidence Motion vide memo no. 1856 dated 10.04.2024. The District Transport Officer-cum-Authorized Officer fixed the date 12.04.2024 for holding the special meeting of no confidence motion vide letter no. 701 dated 03.04.2024⁷ and issued notice to only those 13 elected members of the Panchayat Samiti who were present on earlier date i.e. on 12.01.2024 for special meeting of no confidence motion. Vide order dated 18.03.2024, this Court has directed to hold fresh meeting, the District Transport Officer-cum-Authorized Officer vide letter no. 703 dated 05.04.2024 again issued notice to all elected 38 members of Panchayat Samiti calling them to participate in the meeting of no confidence motion but same has been stayed by the District Magistrate, Samastipur vide memo no. 1856 dated 10.04.2024 stating therein that the Authorized Officer did not mention the allegation levelled against the Pramukh and Up-Pramukh. The matter has also been inquired by the DDC who has also held the commission and omission of the BDO-cum-Executive Officer,



Block Panchayat Samiti, Ujiyarpur in the process of earlier Special Meeting of no confidence motion dated 12.01.2024 was completely in violation of the Panchayat Raj Act and thus illegal and therefore, the process of said meeting would have no legal sanctity. Therefore, the process of no confidence motion should be initiated in accordance with Section 44(3) of the Act so that all the elected members including the petitioner may avail the proper opportunity as well as may exercise their right as provided under the Act.

10. Mr. Bindhyachal Singh, learned senior counsel appearing on behalf of respondent no. 7 submits that the action of the respondent no. 5 is in accordance with law and he has rightly not hold the meeting on 12.01.2024 as on that date the requisitionists were not present and the meeting was convened in accordance with Section 44(3) of the Bihar Panchayati Raj Act, 2006 and in absence of quorum, the meeting has been postponed and Section 44 (3) provides that the requisitionists necessarily to be present in the meeting called to discuss and put to vote the motion of no confidence.

11. Having heard the learned counsel for the parties, as the motion initiated by the original requisitionists dated 02.01.2024 is purportedly signed by the 17 members of the



Panchayat Samiti, Ujiyarpur levelled in the proceeding dated 12.01.2024 was necessarily to be voted upon which did not take place.

12. In light of the paragraph nos. 20, 40 and 41 of the Full Bench judgment passed in LPA No. 125 of 2024 and its analogous cases, *“the requirement is of the majority of the members present and voting and not majority of the total of the elected members of the Zila Parishad.”* and in view of the above mentioned facts and circumstances of the case, all the resulting consequences stands vitiated and the state respondents are directed to proceed further on the basis of the requisition dated 02.01.2024 and hold special meeting within a period of two weeks. The State respondents are further directed to issue letter for special meeting only with those members who were present in the earlier meeting dated 12.01.2024 as per requisition dated 02.01.2024.

13. With the aforesaid direction, the writ petition stands allowed.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	24.06.2024
Uploading Date	14.08.2024
Transmission Date	NA

