

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2733 of 2024

Anil Kumar Son of Bhikhari Singh, resident of village- Machhahi, P.S. Sakra,
District Muzaffarpur, Bihar. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Panchayati Raj, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Additional Chief Secretary, Department of Panchayati Raj, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director, Panchayati Raj, Department of Panchayati Raj, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Collector-cum-District Magistrate, District - Muzaffarpur.
5. The Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Muzaffarpur.
6. The District Panchayat Raj Officer, Muzaffarpur.
7. Reena Kumari, Wife of Pramod Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
8. Nirupama Singh, Wife of Rahul Raj, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
9. Abhishek Kumar, Son of Umeshchandra Thakur, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
10. Naveen Kumar Shah, Son of Ragho Sah, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
11. Sangeet Paswan, Son of Paltan Paswan, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
12. Santlal Paswan, Son of Munshi Paswan, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
13. Ramamand Ojha, Son of Late Satyanarayan Ojha, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
14. Priyanka Kumari, Wife of Sushil Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
15. Sangeeta Devi, Wife of Ram Iqbal Ram, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.



Muzaffarpur.

16. Girija Choudhary, Wife of Pramod Kumar Choudhary, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
17. Nirmala Devi, Wife of Rampravesh Singh, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
18. Fanish Kumar, Son of Late Baidynath Thakur, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
19. Rajesh Kumar Sahni, Son of Mahendra Sahni, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
20. Kiran Devi, Wife of Suresh Prasad, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
21. Archana Kumari, Wife of Sarvesh Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
22. Poonam Devi, Wife of Shankar Mahto, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
23. Neha Tiwari, Wife of Pankaj Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
24. Renu Devi, Wife of Mohan Prasad Keshri, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
25. Savitri Devi, Wife of Devendra Kunwar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
26. Alok Kumar Upadhyay, Son of Jyoti Narayan Upadhyay, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
27. Vinod Kumar Singh, Son of Kameshwar Singh, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
28. Lalita Devi, Wife of Tulsi Rai, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
29. Renu Devi, Wife of Prithvi Nath Rai, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
30. Asha Devi, Wife of Shri Shankar Prasad, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.



31. Nashaba Khatoon, Wife of Md. Rahmatullah Rhai, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
32. Bipin Sahi, Son of Virendra Prasad Shahi, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
33. Gayatri Jaiswal, Wife of Shankar Choudhary, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
34. Prem Kumar, Wife of Chandrdev Prasad Gupta, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
35. Abha Thakur, Wife of Sunil Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
36. Rani Kumar, Wife of Ravindra Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
37. Meena Devi, Wife of Umesh Sah, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
38. Asif Iqbal, Son of Ataur Rehman, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
39. Kundan Kumar, Son of Late Ganesh Prasad Singh, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
40. Radha Devi, Wife of Vinay Kumar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
41. Asha Choudhary, Wife of Uma Shankar Choudhary, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
42. Vibha Devi, wife of Ambika Ram, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
43. Pankaj Lal, Son of Devendra Ram, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
44. Priyadarshani Shahi, Wife of Shyamdev Prasad Sahi, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
45. Om Prakash Kumar, Son of Rambali Sah, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
46. Rajan Devi, Wife of Arun Sahni, Member of the Zila Parishad, Muzaffarpur,



through the Chief Executive Officer, Zila Parishad, Muzaffarpur.

47. Vinod Kumar, Son of Ramchandra Rai, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
48. Himanshu Kumar, Son of Chandrabhushan Gupta, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
49. Sanju Kumari, Wife of Anish Prasad Sahi, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
50. Richa Kumari, Wife of Pawan Kumar Bharti, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
51. Aslam Ansari, son of Ahmad Gaffar, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
52. Pooja Kumari, Wife of Dharmendra Mandal, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
53. Rajeev Kumar, Son of Arun Kumar Singh, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
54. Ishrat Parveen, Wife of Md. Bakhtayaar Ahmad, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
55. Kiran Kumari, Wife of Sitaram Sah, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
56. Sangeeta Devi, Wife of Vijay Kumar Bhagat, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
57. Vijnesh Yadav, Son of Jitendra Yadav, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
58. Neelam Devi, Wife of Ajay Paswan, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.
59. Suresh Prasad Yadav, Son of Harihar Rai, Member of the Zila Parishad, Muzaffarpur, through the Chief Executive Officer, Zila Parishad, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr.Standing Counsel -6

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY



ORAL ORDER

8 06-08-2024 Heard Mr. Suraj Samdarshi, learned counsel for the petitioner, learned counsel for the Zila Parishad, Muzaffarpur and Mr. S.H. Mazid, learned AC to SC-6.

2. The petitioner has prayed for grant of the following reliefs:

(i) to issue an appropriate writ, order or direction in the nature of certiorari for quashing the proceedings of the special meeting dated 23.01.2024 of Zila Parishad, Muzaffarpur contained in memo no. 29 dated 23.01.2024 (Annexure 5) in which the motion of No Confidence against the Respondent no 7-the Adhyaksha and Respondent no. 8- the Upadhyaksha was placed for consideration and was ultimately rejected purportedly because sufficient members were not present in the special meeting whose support could have resulted in success of the motion;



(ii) to issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondent District Magistrate to convene a fresh special meeting exclusively in presence of thirteen members who were present during the special meeting convened on 23.01.2024 and put the no confidence motion against the Respondent no. 7 and 8 contained in requisition dated 09.01.2024 to vote;

(iii) this Hon'ble Court may adjudicate and hold that the action of the official respondents particularly the Respondent no. 4 and 5 in not putting the no confidence motion brought against Respondent no. 7 and 8 to vote amongst the members present during the special meeting



convened for the same, is de hors the Bihar Panchayati Raj Act 2006 particularly section 70 thereof;

(iv) this Hon'ble Court may further adjudicate and hold that since the no confidence motion brought against Respondent no.7 and 8 was never actually put to vote, the bar contained in Section 70(4) (ii) of the Bihar Panchayat Raj Act, 2006 would not apply qua the Respondent nos. 7 and 8 and the members of the Zila Parishad shall be free to bring a fresh no confidence motion;

(v) this Hon'ble Court may further adjudicate and hold that Section 70 (4) of the Bihar Panchayati Raj Act 2006, does not mandate any quorum for the special meeting convened to discuss and vote upon a no-confidence motion, in view of



the law laid down by this Hon'ble Court in the case of Dharamsheela Kumari Vs. Hemant Kumar since reported in 2021 (4) BLJ 194;

(vi) to hold and declare that the action of the respondent no. 4, in not carrying out the no-confidence to its logical conclusion, by putting it to vote, is directly in conflict with the order passed by this Hon'ble Court;

(vii) to grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.

3. The petitioner is an elected member of Muzaffarpur Zila Parishad and the case is that after completion of two years, a request was made for convening the special meeting of the Muzaffarpur, Zila Parishad to consider 'No Confidence Motion' against the respondent no.7, Chand Tara Khatoon serving as Chairperson as also the respondent no.8, the Vice Chairperson on 09.01.2024.



4. This followed the convening of the special meeting on 23.01.2024 to discuss the 'No Confidence Motion'.

5. The case of the petitioner is that on the said date, 13 elected members were present, charges were read out and further request was made to put the motion to vote in the light of order of the Division Bench of Patna High Court in the case of **Dharamsheela Kumari vs. Hemant Kumar & Ors.** reported in **2021(3) PLJR 346.**

6. Learned counsel for the petitioner submits that the respondent, District Magistrate, Muzaffarpur after taking note of letter no. 2535 dated 16.09.2008 issued by the State Election Commission announced that since the strength of Muzaffarpur, Zila Parishad is 54 but only 13 members are present, the minimum requirement of 28 (to cross majority vote) is missing and accordingly, the motion stands defeated. This found incorporated in the memo no. 29 dated 23.01.2024 issued by the office of Zila Parishad, Muzaffarpur (Annexure-P/5 to the writ petition).

7. Learned counsel for the Zila Parishad, Muzaffarpur submits that as the majority mark of 28 members were not present in the said special meeting which was held on 23.01.2024, the motion both against the respondent no. 7 as



also respondent no.8 declared defeated.

8. He, however accepts that following **Dharamsheela Kumari** (supra) judgment, the decision could have been taken amongst the 13 members present, but the fact remains that presently, no fresh requisition has been made/put forward necessitating any order.

9. It is surprising that despite the Division Bench in **Dharamsheela Kumari** (supra) in the year 2021 clarifying that the majority means amongst those present in the meeting and not total elected members, the respondents are still taking decision on the basis of a 2008 SEC letter which the commission itself withdrew and clarified.

10. However, the fact remains that no fresh requisition has been made by anyone much less the petitioner in accordance with 'the Act' warranting any further order to be passed in the matter. However, this Court would like to record paragraphs 117 and 118 of the order passed by the **Division Bench** of the Patna High Court in the **Dharamsheela Kumari** (supra) case which 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 Patna High Court L.P.A No.113 of 2020



dt.28 -06-2021 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, Patna High Court L.P.A No.113 of 2020 dt.28 -06-2021 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.

11. The Division Bench order has further been affirmed by the **Full Bench** of Patna High Court in **Sangeeta Devi vs. the State of Bihar** in **LPA No. 125 of 2024** where the majority has been found to be those present and voting and not amongst the elected members.



12. This Court would further highlight the fact that **Issue No. ix** of the **Dharamsheela Kumari** (supra) clearly states that in case no voting has taken place to the motion, there is no bar for fresh requisition under section **44(3) (ii)** of the **Bihar Panchayat Raj Act, 2006**. This Court stops at that as there is no further development/requisition which warrants any order.

12. In that background, after recording the facts of the case as also the legal aspects, the writ petition stands disposed of.

(Rajiv Roy, J)

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