

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.115 of 2024
In
Civil Writ Jurisdiction Case No.1718 of 2024

1. Dhirendra Mishra son of Kedar Mishra, resident of Village-Bansara, P.O. Pachladhi, P.S. Raiyam, District-Darbhangha.
2. Swatantra Kumar Jha, Son of Arvind Kumar Jha, resident of Village and P.O. Nawada Benipur, P.S. Bahera, District-Darbhangha.

... .. Appellant/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, Darbhanga, District-Darbhangha.
4. The Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Darbhanga, District-Darbhangha.
5. The District Panchayat Raj Officer cum Additional Chief Executive Officer, Zila Parishad, Darbhanga, District-Darbhangha.
6. The State Election Commission through the State Election Commissioner, Bihar, Patna.
7. The State Election Commission, Bihar, Patna.
8. Navin Kumar Dubey son of Kailash Dubey, resident of village Kalwara, PO-Ratanpur, PS-Jale, District- Darbhanga.
9. Mushrat Fatma wife of Habbibullah Hasmi, resident of village Kazibahera, P.O.-Nagardih, P.S.-Jale, District-Darbhangha.
10. Ranjana Kumari daughter of Sri Lal Bahadur Sah, resident of village-Ka-rauni, P.O.-Asthua, P.S.-Singhwara, District-Darbhangha.
11. Om Prakash Thakur son of Ram Jivan Thakur, resident of village Hanuman Nagar, PO-Kansi, Simri, PS- Singhwara, District-Darbhangha.
12. Rinki Kumari wife of Sanjay Kumar Chaupaal, resident of village - Paanta, P.O.-Sonki, P.S.-Sadar, District- Darbhanga.
13. Dinesh Ram son of Fakira Ram, resident of village Bishanpur, P.O.-Narsara,P.S.-Bishanpur, District-Darbhangha.



14. Anju Devi wife of Bipin Sahani, resident of village-Mushtafapur, P.O.- Godhiyari, P.S.-Bishunpur, District-Darbhangha.
15. Asha Devi wife of Anjani Kumar Chaudhary, resident of Village - Piprauli,P.O.-Malhipatti, P.S.-A.P.M., District-Darbhangha.
16. Kajal Devi wife of Phoolbabu Lal Dev, resident of Village - Manoratha, P.O.-Hawasa, P.S.-Ashok Paper, District- Darbhanga.
17. Sita Devi wife of Shambhu Paswan, Resident of Village and P.O. Bahadurpur, P.S. Bahadurpur, District-Darbhangha.
18. Sujata Kumari, Daughter of Bhuneshwar Lal Das, resident of Village- Bajitpur, P.O. Milki Chak, P.S. Bahadurpur, District Darbhanga.
19. Sumitra Devi wife of Hari Paswan, resident of village Basatpur, P.O.- Ughra,P.S.-Bahadurpur, District-Darbhangha.
20. Harimohan Yadav son of Mahesh Kant Yadav, resident of village - Kopi, P.O.-Trimohani, Sushari Turki, P.S.Baheri, District-Darbhangha.
21. Mohammad Subhaan son of Md. Muslim, resident of village and PO- Baghauni, PS-Baheri, District-Darbhangha.
22. Sulekha Devi wife of Sitaram Manjhi, resident of Village - Sonmadihuli, P.O.-Morwara, P.S.-Biraul, District-Darbhangha.
23. Amarnath Sharma son of Udneshwar Sharma, resident of village and P.O.- Havi Bhoaar Benipur, P.S.-Bahera, District Darbhanga.
24. Amit Kumar Thakur, Son of Gopal Thakur, resident of village and P.O.-Po- haddi, Benipur, P.S.-Bahera, District-Darbhangha.
25. Lalit Narayan Paswan son of Vishnudev Paswan, resident of village -Kanokhar, P.O.-Najra Mahamda, P.S.- Manigacchi, District-Darbhangha
26. Awadhesh Kumar son of Dineshwar Yadav, resident of village - Jagdishpur Chakka, P.O.-Nehra, P.S.-Manigachhi, District-Darbhangha.
27. Hakikul son of Nathuni, resident of Village and P.O.- Baghout, P.S.- Manighacchi, District-Darbhangha.
28. Aruna Kumari wife of Vinay Kumar Jha, resident of Village and P.O.- Kathra, Tardih, P.S.-Manigachhi, District- Darbhanga.
29. Dharmendra Kumar Jha son of Madhukant Jha, resident of village and P.O.- Jaidev Patti, P.S.-Ghanshyampur, District-Darbhangha.
30. Dhiraj Kumar Jha, son of Ram Narayan Jha, resident of village Dath, P.O.- Jayantipur, P.S.-Ghanshyampur, District-Darbhangha.
31. Rajendra Prasad son of Bhola Tanti, resident of village Kheshraha, P.O.- Bhindua, P.S.-Kusheshwarsthan, District Darbhanga.



32. Farhat Haidar son of Kurtulain Haidar, resident of village - Devra, P.O.-Banghauri, P.S.-Jale, District-Darbhanga.
33. Samta Kumari daughter of Vijay Prasad, resident of village and P.O.-Radhi, P.S.-Jale, District-Darbhanga.
34. Seema Kumari wife of Sanjiv Raj, resident of village-Bhagwatipur, P.O.-Bharwara, P.S.-Singhara, District-Darbhanga.
35. Dilip Kumar Yadav son of Matuk Lal Yadav, resident of village Phuldhua, P.O.-Banauri, P.S.-Simri, District-Darbhanga.
36. Nadara Hussain daughter of Nazmul Hussain, resident of village and P.O.-Kumhauri, P.S.-Simri, District-Darbhanga.
37. Shashi Rani wife of Nirbhay Kumar, resident of village - Hanuman Nagar, P.O.-Khirma, P.S.-Kewati, District-Darbhanga.
38. Farhaan Khatoon wife of Md. Mustafa, Resident of Village and P.O. Chhatwan, P.S. Kewati, District-Darbhanga.
39. Vibha Devi wife of Nandkishore Yadav, resident of village and P.O.-Saramohanpur, P.S.-Sadar, District-Darbhanga.
40. Ruhi Praveen, wife of Md. Jalaluddin Sahil, Resident of Village-Chaksaina, P.O. Loaam, P.S. Sadar, District-Darbhanga.
41. Rita Devi, wife of Kamlesh Kumar Mandal, Resident of Village and P.O. Nimaithi, P.S. Baheri, District-Darbhanga.
42. Asha Devi, wife of Rohit Sahu, Resident of Village-Balha, P.O. Naudega, P.S. Biraal, District-Darbhanga.
43. Lal Kumar Singh, son of Jagdish Singh, Resident of Village and P.O.-Kakodha, P.S. Sakatpur, Taridh, District-Darbhanga.
44. Nand Kishore Jha, son of Prabodh Jha, Resident of Village-Shankarpur, P.O. Rashidpur, P.S. Bahera, District-Darbhanga.
45. Sunita Yadav, wife of Shambhu Yadav, Resident of Village-Kiratpur, P.O. Harsinghpur, P.S. Alinagar, District-Darbhanga.
46. Kulsum Begam, wife of Kamrul Rayan, resident of Village and P.O. Baghras, P.S. Kiratpur, District-Darbhanga.
47. Chhedi Sahu, son of Ramvilas Sahu, Resident of Village-Palva, P.O. Nadiyami, Gaurabauram, P.S. Biraal, District-Darbhanga.
48. Ajay Kumar Yadav, son of Babu Prasad Yadav, resident of Village-Vishnupur Ghat, P.O. Dakshini Kasraur, P.S. Ghanshyampur, District-Darbhanga.
49. Guneshwar Thakur, son of Budhan Thakur, resident of Village-Shahpur, P.O.



Jhajhra, P.S. Kusheshwarsthan, District-Darbhangha.

50. Poonam Mani Sharma, wife of Ram Shankar Sharma, resident of Village-Chhapki Parhi, P.O. Lakshmisagar, P.S. Sadar, District-Darbhangha.
51. Smt. Renu Devi @ Renu Kumari, wife of Shiv Naryan Yadav, resident of Village-Balbhadrapur Navtoloya, P.O. and P.S. Bahadurpur, District-Darbhangha, Bihar-846001.
52. Smt. Lalita Jha @ Lalita Kumari, wife of Alok Kumar Jha, resident of Village-Supoul, Tola Ramnagar, P.s. Biraul, District-Darbhangha, Bihar -847203.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S. B. K. Mangalam with Mr. Awnish Kumar, Advocate Mr. Kumar Gaurav, Advocates Mr. Vikash Kumar Singh, Advocate
For the Res. No. 51	:	Mr. Y. V. Giri, Sr. Advocate with Mr. Devashish Giri, Advocate
For Zila Parishad	:	Mr. Vivek Prasad, Advocate
For the SEC	:	Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Ajay Kumar, GA-5

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 20-02-2024

The appellants before this Court are members of the Darbhanga Zila Parishad, challenging the judgment of the learned Single Judge. The appellants contend that the Adhyaksha and Up-adhyaksha of the Zila Parishad were removed by reason of a ‘No Confidence Motion’ after which the writ petition was filed. In the writ petition, the learned single Judge found that ‘No Confidence Motion’ having been moved within two years, the meeting could not have been convened by



the Adhyaksha, since the provisions of Section 70 (4) (ii) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act') prohibited such a motion during the first two year period of the tenure; of the Council.

2. Learned counsel for the appellants Mr. S. B. K. Mangalam submits that in fact the two year period had passed by one day and the meeting scheduled had gone ahead with 26 out of the 47 members voting in favour of the 'No Confidence Motion'.

3. Mr. Y V Giri, learned Senior Counsel appearing for respondent nos. 51 and 52 would submit that the appellants do not have *locus standi*, since they are not the requisitionists. It is also submitted that the rigor insofar as Section 70 (4) (ii) of the Act, is insofar as 'No Confidence Motion' within a two year period and the two year period ends only on 04.01.2024; the Adhyaksha and Up-adhyaksha having taken charge on 03.01.2022. It is also submitted that the Up-adhyaksha was not in station and was abroad and there was no notice served on her. There is specific provision as per Section 70 (4) (vi) of the Act that during discussion, an opportunity should be given to the Adhyaksha or Up-adhyaksha, against whom 'No Confidence Motion' is moved, to put-forth their defence. It is also submitted



that the Up-adhyaksha was not present at the time of the meeting also.

4. Learned Senior Counsel would also contend that yesterday, after finding anomaly in the decision in LPA No. 113 of 2020 (*Dharamsheela Kumari Vs. Hemant Kumar and Ors.*), this Court had referred the matter to a Larger Bench and it is submitted that in such circumstances, this matter also may be referred to a Larger Bench.

5. We will first consider the request for a reference to a larger Bench. In *Dharamsheela Kumari* (supra) it was held that a 'No Confidence Motion' has to be passed on the basis of the majority of the members present and voting, at the council meeting. However, there was an earlier decision of a co-ordinate Bench in LPA No. 940 of 2008 (*Sarita Kumari Vs. The State of Bihar*) decided on 20.08.2009, which considered Section 70(4) and found that majority should be of the entire members of the elected council. We referred the matter for consideration to a Full Bench since the impugned judgment in that case directed consideration of the 'No Confidence Motion', based on *Dharamsheela Kumari* (supra).

6. We do not find such a contention arising herein. The elected Council in this case contains 47 members. There were



27 members present and 26 members voted in favour of the 'No Confidence Motion'. Hence, the majority was not only, of those present and voting, but also of the entire elected council. We find absolutely no reason to refer the matter for consideration before a Full Bench, since that question does not arise at all in this case.

7. Now the contention would be as to whether two years has been completed. The Adhyaksha and the Up-adhyaksha were elected on 03.01.2022 admittedly. Hence, the two year period gets over as on 02.01.2024. The requisition for convening a meeting to consider the 'No Confidence Motion' was on 03.01.2024, a day after the two year period. Hence, the rigor under Section 70(4)(ii) does not at all apply in the aforesaid case.

8. We notice the definition clause Section 3(20) of the General Clauses Act, 1897, of 'financial year' which commences on the 1st day of April. The financial year thus ends on the 31st day of March. Further the definition of 'Year' in Section 3(66) reckons it according to the British Calendar. Hence two years starting from 03.02.2022 would end on 02.02.2024. We also have to reckon Section 9 which permits the use of the word 'from', to exclude the first in a series of days



and 'to', for including the last in a series of days. The words employed in Section 70 is 'during the first two year period' which has to go by the interpretation as supplied by us.

9. We have to also notice that the Adhyaksha had in fact convened a special meeting to consider the 'No Confidence Motion' on 12.01.2024 and the 'No Confidence Motion' was allowed by a majority of the elected members of the council. It was after that, the Adhyaksha and the Up-adhyaksha approached this Court and they raised a contention with respect to the requisition having been given within the two year period.

10. We find the Adhyaksha to be estopped from taking such a contention, especially when the 'No Confidence Motion' was scheduled and it was passed, at a properly constituted meeting of the Council based on the requisition made immediately after the expiry of the two year period.

11. We specifically say the Adhyaksha is estopped, since it is admitted that Up-adhyaksha was not in the country and was abroad and was also not present at the time the 'No Confidence Motion' was moved. We are told that 'No Confidence Motion' is already scheduled and there is a writ petition filed against this, in which there is an interim order. The appellant would be entitled to contest the same in the writ



petition. However, insofar as Adhyaksha is concerned, we are of the opinion that ‘No Confidence Motion’ against her has been moved and it has succeeded in the House. She is no longer entitled to hold the post of Adhyaksha.

12. As far as the *locus standi* is concerned, we are of the opinion that the appellants though were not the requisitionists’, they being elected members of the Council, definitely have the *locus standi* to challenge the impugned judgment, especially when they were respondents in the writ petition.

13. The appeal is partly allowed so far as the Adhyaksha is concerned and with respect to the Up-adhyaksha, it is left to be considered in a meeting scheduled, subject to the decision in the writ petition filed and pending as of now.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.02.2024
Transmission Date	

