

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2717 of 2024

1. Parash Kumar Ray Son of Tekan Ray Resident of Village Mahammadpur, P.S. Kadwa, District Katihar, Bihar.
2. Md. Masud Alam Son of Mohamamd Mustak Alam Resident of Village-Bijhara, P.S. Balia Belown, District-Katihar.
3. Parashuram Mandal Son of Dhanshyam Mandal Resident of Nijhra, P.S. Kadwa, District-Katihar.
4. Mohit Kumar Chouhan Son of Damodar Chouhan Resident of Village-Kambaro, P.S. Kadaw, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary Department of Panchayati Raj, Government of Bihar, 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 Katihar.
5. The Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
6. The District Panchayat Raj Officer, Katihar.
7. Mantu Ravidas Son of Not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
8. Shahnaaz Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
9. Sahida Begum Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
10. Ina Devi Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
11. Seema Rani Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
12. Mohammad Wasim Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
13. Masnara Khatoon Wife of Not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.



14. Husne Ara Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
15. Mahenoor Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
16. Beauty Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
17. Naseri Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
18. Afsana Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
19. Robina Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
20. Sita Devi Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
21. Kavita Devi Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
22. Nahela Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
23. Rozana Katoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
24. Md. Kaishar Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
25. Nurefa Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
26. Chaman Yadav Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
27. Deepnarayan Vishwas Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
28. Rita Devi Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
29. Geeta Devi Wife of Not Known Members of the Panchayat Samiti, through



the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.

30. Nahera Khatoon Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
31. Mahfooz Rehman Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
32. Ranjit Kumar Sah Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
33. Rupa devi Wife of Not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
34. Taslim Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
35. Awadesh Kumar Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
36. Rajendra Kumar Kewat Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
37. Francis Marandi Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
38. Mohammad Ajfarool Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
39. Sikandar Son of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
40. Dilip Kumar Mandal Son of Not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
41. Mohammad Zaid Anjum Wife of Not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.
42. Manti Devi Wife of not Known Members of the Panchayat Samiti, through the Block Development Officer Cum Chief Executive Officer, Panchayat Samiti, Kadwa, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr. Basant Vikash, learned AC to GP-12



CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 06-08-2024 Heard Mr. Suraj Samdarshi, learned counsel for the
petitioners, Mr. Ajit Kumar Singh, representing the respondent
no.7, as also Mr. Basant Vikash, learned AC to GP-12 and Mr.
Ravi Ranjan, representing the State Election Commission.

2. The petitioners have 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 16.01.2024 of Panchayat Samiti, Kadwa contained in memo no. 113 dated 16.01.2024 (Annexure 4) in which the motion of No Confidence against the Respondent no. 7 - Pramukh 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 Block Development
Officer to convene a fresh special
meeting exclusively in presence of
twenty members who were present
during the special meeting
convened on 16.01.2024 and put
the no confidence motion against
the Respondent no. 7 contained in
requisition dated 04.01.2024 to
vote;*

*(iii) this Hon'ble Court may
adjudicate and hold that the action
of the official respondents
particularly the Respondent no. 5 in
not putting the no confidence
motion brought against Respondent
no. 7 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 44 thereof;

(iv) this Hon'ble Court may further adjudicate and hold that since the no confidence motion brought against Respondent no. 7 was never actually put to vote, the bar contained in Section 44 (3) (ii) of the Bihar Panchayati Raj Act 2006, would not apply qua the Respondent no. 7 and the members of the Panchayat Samiti shall be free to bring a fresh no-confidence motion;

(v) this Hon'ble Court may further adjudicate and hold that the action of the respondent no. 5, in not carrying out the no-confidence motion to its logical conclusion, by putting it to vote in presence of the



members present is bad in eyes of law 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 grant any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.

3. Pursuant to the requisition made by the elected members on 04.01.2024 against the 'Pramukh' of the Panchayat Samiti, Kadwa. The date for special meeting was notified as 16.01.2024.

4. Learned counsel for the petitioners submit that though 20 out of 40 members were present, mis-construing the majority mark to be the majority of the elected members (i.e. 21), no voting took place and the motion was declared defeated. He submits that it was clearly in breach of **Dharamsheela Kumari vs. Hemant Kumar & Ors.**, the order passed by the Division Bench of the Patna High Court in **2021(3) PLJR 346** specially paragraphs 117 to 118.



5. On the other hand, Mr. Ajit Kumar Singh submits that as the majority mark of 21 members were not present in the special meeting which was held on 16.01.2024, the motion against the respondent no.7, Mantu Ravidas was declared defeated. He further submits that once the motion has been defeated and there is nothing on record to show that the petitioners have taken any steps for fresh requisition and thus no direction can be issued.

6. Having heard the parties, this Court has gone through the order passed by the Division Bench in **Dharamsheela Kumari** (supra), paragraphs 117 and 118 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.

7. The order which was passed in the year 2021 itself has been now stamped in **Sangeeta Devi vs. the State of Bihar (LPA No. 125 of 2024)** and the Full Bench has recorded that majority of those present in the meeting will be the criteria to decide a motion.

8. However, having recorded the aforesaid facts/laws, the Court will further not delve into the matter as Mr. Ajit Kumar Singh has rightly pointed out that there is no fresh requisition warranting any steps to be taken/order to be passed. However, it is important to record issue no. IX of the Division Bench's order in **Dharamsheela Kumari** (supra) case wherein it has been clearly held that when a motion has not been



put to vote, there is no bar in fresh requisition under section
44(3)(ii) of the **Bihar Panchayat Raj, Act, 2006**.

9. The writ petition stands disposed of.

(Rajiv Roy, J)

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