

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2886 of 2024

Manoj Kumar son of Raghuvansh Prasad Ray, resident of Tarachak, Maipura,
P.S. Danapur, District Patna, 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- Patna.
5. The District Panchayat Raj Officer, Patna.
6. The Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block- Danapur, Patna.
7. Vandana Rai, Daughter of not known, Member Panchayat Area- 11, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
8. Raj Kumar, Son of not known Member Panchayat Area- 17, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
9. Shatrughan Choudhary, Son of not known Member Panchayat Area- 22, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
10. Santosh Kumar, Son of not known Member Panchayat Area- 13, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
11. Aarti Devi, Wife of not known Member Panchayat Area- 1, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
12. Govind Prasad, Son of not known Member Panchayat Area- 18, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
13. Vijay Shankar, Son of not known Member Panchayat Area- 19, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.



14. Pooja Devi, Wife of not known Member Panchayat Area- 21, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
15. Sunita Devi, Wife of not known Member Panchayat Area- 10, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
16. Vijendra Kumar, Son of not known Member Panchayat Area- 12, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
17. Rinku Devi, Wife of not known Member Panchayat Area- 14, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
18. Kamlesh Rai, Son of not known Member Panchayat Area- 7, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
19. Veena Devi, Wife of not known Member Panchayat Area- 16, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
20. Reshmi Devi, Wife of not known Member Panchayat Area- 2, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
21. Pushpa Devi, Wife of not known Member Panchayat Area- 4, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
22. Shambhu Rai, Son of not known Member Panchayat Area- 3, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
23. Shambhu Rai, Son of not known Member Panchayat Area- 9, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
24. Bedami Devi, Wife of not known Member Panchayat Area- 15, Panchayat Samiti member of the Block Panchayat Samiti, Danapur, through the Block Development Officer cum Executive Officer, Block Panchayat Samiti, Danapur, Block Danapur, Patna.
25. The State Election Commission Through The Secretary, sone Bhawan, Birchand Patel Path, Patna.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi,
Mr. Avinash Shekhar, Advocates.
For the Respondent/s : Mr. Kinkar Kumar, Standing Counsel 09
For State Election Commisision: Mr. Ravi Ranjan, Advocate.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 19-08-2024 Heard Mr. Suraj Samdarshi, learned counsel for the
petitioner, Mr. Kinkar Kumar, learned Standing Counsel-9 for
the State and Mr. Ravi Ranjan, learned counsel for State
Election Commission.

2. The petitioner has preferred this petition for the
following relief(s):-

*“(i) To issue an appropriate writ,
order or direction in the nature of certiorari
for quashing proceeding of special meeting
convened on 22.01.2024 of the Panchayat
Samiti, Danapur, Patna, whereby and
whereunder the no confidence motion brought
against the petitioner (pramukh), has been
passed and the petitioner has been removed
from the office of pramukh, on the ground that
the said special meeting was convened on the
basis of a requisition which was not valid in
the eye of law as the same did not contain
clear and specific charges against the
petitioner as per the requirement of Section
44(3)(iv) of the Bihar Panchayati Raj Act,
2006 and also on the ground that the
requisition was never served upon the
petitioner as per Section 44(3)(i) of the Bihar
Panchayati Raj Act, 2006.*

*(ii) To issue an appropriate writ,
order or direction in the nature of certiorari
for quashing the order passed by the
Collector under section 157 of the Bihar*



Panchayati Raj Act, 2006 contained memo no, 312 dated 18.01.2024 where by and whereunder the representation of the petitioner in compliance with order dated 11.01.2024 passed in CWJC NO. 254/2024 has been erroneously rejected.

(iii) During pendency to the writ application, the Respondents should be directed not to proceed with the meeting of the Block Panchayat Samiti, Danapur for election of new Pramukh.

(iv) Consequent to grant of relief no. (i) to restore the petitioner as the Pramukh of Panchayat Samiti, Danapur, Patna.

(v) This Hon'ble Court may adjudicate and hold that the any requisition for no confidence motion must contain clear and specific charges against the incumbent so that the person who faces a motion of no-confidence may know what he is up against

(vi) This Hon'ble Court may adjudicate and hold that the any requisition for no confidence motion must be served at the first instance, upon the person against whom the no confidence motion is sought to be brought.

(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 was the ‘Pramukh’ of Panchayat Samiti, Danapur, Patna after having been elected as its member in the year 2021. Once the two years period came to an end, on 30.12.2023, the elected members made a requisition for conducting a special meeting to discuss the ‘No Confidence Motion’ against the petitioner along with the charges. After the



petitioner failed to fix the date, on the direction of the one-third of the elected members of the said Panchayat Samiti, the respondent-Block Development Officer-cum-Executive Officer, Patna fixed the date as 22.01.2024.

4. Aggrieved. The petitioner moved this Court in **CWJC No. 254 of 2024 (Manoj Kumar v. The State of Bihar & Ors)** which came to be disposed of on 11.01.2024 by a Co-ordinate Bench and with a direction to the District Magistrate, Patna to decide the matter under Section 157 of the Bihar Panchayat Raj Act, 2006 (for short 'the Act').

5. This followed the decision of the District Magistrate, Patna communicated *vide* Memo no. 312 dated 18.01.2024 (Annexure-P/5) by which it held that there is no irregularity/illegality in the requisition so made and accordingly, directed the respondent-Block Development Officer-cum-Executive Officer, Panchayat Samiti, Danapur Patna to take further steps for the special meeting to discuss the 'No Confidence Motion' as per 'the Act'.

6. Accordingly, on 22.01.2024, all the nineteen members including the petitioner herein participated in the special meeting and after discussion on the charges, the members participated in the voting. As per the proceeding,



twelve members voted for the motion while seven voted against it. Accordingly, it was declared passed against the petitioner. Subsequently, the election took place to the post on 23.02.2024 and respondent no.7, Vandana Rai was elected as the new 'Pramukh'.

7. Learned counsel for the petitioner submits that respondent-District Magistrate, Patna did not decide the matter as directed by the Patna High Court inasmuch as he overlooked the fact that the charges were not clear and further the requisition was not made directly to him. As such, he submits that in view of the wrong decision of the District Magistrate, Patna all the subsequent development must be set aside.

8. Mr. Kinkar Kumar, learned counsel for the State submits that the petitioner had full knowledge of the requisition, he having refused to accept it, the respondent-Block Development Officer-cum-Executive Officer, Danapur, Patna forwarded it to him. He immediately rushed to the Patna High Court earlier as narrated above, which followed the decision of the District Magistrate, Patna. It is his next submission that on the date, the special meeting took place i.e., on 22.01.2024, the petitioner himself participated, answered to the charges, whereafter the voting took place and the motion was passed



against him.

9. According to him, lots of water has flown down the Ganges, subsequent election has taken place, respondent no.7 has been elected as 'Pramukh' and as such, no interference is required. The last submission is that the petitioner has participated in the special meeting, he cannot look back and allege that it has not been done in accordance with law.

10. Mr. Ravi Ranjan, learned counsel for State Election Commission also echoes the same view and submits that the petitioner having participated in the meeting, he has waived his right to challenge the same subsequently. He submits that the State Election Commission subsequently gave green signal which followed the election and now a new incumbent is there.

11. Having gone through the facts of the case as also the submissions put forward by the respective parties, this Court finds force in the submissions of the respondents. The petitioner having full knowledge of the requisition, he rushed to the Court, got an order, appeared before the District Magistrate, Patna who thereafter passed an order. On the date so fixed, he participated, answered to the charges which followed the 'Motion' having put to vote and the same was passed against him. As per the



materials on record, subsequent development has taken place and the new incumbent is there. The petitioner having participated in the meeting has waived off his right and cannot allege that the same has not been done in accordance with law.

12. The Division Bench of Patna High Court in the case of **Smt. Shamshad Khatun v. The State of Bihar & Ors** as reported in **2010(1) PLJR 929**, in paragraph 21 held as follows:-

“21. Applying the aforesaid principle to the facts of the present case there can be no room for doubt that the right could be waived by the elected candidate and she has done so by her express conduct. Quite apart from the above this Court cannot be oblivious of the fact that the appellant had participated in the meeting by taking a chance and 12 members voted against her. It is also apt to note all the members had been served and they had participated. The requisite majority had voted against her. Ergo, there is no justification or warrant to interfere in the proceeding of No Confidence Motion in exercise of the extra-ordinary and equitable jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.”

13. This Court has also taken note of a judgment and order passed by the Hon’ble Supreme Court in the case of **Padmini Singha v. State of Assam & Ors** reported in (2018)



10 SCC 561 wherein the Hon'ble Supreme Court held that having participated in the meeting, the petitioner waived off her right to assail. Para-13 of the order reads as follows:-

“ 13. From the foregoing, it is quite vivid that the meeting was held to discuss the Motion of No-Confidence. The respondent no. 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact situation, no public interest was affected. The BDO presided over the meeting and every one knew that the meeting was called for passing a resolution either in favour of or against the No Confidence Motion. The respondent no. 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to think, had the respondent no. 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that the respondent no. 6 had waived the condition precedent.”

14. This Court thus holds that the petitioner having participated in the meeting, took chance and the 'No Confidence



Motion’ went against him. Having complete knowledge that the ‘No Confidence Motion’ may fail or pass against the petitioner, he participated. Now, he cannot be allowed to challenge the decision so taken. This Court has also taken note of the fact that subsequently election took place and the respondent no.7 has now taken the seat.

15. The petitioner having served as ‘Pramukh’ of Danapur Panchayat Samiti has lots of experience which can be taken note of by the new ‘Pramukh’ and he can further serve as a Mentor to the new ‘Pramukh’ for the development of Danapur Panchayat Samiti.

16. The writ petition now has to be consigned to files. Accordingly, the same is dismissed.

(Rajiv Roy, J)

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