

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3126 of 2024

Prabhavati @ Prabhavati Devi Wife of Shiv Shankar Prasad, Resident of Village-Nadsena Tola Hasanchak, Block-Meksaur, Police Station-Sitamadhi, District-Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Nawada.
5. The District Panchayati Raj Officer, Nawada.
6. The Sub Divisional Officer, Meskaur, Nawada.
7. The Election Commission of Bihar through the Election Commission, Bihar, Patna.
8. The Block Development Officer cum Chief Executive Prakhanda Panchayat Samiti, Meskaur, Nawada.
9. Santosh Kumar, Pramukh cum Panchayat Samiti Member, 7, Barat
10. Kanti Devi, B.D.C. 01, Mirzapur
11. Radha Kumari, B.D.C. 02, Bisiyayat,
12. Maula Devi, B.D.C. 06 Sahvajpur Saray,
13. Kusum Devi, B.D.C. 05, Tetariya,
14. Arvind Kumar, B.D.C. 08, Barat,
15. Jeetendra Kumar, B.D.C. 09, Rasalpura,
16. Ranju Devi, B.D.C. 14

All respondents No.09 to 16 are residents of Meskaur Block, Police Station-Sitamadhi, District-Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shekhar Harshvardhan, Advocate
For the Respondent/s : Standing Counsel 22

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-03-2024

Heard Mr. Shekhar Harshvardhan, learned counsel
appearing on behalf of the petitioner and the learned SC 22 for



the State.

2. In paragraph no.1 of the writ petition, the petitioner has prayed for relief(s), which are re-produced *inter alia* as follows : -

(i) For issuance of a writ in the nature of CERTIORARI for quashing the proceeding dated 15.01.2024 wherein the Block Development Officer (BDO) -cum- Chief Executive Officer, Prakhand Panchayat Samiti, Meskaur, closed the meeting called for considering the motion of No Confidence after holding a discussion on the requisition / charges of No Confidence Motion and without any voting on the same and holding that the incumbent Pramukh continues to be in majority as only 6 persons out of 14 elected members were present.

(ii) For issuance of a writ in the nature of CERTIORARI for quashing the proceeding dated 15.01.2024 as the same is in violation of Section 44 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as Act) and is also in violation of law laid down by this Hon'ble Court.

(iii) For issuance of a writ in the nature of CERTIORARI for quashing the Clause 7(6) to 7(10) of the Letter No. 07-05/2018-5743 of Bihar State Election Commission dated 11.10.2018 being in violation of Section 44 of the Act and the law laid down by this Hon'ble High Court.

(iv) Issuance of writ in the nature of mandamus directing the Block Development Officer (BDO) - cum- Chief Executive officer, Prakhand Panchayat Samiti, Block to revive the proceeding dated 15.01.2024, which was closed without voting on the motion of No Confidence and hold the vote on the Motion of No Confidence amongst the 6 members present on 15.01.2024 and declare the result based on voting amongst the 6 of the members present.

(v) Issuance of writ in the nature of mandamus directing the Block Development Officer (BDO) cum Chief Executive officer, Prakhand



Panchayat Samiti, Meksaur Block to hold fresh meeting and hold a vote on motion of No Confidence Motion amongst 6 members present on 05.01.2024-and hold discussion on the requisition dated 05.01.2024 containing allegation against the Pramukh- issued by the absentee members and accordingly declare the result.

(vi) For issuance of any other appropriate writ(s), order(s), direction(s) for which the writ petitioner would be found entitled under the facts and circumstances of this case.

3. Mr. Mrigank Mauli, learned Senior Counsel appearing on behalf of the petitioner submitted that from the minutes recorded by the Executive Officer, it would appear that the Executive Officer has relied upon the Circular dated 11.10.2018 of the State Election Commission, which has been recalled by it. The action taken on the basis of void circular is without jurisdiction. He further submitted that six elected members, who were present in the meeting dated 15.01.2024 were not allowed to vote in the special meeting of 'No Confidence Motion', which action is also in violation of Section 44(3)(i)(iii) of the Bihar Panchayat Raj Act, 2006. The B.D.O.-cum-Executive Officer apparently was influenced by the Pramukh and seeks for interference of this Court.

4. Learned counsel further referring to paragraph nos.58 and 59 of the judgment of **Dharmsheela Kumari Vs. Hemant Kumar & Ors.** case reported in **2021(3) PLJR 346**



and the case of **Dr. Shah Faesal & Ors. Vs. Union of India & Anr.** reported in **2020 (4) SCC 1** and giving information that the ratio of the said judgment has been questioned by the Division Bench of this Court in LPA No.125 of 2024 that the later judgment has not considered the another Division Bench judgment passed in **LPA No. 940 of 2008 (Sarita Kumari . Vs. the State of Bihar)**. However, he submitted that the clarification made in paragraph nos. 58 and 58 of **Dharmasheela Kumari case (supra)** still holds good law for the purpose of deciding the present cases in which the elected members have been restrained from appearing and holding of the special meeting for voting against no confidence motion on the date fixed among the members present in the meeting of no confidence motion.

5. He further submitted that admittedly, in the present case, there were six elected members, who were present at the time fixed for special meeting on 15.01.2024 and the B.D.O.-cum-Executive Officer without authority of law had stopped them from holding of the special meeting on the date fixed for conducting of the election among the elected members, who were present at the time of voting on the basis of the circular, which has been held inoperative to be partially illegal, which



requires interference of this Court.

6. *Per contra*, learned counsel for the State has relied on the Division Bench judgment passed in **LPA No. 940 of 2008 (Sarita Kumari . Vs. the State of Bihar)** and has submitted that there is no infirmity in the action of the Executive Officer in not allowing six elected members, who were present at the time of special meeting were less in number as required under Section 44 of the Act, 2006, as a result of which the Pramukh continued to function.

7. Heard the parties.

8. It is to be noted that in a recent development, a Division Bench of this Court vide order dated 19.02.2024 in L.P.A. No. 113 of 2020 considering an apparent conflict with the another Division Bench of this Court in **L.P.A. No. 940 of 2008, (Sarita Kumar vs. the State of Bihar)** dated 20.08.2009, wherein, it has been held that “Majority” should be of persons directly elected in the council has doubted the ratio held in **Dharamsheela (supra)** with respect to the elected members present and voted can be deemed to have been passed, if there is majority of the elected members present and participating in the meeting and has referred the same to be heard by the larger Bench of this Court.



9. In situations where a decision/judgment has been passed in ignorance of an earlier decision of coordinate bench, the judgment rendered earlier would continue to hold force and the subsequent judgments would become *per incuriam*. In so far as the the second instance is concerned, the Supreme Court, in plethora of judgments, has held that a coordinate bench or co-equal bench cannot give a decision contrary to or inconsistent with the law laid down by the coordinate bench. The rationale for such principle is that precedent law must be followed by all and deviation from it should only be on a procedure known to law. Further, judicial discipline demands that judicial propriety and judicial decorum must be followed in all circumstances. Therefore, coordinate bench should not embark upon the exercise of inquiring about the correctness of the law laid down by another coordinate bench.

10. The constitution bench of the Supreme Court, as far back in 1961, in the case of ***Jaisri Sahu v. Rajdewan Dubey and Ors (1962) 2 SCR 558***, dealing with a similar issued has held:

“The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing the case would refer the matter for the decision of a Full Court.”



11. However, in not following the settled law, Courts create a disharmony and disturb the principle of *stare decisis*. It has been noticed that despite law settled by the Supreme Court, in some of the cases, courts have taken a different approach. Instances can be found where the Courts generally consider the most recent judgment on the point to be correctly laying the law. However, such an approach is an erroneous approach in light of the Supreme Court judgment cited above.

12. Though there is no provision like Article 141 which specifically lays down the binding nature of the decisions of the High Courts, it is a well accepted legal position that a single judge of a High Court is ordinarily bound to accept as correct judgments of courts of co-ordinate jurisdiction and of the Division Benches and of the Full Benches of his court and of the Supreme Court. Equally well settled is the position that when a Division Bench of the High Court gives a decision on a question of law, it should generally be followed by a co-ordinate Bench in the subsequent case wants the earlier decision to be reconsidered, it should refer the question at issue to a larger Bench.

13. It is well settled that it is only the *ratio decidendi*



that has a precedent value. As observed by the Supreme Court in ***S. P. Gupta v. President of India***, reported in (*AIR 1982 SC 149*) :

"It is elementary that what is binding on the court in a subsequent case is not the conclusion arrived at in a previous decision, but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion." A case is only an authority for what it actually decides and not what may come to follow logically from it. Judgments of courts are not to be construed as statutes (see *Amar Nath Om Parkash v. State of Punjab* reported in *AIR 1985 SC 218*)."

14. The unjustified action of the Block Development Officer (BDO) -cum- Chief Executive Officer, Prakhanda Panchayat Samiti, Meskaur, on 15.01.2024, by arbitrarily deciding to close the meeting called for considering the motion of No Confidence after holding a discussion on the requisition / charges of No Confidence Motion and without any voting on the same and holding that the incumbent Pramukh continues to be in majority as only 6 persons out of 14 elected members were present, is an attempt to disturb a level-playing field between candidates, and calls for interference by this Court.

15. The Apex Court has deliberated upon the limitations and exceptions on the powers of Court to interfere in



matters pertaining to elections in paragraphs no.35 and 37 of **Union Territory of Ladakh & Ors. Vs. Jammu and Kashmir National Conference and Anr.** reported in **2023 SCC OnLine SC 1140**, wherein following observation has been made :-

“37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions *supra*, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof...”

(emphasis supplied)

16. In light of the above observation, the proceeding dated 15.01.2024, wherein the Block Development Officer (BDO) -cum- Chief Executive Officer, Prakhand Panchayat Samiti, Meskaur, closed the meeting called for considering the motion of No Confidence after holding a discussion on the requisition / charges of No Confidence Motion and without any voting on the same and holding that the incumbent Pramukh continues to be in majority, is hereby set



aside and quashed.

17. The action of the Block Development Officer-cum- Chief Executive Prakhanda, Panchayat Samiti by relying upon Clause 7(6) to 7(10) of letter No.07-05/2018-5743 dated 10.10.2018 addressed to District Magistrate, Nalanda Election Commission, which is no more in existence is held to be having passed without jurisdiction and consequential action of holding of special meeting of no confidence motion on 15.01.2024 is being without authority of law ultimately rendering minutes drawn in that connection by the B.D.O.-cum-Executive Officer on 15.01.2024 is also held to be without authority of law as observed in the above order by the Apex Court in Union territory of Ladakh & Ors. (*supra*). The manner in which B.D.O.-cum-Executive Officer has tried to impede the lawful procedure is only indicative of unjust executive action.

18. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
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