

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4570 of 2024

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Babita Devi W/O- Guddu Prasad Resident of Village and P.O.- Simariya, P.S.-
Shahpur, District- Bhojpur.

... .. Petitioner/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, Bhojpur, District- Bhojpur.
4. The District Panchayat Raj Officer, Bhojpur, District- Bhojpur.
5. The Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
6. The Block Panchayat Raj Officer, Bhojpur, District- Bhojpur.
7. Geeta Devi Wife of Putul Sah Resident of Village and Post- Umraganj, P.S.- Behiya, District- Bhojpur, Presently Pramukh of Block Panchayat Samiti Shahpur, District- Bhojpur.
8. Babloo Tiwari Son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
9. Kamal Deo Tiwari son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
10. Shambhu Prasad son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
11. Mahesh Singh son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
12. Chandan Kumar Prasad son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
13. Chanda Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
14. Usha Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
15. Kushum Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
16. Birendra Sah son of not known to the petitioner The elected Member of



- Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
17. Santosh Paswan son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 18. Shriram Kumhar son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 19. Sunita Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 20. Lakhmaniya Kunwar son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 21. Radha Krishna Gond son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 22. Ragini Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 23. Aarti Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 24. Rajesh Keshri son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 25. Satyendra Kumar Son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 26. Punam Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 27. Brijkishore Yadav son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 28. Rama Shankar Singh son of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 29. Pushpa Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.
 30. Sumanti Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-



cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.

31. Abha Devi wife of not known to the petitioner The elected Member of Block Panchayat Samiti, Shahpur, through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti Shahpur, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam,
Mr. Awnish Kumar, Advocates.
For the Respondent/s : Mr. Kinkar Kumar, Standing Counsel (9)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 03-09-2024 Heard Mr. S.B.K. Mangalam, learned counsel for the

petitioner and Mr. Kinkar Kumar, learned SC-9 for the State.

2. The present writ petition has been preferred for the

following reliefs:-

“I. For issuance of an appropriate writ in the nature of CERTIORARI for quashing the requisitions dated NIL signed by 9 elected members of Shahpur Block Panchayat Samiti addressed to the Respondent no.7 the Pramukh of Block Panchayat Samiti Shahpur whereby and where under the members of the Block Panchayat Samiti had made a request from the Respondent no.7 to fix the date of Special Meeting of the Block Panchayat Samiti for consideration of their No Confidence Motion against the Pramukh and Up- Pramukh of the Shahpur Block Panchayat Samiti.

II. For issuance of an appropriate writ in the nature of CERTIORARI for quashing the proceeding of the Block Panchayat Samiti Shahpur dated 12.01,2024 whereby and where under No-Confidence Motion which was brought against the Pramukh and Up- Pramukh of the Panchayat Samiti was rejected or considered to have not been against the Pramukh and Up-Pramukh of



the Shahpur Block Panchayat Samiti, on the ground that the motion of no-confidence was not moved/brought by the actual aggrieved members of the panchayat samiti rather it was managed/brought by the supporters of pramukh and up-pramukh himself to defeat the provisions as contained under section 44(3)(ii) of the Bihar Panchayat Raj Act, 2006 and also to prevent the actual aggrieved members of the panchayat samiti from bringing the no-confidence motion against them as and when situation arises.

III. For issuance of any other appropriate Writ/Writs order/orders, Direction/Directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that on the date of special meeting, only one member was present on 12.01.2024 and in that background, the respondent/Deputy Collector, Land Reforms, Bhojpur should have closed the proceeding. Instead, it recorded the same to have been defeated which is in the teeth of order of a Division Bench in the case of **Dharamsheela Kumari v. Hamant Kumar & Ors** reported in **2021(3)PLJR 346**.

4. Mr. Kinkar Kumar, learned SC-9 submits that the special meeting/proceeding came to an end and it is not the case of the petitioner that any further requisition has been made and as such, the writ petition, for the present, has got not merit.

5. From perusal of the special meeting/proceeding



dated 12.01.2024, it is clear that as no one appeared, only 'Pramukh' was present, the Motion was not put to vote. In that background, the division Bench judgment in **Dharamsheela Kumari (Supra)** comes into picture, specially, issue no.(ix). For proper appreciation, paragraphs 117 and 118 of the said judgment are incorporated and the same 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.

6. From the aforesaid facts specially the issue no.



(ix), it is very clear that any meeting which has come to an end without the Motion being put to vote, the legal bar of moving a fresh Motion of No Confidence stipulated under Section 44(3) (ii) of the Bihar Panchayat Raj Act, 2006 would not be attracted.

7. However, as learned SC-9 has rightly pointed out, no such situation has arisen warranting any comment from this Court.

8. The writ petition stands disposed of.

(Rajiv Roy, J)

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