

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4364 of 2024

Priyanka Singh Wife of Dheeraj Kumar Singh, Resident of Vill. and P.O.-
Satasi, District Saran, Bihar 841411, Presently Up-Adhyaksh of Saran Zila
Parishad, District Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. State Election Commission, Bihar, Patna through its Secretary, 3rd floor, Sone Bhawan, Veer Chand Patel Path, Patna.
3. District Magistrate-cum- District Election Officer (Panchayat), Saran at Chapra.
4. Deputy Development Commissioner, Saran at Chapra- cum- Executive Officer, Saran Zila Parishad, District Saran at Chapra.
5. Jaimitra Devi, Wife of Amar Rai, Resident of vill.- Jaitiabajitpur, P.O.- Mehrauli, District Saran at Chapra, presently Adhyaksh, Saran Zila Parishad, District- Saran at Chapra.
6. Akhtar Hussain, Son of Late Shafik Ahmed, presently member from territorial constituency no 1, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
7. Tuntun Singh, Son of Surendra Singh, presently member from territorial constituency no.2, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
8. Nusrat Praveen, wife Parvej Akhtar, presently member from territorial constituency no. 3, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
9. Ruchi Priya Devi, wife of Manoranjan Thakur, presently member from territorial constituency no.4, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
10. Geetu Singh, wife of Vrijendra kumar, presently member from territorial constituency no. 5, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
11. Indu Devi, wife of Shiv Shankar Singh, presently member from territorial constituency no.6, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
12. Anil Kumar Singh, Son of Parshuram Singh, presently member from territorial constituency no.7, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
13. Ramavati Singh, wife of Pankaj Singh, presently member from territorial constituency no.8, Saran Zila Parishad, District Saran at Chapra, elected



- member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
14. Goldi Kumari, wife of Aashutosh Tiwari, presently member from territorial constituency no.9, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 15. Kanti Devi, wife of Jaglal Yadav, presently member from territorial constituency no.10, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 16. Raghuvansh Singh, Son of Shri Krishna Singh Bhagwan Singh, presently member from territorial constituency no 1, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 17. Bandana Kumari, wife of Shailesh Kumar, presently member from territorial constituency no.12, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 18. Guddu Shah, Son of Late Ram Prasad Shah, presently member from territorial constituency no.13, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 19. Rambha Kumari, wife of Laxman Ram, presently member from territorial constituency no.14, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 20. Prem Kumar Ranjan, Son of Gautam Rai, presently member from territorial constituency no.15, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 21. Abhay Tarkeshwar Ram, Son of Bundela Ram, presently member from territorial constituency no.17, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 22. Kiran Devi, wife of Late Sanjay Shah, presently member from territorial constituency no 18, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 23. Anita Navin, wife of Navin Kumar Singh @ Abhay Singh, presently member from territorial constituency no. 19, Saran Zila Parishad, District Saran at Chapra elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 24. Anand Kumar Rai, Son of Ram Pravesh Rai, presently member from territorial constituency no. 20, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 25. Meena Arun, wife of Arun Singh, presently member from territorial



- constituency no. 21, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
26. Md. Illiyas Ansari, Son of Md. Kaisar Ansari, presently member from territorial constituency no. 22, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 27. Hari Shankar Singh, Son of Sidhar Singh, presently member from territorial constituency no. 23, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 28. Aasha Gupta, wife of Shri Bhagwan Gupta, presently member from territorial constituency no. 24, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 29. Chhavinath Singh, Son of Ram ji Singh, presently member from territorial constituency no. 25, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 30. Urmila Devi, wife of Avadh Lal Gupta, presently member from territorial constituency no. 27, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 31. Chandani Devi, wife of Ashok Singh, presently member from territorial constituency no. 28, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 32. Harivansh Rai, Son of Rajendra Rai, presently member from territorial constituency no. 29, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 33. Ratnesh Kumar Bhagat, Son of Sudama Bhagat, presently member from territorial constituency no.- 30, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 34. Sunita Singh, wife of Sanjay Kumar Singh, presently member from territorial constituency no. 31, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 35. Aalok Rai, Son of Rajeshwar Rai, presently member from territorial constituency no. 32, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
 36. Usha Devi, wife of Sunil Kumar, presently member from territorial constituency no. 33, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.



37. Mukesh Kumar Ram, Son of Rajdev Ram, presently member from territorial constituency no. 34, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
38. Sneha Singh, wife of Amit Kumar Singh, presently member from territorial constituency no. 35, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
39. Vinod Rai, Son of Chandeshwar Rai, presently member from territorial constituency no. 36, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
40. Aasha Kumari, wife of Manohar Ram, presently member from territorial constituency no. 37, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
41. Neetu Rai, wife of Raj Kishore Rai, presently member from territorial constituency no. 38, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
42. Ramavati Devi, wife of Ajay Kumar Manjhi, presently member from territorial constituency no. 39, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
43. Priti Raj, wife of Piyush Raj, presently member from territorial constituency no. 40, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
44. Karunesh Kumar Singh, son of Virendra Singh, presently member from territorial constituency no. 41, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
45. Jafarlkbal, son of Idrish Ansari, presently member from territorial constituency no. 42, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
46. Golok Bihari Sharan Singh, son of Surendra Mohan Singh, presently member from territorial constituency no. 43, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
47. Chinta Devi, wife of Suman Kumar, presently member from territorial constituency no. 44, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
48. Vibha Devi, wife of Ashok Kumar Yadav, presently member from territorial constituency no. 45, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.



Parishad, District- Saran at Chhapra.

49. Richa Rai, wife of Shiv Shankar Mandal, presently member from territorial constituency no. 46, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.
50. Sunil Kumar Rai, son of Rameshwar Rai, presently member from territorial constituency no. 47, Saran Zila Parishad, District Saran at Chapra, elected member of Saran Zila Parishad through Executive Officer, Saran Zila Parishad, District- Saran at Chhapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Senior Adv.
For the Resp. No. 10	:	Mr. Prashant Sinha, Adv. Ms. Nikita Mittal, Adv.
For the Zila Parishad	:	Mr. Nikesh Kumar, Adv.
For the SEC	:	Mr. Ravi Ranjan, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 25-09-2024

Heard Mr. Sanjay Singh, learned Senior Counsel
for the petitioner, Mr. Nikesh Kumar representing the Zila
Parishad, Saran, Ms. Nikita Mittal representing the respondent
no. 10 as also Mr. Ravi Ranjan who represent the State Election
Commission.

(A) PRAYER:

2. The present writ petition has been preferred for the
following relief(s):

“(i) for issuance of an appropriate writ in the nature of certiorari or any other similar writ in similar nature for quashing the notice issued under the signature of respondent no. 4 and contained under letter no. 129 dated 29-2-2024 whereby and where under notices have been issued to all elected



members including the writ petitioner informing them about special meeting scheduled on 09-03-2024 at 11:00 a.m. for consideration of no confidence motion against the writ petitioner on the ground that the said notice is totally without jurisdiction as the District magistrate had no jurisdiction as also said notice does not contain any reasons/charges and thus same is in direct contravention of section 70(4)(iv) of the Bihar Panchayat raj act, 2006;

(ii) for issuance of an appropriate writ in the nature of certiorari or any other similar writ in similar nature for quashing the order contained in memo no.5 dated 28-02-2024 issued in the signature of Respondent no. 3 whereby and where under while deciding the issue of writ petitioner in light of direction issued by this Hon'ble Court the issue so raised by the writ petitioner was left out and has not been decided and straightway while holding the process to be in conformity of provisions of the Bihar panchayat raj act, 2006(for sake of brevity herein after to be referred as the Act, 2006) directions have been issued to Respondent no.5(Adhyaksh) and respondent no.4 to act in accordance with law as also law laid down in case of Dharmsheela Kumari vs Hemant kumar, since reported in



(2021)3 PLIR 346;

(iii) for issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondent authorities to produce on record the requisition dated 05-02. 2024 and production on same, same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI or any other writ in similar nature, for quashing the requisition dated 05-02-2024 on the ground that not only said requisition has been brought with an ulterior motive but also the reasons and charges are vague and not clear as stipulated under Subsection 4(iv) of section 70 of the Act, 2006;

(iv). for a declaration that if statute prescribes a particular act to be done in a particular manner it should be done in that manner alone or not at all and any other mode is not only necessarily prohibited but also constitute illegality;

(iv). for a declaration that if under the scheme of the act, 2006 the statute does not contemplate any power or duty assigned to any Upadhyaksh of any Zila Parishad when Adhyaksh is available then in that view of the matter, any allegation of misuse or abuse of such power or duty is nothing but an illegality and thus no validity can be



attached to any such requisition which contains such allegation;

(vi). for issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner is entitled under the facts and circumstances of the case.”

(B) FACTS/CASE OF THE PETITIONER:

3. The brief facts of the case is/are as follows:

4. The State Election Commission (henceforth for short ‘the Commission’) declared the notification for conducting general panchayat election, 2021 which included the different posts of Saran Zila Parishad. The petitioner as also the respondents filed their respective nominations from different constituencies of Saran Zila Parishad for its member’s post.

5. They were subsequently elected and on the first meeting of the Saran Zila Parishad, after the newly elected members were ascribed oath, process of election for post of Chairperson and Deputy Chairperson of the Saran Zila Parishad took place in which, the respondent no. 5 & the petitioner were elected as the Chairperson and Deputy Chairperson respectively.

6. However, since the date of assumption of the office, the Respondent no. 5 started acting in dictatorial manner working as per her whims and even her attitude towards other



elected members and more specifically towards the writ petitioner was/were highly discriminatory.

7. As such, after the lapse of two years of statutory ban, the Respondent no.5 being conscious of the fact that she has already lost confidence of the house, plotted a plan to play fraud with the democratic institution of the Saran Zila Parishad and thus a requisition was prepared taking into confidence some of the elected members of her choice and then a date was fixed for special meeting on 15-01-2024 to discuss the 'No Confidence Motion' against her. Further, on the said date, only six members participated and citing the guidelines of 'the Commission' dated 16-09-2008 (which now is no longer applicable), no voting was carried out and illegally the 'No Confidence Motion' was said to have been dropped against the respondent Chairperson.

8. This was questioned by the petitioner and she filed representation before the respondent authorities. Aggrieved by it, the respondent no. 5 through her chosen blue eyed members made a requisition for convening special meeting to discuss 'No Confidence Motion' against the petitioner.

9. However, neither the requisition nor the copy of same was ever forwarded to the writ petitioner and she was put



into complete dark as to what are the allegations levelled against her and only through her well wishers, she came to know that the respondent no. 5 has managed to get a requisition filed before herself for the removal of the writ petitioner.

10. This led to the issuance of the letter no. 53 dated 09- 02-2024 issued under the signature of respondent no. 4 whereby and whereunder she was informed about the special meeting fixed on 19-02-2024 for consideration of 'No Confidence Motion' against her.

11. However, a bare perusal of the said notice would clearly manifest that the allegations levelled against writ petitioner were vague in nature which cannot be termed as valid allegations.

12. As the allegations/charge levelled against the writ petitioner did not made out clear charges as stipulated under section 70(4)(iv) of the Bihar Panchayat Raj Act, 2006 (henceforth for short 'the Act'), she approached Patna High Court by filing **CWJC No. 2881 of 2024 (Priyanka Singh Vs. State of Bihar & Ors.)** wherein several legal issues were raised. It was heard and vide an order dated 16-02.2024, a coordinate Bench of this court was pleased to direct the respondent District Magistrate, Saran at Chapra to hear the



aggrieved parties and decide the same considering that there was violation of statutory requirement as stipulated under section 70(4) of 'the Act'.

13. Pursuant thereto, all the elected members were noticed and the writ petitioner on receipt of said notice appeared and filed her brief representation dated 22-02-2024 putting in her grievance. During the course of hearing, not only the representation dated 22-02-2024 but also previous writ petition were shown to the Respondent No.3 but for the reasons best known to him, he held that the requisition has been validly made and further directed the respondent no. 4 & 5 to act in accordance with law as per 'the Act', 2006. The order came to be communicated vide memo no. 05 dated 28-02-2024.

14. The contention is that a bare perusal of said order would clearly show that not only issue raised by the writ petitioner was not taken note, even the specific directions of the Court were overlooked and an empty formality of hearing the parties was carried out with the direction to respondent no. 4 & 5 to act in accordance with law.

15. Thereafter, the date for the special meeting was fixed on 09.03.2024 for consideration of 'No Confidence Motion' against the writ petitioner and further notices were



issued in this regard to all elected members of the Saran Zila Parishad vide letter no. 129 dated 29-02-2024.

16. The contention of the petitioner is that a bare perusal of the said notice would clearly manifest that in a haste to issue the notice, it did not incorporated any charges on which the discussion was to be made in the special meeting. The plea is that it is in direct conflict with the section 70(4)(iv) of 'the Act'. Thus the members of the Zila Parishad, Saran were informed about the special meeting scheduled on 09-03-2024 without any charges to be discussed nor the petitioner had any clue as to what are the charges which needs her reply/she has to answer.

17. The contention of the writ petitioner is that on the one hand, the respondent District Magistrate, Saran chose not to decide the issue which was raised before him, on the other hand, the respondent no. 4 acted in gross violation of 'the Act' and proceeded to fix the date of special meeting on 09.03.2024 without incorporating the charges. Thus, this notice is/was worse than the earlier notice which was having vague charges. The same as such needs interference.



(C) SUBMISSIONS:

18. Learned Senior Counsel, Mr. Sanjay Singh represents the petitioner and he reiterates that the earlier requisition was having vague charges which led the petitioner to knock the doors of Patna High Court, an order was passed on 16.02.2024 in CWJC No. 2881 of 2024 (Priyanka Singh Vs. State of Bihar & Ors.) directing the respondent, District Magistrate, Saran at Chapra to look into the order, hear all the parties and pass an order.

19. Pursuant thereto, the District Magistrate, Saran took up the matter and passed an order on 28.02.2024 which came to be communicated through memo no. 05 dated 28.02.2024. Immediately thereafter, another date was fixed on 29.02.2024 which followed the notice issued by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Saran at Chapra fixing 09.03.2024 as the date for special meeting. However, the notice did not contain any charge whatsoever against the petitioner which was to be discussed.

20. Learned Senior Counsel submits that in the absence of the charges which should have been part of the notice, the meeting held on 09.03.2024 by which the petitioner was removed from the post of the Deputy Chairperson be



declared illegal and further she has the right to occupy the chair.

(D) RESPONSE OF THE ZILA PARISHAD, SARAN

21. Counter affidavit has been filed by the Zila Parishad, Saran, Chapra and as per it, on 28.02.2024, the District Magistrate - cum District Election Officer (Panchayat), Saran at Chapra passed his speaking order contained in memo no. 05 dated 28.02.2024, by which he directed the Chairperson, Zila Parishad, Saran and the DDC cum Chief Executive Officer, Zila Parishad, Saran at Chapra to call for Special Meeting within seven days from the receipt of the order, for discussion on No-Confidence Motion against the petitioner as per the provision of Section 70(4)(ii) of the Act, 2006 and following the observation/ direction passed in LPA No. 113 of 2020 (Dharamsila Kumari vs Hemant Kumar & Ors.).

22. After the order dated 28.02.2024 passed by the District Magistrate cum District Election Officer (Panchayat), Saran at Chapra, the Chairperson of Zila Parishad, Saran at Chapra fixed the date for convening the Special Meeting for discussion on No-Confidence Motion against the petitioner on 09.03.2024 whereafter came the letter bearing No. 05 dated 29.02.2024 by the Chairperson to the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Saran at Chapra to arrange the Special Meeting for discussion



on No-Confidence Motion against the Deputy Chairperson.

23. This followed the letter no. 129 dated 29.02.2024 issued by the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Saran at Chapra to the members of the Zila Parishad, Saran at Chapra with the request to ensure their presence in Special Meeting scheduled to be held on 09.03.2024 for discussion on No-Confidence Motion against the petitioner.

24. As per the schedule, on 09.03.2024, the special meeting for discussion on the No-Confidence Motion against the petitioner was held and it got passed by 41 votes in favour of No-Confidence Motion and 1 against it. The petitioner did not participate in the meeting.

25. The contention is that no illegality or irregularity has been committed by the answering respondents in complying the order dated 28.02.2024 passed by the District Magistrate cum District Election Officer (Panchayat), Saran at Chapra in compliance of direction passed in CWJC 2881 of 2024 and thus the writ petition has no merit and is fit to be dismissed.

26. Though the other respondents too have appeared, there is no other affidavit on record.

27. Having heard the parties at length and perusing



the records, this Court deems it appropriate to incorporate Section 70 of 'the Act' which read as follows:

Section 70: Resignations or Removal of Adhyaksha and Up-adhyaksha

“(1) The Adhyaksha may resign his office by writing under his hand addressed to the District Magistrate and the Up-adhyaksha may resign his office by writing under his hand addressed to the Adhyaksha.

(2) Every resignation under subsection (1) shall take effect on the expiry of seven days from the date of such resignation, unless within the said period of seven days he withdraws such resignation by writing under his hand addressed to the District Magistrate or the Adhyaksha, as the case may be.

(3) Adhyaksha or Up-adhyaksha shall vacate the office if he ceases to be a member of the Zila Parishad.

(4) (i) Adhyaksha and Up-Adhyaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of directly elected members from territorial constituencies of the Zila Parishad at a



meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one fifth of the total number of directly elected members of the Zila Parishad and shall be delivered to the Adhyaksha with a copy to the District Magistrate. The Adhyaksha shall within seven days from the date of receipt of such requisition convene a special meeting of the Zila Parishad. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice Adhyaksha if the motion is of the meeting. The meeting shall s against the Up presided over by the Up-adhyaksha; if it is against the Adhyaksha the Upadhyaksha shall preside over the meeting and if it is against Adhyaksha and Upadhyaksha both then the District Magistrate shall preside over the meeting.

In case of the post of Up-adhyaksha being vacant or his absence from the meeting convened for discussion on no confidence motion against the Adhyaksha or the post of Adhyaksha being vacant or his absence from the meeting convened for discussion on no confidence motion against the Up-adhyaksha, as the case may be, the meeting shall be presided over by any member elected from amongst the directly elected members from the territorial



constituencies of the Zila Parishad present in the meeting.

In case of failure to convene the meeting by the Adhyaksha, the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided by him.

No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.

(ii) During the first two year period of the tenure, no confidence motion shall not be moved against the Adhyaksha or the Upadhyaksha. [Such a no confidence motion may be brought only once in the whole tenure of "Adhyaksha or Upadhyaksha]

(iii) No-confidence motion against the Adhyaksha or Upadhyaksha or both, shall not be brought within six months of the expiry of the term of the Zila Parishad.

(iv) Such reasons/charges, on the basis of which no confidence motion is to be moved against the Adhyaksha or Upadhyaksha, shall be clearly mentioned in the notice of the meeting called to consider the no confidence motion.

(v) As soon as the meeting called



under this Section commences, the presiding member at the meeting shall read out the motion on which the meeting has Deened to consider, before the present members and declare it open for discussion. Any discussion on the motion under this Section shall not be adjourned.

(vi) During discussion, opportunity shall be given to the Adhyaksha or Upadhyaksha or both against whom no confidence motion is moved, for his defence before the Zila Parishad. The motion shall be put to vote on the same day after discussion which shall take place by secret ballot in the prescribed manner by the District Magistrate.

(vii) [xxx]

(5) Without prejudice to the provisions under this Act, if in opinion of the [Government) having territorial jurisdiction over the Zila Parishad, a Adhyaksha or the Upadhyaksha of Zila Parishad absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties [Disobedience of order of an authority established by law or) or becomes



physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the [Government] may, after giving the Adhyaksha or the Upadhyaksha, as the case may be, a reasonable opportunity for explanation, by order, remove such Adhyaksha or the Upadhyaksha, as the case may be, from office.

[Provided when a system of Lok Prahari, instituted under sub-section (5) of Section 152 comes into force by a valid notification of the State Government, the Government may only pass order of removal of such Adhyaksha or Upadhyaksha, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.]

[The Adhyaksha or Up-Adhyaksha so removed on the charge of being found guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any panchayat bodies till further five years from the date of such removal. The Adhyaksha or Up-Adhyaksha so removed on rest of the charges shall not be eligible for re-election as Adhyaksha or Up-Adhyaksha during the remaining term of office of such Zila Parishad.



(2) An Adhyaksha or Up-adhyaksha removed from the office under sub- section (1) may also be removed by the Government from the membership of the Zila Parishad.”

28. Sub-section (iv) of Section 70 of ‘the Act’ is very clear- the reason/charge on the basis of which no confidence motion is to be moved against the Chairperson/Deputy Chairperson shall be clearly mentioned in the notice of the meeting called to consider the said no confidence motion.

29. In that background, now the notice dated 29.02.2024 issued by the respondent no. 4 has to be given a look and it read as follows:

“परिशिष्ट-क”

अविश्वास प्रस्ताव पर चर्चा हेतु दी जाने वाली सूचना

कार्यालय जिला परिषद, सारण छपरा।

पत्रांक 129

दिनांक 29.02.2024

सेवा में,

श्री/श्रीमती/ प्रियंका सिंह

जिला परिषद सदस्य प्रा0नि0 क्षेत्र संख्या 26 (इसुआपुर)

(भाग-2)

जिला पदाधिकारी, सारण छपरा के आदेश ज्ञापांक 06 न0/विधि दिनांक 28.02.2024 के आलोक में सूचित किया जाता है कि उपाध्यक्ष, श्रीमती प्रियंका सिंह के विरुद्ध अविश्वास प्रस्ताव की प्रक्रिया को



पूर्ण करने हेतु सारण जिला परिषद सभागार में दिनांक 09.03.2024 को
पूर्वाह्न 11.00 बजे से जिला परिषद, सारण की विशेष बैठक बुलाई गई है।
कृपया निश्चित समय पर बैठक में भाग लेने की कृपा की जाय।

मुख्य कार्यपालक पदाधिकारी

जिला परिषद सारण, छपरा।

दिनांक

30. From the aforesaid notice dated 29.02.2024 issued
by the respondent Chief Executive Officer, Zila Parishad, Saran,
Chapra, it is clear:

*i) no charge/reason has been
assigned which was/were to be discussed on
09.03.2024 special meeting.*

*ii) there is no averment in the
notice that the reasons/charge are on any
other annexure which stands attached with
the notice.*

(E) FINDINGS:

31. It is important to note here that in paragraphs 32
and 33 of the writ petition, the petitioner has made specific
averment that in gross violation of 'the Act', the notice issued
on 29.02.2024 by the respondent no. 4 did not contain any



reason/charge to which she is/was required to answer and as such the calling of the special meeting was illegal.

32. Sub-section (iv) of Section 70 of 'the Act' is very clear, the reasons/charges on the basis of which a no confidence motion is to be moved against the Chairperson/Deputy Chairperson shall be clearly mentioned in the notice of the meeting called to consider the no confidence motion.

33. The framer of 'the Act' wanted the requisitionist to specify the reason/charges that has come against the Adhyaksha/Up adhyaksha forcing them to call the special meeting and the same has to be part of the notice so that the person against whom the 'No Confidence Motion' has been brought is able to answer to the charges. In absence of any charge/reason being part of the notice and/or vague charge in the notice, it will render the notice illegal and liable to be set aside.

34. Here is a classic case where the notice dated 29.02.2024 issued by the respondent Chief Executive Officer, Saran (respondent no. 4) did not even contain the charges. On the basis of the track record of the said respondent, this Court is very clear- the concerned Officer has absolutely no knowledge of 'the Act'/provision as also the duties cast upon him/her, otherwise his/her office would not have issued such cryptic



notice without any charge. It is unfortunate that even the District Magistrate, Saran at Chapra did not look into this aspect.

35. In the case of **Sindhu Devi and Others Vs. The State of Bihar and Others (LPA No. 1397 of 2001)**, a **Division Bench** of Patna High Court has passed the following order:

“i) Thus, the record to bring in an action for a motion for no confidence against a Pramukh, an elected office, is on record. On record, there is not a shred nor a whisper of what is the wrong done by the Pramukh and what exactly he is up against when he will face an opportunity, to reply as to why he should not be bundled out of his office.

ii) The Court is afraid that it does not agree with the Counsel for the Appellants that majority is a democracy. If this be so, would it not be mobocracy? After all democracy functions on sanctions, sanctions of the law. Democratic institutions follow, respect and protect the Rule of Law. Otherwise, majority is not democracy but anarchy Brute majority cannot belittle democratic institutions. Such bad practices lend themselves to dictatorships. This is an example which reflects the evils of having lost 30 years of experience on self Government, even the basic norms of



democracy in institutions of self Government have been forgotten. Coming down, now, to realities and the concept under which a motion of no confidence may be considered.

iii). The learned Judge has already noticed the provisions. This Court is only reiterating them. An action may be brought for a motion of no confidence against a Pramukh or a Uppramukh of Panchayat Samiti. But this action is not in a vacuum. The law itself contemplates that the man charged will have an opportunity of being heard before being removed from his office for any misconduct in discharge of his duties. The expression "an opportunity of being heard", and the expression "misconduct in the discharge of his duties", are expressions which are mentioned in Sub-section (4) of Section 42 of the Bihar Panchayat Raj Act, 1993. The mechanics of bringing in a motion of no confidence also rests on the premises that should there be a written request of not less than 1/3rd of the total number of members present on a date, within 15 days from such a receipt, a special meeting will be called. But, the law enjoins that such a notice will need to indicate the object for which the meeting is proposed. The exercise to indicate the object contemplates consideration of identified



issues in objectivity.

iv). The expression used in the enactment is "specify the object for which the meeting is proposed to be called". This is mentioned in Sub-section (3) of Section 44. When these obligations have been taken care of that is a notice given by a member in writing, a notice which indicates the charges of misconduct or the misdemeanour which a Pramukh or a Up-Pramukh of a Panchayat Samiti may have to face, then a scheduled period has to lapse and only thereafter a meeting is to be held and then only the business is to be transacted. Again, the law refers to the expression "the business to be transacted"

v). In the circumstances the law enjoins a fair opportunity to the person who faces a charge on an allegation for misconduct or misdemeanour to avail of the opportunity and give his defence before the Panchayat Samiti. After these conditions are satisfied, only thereafter may the Panchayat Samiti consider a motion of no confidence.

vi). Thus, the Court can hardly agree with the four Appellants or for that matter their Counsel that a bare notice without specifying allegation is enough. Such a notice calling a motion of no confidence without recording or listing



allegations, is void at the threshold. A brute majority by members in absence of indicated misconduct cannot decide the fate of a Pramukh or an Uppramukh. This is not democracy.

vii). This letters patent appeal is misconceived and is, accordingly, dismissed. The order of the learned Judge on the writ petition is not in error.

viii). After having lost the experience of self Government in the State for 30 years there is a special obligation which lies on the Executive Officer, Block Development Officer and the Circle Officer to ensure that a motion of no confidence must be strictly in accordance with the Act and the person who is to face must know what the charges are.

ix). Further, the Court would like to indicate to the State Counsel to ensure that sufficient guidelines are given to bureaucracy nearer the Panchayats to refrain from interfering with internal matters of panchayats and not to take sides or be partisan in unsettling local self Government. Further, all those who are obliged to monitor a requisition or a motion of no confidence should be advised not to fall into a fault as in the present case and so easily send a requisition to consider a motion of no



confidence to the Panchayat Samiti, without reference to charges attributing misconduct, as is the obligation under law.

x). Thus, the Letters Patent Appeal is dismissed.”

(underline by this Court)

36. Further, in the case of **Meena Yadav & Anr vs. The State of Bihar & Ors** reported in **2010 (2) PLJR 389**, the **Division Bench** of the **Patna High Court** in paragraphs 10 to 16 held as follows:

10. In the case of Nirmala Singh (supra) the petitioners who were Pramukh and Up-Pramukh succeeded in showing that the notice for the meeting to consider no confidence motion was defective as no reasons in support of the motion had been mentioned which is a requirement of law. However, the Court held in paragraph-3 that the petitioners did not suffer on that account and no prejudice was caused to them because none of the petitioners attended the meeting. It was further noticed that after the meeting in which they were removed ,again a



meeting was held for filling up the vacancies caused due to their removal and both the petitioners participated in the said meeting treating that meeting to be valid one and in fact one of the petitioners of that case had again offered himself as a candidate for one of the posts. In view of such subsequent conduct of the petitioners and on the ground that they had not suffered any prejudice on account of defect in the notice furnished to them, the writ petition was dismissed.

11. The discussion of the aforesaid precedents clearly reveals that although in the 1993. Act the provisions were milder and did not explicitly require, as provided in the 2006 Act, to clearly mention the reasons/charges in the notice, still the Division Bench in the case of Sindhu Devi (supra) gave reasons and came to, a conclusion that mere notice without specifying allegations and calling motion of 'no confidence' is void at the threshold. This



finding was derived by the Division Bench in the context of 1993 Act by highlighting that the law enjoins that the notice will indicate the object for the meeting proposed as mentioned in sub-section (3) of Section 44 and by referring to the true meaning of Democracy that it should not permit a brute majority to carry out motion of no confidence without recording or listing the allegations in the notice.

12. The subsequent Act of 2006 whose relevant provisions have been extracted earlier, has now cast an explicit obligation upon the Authority issuing the notice of meeting, be it the Pramukh or the Executive Officer to mention the reasons/charges in the notice. The purpose of this provision is not confined to giving notice to the Pramukh or Up-Pramukh of the meeting for a no confidence motion alongwith reasons/charges so as to comply with requirements of natural justice, rather the



purpose is clearly a much larger one, to subserve the basic ideology and purpose of Democracy which require free flow of relevant facts to all the members of a democratically elected body if those members are to have any meaningful discussions or deliberations over the concerned issues. The right of the members to have minimum fifteen days of notice alongwith reasons/charges so that they may come ready to participate meaningfully, in the meeting relating to a 'no confidence motion' has an important value which can not be denied either by the Pramukh or the Executive Officer who are obliged to give notice of such meeting once a valid requisition is made by the required number of elected members. This provision requiring mentioning of reasons/charges in the notice of the meeting called to consider a no confidence motion serves the twin purpose of promoting informed debate amongst the



members and enabling the office bearer against whom the motion is directed to defend himself against the alleged charges. The Legislature has incorporated such a provision in the Act when it was not there in such clear terms in the earlier Act of 1993, with a purpose which must be given full meaning and play.

13. There is no vagueness or ambiguity in the language of the statute, be it subsection (3)(b) of Section 44 or Subsection (4)(i) of Section 70 of the Act so as to call for any interpretation. The relevant provisions in categorical terms require that the reasons/charges for no confidence motion shall be clearly mentioned in the notice of the meeting. Besides serving the twin purpose indicated above, the provision serves to protect and promote the meaning and purpose of true Democracy which requires meaningful debates and discussions. They improve the understanding and



capability of the elected members and also educate the grass root constituents of Democracy i.e. the voters. Such laudable purpose which is sure to promote larger public good needs to be protected by all the constitutional authorities including courts. Hence, it must be held that the relevant provisions noticed above are mandatory. Whether the notice of meeting called to consider "no confidence motion" has been issued by the elected office bearers or in default by the concerned officials, it must clearly mention the reasons/charges, failure to do so will render the notice and the consequent meeting void. Such clear and purposive provision by text and context should not be made ineffective by holding it directory so as to be violated with impunity. Violation of such a provision cannot be condoned on the ground that somehow the reasons/charges were known to the persons concerned or they did not care to know the



reasons/charges. Allowing such a state of affairs to develop would go against the clear mandate of law and shall run counter to good and basic tenets of Democracy.

14. The arguments advanced on behalf of the respondents that the provisions be treated as directory rest on the ground that such lapses in the notice may be resorted to deliberately only to avoid a valid meeting to consider a valid requisition for no confidence motion. It has been further submitted that for this reason the Legislature has not indicated as to what would be the consequences of non-compliance with such provision. In our considered view this argument and submission has no merits because we are of the clear view that failure of Panchayat Samiti or that of an Adhyaksha of Zila Parishad to issue a proper notice as required by law for considering a requisition for no confidence motion can, in proper circumstances be viewed as a misconduct in



the discharge of his duties in the context of provisions for removal provided under sub-section (4) of Section 44 or sub-section (5) of Section 70 of the Act. In case of deliberate disregard of law noticed above, the Commissioner would be well advised to take action against them. In case of deliberate disregard of such salutary provision by the Executive Officer or the District Magistrate, as the case may be, the higher authorities of the Government or in appropriate cases the Courts will be free to take appropriate action in accordance with law. Only on account of such apprehensions the clear mandate of Legislature cannot be declared, as directory so as to allow its disregard.

15. Both the parties have cited a large number of judgments to assist this court on the issue whether the aforesaid provisions should be treated as directory or mandatory. It was submitted on the basis of judgment of the Supreme Court reported in AIR 1965 SC



895 *(R.B. Sugar Company v. Rampur Municipality)* that use of the word, "shall" may prima facie make a provision appear mandatory but there cannot be any general rule and the issue whether a provision is directory or mandatory depends upon the facts of each case in which the object of the statute plays a determining role. The nature of the provision, its purpose, intention of the Legislature in enacting the provision as well as serious general inconvenience or injustice to persons are some of the relevant considerations in deciding such an issue whether the provision is to be held directory or mandatory. The language of the provision also plays an important role. Besides the aforesaid judgment, a recent judgment of the Supreme Court in the case of *Bachahan Devi v. Nagar Nigam, Gorakhpur*, (2008) 12 SCC 372 was also relied upon to submit that in the present case since the word 'shall' has been used by the Legislature, the provision



should be held to be mandatory which alone will help in achieving the purpose for which it was enacted by the Legislature. Reliance was also placed upon paragraph-101 in the judgment of the Supreme Court in the case of Central Bank of India v. State of Kerala, (2009) 4 SCC 94 to underline and highlight the principle that interpretation is best when textual interpretation matches with the contextual. Again it was submitted that the text and the context of the relevant provisions require the word 'shall' to be treated as mandatory.

16. On the other hand, learned counsel for the respondents pointed out that in the case of P.T. Rajan v. T.P.M. Sahir, AIR 2003 SC 4603, the Supreme Court reiterated that use of the word 'shall' or 'may' is not decisive and that a statute may require a statutory functionary to perform a statutory duty within the time prescribed but still it will be directory because provision which is



procedural in nature, even if it employs the word 'shall' may not be mandatory if no prejudice is caused due to such interpretation. This submission, in the context of statutory provision under consideration cannot be accepted because the provision does not relate to a simple time schedule or to a simple procedural matter. Generally a time schedule or procedural step does not go to the root of a proceeding unless it causes prejudice but a notice for "no confidence" motion and meeting for that purpose cannot be treated as a mere ministerial or procedural act. Mentioning of allegations or charges in such a notice are matters of immense substance on which meaningful and informed debate depends, which is necessary to protect and promote Democracy. On the outcome of such debate may depend the fate of an elected representative. Such matters of significance cannot be treated as matters prescribing



only a procedure. These provisions are substantial provisions and breach of the same would go to the root of the matter and shall vitiate the notice at the threshold as held by the earlier Division Bench in the case of Sindhu Devi (supra): We find no good reasons to take a different view in the context of the Act of 2006 which has made the relevant provisions more stringent and explicit. The requirement to mention the charges in the notice was not deemed sufficient and the Legislature used the word "clearly" before the word "mention" Thus, the text as well as the context requires the provision to be treated as mandatory. We hold accordingly. The learned Single Judges while deciding the case of Bindu Devi (supra) and Nirmala Singh (supra) did not have the occasion to consider the provisions of 2006 Act nor the Division Bench judgment in the case of Sindhu Devi (supra) was brought to its notice. Hence, these judgments



cannot stand in the way of our view which
we have taken above in the context of
provisions of 2006 Act.

(underline by this Court)

37. Recently, in the case of **Jaimitra Devi vs. the State of Bihar & Ors. (CWJC No. 10942 of 2024)** reported in **2024 SCC online 5882**, where the lady is/was the **Chairperson** of the same **Zila Parishad, Saran at Chapra**, this Court in paragraphs 113 to 116 held as follows:

113: Section 70(4) (iv) of 'the Act' is very clear. The reasons/charges on the basis of which a 'No Confidence Motion' is to be moved must be part of the notice of the meeting. The legislature has incorporated the same with the purpose so that each and every member must have first hand knowledge of the charges that have been levelled by the requisitionist to convene the special meeting to discuss and deliberate upon the 'No Confidence Motion'.

114. The counter-affidavit of the Zila Parishad, Saran, Chapra is clear. The original notice issued vide memo no. 473 dated 15.07.2024 issued by the respondent no. 4 did not contain the charges. It was ten days later that vide memo no. 511 dated 25.07.2024, remedial measure were taken.



This Court cannot turn its eyes away from the fact that on the same day (25.07.2024), the matter was heard at length and after noticing that the charges is/are not part of the record, it was adjourned for 29.07.2024 with the direction to the learned counsel for the Zila Parishad, Saran to file counter-affidavit and clarify on this aspect.

115. It was only thereafter, that the respondent no. 4 came out of deep slumber and took remedial measures by issuing memo no. 517 dated 25.07.2024 containing the charges. It was in the aforesaid circumstances that after hearing the learned counsels on 29.07.2024 and going through the reply of the Saran Zila Parishad on this aspect, while reserving the order, this Court stayed the meeting that was to be held on 30.07.2024.

116. The fourth issue is thus decided in favour of the petitioner. In the absence of charges being part of the notice (memo no. 473 dated 15.07.2024), no meeting could have been held on 30.07.2024.”

(F) CONCLUSION:

38. The submissions, facts and the case laws have been



incorporated. In the considered opinion of the Court, any notice bereft of charges and/or vague charge is/are not in line with the Section 70(4)(iv) of 'the Act'. Here the case is worse. The notice dated 29.02.2024 did not contain any charge. In the said background, the petitioner has made out a case. The respondents Zila Parishad, Saran, Chapra has chosen not to answer to the illegality pointed out by the petitioner in the writ petition that subsection (iv) of Section 70(4) of 'the Act' was not followed by the respondent no. 4. In the aforesaid background, the notice dated 29.02.2024 issued by the respondent no. 4 fixing the date as 09.03.2024 to discuss the 'No Confidence Motion' against the petitioner without any reason/charges is held illegal.

39. As the notice dated 29.02.2024 without any charge issued by the respondent no. 4 has been declared an illegal notice, the further development pursuant to the issuance of said notice i.e. the special meeting dated 09.03.2024 where the 'No Confidence Motion' was taken up and declared pass against the petitioner is also held illegal. This Court picks up the observation of the Division Bench in the case of **Sindhu Devi** (supra) and holds that a brute majority in the absence of charges cannot decide the case of the Deputy Chairperson of the Saran Zila Parishad. This is not democracy.

40. Accordingly, both the notice dated 29.02.2024



issued by the respondent no. 4, the Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Saran as also the subsequent special meeting dated 09.03.2024 by which the petitioner was removed from the post of Deputy Chairperson of the said Zila Parishad are hereby quashed. Mr. Ravi Ranjan representing the State Election Commission has informed that no fresh election to the said post of Deputy Chairperson of Saran Zila Parishad has been held.

41. The clock is turned back to 09.03.2024 when the petitioner was holding the post of Deputy Chairperson of the Zila Parishad, Saran, Chapra. She shall assume the post of the Deputy Chairperson of the Saran Zila Parishad forthwith.

42. The writ petition is allowed. No cost.

(Rajiv Roy, J)

Vijay Singh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.09.2024
Transmission Date	

