

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4945 of 2024

1. Lalan Kumar Paswan Son of Bhogi Paswan, resident of village and P.O. Ariyari Got, P.S. Kamtaul, District - Darbhanga, the elected members of Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District - Darbhanga.
2. Aniket Kumar Mishra, son of Sri Murari Mishra, resident of Village-Kachhua, P.O. Chakauti, P.S. Jale, District - Darbhanga, the elected members of Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.

... .. 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, Darbhanga, District - Darbhanga.
4. The District Panchayat Raj Officer, Darbhanga, District - Darbhanga.
5. The Sub-Divisional Magistrate, Darbhanga Sadar District- Darbhanga.
6. The Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, District - Darbhanga.
7. Fulo Baitha, son of not known to the petitioners, Presently Pramukh of Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
8. Abdur Rajik, son of not known to the petitioners, Presently of Up Pramukh of Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District - Darbhanga.
9. Md. Rizwan, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
10. Nutan Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
11. Atima Khatoon, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
12. Ismat Khatoon, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
13. Sheela Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
14. Anchana Kumari, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development



- Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
15. Sanjay Mandal, son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 16. Janki Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 17. Rinki Paswan, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 18. Shahnaz Begum, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
 19. Rizwana Praveen, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
 20. Babita Kumari, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
 21. Sanjay Kumar, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 22. Son Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 23. Bimal Devi, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 24. Md. Dawir, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 25. Sima Kumari, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District-Darbhangha.
 26. Jinat Khatoon, Wife of not known to the petitioners, The elected members of



- Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
27. Bikau Paswan, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
28. Viveka Nand Jha, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
29. Anil Bhandari, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
30. Awadhesh Nayak, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
31. Arun Kumar Mishra, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
32. Annu Jha, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
33. Deepak Kumar Pandit, Son of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.
34. Tahira Khatoon, Wife of not known to the petitioners, The elected members of Block Panchayat Samiti, Jale through the Block Development Officer-cum-Executive Officer, Block Panchayat Samiti, Jale, P.O. and P.S. Jale, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Awnish Kumar, Adv.
For the Res. no. 7 : Mr. Mukund Mohan Jha, Adv.
For the State : Mrs. Shweta Anand, AC to GP-13

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 03-09-2024 Heard Mr. Awnish Kumar, learned counsel for the
petitioner, Mrs. Shweta Anand, learned AC to GP-13, Mr.



Mukund Mohan Jha representing respondent no. 7.

2. The present writ petition has been preferred for the following reliefs:

“(I)(a) for quashing the requisition dated 28.12.2023 submitted by 11 elected members of Block Panchayat Samiti, Jale and addressed to the Pramukh of Block Panchayat Samiti, Jale, whereby and where under the requisitionists had made a grievance from the Pramukh to fix the date of special meeting for consideration of their No Confidence Motion against the Pramukh and Up-Pramukh of Jale Block Panchayat Samiti on the ground that the said requisition is not a valid requisition in law for non-compliance of the provisions contained under Section 44 (3) (iv) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act).

(b) for quashing the letter of Pramukh, Block Panchayat Samiti, Jale, Respondent no.7 dated 28.12.2023 addressed to the Respondent no.6, whereby and where under he was pleased to fix the date of special meeting on 04.01.2024, on the ground that the Pramukh had acted on the basis of requisition which was submitted by his supporter members to frustrate the cause of genuine members, who might have



brought a No Confidence Motion against the Pramukh or the Up-Pramukh whenever they would have found that the Pramukh and Up-Pramukh of the Panchayat Samiti are not working properly and they are misusing their power. The said letter of Respondent no.7 was further bad in law since he had fixed the date of special meeting on 04.01.2024 in violation of the provisions contained under Section 46(4) of the Gram Panchayat Act.

(c) for quashing the notice dated 28.12.2023 issued by the Respondent no.6 and contained in his letter no.1546 dated 28.12.2023, whereby and where under he had informed the Pramukh, the Up-Pramukh and all other elected members of Block Panchayat Samiti and they were requested to attend the special meeting of Block Panchayat Samiti convened on 04.01.2024 for consideration of No Confidence Motion against the Pramukh and Up-Pramukh, on the ground that there was no seven clear days notice as contemplated under Section 46(4) of the Gram Panchayat Act;

(II) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent no.6 to produce on record the proceeding of special meeting dated 04.01.2024 of Block Panchayat Samiti, Jale convened for



consideration of No Confidence Motion against the Respondent nos. 7 and 8 and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI on the ground that the said special meeting was convened by the Pramukh in connivance with requisitionists to get the motion rejected and confirm his position in the Panchayat Samiti for its remained period for which it was constituted in the election dated 27.12.2021;

(III) for a declaration that since the No Confidence Motion brought against the Respondent nos. 7 and 8 was not put to vote in the special meeting dated 04.01.2024 and, therefore, no decision was taken in the meeting with the exercise of secret voting of the members, the bar under Section 44 (3) (ii) would not come in the way of aggrieved elected members of Block Panchayat Samiti if they found that the removal of the Respondent nos. 7 and 8 is need for one reason or the other;

(IV) for issuance of any other appropriate writ/writs, order/ orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case. “

3. Learned counsel for the petitioner straightaway



took this Court to the special meeting that took place on 04.01.2024 to show that out of 29 members, five were present. However, the motion was not put to vote and it was held that the confidence motion is defeated. This relates to Sahaspur Panchayat under Block Jale in the District of Darbhanga.

4. He submits that once the motion was not put to vote in view of the Division Bench judgment of the Patna High Court in Dharamshila Kumari Vs. Hemant Kumar and others reported in 2021 (3) PLJR 346, especially paragraph 117 and 118 will come into picture and there is no bar in fresh requisition.

5. Learned AC to GP-13 as also learned counsel appearing on behalf of the respondent 7 submits that it is not the case of the petitioner that subsequently any requisition has been made.

6. Learned counsel for the petitioner at this point of time provided a copy of the requisition dated 19.08.2024 to show that one-third members have submitted their requisition for holding fresh special meeting to discuss 'No Confidence Motion' against the Pramukh.

7. Let the aforesaid documents provided by learned counsel for the petitioner be kept on record.

8. He submits that the Pramukh vide letter dated



22.07.2024 has cited the pendency of the present case and has further averred that he will be taking decision once the writ petition is disposed of.

9. The Dharamsheela Kumari (supra) judgment, especially Paragraph 117 and 118 read as follows:

117. Having gone through the submissions put to this Court in detail, the Court finds that the allegation of fraud was not established and the Pramukh and the Requisitionists could not have been said to have committed a fraud on the system; the words of Section 44(3)(i) have to be read in conjunction with one another and the majority required to put a motion to vote is from amongst the members of the Samiti present and voting; the logical conclusion of a motion is 'voting upon' the same, and since no vote took place in the meeting dated 10.08.2018, the motion cannot be said to have been 'brought' and consequently, the bar of Section 44(3)(ii) is not attracted.

118. Thus the questions are answered as under:

Issue No.(i):- The provision of Section 44 of the Patna High Court L.P.A No.113 of 2020 dt.28 -06-2021 Bihar Panchayat Raj Act, 2006 is an independent and stand alone Section, a complete code in itself.

Issue No.(ii):- The procedure prescribed under the provisions of Section 46 of the Act for convening a special meeting is neither applicable nor can it be read into for the meeting stipulated



under Section 44 of the Act.

Issue No.(iii):- Under Section 44(3) of the Act majority required to put the motion to vote is amongst the members of the Panchayat Samiti present and voting. No minimum quorum is required for putting the motion of no confidence to vote.

Issue No.(iv):- Section 44(3) of the Act mandates a motion of no confidence to be put to vote by way of a secret ballot.

Issue No.(v):- The impugned action, i.e. resolution dated 10.08.2018 is in fraction of the provisions of the Act and as such is quashed and set aside.

Issue No.(vi):- Section 44 of the Act does not mandate the Requisitionists necessarily to be present in the meeting called to discuss and put to vote the motion of no confidence.

Issue Nos. (vii) & (viii):- In the given facts, Patna High Court L.P.A No.113 of 2020 dt.28 -06-2021 absence of the Requisitionists cannot be said to be an act of fraud with an endeavour of defeating the provisions of the Statue.

Issue No.(ix):- In the absence of the motion being put to vote, the legal bar of moving a fresh motion of no confidence stipulated under Section 44(3)(ii) would not be attracted.

Issue No.(x):- In the attending facts and circumstances, it cannot be said that the acts of



the Executive Officer are deliberate leading to dereliction of duty warranting initiation of an enquiry with regard to his act and conduct.

10. Issue no. 9 is very clear. If the motion has not been put to vote, there is no bar in fresh requisition for holding special meeting under Section 44(3)(ii) of the Bihar Panchayat Raj Act.

11. This Court stops at that. A requisition has already been made following Dharamsheela Kumari (supra) judgment. A decision has to be taken by the ‘Pramukh’ under Section 44(3) (ii) of the Bihar Panchayat Raj Act, 2006.

12. The writ petition stands disposed of with aforesaid observations.

(Rajiv Roy, J)

Vijay Singh/-

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