

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2531 of 2024

Gayatri Devi Alias Gaytri Devi Wife of Sri Prem Ranjan Kumar Resident of Village and P.O.- Parasuram Pur, P.S.- Parsauni, District- Sitamarhi, Presently Pramukh of Prakhand Panchayat Samiti, Block- Parsauni, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The District Panchayat Raj Officer, Sitamarhi.
4. The Sub-Divisional Officer, Sadar Sitamarhi, District- Sitamarhi.
5. The Block Development Officer- cum- Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, District- Sitamarhi.
6. The Block Panchayati Raj Officer, Parsauni, District- Sitamarhi.
7. Smt. Meena Devi wife of not known to the petitioner Presently Up-Pramukh of Prakhand Panchayat Samiti, Block- Parsauni, P.S.- Parsauni, District- Sitamarhi.
8. Ansu Singh Wife of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
9. Anju Devi Wife of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
10. Sajda Khatoon wife of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
11. Kiran Devi wife of Avinash Thakur The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
12. Ram Babu Rai Son of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
13. Ragini Devi wife of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.
14. Babloo Kumar son of not known to the petitioner The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block



Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti,
Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.

15. Kiran Devi wife of Ratnesh Sah The Elected Member of Prakhand Panchayat Samiti, Block- Parsauni through the Block Development Officer-cum-Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, P.O. and P.S.- Parsauni, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Mohan, Advocate
For the Respondent/s : Mr. Gautam Kumar Yadav, AC to GP-26
For Respondent nos. 8, 9
and 11 to 15. : Mr. S.B.K. Mangalam, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

CAV

Date : 10-07-2024

Heard Mr. Rajesh Mohan, learned counsel for the petitioner, Mr. Gautam Kumar Yadav, learned State counsel as also Mr. S.B.K. Mangalam, learned counsel representing respondent nos. 8 and 11 to 15.

2. The petitioner has prayed for the grant of following reliefs:

(i) for issuance of an appropriate writ of Certiorari for quashing the letter no. 129 dated 30.01.2024 issued by the Respondent no.6, the Block Development Officer, Parsauni -cum- Executive Officer, Prakhand Panchayat Samiti, Block- Parsauni, District Sitamarhi, addressed to the



petitioner, whereby and whereunder the elected members of Prakhand Panchayat Samiti on 18.01.2024 requisition to convened the special meeting of Prakhand Panchayat Samiti, Parsauni for consideration of their No Confidence Motion against the petitioner on 13.02.2024;

(ii) For a declaration that if under section 44 (3) (ii) of the Bihar Panchayat Raj Act, 2006 contained a clear mandate for brining a No Confidence Motion against the Pramukh or the Up- Pramukh of the Block Panchayat Samiti, any requisition for brining No Confidence Motion can be moved only once in the whole tenure of Pramukh/Up- Pramukh. The section 44 (3) clearly mentioned the manner prescribed for convene a special meeting to bring a No Confidence Motion and if the



manner prescribed has not been followed for moving such requisition, the requisition is not a valid requisition in the eye of law and no special meeting can be convened in pursuance thereof;

(iii) for issuance of any other order/orders, direction/directions, relief/reliefs for which the petitioner in the facts and circumstances of the case entitled too.

3. The matter relates to Parsauni Block Panchayat Samiti and pursuant to the election held on 31.12.2021, the petitioner was elected as its "Pramukh". She subsequently, assumed office and according to her, started discharging her duty to the complete satisfaction of the people. However, those opposed to her, immediately after passage of two years, gave requisition on 3.1.2024 for her removal. The respondent no. 5 forwarded the same vide his office letter no. 11 dated 4.1.2024 . The petitioner refused to act on the requisition and communicated her decision to the respondent no.6 vide letter dated 08.01.2024. The respondent no. 5, Block Development



Officer cum Executive Officer, Parsauni placed the file before the Up-pramukh who fixed the meeting date as 16.01.2024.

4. The petitioner challenged the requisition dated 03.01.2024 by filing C.W.J.C. No. 751 of 2024 (*Gayatri Devi alias Gaytri Devi vs. the State of Bihar & Ors*). It came to be disposed of on 12.1.2024 and taking note of amongst the other Section 44 and 46 of the Bihar Panchayat Raj Act, 2006 (henceforth for short 'the Act') which according to the Court were not followed, the notice dated 3.1.2024 as also the subsequent intimation fixing the date as 16.01.2024 by the respondent no. 5, the Block Development Officer cum Executive Officer, Parsauni Block, Sitamarhi were quashed.

5. After the quashing of the earlier requisition, on 18.1.2024, fresh requisition addressed to the Pramukh was made by the Panchayat Samiti members detailing out the allegations against both the Pramukh as also the Up-Pramukh(**Annexure-P/5**). This was forwarded by the respondent no.5, Executive Officer cum B.D.O., Parsauni to the petitioner on 19.1.2024.

6. The petitioner incorporated her comments on 25.1.2024 observing that the second no confidence motion in one year cannot be allowed and as such the notice dated 18.1.2024 was rejected.



7. As the Pramukh (the petitioner herein) chose to reject the requisition request, as per 'the Act', it was presented before the Up-Pramukh, who in turn, fixed the date as 13.02.2024. Subsequently, the respondent no.5, the Executive Officer, Panchayat Samiti cum Block Development Officer, Parsauni vide office letter no. 129 dated 30.1.2024 notified 13.2.2024 to be the date for taking up the 'No Confidence Motion' against the petitioner (the Pramukh) as also the Up-Pramukh (**Annexure-P/6**).

8. As the story unfolds, the special meeting for discussion on 'No confidence motion' against the 'Pramukh' and the 'Up-Pramukh' were taken up on 13.2.2024 and six out of ten members of the Panchayat Samiti voted in favour of it. The same were accordingly declared passed against them (**Annexure-R/F to the petition**).

9. The minutes of the proceedings were subsequently sent to the District Magistrate, Sitamarhi as also the District Panchayat Raj Officer, Sitamarhi by the respondent no.5, the Executive Officer cum Block Development Officer, Parsauni vide memo no. 191 dated 13.2.2024 (**Annexure-R/G to the counter affidavit**).

10. The petitioner who in the meantime had moved



this Court by filing the present writ petition challenging the letter no. 129 dated 30.01.2024 did not challenged her removal (on 13.02.2024) by filing any Interlocutory Application.

11. Learned counsel for the petitioner submits that as the earlier request for taking up of the 'No confidence motion' against her on 3.1.2024 was quashed by a bench of this Court, as stated above, the second 'No confidence motion' could not have been taken up for the discussion/voting.

12. Learned counsel for the petitioner took this Court to sections 44 and 46 of 'the Act' in support of the case. Section 44 of 'the Act' read as follows:

44. Resignation and Removal of Pramukh and Up- Pramukh-(1) the Pramukh may resign his office by writing under his hand and addressed to the Subdivisional Magistrate and the Up- Pramukh may resign his office by writing under his hand addressed to the Pramukh and in the absence of Pramukh to the Sub-divisional Magistrate and the said office shall be deemed to be vacant 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 Subdivisional Magistrate or the Pramukh, as the case may be.

(2) a Pramukh or Up- Pramukh shall vacate office if he ceases to be a member of the Panchayat Samiti.

(3) (1) a Pramukh/Up-Pramukh of the Panchayat Samiti 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 elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the



Executive Officer of the Panchayat Samiti, by not less than one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting the Up-Pramukh or one third of the total number of directly elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. 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) no confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure '[such a no confidence motion may brought only once in the whole tenure of Pramukh/Up-Pramukh] [xxx]'

(iii) no confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samin as mentioned in section 39 (1) of this Act.

(iv) such reasons/charges on the basis of which no confidence motion has to be moved against the Pramukh or Up-Pramukh, shall be clearly mentioned in the notice of meeting called to consider the no confidence motion.



(v) as soon as the meeting called under this section begins, the presiding member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it open for discussion Any discussion on the motion shall not be adjourned;

(vi). during discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no confidence motion has been moved for his defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner;

(vii) in case of no confidence motion against a Pramukh, the meeting shall be presided by the Up- Pramukh, in case of motion against Up-Pramukh by the Pramukh and in case of motion



against both Pramukh and Up-Pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting;

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

(4) Without prejudice to the provisions under this Act, if in opinion of the [Government]³ having territorial jurisdiction over the Panchayat Samiti,



a Pramukh or an Up-Pramukh of Panchayat Samiti 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 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 Commissioner may, after giving the Pramikh or Up-Pramukh, as the case may be, a reasonable opportunity for explanation, by order, remove such Pramukh or Up-Pramukh, 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 valid



notification of the State Government, the Government may only pass order of removal of such Pramukh/Up-Pramukh, as the case may be in the light of the enquiry and recommendation of Lok Prahari for the removal]

[The Pramukh or Up-Pramukh 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 selection to any Panchayat bodies in further five years from the date of such removal. The Pramukh or Up-Pramukh so removed on rest of the charges shall not be eligible for re-election as Pramukh or Up-Pramukh during the remaining term of office of such Panchayat Samiti.

(5) A Pramukh or Up- Pramukh removed from his office under subsection (4) may also be removed by the



*Government from membership of the
Panchayat Samiti*

13. Similarly, section 46 of 'the Act' read as follows:

46. Meetings of Panchayat Samiti -

(1) A Panchayat Samiti shall hold a meeting for the transaction of business at least once in two months (hereinafter in this section called the ordinary meeting) and shall subject to the provisions of the following sub-sections, make regulations in conformity with this Act or with any rules made thereunder with respect to the day, hour, notice, management and adjournment of its meetings and generally with respect to the transaction of business thereto.

(2) every meeting of the Panchayat Samiti shall ordinarily be held at the headquarters of the Panchayat Samiti;



(3) the date of the first meeting of the Panchayat Samiti after its constitution shall be fixed by the Sub-divisional Magistrate who shall preside at such meeting and date of each subsequent ordinary meeting shall be fixed at the previous meeting of the Panchayat Samiti:

Provided that the Pramukh may for sufficient reason alter the day of the meeting to a subsequent date. The Pramukh may, whenever he thinks fit and upon the written request of not less than one third of the total number of members and on a date within fifteen days from the receipt of such request shall call a special meeting. Such request shall specify the object for which the meeting is proposed to be called. If the Pramukh fails to call a special meeting, the Up-Pramukh or one-



third of the total number of members may call the special meeting for a day not more than fifteen days after presentation of such request and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting.

(4) Ten clear days' notice of an ordinary meeting and seven clear days' notice of a special meeting specifying the time at which such meeting is to be held and the business to be transacted thereat shall be sent to the members and affixed at the office of the Panchayat Samiti. Such notice shall include in case of a special meeting any motion or proposition mentioned in the written request made for such meeting.



(emphasis supplied)

(5) *Half of the total number of members of the Panchayat Samiti shall form a quorum for transacting business at a meeting of the Panchayat Samiti, If at the time appointed for the meeting a quorum is not present, the person presiding shall wait for one hour and if within such period there is a quorum. proceed with the meeting, but if within such period there is no quorum, the person presiding shall adjourn the meeting to such hour on some future day as he may deem fit. He shall similarly adjourn the meeting at any time after it has begun if his attention is drawn to the want of quorum. At such adjourned meetings, a quorum of at least one fifth of the total number of member shall be required, and the business*



which would have been brought before the original meeting shall be transacted.

(6) Every meeting shall be presided over by the Pramukh or if he is absent by the Up-Pramukh and if both are absent or if the Pramukh is absent and there is no Up-Pramukh the members present shall elect one from among themselves to preside.

(7) All questions shall unless otherwise especially provided, be decided by a majority of votes of the members present and voting. The presiding member, unless he refrains from voting, shall give a vote before declaring the number of votes for and against a question and in case of equality of votes, he may give his casting vote.

(8) No member of a Panchayat Samiti shall vote on, or take part in



the discussion of, any question coming up for consideration at a meeting of the Panchayat Samiti, if the question is one in which, apart from its general application to the public, he has any pecuniary or personal interest and if the person presiding has such an interest, he shall not preside over the meeting when such question comes up for consideration.

(9) If the person presiding is believed by any member present at the meeting to have any such pecuniary or personal interest in any matter under discussion and if a motion to that effect be carried, he shall not preside at the meeting during such discussion or vote on or take part in it. Any member of the Panchayat Samiti may be chosen to preside at the meeting during the continuance



of such discussion.

(10) No proposition shall be discussed at any ordinary meeting unless it has been entered in the notice convening such meeting or in the case of a special meeting in the written request for such meeting. A member may propose any resolution connected with or incidental to the subjects included in the list of business. The Pramukh may propose any urgent subject of a routine nature not included in the list of business if no member objects to it. No permission shall be given in the case of a motion or proposition to modify or cancel any resolution within three months after passing thereof except in accordance with sub-section (12). The order in which any business or proposition shall be brought forward at such meeting shall be determined



by presiding authority who in case it is proposed by any member to give particular proposition shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

(11) Any ordinary meeting may with the consent of a majority of the members present, be adjourned from time to time, but no business shall be transacted at any adjourned meeting other than that left or undisposed at that meeting.

(12) No resolution of Panchayat Samiti shall be modified or cancelled within six months after passing thereof except by a resolution.

(13) The proceeding of every meeting shall be recorded in the minutes book immediately after the deliberations of the meeting and shall, after being read over by the presiding authority



of the meeting, be signed by him. The action taken on the decisions of the Panchayat Samiti shall be reported at the next meeting of the Panchayat Samiti. The minutes book shall always be kept in the office of the Panchayat Samiti. The Executive Officer shall be the custodian of the minute book.

(14) The Panchayat Samiti may require the presence of Government officers at its meeting, If it appears to a Panchayat Samiti that the attendance of any officer of the Government having jurisdiction over an area of a district or part of a district and not working under the Panchayat Samiti is desirable at a meeting of the Panchayat Samiti, the Executive Officer shall by a letter addressed to such officer not less than fifteen days before the intended



meeting request that officer to be present at the meeting and the officer shall, unless prevented by sickness or other reasonable cause, attend the meeting:

Provided that the officer on receipt of such letter may if he for any of the reasons aforesaid is unable to be present thereat himself, instruct his deputy or other competent subordinate officer to represent him at the meeting."

14. Learned counsel for the petitioner wanted this Court to give a re-look to section 44(ii) of 'the Act' which read as follows:

44(ii) No confidence motion against the Pramukh or Up-Pramukh within first two year period of their tenure. Ins. vide Sec. 10 of Amdt. Act 15 of 2015 (w.e.f. 1.1.2016) [such a no confidence motion may be brought only once in the whole tenure of



Pramukh/Up-Pramukh].

15. He as such reiterates that the first requisition having been annulled by the Patna High Court, the second requisition is/are was not maintainable in the teeth of 'the Act' and thus it was rightly rejected by her. In that background, subsequent meeting which took place on 13.2.2024 is not in consonance with 'the Act' and needs interference.

16. In support of her case, learned counsel for the petitioner referred to an order of learned Single Judge in **C.W.J.C. No. 2744 of 2024 (Rekha Devi vs. the State of Bihar)** disposed of on 13.2.2024 to plead that the second no confidence motion is impermissible.

17. Paras 8 to 11 of **Rekha Devi** (supra) order read as follows:

8. This Court is surprised by the understanding of the Block Development Officer-cum-Executive Officer who do not have jurisdiction to differ or object the time fixed by the requisitionists, has himself has found that the period of seven days falls on 13.02.2024. This Court finds no infirmity committed by



*the requisitionists in fixing the date of meeting on 13.02.2024 i.e. today. The petitioner shall have the liberty to either participate in the meeting or he may restrain himself from participating in the meeting. The deliberation in the house has to take place in accordance with the clarification made in paragraphs 58 and 59 of the Division Bench judgment of this Court in case of **Dharamsheela Kumari vs. Hemant Kumar & Ors.** reported in **2021(3) PLJR 346** and without deliberation if any motion is passed against the petitioner the same will be in violation of the observation made in paragraph 62 of the decision in case of **Dharamsheela Kumari (supra)**.*

9. The provision of Section 44 of the Act, 2006 is a complete Code. The action of Executive Officer is deprecated who without jurisdiction has tried to interfere with the date fixed by the requisitionist



and in complete ignorance of the provision of Section 44 has vide Memo No. 112 dated 03.02.2024 and without jurisdiction has fixed the date of special meeting on 13.02.2024, which admittedly has been fixed by the requisitioner on 13.02.2024 in accordance with the provisions of sub-section (1) of Section 44 of the Act, 2006.

10. This Court do not find any violation of provision of Section 44 of the Act, 2006 in fixing the date of meeting.

11. The writ petition is accordingly allowed.

18. Learned counsel for the petitioner further took this Court to a Division Bench order of the High Court in LPA No. 125 of 2021 in **Sangeeta Devi & Anr. vs. the State of Bihar & Ors.** in which on 19.2.2024 taking note of conflicting order passed in the case of **Sarita Kumari Vs. the State of Bihar** (in **LPA No. 940 of 2008**) vis-a-vis **Dharmshela Kumari and others** (Supra) the matter was referred to the full



bench. He submits that taking into account the aforesaid facts, the writ petition is fit to be allowed.

19. Counter affidavits have been filed both on behalf of the respondent no.5 as also the respondent nos. 8 and 11 to 15.

20. The counter affidavit of the respondent no.5, the Block Development Officer cum Executive Officer, Panchayat Samiti, Parsauni read as follows:

(ix). that the file with original Copy of the above mentioned requisition dated 18.01.2024 was sent to the petitioner by the Executive Officer. Panchayat Samiti Cum- Block Development Officer, Parsauni vide letter No.-80, dated 19- 01- 2024 for fixation of date/ time and place for convening Special Meeting for discussion the Point of No Confidence Motion". But such proposal was rejected by petitioner vide her Comment dated 25- 01-2024 written down on the note Sheet page no. 8 of said file;

(x). that thereafter the Concerned file was



put up before the Hon'ble Up Pramukh on 27-01- 2024 and the Hon'ble Up-Prasukh vide her Comment dated 29.01.2024 mentioned on the Page No. 11 of the Note Sheet of the file Concerned, fixed the date as 13.02.2024 for the purpose in question. Accordingly such information was Communicated to all members of Panchayat Samiti, Parsauni by the Executive Officer, Panchayat Samiti-Cum- Block Development Officer, Parsauni vide letter no. 128 to 137, dated 30.01.2024;

(xi) that the Special meeting for discussion upon no Confidence Motion against the Honourable Prasukh (the writ petitioner) and the Honourable Up-Prasukh (Respondent no. 07) was Convened on 13.02.2024;

(xii) that 6 (six) members out of 10 (ten) members of Panchayat Samiti took Part in Special meeting and casted their votes



against both of the Hon'ble Pramukh and Hon'ble Up- Pramukh and thus No Confidence Motion " was passed agaisnt the Hon'ble Pramukh and Hon'ble Up- Pramukh;

(xiii) that the above mentioned proceeding of the Special meeting dated 13.2.2024 was sent to the District Magistrate, Sitamarhi by the Block Development Officer, Parsauni and copy of such letter was sent to the District Panchayat Raj Officer, Sitamarhi vide memo no. 191 dated 13.2.2024.

21. Further, paragraph 5 of the counter affidavit, it was averred that:

"5. That under the facts and circumstances mentioned in Sub-para (i) to (xiii) of and para 5 above it is evident that the previous meeting could not be conducted. The previous meeting was never held at all, as the 'notice itself' for



that meeting was quashed in light of order dated 12.01.2024 C.W.J.c. N. 751/2024. So, the meeting to pass the 'No Confidence Motion' could not be called for and hence the Special Meeting convened on 13.2.2024 in question has been convened in accordance with the provision contained in Section 44(3) of the Bihar Panchayat Raj -Act, 2006. And hence the Writ petition filed by the petitioner is not maintainable.

22. Mr. S.B.K. Mangalam, who in the first round of litigation had battled for the petitioner herein and now represents the respondent nos. 9 and 11 to 15 submits that after the writ petitioner rejected the requisition made by the members, the file was presented before the Up-Pramukh who fixed the date as 13.2.2024.

23. Accordingly, the special meeting took place on 13.2.2024 and the No Confidence Motion was passed against her as also the Up-Pramukh and they were removed from their



respective posts. He further submitted that the said proceeding dated 13.2.2024 has not been challenged by the writ petitioner by filing any Interlocutory Application and as such it has now become final attained finality.

24. He further submits that so far as the case cited by the petitioner is concerned, it has been clearly held in the case of **Dharmsheela Kumari** (supra) that in the absence of motion being put to vote, a fresh motion will not attract section 44(3)(4) of 'the Act'. He thus submits that the writ petition deserves dismissal.

25. Having gone through the facts of the case, the materials available on record and after hearing the parties, this Court takes note of the fact that the earlier requisition request dated 3.1.2024 never moved further inasmuch as even before the meeting could take place on 16.01.2024, it came to be quashed by a bench of this Court on 12.1.2024 in C.W.J.C. No. 751 of 2024 preferred by the petitioner on the ground that it was not requisitioned in accordance with law.

26. In that background, the fresh requisition was made on 18.1.2024 and once the Pramukh (the petitioner herein) refused to fix a date by rejecting it, subsequently, the file went before the Up-Pramukh, who fixed the date as



13.2.2024. In the meeting so held, those present voted in favour of the 'No confidence motion' and both the Pramukh as also the Up-Pramukh were ousted from their respective posts.

27. So far as the claim of the petitioner that this be read as the second no confidence motion which is impermissible under section 74(ii) of 'the Act' is fit to be rejected. It is not the case of the petitioner that the first requisition led to the meeting and discussion on 'No Confidence Motion' and the motion was put to vote and as such the respondents could not have made request for second motion.

28. He submits that on the contrary, the fact remains that the first 'No Confidence Motion' came to an abrupt end after the interference of a bench of this Court and in that background, the fresh requisition cannot be construed to be in the teeth of Section 44(ii) of 'the Act'.

29. So far as the cases cited by the petitioner in **Rekha Devi** (supra) as also **Dharamsheela Kumari** (supra) are concerned, it does not come to her rescue in the facts and circumstances stated above.

30. In **Rekha Devi** (Supra), the writ petition was allowed after holding that when the date was fixed, the Executive Officer had no business to interfere in the matter.



Here, as per 'the Act', once the Pramukh rejected and chose not to fix the date, the file was placed before the Up-Pramukh who fixed the date. Thus **Rekha Devi** (supra) case in no way supports the petitioner's case.

31. In fact, in **Dharamsheela Kumari** (supra), the Division Bench concluded its opinion in paragraphs 117 and 118 and it 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 Bihar Panchayat Raj Act, 2006 is an independent and stand alone Section, a complete code in itself;

Issue No.(ii):-the procedure as, grudge, oblique 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 of 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, absence of the Requisitionists cannot be said to be an act of fraud with an endeavour of defeating the provisions of the Statute;

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)(u) 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.

32. In this case, pursuant to the earlier request having been struck down by Patna High Court, neither any meeting nor voting took place and in this background Issue No. (ix) squarely covers the present case.

33. It is to be noted here that after the reference made to the Full Bench to decide the correct law between **Sarita Kumari** (supra) and **Dharamsheela Kumari** (supra) in the case of **Sangeeta Devi and Others vs. State and Ors.** The Full Bench decided it on 16.5.2024 and reported in **2024 (4) BLJ-1** Paras 39 to 43 held as follows:

39. We do not find any insurmountable



inexactitude in the language used in Section 70(4) of the Act. It does not present before us a situation where some specific tool of interpretation is required to be pitched in and that not doing so would reduce the legislation to futility and render the manifest purpose of the legislation, nugatory.

40. *With utmost deference, we say that in **Sarita Kumari** (supra), perhaps, the entire scheme of Section 70(4) of the Act was not gone into. It has succinctly been explained in **Dharamsheela Kumari** (supra), which dealt with the "no confidence" motion of Pramukh and Up-Pramukh under Chapter-IV, which provision, namely, Section 44(3) is exactly similar to Section 70(4) of the Act.*

41. *We, thus, conclude that for a motion of "no confidence" to be carried out successfully, the requirement is of the*



majority of the members present and voting and not majority of the total of the elected members of the Zila Parishad.

42. We have not referred to the facts of any one of the writ petitions or appeals before us, which shall be decided on the principle enunciated by us.

43. The reference stands answered accordingly.

34. In the aforesaid facts and the orders/judgments, the contention of the petitioner that pursuant to the quashing of the earlier requisition/proposed meeting by the Patna High Court, the subsequent requisition cannot be considered, is bereft of merit and fit to be rejected.

35. A request was made to the petitioner (who was then the Pramukh) to requisition meeting for considering the 'No Confidence Motion' both against the Pramukh as also the Up-Pramukh. She rejected the request, following 'the Act', it was placed subsequently before the 'Up-Pramukh' who fixed the same for 13.2.2024. On the said date, the members in majority after the discussion voted in favour of the motion both



against the Pramukh as also the Up-Pramukh.

36. This Court thus holds that as the first notice is concerned, its never culminated into any meeting and/or resolution for or against the motion. In that background, the no confidence motion that was taken up on 13.2.2024 will be deemed to be the only motion which finally went against the Pramukh (the petitioner herein) as also the Up Pramukh.

37. The Court further holds that the procedure adopted by the authorities in bringing the No confidence motion against the petitioner as also the Up-Pramukh on 13.2.2024 pursuant to the requisition made on 18.01.2024 is/was perfectly justified and in accordance with 'the Act' which needs no interference.

38. The writ petition stands dismissed. The interim order passed on 15.02.2024 is vacated.

(Rajiv Roy, J)

Ravi/-

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