

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2232 of 2024

Yasmin Aash @ Yasmin Parween @ Yasmina Parween Wife of Wazir Alam
Resident of Ward no 8, Haruwatanga Police Station-Dighal Bank, Distirct-
Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar trthough the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, Kishanganj.
3. The Sub Divisional Officer, Kishanganj.
4. The Executive Officer Cum Block Development Officer, Dighal Bank , District-Kishanganj.
5. The State Election Commission through Chief Executive Officer, Bihar, Patna.
6. Vijender Kumar Murmu Son of Kishun Murmu Resident of Naya Banusi Tola, Police Station-Khodabari, District-Kishanganj.
7. Sharwan Kumar Rajbhar Son of Sahdev Rajbhat Resident of Palsa Milik, Police Station-Khodabari, District-Kishanganj.
8. Shiva Devi Wife of Shiv Narayan Yadav Resident of Talgach, Police Station-Khodabari, District-Kishanganj.
9. Dilnaz Begum Wifeof Arhim Resident of Haldavan, Police Station-Dighal Bank, District-Kishanganj.
10. Md. Mifahul Haque Son of Abdul Mannan Resident of Dogirja Satkoha, Police Station-Dighal Bank, District-Kishanganj.
11. Ram Prasad Ganesh Son of Chamu Lal Ganesh Resident of Maltoli, Police Station-Dighal Bank, District-Kishanganj.
12. Bijli Devi Wife of Arun Dev Giri Resident of Mahamari, P.O. Dhantola, Police Station-Dighal Bank, District-Kishanganj.
13. Pankaj Kumar Son of Late Mohan Pandey Resident of Dhantola, Police Station-Dighal Bank, District-Kishanganj.
14. Mishri Lal Das Son of Bhukra Harijan Resident of Karuaamni,P.O. Padampur, Police Station-Dighal Bank, District-Kishanganj.
15. Pramila Devi Wife of Jageshwar Goswami Resident of Mangura, P.O. Mangura, Police Station-Dighal Bank, District-Kishanganj.
16. Ruquaiya Khatoon Wife of Late Najibur Rahman Resident of Jagir Dahibabhat, P.O. Tulsiya, Police Station-Dighal Bank, District-Kishanganj.
17. Yar Mohammad Son of Abdul Wahab Resident of Balubadi, P.O. Kodnobari, Police Station-Kodhobari, District-Kishanganj.
18. Minnat Parveen Wife of Farooque Alam Resident of Patthanghatti, P.O. Kodnobari, Police Station-Kodhobari, District-Kishanganj.
19. Akthari Begum Wife of oAyub Alam Resident of Chakla Ghangada, Police Station-Kodhobari, District-Kishanganj.

- 20. Md. Mushtaque Son of Haji Samiruddin Resident of Chakla Ghangada, Police Station-Kodhobari, District-Kishanganj.
- 21. Maleka Khatoon Wife of Mohsin Ali Resident of Mustafaganj, P.O. Tulsiya, Police Station-Dighal Bank, District-Kishanganj.
- 22. Aama Khatoon Wife of Abdul Latif Resident of Sukandeghi, P.O. Padampur, Police Station-Dighal Bank, District-Kishanganj.
- 23. Mustafa begum Wife of Md. Akhtar Resident of Dogachi, Police Station-Garbhandanga, District-Kishanganj.
- 24. Anjani Begum Wife of Abdul Kalam Resident of Aambadi, P.O. Lohagada Haat, Police Station-Garbhandanga, District-Kishanganj.
- 25. Zafar Hasnain Son of Shamshul Hoda Resident of Tarabadi, Police Station-Garbhandanga, District-Kishanganj.
- 26. Abdul Kaiyum Son of Tauheed Alam Resident of Dakra, P.O. Lohagada Hatt, Police Station-Garbhandanga, District-Kishanganj.
- 27. Ajmat Ali Son of Nizamuddin Resident of Khas Kumhiya, P.O. Lohagada Hatt, Police Station-Garbhandanga, District-Kishanganj.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 2233 of 2024

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Anjri Begum @ Anjari Begam wife of Abul Kalam, resident of Aambadi, P.O. Lohargraha Hatt, Police Station-Garbhadanga, Dist-Kishanganj.

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- 1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
- 2. The District Magistrate, Kishanganj.
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- 10. Md. Miftahul Haque son of Abdul Mannan, resident of Dogirja Satkoha, Police Station- Dighal Bank, District- Kishanganj.
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Bihar Panchayat Raj Act, 2006 (hereinafter the 'Act') – S.157, S.40, S.44

Writ petition – there are two writ petitions being of similar nature are being tried together by common order – Panchayati Raj – challenging the requisition, special meeting of no confidence on ground that the ground that the procedure prescribed under S.44 of the Act have not been followed or corrupt practice adopted by the Pramukh, Up –Pramukh or elected members of the Panchayat Samiti in connivance of the Executive Officer or District Magistrate – within two years of the tenure of Pramukh and Up- Pramukh - by the Act no 'no-confidence motion' can be moved within two years of election – elected members who desire to become Pramukh indulge in 'horse –trading' defeating the democratic process- in this case it appears the executive too at the level of District Magistrate who appears to have knowingly fixed the date of special meeting to be convened on 10/2/2024 – the message as well end of the decision elates to pervasive philosophy of democratic election – special meeting of 'no-confidence motion' as in the present case has been called by any of the elected members at the time on

frivolous ground or taking the notion of statutory provision contained in S.40 of the Act and became successful – the executives who are required by law to discharge their official duties often misuse the powers vested in them, which in turn defeats the very democratic process it is sought to safeguard – time and again the apex court in plethora of cases has reiterated the doctrine of reasonableness may be invoked where the authority is bestowed with the power to take actions based on its opinion-the purpose is to not let unfettered power go unchecked wrecking havoc in the democratic setup- based on mentioned principles of law there has to be some foundation basis provided for any action taken, more so, when such decisions affect the rights of general public, the actions of District Magistrate in the present case if considered in view of facts discussed above order passed by District Magistrate dated 31/01/2024 finds only averment made by the Panchayat Samiti Members and the Block Development Officer regarding the alleged illegality committed during course of special meeting of ‘No Confidence Motion’ on 10/02/2024 – the nature of the powers conferred on the District Magistrate under the Act needs to be scrutinized under the lens of judicial review and to find out the facts and circumstances on the basis of which the authority concerned is alleged to have the opinion – the power under S.157 is to be exercised when the District Magistrate ‘is of the opinion’ that such circumstances as provided for under the section exists and there is need to issue requisite directions in order to ensure compliance with the provisions of the Act – what is required under this Act is the subjective opinion or the satisfaction of the District Magistrate based entirely on his discretion – the provisions of S.44 of the Act don’t give jurisdiction to the District Magistrate to fix a date of special meeting of ‘No Confidence Motion’ under the Act – the Act provides for the manner in which the District Magistrate has to arrive at the decision to hold that there is any infraction of S.44 of the Act,2006 by either dealing the procedural defects or illegally having found in holding of the special meeting – In the above background fixing the date of special meeting on 10/2/2024 lacks justification and reasoning in the impugned order and if such order is allowed to continue it will lead to collapse of the whole democratic setup at Panchayat level – no alternative but to hold actions of District Magistrate to be undemocratic who without jurisdiction had fixed the date of meeting on 10/02/2024 and thereafter he had directed the Pramukh – Digha Bank to hold special meeting on the date fixed by him i.e.,10/02/2024 as contained in Memo No.125 dated 31/01/2024 call for interference as having been passed without jurisdiction is nullity is hereby set aside and quashed – the Chief Secretary, Government of Bihar must hold an urgent meeting with all the District Magistrate and give basic tip to make them aware of S.44 and 70 before exercising power to make them aware of S.44 and 70 before exercising power under S.157 and different provisions of the Act – the Block Development Officers who are the Executive Officers under the Act are held responsible for drawing minutes of meeting in respect of business of the Panchayat Samiti, as well as special meeting of ‘ No Confidence Motion’ Also show complete ignorance and deliberately assume to exercise power illegally rendering the calling of the Special Meeting to be without jurisdiction and authority of law. It is not only the present Block Development Officer who has

shown complete ignorance with respect to the provisions of the Act, especially S.44 and Rule 15 of the Bihar Panchayati Raj Institutions (Conduct of Business) Rules, 2015 – They are the one who has to participate in the meeting being the Executive Officer and has to draw the deliberate which takes place during the course of business of the Panchayat Samiti or with respect to the special meeting – complete ignorance in this regard is also failure on the part of all the Block Development Officers leading to frustrate the mandate of the people – Court not gone into merits of case – leaving it to democratically elected members of the Panchayat Samiti who can better understand the consequences they faced in public interest taking into consideration the mandate of the people – members were well aware of their rights and charges leveled by them against the Pramukh and Up-Pramukh are free to take appropriate action in accordance with law – the writ petition is disposed of – a copy of the order be communicated to learned Advocate General and Chief Secretary of Bihar

Ref: Union Territory of Ladakh v Jammu & Kashmir National Conference, 2023 SCC Online 1140

Bhanumati & Ors v State of Uttar Pradesh & Ors AIR 2010 SC3769

Amrendra Kumar Pandey v Union of India & Ors 2022 Live Law (SC) 600

S.L.Kapoor v Jagmohan (1980) 4 SCC 379

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... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 2232 of 2024)

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate. Mr. Ram Pravesh Nath Tiwari, Advocate.
For SEC	:	Mr. Ravi Ranjan, Advocate. Mr. Girish Pandey, Advocate.
For private respondent No. 7, 8, 11 to 15, 18 to 23, 26 & 27	:	Mr. Amit Shrivastava, Sr. Advocate. Mr. Rajeev Ranjan, Advocate.
For the State	:	Mr. Birendra Prasad Singh, AC to SC-19.

(In Civil Writ Jurisdiction Case No. 2233 of 2024)

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Advocate. Mr. Ram Pravesh Nath Tiwari, Advocate.
For SEC	:	Mr. Ravi Ranjan, Advocate. Mr. Girish Pandey, Advocate.
For private respondent No.	:	Mr. Amit Shrivastava, Sr. Advocate.



7, 8, 11 to 15, 18 to 23, 26 & 27 Mr. Rajeev Ranjan, Advocate.
For the State : Mr. Vijay Kumar Singh, AC to SC-19.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 01-04-2024

The issue involved in both the writ petitions are similar, hence they are being heard together and being disposed of by a common order.

2. Heard Mr. P. N. Shahi, learned senior counsel along with Mr. Ram Pravesh Prasad Singh, learned counsel appearing on behalf of the petitioners; Mr. Ravi Ranjan, learned counsel along with Mr. Girish Pandey, learned counsel appearing on behalf of the State Election Commission; Mr. Amit Shrivastava, learned senior counsel along with Mr. Rajeev Ranjan, learned counsel for the respondent nos. 7, 8, 11 to 15, 18 to 23 and 26 & 27 in both the writ applications and Mr. Birendra Prasad Singh, learned AC to SC-19 for the State in C.W.J.C. No. 2232 of 2024 and Mr. Vijay Kumar Singh, learned AC to SC-18 for the State in C.W.J.C. No. 2233 of 2024.

3. In continuation of the order dated 26.02.2024 and 15.03.2024 and specific direction of this Court, the personal appearance of the District Magistrate, was dispensed with vide order dated 15.03.2024. He was directed by this Court to justify his action and his awareness about the provisions of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as “the Act”), especially the provision of Section 157 of the Act, in exercise of



which, he has passed order contained in Memo No.125 dated 31.01.2024. Both the parties have deprecated the manner in which he has himself fixed the date of special meeting to be convened on 10.02.2024 playing with the democratic process, which led to calling of his action in question in the present writ petition.

4. The Block Development Officer is present in the Court along with the records. He too is not aware of the charges levelled against the petitioners of both the writ petitions, with respect to non-conduct of the business of the Panchayat Samiti, as well as, not holding regular meeting apart from other charges made in the requisition. He has shown his unawareness about the provision of Section 50 of the Act contained in Chapter IV, as well as, provision of Section 43 with respect to the Up-Pramukh. Section 50 of the Act provides for Standing Committees and there are seven such committees headed by the Pramukh. The Up-Pramukh is the Chairman of the Social Justice Committee. Section 43 of the Act deals with the power, functions and duties of the Up-Pramukh. The Block Development Officer has also shown his unawareness with respect to the Bihar Panchayat Raj Institutions (Conduct of Business) Rules, 2015 (hereinafter referred to as “the Rules, 2015). It is not only the present Block Development Officer and the District Magistrate are in complete ignorance of the



provision of the Act and the manner in which the business of the Panchayat Samiti has to be convened or at the level of Zila Prishad and the Municipal Corporation.

5. This Court has been loaded with writ petitions challenging the requisition, special meeting of no confidence on the ground that the procedure prescribed under the Section 44 of the Act, 2006 have not been followed or corrupt practice adopted by the Pramukh, Up-Pramukh or the elected members of the Panchayat Samiti in connivance of the Executive Officer or the District Magistrate as the case may be, being filed each day just after the completion of two years of the tenure of Pramukh and the Up-Pramukh.

6. The mandate of Section 44 of the Act provides that within first two years period of the tenure of Pramukh and Up-Pramukh, 'No Confidence Motion' cannot be moved and overwhelmed with the said provision, the elected members who desire to become Pramukh or Up-Pramukh indulge in mass 'horse trading' defeating the democratic process and in the present case it appears that the executive too at the level of the District Magistrate, who appears to have knowingly fixed the date of special meeting to be convened on 10.02.2024. The Apex Court recently in **Union Territory of Ladakh v. Jammu & Kashmir National Conference, 2023 SCC OnLine SC 1140.**



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

(emphasis supplied)

7. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which **Sir Winston Churchill** vivified in matchless words :

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

8. In the State of Bihar, it appears that the special meeting of ‘No Confidence Motion’ as in the present case has been called by any of the elected members at times on frivolous ground or taking the notion of statutory provision contained in specially Section 40 of the Act and became successful.

9. The paramount concern of this Court is that the Executives who are required to act by the law in discharge of their administrative and quasi judicial duties, often misuse the



powers so vested in them, which in turn defeats the very democratic process it sought to safeguard. In the case of **Bhanumati & Ors. Vs. State of Uttar Pradesh and Ors.** reported in **AIR 2010 SC 3796**, following paragraphs would be gainful to quote:

“58. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India.”

10. Time and again the Apex Court in plethora of cases has reiterated that doctrine of reasonableness may be invoked where the authority is bestowed with the power to take actions based on its opinion. The purpose is to not let unfettered power go unchecked wrecking havoc in the democratic setup. In Hon'ble Supreme Court in **Amarendra Kumar Pandey Versus Union Of India & Ors** reported in **2022 LiveLaw (SC) 600**, has observed as follows:-

“28. Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as ‘is satisfied’ or ‘is of the opinion’ or ‘if it has reason to believe’ or ‘if it considered necessary’, the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.
29. The action based on the subjective opinion or



satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.

30. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See *Director of Public Prosecutions v. Head*, (1959) AC 83 (Lord Denning).]

31. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. [See *Reg. v. Governor of Brixton Prison, Armah, Ex Parte*, (1966) 3 WLR 828 at p. 841].

32. It is in such a case that it is said that the authority would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion is drawn when opinion is based on irrelevant matter. [See *Rasbihari v. State of Orissa*, AIR 1969 SC 1081].

33. In the case of *Rohtas Industries Ltd. v. S.D. Agarwal and another*, AIR 1969 SC 707, it was held that the existence of circumstances is a condition precedent to form an opinion by the Government. The same view was earlier expressed in the case of *Barium Chemicals Ltd. and another v. Company Law Board and others*, AIR 1967 SC 295.

34. Secondly, the court can inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. [See *Bean v. Doncaster Amalgamated Collieries*, (1944) 2 All ER 279 at p. 284]. Thus, this Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court. [See *Farmer v. Cotton's Trustees*, 1915 AC 922].



Their Lordships observed: “..... in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only.”[See also *Muthu Gounder v. Government of Madras*, (1969) 82 Mad LW 1].

35. Thirdly, this Court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The Courts have always equated the jurisdictional review with the review for error of law and have shown their readiness to quash an order if the meaning of the constitutional or statutory term has been misconstrued or misapplied. [See *Iveagh (Earl of) v. Minister of Housing and Local Govt.*, (1962) 2 QB 147; *Iveagh (Earl of) v. Minister of Housing and Local Govt.* (1964) 1 AB 395].

36. Fourthly, it is permissible to interfere in a case where the power is exercised for improper purpose. If a power granted for one purpose is exercised for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised genuinely for the purpose of taking immediate action but has been used only to avoid embarrassment or wreck personal vengeance, then the power will be deemed to have been exercised improperly. [See *Natesa Asari v. State of Madras*, AIR 1954 Mad 481].

37. Fifthly, the grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. In this connection, reference may be made to *Ram Manohar v. State of Bihar*, AIR 1966 SC 740; *Dwarka Das v. State of J. and K.*, AIR 1957 SC 164 at p.168 and *Motilall v. State of Bihar*, AIR 1968 SC 1509. On the same principle, the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong question: [See (1967) 1 AC 13]” (emphasis supplied)

11. The Apex Court in the case of **S.L. Kapoor v.**

Jagmohan, (1980) 4 SCC 379, has made following observations:-

“ 7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of “administrative action”. Now, from the time of the decision of this Court in *State of Orissa v. Dr (Miss) Binapani Dei* [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] “even an administrative order which involves civil consequences . . . must be made consistently with the rules of natural justice”. What are civil consequences? The question was posed and answered by this Court in *Mohinder Singh Gill v. Chief*



Election Commissioner, New Delhi [(1978) 1 SCC 405, 440, 441 : (1978) 2 SCR 272, 308-309] Krishna Iyer, J., speaking for the Constitution Bench said (at pp. 308-09): (SCC p. 440, para 66)

“But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? ‘Civil consequences’ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

The learned Judge then proceeded to quote from Black's Legal Dictionary and to consider the interest of a candidate at a parliamentary election. He finally said: (SCC p. 441, para 66)

“The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import.”

12. Based on the above principles of law, there has to be some foundational basis provided for any action taken, more so, when such decisions affect the rights of the general public, the action of the District Magistrate in the present case, if considered in view of the facts discussed hereinabove, I find that the order passed by the District Magistrate dated 31.01.2024 as contained in Annexure- 1 finds only enumeration or the contentions of the parties and the averments made by the Panchayat Samiti Members and the Block Development Officer, regarding the alleged illegality committed during the course of special meeting of ‘No Confidence Motion’ against the petitioner on 13.01.2024. No reasons have been assigned by the District Magistrate before he has arrived to direct the Pramukh to hold special meeting of ‘No Confidence Motion’ on



10.02.2024.

13. The nature of the power conferred on the District Magistrate under Section 157 of the Act needs to be scrutinized under the lens of judicial review to find out the existence of the facts and circumstances on the basis of which the authority concerned is alleged to have formed the opinion. For convenience, the provision of the aforementioned section is reproduced hereinbelow:-

“157. Power of the District Magistrate with regard to conduct of special meetings called to consider no confidence motion — If the District Magistrate suo motu or upon information being received from any source, is of the opinion that any irregularity or mistake is being committed so far as provisions related to conduct of any special meeting of a Panchayat to consider a no confidence motion is concerned, he shall have the power to issue such directions as considered necessary for complying with the provisions of the Act in that regard. He may also depute any officer to be present in such a meeting and to call for a report from such officer.”

14. Prima facie, it appears that the power under Section 157 is to be exercised when the District Magistrate ‘is of the opinion’ that such circumstances as provided for under the section exist and there is need to issue requisite directions in order to ensure compliance with the provisions of the Act. What is required under this section is the subjective opinion or satisfaction of the District Magistrate based entirely on his discretion.

15. It is apt to reproduce the provisions contained



in Section 44 of the Act, 2006.

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 Subdivisional 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) (i) *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 be brought only once in the whole tenure of Pramukh / Up-Pramukh).*

(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 Samiti 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 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 (Disobedience of order of an authority established by law) 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 Pramukh 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 a 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 inquiry 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 election to any Panchayat bodies till 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 sub-section (4) may also be removed by the Government from membership of the Panchayat Samiti."

16. The provisions of Section 44 of the Act don't give jurisdiction to the District Magistrate to fix a date of special meeting of 'No Confidence Motion' under the Act. The



provision of Section 157 of the Act provides for the manner in which the District Magistrate has to arrive at the decision to hold that there is any infraction of Section 44 of the Act, 2006 by either dealing the procedural defects or illegality having found in holding of the special meeting.

17. In the above background, fixing the date of special meeting on 10.02.2024 lacks justification and reasoning in the impugned order and if such order is allowed to continue, it will lead to collapse of the whole democratic setup at Panchayat level.

18. This Court has no alternative than to hold the action of the District Magistrate to be undemocratic who without jurisdiction had fixed the date of meeting on 10.02.2024 and thereafter he had directed the Pramukh – Dighal Bank to hold the special meeting on the date fixed by him i.e. 10.02.2024, as contained in Memo No. 125 dated 31.01.2024 call for interference as having been passed without jurisdiction is a nullity is hereby set aside and quashed.

19. The Chief Secretary, Government of Bihar must hold an urgent meeting with all the District Magistrates and give basic tip to make them aware of Sections 44 and 70 before exercising power under Section 157 and different provisions of the Act.



20. The Block Development Officers, who are the Executive Officers under the Act and are held responsible for drawing minutes of meeting in respect of the business of the Panchayat Samiti, as well as, special meeting of 'No Confidence Motion' also show complete ignorance and deliberately assume to exercise power illegally rendering the calling of the Special Meeting to be without jurisdiction and authority of law. It is not only the present Block Development Officer who has shown his complete ignorance with respect to the provision of the Act, especially, Section 44 and Rule 15 of the Bihar Panchayat Raj Institutions (Conduct of Business) Rules, 2015. They are the one who has to participate in the meeting being the Executive Officer and has to draw the deliberation which takes place during the course of business of the Panchayat Samiti or with respect to the special meeting. Complete ignorance in this regard is also failure on the part of all the Block Development Officers leading to frustrate the mandate of the people.

21. This Court has not gone into the merits of the case of the either parties leaving it open to the democratically elected members of the Panchayat Samiti who can better understand the consequences they have faced in public interest taking into consideration the mandate of the people.

22. Mr. Amit Shrivastava, learned senior counsel has shown his concern that as a consequence of quashing of the



order dated 31.01.2024 contained in Memo No. 125, the elected members are well aware of their right and charges levelled by them against the Pramukh and Up-Pramukh are free to take appropriate action in accordance with law.

23. The writ petition, accordingly, stands disposed of.

24. Let a copy of this order be communicated to the learned Advocate General as well as the Chief Secretary, Government of Bihar.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	18.04.2024
Transmission Date	N.A.

