

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12087 of 2024**

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1. Yasmin Aash alias Yasmin Parween alias Yasmina Parween Wife of Md. Wazir Alam, resident of Ward No. 8, Haruwatanga, Police Station Dighal Bank, District - Kishanganj.
2. Anjri Begum alias Anjari Begam, Wife of Abdul Kalam, resident of Aambadi, Post Office Lahagraha Hatt, Police Station Garbhadanga, District - Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through 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. Shrawan Kumar Rajbhar Son of Sahdev Rajbhar, 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, wife of Arhim, resident of Haldavan, Police Station Dighal Bank, District Kishanganj.
10. Md. Miftahul 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, Post Office 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, Post Office Padampur, Police Station Dighal Bank, District Kishanganj.
15. Pamila Devi, Wife of Jageshwar Goswami, resident of Mangura, Post Office Manguara, Police Station Dighal Bank, District Kishanganj.
16. Ruquaiya Khaton, Wife of Late Najibur Rahman, resident of Jagir Dahibabhat, Post Office Tulsiya, Police Station Dighal Bank, District Kishanganj.
17. Yar Mohammad, Son of Abdul Wahab, resident of Balubadi, Post Office



- Kodnobari, Police Station Khodabari, District Kishanganj.
18. Minnat Parveen, Wife of Farooque Alam, resident of Pathanghatti, Post Office Kodnobari, Police Station Khodabari, District Kishanganj.
  19. Akhari Begum, Wife of Aub Alam, resident of Chakla Ghangada, Police Station Khodabari, District Kishanganj.
  20. Md. Mushtaque, Son of Haji Samiruddin, resident of Chakla Ghangada, Police Station Khodabari, District Kishanganj.
  21. Maleka Khatoon, Wife of Mohsin Ali, resident of Mustafaganj, Post Office Tulsiya, Police Station Dighal Bank, District Kishanganj.
  22. Aama Khatoon, Wife of Abdul Latif, resident of Sukandeghi, Post Office Padampur, Police Station Dighal Bank, District Kishanganj.
  23. Mustafi Begum, Wife of Md. Akhtar, resident of Dogachi, Police Station Garbhandanga, District Kishanganj.
  24. Zafar Hasnain Son of Shamshul Hoda, resident of Tarbadi, Police Station Garbhandanga, District Kishanganj.
  25. Abdul Kaiyum, Son of Tauheed Alam, resident of Dakra, Post Office Lohagada Hatt, Police Station Garbhandanga, District Kishanganj.
  26. Ajmat Ali, Son of Nizamuddin, resident of Khas Kumhiya Post Office Lohangada Hatt, Police Station Garbhandanga, District - Kishanganj.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 9077 of 2024**

1. Md. Mushtaque Son of Haji Samiruddin @ Samiruddin Resident of Chakla Dhangarha, Police Station- Kodhobari, District- Kishanganj.
2. Sharvan Kumar @ Sharvan Kumar Rajbhar, Son of Sahdev Rajbhar Resident of Durga pur, Police Station- Kodhobari, District- Kishanganj.
3. Shiva Devi, Wife of Shiv Narayan Yadav Resident of Talgachh, Police Station Kodhobari, District- Kishanganj.
4. Ram Prasad Ganesh, Son of Chamu Lal Ganesh Resident of Maltoli, Police Station- Dighal Bank, District- Kishanganj.
5. Bijli Devi, Wife of Arun Dev Giri Resident of Mohomari Giri Tola, Police Station- Dighal Bank, District- Kishanganj.
6. Pankaj Kumar, Son of Late Mohan Prasad Pandey, Resident of Dhantola, Police Station- Dighal Bank, District- Kishanganj.
7. Mishri Lal Das, Son of Bhukra Harijan Resident of Karuaamni, P.O. Padampur, Police Station- Dighal Bank, District- Kishanganj.
8. Pramila Devi, Wife of Jageshwar Goswami, Resident of Mangura, P.O. Mangura, Police Station- Dighal Bank, District- Kishanganj.
9. Minnat Parveen, Wife of Farooque Alam Resident of Pattharghatti, P.O.- Kodhobari, Police Station- Kodhobari, District- Kishanganj.
10. Akhtari Begum, Wife of Ayub Alam Resident of Chakla Dhangadha, Police



Station- Kodhobari, District- Kishanganj.

11. Maleka Khatoon, Wife of Mojibur Rahman, Resident of Naya Basti Kumhar Toli, P.O. Tulsiya, Police Station- Dighal Bank, District- Kishanganj.
12. Aasma Khatoon, Wife of Abdul Latif, Resident of Sukandidhi, Police Station- Dighal Bank, District- Kishanganj.
13. Mustafi Begum, Wife of Md. Akhtar Rahi, Resident of Dogachhi, Police Station- Garbhandanga, District- Kishanganj.
14. Abdul Kaiyum, Son of Tauheed Alam Resident of Iakra, P.O. Lohagada Hatt, Police Station- Garbhandanga, District- Kishanganj.
15. Ajmat Ali, Son of Nizamuddin Resident of Kumhiya Ikra, Police Station- Garbhandanga, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, Kishanganj.
3. The Sub Divisional Officer, Kishanganj.
4. The Special Officer, Panchayati Raj Department, Government of Bihar, Patna.
5. The Executive Officer Cum Block Development Officer, Dighal Bank, District- Kishanganj.
6. Kishore Kunal, Son of Late Prithwi Chand Singh, Resident of Professor Colony, Forbesganj, P.S. Forbesganj, District- Araria, at present posted as Block Development Officer, Dighal Bank, District- Kishanganj.
7. Yasmin Aash @ Yasmin Parween @ Yasmina Parween Wife of Wazir Alam Resident of Ward no 8, Haruwatanga Police Station- Dighal Bank, District- Kishanganj, at present Pramukh, Dighal Bank Panchayat Samiti, District- Kishanganj.
8. Vijendra Kumar Murmu Son of Kishun Murmu Resident of Naya Banusi Tola, Police Station- Khodabari, District- Kishanganj.
9. Dilnaz Begum Wife of Abdul Rahim, Resident of Haldavan, Police Station- Dighal Bank, District- Kishanganj.
10. Md. Miftabhul Haque, Son of Abdul Mannan Resident of Dogirja Satkoha, Police Station- Dighal Bank, District- Kishanganj.
11. Ruquaiya Khatoon Wife of Late Najibur Rahman Resident of Jagir Dahibabhat P.O. Tulsiya, Police Station- Dighal Bank, District- Kishanganj.
12. Yar Mohammad Son of Abdul Wahab Resident of Balubadi, P.O. Kodnobari, Police Station- Kodhobari, District- Kishanganj.
13. Anjari Begum, Wife of Abdul Kalam Resident of Aambadi, P.O. Lohagada Haat, Police Station- Garbhandanga, District- Kishanganj, at present Up- Pramukh, Dighal Bank Panchayat Samiti, District- Kishanganj.
14. Zafar Hasnain, Son of Shamshul Hoda Resident of Tarabadi, Police Station- Garbhandanga, District- Kishanganj.



... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No. 12087 of 2024)

For the Petitioner/s : Mr. Lalit Kishore, Sr. Advocate  
Mr. Ayush Kumar, Advocate  
Mr. Khishka Shankar, Advocate  
Mr. Ram Pravesh Nath Tiwari, Advocate  
For SEC : Mr. Ravi Ranjan, Advocate  
Mr. Girish Pandey, Advocate  
For the Respondent/s : Mr. Najeeb Ahmad Khan, Advocate  
(In Civil Writ Jurisdiction Case No. 9077 of 2024)  
For the Petitioner/s : Mr. Amit Srivastava, Sr. Advocate  
Mr. Rajeew Ranjan, Advocate  
For the Respondent/s : Mr. P.N. Shahi, Sr. Advocate  
Mr. Najeeb Ahmad Khan, Advocate  
Mr. Anil Kumar Singh, G.P.- 26  
Mr. Gautam Kumar Yadav, AC to GP-26

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

**CAV JUDGMENT**

**Date : 10-09-2024**

Heard Mr. Lalit Kishore, learned Senior Counsel for the petitioners (in **CWJC No. 12087 of 2024**) while Mr. Amit Srivastava, learned Senior Counsel is representing petitioner, Mr. Pushkar Narain Shahi for respondent nos. 7 and 13 (in **CWJC No. 9077 of 2024**) duly assisted by Mr. Ansul, Mr. Gautam Kumar Yadav, learned AC to GP-26 and Mr. Ravi Ranjan/Mr. Girish Pandey, learned counsel for the State Election Commission.

**(A) PRAYER:**

2. The writ petition has been preferred by **Yasmin Aash @ Yasmin Parween @ Yasmina Parween and Anjari Begum (CWJC No. 12087 of 2024)** for the following reliefs:



*(i) for issuance of an appropriate writ/writs in the nature of writ of certiorari for quashing the letter dated 25.07.2024 issued vide Respondent No. Letter 1 5674 No. by whereby the said respondent has directed the Respondent No. 2 to ensure holding of 'No Confidence Motion' against the petitioners in view of the requisition submitted before Petitioner No. 1 for holding special meeting for 'No Confidence Motion';*

*(ii) for quashing of Office Order issued by Memo No. 891 dated 05.08.2024 issued by Respondent No. 2 (District Magistrate, Kishanganj) whereby the said respondent has directed the Petitioner No. 1 to hold special meeting for discussion on 'No Confidence Motion' brought against Petitioner No. 1 by some of the*



*Private Respondents by an earlier requisition dated 02.05.2024 presented by them;*

*(iii) for further writ/writs to respondents, restraining them the from directing the petitioners to hold special meeting for 'No Confidence Motion' till the disposal of C.W.J.C. No. 9077 of 2024 (Md. Mustae and others versus the State of Bihar and others) which had been filed by the Private Respondents in which the issue involved is absolutely identical and the same is pending before the Hon'ble Court for adjudication, in which notices have been issued to Private Respondents and direction has been issued to file Counter Affidavit;*

*(iv) for any other relief/reliefs to which the petitioner is found entitled to in the facts and circumstances of*



*the case.*

3. The reliefs sought for by **Md. Mushtaque and Others (CWJC No. 9077 of 2024)** read as follows:

*(i) for issuance of an appropriate writ in the nature of CERTIORARI or such other writ/order or direction, for quashing the Letter No. 443 dated 29.05.2024 issued by the Block Development Officer-cum-Executive Officer, Panchayat Samiti, Dighal Bank, whereby and where under he in a completely illegal and untenable manner; in colorable exercise of power; and, in teeth of Section-44 (3)(i) of the Bihar Panchayat Raj Act, 2006 and also in utter disregard of the judgment of Hon'ble Division Bench in LPA No. 113/2020, since reported in PLJR 2021 (3) 346 and the Hon'ble Full Bench judgment in LPA No. 125/2024 dated*



*16.05.2024, he has refused to issue notices to elected members of Panchayat Samiti Dighal Bank for the Special Meeting which was to be held on 07.06.2024 as fixed by the petitioners under section 44(3)(i) of Bihar Panchayat Raj Act, 2006; (ii) for issuance of an appropriate writ in the nature of CERTIORARI or such other writ/order or direction, for quashing the Letter No. 424 dated 16.05.2024 issued by the Block Development Officer-cum-Executive Officer, Panchayat Samiti, Dighal Bank, by which he has communicated the decision of the Pramukh, Panchayat Samiti, Dighal Bank whereby and where under she has in a completely illegal and untenable manner, in colorable exercise of power, and, in teeth of Section-44 (3)(i) of the*





*Bihar Panchayat Raj Act, 2006 and also in utter disregard of the judgment of Hon'ble Division Bench in LPA No.. 113/2020, since reported in PLJR 2021 (3) 346 rejected Meeting of the Panchayat Samiti, Dighal Bank to consider the requisition of the petitioners dated 02.05.2024 which was submitted to her by Registered Speed Post for consideration of No Confidence Motion against her more particularly in view of the observations of the Hon'ble High Court as contained in paragraph no. 22 of the oral judgment dated 01.04.2024 passed in CWJC No. 2232/2024 and CWJC No. 2233/2024;*

*(iii) for issuance of an appropriate writ in the nature of CERTIORARI or such other writ/order or*



*direction, for quashing the Memo No. 25 dated 13.01.2024 which contains the minutes of the alleged no confidence meeting held on 13.01.2024 issued by the Block Development Officer-cum-Executive Officer, Panchayat Samiti, Dighal Bank, whereby and where under he has illegally and unlawfully recorded that the no confidence motion brought against the Pramukh and Up-Pramukh, Panchayat Samiti, Dighal Bank stands rejected and the Pramukh and Up-Pramukh, Panchayat Samiti, Dighal Bank shall continue on their respective posts in view of Letter No.5743/ पं०रा० dated 11.10.2018 issued by Special Officer, Panchayati Raj Department, Bihar, Patna as the said Memo is in teeth of the law*



*laid down by Hon'ble Division Bench in LPA No. 113/2020, since reported in PLJR 2021 (3) 346;*

*(iv) for issuance of an appropriate writ in the nature of CERTIORARI or such other writ/order or direction, for quashing the Letter No. 5743/ पं०रा० dated 11.10.2018 issued by Special Officer, Panchayati Raj Department, Bihar, Patna as the said letter is in teeth of the provisions of Section-44(3) (v) and (vi) of the Bihar Panchayati Raj Act, 2006 and also in teeth of the law laid down by Hon'ble Division Bench in LPA No. 113/2020 since reported in 2021(3) PLJR 346 and the Hon'ble Full Bench judgment dated 16.05.2024 passed in LPA No. 125/2024;*

*(v) for issuance of a writ in the nature of Mandamus or such other*



*writ/order or direction commanding the Respondent No. 5 to forthwith fix the date of Special Meeting of the Panchayat Samiti, Dighal Bank to consider the requisition dated 02.05.2024 submitted by the petitioners consideration of the No Confidence Motion against the Pramukh and Up-Pramukh of the Panchayat Samiti, Dighal Bank;*

*(vi) for issuance of a writ in the nature of Mandamus or such other writ/order or direction commanding the Respondent No. 1 to take appropriate departmental action against the Respondent No. 5 for his blatant defiance of law with the malafide and oblique intention to help and aid the Respondent Nos. 7 and 13 to illegally continue on their posts;*



*(vii) for grant of such other relief/reliefs to which the petitioners are otherwise entitled in law.*

**(B) PETITIONERS' CASE:- (in C.W.J.C. No. 12087 of 2024)**

4. The Petitioner Nos. 1 and 2 are duly elected '**Pramukh**' and '**Up-Pramukh**' respectively of the **Panchayat Samiti, DighalBank, Kishanganj** who are/were discharging their duties and responsibilities as mandated under the **Bihar Panchayati Raj Act, 2006** (henceforth for short '**the Act**') while the Respondent Nos. 6 to 26 are duly elected members of the said Panchayat Samiti.

5. The brief facts giving rise to the present writ application is that on **30.12.2023**, nine Panchayat Samiti members presented a requisition to the petitioner no. 1 with a copy to Respondent No. 4 asking her to convene special meeting for the purpose of '**No Confidence Motion**' against them alleging charges.

6. The file was accordingly presented before the petitioner No. 1 by the **Respondent No. 4, the Executive Officer cum Block Development Officer, Dighalbank** for approval on **01.01.2024**. She thereafter fixed **13.01.2024** as the date for holding the special meeting to discuss the '**No Confidence Motion**' and further gave direction to the respondent no. 4 to issue notices upon the Panchayat Samiti Members



regarding it. Accordingly, notices were issued by the respondent no.4 to all the members of the Panchayat Samiti (the Respondent Nos. 6 to 26).

7. On **13.01.2024**, when the special meeting convened, no Panchayat Samiti member attended it. Accordingly, the respondent no.4 after waiting for the members finally completed the formalities and declared that in absence of any of the member attending the meeting, the 'No Confidence Motion' stands failed/rejected.

8. It later came to notice that a writ petition had already been preferred against the decision fixing the date by some Panchayat Samiti members, including **Md. Mushtaque** (respondent no.20), **Akhtari Begum** (Respondent No. 19) alongwith **Maleka Khatoon** (Respondent No. 21) vide **C.W.J.C. No. 1067 of 2024**.

9. Though, during the pendency of the said writ petition, the 'No Confidence Motion'/special meeting had already taken place on 13.01.2024, this fact was not presented before the Court when the case was taken up on. Accordingly, on the submissions made on the behalf of the petitioners, the Court was pleased to direct the **respondent District Magistrate, Kishanganj** (Respondent No. 2) to pass a reasoned



order after providing due opportunity of hearing to all the parties in exercise of power vested to him under **section 157 of 'the Act'**. The writ petition was thus disposed of on **25.01.2024**.

10. The Respondent No. 2, the District Magistrate, Kishanganj thereafter took up the matter where Panchayat Samiti Members alleged that the Respondent No. 4, the Block Development Officer cum Executive Officer, Dighal Bank did not allowed the special meeting to take place on 13.01.2024 on the ground that the required quorum for the presence of the Panchayat Samiti members is not complete.

11. The Respondent No. 4 however, filed his report before the Respondent No. 2 stating therein that on 13.01.2024, i.e. on the date fixed for special meeting, no Panchayat Samiti member came there and/or presented himself/herself to attend the special meeting and as such it was declared failed.

12. The Respondent No. 2 after hearing all the parties vide an order dated **31.01.2024** gave directions for holding of special meeting to discuss the 'No Confidence Motion' against the petitioners again on **10.02.2024**.

13. Aggrieved by the said decision of the respondent District Magistrate, Kishanganj; two writ petitions came to filed by the **petitioner nos. 1 and 2** vide **C.W.J.C. No.**



**2232 of 2024** and **C.W.J.C. No. 2233 of 2024** respectively.

14. The coordinate bench heard the two writ petitions and vide an order dated **01.04.2024** quashed the order dated **31.01.2024** passed by the respondent District Magistrate, Kishanganj. The Court further incorporated the contention of the respondents that the elected members are well aware of their rights as also the charges levelled by them against the 'Pramukh' and 'Up-Pramukh'.

15. The elected members thereafter once again preferred requisition on **02.05.2024** before the petitioner no. 1 requesting her to convene special meeting to discuss the 'No Confidence Motion' against the petitioners. This was rejected by the petitioner no. 1 and communicated by the respondent no.4 vide memo no. 424 dated **16.05.2024**.

16. Thereafter, the 1/3rd elected members on **24.05.2024** fixed the date of the special meeting for **07.06.2024**. However, the respondent no.4 vide **letter No. 443** dated **29.05.2024** passed an order holding that the first 'No Confidence Motion' brought against the petitioners having failed/rejected on 13.01.2024, the second 'No Confidence Motion' could not be brought against them under **section 44(3)(ii) of 'the Act'**.

17. It was now the turn of respondents Panchayat





Samiti members to prefer **C.W.J.C. No. 9077 of 2024 (Md. Mustaque and others versus the State of Bihar and others)** with the prayer to quash the decision communicated by the respondent no.4 as also to fix the date of special meeting of Panchayat Samiti, Dighal Bank for considering the requisition dated 02.05.2024 submitted by them to discuss the 'No Confidence Motion' against the 'Pramukh' and 'Up-Pramukh'.

18. The writ petition (**CWJC No. 9077 of 2024**) was heard on **21.06.2024** by a coordinate bench wherein notices were issued to the respondents while directing the State respondents to file Counter Affidavit within two weeks. Since the learned counsel for the 'Pramukh' and 'Up-Pramukh' suo motu appeared in the said writ petition, they were also directed to file Counter Affidavits. It was further observed that any decision taken by the Committee shall be subject to the final outcome of the writ application.

19. It was again taken up by this Court on **15.07.2024** and adjourned with a direction to the respondent State to comply the order dated 21.06.2024 by filing reply.

20. The contention of the petitioners (**of CWJC No. 12087 of 2024**) is that during the pendency of the **C.W.J.C. No. 9077 of 2024**, the respondent District Magistrate,



Kishanganj vide **letter no. 915** dated 29.06.2024 sought guidelines from the **Panchayat Raj Department** (henceforth for short '**the Department**') whereafter vide **letter no. 5674 dated 25.07.2024**, the respondent no.1 directed the respondent no.2 to take appropriate steps for convening the special meeting in accordance with law as also to take action against the respondent no.4 for his act of indiscipline in rejecting the request for fixing of date to convene special meeting by the 1/3rd members. The communication further made it clear that any decision taken by the Panchayat Samiti shall be subject to the decision of the High Court in **C.W.J.C. No. 9077 of 2024**.

21. This followed the **order/memo no. 891 dated 05.08.2024** issued by the respondent District Magistrate, Kishanganj with a direction to the respondent no. 4 to ensure fixing of date for the special meeting to discuss the 'No Confidence Motion' in accordance with law. It further directed that if the 'Pramukh' fails to fix the date as per 'the Act', further steps be taken accordingly to fix the date if 1/3rd members makes request. It was made clear by the respondent District Magistrate, Kishanganj that the said meeting/decision of the Panchayat Samiti shall be subject to the final outcome of the writ petition pending before this Court.



22. Aggrieved by the said decisions that the Pramukh/Up-Pramukh preferred **CWJC No 12087 of 2024 (Yasmin Aash and Another vs. the State of Bihar)**

23. It was taken up on **13.08.2024** and while clubbing it with the **C.W.J.C. No. 9077 of 2024 (Md. Mushtaque & Ors. vs. the State of Bihar)** and directing the respondents to file counter affidavit, it was posted for **27.08.2024**.

24. Meanwhile, pursuant to the direction issued on **05.08.2024** as the 'Pramukh' chose not to fix the date, 1/3rd members of the Panchayat Samiti on **19.08.2024** fixed the date as **30.08.2024** (Annexure-18 of the Interlocutory Application no. 01 of 2024).

25. The respondent no. 4 thereafter issued notices to all the Panchayat Samiti members to attend the meeting on **30.08.2024**. (Annexure-19 of the Interlocutory Application no. 02 of 2024).

26. The two writ petitions are/were taken up by the Court on **30.08.2024** when the special meeting is/was on.

27. The contention of the petitioners (**CWJC No. 12087 of 2024**) as presented by Mr. Lalit Kishore, learned Senior Counsel is that as per sections **44(3)(i) and 44(3)(ii)** of



**‘the Act’**, no special meeting shall be postponed once the notices for the same has been issued and also as per the said provision, while ‘No Confidence Motion’ could not be brought against ‘Pramukh’ and ‘Up Pramukh’ in first two years period of tenure, it can further be brought against them only once in their entire tenure.

28. Thus, in view of the above said provision, once the meeting was fixed on 13.01.2024, it could not have been postponed and as the members chose to abstain on that day, the motion was declared failed/rejected by the respondent no.4. Thus, for all practical purposes the chapter of ‘No Confidence Motion’ came to an end for the rest of the their tenure. In that circumstances, no second 'No Confidence Motion' could be brought against the petitioners and the decision taken by the respondents has to be interfered with.

29. Learned Senior Counsel submits that the requisitionists by not presenting themselves on 13.01.2024 willingly waived of their rights and as ‘No Confidence Motion’ on 13.01.2024 against the petitioners was rightly rejected and in that background, the second ‘No Confidence Motion’ could not be brought against them anymore in the present tenure.

30. The further contention is that the respondent



nos.1 and 2 while issuing directions have miserably failed to appreciate the factual position of the present case as well as the law and therefore, the same needs interference.

31. The contention is that since the issue of whether the 'No Confidence Motion' can be brought against the petitioners or not in view of second requisition dated 02.05.2024 issued by the respondents is sub-judice before this Court for consideration in **Md. Mustaque and others (C.W.J.C. No. 9077 of 2024)**, the action of the respondents in issuing the Annexures-1 and 2 was/were absolutely impermissible. The respondent nos. 1 and 2 while issuing the order in question have thoroughly misinterpreted the orders passed in **C.W.J.C. No. 2232 of 2024** and **C.W.J.C. No. 2233 of 2024** dated **01.04.2024** and have thus committed an illegality.

32. Learned Senior Counsel submits that the Principal Secretary/Additional Chief Secretary of 'the Department' has no role to play under 'the Act' and as such it has no business to give direction on 25.07.2024.

33. It is his contention that there is no provision under 'the Act' which allows the Principal Secretary/Additional Chief Secretary of 'the Department' to come into picture. He submits that in absence of there being any role of the concerned



officials, the Additional Chief Secretary exceeded his jurisdiction in giving the direction to the respondent District Magistrate, Kishanganj.

34. He submits that pursuant to the said direction of the respondent Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna, the respondent Collector, Kishanganj also passed an illegal order vide memo no. 891 dated 5.8.2024 by asking the petitioner/Pramukh, Panchayat Samiti, Dighalbank to act on the request made by the elected members and in case she files in accordance with law/act on the decision taken by the elected members, the Executive Officer shall ensure convening of the special meeting which shall be subject to the final outcome of the writ petition.

35. Learned Senior Counsel submits that as per section 44(3) (i) of 'the Act', once the process started with the request made on 02.05.2024, admittedly, the period of 15 days came to an end on 17.05.2024 and as such any decision taken to convene the meeting in the month of August i.e. after three months is complete violation of the said Act. He submits that the respondent authorities completely overlooked the said provision which has stipulated the time frame and in that background, the order needs to be interfered with.



36. The submission is that the Panchayat members knowingly failed to attend the special meeting on 13.01.2024 to discuss the 'No Confidence Motion' against the petitioners. Accordingly, it was declared failed. Further, once it failed, the second requisition is impermissible in the eyes of law as they have already waived of their rights earlier by not participating in the meeting. Had they participated and then the meeting not taken place, the situation would have been different but in the present case, it is the otherway round.

37. Learned Senior Counsel concludes by submitting that in that backdrop, once the order of the Additional Chief Secretary of the Department goes, all the consequential orders/decision taken which has resulted in the convening of the meeting on 30.08.2024 will also go and further the writ petition preferred by the petitioners 'Premukh' and 'Up-Premukh' (CWJC No. 12087 of 2024 ) be allowed while the writ petition filed by the elected members, Md. Mushtaque and others (CWJC No. 9077 of 2024) has to be dismissed.

**(C) CASE OF MD. MUSHTAQUE & OTHERS**

**(CWJC NO. 9077 OF 2024)**

38. Learned Senior Counsel, Mr. Amit Srivastava represents the respondents Panchayat Samiti members in



**Yasmin Aash and Another** (supra) and the petitioners, **Md. Mushtaque and others** (supra). He initiates his argument by submitting that in the demoractic set up, the majority has to be tested on the floor of the house and not in the Courts.

39. According to him, the elections for the post of 'Pramukh' and 'Up-Pramukh', Panchayat Samiti, Dighal Bank were held on 29.12.2021 in which Yasmin Aash was elected as the 'Pramukh' while Anjari Begam was chosen as the 'Up-Pramukh'.

40. However, as they failed to discharge their duties properly in accordance with the provisions of 'the Act' specially in terms of Section-44(3) (i) and (iv) of 'the said Act', nine members of the Panchayat Samiti, Dighal Bank submitted a requisition dated 30.12.2023 against them wherein five charges/reasons were clearly mentioned therein. On receipt of the said requisition, the 'Pramukh' describing herself as 'Yasmin Praween fixed the date of Special Meeting on 11.01.2024 at 10:00 A.M. This endorsement is evident from the said requisition itself.

41. It further transpires from the relevant file of the Panchayat Samiti, Dighal Bank that the respondent no.4 made noting in the relevant file that notices be issued for fixing





11.01.2024 as the date of Special Meeting. However, the 'Pramukh' on her own volition changed the date from 11.01.2024 to 13.01.2024.

42. Pursuant to the said file noting, individual notices on 01.01.2024 were issued by the respondent Executive Officer, Panchayat Samiti, Dighal Bank to all the members. All the fifteen writ petitioners received the said notice dated 01.01.2024, whereby and where under it was informed that discussion on 'No Confidence Motion' will be taken up in the Special Meeting at 10:00 A.M. on 13.01.2024 in the Meeting Hall, Dighal Bank.

43. Md. Mushtaque as also two other members filed **CWJC No. 1066 of 2024** and **CWJC No.1067/2024** on 12.01.2024 before this Court for quashing the notice dated 01.01.2024 which was contrary to direction given by the 'Pramukh' (Yasmin Aash) as one Yasmin Praween has put her signature as 'Pramukh', Dighal Bank. Panchayat Samiti, Kishanganj but as per the list of returned candidates, no such name existed in the list.

44. Supplementary Affidavit was later filed by the petitioners on **19.01.2024** alleging that the respondent no.4, the Executive Officer-cum-Block Panchayati Raj Officer, Dighal



Bank, Kishanganj in connivance with the 'Pramukh' did not permit the Panchayat members to enter the Special Meeting Hall on 13.01.2024 and/or put in their signatures on meeting register and thereafter declared it as failed.

45. They thereafter submitted representations to this effect on 15.01.2024 and 17.01.2024 to the respondent District Magistrate, Kishanganj in which it was specifically stated that members were prevented from participating in the meeting on 13.01.2024 by the said respondent Executive Officer-cum-Block Panchayati Raj Officer Dighal Bank, Kishanganj.

46. The said **CWJC Nos. 1066 of 2024** and **CWJC No. 1067 of 2024** were taken up on **25.01.2024** and was disposed of with the directions to the District Magistrate, Kishanganj to hear them in view of the specific grievance that the members were not allowed to participate in the said meeting.

47. Learned Senior counsel submits in any case, when the respondent no. 4 recorded that no member appeared to attend the meeting, he was duty-bound to record the same and close the meeting but without putting the motion to vote, it cannot be recorded that the meeting has failed. He submits that the respondent no. 4 could have sought guidelines in the matter



instead of conniving with the 'Pramukh' and 'Up-Pramukh' in declaring the motion having failed.

48. Pursuant to the said order dated 25.01.2024, the Panchayat members appeared before the respondent District Magistrate, Kishanganj on 27.01.2024 with their written representation.

49. The respondent District Magistrate, Kishanganj after hearing the parties including the respondent Block Development Officer cum-Executive Officer, Dighal Bank vide memo nos. 125 and 126 dated 31.01.2024 passed a detailed order and further directed re-convening of the Special Meeting for considering the 'No Confidence Motion' on 10.02.2024.

50. Thereafter, the 'Pramukh' and the 'Up-Pramukh' preferred **CWIC No. 2233 of 2024** and **CWJC No. 2233 of 2024** challenging the said order dated 31.01.2024. It was taken up on 01.04.2024 and the Coordinate Bench was pleased to hold that the fixing of date of the meeting on 10.02.2024 was without jurisdiction and accordingly it was set aside/quashed. The Court however recorded the submissions of the Panchayat members that they are aware of their rights.

51. Learned Senior Counsel submits that :

*(a) thereafter, on 02.05.2024, petitioners tried to*



*personally submitted their requisition dated 02.05.2024 to the 'Pramukh' for fixing a date for convening the Special Meeting of the Panchayat Samiti, Dighal Bank to consider the 'No Confidence Motion' against her as well as the 'Up-Pramukh'. However, upon her refusal to accept it, the members were left with no option but to send the said requisition dated 02.05.2024 to the Respondent 'Pramukh' by Registered Speed Post on 02.05.2024 itself and as per the postal records, it was received in the office of the 'Pramukh' on 07.05.2024.*

*(b) the 'Pramukh' as such was duty-bound to fix the date of the Special Meeting in accordance with Section-44(3)(i) of 'the Act'.*

*(c) further, there is no provision under 'the Act' to reject fixing of date of convening of the Special Meeting for consideration of the No Confidence Motion as per the said requisition dated 02.05.2024.*

*d) as she failed to take a decision, the Panchayat members on 24.05.2024 fixed the date of Special Meeting of the Panchayat Samiti, Dighal Bank on 07.06.2024 for consideration of their requisition.*



*They thus exercised their rights as provided under Section-44(3)(1) of 'the Act'. The respondent Executive Officer was requested to issue notices to all the members of the Panchayat Samiti, Dighal Bank.*

*(e) further by way of abundant precaution, the petitioners sent the said letter dated 24.05.2024 through Registered Speed Post also, copies of which were sent to the 'Pramukh', the 'Up-Pramukh', the Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna, the District Magistrate, Kishanganj as also the District Panchayati Raj Officer, Kishanganj through Registered Speed Post on 24.05.2024 itself.*

52. The contention is that the Respondent No. 5 instead of acting in accordance with Section-44(3)(1) of 'the Act' as also the judgment rendered by the Division Bench in **Dharamsheela Kumari vs. Hement Kumar and others** reported in **2021 (3) PLJR 346**, vide office letter no. 443 dated 29.05.2024 rejected the same.

53. This followed the writ petition bearing **CWJC No. 9077 of 2024**. Thereafter, the respondent District



Magistrate, Kishanganj sought guidelines from ‘the Department’ and in turn ‘the Department’ vide direction dated 25.07.2024 wanted:

*i) convening of the special meeting in accordance with law taking note of the judgment of Patna High Court;*

*ii) appropriate action against the respondent Executive Officer who illegally rejected the request on 29.05.2024.*

*iii) the District Magistrate, Kishanganj vide his office order dated 05.08.2024 directed the respondent executive officer to take steps for convening of the meeting in accordance with law.*

54. This followed the filing of **CWJC No. 12087 of 2024** by the Pramukh/Up-Pramukh which is now presently before this Court.

55. Learned Senior Counsel submits that when the respondent Executive Officer, Dighalbank acted illegally and the District Magistrate, Kishanganj sought direction, ‘the Department’ was fully justified in guiding the District Magistrate. He submits that the direction was given only in



order to uphold the spirit of the Constitution and majesty of law as also the institution of the Panchayat Raj which have been subverted by the Respondent Executive Officer in connivance with the 'Pramukh' and the 'Up-Pramukh'.

56. He submits that 'the Department' was further justified in directing for departmental action against the Respondent Executive Officer in accordance with law which may act as a deterrent for such Officers in future. Learned Senior Counsel submits that consequential decisions which resulted into the convening of the meeting on 30.08.2024 to discuss the 'No confidence motion' thus is/are fully justified.

57. Learned Senior Counsel submits that in **Dharamsheela Kumari** (supra), the Division Bench already held that any meeting in which the motion was not put to vote, there is no bar in convening the fresh meeting as the earlier meeting will not be considered to the concluded meeting.

58. He further cited the recent decision of **Jaimitra Devi vs. the State of Bihar & others** of this Court reported in **2024 SCC online 5882** wherein following **Dharamsheela Kumari** (supra) this Court has expressed the same view.

59. Learned Senior Counsel concludes by submitting that the 'Pramukh' and the 'Up-Pramukh' in active



connivance with the respondent no.4, the Block Development Officer cum Executive Officer, Panchayat Samiti, Dighalbank have ensured that the spirit of democracy is throttled which clearly reflects from the fact that despite the requisition made in last few days of the year 2023, it could not be taken to its logical conclusion till 29.08.2024. Those who are enjoying power only due to democratic set up in the country should not hesitate in following the democratic norms and face the floor.

**(D) CASE OF STATE RESPONDENT NOS. 2 & 4.**

60. Learned State Counsel submits that the facts have already come on record. After the respondent no.4 rejected the request made by the 1/3rd elected members on 29.05.2024 and the writ petitions filed, the respondent no.2 sought guidelines from 'the Department' which followed the order dated **25.07.2024** by the respondent No-01, **the Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna** by which he found the action of the then Executive Officer, Panchayat Samiti -cum- Block Development Officer, Dighalbank to be completely against the provisions of law and various decisions of the High Court and accordingly gave direction vide letter no 5674, dated 25.07.2024 to the respondent no. 02, the District Magistrate, Kishanganj to act in accordance





with law for fixing the date for the special meeting to discuss the 'No Confidence Motion' against the 'Pramukh', Panchayat Samiti, Dighalbank and the 'Up Pramukh', Panchayat Samiti, Dighalbank. It was further observed that the entire exercise will be subject to the final Order passed by the Court in **Md. Mushtaque** and other (supra).

61. This followed the **letter no. 892** dated **05.08.2024** issued by the **respondent no.2, the District Magistrate, Kishanganj** directing the respondent no.4 to take steps in accordance with law for fixing the date of special meeting. This came to be challenged in **CWJC No. 12087 of 2024 (Yasmin Aash and Anr vs. the State of Bihar)**.

62. The stand of the State respondent is/are that after the judgment rendered by the Division Bench in **Dharamsheela Kumari** (supra) as also **Jaimitra Devi** (supra), in absence of the motion being put to vote on the earlier occasion, there is no bar for the fresh requisition to discuss the motion of 'No Confidence' as stipulated under **44 (3) (11)** of '**the Act**'. Thus the writ petitions preferred by the 'Pramukh'/'Up-Pramukh' is fit to be dismissed.

**(E) CASE OF THE STATE ELECTION COMMISSION**

**RESPONDENT NO.5:**

63. Mr. Ravi Ranjan, learned counsel for the State



Election Commission (henceforth for short 'the Commission') echos the submissions put forward by the learned Senior Counsel (**in Mushtaque & Ors.**) and submits that though 'the Commission' for the present is not in the picture, the fact remains that after the **Dharamsheela Kumari** (supra) judgment, when a motion has not been put to vote, there is no bar in convening the fresh meeting.

**(F) FINDINGS:**

64. Having gone through facts of the case, the materials on record as also the submissions put forward by the learned Senior Counsels/learned State Counsel and the learned Counsel for the State Election Commission, the facts that are not in dispute is/are that:

*(i) a requisition was made by the nine elected members of Dighalbank Panchayat Samiti on 30.12.2023;*

*(ii) the 'Pramukh' fixed the date as 13.01.2024;*

*(iii) on that day, the special meeting took place but as one one appeared to attend the said meeting, it was closed by the respondent, Block Development Officer cum Executive Officer,*



*Panchayat Samiti, Dighalbank. However, it further recorded that the motion stands failed/rejected;*

*(iv) C.W.J.C. No. 1066 of 2024 and C.W.J.C. No. 1067 of 2024 were filed by Md. Mushtaque and Mallika Khatoon who wanted quashing of the special meeting that was to be held on 13.01.2024 but the same was disposed of by the coordinate bench on 25.01.2024 directing the respondent, District Magistrate to pass an appropriate order.*

*(v) this followed the direction of the respondent District Magistrate, Kishanganj to all the elected members to appear on 27.01.2024 and after hearing them, he gave direction on 31.01.2023 to convene the special meeting on 10.02.2024;*

*(vi) it was now the turn of the 'Pramukh' and 'Up-Pramukh' to approach the Patna High Court vide CWJC No. 2232/2024 and CWJC No. 2233/2024. It was taken up on 1.04.2024 and the order passed by the*



*respondent District Magistrate, Kishanganj was interfered with. While setting aside the decision of the District Magistrate, Kishanganj the coordinate bench in paragraphs 19 to 24 gave his observation which is as follows:*

*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;*

*24. let a copy of this order be communicated to the learned*



*Advocate General as well as the  
Chief Secretary, Government of  
Bihar.*

65. Thereafter, fresh requisition was made on **02.05.2024** by the elected members which came to be rejected by the 'Pramukh' and communicated by the respondent Block Development Officer cum Executive Officer, Panchayat Samiti vide **memo no. 424 dated 16.05.2023**;

66. As the 'Pramukh' failed to fix the date, 1/3rd members acting as per 'the Act' on **24.5.2024** fixed the date as **07.06.2024**.(Bold inserted by this Court)

67. However, surprisingly, the respondent Block Development Officer cum Executive Officer, Panchayat Samiti, Dighalbank vide an order dated **29.05.2024** rejected the said request and the same is incorporated hereinbelow:

कार्यालय प्रखण्ड विकास पदाधिकारी-सह-कार्यपालक पदाधिकारी, दिघलबैंक।

पत्रांक 443

दूरभाष संख्या 06456.245215

संचिका संख्या...../...../2024

मोबाईल नं0-94318.18323

दिनांक 29/05/2024

ई-मेल bdodighalbalnk@gmail.com

प्रेषक:-

प्रखण्ड विकास पदाधिकारी

- सह -

कार्यपालक पदाधिकारी,



पंचायत समिति, दिघलबैंक ।

सेवा में,

श्री मो0 मुस्ताक, सदस्य, पंचायत समिति, दिघलबैंक

श्री श्रवण कुमार, सदस्य, पंचायत समिति, दिघलबैंक

श्री मिश्री लाल दास, सदस्य, पंचायत समिति, दिघलबैंक

श्री राम प्रसाद गणेश, सदस्य, पंचायत समिति, दिघलबैंक

श्री अजमत अली, सदस्य, पंचायत समिति, दिघलबैंक

श्री अब्दुल कैयुम, सदस्य, पंचायत समिति, दिघलबैंक

श्री पंकज कुमार, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती शिवा देवी, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती विजली देवी, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती मिन्नत प्रवीण, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती मुस्तफी बेगम, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती अख्तरी बेगम, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती आसमा खातुन, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती मालेका खातुन, सदस्य, पंचायत समिति, दिघलबैंक

श्रीमती प्रमीला देवी, सदस्य, पंचायत समिति, दिघलबैंक

विषय:— दिनांक 07.06.2024 को प्रमुख/उप प्रमुख पंचायत समिति दिघलबैंक के विरुद्ध अविश्वास प्रस्ताव हेतु विशेष बैठक आहुत करने के संबंध में।

महाशय,

उपर्युक्त विषय के संदर्भ में दिनांक 24.05.2024 को श्री मो0 मुस्ताक एवं अन्य 14 कुल 15 (पन्द्रह) सदस्यों द्वारा समर्पित अधियाचना बिहार पंचायती राज अधिनियम 2006 की धारा (3)(ii) के नियम संगत नहीं होने तथा CWJC 2232/2024 एवं 2233/2024 पर माननीय उच्च न्यायालय पटना द्वारा दिनांक 01.04.2024 को पारित आदेश में पुनः (दोबारा) विशेष बैठक हेतु कोई आदेश पारित नहीं किये जाने, साथ ही एल0पी0ए0 सं0 125/2024 में माननीय उच्च न्यायालय द्वारा पारित आदेश





पंचायत समिति, दिघलबैंक के दिनांक 13.01.2024 को आहुत अविश्वास प्रस्ताव संबंधी विशेष बैठक की प्रक्रिया पर कोई प्रतिकूल प्रभाव नहीं पड़ने के फलस्वरूप खारिज किया जाता है।

सूचनार्थ प्रेषित

विश्वासभाजन

ह0

प्रखण्ड विकास पदाधिकारी

— सह —

कार्यपालक पदाधिकारी,

पंचायत समिति, दिघलबैंक।

68. This Court is surprised. How can the Block Development Officer cum Executive Officer, Dighalbank reject a proper requisition made by the 1/3rd members of the Panchayat Samiti, Dighalbank. The aggrieved parties were free to approach appropriate competent Court against the said requisition dated 02.05.2024 as also the fixing of the date for special meeting on 07.06.2024 but under no circumstance/authority/power, the respondent Block Development Officer cum Executive Officer, Dighalbank could have taken a decision. It was clear case of misuse of power with the sole purpose to help the cause of the 'Pramukh'/'Up-Pramukh'.

69. **Md. Mushtaque and others** (supra) approached this Court challenging the said order and on 21.06.2024 and a



coordinate bench directed the respondents to file counter affidavit.

70. Meanwhile, the roster changed and the writ petitions were placed before this Court on 15.07.2024 when taking note of order dated 21.06.2024 of the coordinate bench, an order was passed with the direction to the respondent no.1 to file counter affidavit in next three weeks.

71. It was in the said circumstances that the matter was taken up by the Respondent No. 1, the Additional Chief Secretary of the Department and on 25.07.2024, he gave direction for convening of the meeting in accordance with law.

72. This followed the decision of the respondent No. 2, the District Magistrate, Kishanganj vide memo no. 811 dated 5.8.2024 which prompted the 'Pramukh' and 'Up-Pramukh' to file CWJC No. 12087 of 2024 for quashing of the said orders as also to put a stay on it.

73. On 13.08.2024, the matter was taken up and the following order was passed in **Yasmin Aas @ Yasmin & Ors.**  
**case:**

*Heard Mr. Pushkar Narain Shahi, learned  
Senior Counsel for the petitioner duly*



*assisted by Mr. Ansul, Mr. Amit Shrivastava, learned Senior Counsel appearing on behalf of the respondent No. 7, 8, 11-15, 18-23, 25 & 26.*

*2. The present writ petition has been preferred for issuance of an appropriate writ/writs in the nature of writ of certiorari for quashing the letter dated 25.07.2024 issued vide Letter No. 5674 by Respondent No. 1 whereby the said respondent has directed the Respondent No. 2 to ensure holding of 'No Confidence Motion' against the petitioners in view of the requisition submitted before Petitioner No. 1 for holding special meeting for 'No Confidence Motion'.*

*3. It seems that the CWJC No. 9077 of 2024 (Md. Mushtaque and others Vs. State of Bihar) relating to the same issue is pending before this Court and as such it would be appropriate that both the cases are heard together.*

*4. Office to do the needful.*

*5. Learned Senior Counsel appearing on behalf of the petitioner submits that earlier*



*pursuant to the requisition, the special meeting took place on 13.01.2024 (Annexure P/8 to the petition), but since all the elected members absented themselves, it came to an end. It is his further submission that the respondents herein who are petitioner in CWJC No. 9077 of 2024 earlier preferred CWJC No. 1067 of 2024, in which he did not inform the Co-ordinate Bench on 25.01.2024 that the proceeding has already come to an end on 13.01.2024.*

*6. He submits that, in that background, the Co-ordinate Bench directed the respondent-District Magistrate, Kishanganj, to take decision in the matter under appropriate Act (Annexure P/9 to the petition). The further submission is that thereafter, the District Magistrate fixed the date as the date of special meeting on 10.02.2024.*

*7. Now, it was the turn of the petitioner to approach this Court in CWJC No. 2232 of 2024, as also by the Up-Pramukh (Anjri*



*Begum Vs. the State of Bihar in CWJC No. 2233 of 2024). Both were taken up by the Co-ordinate Bench on 01.04.2024 and Paragraphs 20 to 24 (Annexure P/13 to the petition) read as follows:*

*“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.”*

*8. Learned Senior Counsel submits that a perusal of the records of the writ petition would show that this followed a requisition made by the elected members on 02.05.2024 for convening special meeting to discuss ‘No Confidence Motion’ against the Pramukh (the petitioner herein) (Annexure P/14 to the petition).*

*9. This followed the rejection order passed by the Block Development Officer by the letter No. 424 dated 16.05.2024 and Letter No. 443 dated 29.05.2024 (Annexure P/15 to the petition).*

*10. By rotation, now, Md. Moushtaque moved this Court in CWJC No. 9077 of 2024 in which on 21.06.2024, a Coordinate Bench passed the following order:*



*“Heard Mr. Amit Srivastava, learned senior counsel appearing for the petitioners and Mr. P.N. Shahi, learned senior counsel appearing for respondent Nos.7 and 13 and learned A.C. to G.P.-26 appearing for the State. Issue notice to respondent Nos.6,8,9,10,11,12 and 14 for which requisites etc., by Registered cover with A.D. as well as by ordinary process must be filed within a period of one week, failing which this application shall stand rejected without further reference to a Bench.*

*Learned counsel for the State must be filed their counter affidavit within a period of two weeks personally sworn by respondent No.1 and learned senior counsel for respondent Nos.7 and 13 is also directed to file their counter affidavit within a period of one week.*

*Put up this case on appearance of respondent Nos.6,8,9,10,11,12 and 14 or on 15.07.2024 whichever is earlier. Any decision taken by the Committee shall be the subject to the final outcome of the writ application.”*

*II. It was taken up again on*





*15.07.2024, when this Court passed the following order:*

*“Earlier, in this case, notices were issued by a coordinate Bench on 21.06.2024 upon respondent Nos. 6, 8 to 12 and 14 through both process.*

*2. As per the office notes, on 6, 9 and 14, the same has been personally received by them. So far as notices upon respondent Nos. 8, 11 and 12 are concerned (wrongly respondent no. 9 is incorporated herein also) it was hanged on their respective houses.*

*3. Let this time, the notices be issued upon respondent Nos. 8, 11 and 12 through the Block Development Officer, Dighal Bank, Kishanganj through both processes i.e. ordinary as well as registered cover with A/D for which requisites etc. must be filed within a period of one week failing which the application shall stand rejected without further reference to the Bench.*

*4. In case, the order passed is not complied and the matter accordingly stands dismissed, subsequently, the same be posted under the heading 'To be Mentioned alongwith 'Tied Up' matters before the Bench on the 'TIED UP' day.*

*5. In this case, though direction was given to respondent No. 1 to file counter-affidavit, no*



*such reply is on record.*

*6. In that background, he is required to file counter- affidavit in next three weeks or will pay Rs. 5,000/- to Patna High Court Legal Services Committee through his own pocket.*

*7. List this case after four weeks.”*

*12. It seems thereafter, the District Magistrate, Kishanganj, sought guidelines from the Department vide letter No. 915 dated 29.06.2024. This followed the letter No. 5674 dated 25.07.2024 under the signature of the Additional Chief Secretary, Panchayati Raj Department, Bihar, Patna addressed to the District Magistrate, Kishanganj, by which it directed the Collector, Kishanganj to take appropriate steps if the Pramukh fails to call the special meeting, to take action against the Executive Officer for his clear act of indiscipline and further that any decision in the ‘No Confidence Motion’ shall be subject to the final order passed by learned court pending before the Patna High Court.*

*13. This followed the order passed by the Collector, Kishanganj, vide memo No. 891 dated*



*05.08.2024 by which it directed the Executive Officer-cum-Block Development Officer, Dighal Bank, Kishanganj to act in accordance with the direction given by the Additional Chief Secretary vide Memo No. 5674 dated 25.07.2024 (Annexure P/2 to the petition).*

*14. Learned Senior Counsel submits that under the Act, the Additional Chief Secretary of the department has no role to play and as such, he has exceeded his jurisdiction. The second submission is that on 13.01.2024, the meeting already stands concluded but this fact was not placed before the Patna High Court, when CWJC No. 1067 of 2024 (Md. Mushtaque Vs. State of Bihar) was taken out on 25.01.2024 and in that background, the District Magistrate, Kishanganj, was directed to pass an order.*

*15. It is his submission that now that the Additional Chief Secretary, Panchayati Raj Department, Bihar, as also the District Magistrate, Kishanganj, have passed an*



*order/given direction to the Block Development Officer-cum-Executive Officer, Dighal Bank, Kishanganj, a special meeting is in the offing and as such, interim order be passed in favour of the petitioner.*

*16. Mr. Amit Shrivastava, learned Senior Counsel represent the respondents as recorded above. It is his submission that facts have already been incorporated and he only want to point out that the earlier meeting ended without there being any motion put to vote and as such taking into account the order passed by the Division Bench of Patna High Court in the case of **Dharamsheela Kumari Vs. Hemant Kumar and Ors, reported in 2021 (3) PLJR 346,** any fresh requisition made by the elected members has to be considered and in that background, the Executive Officer-cum-Block Development Officer, Dighal Bank exceeded its jurisdiction in rejecting it on the advice of the petitioner. He submits that*



*the petitioners in Case No. 9077 of 2024 was forced to approach Patna High Court in which pursuant to the direction given by the Co-ordinate Bench/this Court, the Additional Chief Secretary who was to file counter affidavit took a decision which followed the direction of the District Magistrate.*

*17. He submits that even ignoring the two orders of the Additional Chief Secretary/District Magistrate, Kishanganj, the Pramukh and upon her failure, the Up-Pramukh have to take a decision, as also communicate the elected members about it.*

*18. Failure to do so by either of them, one-third of the elected members will be taking decision in accordance with law. His submission is that the petitioner herein cannot sit over the matter in a democratic set up.*

*19. Both the CWJC 12087 of 2024 and CWJC No.9077 of 2024 have been tagged*



*and will be taken up on 27.08.2024 at 12:00 P.M. The State-respondents are directed to file a counter affidavit on behalf of the District Magistrate, Kishanganj, by 22<sup>nd</sup> of August, 2024 after service of copies upon the petitioner as also the other respondents.*

*20. Failure to do so, a cost of Rs. 5,000/- is to be deposited with the Patna High Court Legal Services Committee by the respondent No. 2.*

*21. Issue notice to respondent No. 6, 9, 10, 16, 17 and 24. The State-counsel shall direct the Block Development Officer, Dighal Bank to serve notices upon the aforesaid respondent by 19.08.2024, so that if they want to file any reply, the same should come by 27.08.2024.*

*22. Any further development after the passing of the order shall be the subject matter of the final outcome of the two writ petitions.*

74. It seems that thereafter on **19.08.2024**, 1/3rd members (after the Pramukh failed to convene the meeting) took



a decision and fixed the date as **30.08.2024** for special meeting which followed the respondent, Block Development Officer cum Executive Officer, Dighalbank issuing notices to the Panchayat membes **on 21.8.2024**.

75. It was in these circumstances that upon urgent mentioning by the learned counsel for the petitioners, **Yasmin Aas @ Yasmin & others and Anjari Begum** that it has been taken up on **30.08.2024**.

76. It is to be noted that on 13.01.2024, as no member attended the special meeting, the motion was not put to vote. The said meeting will thus not come under the category of concluded meeting. As such, when the 1/3rd members of the Dighalbank Panchayat Samiti made request to the 'Pramukh' to fix a fresh date, the 'Pramukh' was duty bound to fix the date of special meeting, as it will be considered a fresh meeting. As she failed to fix the date, the elected members rightly took the decision on 19.08.2024 for convening the special meeting on 30.08.2024 which followed the communication made by the respondent no.4 on 21.08.2024.

77. The order passed by the Division Bench in the case of **Dharamsheela Kumari and others** (supra) is very clear: any motion which has not been put to vote, the legal bar



of moving a fresh motion of no confidence stipulated under section 44(3) (ii) of 'the Act' would not be attracted.

78. Paragraph nos. **117 and 118** of the **Dharamsheela Kumari** (supra) judgment 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.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.*

79. Further, again in the case of **Jaimitra Devi** (supra), following the judgment of the **Division Bench** of **Dharamsheela Kumari** (supra), it has already been held that the motion having not been put to vote, it will not be declared



as concluded meeting. In that background, when the respondent Block Development Officer cum Executive Officer, Dighalbank earlier exceeded his jurisdiction in rejecting the request made by the 1/3rd members of Panchayati Samiti, Dighalbank, the respondents Additional Chief Secretary of the Department as also the District Magistrate, Kishanganj rightly stepped in and ensured that the democratic process is not muzzled by an individual (the Block Development Officer cum Executive Officer, Dighalbank).

80. This Court thus holds that the respondent no.1, the Additional Chief Secretary of the Department as also the respondent no.2, the District Magistrate, Kishanganj were fully justified in passing the orders in question and the submissions put forward by the learned Senior Counsel for the 'Pramukh' and 'Up-Pramukh' that 'the Act' do not provide them any role is rejected. When an Officer assigned with the job of acting in accordance with 'the Act' fails to do so, 'the Department' as also the superior authorities are duty bound to step in and ensure that the wheels is/are again put on the track.

81. So far as the contention of the learned Senior Counsel, Mr. Lalit Kishore that the requisition dated 02.05.2024 having been rejected on 16.05.2024, 'the Act'



stipulating only 15 days period to decide the matter after three months, the 1/3rd members could not have fixed any date for convening of the meeting nor the respondent no.4 could have fixed the date as 30.08.2024, the said contention is fit to be rejected on the ground that the process was stalled midway by an illegal act of the respondent Block Development Officer cum Executive Officer, (Panchayat) Dighalbank, when he rejected the request. Thereafter, Md. Mushtaque and others were forced to approach the Patna High Court and the case remained sub-judice. The wheels were jammed by the respondent no.4 and thus the time line which the learned Senior Counsel is referring to interfere with the meeting being held on 30.08.2024 cannot be accepted.

82. This Court thus holds that the requisition dated 02.05.2024/19.08.2024 made by the 1/3 members of Dighalbank Panchayat Samiti is/are fully justified. Further, as meeting dated 13.01.2024 having come to an end without the motion being put to vote, there is no bar in calling for a fresh special meeting to discuss the 'No Confidence Motion' against the 'Pr mukh' and Up-Pr mukh (petitioners in C.W.J.C. No. 12087 of 2024). Further, pursuant to the fresh requisition made by 1/3rd the elected members, the consequential decision of the respondent



no.4 issuing the notices on 21.08.2024 fixing the date of special meeting on 30.08.2024 is/are again justified and neither the decision taken by the respondent no.1 on 25.07.2024 nor that of the respondent no.2 on 05.08.2024 need any interference.

**83. Time has now come for ‘the Department’ to convene a State level meeting of all the Block Development Officers cum the Executive Officers of Panchayat Samitis in the State capital to be addressed by the Senior Officials of ‘the Department’ as also the officials of the State Election Commission beside the learned Advocate General, Bihar and/or any Senior Government Counsel/Senior Counsel nominated by the learned A.G. They should be given guidelines of do’s/don’ts, sensitized about ‘the Act’, the letters/memos/circulars of ‘the Department’ issued from time to time as also the State Election Commission alongwith the various judgments of Patna High Court related to ‘the Act’. They be further directed to act strictly in line making it clear that failure to do so, appropriate action shall be taken against them in accordance with the law.**

84. The sooner the meeting is convened, the better it will for the health of Panchayat Samitis across the State as the



Block Development Officers are not only unaware of 'the Act as also the guidelines of the Department and judgments rendered, at times, they are acting independently and in connivance of those in power at the local level.

85. So far as the two writ petitions are concerned, while **C.W.J.C. No. 12087 of 2024 (Yasmin Aas @ Yasmin and Another)** is dismissed, the **CWJC No. 9077 of 2024 (Md. Mushtaque and others)** is allowed.

86. Let a copy of the order be sent to the **respondent no.1, the Additional Chief Secretary/Principal Secretary, Panchayat Raj Department, Bihar, Patna** for his perusal and needful.

**(Rajiv Roy, J)**

Ravi/-

AFR/NAFR	AFR
CAV DATE	30.08.2024
Uploading Date	10.09.2024
Transmission Date	

