

(2019) 08 PAT CK 0097

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18324 Of 2018

Gopal Prasad Singh

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Panchayat Raj Act, 2006 — Section 11(A), 39(1), 44, 44(3), 44(3)(V), 44(4), 46(4), 157

Citation : (2019) 4 PLJR 579

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Sharda Nand Mishra, Kumar Alok, S.B.K. Mangalam, Bimal Kumar

Final Decision : Allowed

Judgement

1. Petitioner in the present case is aggrieved by and dissatisfied with the order dated 01.09.2018 passed by the District Magistrate-cum-District

Election Officer (West), Katihar by which the District Magistrate has held that the special meeting to consider the no confidence motion against the

petitioner held on 08.08.2018 was illegal and contrary to the provisions as contained under Section 44(3) (V) and for the reason that 7 days clear

notice as envisaged under Section 46(4) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the "Act of 2006") were not given.

2. The petitioner has assailed the order of the District Magistrate as contained in Annexure 5 to the writ application on the ground inter alia

that the District Magistrate has entertained a belated objection preferred by some of the members of the Panchayat Samiti who had participated in the

special meeting held on 08.08.2018 but after the no confidence motion failed, they raised this issue of 7 days clear notice, 20 days after the no

confidence motion had already been passed.

3. Briefly stating the case of the petitioner is that on receipt of a requisition dated 02.08.2018 for holding a special meeting to discuss no confidence

motion against the petitioner who is Pramukh of the Panchayat Samiti, the petitioner fixed a date of meeting to be held on 08.08.2018. It is his

contention that in Annexure â??1â?? to the writ application which is a copy of the requisition, the requisitionists had made as many as 11 allegations

against the petitioner and those were subject matter of discussions in the special meeting. The Block Development Officer- cum-Executive Officer,

Amdabad issued notice vide letter bearing Memo No. 1321 dated 03.08.2018 by which he called special meeting on 08.08.2018 at 11.30 A.M. It is

specifically asserted that notices were served upon all the members of the Panchayat Samiti of the Block including upon the requisitionists.

4. According to the petitioner and as is evident from the minutes of the meeting dated 08.08.2018 as contained in Annexure â??3â?? to the writ

application that in addition to the petitioner 10 members of the Panchayat Samiti participated in the special meeting. There was a discussion and

ultimately through secret ballot voting was done. Altogether 10 members voted in favour of the no confidence motion. Only 10 members voted in

favour of motion which did not meet the requirement of at least 11 members vote to pass the motion, no confidence motion failed.

5. It is the case of the petitioner that the information revealed pursuant to his application under Right to Information Act would show that the members

of the Panchayat Samiti namely Majharul Haque (respondent no. 23), Faizul Haque (respondent no. 10) and others had submitted an application dated

14.08.2018 before the District Panchayat Raj officer, Katihar for staying the meeting dated 08.08.2018 and to fix another date of special meeting.

Annexure â??7â?? series to the supplementary affidavit is the copy of the application dated 14.08.2018. The application is dated 14.08.2018 and has

been signed by Majharul Haque (respondent no. 23), Faizul Haque (respondent no. 10), Sainoor Khatoon (respondent no. 17) and Marjina Khatoon

(respondent no. 8). Prior to the application dated 14.08.2018 the requisitionists/ respondents had not made any objection regarding fixing of date of the

special meeting. They filed their objection on 14.08.2018 after attending the meeting and when the no confidence motion failed in the secret voting.

6. It is further case of the petitioner that none of the requisitionists filed any counter affidavit in the connected writ application rather the counter

affidavit has been filed on behalf of respondent no. 14 namely, Sunita Jha @ Sunita Devi who had not filed any objection to the holding of special

meeting on 08.08.2018. It has been alleged that by filing Interlocutory Application one of the respondents Sunita Jha @ Sunita Devi has brought on

record an Annexure showing that requisitionists namely, Majharul Haque, Faizul Haque, Sainoor Khatoon and Marjina Khatoon had filed an

application dated 06.08.2018 before the Block Development Officer, Amdabad, but the said document is only a forged document, because those

requisitionists had not filed any counter affidavit saying so.

7. It has been submitted that although a counter affidavit has been filed on behalf of the respondent nos. 7, 8, 10, 12, 17, 18 and 21 to 25, but the

deponent of the counter affidavit Majharul Haque has nowhere declared that he had been authorized on behalf of the other answering respondents to

swear affidavit on their behalf. Further in his counter affidavit Majharul Haque has not enclosed the copy of the complaint petition which was

allegedly submitted before respondent no. 6 and other superior authorities like the District Magistrate, Katihar, Sub-Divisional Officer, Manihari and

District Panchayat Raj Officer, Katihar. It is also submitted that the application dated 14.08.2018 submitted by Majharul Haque and three others and

copy of which has been made available to the petitioner and which is Annexure 6 series, there is no mention of the alleged fact that on

06.08.2018 they had submitted any complaint.

8. It is submitted that apparently the statement that on 06.08.2018, Majharul Haque and three others had made any complaint before respondent no. 6

and other authorities are totally baseless and this statement has been introduced only in attempt to make out a case.

9. It is submitted that the impugned order passed by the District Magistrate is wholly illegal inasmuch as the District Magistrate could not appreciate

that the impugned order has been passed on the application of those members who had participated in the special meeting held on 08.08.2018, they

had actively discussed the no confidence motion but then having failed to get it through, they decided to raise objection. In his submission the District

Magistrate could not appreciate that all the members of the Panchayat Samiti

had been duly served and none of the members had made any complaint with regard to the service of notice of the special meeting well before the date of the meeting.

10. Thus, according to learned counsel, if the notices were duly served upon the members of the Panchayat Samiti well before the date of the meeting

and the complainants before the District Magistrate had participated in the meeting without any protest or demur, the subsequent complaint saying that

it was not 7 days clear notice was totally insignificant and meaningless. It is submitted that the requirement of 7 days clear notice as envisaged under

Section 44(3) has to be read keeping in mind the principles of natural justice. A reading of sub- section (3) of Section 44 would show that it imposes a

duty upon the Pramukh to convene the special meeting on a date falling within 15 days of the requisition. In the present case, the meeting was

convened within 15 days from the date of the requisition.

11. It is further submitted that the second ground on which the District Magistrate has interfered with the holding of the special meeting is also

contrary to the materials available on the record. In the requisition, as contained in Annexure 1, as many as 11 allegations were made which

were capable of discussions and in fact the minutes of the special meeting would show that all those allegations were discussed in the meeting before

the voting took place. Thus there was no violation of the conditions of Clause (V) of Sub-section (3) of Section 44 of the Act of 2006. The allegations

were clearly stated in Annexure 1 hence there was no reason for the District Magistrate to take a view that the requisition did not contain the

allegations and there was no notice of the same to the members of the Panchayat Samiti. For all these reasons, learned counsel for the petitioner has

submitted that the impugned order as contained in Annexure 5 is wholly illegal, arbitrary, bad in law and without jurisdiction hence, Annexure

5 and consequential action taken by the Block Development Officer, Amdabad as contained in Annexure 6 to the writ application be

set aside.

12. Learned counsel for the petitioner has however submitted that the District Magistrate had no power to pass any order under Section 157 of the

Act of 2006 much after passing of the resolution at the special meeting held on 08.08.2018. In this regard he has relied upon judgment of this court in

the case of Suryadeo Kumar Vs. State of Bihar reported in 2009(2) PLJR 435.

13. Mr. S.B.K. Mangalam, learned counsel for the respondents has led the argument. It is his submissions that because the notice of the special

meeting was issued without giving 7 days clear notice, the special meeting will be deemed to have been held ignoring the mandatory conditions of

providing 7 days clear notice to the members of the Panchayat Samiti. Learned counsel submits that the copy of the complaint dated 06.08.2018

enclosed with the I.A. No. 01/2019 filed on behalf of the respondent no. 14 for vacating the interim order of stay would show that Majharul Haque

and three other requisitionists had raised objection to the holding of the special meeting on 06.08.2018. Learned counsel submits that sub-section (4) of

Section 46 provides that 7 days clear notice of a special meeting specifying the time at which such meeting is to be held and the business to be

transacted there at shall be sent to the members and affixed at the office of the Panchayat Samiti. Such notice shall include in case of a special

meeting any motion or proposition mention in the written request made for such meeting.

14. It is submitted that in the various judgments of this court it has been held that the notice of convening special meeting should be given to the

members keeping 7 days margin between the date of notice and the date of meeting. It is submitted that in the present case respondent no. 6 has

acted mechanically, he issued the notice of special meeting on 03.08.2018 fixing the date of special meeting on 08.08.2018 which was contrary to the

provision as contained in sub-section (4) of Section 46 of the Act of 2006. It is for this reason the District Magistrate cancelled the meeting and

directed the Block Development Officer to take fresh steps for holding special meeting. It is his submission that apart from the complaint submitted on

06.08.2018 the another letter dated 14.08.2018 was submitted directly to the District Panchayat Raj Officer which was a separate representation

altogether and therefore on this ground the writ petitioner cannot contend that no objection was taken against the holding of the special meeting on

08.08.2018. It is his submission that in the given facts and circumstances of the case the District Magistrate has rightly exercised her power under

Section 157 of the Act of 2006.

15. In this case respondent no. 3 to 6 has filed a counter affidavit. The Block

Development Officer being respondent no. 6 has filed the affidavit saying that he has been authorized to swear affidavit on behalf of the other answering respondents. He has reiterated the facts which have been taken note of hereinabove by this court with regard to the date of requisition and issuance of notice. He has stated that after special meeting regarding no confidence motion against Panchayat Samiti members gave application to the Block Development Officer-cum- Executive Officer for calling special meeting of no confidence motion against Block Pramukh which was received in Block office on 12.08.2018. A copy of the same was given to the office of the District Magistrate and based on the same the impugned order dated 01.09.2018 has been passed by the District Magistrate. Thus, so far as the affidavit of the respondent no. 6 is concerned, it only states that after holding of the special meeting a complaint was made on 12.08.2018.

16. Both the parties have relied upon some judgments which this courts will discuss hereinafter.

Consideration

17. Having heard learned counsel for the parties and on perusal of the records this court finds that there are some admitted facts to the extent that on receipt of the requisition dated 02.08.2018 (Annexure 1) the petitioner being Pramukh fixed a date for special meeting on 08.08.2018 and wrote to the Block Development Officer (respondent no. 6) to issue notice to all the members of the Panchayat Samiti. In terms of sub-section (3) of Section 44 of the Act of 2006, the meeting should have been fixed within 15 days and that was done by the petitioner. It is not the case of the respondents that the notice of the special meeting was not served on any of the members of the Panchayat Samiti rather it is categorical assertion of the petitioner which has not been controverted by the respondents that the notice of the special meeting was served on all the members of the Panchayat Samiti well in time.

18. On 08.08.2018, the special meeting was held. On the said date in addition to the petitioner altogether 10 members were present. Perusal of the minutes of the special meeting (Annexure 3) would show that Majharul Haque, Ainul, Sainoor Khatoon and Faizul Haque were very much present in the meeting. They did not raise any protest with regard to the 7 days clear notice before start of the meeting or even thereafter before

voting. Discussions took place and as per rule secret ballot voting was adopted. The no confidence motion failed because only 10 votes were found in favour of the resolution. In terms of Section 44 of the Act of 2006, a resolution expressing want of confidence in the Pramukh was required to be passed by a majority of the total number of elected members of the Panchayat Samiti. It is an admitted position that to pass resolution at least 11 votes were required.

19. This court further finds that the total number of members of the Panchayat Samiti is 20 out of which 10 votes went in favour of the no confidence motion but that was not suffice to remove the petitioner. After the special meeting was over and counting of votes was done and result declared, those members of the Panchayat Samiti who had participated in the meeting raised an issue as to the holding of the meeting on 08.08.2018 without giving 7 days clear notice.

20. The counter affidavit of respondent no. 14 admits that she had received the notice. She admits in paragraph 5 of her counter affidavit that

the members of the Panchayat Samiti were served with the notice but then she has brought on record a copy of the application dated 06.08.2018

(Annexure R-14/1) said to have been submitted by Ainul and three others. Annexure R-14/1 bears one initial at the bottom without

there being any seal of the office of the Block Development Officer. The petitioner has alleged that it is a kind of forged document but without going

into that aspect of the matter, this court is of the considered opinion that once Ainul and three others who had allegedly submitted Annexure R-

14/1 participated in the special meeting on 08.08.2018 without reserving their right to protest, no protest was registered and they participated

actively in the discussions and voting, they will be deemed to have waived their rights, if any, to raise an objection against the holding of the special

meeting without giving 7 days clear notice. They had acquiesced to the notice. They had not raised any objection at the beginning of the special

meeting before the Chairman of the meeting, therefore Annexure R-14/1 had lost its effect and efficacy and will be of no avail for the

contesting respondents.

21. In her counter affidavit respondent no. 14 has not stated that she had raised any objection to the holding of the special meeting. This court would,

however, record to this extent that when same persons who are signatories to Annexure â??R-14/1â?? submitted a representation to the District

Panchayat Raj Officer on 14.08.2018 i.e. after holding of the special meeting they did not mention anything about their previous letter dated

06.08.2018 (Annexure â??R-14/1â??) and that casts a serious doubt over the contention of the contesting respondents that Annexure â??R-14/1â??

was submitted with the respondent no. â??6â?? on 06.08.2018. This much is required to be said only to notice that in the subsequent communication

dated 14.08.2018 if the respondents did not mention about the earlier protest in form of Annexure â??R-14/1â??, it cannot be said to be a natural

conduct of the complainants because any person who is vigilantly guiding his rights to protest would never miss an opportunity to mention that in past

also he had raised a protest.

22. In his counter affidavit the respondent no. â??6â?? has categorically stated that after the special meeting was over a complaint was made by the

9 members of the Panchayat Samiti and thereafter the impugned order was passed.

23. So far as the provisions with regard to the 7 clear days notice is concerned the same has fallen for consideration before this court times and again.

Section 44(3) and sub-section (4) of Section 46 as also the relevant provisions of the No Confidence Motion Rules, 2010 are quoted hereunder for a

ready reference:-

â??44(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 the 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 years 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.â??

46(4). Ten clear daysâ?? notice of an ordinary meeting and seven clear daysâ?? notice of a special meeting specifying the time at which such

meeting is to be held and the business to be transacted thereat shall be sent to the members and affixed at the office of the Panchayat Samiti. Such

notice shall be included in case of a special meeting any motion or proposition mentioned in the written request made for such meeting.â??

24. In the case of Smt. Shamshad Khatun vs. State of Bihar reported in 2010(1) PLJR 929, Honâ??ble Division Bench of this court was considering

a case wherein the appellant was elected as Pramukh of Fatuha Block. While she was functioning as Pramukh, the members of the Panchayat Samiti

sent a requisition on 05.12.02009 for convening a special meeting for no confidence motion against her. On the basis of the said requisition, the Block

Development Officer cum Executive Officer issued notice for convening a special meeting on 12.12.2009. On the date fixed, a no confidence motion

was passed against the appellant. The appellant participated in the no confidence motion and she came to be unseated. After the post fell vacant the

State Election Commission communicated to the District Magistrate cum Election Officer, Patna fixing 11.01.2010 for the date of election of new

Pramukh. At this stage, the appellant invoked the jurisdiction of this court under Article 226 of the Constitution of India. The issue as to 7 days clear

notice was raised. The learned Single Judge expressed his view that the resolution passed against the appellant did not deserve to be interfered with.

In the Letters Patent Appeal the Honâ??ble Division Bench though held that the provisions of sub-section (4) of Section 46 is mandatory and there

has to be a notice of 7 clear days went on to consider as to whether the appellant by her own conduct had waived the mandatory requirement

commanded by the statute and ultimately what has been held in paragraph 12, 13, 14 and 15 of the said judgment are quoted hereunder for a ready

reference:-

â??12. In Swaran Singh (supra), their Lordships have held to construe a statute, the scheme of the Act has to be taken into consideration and, for the

said purpose, it has to be read as a whole and then chapter by chapter, section by section and word by word. In the present case we are concerned

with the proposition whether a mandatory provision can be waived. Therefore, we are disposed to think the said decision does not aid or assist the stand put forth by Mr. Singh.

13. In *Jogindra Singh Sodhi v. Amar Kaur*, (2005) 1 SCC 31, a two-Judge Bench of the Apex Court was dealing with the stand taken as regards

waiver on the part of the landlady by her own conduct. Their Lordships expressed the view that waiver is a question of fact which must be expressly

pleaded, clearly proved and no such plea had been raised by the tenant or by the sub-tenant. Their Lordships further held a bald plea of waiver cannot

defeat statutory provision made in larger interest. In that context their Lordships referred to the earlier decisions rendered in *Shalimar Tar Products*

Ltd. v. H.C. Sharma, (1988) 1 SCC 70 and *Pulin Elehari Lal v. Mahadeb Dutta*, (1993) 1 SCC 629. In *Shalimar Tar Products Ltd.* (supra) the Apex

Court has expressed the views as follows:â?

â??13. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his

individual capacity. We are, however, in this case unable to agree. Firstly, in this case there was no case of waiver. Waiver is a question of fact which

has to be tested by facts and evidence. There was no conscious relinquishment of the advantage of any statute. No court has gone into this fact. It

does not seem to have been urged before the High Court also. Apart from this, in this requirement of the statute which is in the public interest there

cannot be any question of waiver of a right, dealing with the rights of the tenants or the landlord.â??

In *Pulin Behari Lal* (supra) it has been held as follows:â?

â??6â?|.â?| Waiver is a question of fact which depends on the facts and circumstances of each case. In the case of waiver of any provisions of the

statute it is necessary to prove that there was conscious relinquishment of the advantage of such provisions of the statute â??

14. In this regard we may fruitfully refer to the decision in *Bibi Amna Khatun & Ors.* (supra) wherein the majority speaking through *Hari Lal*

Agrawal, J. (as His Lordship then was), expressed the view as under:â?

â??8. In my opinion, simply because the second part of Section 11A is mandatory in nature, will not rule out the application of the principle of

â??waiverâ??, if once the correct scope of this maxim is appreciated and

understood. Although the desired assistance was not rendered at the Bar, I have taken some pains to examine the proposition in its true perspective with reference to the facts of the present case.

9. The essence of waiver is estoppel and where there is no estoppel, there can be no waiver, the connection between

estoppel and waiver being very close. But in spite of that, there is an essential and fundamental difference between the two and that

is that whereas estoppel is a rule of evidence, waiver is a rule of conduct. The accepted connotation of waiver is that to constitute waiver

there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of an existing legal right and a conduct

which warrants an inference of the relinquishment of a known right or a privilege (see, AIR 1959 SC 149).

There is, however, a tendency to mix up waiver and estoppel, as a single idea, although the one has apparently reference to a man's

conduct and the other to the legal consequence of that conduct. The principle underlying both these maxims is the same, namely, that a party will not

be permitted to approbate and reprobate or, in other words, to blow hot and cold, in respect of the same matter. This is the underlying principle behind

the maxim waiver.

I may now refer to a few authorities where the application of waiver has been considered, in order to bring home my point of view. The principle that

has been decided by those authorities, if I may briefly put it here, is that where a right or privilege guaranteed by law rests in the individual and is

primarily intended for his benefit and does not infringe the right of others, it can be waived provided such waiver is not forbidden by law and does not

contravene any public policy. This principle was recognized by this Court also in the case of Sashibhusan Prasad Singh v. Dalip Narain Singh (AIR

1936 Pat. 75) and then again in the case of Jogendra Missir v. Ramnandan Singh (AIR 1968 Pat. 218). The Supreme Court also in the case of

Basheshar Nath v. Commr. of Income-tax, Delhi and Rajasthan (AIR 1959 SC 149) made a similar observation. Maxwell in his Interpretation of

Statutes, 11th Edition (1962) at page 376, has also enunciated the same principle for applying this principle of estoppel.

15. In this context we may profitably refer to Krishna Bahadur v. Puma Theatre,

(2004) 8 SCC 229, wherein it has been held as follows:â?

â??9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a

cause of action; it is a rule of evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party

fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition

that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right

in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.â??

25. In the case of Manju Devi Vs. State of Bihar reported in 2010 (2) PLJR 905, a learned coordinate Bench of this court was considering one of the

issues wherein it was placed before the court that the Executive Officer vide his Memo dated 14.08.2009 had fixed the special meeting on 22.08.2009.

The notice was duly served on all the members but two on 15th itself. The Pramukh and Up-Pramukh raised a submission that the notice issued by the

Executive Officer was not providing 7 days clear time as envisaged under sub-section (4) of Section 46 of the Act of 2006. Rejecting the contention

of the Pramukh and Up- Pramukh who had despite receipt of the requisition failed to fix a date for meeting this court held in paragraphâ??8â?? of

the judgment as under:

â??8. There is yet another reason for not invalidating the meeting of 22.8.2009. It is presumed that as the Executive Officer is supposed to be aware

of the law so is the Pramukh and Up-Pramukh supposed to be aware of the law. If they were of the view that the meeting, as called for, was in

contravention of law, for any reason, then it was their duty to raise, a point of order at the meeting and get the meeting adjourned. They had to register

their protest at the meeting. They did not do so and permitted the meeting to be held and having lost the confidence of the house, on technical plea

seek to get the same set aside.â??

26. Recently in the case of Nitu Kumari vs. State of Bihar and others reported in 2019 (2) BLJ 688, this very court had occasioned to consider as to

whether the petitioner in the said case had waived her right to call the meeting

for considering no confidence motion by her conduct. This court relied upon the judgment of the Honâ??ble Supreme Court in the case of Jaswant Singh Mathura Singh and Another Vs. Ahmadabad Municipal Corporation reported in AIR 1991 SC 2130, Krishna Lal Vs. State of J&K reported in (1994) 4 SCC 422 and Babulal Badriprasad Verma Vs. Surat Municipal Corporation and others reported (2008) 12 SCC 401 and held that respondent no. 6 has rightly acted in terms of the instructions and guidelines of the State Election Commission. This court also distinguished the learned Single Judge judgment of this court in the case of Gita Devi Vs. State of Bihar reported in 2015(1) PLJR 790 paragraph 25, 26 & 27 of the judgment in the case of Nitu Kumari (supra) reads as under:-

â??25. No doubt in terms of the judgment of this court in the case of Geeta Devi (supra) the requisitionists has to wait till 7th day before going for a Special Meeting to be convened by the Executive Officer but on a reading of the whole judgment in the case of Geeta Devi (supra) it would appear that in the said case the instructions of the Bihar State Election Commission was not brought to the notice of learned Co-ordinate Bench of this Court in this case respondent No. 6 has brought on record Annexure â??Bâ?? which fully explains as to how the case of avoidance of service of Notice by Pramukh, the Executive Officer has to proceed. Annexure â??Bâ?? clearly provides the example giving a date-wise procedure. It emphasizes that for giving seven clear days Notice, the Notice convening Special Meeting be issued within 2-3 days from the date of service of requisition. I am, therefore, of a view that every judgment is a judgment in the facts pleaded in that case and a slightest of change in the facts would make a sea-difference. Reference in this regard, may be made to the judgment of the Honâ??ble Supreme Court in the case of Bharat Petroleum Corpn. Ltd. and another vs. N.R. Vairamani and another reported in (2004) 8 SCC 579.

26. Clause (V) of the instruction letter as contained in Annexure- â??Bâ?? reads as under: -

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27. In the present case since the petitioner was not allowing the service of requisition/notice and had already refused to receive the notice when it was

attempted to be served upon her through the process server, on going through the material particularly Annexure-â??Bâ?? to the counter affidavit of

respondent no. 6, this Court finds that the ratio of the judgment of the learned Single Judge of this Court in the case of Geeta Devi (supra) would not

help the petitioner.â??

27. In the facts of the present case when the ratio of the aforementioned judgments are applied this court comes to a conclusion that principles of

waiver applies here and the issue raised with regard to 7 days clear notice were no longer available to the requisitionists and in absence of there being

any case of the respondents that the notice of the special meeting was not duly served upon him/them and for that reason they could not participate in

the special meeting. They cannot be allowed to take a plea after participating and voting in that special meeting held on 08.08.2018 that it was not in

accordance with law.

28. Those who had participated in the special meeting and voted without registering any protest before the Chairman of the meeting particularly have

no case to plead that the special meeting be declared illegal. The District Magistrate, Katihar has, thus, completely erred in holding that the special

meeting was not in accordance with law on this ground.

29. The second ground on which the District Magistrate has interfered with is also not available to the respondents. Annexure â??1â?? to the writ

petition is the copy of the requisition which contains all the allegations serially

and the minutes of the meeting held on 08.08.2018 shows that those allegations were discussed. In the case of Smt. Kela Devi Vs. State of Bihar and others reported in 2009(4) PLJR 168 a learned coordinate Bench of this court was considering a prayer for quashing of the proceedings of no confidence motion dated 19.08.2008 and also for quashing of the notice dated 14.08.2008 issued by respondent no. 5 the Block Development Officer cum Executive Officer, Karpi on the ground of alleged violation of the provisions of sub-section (4) of Section 46 of the Act of 2006. There was another writ application in which the petitioner who was the Pramukh of the Panchayat Samiti and was aggrieved by the decision of the District Magistrate, Arwal directing the Block Development Officer, Karpi to again fix a date to convene a special meeting for considering the proposal of no confidence motion after holding that the resolution dated 19.08.2008 is void and non-existent as only five days time was given instead of seven days time to convene the special meeting. Since both the writ applications were interlinked, they were tagged. The learned writ court relied upon the judgment of this court in the case of Suryadeo Kumar (supra) and held that the power under Section 157 of the Act of 2006 can be exercised by the Collector at any time before the special meeting itself is held and decision taken therein and not after the said meeting was concluded. For the said reason the order dated 28.08.2008 passed by the Collector were set aside being void and contrary to law.

30. In the opinion of this court, the present case would also be covered by the judgment of this court in the case of Suryadeo Kumar (supra). The collector has exceeded her jurisdiction and proceeded to pass the impugned order on 01.09.2018 much after the special meeting had concluded on 08.08.2018. This court has already held that the requisition (Annexure â??1â??) contained a detail allegations and those were well discussed in the special meeting held on 08.08.2018, therefore, the District Magistrate is once again not correct in saying that there was violation of Clause (V) of sub-section (3) of Section 44 of the Act of 2006.

31. In view of the discussions made hereinabove, the impugned orders as contained in Annexure â??5â?? & â??6â?? to the writ application are hereby quashed.

32. The writ application stands allowed.