



पत्र संख्या-पं0नि0 30-93/2024 3428

प्रेषक,

विशेष कार्य पदाधिकारी,  
राज्य निर्वाचन आयोग, बिहार।

सेवा में,

जिला पदाधिकारी-सह-  
जिला निर्वाचन पदाधिकारी (पंचायत),  
समस्तीपुर।

पटना, दिनांक- 5.9.24

विषय:- उपाध्यक्ष, जिल परिषद, समस्तीपुर के रिक्त पदों पर निर्वाचन की तिथि निर्धारण करने के संबंध में।

प्रसंग:- आपका पत्रांक 3465 दिनांक 09.08.2024

महाशय,

निदेशानुसार उपर्युक्त विषय के संबंध में सूचित करना है कि प्रासंगिक पत्र द्वारा उपाध्यक्ष, जिल परिषद, समस्तीपुर के विरुद्ध अविश्वास प्रस्ताव पारित होने के फलस्वरूप रिक्त पद पर निर्वाचन कराने हेतु आयोग को प्रतिवेदन/प्रस्ताव प्रेषित किये गये हैं।

उक्त संदर्भ में उपाध्यक्ष, जिला परिषद समस्तीपुर द्वारा माननीय उच्च न्यायालय पटना में CWJC No 11619/2024 दाखिल की गई है। जिसमें CWJC No 8409/2024 (अजहर आलम राज्य सरकार एवं अन्य) संलग्न है, में माननीय उच्च न्यायालय पटना द्वारा दिनांक 22.07.2024 को पारित आदेश की कंडिका 03 में अंकित है कि दिनांक 30.12.2023 को 26 जिला परिषद सदस्यों द्वारा अध्यक्ष एवं उपाध्यक्ष के विरुद्ध अविश्वास प्रस्ताव लाये जाने हेतु अध्यक्ष की गई थी। (आदेश की प्रति संलग्न)

उक्त सभी कागजातों/साक्ष्यों के अवलोकन से स्पष्ट हो रहा है कि अध्यक्ष के विरुद्ध अविश्वास प्रस्ताव हेतु बैठक सम्पन्न हुये हैं। परन्तु उपाध्यक्ष के संबंध में स्पष्ट नहीं है।

उक्त परिप्रेक्ष्य में अनुरोध है कि दिनांक 30.12.2023 दिये गये अध्यक्ष की प्रति उपलब्ध कराई जाय एवं उससे संबंधित की गई कार्रवाई के संबंध में स्थिति स्पष्ट करते हुए वांछित प्रतिवेदन पत्र प्राप्ति के दो दिनों के अन्दर उपलब्ध कराना सुनिश्चित की जाय। ताकि संदर्भित रिक्त पद पर निर्वाचन कराने हेतु तिथि निर्धारित की जा सके।

अनुलग्नक-यथोक्त।

विश्वासभाजन

05/9/24

विशेष कार्य पदाधिकारी।

ज्ञापांक पं0नि0 30-93/2024-3428

पटना, दिनांक - 5.9.24

प्रतिलिपि : आयुक्त, दरभंगा प्रमंडल, दरभंगा को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

05/9/24

विशेष कार्य पदाधिकारी।

5.9.24



IN THE HIGH COURT OF JUDICATURE AT PATNA  
Civil Writ Jurisdiction Case No. 8409 of 2024

Azhar Alam

... .. Petitioner/s

Versus

The State of Bihar & Ors

... .. Respondent/s

**Appearance :**

|                      |   |   |
|----------------------|---|---|
| For the Petitioner/s | : | Mr. Suraj Narayan Yadav, Advocate<br>Mr. Bijay Bhushan Prasad, Advocate<br>Ms. Rani Shashi Bharti, Advocate |
| For the Respondent/s | : | Mr. Santosh Chandra Bhaskar, AC to GP-11  |
| For the SEC          | : | Mr. Girish Pandey, Advocate   |

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

**ORAL ORDER**

2 22-07-2024

Heard Mr. Suraj Narayan Yadav, learned counsel for the petitioner as also the State and Mr. Girish Pandey, learned counsel representing the State Election Commission, Bihar.

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

(i) for issuance of writ in the nature of certiorari to quash the decision taken in the Special Meeting of No Confidence Motion held on 13.01.2024 by which No Confidence Motion brought against the chairperson of the District Board, Samastipur has been declared failed;

(ii) for issuance of a writ in the nature of mandamus / or any appropriate writ, order/s, direction/s commanding upon the respondent to revive the proceeding of



*No Confidence Motion and hold a fresh special meeting of No Confidence Motion against the Chairperson of District Board, Samastipur held on 13.01.2024 among the 5 members present in the said meeting.*

3. The matter relates to District Board, Samastipur and twenty-six elected members gave a requisition on 30.12.2023 for taking up 'No confidence motion' against the Chairperson as also the Vice-Chairperson. This followed the special meeting which was held on 13.01.2024 and the District Magistrate, Samastipur after recording that out of fifty-one members, only five appeared on the date of special meeting and thus following the letter no. 2535 dated 16.09.2008 issued by the State Election Commission, Bihar, Patna. Since the requisite members required for the meeting were not present, the voting is not required. This was communicated through memo no. 273 dated 13.01.2024 (Annexure-P/4 to the petition).

4. Learned counsel for the petitioner submits that not only the State Election Commission has clarified in the matter, the Division Bench in **Dharmshila Kumari vs. Hemant Kumar and Ors [2021 (3) PLJR 346]** has been stamped by the **Full Bench in LPA No. 125 of 2024 (Sangeeta Devi vs the State of Bihar)** in which it has been held that for the motion to be carried out successfully, the majority of members present and



voting is required and not the majority of the total members elected.

5. The paragraphs 40 and 41 of the Sangeeta Devi (Supra) read as follows:

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

*41. We, thus, conclude that for a motion of "no confidence" to be carried out successfully, the requirement is of the majority of the members present and voting and not majority of the total of the elected members of the Zila Parishad.*

6. Mr. Girish Pandey, learned counsel appearing on behalf of the State Election Commission submits that vide letter no. 449 dated 08.02.2022, it has been informed to all the District Magistrates across the State stating that they were earlier also informed vide letters dated 19.07.2018, 18.07.2018 and 12.01.2024 that the letter no. 2535 dated 06.09.2008 has become



infructuous and that should not be taken into account in the special meeting proceedings.

7. The petitioner has made out a case and before passing an order, the other side have to be noticed/heard.

8. Let the respondent no. 5, the District Magistrate, Samastipur file counter affidavit duly signed by him on the following points:

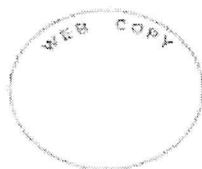
(i) whether he was in receipt of the aforesaid letters issued by the State Election Commission or not;

(ii) whether in the light of the said direction, the decision taken by him to drop the 'No confidence Motion' is justified or not.

9. The State Election Commission, Bihar, Patna shall also be filing a counter affidavit which may be used by the Court for further such cases.

10. The State Election Commission is duty bound to bring on record the letters dated 19.07.2018, 18.07.2018 as also 12.01.2024 beside the letter no. 449 dated 08.02.2022 in its counter affidavit.

11. Issue notice to the respondent nos. 8 to 57 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 two



weeks from today failing which the application shall stand rejected without further reference to the Bench.

12. 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'.

13. List this case after six weeks.

**(Rajiv Roy, J)**

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