

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21450 of 2014

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Ranjana Singh W/o Sanjay Kumar Singh, resident of village Batraha, Police Station Saharsa, District Saharsa, Presently Deputy Chairman, Nagar Parishad, Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development AND Housing Department, Govt. of Bihar, Patna.
3. The Commissioner, Koshi Division, Saharsa.
4. The District Magistrate, Saharsa.
5. The Executive Officer, Nagar Parishad, Saharsa.
6. Raju Mahto, the Chairman, Nagar Parishad, Saharsa.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
 Mr. Vipin Kumar Singh, Advocate
For the Respondent/s : Mr. Raju Giri, G.P.-30

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 27-04-2015

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner, Mr. Santosh Kumar Mishra, Assisting Counsel to G.P. 34 for the State, Mr. Dhirendra Kumar Jha for the Nagar Parishad, Saharsa and Mr. Sarvesh Chandra Verma, learned counsel appearing for the respondent no. 6, the Chairman, Nagar Parishad, Saharsa.

The petitioner has prayed for a writ in the nature of certiorari for quashing the order dated 8.11.2014 issued under the signature of the Executive Officer, Nagar Parishad, Saharsa, whereby the proposal for no confidence motion brought against the respondent no. 6, the Chairman, Nagar Parishad, Saharsa has been declared to be

defeated in absence of quorum.



Mr. Bindhyachal Singh, learned counsel appearing on behalf of the petitioner straightaway raises an issue of law and with reference to the provisions underlying Rule 2(vi) of the Bihar Municipal No Confidence Motion Rules, 2010 (hereinafter referred to as 'the Rules') and Section 50 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), he submits that even if the stand of the respondents is to be accepted on its face value yet, in case the requisitionists who had moved the motion were not found present on the date fixed for special meeting i.e. 8.11.2014, the presiding officer was under an obligation under Section 50(2) of the Act to adjourn the special meeting to any other date and on which date the motion could have been considered on the basis of the members present and voting. He submits that in a hurry the Executive Officer has not only assumed the jurisdiction of a Presiding Officer which does not vest in him to pass the impugned order present at Annexure-5 whereby he has rejected the no confidence motion.

Although serious attempt has been made by Mr. Jha appearing for the Nagar Parishad as well as counsel for the Chairman to defend the order but the stand taken is indefensible in view of the statutory provisions as well as a judgment and order of this Court reported in 2014(4) PLJR 467 (Vibha Devi vs. The State of Bihar &

Ors.).

Section 25(4) of 'the Act' vests jurisdiction in 1/3rd of the elected members of the municipality to move a no confidence motion against a Councilor or a Deputy Chief Councilor as the case may be, in the manner prescribed. 'The Act' initially was not accompanied with any rules rather 'the rules' were framed in 2010 and which casts an obligation on the Chief Councilor to fix a date of special meeting on receipt of such requisition. Following fixation of the meeting that a notice in this regard is to be circulated in the manner prescribed under sub-rule (i), (ii) and (iv) of 'the Rules'. No sooner the meeting commences that the Presiding Officer is cast with responsibility to read out the motion. The quorum for holding such meeting has been prescribed at rule 2(vi) to be as per the provision of Section 50 of 'the act'.

Section 51 of 'the act' provides that the Chief Councilor in his absence the Deputy Chief Councilor shall preside in the meeting fixed for the purpose and which would also include the special meeting. Section 50 of 'the act' prescribes the quorum. Section 50(1) prescribes a quorum of 1/3rd of total number of councilors and if at any time the quorum is not complete in a meeting then under sub-section (2) of Section 50 the Presiding Officer would be under a duty to adjourn / suspend the meeting. Section 50(3) of the Act then

provides that no quorum shall be necessary for such adjourned meeting.

The provisions of 'the Act' and 'the Rules' framed thereunder leave no room for any doubt that even if the Chairman had proceeded to fix the date of meeting for consideration of the requisition on 8.11.2014 vide letter dated 1.11.2014, copies of which has been annexed in the counter affidavit of the Chairman, in case it was found that the requisitionists had absented themselves on the said date then the Presiding Officer i.e. the Chairman and none else, was under a duty to adjourn the meeting to another date which legal duty in the present case has been abdicated by the Chairman and on the contrary the Executive Officer in a cavalier manner has assumed such jurisdiction to pass the order that the motion stands defeated. The order dated 8.11.2014 placed at Annexure-5 to the writ petition is unsustainable not only on grounds of statutory violations but also on grounds of absence of jurisdiction on the part of the Executive Officer to pass such order.

For the reasons aforementioned, the order of failure of the motion passed by the Executive Officer present at Annexure-5 cannot be upheld and is set aside. Since this Court finds no infirmity in the requisition moved against the Chairman of the Nagar Parishad, Saharsa, a copy of which is placed at Annexure-1 to the writ petition,

he shall proceed to fix the date of special meeting on or before 04.05.2015 by following the lawful procedure and in case the Chairman fails to fix the date of special meeting on 4.5.2015 then the requisitionists shall be at liberty to proceed in the matter in accordance with law.

Before parting, a word of caution for the Executive Officer, Nagar Parishad, Saharsa, to strictly abide by the legal provisions while performing his duty and not exceed his jurisdiction.

The writ petition is allowed.

(Jyoti Saran, J)

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