

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13964 of 2015

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1. Nagendra Jha S/o Late Mahant Sah R/o Village Belsand, Ward no. 9,
P.O. + P.S. Belsand, Dist. Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Secretary, State Election Commission, Bihar, Patna.
4. The District Magistrate, Sitamarhi.
5. The Sub Divisional Officer, Sitamarhi.
6. The Circle Officer-Cum-Executive Officer, Nagar Panchayat, Belsand, Sitamarhi.
7. Nathuni Alam S/o Vazul Haque R/o Village Belsand, Ward no. 1, P.O. + P.S. Belsand, Dist. Sitamarhi.
8. Kunti Devi W/o Vinod Choudhary R/o Village Belsand, Ward no. 2, P.O. + P.S. Belsand, Dist. Sitamarhi.
9. Shakuntala Devi W/o Sri Shyam Babu Prasad R/o Village Belsand, Ward no. 3, P.O. + P.S. Belsand, Dist. Sitamarhi.
10. Sabra Khatun W/o Md. Ibrahim R/o Village Belsand, Ward no. 7, P.O. + P.S. Belsand, Dist. Sitamarhi.
11. Brajnandan Prasad S/o Late Ram Chandra Sah R/o Village Belsand, Ward no. 8, P.O. + P.S. Belsand, Dist. Sitamarhi.
12. Leela Devi W/o Kanhai Sah R/o Village Belsand, Ward no. 10, P.O. + P.S. Belsand, Dist. Sitamarhi.
13. Sunita Devi W/o Gopal Bhagat R/o Village Belsand, Ward no. 11, P.O. + P.S. Belsand, Dist. Sitamarhi.
14. Sarita Devi W/o Sri Munna Rai R/o Village Belsand, Ward no. 12, P.O. + P.S. Belsand, Dist. Sitamarhi.
15. Shyam Sahani S/o Late Bhola Sahani R/o Village Belsand, Ward no. 6, P.O. + P.S. Belsand, Dist. Sitamarhi.
16. Randhir Kumar S/o Suresh Sah R/o Village Belsand, Ward no. 4, P.O. + P.S. Belsand, Dist. Sitamarhi.
17. Md. Vazir Sah S/o Zamruddin Sah R/o Village Belsand, Ward no. 5, P.O. + P.S. Belsand, Dist. Sitamarhi.
18. Vinod Paswan S/o Late Suraj Paswan R/o Village Belsand, Ward no. 13, P.O. + P.S. Belsand, Dist. Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad, Adv.
Mr. Rewti Kant Raman, Adv.

For the Respondent/s : Mr. Arun Kumar, A. C. to G.P.5

For the Respondent No.3(SEC) : Mr. Amit Srivastava, Adv.
Mr. Girish Pandey, Adv.

For the private respondent No. 7 to 10 and 12 to 14:

Mr. Mrigank Mauli, Adv.
Mr. Rakesh Kumar Singh, Adv.

For the respondent No.6 : Mr. Onkar Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 27-10-2015

Heard Mr. Mahesh Prasad learned counsel for the petitioner, learned counsel for the State, Mr. Mrigank Mauli learned counsel for the respondent Nos. 7 to 10 and 12 to 14 and Mr. Om Prakash for the Executive Officer, Nagar Panchayat.

The petitioner is the Ex-Chief Councillor of Nagar Panchayat, Belsand in the district of Sitamarhi and stands removed by the no confidence motion passed in the special meeting held under section 25(4) of the Bihar Municipal Act, 2000 (hereinafter referred to as 'the Act') read with the Bihar No Confidence Motion Rules, 2010 on 4.9.2014(hereinafter referred to as 'the Rules').

This is the third attempt made by the petitioner to seek an indulgence to his ouster with his earlier attempts being disposed of on grounds that even when the petitioner was choosing to question the reelection to the post of Chief Councillor, he had failed to question his own ouster. It is upon becoming wiser that the petitioner has filed the present writ petition, this time questioning his ouster. The only ground that has been raised by Mr. Mahesh Prasad is that there is no valid service of notice of the special meeting held on 4.9.2014.



The arguments has been contested by the counsel for the Executive Officer as well as Mr. Mauli appearing for the private respondents and who with reference to the counter affidavit have stated that the returned envelop enclosed at Annexure-R/6 to the counter affidavit of the private respondents is evident of the refusal by the petitioner to accept the notice. Another reference has been made to Annexure-R/7 to submit that even personal service attempted on 27.8.2014 has not been accepted.

I have heard learned counsel for the parties and I have perused the records.

The present contest seeks its origin in the order passed by this Court in C.W.J.C.No.11869 of 2014 which was filed by this petitioner questioning the motion moved against him on grounds that the requisition was not served and the notice of special meeting was not in consonance with 'the Act' and the rules. This Court taking into consideration the facts and the documents on record, disposed of the writ petition casting an obligation on the Chief Councillor to fix the date of special meeting latest by 21st of July, 2014 failing which the requisitionists were given liberty to carry out the obligation in terms of 'the Rules'. It so happens that the Chief Councillor- petitioner fixed the date of special meeting on 1.8.2014 but prior thereto he voluntarily resigned on 31.7.2014



which is manifest from Annexure-8 to the supplementary affidavit. The resignation apparently was directed to avoid the motion. The special meeting was held on 1.8.2014 and since the petitioner had resigned that the Presiding Officer sought guidelines from the Executive Officer as well as the Department as to the mode and manner of its progress. This is evident from the minutes of the meeting held on 1.8.2015, a copy of which is placed at Annexure-3 to the writ petition. Since the special meeting held on 1.8.2014 remained inconclusive that the petitioner got wiser and withdrew his resignation on 4.8.2015, a copy of which is placed at Annexure-9 to the supplementary affidavit.

Considering the circumstances existing that the Executive Officer in the light of the minutes of the meeting held on 1.8.2014 sought guidelines from the Department and was told to proceed in terms of Section 25 and Section 50 of 'the Act'. The communications in this regard are enclosed at Annexure-R/3 and R/4 to the counter affidavit of the private respondents. It is in view of the these developments that the Presiding Officer decided the date of special meeting in tune with the statutory provisions of Section 50 and which was fixed on 4.9.2014 and was communicated to all which is evident from Annexure-R/5. The Chief Councillor and the Deputy Chief Councillor did not sign



thereon and as a consequence they were communicated through the postal peon. Annexure-R/6 to the counter affidavit of the private respondent reflects that the Chief Councillor refused to accept notice on 25.8.2014 as is evident from the note of the postal peon. A personal service of notice also did not bear any result which is evident from Annexure-R/7. It is thereafter that the meeting was held on 4.9.2014. The motion was discussed and the petitioner was ousted in the ballots cast.

The only contention advanced by Mr. Mahesh Prasad very vigorously was regarding non service of notice. The argument is fallacious. Apart from the fact that there is a recorded refusal by the petitioner as manifest from the note of the postal peon as is confirmed from Annexure-R/6 to the counter affidavit of the private respondent, even the personal service records a refusal as stands confirmed from Annexure-R/7. In view of these confirmed refusals recorded by the postal peon and the messenger peon of the Nagar Panchayat, the contention advanced by the Chief Councillor regarding absence of notice is only taken to be rejected. In addition thereto the conduct of the petitioner is such that he is not found entitled to indulgence for he has tried to play round with the order of this Court in first trying to avoid motion by resigning and once the business of the special meeting so held stood

inconclusive then he cunningly sought to withdraw the same.

I am attempted to impose cost on the petitioner but I refrain from doing so. Suffice it to say that neither on merits nor on conduct is the petitioner found entitled for indulgence. The writ petition is dismissed.

(Jyoti Saran, J)

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