

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11643 of 2014

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1. Najiran Khatoon Wife of Wakil Mian Resident of Village - Bihia, P.S. - Bihia, District - Bhojpur, Chief Councillor, Nagar Panchayat, Bihia, District - Bhojpur (Ara).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar.
3. Deputy Secretary, Urban Development and Housing Department, Government of Bihar.
4. District Magistrate, Bhojpur, Ara.
5. Sub-divisional Magistrate, Jagdishpur, District - Bhojpur.
6. Executive Officer, Nagar Panchayat, Bihia, District - Bhojpur.
7. Nagar Panchayat, Bihia through its Executive Officer, Nagar Panchayat, Bihia, District - Bhojpur.
8. Nutan Devi Wife of Sri Ram Babu Councillor of Ward No. 10, Nagar Panchayat, Bihia, District - Bhojpur.
9. Pappu Kumar, Councillor of Ward No. 12, Nagar Panchayat, Bihia, District - Bhojpur.
10. Gaya Singh, Councillor of Ward No. 09, Nagar Panchayat, Bihia, District - Bhojpur.
11. Sabita Devi Wife of Sri Birendra Prasad Councillor of Ward No. 02, Nagar Panchayat Bihia, District - Bhojpur.
12. Shailendra Kumar Gupta Son of Late Bachhan Gupta Councillor of Ward No. 13, Nagar Panchayat, Bihia, District - Bhojpur.
13. Urmila Devi Wife of Pawan Jee Councillor of Ward No. 08, Nagar Panchayat, Bihia, District - Bhojpur.
14. Baijnath Prasad Son of Paras Nath Sarraf Councillor of Ward No. 06, Nagar Panchayat, Bihia, District - Bhojpur.
15. Urmila Devi Wife of Mantu Yadav Councillor of Ward No. 03, Nagar Panchayat, Bihia, District - Bhojpur.
16. Rajeev Kumar Santosh Son of Santosh Kumar Councillor of Ward No. 04, Nagar Panchayat, Bihia, District - Bhojpur.
17. Kamakhya Prasad Son of Sri Nath Councillor of Ward No. 01, Nagar Panchayat, Bihia, District - Bhojpur.
18. Nippa Devi, Councillor of Ward No. 05, Nagar Panchayat, Bihia, District - Bhojpur.
19. Raj Kishore Ram Son of Hira Lal Ram Councillor of Ward No. 11, Nagar Panchayat, Bihia, District - Bhojpur.
20. Janaki Singh Son of Late Suraj Singh Councillor of Ward No. 14, Nagar Panchayat, Bihia, District - Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh, Adv.
For the Respondent/s : Mr. M.K.Sinha, Adv.

For the respondent Nos.8 to 16 : Mr. Jitendra Prasad Roy, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-10-2015

Heard Mr. Jitendra Prasad Singh learned counsel for the petitioner, learned counsel for the State and Mr. Jitendra Prasad Roy who has appeared for the private respondent Nos. 8 to 16. Since it is admitted position that respondent Nos. 17 to 20 did not participate in the no confidence motion hence the requirement of notice is waived.

The petitioner happens to be the Chief Councilor of Nagar Panchayat, Bihia in the District of Bhojpur and has been unsuited in the no confidence motion passed against her on 14.7.2014. The requisition moved against the petitioner is at Annexure-1 and is signed by the required number of Ward Councilors. Since the petitioner did not take steps to fix the date of special meeting that it was fixed by the Ward Councillors on 14.7.2014 and was circulated. Following the circulation of notice that the special meeting in terms of Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') read along with the Bihar Municipal No Confidence Motion Process Rules, 2010 framed thereunder (hereinafter referred to as 'the Rules'), was held on 14.7.2014 and in which the petitioner has been voted out. The short issue that was raised by Mr. Singh to contest the motion is that the provision of Rule 2(v) of 'the Rules' has

not been followed. He submits that the motion is required to be thrown open for discussion and only after the discussion that the voting has to be carried out and the result declared but in this case the Councillors have not chosen to do so as is manifest from the proceedings present at Annexure-6 .

Mr. Jitendra Prasad Roy has suo motu appeared for the Ward Councillors who were present in the special meeting and he opposes the contentions inter alia on ground that since the petitioner did not choose to participate in the meeting hence there was no issue of discussion in view of the unanimity in the resolution. He further submits that the issue whether or not any discussion took place could be certified by the Executive Officer who was present in the meeting.

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

Considering that the issue raised by Mr. Singh is an issue of law and fact, it is to be seen whether it stands supported by the pleadings on record. The provision of Rule 2(v) of the Rules mandates that no sooner than the special meeting commences that the Presiding Officer would read out the motion on which the meeting has been called and declare it open for discussion. During discussion an opportunity is to be given to the Chief Councillor/Deputy Chief Councillor to defend himself. It is thereafter that the motion would be subjected to voting



by secret ballot on the same day after discussion. The discussion aspect has got some relevance for it is thereafter that the ballot takes place. The proceedings are impugned at Annexure-6 to the interlocutory application filed for questioning the same bearing I.A.No.5284 of 2014 and leaves no room for any confusion that no discussion took place. Indisputably the Presiding Officer read the motion and held all the charges is to be proved. It is noted that the petitioner and some others were not present. Whereas Rule 2(v) of the Rules casts an obligation on the Presiding Officer to hold the discussion on the charges amongst the members but he did not choose to do so rather he observed that it was unanimously decided by the members present to resolve the issue by way of secret ballot. This is not the legislative intent. If the procedure is prescribed under the statute it has to be mandatorily followed and cannot be circumvented. In these undisputed circumstances I wonder for the submission made by Mr. Roy that we should await an affidavit from the Executive Officer who certainly cannot be permitted to supplement the reasons.

The infirmity in the motion is apparent from a bare glance of the motion and cannot be upheld. Law is very well settled on the issue and when statute prescribes a mode and manner of performance of an act, it has to be mandatorily followed and all other modes would be impliedly forbidden.

At this stage it is pointed out by Mr. Jitendra Prasad Roy that following the no confidence motion a reelection has taken place on 8.8.2014 and in which the respondent No. 15 namely Urmila Devi wife of Mantu Yadav has been elected as the Chief Councillor. Unfortunately, the petitioner has not chosen to contest the reelection. The result is that even when the petitioner has made out a point for interference in the motion passed against her but her option not to question the election of the private respondent No.15 to the post of Chief Councillor, in my opinion would prove fatal for the relief prayed. Even when the issue raised merits consideration, the conduct of the writ petitioner in not choosing to question the election of the private respondent no.15 to the post of Chief Councillor, has rendered the issue academic and is disposed of accordingly.

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(Jyoti Saran, J)