

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2398 of 2015

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1. Sujata Devi Wife of Krishna Mena Maharaj, Resident of Ekma Bhat Toli, Ward No. 4, P.O. and P.S. - Ekma, District - Sarana at Chapra, presently Chief Councilor, Nagar Panchayat Ekma Bazar, District - Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The Executive Officer, Nagar Panchayat, Ekma Bazar, P.S. and P.S. - Ekma, District - Saran at Chapra.
6. Smt. Rinki Devi Wife of Sri Vijay Kumar Singh, presently Deputy Chief Councilor, Nagar Panchayat Ekma Bazar, P.O. and P.S. Ekma District - Saran at Chapra.
7. Smt. Devanti Devi Wife of not known to the petitioner
8. Smt. Geeta Devi Wife of not known to the petitioner
9. Md. Annas Son of not known to the petitioner
10. Sri Vyas Manjhi Son of not known to the petitioner null
11. Sri Jai Prakash Sharma Son of not known to the petitioner
12. Sri Harendra Ram Son of not known to the petitioner
13. Sri Parshuram Mahto Son of not known to the petitioner
14. Sri Jitendra Singh Son of not known to the petitioner
15. Sri Shailendra Singh Son of not known to the petitioner
16. Smt. Kaushalaya Devi Wife of not known to the petitioner
17. Smt. Punam Devi Wife of not known to the petitioner
18. Sri Arbind Kumar Dubey Son of Not known to the petitioner
19. Smt. Anju Devi Wife of not known to the petitioner
20. Smt. Anu Devi Wife of not known to the petitioner
21. Sri Manoj Giri Son of not known to the petitioner
22. Smt. Rita Devi Wife of not known to the petitioner
23. Sri Mithilesh Singh Son of not known to the petitioner Respondet nos. 6 to 23 are the Ward Councilors of Nagar Panchayat, Ekma Bazar through the Executive Officer, Nagar Panchayat Ekma Bazar, P.O. and P.S. Ekma, District - Saran at Chapra.
24. The State Election Commission (Municipality) through the Secretary, 4th Floor Sone, Bhawan, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.
Mr. Ravi Ranjan, Adv.
Mr. Chandan, Adv.

For the Respondent-State : Mr. Binay Kumar Pandey, A.C. to G.A. 3

For the SEC : Mr. Amit Shrivastava, Adv.
Mr. Girish Pandey, Adv.

For the private respondents: Mr. Raghwendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

3 02-04-2015 Heard Mr. Ravi Ranjan, learned counsel for the petitioner, Mr. Binay Kumar Pandey, A.C. to G.A.3 for the State, Mr. Girish Pandey, learned counsel for the Election Commission and Mr. Raghwendra Kumar for the respondent Nos. 6, 11, 13 to 15, 18 to 20 and 20, 22 and 23.

Though the other respondents have been served through the Executive Officer-cum-Block Development Officer on 18.3.2015 and an affidavit has been filed to that effect by the Executive Officer but they have not chosen to appear.

A very short issue has been raised by learned counsel for the petitioner to question the no confidence motion passed against the petitioner who happens to be the Chief Councillor of the Nagar Panchayat Ekma Bazar, District-Saran at Chapra on 16.2.2015, a copy of which is placed at Annexure-B to the counter affidavit filed on behalf of the respondent no.5. He submits that the notice convening special meeting as contained in Annexure-4 to I.A. No. 1350 of 2015 is in violation of Rule 2(iv) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as 'the Rules') framed under Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') in as much as it is not accompanied with reasons/charges.

Since the illegality was apparent on the face of it and most

of the respondents had appeared through counsel Mr. Raghwendra Kumar this Court vide order passed on 13.3.2015 issued notice to the non-appearing respondents for completion of the formality. Since in view of the apparent illegality in the notice convening special meeting, the no confidence motion passed on 18.2.2015 was unsustainable.

As I have observed hereinabove, the non-appearing respondents though served, has not chosen to appear. The requisitionists and the other Ward Councillors of the Nagar Panchayat appearing through Mr. Raghwendra Kumar, do admit to the legal infirmity in the notice placed at Annexure-4 to I.A. No. 1350 of 2015.

Mr. Raghwendra Kumar however submits that since there is no infirmity in the requisition filed for moving the no confidence motion against the petitioner, a copy of which is placed at Annexure-1 to the writ petition hence even if this Court would set aside the no confidence motion, a direction be issued to the Chief Councillor- petitioner to fix the date for special meeting.

Mr. Ravi Ranjan appearing on behalf of the Chief Councillor would have no objection to such direction.

In view of the circumstances existing and considering that the illegality in the notice convening special meeting dated 12.2.2015 placed at Annexure-4 to I.A. No. 1350 of 2015 is

unsustainable and the defect is not curable, it cannot be upheld and as a consequence the no confidence motion passed against the petitioner in the special meeting held on 18.2.2015 also stands invalidated. In result, the notice dated 12.2.2015 as well as the no confidence motion passed on 18.2.2015 are set aside.

Since this Court finds no infirmity in the requisition moved against the petitioner hence she is duty bound to convene a meeting for consideration of the no confidence motion so moved against her and which should be fixed by her on/or before 13.4.2015 failing which the requisitionists shall be at liberty to proceed in accordance with law.

No sooner the petitioner fixes the date of special meeting that it shall be the duty of the Executive Officer to circulate the notice bearing in mind the stipulations provided under Rule 2(iv) of the Rules and any lapse on the part of the Executive Officer in abiding by the statutory provisions underlying the Bihar Municipal Act and the Rules framed thereunder would be construed as a violation of this Court's direction and would be treated of a contempt to the present order.

The writ petition is allowed with the direction aforementioned.

Bibhash/-

(Jyoti Saran, J)

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