

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6602 of 2015

With

I.A. No.3986 of 2015

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Sujata Devi, wife of Krishna Menan Maharaj, resident of Ekma Bhat Toli, Ward No.4, P.O. and P.S.- Ekma, District - Saran 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, District - Saran at Chapra.
5. The Executive Officer, Nagar Panchayat, Ekma Bazar, P.O. 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.
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.

Respondent 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. Manglam Mr. Chandan
For the Respondent-State	:	Mr. Ajit Pratap Singh, SC-15 Mr. S.K.Ranjan, AC to SC-15
For the State Election Commission:		Mr. Amit Shrivastava

Mr. Girish Pandey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-05-2015

Heard Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner, learned counsel for the State and learned counsel for the State Election Commission.

This is the second attempt on the part of the petitioner to question the **no confidence motion**, the earlier raised in CWJC No.2398 of 2015. This time the petitioner raises violation by the Executive Officer in complying with the provisions underlying section 49 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') in not maintaining the statutory period in between the service of notice and the date fixed for special meeting.

The facts of the case briefly stated is that a **no confidence motion** was passed against the petitioner who happens to be the Chief Councillor of Nagar Panchayat, Ekma Bazar in the district of Saran at Chapra. The motion was questioned by the petitioner before this Court in CWJC No.2398 of 2015 on grounds that the notice issued by the Executive Officer did not comply with the provisions 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 Act' inasmuch as it was not

accompanied with reasons/charges.

This Court after hearing the parties allowed the writ petition and finding substance in the argument of Mr. Manglam, learned counsel appearing for the petitioner set aside the **no confidence motion** passed against the petitioner but this Court not finding any infirmity in the requisition moved against the petitioner and taking note of the statutory duty cast upon the petitioner under the provisions of rule 2(i) of 'the Rules' to convene a meeting, issued directions to the petitioner to fix a date of special meeting on or before 13.4.2015, failing which the requisitionists were at liberty to proceed in accordance with law. The petitioner failed to comply with the direction. In fact even when the statutory provisions underlying section 25 (4) of 'the Act' read with rule 2(i) of 'the Rules' cast statutory obligation to fix the date of special meeting within a period of 7 days from the date of receipt of such requisition and almost a period of four weeks had passed from the filing the requisition the petitioner again avoided this responsibility by moving in intra court appeal against the order passed by the writ Court. In the meanwhile the requisitionists had proceeded to fix a date of special meeting which was held on 24.4.2015 and when **no confidence motion** was passed against the petitioner and even the date of election of new Chief Councillor has been notified on

15.5.2015, The **no confidence motion** passed against the petitioner on 24.4.2015 and the election notified is sought to be questioned by filing an interlocutory application bearing I.A. No.3986 of 2015.

Mr. Manglam, learned counsel appearing for the petitioner vehemently arguing in support of the petitioner has sought to question the **no confidence motion** on grounds that the notice of special meeting circulated by the Executive Officer on 21.4.2015 notifying the meeting on 24.4.2015 was served on the Councillors on 22.4.2015 and since the statutory period of 72 hours was not met in between the service of notice and holding of meeting as mandated under section 49 of 'the Act' hence the meeting was infracted and the motion invalidated. Perhaps on the issue of statutory compliance the argument of Mr. Manglam may be in tune with the statutory provisions but in so far as the conduct of the petitioner is concerned, she being in default of the directives issued by this Court in the earlier writ petition filed by her bearing CWJC No.2398 of 2015 she cannot be permitted to question the motion on any invalidity having herself committed default of the mandamus issued by this Court. A person in default cannot allege default.

The petitioner definitely has not approached this Court with clean hands inasmuch as she having failed to comply with the

duty cast upon her she cannot be permitted to question the **no confidence motion** on any statutory violation. Doors of justice are open for bonafide aggrieved and not for unscrupulous litigants like the petitioner whose sole attempt has been to avoid the eventuality which has not once but twice met her in the form of the **no confidence motion**.

For the reasons aforementioned, I am not persuaded to grant indulgence to the issued raised by the petitioner.

The writ petition and the interlocutory application are dismissed.

(Jyoti Saran, J)

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