

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5560 of 2015

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MOTIUR RAHMAN, SON OF LATE MIR JALIL, RESIDENT OF
MOHALLAH-ALAM TOLA, WARD NO.13, FORBESGANJ, DISTRICT-
ARARIA (BIHAR).

.... Petitioner/s

Versus

1. THE STATE ELECTION COMMISSION, BIHAR, BIR CHAND
PATEL PATH, PATNA THROUGH THE CHIEF COMMISSIONER.
2. IN-CHARGE SECRETARY, STATE ELECTION COMMISSION,
BIHAR, BIR CHAND PATEL PATH, PATNA.
3. DISTRICT MAGISTRATE-CUM-DISTRICT ELECTION OFFICER
(NAGARPALIKA). ARARIA.
4. EXECUTIVE OFFICER, NAGAR PARISHAD, FORBESGANJ,
DISTRICT- ARARIA (BIHAR).

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. R.K. Priyadarshi, SC-32 Mr. Kundan Kumar, AC to SC-32
For the State E.C.	:	Mr. Amit Shrivastava, Advocate
For the Respondent No. 4:	:	Ms. Aditi Hansaria, Advocate
For the Resp.-Intervener :	:	Mr. Rajendra Prasad, Sr. Advocate Mr. Binay Kumar Singh, Advocate Mr. Rajesh Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 23-11-2015 Heard Mr. Raju Giri, learned counsel appearing on

behalf of the petitioner, learned counsel for the State, Mr. Amit

Shrivastava for the State Election Commission and Mr. Rajendra

Prasad, learned senior counsel for the private respondent.

The petitioner has prayed for quashing of the letter dated

19.3.2015 issued by the State Election Commission whereby the

election to the post of Deputy Chief Councillor, Nagar Parishad,

Forbesganj was notified to be held on 11.4.2015 placed at

Annexure-3. The petitioner also has prayed for an appropriate declaration to the effect that he continues to hold the post of Deputy Chief Councillor, Nagar Parishad Forbesganj in the district of Araria.

Facts are not too elaborate and briefly stated is that the petitioner holding the post of Deputy Chief Councillor of the Nagar Parishad, Forbesganj submitted his resignation on 24.2.2015 placed at Annexure-1. On the same date even the Chief Councillor submitted her resignation but prior thereto at 12:00 A.M. she accepted the resignation of the petitioner. Within four days thereafter the petitioner chose to withdraw his resignation *inter alia* on grounds that it was coerced upon him by the Chief Councillor and for which he filed an application before the Executive Officer, Nagar Parishad seeking appropriate guidelines as to before whom the withdrawal of the resignation be submitted as the Chief Councillor had already resigned in the meanwhile.

In between the election was notified by the State Election Commission on 19.3.2015 for election to the post of Deputy Chief Councillor and the petitioner prayed for an interim direction for stay thereof. This Court vide order passed on 10.4.2015 made the election subject to the result of the present writ petition. The election was held on 11.4.2015 and in which a new Deputy Chief Councillor has been elected. The petitioner did

not participate in the election.

The limited issue sought to be raised by Mr. Giri appearing for the petitioner is that there was a confusion prevailing by virtue of the resignation of the Chief Councillor and since the statutory provisions underlying Section 25(3) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') required the withdrawal of the resignation to be filed before the Chief Councillor hence the petitioner holding the post of Deputy Chief Councillor sought necessary guidelines from the Executive Officer which was not forthcoming and which prompted the petitioner to move this Court. The argument which Mr. Giri endeavours to make is that the guidelines so sought by the petitioner be treated as a withdrawal of the resignation of the petitioner for it was in absence of the concerned statutory authority i.e. the Chief Councillor which prevented him to seek his remedy before the appropriate forum and hence the guidelines was sought by him.

A counter affidavit was filed by the Executive Officer supporting the filing of the application seeking guidelines for filing of application for withdrawal of resignation in paragraph-6 of the counter affidavit. But surprisingly the Executive Officer while making a statement to such effect has not even bothered to verify from the position from the records. At least the affidavit to

the counter affidavit indicates no source for such information.

The private respondent has appeared through senior counsel Mr. Rajendra Prasad and contested the position that any such application seeking withdrawal of the resignation had been filed by the petitioner.

It is in these circumstances that the records of the proceeding of the Nagar Parishad was directed to be produced by the Executive Officer who appears in person along with the records. Even while a statement is being made by Executive Officer that he did find a letter amongst the records seeking guidelines to the withdrawal of the resignation but the records do not indicate as such and no such letter is present therein. It is stated by the Executive Officer with reference to the records that a proceedings has been drawn against the concerned Assistant for the missing documents but what this Court finds from the records is that a forwarding was made by the Office Assistant as late as on 28th of March, 2015 i.e. almost three weeks since alleged filing of the application on 24.2.2015 and even while detailing the documents on record, there is no mention regarding said application dated 24.2.2015 of the petitioner.

Mr. Giri very strenuously has argued that it is the handy work of the predecessor in the office of the Executive Officer who has removed the documents from the records but the note of the

Office Assistant dated 28.3.2015 while discussing the documents makes no mention about the said application.

It has been jointly argued by Mr. Shrivastava for the Commission and Mr. Prasad appearing for the private respondent that even if the letter of the petitioner dated 24.2.2015 is taken on its face value it yet would not satisfy the statutory requirements which warrants filing of an application for withdrawal of the resignation to be on the record of the proceedings. With reference to the provisions of Section 25(3) of the 'Act' it is argued that the stipulations are loud and clear and it enables a Chief Councillor or a Deputy Chief Councillor to withdraw his resignation within seven days of its filing. With reference to Annexure-2 on which Mr. Giri seeks to rely, it is argued that the said letter by no stretch of imagination can be termed as a withdrawal application.

I have heard learned counsel for the parties and I have perused the records. There is absolutely no confusion in the statutory requirement which mandates an application to be filed by the Chief Councillor or the Deputy Chief Councillor seeking withdrawal of his resignation within seven days of resigning. Admittedly Annexure-2 cannot be termed as a withdrawal application for it merely seeks guidelines from the Executive Officer as to the authority before whom the same is to be submitted. Even when the statutory provisions provides that the

application seeking withdrawal of resignation be filed before the Government in respect of the Chief Councillor and the Chief Councillor in respect of Deputy Chief Councillor, there is no such application on record. In my opinion, even if the post of the Chief Councillor had fallen vacant by the time wisdom had dawned upon the petitioner to seek withdrawal of his resignation, it did not stop him to either approach the District Magistrate, the Commissioner or the Government seeking withdrawal of his resignation. There is not even a whisper in the record of the proceedings which would support the argument of Mr. Giri that the petitioner intended to withdraw his resignation. A mere filing of an application seeking guidelines in such circumstances cannot be stretched enough to be termed as a deemed withdrawal of the resignation of the petitioner.

For the reasons so mentioned above, I am not persuaded to grant any indulgence to the issue raised. The writ petition is accordingly dismissed. The records so produced be returned to the Executive Officer.

(Jyoti Saran, J)

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