

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18241 of 2014

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1. Afzal Imam Son of Md. Shahabuddin Resident of Mohalla - Alamganj, Narkatghat, Ward No. 52, P.O.- Gulzarbag, P.S.- Alamganj, District - Patna presently Mayor (Chief Councilor) Patna Municipal Corporation, Patna

.... 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 Municipal Commissioner, Patna Municipal Corporation, Patna
4. The Deputy Chief Councilor (Deputy Mayor), Patna Municipal Commissioner, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Mangalam, Adv.
For the State : Mr. Amar Nath Deo, S.C. 26
For the Municipal Commissioner : Mr. Prasoon Sinha, Adv.
For the Respondent-intervenor : Mr. Abhinav Srivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

C.A.V. JUDGMENT

Date: 08-01-2015

The Executive and the people's representative being at logger heads, the result is the dispute raised herein. The situation has become even more complex when the Corporation staff as well as a large number of Ward Councillors are standing up in arms against the Chief Councillor who is also called the Mayor of the Corporation. The issue raised herein, is rather simple but has its own complexity. The limited question posed before this Court is whether the Municipal Commissioner should have proceeded to hold meeting on a requisition made by the Deputy Chief Councillor who is also called the Deputy Mayor by relying upon Section 26(2)(b) of the Bihar Municipal Act,

2007 (hereinafter referred to as 'the Act').

The petitioner who is the Mayor of the Corporation and its Chief Councillor, has questioned the order of the Municipal Commissioner bearing Memo No. 6256 dated 17.10.2014 whereby on a requisition made by the Deputy Mayor vide letter bearing No. 21 dated 15.10.2014 under Section 26(2) (b) of the Act, he has convened a meeting on 21.10.2014 at 12 noon at the Patna Collectorate to be presided by the Deputy Mayor.

This matter was considered on 21.10.2014 that is the date on which the meeting was fixed and when it was taken up for consideration, it was informed by learned counsel appearing on behalf of the Municipal Commissioner that the meeting had already concluded and thus the writ petition had become infructuous. In any other situation the writ petition would have been disposed of in view of the circumstances existing but in the nature of the dispute raised in the writ petition, this Court required the parties including the Municipal Commissioner, the Deputy Mayor and the Principal Secretary of the Urban Development Department to file their respective affidavits.

The pleadings being complete, the parties were heard with the view to final disposal of the writ petition at the stage of admission itself.



Mr. S.B.K. Mangalam, learned counsel has appeared for the petitioner, learned counsel for the State has represented the Principal Secretary, Mr. Prasoon Sinha learned counsel has appeared for the Municipal Commissioner and Mr. Abhinav Srivastava has appeared for the Deputy Mayor and also seeks intervention on behalf of some of the Ward Councillors.

I have heard learned counsel for the parties and I have perused the materials on record.

Whereas it has been the contention of Mr. Mangalam that an exercise of such kind is akin to running a parallel local self Government and that it has been the endeavour of the Municipal Commissioner with the aid and assistance of the Deputy Mayor, to belittle the seat of the Mayor but the arguments have been countered by the learned counsel appearing on behalf of the Municipal Commissioner and the Deputy Mayor by submitting that the situation had reached a distance where there was no other option available than to convene a meeting under Section 26(2)(b) of the Act. It was submitted that since large number of important decisions were pending consideration and the work of the Corporation was being seriously hampered that such a step was taken which is within the parameters of law.

Although extensive arguments have been advanced by learned

counsel for the parties but in the nature of the order this Court proposes to pass it would not be necessary to delve deep into the matter.

Section 48 of the Act deals with the meeting to be held by the Municipality for transacting its business and sub section 1 thereof provides that it shall be held not less than once every month.

Sub Section (2) vests power in the Chief Councillor to convene such meeting upon a requisition made by not less than 1/5th of the Councillors and it is in the event where the Chief Councillor fails to do so that Sub Section (3) thereof vests power in the Ward Councillor to convene such meeting.

Section 49 of the Act provides that a list of business to be transacted at every meeting, be sent to every Councillor at his registered address at least 72 hours before the time fixed for such meeting.

Section 51 provides that Chief Councillor shall preside at every meeting and in his absence the Deputy Chief Councillor shall preside.

Section 50 of the Act provides for a quorum of not less than 1/5th of the total number of Councillors and in absence of quorum the Presiding Officer shall either adjourn the meeting or suspend the same until the quorum is achieved.

Sub Section (3) thereof provides that where a meeting is

adjourned for want of quorum, no quorum shall be necessary for such adjourned meeting.

Section 26 of the Act vests power in the Deputy Chief Councillor to preside over a meeting in absence of the Chief Councillor and in the circumstances, which are discussed in Sub Section (2) thereof and runs as follows:

“(2) When-

- (a) the office of the Chief Councillor falls vacant by reason of death, resignation, removal or otherwise, or
- (b) the Chief Councillor is, by reason of leave, illness or other cause, temporarily unable to exercise the powers, perform the functions, or discharge the duties, of his office, the Deputy Chief Councillor shall exercise the powers, perform the functions, and discharge the duties, of the Chief Councillor until a Chief Councillor is elected under sub-section (3) of section 23 and enters office or until the Chief Councillor resumes his duties.”

The statutory provisions referred to above clearly demarcates the circumstances in which a Deputy Chief Councillor can preside over a meeting.

The issue is whether the circumstances so conceptualized, did exist and which prompted the Municipal Commissioner to convene the meeting under the said provisions vide the order impugned in this writ petition.

The records of the writ proceedings manifest that a meeting of



the Board of the Corporation was convened on 16.10.2014 and communicated vide letter dated 9.10.2014 to all concerned, by the Secretary of the Corporation. The copy of the letter is present at Annexure-1 to the writ petition. The meeting could not be held on 16.10.2014 for want of quorum and was adjourned to 20.10.2014 by the Chief Councillor and which adjournment was communicated to the Municipal Commissioner by the Chief Councillor vide letter dated 16.10.2014 present at Annexure-2. Annexure-3 is a file noting of the Municipal Commissioner dated 17.10.2014 and who while objecting to the date of the adjourned meeting fixed on 20.10.2014 has informed the Chief Councillor that there is already a meeting of the Empowered Standing Committee fixed for the said date which is also the date fixed for discussing the Chhath preparations and thus it would not be feasible to hold the meeting on 20.10.2014, which should be deferred.

While raising his objections the Municipal Commissioner has also mentioned that some of the Ward Councillors and the Deputy Mayor have also moved a separate requisition for holding a special meeting. It is rather strange that even while raising objections on the requisition of the Chief Councillor on 17.10.2014, the Municipal Commissioner on the very same date has issued the impugned order whereby on a requisition of 29 Ward Councillors including the Deputy Mayor, a meeting was convened for 21.10.2014 under Section



26(2)(b) of the Act. The order discusses the circumstances in which two earlier meetings scheduled on 19.7.2014 and 16.10.2014 could not be held for want of quorum. The order also discusses the circumstances in which the staff of the Corporation had decided not to attend the meeting of the Empowered Standing Committee and the Board being aggrieved by certain actions of the Chief Councillor. The order also discusses the agenda which were pending consideration since last several months for want of quorum in a meeting and which was seriously hampering the working of the Corporation.

No doubt Section 26(2)(b) of the Act empowers the Deputy Chief Councillor to preside over the meeting if the Chief Councillor is by reason of the leave, illness or other cause, temporarily unable to exercise the powers, perform the functions, or discharge the duties and thus the Deputy Chief Councillor is vested with statutory powers to hold meeting in certain circumstances but whether such circumstances did exist in the present case, is the issue posed before this Court.

What I find from the proceeding is that the meeting convened on 16.10.2014 could not be held for want of quorum and was adjourned to 20.10.2014 on which date there was already a prefixed meeting of the Empowered Standing Committee with other agendas as well. Thus in the opinion of the Municipal Commissioner, it was not



feasible to hold the adjourned meeting on 20.10.2014 and a request was made to the Chief Councillor to fix any other date. Such noting of the Chief Councillor is dated 17.10.2014. This Court fails to appreciate that where the Commissioner was already in touch with the Chief Councillor on the issue of holding a meeting, where was the extraordinary circumstances which prompted him to proceed with the requisition of the Deputy Mayor dated 15.10.2014 for convening a meeting under Section 26 (2)(b) of the Act. In my opinion even though the order of the Commissioner dated 17.10.2014 impugned at Annexure-4 to the writ petition and which is put to question before this Court, does discuss the circumstances for holding a meeting under Section 26(2)(b) of the Act and which may perhaps justify a holding of such meeting but the timing of such meeting was not appropriate especially when the Commissioner was deliberating upon fixing the date of an adjourned meeting on the requisition of the Chief Councillor dated 16.10.2014. The agendas to be discussed at the meeting convened under Section 26(2)(b) of the act does reflect a sense of urgency but in my opinion the hurriedness shown was unwarranted. The Commissioner ought to have awaited the result of the adjourned meeting and the circumstances existing in such adjourned meeting before accepting the request of the Deputy Chief Councillor under Section 26(2)(b) of the Act. Since the agendas to be

discussed in the meeting was relevant for the smooth functioning of the Corporation, this Court even while not approving the manner in which the meeting has been convened, is not persuaded enough to interfere with the decision so taken in the meeting, in the best interest of the Corporation as well as the benefits attached therewith.

While observing as such, this Court would have a word of advice for the Executive head of the Corporation, to abide by the statutory provisions which bind the office of the Municipal Commissioner as well as the duties attached therewith.

With the observations aforementioned, the writ petition and the interlocutory applications are disposed of.

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(Jyoti Saran, J)

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