

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9275 of 2015

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1. Amarendra Kumar S/o Late Bhagwati Prasad Shah Resident of Mohalla Sipah,
Ward No. 6, P.O. and P.S. Arwal, District Arwal. 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, Arwal, District Arwal.
5. The Executive Officer, Nagar Parishad Arwal, District Arwal.
6. Smt. Maya Devi W/o Sri Baldeo Prasad
7. Sri Chandra Bhushan Singh S/o Not known to the petitioner
8. Smt. Seema Devi W/o Not known to the petitioner.
9. Smt. Babita Devi W/o Not known to the petitioner.
10. Smt. Bano Praveen W/o Not known to the petitioner.
11. Smt. Shakeela Khatoon W/o Not known to the petitioner.
12. Smt. Najma Khatoon W/o Not known to the petitioner.
13. Sri Nitya Nand Singh S/o Not known to the petitioner
14. Sri Satyendra Bahelia S/o Not known to the petitioner
15. Smt. Sabila Khatoon W/o Not known to the petitioner.
16. Sri Awadh Prasad S/o Not known to the petitioner
17. Sri Raju Kumar S/o Not known to the petitioner
18. Sri Gopal Singh S/o Not known to the petitioner
19. Sri Suresh Chaudhary S/o Not known to the petitioner
20. Smt. Usha Devi W/o Not known to the petitioner.
21. Sri Akhilesh Saw S/o Not known to the petitioner
22. Smt. Punam Kumari W/o Not known to the petitioner.
23. Sri Ram Kishore Verma S/o Not known to the petitioner
24. Sri Baijnath Prasad S/o Not known to the petitioner
25. Sri Yadu Chaudhary S/o Not known to the petitioner
26. Sri Ram Binay Paswan S/o Not known to the petitioner
27. Smt. Nilu W/o Not known to the petitioner.
28. Smt. Gita Devi W/o Not known to the petitioner.
29. Sri Ramanand Singh S/o Not known to the petitioner Respondent Nos. 6 to 29 are the Ward Councilors of nagar Parishad, Arwal through the Executive Officer, nagar parishad, Arwal, District Arwal.
30. 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.
Mrs. Amrita Kumari, Adv.

For the State : Mr. D.K. Prasad, G.P.7

For the Respondent SEC : Mr. Amit Srivastava, Adv.
Mr. Girish Pandey, Adv.

For the Nagar Parishad : Mr. Sanjeev Nikesh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 12-08-2015

Heard learned counsel for the parties.

The petitioner in substance has questioned the exercise of casting vote by the Presiding Officer in the special meeting of the municipality held on 05.1.2015 and which has resulted in unseating of the petitioner from the post of Chief Councilor, Arwal Nagar Parishad in the district of Arwal.

The petitioner had earlier moved this Court in C.W.J.C.No.1511 of 2014 questioning the proceedings of the special meeting inter alia on grounds that of the 24 elected members only 21 were present and of whom 20 exercised their votes. It was the case of the petitioner that of the 20 votes cast, 12 were cast in support of the motion which did not constitute a majority and yet the motion was declared passed against the petitioner.

The records of the proceeding of the motion of the special meeting held on 5.1.2015 on the other hand reflected that of the 21 elected members present in the special meeting 20 participated in the voting in which, 13 voted in support of the motion while 3 voted against the motion and 4 votes were declared invalid. Since there was a dispute as regarding the manner in which the special meeting had been conducted and there were allegation and counter allegation raised that this Court taking note of the fact that the issue had reached the State Government and a Committee had been constituted to examine the allegations of malpractice in the special meeting that the writ petition was disposed of with the direction to the Principal Secretary to take a final decision in the matter in the backdrop of the report so to be submitted by the Committee but any such order be passed only after due notice and opportunity of hearing to the contesting parties.

This writ petition in fact was filed complaining that no order had yet been



passed by the Principal Secretary. It appears that after the filing of the writ petition, the Principal Secretary upon consideration of the report submitted by the Committee disposed of the matter vide order passed on 20.7.2015 upholding the motion so passed against the petitioner. The decision so taken by the Principal Secretary is sought to be questioned by the petitioner by filing I.A.No.6077 of 2015 and since it is consequential in nature hence the prayer is allowed and the petitioner is permitted to question the order passed by the Principal Secretary upholding the no confidence motion passed against the petitioner on 5.1.2015 in the special meeting so held for the purpose, in the present application.

Mr. Mangalam learned counsel appearing on behalf of the petitioner has raised the issue of jurisdiction of the Presiding Officer to exercise his casting vote as according to Mr. Mnagalam, of the 20 elected members who participated in the meeting only 12 had voted in favour of the motion while the 13th vote is an exercise of casting vote by the Presiding Officer which according to Mr. Mangalam is in the teeth of the statutory provisions of Section 25(4) of the Bihar Municipal Act, 2007(hereinafter referred to as 'the Act') which specifically provides that the procedure to be followed in the special meeting held to consider a no confidence motion would be, as prescribed by the rules and since the No Confidence Motion Rules 2010 do not provide for exercise of casting vote by the Presiding Officer hence such action stands vitiated. While admitting to fact that the power of the Presiding Officer to exercise his casting vote, in case of a 'tie', already stands decided in the Bench decision rendered in the case of **Rajeshwar Prasad Vs. State of Bihar & Ors.** reported in **2012(2)PLJR 525** Mr. Mangalam attempted to argue that the judgment would require a reconsideration in the backdrop of the statutory provisions underlying Section 25(4) of the Act read with the Bihar No Confidence Motion Rules 2010 framed thereunder.

The sum and substance of argument of Mr. Mangalam is that when the substantive provision for consideration of a no confidence motion prescribes a procedure under the Rules, which neither refers to the provisions of Section 51 nor gives any jurisdiction to a Presiding Officer of the special meeting to exercise a casting vote, any exercise of jurisdiction by a Presiding Officer in case of an equality of votes relying upon the provisions of Section 51(2) of ‘the Act’ would be contrary to the legislative intendment. According to Mr. Mangalam this relevant aspect of the matter has not been taken note of by the Bench while laying down the law on the issue of exercise of casting vote in the case of **Rajeshwar Prasad** (supra).

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

Apart from the fact the issue so raised by Mr. Mangalam has been elaborately considered by the Bench in the judgment of **Rajeshwar Prasad** (supra) and in particular paragraphs 21 and 22 of the judgment, the issue that the provisions of Section 51 can be taken recourse to in the matter of special meeting as well, stands answered in paragraph 22 of the Division Bench judgment rendered in the case of **Vibha Devi Vs. The State of Bihar** reported in **2015(2)PLJR 167**.

For the reasons aforementioned and in view of the law so settled there was no infirmity in the action of the Presiding Officer in exercising his casting vote. There being no other issue raised in this writ petition, it is dismissed accordingly.

(Jyoti Saran, J)

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