

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13310 of 2016

Dina Nath Prasad S/o - Late Ram Ayodhya Prasad resident of Ward No. - 11, P.S. - Dhaka Ramchander, P.O. - Dhaka, District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development, Govt. of Bihar, Patna.
2. The Nagar Panchayat, Dhaka, represented through its Executive Officer, Nagar Panchayat, Dhaka, District - East Champaran.
3. The Executive Officer, Nagar Panchayat - Dhaka, District - East Champaran.
4. Mrs. Saimulan Khatoon, the Municipal President, Nagar Panchayat - Dhaka, District - East Champaran.
5. Naima Khatoon W/o - not known to the petitioner
6. Ruby Begam W/o - not known to the petitioner
7. Kuraisha Khatoon W/o - not known to the petitioner
8. Singhasahani Devi W/o - not known to the petitioner
9. Shahida Khatoon W/o - not known to the petitioner
10. Mehrunisha W/o - not known to the petitioner
11. Akhtari Begam W/o - not known to the petitioner
12. Khabira Khatoon W/o - not known to the petitioner
13. Shahjehan Khatoon W/o - not known to the petitioner
14. Archana Pandey W/o - not known to the petitioner
15. Narayan Singh S/o - not known to the petitioner
16. Jamshed Alam S/o - not known to the petitioner
17. Jakir Hussain S/o - not known to the petitioner
18. Devendra Yadav S/o - not known to the petitioner
19. Tabrez Alam S/o - not known to the petitioner
20. Ram Udesb Singh S/o - not known to the petitioner
21. Lalan Ram S/o - not known to the petitioner
22. Md. Mansoor S/o - not known to the petitioner Respondents No. 5 to 22 are duly elected Ward Councillors of Nagar Panchayat, Dhaka and are being represented through its Executive Officer, Nagar Panchayat, Dhaka, District - East Champaran.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava
Mr. Madhurendra Kumar
Mr. Rajeev Ranjan
Mr. Priya Ranjan
For the Respondent/s : Mr. RAJIV ROY- GP-

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 30-08-2016



Required number of Ward Councillors of Nagar Panchayat, Dhaka (respondents herein) filed a requisition (Annexure-1) to bring a no confidence motion against the petitioner who, on being elected, was functioning as the Deputy Chief Councillor of the Nagar Panchayat. The requisition having been brought to the notice of the Chief Councillor was acted upon and a notice was directed to be issued for convening of a special meeting of the Nagar Panchayat for consideration thereof on 13.08.2016. The petitioner has filed the writ application for quashing of the said requisition of no confidence motion as also the notice of the special meeting dated 03.08.2016 (Annexure-2) issued by the Executive Officer of the Nagar Panchayat.

Heard Mr. S.P. Srivastava in support of the writ application and the counsel for the State.

It is stated that the requisition (Annexure-1) was undated and handed over to Bajrang Sah, a peon of Nagar Panchayat on 16.07.2016 which was later produced before the Executive Officer and the matter was placed in file before the Chief Councillor on 01.08.2016 who directed for convening of the special meeting of the Councillor on 13.08.2016.

I.A. No. 6683 of 2016 has been filed to challenge the resolution taken in the special meeting of the Councillors held on 13.08.2016 wherein the no confidence motion was carried through. The petitioner has called in question the legality of the said proceeding of the special meeting.

In support of the writ petition, Mr. Srivastava has submitted the requisition ought to have been handed over to the Chief Councillor only as the no confidence motion pertains to the Deputy Chief Councillor. In the case at hand, the same was first presented, at best, before the Executive Officer. Secondly, it has been submitted that the date fixing the special meeting of the Nagar Panchayat

ought to have been fixed within 15 days from the date of requisition. In case at hand, such requisition was presented before the Executive Officer on 18.07.2016. In order to support his contention, he has relied on unreported judgment of this Court dated 15.09.2015 passed in CWJC No. 12923 of 2015. He also challenges the issue of notice by the Executive Officer of the Nagar Panchayat.

In exercise of the power conferred by section 25(4) and 419 of the Bihar Municipal Act 2007 (for short 'the Act') the government has framed a Rule providing the process and conduct of the No Confidence Motion against the Chief Councillor/Deputy Chief Councillor. Accordingly, the Bihar Municipal No Confidence Motion Process Rule, 2010 is framed which governs the process and conduct of the no confidence motion.

Mr. Srivastava has relied on Rule 2(i) thereof which is extracted herienbelow:-

“To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of requisition and the meeting shall be convened within fifteen days of the date of issuance of the notice.”

On bare perusal, it would appear that with a view to remove the Chief Councillor/Deputy Chief Councillor, a special meeting of the elected Councillors shall be convened upon a requisition for such meeting signed by not less than 1/3rd of the total number of the elected Councillors. It further



provides that the same shall be given to the Chief Councillor whereafter notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within 07 days from the date of receipt of the requisition and the meeting shall be convened within 15 days of the date of issuance of the notice. There is no dispute that the requisition signed by the required number of the elected Councillors was addressed to the Chief Councillor which was presented before the Executive Officer of the Nagar Panchayat. The same was processed and placed before the Chief Councillor on 01.08.2016 whereupon she directed for convening of special meeting on 13.08.2016. The requirement of law is that any such requisition must be signed by the required number of elected Councillors and given to the Chief Councillor. Indisputably, the requisition was made over to the Chief Councillor but through the Executive Officer. It would be inappropriate to interpret the provision of Rule 2(i) to mean that such requisition should be physically handed over to the Chief Councillor. This is not the purport of the provision of the Rule. The requisition was addressed to the Chief Councillor and was presented before her who directed for convening of the special meeting. This Court is unable to find any illegality in such presentation of the requisition before the Chief Councillor through the Executive Officer of the Nagar Panchayat. The reliance by the petitioner on the unreported judgment appears to be misplaced as the Court is unable to find from the said judgment any such proposition of law.

It is next urged that the special meeting ought to have been convened within 15 days of the submission of the requisition and such notice should be issued by the Chief Councillor. There is non compliance of the Rule provision(s). Again, adverting to the rule-provision, it appears that the requirement of law is to take steps for fixing the date of special meeting within



07 days from the receipt of the requisition. Naturally, the word 'receipt' means presentation of the requisition before the competent authority who is empowered to act thereon. In the case at hand, the respondent no.4, being the Chief Councillor to whom the requisition was addressed, was the authority required to act thereon. The Court is unable to find from the rule-provision that such special meeting is required to be fixed from the date of requisition. The Court does not find much substance in the said submission of the petitioner. It has been argued with much vigour and vehemence that according to the rule provision the notice for convening a special meeting must be under the hand and seal of the Chief Councillor. The rule-provision says that the notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body. It shall be inappropriate to suggest that the notice must also be signed by the Chief Councillor. The Executive Officer of the Nagar Panchayat heads the office of the Chief Councillor. Any direction or instruction issued by the Chief Councillor is to be carried out by the Executive Officer. Under orders of the Chief Councillor the notice (Annexure-2) was issued by the Executive Officer. The Court would accept such notice issued by the Executive Officer in due compliance of the rule-provision. The Rule does not mandate that notice should be issued under the hand and seal of the Chief Councillor. The interpretation of the Rule, as argued by the counsel for the petitioner, would frustrate the provision of law by reading something which is not provided.

Before concluding, the Court may note the contention of the petitioner relying on **Mohan Prasad Rastogi vs. State of Bihar (2012 910 PLJR 112)**. Particular reliance is placed on paragraph 17 thereof. In my considered view, such reliance on the said judgment is again misplaced. The observations made in paragraph 17 thereof do not support the case of the

petitioner as presented through this writ petition.

In the light of the discussions made above, this Court is unable to find any patent illegality in the process adopted by the respondents to convene the special meeting of the elected Councilors to deliberate over the no confidence motion. The challenge to the requisition and the notice issued in this regard by the Executive Officer fails. Consequently, the writ application also fails.

Dismissed. No cost(s).

(Kishore Kumar Mandal, J)

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