

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1732 of 2016

In

Civil Writ Jurisdiction Case No. 13310 of 2016

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

.... Appellant

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. Singhashani 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
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

.... Respondents

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Appearance :

For the Appellant/s : Mr. Prakash Srivastava, Advocate
Mr. Rajeev Ranjan, Advocate

For the Respondent/s : Mr. Rajiv Roy, GP-1
Mr. Arun Kumar, AC to GP-1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 15-09-2016

Heard Mr. Prakash Srivastava, learned counsel appearing for the appellant, and Mr. Rajiv Roy, learned Government Pleader No. 1, appearing on behalf of the State-respondents.

2. This appeal is directed against the order, dated 30.08.2016, passed in C.W.J.C. No. 13310 of 2016, by which the learned single Judge dismissed the writ application filed by the writ petitioner-appellant.

3. The writ petitioner-appellant, who was elected as Municipal Vice President (Dy. Chief Councillor) of Nagar Panchayat, Dhaka, East Champaran, filed the writ application challenging the *requisition* of “No Confidence Motion” as also notice of *Special Meeting*, dated 03.08.2016, issued by the Executive Officer of the Nagar Panchayat, Dhaka, as well as the subsequent resolution taken in the *Special Meeting* of the Councillors held, on 13.08.2016, removing him from the post of Vice President.

4. The relief, sought for by the writ petitioner-appellant before the learned single Judge, was founded on the ground that the *requisition* seeking his removal ought to have been handed over to the Chief Councillor; instead, the same was presented by a Peon (orderly) before the Executive Officer, who



passed it on to the Chief Councillor. It was further his case that the date scheduling the *Special Meeting* of Nagar Panchayat, Dhaka, ought to have been fixed within 15 days from the date of *requisition*. In other words, according to the writ petitioner-appellant, if the *requisition* was presented before the Executive Officer on 18.07.2016, the *Special Meeting* should have been fixed before 02.08.2016; instead, the same was fixed on 13.08.2016. Besides this, the notice was issued by the Executive Officer, Nagar Panchayat; whereas it ought to have been issued by the Chief Councillor himself.

5. The learned single Judge, after hearing the parties, did not find any illegality in the entire process including convening of *Special Meeting* and carrying the motion against the petitioner in the *Special Meeting* held on 13.08.2016.

6. The writ petitioner-appellant has reiterated the same submissions before us as were made before the learned single Judge.

7. Learned counsel appearing, on behalf of Nagar Panchayat, submits that the writ application itself is not maintainable, inasmuch as pursuant to carrying of No Confidence Motion against the writ petitioner-appellant, a new Deputy Chief Councillor has been appointed. We could have dismissed this

appeal, on this score alone; but we deem it expedient to settle the issue, as the same is raised again and again.

8. The dispute, in this case, is: whether the process, adopted for convening *Special Meeting* for the purpose of considering the *requisition*, more than 1/3rd Ward Councillors for the purpose of removal of Vice Chief Councillor, was in accordance with law?

9. The Government, in exercise of power conferred under Section 25 (4) and 419 of the Bihar Municipal Act, 2007, has framed Bihar Municipal No Confidence Motion Process Rule providing the process and conduct of “No Confidence Motion” against the Chief Councillor/Deputy Chief Councillor. Rule 2(1) of Rule, 2010, which is relevant in the present context and has been relied upon by both the parties, is quoted hereinbelow for easy reference:

“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.”

10. The requirement, as under the rule, is as follows:

(i) The Chief Councillor / Deputy Chief Councillor can be removed under the Rule in *Special Meeting* of elected Ward Councilors;

(ii) Such a *Special Meeting* would be called only when a *requisition* is made and signed by not less than 1/3rd of the total number of elected Councillors and to be given to the Chief Councillor;

(iii) The notice shall be issued by the Chief Councillor within 7 days from the receipt of *requisition*; and

(iv) The *Special Meeting* shall be convened within 15 days of the date of issuance of the notice.

11. The writ petitioner-appellant does not dispute that the *requisition* was made and signed by not less than 1/3rd members of the elected Councillors. The main dispute is that the *requisition* was not given to the Chief Councillors personally.

12. We may record here that there is nothing in the Rule, which requires that the notice shall be given personally to the Councillor; any interpretation to the contrary would lead to an anomalous situation. What is important is that the notice should be

addressed to the Chief Councillor and is to be brought to his/her notice. It is immaterial whether the same is made over to him/her, or is brought to his or her notice, by an orderly or by the Executive Officer, Nagar Panchayat.

13. We would agree with the conclusion of the learned single Judge that there is nothing in the Rule, which requires that the notice is to give personally in the hands of the Chief Councillor; otherwise, the *requisition* would become bad in law on that count.

14. The other contention of the writ petitioner-appellant is that since the notice was received by the peon (orderly) on 16.07.2016 and by the Executive Officer on 18.07.2016, the one week period to be counted for issuance of notice ought to be reckoned from 16.07.2016. In our view, as per Rule 2(1) of the Rules, the period of 7 days is to be counted from the date, the notice is brought to the notice of the Chief Councillor. There can be instance that the Chief Councillor may be ill or may be out of station and if 7 days period is insisted from the date, the *requisition* is filed in the office of Chief Councillor, the same would lead, again, to an anomalous situation, inasmuch as the Chief Councillor may not be present for the whole week itself. Hence, we hold that the requirement of law is that the

Special Meeting shall be held within 7 days from the date of receipt of notice by the Chief Councillor and the meeting shall be convened within 15 days from the date of issuance of notice.

16. We find that the notice has been issued within 7 days of the *requisition* coming to the notice of the Chief Councillor and within 15 days of the date of issuance of the notice. As such, there has been no breach of process and requirement of law.

17. The last submission of the writ petitioner-appellant that the notice should be signed by the Chief Councillor is also misplaced and devoid of merit. The term “*notice*” shall be issued by the Chief Councillor would not mean that the notices have to be issued personally by him or her, but the requirement is that the notice shall be issued pursuant to the direction of the Chief Councillor.

18. In the present case, as per the endorsement of the Chief Councillor, the notice was issued by the Executive Officer, which is wholly in accordance with law. We are, therefore, of the considered view that the No Confidence Motion has been carried out against the writ petitioner-appellant in accordance with the provisions of Bihar Municipal No-Confidence Motion process Rules, 2010, and, we do not find any infirmity, legally or

factually, in the impugned order passed by the learned single Judge.

19. The appeal is, accordingly, dismissed.

(I.A. Ansari, CJ.)

(Samarendra Pratap Singh, J.)

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