

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1580 of 2016

With

I.A. No.863 of 2016

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Sujay Kumar, Son of Shri Prithvi Nath Paswan, resident of Mohalla- Bahadurpur, Ward No.29, Near Shiv Durga Mandir, P.S.- Samastipur Town, District- Samastipur at the relevant time Deputy Chief Councillor, Municipal Council, Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Commissioner, Darbhanga Division, Darbhanga at Darbhanga.
3. The District Magistrate, Samastipur at Samastipur.
4. The Executive Officer, Municipal Council, Samastipur, at Samastipur.
5. The Chief Councilor, Municipal Council, Samastipur.
6. Rajiv Ranjan Singh, S/o Birendra Prasad Singh, Municipal Councilor of Ward No.8, Municipal Council, Samastipur, P.S. + District- Samastipur.
7. Shailesh Kumar, S/o Mundrika Pd. Kunwar, Municipal Councilor of Ward No.5, Municipal Council, Samastipur, P.S. + District- Samastipur.
8. Bindu Devi, W/o Harihar Pd. Mahto, Municipal Councilor of Ward No.16, Municipal Council, Samastipur, P.S. + District- Samastipur.
9. Seema Kumari, W/o Basudeo Prasad, Municipal Councilor of Ward No.15, Municipal Council, Samastipur, P.S. + District- Samastipur.
10. Umesh Kumar Verma, S/o Late Yugal Pd. Verma, Municipal Councilor of Ward No.14, Municipal Council, Samastipur, P.S. + District- Samastipur.
11. Poonam Kumari, W/o Anand Kumar, Municipal Councilor of Ward No.28, Municipal Council, Samastipur, P.S. + District- Samastipur.
12. Rubi Chanchala, W/o Sanjiv Kumar Chaudhary @ Munna Choudhary, Municipal Councilor of Ward No.23, Municipal Council, Samastipur, P.S. + District- Samastipur.
13. Meera Gupta, W/o Late Anil Gupta, Municipal Councilor of Ward No. 11, Municipal Council, Samastipur, P.S. + District- Samastipur.
14. Tek Narayan Mahto, S/o Akalu Mahto, Municipal Councilor of Ward No 4, Municipal Council, Samastipur, P.S. + District- Samastipur.
15. Kamini Sinha, W/o Sudhanshu Kumar Sinha, Municipal Councilor of Ward No.1, Municipal Council, Samastipur, P.S. + District- Samastipur.
16. Reena Kumari, W/o Dharmendra Singh, Municipal Councilor of Ward No. 12, Municipal Council, Samastipur, P.S. + District- Samastipur.
17. Lalita Gupta, W/o Tarkeshwar Nath Gupta, Municipal Councilor of Ward No.17, Municipal Council, Samastipur, P.S. + District- Samastipur.
18. Anand Bhushan, S/o Suresh Prasad Singh, Municipal Councilor of Ward No.6, Municipal Council, Samastipur, P.S. + District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Jha
For the Respondent/s	:	Mr. Rajiv Roy, GP-5
For the Respondent-SEC	:	Mr. Girish Pandey
For the respondent-Municipality:	:	Mr. Durga Nand Jha
For the private Respondents	:	Mr. Indu Bhushan

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 17-02-2016

Heard Mr. Ranjan Kumar Jha, learned counsel appearing for the petitioner, counsel for the State, counsel for the State Election Commission and Mr. Durga Nand Jha, learned counsel appearing for the Municipality.

The petitioner is an Ex Deputy Councillor of Nagar Parishad, Samastipur and is aggrieved by the *no confidence motion* passed against him in the special meeting held on 10.12.2015. The motion is being questioned on the following grounds:

- (a) The notice dated 30.11.2015 impugned at Annexure-3 issued by the Executive Officer informing the Councillors about the special meeting to be held on 10.12.2015 is in violation of rule 2(iv) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as 'the Rules') framed under the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act');
- (b) The special meeting was not held in the manner prescribed under rule 2(v) of 'the Rules' for whereas no sooner such meeting commences not only the Presiding Officer has to read out the motion but the motion so moved has to be thrown open for discussion by the

Councillors present and voting, which has not been done.

It is questioning the motion on these two grounds that it is argued by Mr. Jha, learned counsel appearing for the petitioner that the motion passed is invalid and the ouster has to be set aside. While admitting to the participation of the petitioner in the special meeting he submits that a mere participation would not take away the right of the petitioner to question the meeting and the motion passed therein on its validity and no sooner the invalidity is apparent on the face of it, a participation would not be sufficient to uphold the motion.

Learned counsel for the petitioner while referring to the judgments of this Court reported in **2010(1) PLJR 929 (Smt. Shamshad Khatun vs. The State of Bihar)** and **2010(3) PLJR 259 (Vinay Kumar Pappu Vs. The State of Bihar)** has submitted that although the Division Bench of this Court has discussed an issue of waiver upon participation of the elected representatives but the facts of the said case are dissimilar and would not apply to the present case. Referring to the judgment of another Division Bench reported in **2010 (2) PLJR 389 (Meena Yadav vs. The State of Bihar)** he submits that these provisions have been held to be mandatory and a deviation therefrom has been held sufficient to invalidate the motion.



The arguments of Mr Jha, learned counsel appearing for the petitioner has been contested by Mr. Durga Nand Jha, learned counsel appearing for the Municipality to submit that despite the invalidity in the procedural requirement, the participation by the petitioner in the special meeting wrests away this right in the petitioner to question the motion on procedural infraction.

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

It is appreciating the invalidity in the notice impugned at Annexure-3 which admittedly does not accompany reasons as mandated under rule 2(iv) of 'the Rules' that this Court issued notice to the non-appearing respondents and who have appeared through Mr. Indu Bhushan. In fact pending return of the notice that an election had been notified for electing the new Deputy Chief Councillor. That the petitioner moved in I.A. No.863 of 2016 and considering the circumstances the election was stayed by this Court vide order passed on 3.2.2016.

The legal position is well settled and undoubtedly any deviation from the mandatory requirements as envisaged in 'the Rules' so framed to regulate a special meeting to consider *a no confidence motion* would be sufficient to invalidate a motion passed. Be it the requirement of service of requisition under rule



2(i), the failure on the part of the Executive Officer to mention the reason/charges under rule 2(iv) of 'the Rules' or the failure of the presiding officer to read out the motion and throw open the allegations for discussion, which are mandatory requirements. The final decision on the motion is by casting of ballots by the members present and voting and is to be decided on the basis of the vote cast by the majority of the elected members.

In so far as the legal issue raised by Mr. Jha is concerned, the notice impugned at Annexure-3 as well as the minutes of the special meeting present at Annexure-4 confirm to the violation of statutory procedure. Admittedly the notice circulated by the Executive Officer present at Annexure-3 does not accompany the reasons/allegations nor the minutes of the special meeting present at Annexure-4 reflect that the procedure mandated under rule 2(v) was followed. On amongst these infirmities one relevant aspect of the matter which goes to the root of the contest is that notwithstanding such admitted procedural violations, the petitioner did participate in the special meeting and even cast his vote. Neither in the minutes of the special meeting there is any voice of protest registered by the petitioner as to the invalidity of the motion on any of the grounds so taken nor there is any document on record to demonstrate that any such protest was made by the petitioner. In fact the contest for the petitioner ends when he decided to

participate in casting of the ballots which marks the end of the *no confidence motion*. The petitioner without raising any protest or a murmur proceeded to cast his ballot and the result going the other way, he now chooses to contest the motion on violation of statutory procedure.

It would also be necessary to mention here that of the 29 elected members who participated in the special meeting, two members decided to refrain from participating in the voting process. Unfortunate for the petitioner that he is not amongst these two Councillors. Of the 27 remaining elected Councillors who exercised their vote on the motion, whereas 15 supported the motion moved against the petitioner, 10 opposed the motion while two votes were found invalid. The petitioner is one of the participants in the casting of votes. Since the majority of the elected members had supported the motion moved against the petitioner it was rightly declared passed. In my opinion the petitioner having taken a calculated risk to participate in the special meeting without raising any protest rather having gone ahead to even participate in the casting of ballot and having lost the confidence motion, he cannot be permitted to turn around to question the result.

The judgments passed by the Division Bench of this Court in the case of **Vinay Kumar 'Pappu'** (supra) and **Smt. Shamshad Khatun** (supra) squarely applies to the present case and

even when the procedural infraction are staring on the face of motion but in absence of any voice of protest or objection to the same by the petitioner, he is estopped on the principles of waiver to question the motion after participating therein and being a party to casting of votes.

The writ petition is dismissed accordingly. The interlocutory application stands disposed of.

The interim order passed on 3.2.2016 stands vacated.

Let the Commission proceed accordingly.

(Jyoti Saran, J)

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