

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1857 of 2016

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Sunita Devi Sri Jitendra Kumar R/o Moh- Babuganj, Dehri Ward No. 35, Old G.T. Road (Barah Patthar) P.S.- Dehri District- Rohtas, Presently the Deputy Chief Councilor, Dehri Nagar Parishad, Dehri at Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban & Housing Development Department Bihar, Patna.
2. The Collector cum the District Magistrate, Rohtas at Saran, Dist- Rohtas.
3. The Chief Councilor, Dehri Nagar Parishad, Dehri Dalmiyanagar, dist- Rohtas.
4. The Nagar Executive Officer, Nagar Parishad Dehri Dalmiyanagar, Dist- Rohtas.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Amar Prakash, Advocate
For the Respondent/s : Mr. A.N. SINHA G.P.-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-01-2016

Heard Mr. Amar Prakash, learned counsel for the petitioner and learned counsel for the State and Mr. Avinash Kumar for the Municipality.

The petitioner is aggrieved by the action of the Executive Officer, Nagar Parishad Dehri Dalmiyanagar in the district of Rohtas in not discharging the legal obligation cast upon him under the provisions of the Rule 2(iii) of the Bihar No Confidence Motion Rules 2010 (hereinafter referred to as the 'Rule') which casts an obligation on the Chief Municipal Officer which in the present case would be the Executive Officer, Nagar Parishad to issue a notice for convening of special meeting in conformity of such direction being



issued either by the Chief Councillor under Rule 2(i) or the requisitionists under Rule 2(ii) or the Presiding Officer of a special meeting under Section 50 of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act').

The issue raised in the present application relates back to an order passed by this Court in CWJC No. 15903 of 2015 which was filed by a Councilor of the Nagar Parishad being aggrieved by the action of the present petitioner who is the Deputy Chief Councillor, in not convening a special meeting after the special meeting convened for considering the 'no confidence motion' moved against the Chief Councilor had to be adjourned for want of coram. It was the grievance of the petitioner in the said writ petition that although the special meeting did not take place on the date fixed and was adjourned but since after the adjournment on 20.7.2015, the Presiding Officer that is the Deputy Chief Councilor was not discharging the obligation cast upon her under Section 50 of 'the Act'.

It is in consideration of the issues raised that this court vide order passed on 12.10.2015 disposed of the writ petition with a direction to the Deputy Chief Councilor i.e. the present petitioner to fix the date of special meeting for consideration of the matter. A copy of this order is placed at Annexure-1 to the writ petition. It is the grievance of the present petitioner who is the Presiding Officer of the



special meeting and the Deputy Chief Councilor that though in obedience of the directions of this court she fixed the date of special meeting on 24.12.2015 and communicated the same to the Executive Officer vide letter dated 14.12.2015 for circulation thereof in tune with the stipulations present under 'the Rules' but the Executive Officer instead of complying with the direction and circulating the notice raised objections on the jurisdiction of the Deputy Chief Councilor to call such meeting.

Prima facie the Executive Officer in obstructing the Presiding Officer-cum-Deputy Chief Councilor to abide by the directions of this Court as contained in the order passed in CWJC No. 15903 of 2015 has made himself liable for proceeding in contempt. The Deputy Chief Councilor / Presiding Officer of the special meeting was acting under the directions of this court to convene the special meeting vide letter dated 14.12.2015 fixing the date on 24.12.2015 whereafter it was none of the business of the Executive Officer to raise any objections therein. The Executive Officer was duty bound to circulate the notice in obedience of the directions of this Court and bearing observance of the stipulations present in Rule 2(iv) of 'the Rules'. The power and functions of a Chief Municipal Officer which term includes the Executive Officer of the Nagar Parishad, is described in Section 27B of 'the Act' and he has been posted there to



carry out the purposes of 'the Act'. As already discussed it is either the Chief Councilor who has the obligation to fix the date for special meeting under Rule 2(i) and on his failure it is the requisitionists who has been given the responsibility but once the date of special meeting is fixed then such jurisdiction moves away from the Chief Councilors/ requisitionists as the case may be and stands vested in the Presiding Officer of the special meeting who in the present case is the Deputy Chief Councilor under Section 50 of the 'Act'. In other words once the special meeting is held and is adjourned for any reason mentioned in Section 50(2) of 'the Act' then the duty to fix a new date exclusively vests in the Presiding Officer of the special meeting. Even otherwise in view of the mandamus issued by this court in the order passed in CWJC No. 15903 of 2015, the Presiding Officer-cum-Deputy Chief Councilor was carrying out the obligation as directed by this Court and the act of the Executive Officer in putting obstruction borders on contempt. The letter of the Executive Officer dated 14.12.2015 is an attempt to overreach the order of this Court and although this Court was inclined to draw contempt proceedings against the Executive Officer for his attempted overreach but for the persuasion of learned counsel appearing on his behalf I grant him one opportunity to correct himself.

For the reasons so mentioned hereinabove the objections

raised by the Executive Officer as present in Annexure-4 is held ridiculous not even warranting its quashing and is fit to be ignored. The Deputy Chief Councilor would fix the date of the adjourned special meeting and the Executive Officer would circulate the same abiding by the provisions of Rule 2(iv) of 'the Rules' which require the reasons/charges to be present in the notice.

The writ petition is allowed.

(Jyoti Saran, J)

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