

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6538 of 2016

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Priti Singh W/o Suresh Singh, Resident of village-Bodhgaya, District-Gaya

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary
2. Urban Development Department, Govt. of Bihar, Patna
3. The District Magistrate, Gaya
4. The Secretary, State Election Commission, Patna
5. The Executive Officer, Nagar Panchayat, Bodhgaya
6. Smt. Anita Devi Card Councillor Ward No. 1
7. Sri Arvind Kumar Singh Ward Councillor Ward No. 2
8. Smt. Rita Kumari Ward Councillor Ward No. 3
9. Sri Shivdayal Manjhi Ward Councillor Ward No. 4
10. Smt. Reshmi Devi Ward Councillor Ward No. 5
11. Sri Shivrat Manjhi Ward Councillor Ward No. 6
12. Smt. Dulari Devi Ward Councillor Ward No. 7
13. Sri Dinesh Kumar Singh Ward Councillor Ward No. 8
14. Sri Jai Singh Ward Councillor Ward No. 9
15. Smt. Jamuna Devi Ward Councillor Ward No. 10
16. Sri Shivshankar Bhagat Ward Councillor Ward No. 11
17. Sri Ram Sevak Singh Ward Councillor Ward No. 12
18. Smt. Manorma Devi Ward Councillor Ward No. 13
19. Smt. Kamla Devi Ward Councillor Ward No. 14
20. Smt. Mamta Devi Ward Councillor Ward No. 15
21. Smt. Savitri Devi Ward Councillor Ward No. 16
22. Smt. Lalita Devi Ward Councillor Ward No. 17
23. Smt. Ramratiya Devi Ward Councillor Ward No. 19

Serial No. 5 to 22 are members of Ward Councillors of Bodhgaya
Nagar Panchayat, Bodhgaya, District-Gaya

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Manoj kumar, Advocate

For the State E.C. : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the Respondent/s : Mr. PURNENDU SINGH, GP-27
Mrs. Sunita Kumari, AC to GP-27

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-04-2016

Heard Mr. Y.V. Giri, learned senior counsel appearing for



the petitioner, learned counsel for the State, Mr. Ashok Kumar for the Municipality, Mr. Yogesh Chandra Verma, learned senior counsel appearing for some of the respondents, Mr. S.B.K. Manglam for the others, Mr. Indradeo Prasad appearing for some of the respondents and Mr. Amit Shrivastava for the State Election Commission.

The petitioner is the Ex-Chairman of Nagar Panchayat, Bodh Gaya and questions the proceedings of the special meeting held on 29.3.2016 whereby a 'no confidence motion' moved against the petitioner has been passed.

Two issues have been raised by Mr. Giri to question the motion, namely:

- (a) That the requisition annexed vide Annexure-1 and 2 was never given to the petitioner by the requisitionists and even if the Executive Officer forwarded the same in the file, it would not amount to a service in terms of Rule 2(1) of the Bihar No Confidence Motion Rules, 2010 (hereinafter referred to as the 'Rules') framed under the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act'); and
- (b) The notice of the special meeting impugned at Annexure-4 dated 21.3.2016 issued by the Executive Officer of the Municipality communicating the date of special meeting fixed for 29.3.2016, also was not served on the petitioner and to establish the same, learned

counsel has referred to a reverse of the notice present at Annexure-5.

In support of the submissions advanced, Mr. Giri has made reference to a judgment of this Court reported in AIR 2015 Patna 7 (Devendra Yadav vs. State of Bihar) and an unreported decision of this Court arising from CWJC No. 2036 of 2016 (Dinesh Singh vs. The State of Bihar & ors.).

Pursuant to the order of this Court the records have been produced and which demonstrates that the requisition was forwarded to the petitioner in file and was returned by the petitioner with objection which aspect is also manifest from Annexure-2 to the writ petition. Meaning thereby the requisition was received by the petitioner in file. In so far as the service of notice is concerned page 67 of the records contains the report of the Process Server and records a refusal by the petitioner who represents Ward No. 18.

Although Mr. Giri has tried to question the service by relying upon Annexure-5 to the writ petition and to submit that the service report has been incorporated subsequently but in my opinion this is not the correct position for there lies no occasion for the Process Server to leave any space in anticipation, so as to incorporate a refusal in between. The position reflecting from the records would answer the issue raised by the petitioner regarding absence of service

of notice of the special meeting which in view of the refusal recorded, would be deemed to be a valid service of notice of special meeting.

Reverting back to the first issue raised by Mr. Giri regarding the mandate of Rule 2(1) on the issue of service of requisition and that the requisitionists are under a duty to first make an attempt of service on the Chief Councillor and only on failure to do that they file it before the Executive Officer explaining the circumstances, in my opinion, the submissions advanced by Mr. Giri stands answered in the judgment of this Court reported in **2015(1) PLJR 830 (Amit Kumar vs. State of Bihar & ors.)** more particularly paragraph-11 and 13 thereof which is a complete answer to all the issues so raised by the petitioner and which judgment of this Court stands affirmed by the Division Bench in L.P.A. No. 1077 of 2014. Para 11 and 13 of the judgment is reproduced hereinbelow for ready reference:

“11.The provisions of Rule 2(i) of the Rules framed under the Bihar Municipal Act 2007 merely requires that a requisition signed by not less than 1/3rd of the total number of the Ward Councillor be given to the Councillor. It is nowhere mentioned in the rules as canvassed by Mr. Giri that it has to be personally served upon the Chief Councillor. All that law requires is that the copy of the requisition should be given to the Chief Councillor. Now in view of this



mandate as reflected from the rule it is to be seen is whether the requisition placed before the Chief Councillor was a compliance of the rule or not. As per the admission of the Chief Councillor himself in paragraph 9 and 10 of the writ petition, the copy of the requisition was placed before him in the file and following which he has proceeded to fix the date of special meeting on 8.7.2014. The Chief Councillor after admitting this position and after having fixed the date for special meeting on 8.7.2014 cannot now turn back to contest that the requisition was not served upon him in the manner prescribed when indeed it was placed before him in the file and has been acted upon.”

“13. In so far as the present case is concerned, all that the law requires is that the requisition for moving a no confidence motion against the Councillor/Deputy Chief Councillor, is to be given to the Chief Councillor. It is nowhere provided that it has to be personally served upon him or that unless the main copy is placed before the Chief Councillor, he is not required to proceed thereon. In the opinion of this Court, the placement of the requisition in the file before the Chief Councillor and which stands acknowledged by him in the file noting dated 23.6.2014, would be substantial compliance of the statutory provision. In fact the mode and manner of service of requisition under Rule 2(i) of the rules also came up for consideration in another matter arising

from C.W.J.C. No. 11869 of 2014 and this Court taking into consideration the statutory provisions has opined as follows:

“Insofar as the service of requisition on the petitioner is concerned, this Court is of the opinion that the very admission of the petitioner as reflected from his letter dated 19.6.2014 placed at Annexure-2A admitting to the receipt of a copy of the requisition, would be substantial compliance of Rule 2(i) of the Rules and merely because the original copy of the requisition was not served on the petitioner, would not be a ground to invalidate the motion. The requirement of law is that the Chief Councillor should be made aware of the allegations set out against him or the Deputy Chief Councillor, be it any form. The moment a requisition is brought to the notice of the Chief Councillor in whatever form, it would be substantial compliance of law and no technical objection can be raised by him by relying upon rule 2(i). A requisition thus having been admittedly received by the petitioner, this would bring this Court to the second issue raised regarding fixing the date of the special meeting”.

For the reasons aforementioned, I am not persuaded to grant

indulgence to the issue raised by Mr. Giri to contest outcome of the special meeting nor do I find any infirmity in the proceedings of the 'no confidence motion' so passed against the petitioner requiring an interference therewith.

The writ petition is dismissed accordingly.

Interlocutory application bearing I.A. No. 2927 of 2016 stands disposed of.

(Jyoti Saran, J)

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