

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19325 of 2015

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1. Ranju Devi wife of Dr. Indreshwar Kumar Resident of village - Anjanika Mela, P.O.- Mirzapur, P.S. - Mali, Dist. - Aurangabad.
 2. Bimla Devi wife of Shri Sanjay Kumar Resident of village - Harbansha, P.O. - Lahsa, P.S. - Kaithu, Dist. - Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Zila Panchayat Raj Padadhikari, Dist. - Aurangabad.
3. The Deputy Development Commissioner cum Chief Executive Officer, Dist. - Aurangabad.
4. The District Magistrate, Aurangabad.
5. Sri Ram Krishna Kumar son of Satyanarain Pandey Resident of Village - Shamsher Nagar, P.O. - Shamsher Nagar, P.S. - Daudnagar, Dist. - Aurangabad.
6. Sri Rajeev Kumar son of Dr. Braj Kishore Prasad Resident of village & P.O. - Daudnagar, P.S. - Daudnagar, Dist. - Aurangabad.
7. Smt. Manjari Singh wife of not known Resident of Village - Dehri, P.O. - Porwa, P.S. - Muffasil Aurangabad, Dist. - Aurangabad.
8. Smt. Urmila Devi wife of Rajendra Prasad Singh Resident of village - Dardha, P.O. - Dardha, P.S. - Goh, Dist. - Aurangabad.
9. Om Prakash Singh son of Sri Rabindra Singh Resident of village - Dardha, P.O. - Dardha, P.S. - Goh, Dist. - Aurangabad.
10. Smt. Manorma Devi wife of Awadhesh Paswan Resident of village - Aat, P.O. - Manika, P.S. - Madanpur, Dist. - Aurangabad.
11. Prafulla Singh son of Naresh Singh Resident of Village - Bari, P.O. - Khiriawan, P.S. - Madanpur, Dist. - Aurangabad.
12. Smt. Shila Devi wife of Late Sanjay Singh Resident of Village - Hadiya, P.O. - Telhara, P.S. - Aawan, Dist. - Aurangabad.
13. Smt. Juli Sinha wife of Niraj Sinha Resident of Village - Bishunpur, P.O. - Obra, P.S. - Obra, Dist. - Aurangabad.
14. Smt. Sudha Devi wife of Late Shushil Pandey Resident of Village - Pesai, P.O. - Chanda, P.S. - Khudwan, Dist. - Aurangabad.
15. Ajay Paswan son of Bhola Paswan Resident of Village - Balekhar, P.O. - Choparia, P.S. - Muffasil Aurangabad, Dist. - Aurangabad.
16. Dinesh Kumar Singh son of not known Resident of village & P.O. - Piru, P.S. - Haspura, Dist. - Aurangabad.
17. Shahsi Devi wife of Jitendra Kumar Paswan Resident of village & P.O. - Lohra, P.S. - Kasma, Dist. - Aurangabad.
18. Sone Lal Raman son of Bhugeshwar Ram Resident of village - Neura, P.O. - Sunderganj, P.S. - Rishiyap, Dist. - Aurangabad.
19. Pappu Sharma son of Saryug Mistri Resident of village - Katchariya Bela, P.O. - Tarwan, P.S. - Parwan, Dist. - Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Chaudhary, Adv
For the Respondent/s : Mr. Anasul Haque, A.C. to A.A.G.-9
For the private respondent : Mr. Rajendra Prasad Singh, Sr. Adv.
For the Respondent No. 12 : Mr. Santosh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 14-01-2016

Heard Mr. Alok Kumar Chaudhary, learned counsel for the petitioners, Mr. Anisul Haque A.C. to A.A.G.-9 for the State, Mr. Rajendra Prasad Singh learned Senior Counsel for the private respondents except for respondent no. 12 and Mr. Santosh Kumar Pandey for the respondent no. 12

The two petitioners herein are the Chairman and Vice-Chairman respectively of Zila Parishad, Aurangabad and are aggrieved by the order bearing memo no. 888 dated 11.12.2015 whereby the District Magistrate, Aurangabad while expressing his opinion on the view taken by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Aurangabad as present in Annexure-6 has directed for holding of a special meeting on 21.12.2015 for consideration of the no confidence motion moved by the members of the Zila Parishad, Aurangabad as against the two petitioners herein.

Mr. Alok Kumar Chaudhary, learned counsel for the petitioners while questioning such opinion of the District Magistrate has submitted that these petitioners were elected members of the Zila Parishad and were subsequently also elected as the Chairman and Vice-Chairman thereof in the year 2011. It is stated that the



petitioners were removed from their respective post under a no-confidence motion moved on 5.7.2013 which was passed on 8.8.2013 but were re-elected against the post again on 8.9.2013 and have continued on their respective posts since then. It is the submission of Mr. Chaudhary that vide Bihar Act, 15 of 2015 several amendments were incorporated in the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') including an amendment to Section 70 of 'the Act' whereby Section 70(4)(ii) was amended to add a clause which provided that a no confidence motion can be brought only once in the whole tenure of an Adhyaksha or Up-adhyaksha. The said amendment has been notified in the Gazette on 27.8.2015. He submits that despite the amendments so incorporated, another motion was introduced against the two petitioners vide requisition present at Annexure-4 on 2.12.2015. The petitioners objected to the motion by filing a representation to such effect before the Executive Officer requesting him not to proceed with the motion, a copy of which is present at Annexure-5 and which was acted upon by the Deputy Development Commissioner vide letter dated 8.12.2015 present at Annexure-6 whereby the no confidence motion moved was rejected. The matter reached the District Magistrate who vide impugned order bearing No. 888 dated 11.12.2015 superseded the view expressed by the Deputy Development Commissioner to direct for holding of the special

meeting to consider the motion moved against the petitioners on 21.12.2015. Mr. Chaudhary, primarily has questioned the view of the District Magistrate to uphold the initiation of the motion on two grounds namely:

- a) The order was passed without opportunity of hearing to the petitioners and thus is in violation of principles of natural justice; and
- b) The view taken by the District Magistrate is in the teeth of the amendment incorporated vide Bihar Panchayat Raj Amendment Act, 2015 (Bihar Act, 15 of 2015) inasmuch as the petitioners having already faced a motion which though was passed against them but having been re-elected, they cannot be subjected to repeated motions.

The matter was heard on 17.12.2015 when this Court in consideration of the issues raised, put the respondents on notice and in the mean time the special meeting fixed for 21.12.2015 was stayed. The private respondents have appeared through Mr. Rajiv Kumar Singh and Mr. Rajendra Prasad Singh, learned Senior Counsel advancing the argument on their behalf, has led the main contest to submit that there is no infirmity in the view taken by the District Magistrate, Aurangabad in upholding the initiation, for the



amendment in no manner comes to the rescue of the petitioners. It is the argument of Mr. Singh that the word 'tenure' expressed in the amended provision would not include the tenure which stands expired by virtue of the no confidence motion passed against these petitioners on 8.8.2013. He submits that merely a fortuitous circumstance where these two petitioners have been re-elected to the post would not give them a continuity of the earlier tenure for the present tenure is by virtue of a re-election and is a fresh tenure. It is the argument of Mr. Singh that since the amended provision merely provides that a no confidence motion can be brought only once in the whole tenure of the Adhyaksha/Up-adhyaksha it has to read to mean the current tenure and cannot relate to the previous tenure of these petitioners. According to Mr. Singh, the tenure which is put to question is by virtue of a re-election of these petitioners and is a fresh tenure.

The argument of Mr. Singh is also being seconded by Mr. Anisul Haque, A.C. to AAG-9 to support the view taken by the District Magistrate who has filed a separate affidavit pursuant to the direction of this Court and relying upon a letter of the Director, Panchayat Raj dated 5.10.2015 on the issue of tenure and the period within which a motion can be moved against a holder of the post, he has supported the view taken.

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

In so far as the issue regarding the order being in violation of the principles of natural justice is concerned, there is no contest on this point and apparently it is on mere review of the circumstances that the order has been passed by the District Magistrate, Aurangabad. It is manifest from the order itself that the order has been passed without giving any opportunity to the affected persons to present their view. This Court could have set aside the order on this limited ground and remitted the matter for fresh consideration but considering that the issue raised requires a statutory interpretation, I have proceeded to test whether the opinion expressed by the petitioners as seconded by the Deputy Development Commissioner is correct or the opinion of the District Magistrate requires to be upheld.

The facts have already been enumerated. These two petitioners having succeeded in the election as a member of Zila Parishad, were elected as the Chairman and Vice-Chairman thereof in 2011. Upon the completion of two years of tenure that a motion was moved and these two petitioners were removed from their posts on 8.8.2013 only to be re-elected again on 8.9.2013. Meaning thereby the post of Chairman and the Vice Chairman of the Zila



Parishad, Aurangabad has continued to be occupied by these two petitioners. It is not a case where there is a break in continuity rather it is these two petitioners who have continued to hold the post right since 2011 only to be briefly removed in between the period 8.8.2013 until 8.9.2013. In the backdrop of this special feature where these two petitioners have continued to occupy the post of Chairman/Vice-Chairman respectively all through, it is to be seen whether the amendment incorporated to Section 70(4)(ii) of 'the Act' would provide an answer in their favour. It would also be necessary to mention here that by the same amendment clause (vii) of Section 70(4) of 'the Act' was deleted.

For the sake of convenience I deem it proper to reproduce Sub-sections (i), (ii) and (vii) of Section 70(4) of 'the Act' (unamended) which are put to consideration before this Court in the backdrop of the issues raised.

“70.(4)(i) Adhayaksha and Up-Adhayaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of directly elected members from territorial constituencies of the *Zila Parishad* at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one fifth of the total number of directly elected members of the *Zila Parishad* and shall be delivered to the *Adhyaksha* with a copy to the District Magistrate. The *Adhyaksha* shall within seven days from the date of receipt of such requisition convene a special meeting of the *Zila Parishad*. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. The meeting shall be presided over by the *Adhyaksha* if the motion is against

the *Up-adhyaksha*; if it is against the *Adhyaksha* the *Upadhyaksha* shall preside over the meeting and if it is against *Adhyaksha* and *Upadhyaksha* both then the District Magistrate shall preside over the meeting.

In case of the post of *Up-adhyaksha* being vacant or his absence from the meeting convened for discussion on no confidence motion against the *Adhyaksha* or the post of *Adhyaksha* being vacant or his absence from the meeting convened for discussion on no confidence motion against the *Up-adhyaksha*, as the case may be, the meeting shall be presided over by any member elected from amongst the directly elected members from the territorial constituencies of the *Zila Parishad* present in the meeting.

In case of failure to convene the meeting by the *Adhyaksha*, the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided by him.

No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.

(ii) During the first two year period of the tenure, no confidence motion shall not be moved against the *Adhyaksha* or the *Upadhyaksha*.

(vii) If the motion of no confidence against the *Adhyaksha* or the *Upadhyaksha* or both is once rejected, no fresh motion of no confidence against the *Adhyaksha* or the *Upadhyaksha* or both, as the case may be shall be brought before the *Zila Parishad* within a period of one year from the date of rejection of such motion.”

Section 12 of the Bihar Amendment Act, 15 of 2015 incorporates amendment to Section 70 of ‘the Act’ and runs as follows:

“12. Amendment of Section 70 of the Bihar Act 6, 2006.-(1) The following sentence shall be added at the end of clause (ii) of sub-section (4) of Section 70 of the said Act, 2006:-

“Such a no confidence motion may be brought only once in the whole tenure of “Adhyaksha or Upadhyaksha”

(2) The clause (vii) of sub-section (4) of Section 70 of the said Act, 2006 is hereby deleted.”



The legal position as it stands since after the amendment is that a no confidence motion cannot be moved within first two years period of the tenure of Adhyaksha or Up-adhyaksha and such a no confidence motion may be brought only once in the whole tenure of the Adhyaksha or Up-adhyaksha. According to Mr. Singh the word 'tenure' has to be interpreted qua the success in the election to the post and since in the present case the two petitioners have occupied the post in two spells, each of such spell would mean a tenure. According to Mr. Singh not being a case where a motion moved has failed, the petitioners having been removed by the motion, their re-election is an independent tenure and the motion passed in the previous tenure cannot cover the present tenure nor the motion moved presently can be forestalled by the amendment to Section 70(4)(ii).

The argument advanced by Mr. Singh does reflect a plausible explanation to the provisions but considering that the legislature has been very conscious to incorporate the amendment by using the word '**whole tenure**' of the Adhyaksha or Up-adhyaksha, it would mean the entire tenure of the person holding the post. Had there been a situation where the holder of the post of Adhyaksha or Up-adhyaksha was replaced by other members in a re-election held on their removal in a no confidence motion, in such a case indisputably the fresh



incumbents could be subjected to a motion and the condition incorporated in clause (ii) of Section 70(4) of 'the Act' would not apply in their case because their tenure would begin on the date on which they occupied the post but in so far as the present petitioners are concerned, considering that these two persons have occupied the post right since 2011 only to be removed for a brief period of one month under a no confidence motion which led to a re-election in which they again were re-elected, the word '**whole tenure**' in their case would include the tenure earlier held in view of the prefix 'whole' attached to the word 'tenure' and in absence of any classification to mean the current tenure. An intermittent removal under a no confidence motion only to result in their re-election, cannot be interpreted to mean a fresh tenure for such of the occupants.

Another aspect of the matter which does not persuade this Court to uphold the view expressed by the District Magistrate as advanced by learned counsel for the State and Mr. Rajendra Prasad Singh is the deletion of Clause (vii) of Section 70(4) of 'the Act' which related to circumstances in which a motion had failed against the Adhyaksha/Upadhyaksha. This provision was deleted to incorporate a provision in Section 70(4)(ii) putting a limitation on such motions.



Although an election to the post of Member of a Zila Parishad is by a direct election, an election to the post of Chairman/Vice-Chairman is through an internal election by a majority of the members supporting such candidature. It is history that these two persons after being elected as Member were also elected as Chairman/Vice-Chairman in 2011 and though they were removed from their respective posts under a no confidence motion in 2013 but then they contested the re-election and the majority of the members again have re-elected them to their respective posts without any break. Once the members have consciously re-elected these two persons back to the post of Chairman/Vice-Chairman and allowed them continuity on their posts, they cannot be permitted to indulge in juridical adventurism.

For the view expressed by me hereinabove, I am not persuaded to uphold the views of the District Magistrate to entertain the no confidence motion moved against the petitioners which in my considered opinion is *de hors* the amendment introduced to Section 70(4)(ii) of 'the Act'. In the extra-ordinary circumstances where these two petitioners have occupied the post since 2011, the words '**whole tenure**', in their case would date back and include the said tenure as well and since they have already faced a motion which may have gone against them but considering that they stand re-elected to

the post again in consecutive succession, in my opinion no second motion can be brought against them in view of the amendments to Section 70(4)(ii) and (vii) of 'the Act' vide Bihar Act, 15 of 2015.

In result the order of the District Magistrate bearing memo no. 888 dated 11.12.2015 impugned at Annexure-7 cannot be upheld and is accordingly set aside. The motion so initiated against the petitioners vide requisition dated 2.12.2015 impugned at Annexure-4 cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

deepika/Bibhash

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