

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3341 of 2016

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1. Rajiv Ranjan Singh son of Sri Birendra Prasad Singh Ward Councilor of ward no. 8 Nagar Parishad Samastipur P.s+District- Samastipur.
 2. Bindu Devi wife of Sri Harihar Prasad Mahto Ward Councilor of ward no. 16 Nagar Parishad Samastipur P.s+District- Samastipur.
 3. Seema Kumari Wife of Sri Badudeo Prasad Ward Councilor of ward no. 15 Nagar Parishad Samastipur P.s+District- Samastipur.
 4. Shailesh Kumar Son of Mundrika Prasad Kunwar Ward Councilor of ward no. 8 Nagar Parishad Samastipur P.s+District- Samastipur.
 5. Umesh Kumar Verma Son of late Yugal Prasad Verma Ward Councilor of ward no. 14 Nagar Parishad Samastipur P.s+District- Samastipur.
 6. Lalita Gupta Wife of Sri Tarkeshwar Nath Gupta Ward Councilor of ward no. 17 Nagar Parishad Samastipur P.s+District- Samastipur.
 7. Rubi Chanchala wife of Sri Sanjiv Kumar Choudhary@Munna Chaudhary Ward Councilor of ward no. 23 Nagar Parishad Samastipur P.S.+District- Samastipur.
 8. Tek Narayan Mahto Son of Sri Aklu Mahto Ward Councilor of ward no. 4 Nagar Parishad Samastipur P.s+District- Samastipur.
 9. Kamini Sinha Wife of Sri Sudhanshu Kumara Sinha Ward Councilor of ward no. Nagar Parishad Samastipur P.s+District- Samastipur.
 10. Anand Bhushan son of Sri Suresh Prasad Singh Ward Councilor of ward no. 6 Nagar Parishad Samastipur P.s+District- Samastipur.
 11. Reena Kumari wife of Sri Dharmendra Singh Ward Councilor of ward no. 12 Nagar Parishad Samastipur P.S.+District- Samastipur.
 12. Poonam Kumari wife of Sri Anand Kumar Ward Councilor of ward no. 8 Nagar Parishad Samastipur P.S.+District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Urban Development Department & Housing Development Department , Govt; of Bihar, Patna.
2. The Commissioner, Darbhanga Division Darbhanga at Darbhanga.
3. The District Magistrate Samastipur at Samastipur
4. The Executive Officer, Nagar Parishad, Samastipur at Samastipur District Samastipur.
5. Smt. Archana Devi Wife of Sri Rajesh Kumar Sah the Chief Councilor, Nagar Parishad Samastipur P.S. +District Samastipur.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Indu Bhushan, Advocate
For the Municipality : Mr. Durga Nand Jha, Advocate
For the Respondent/s : Mr. Partha Sarthi, GA-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 22-02-2016

Heard learned counsel for the petitioner, Mr. Partha Sarthi, learned G.P.-11, Mr. Durgesh Nand Jha for the Samastipur Municipality and Mr. Ranjan Kumar Jha, learned counsel for the Chairman.

The petitioner, a member of the Samastipur Nagar Parishad, is aggrieved by the decision taken by the respondent no. 4 who happens to be the Executive Officer of the Nagar Parishad in not proceeding with the requisition so moved by the Councillors of the Municipality for bringing a 'no confidence motion' against the respondent no. 5 and the reasons can be found in the provision of Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

Briefly speaking the respondent no. 5 after being elected as a Councillor was also elected as a Chief Councillor only to be removed by 'no confidence motion' passed against her by the majority of elected members of the Municipality in the special meeting held on 23.9.2014. Notwithstanding the result of the 'no confidence motion' the majority of the Councillors again elected the respondent no. 5 to the post of Chief Councillor in the re-election held on 15.11.2014. The present requisition has been moved on 10.12.2015 by one third members of the Municipality present at Annexure-1. The respondent no. 5 having been re-



elected to the post on 15.11.2014 hence taking note of the first proviso to Section 25(4) of 'the Act' which prohibits any no confidence motion being brought against the Chief Councillor / Deputy Chief Councillor within a period of two years of taking over charge of the post, the respondent no. 5 objected thereto and which objection has been upheld by the Executive Officer in the light of a Bench decision of this Court arising from CWJC No. 13050 of 2009 wherein it has been held that whenever a Pramukh or Up-Pramukh is elected to the post then for the first two years, no 'no confidence motion' can be brought.

While learned counsel for the petitioner relies upon the previous tenure of the respondent no. 5 to justify the fresh motion moved in reference to the 2nd proviso to Section 25(4) of 'the Act' counsel for the Municipality Mr. Durga Nand Jha and Mr. Ranjan Kumar Jha for the Chief Councillor make reference to a Division Bench judgment of this Court reported in **2012 (4) BBCJ 97 (Subhansh Rai vs. State of Bihar)** to advance her case and to submit that the issue stands concluded by the judgments of this Court and that each election to the post would mean a beginning of a tenure.

Having heard learned counsel for the parties and the judgments relied upon by the them, it is manifest that the initiation

of the proceeding of no confidence motion was illegal. May be, in cases where a motion fails that a recourse can be taken to the 2nd proviso of Section 25(4) but there leaves no room for confusion to hold that a Chief Councillor having served on the post and having been removed in a 'no confidence motion', the moment she gets support of the majority for being reelected as the Chief Councillor, a fresh tenure begins and any motion thereafter can only be brought in consonance with the 1st proviso to Section 25(4) of 'the Act' and not the 2nd proviso.

The issue stands concluded by the earlier decisions of this Court and the statutory provisions itself is eloquent enough to confirm that the objection so raised by the private respondent as upheld by the Executive Officer suffered from no infirmity warranting any interference.

The writ petition is disposed of.

(Jyoti Saran, J)

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