

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8887 of 2014

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Syed Irshad Akhtar, son of Samsul Joha, resident of Mohalla- Kali Bagh, P.S.- Bettiah Town, District- West Champaran (Member of Standing Committee, Nagar Parishad, Bettiah).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Bettiah West Champaran.
4. The D.D.C., West Champaran, Bettiah.
5. The Sub-Divisional Officer, Bettiah, West Champaran.
6. The Executive Officer, Nagar Parishad, Bettiah, West Champaran.
7. Sujay Suman, son of Bhairo Dayal Saran, R/o + PO + P.S.- Keshirya, District- East Champaran, presently posted as Junior Engineer, Nagar Parishad, Bettiah, West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Verma Mr. Ashok Kumar Gupta Mr. Shrawan Kumar Saraf
For the Respondent-State	:	Mr. Vivek Prasad, GP-18
For the Respondent No.6	:	Mr. Dhananjay Kumar
For the Respondent No.7	:	Mr. Dilip Kumar Tiwari Mr. Krishna Kant Tiwari

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 19-01-2016

Heard Mr. Anil Kumar Verma, learned counsel appearing for the petitioner, counsel for the State, Mr. Dhananjay Kumar, learned counsel appearing for the Nagar Parishad and Mr. Dilip Kumar Tiwari, learned counsel appearing for the private respondent no.7.

Although this writ petition initially was filed by three petitioners including the Standing Committee of the Nagar



Parishad, Bettiah represented through a member Raish Lal Gupta but pending disposal of the writ petition, two of the petitioners i.e. petitioner nos.1 and 3 chose to withdraw from the contest. Even otherwise the Standing Committee could only be represented through Chairman or the Vice-Chairman and unless the Committee so empowers any member, he could not have filed the writ petition in a representative capacity of the Standing Committee. Nonetheless an issue of public interest involving the interest of municipality being raised by a member of the Empowered Standing Committee, i.e. petitioner no.2 who continues to pursue the matter the writ petition is capable of being considered on its merit.

The issue raised by the petitioner stands noted in the order dated 6.7.2015 and the petitioner is aggrieved by the order bearing Memo no.16 dated 10.3.2014 passed by the Executive Officer, Nagar Parishad, Bettiah, whereby he has withdrawn the order bearing Memo no.1635 dated 21.2.2014, whereby and whereunder the respondent no.7 had been communicated the order of suspension stated to have been passed in a resolution taken by the Empowered Standing Committee of the Municipality.

Notices were issued to the respondents by this Court and the respondents have responded through counsel.

Although extensive arguments were advanced by Mr.



Verma, learned counsel appearing for the petitioner to question the power of the Executive Officer to withdraw the earlier communication dated 21.2.2014 but such arguments were contested by Mr. Tiwari, learned counsel appearing for the private respondent no.7 on limited ground that whereas in terms of Rule 10 of the Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010 (hereinafter referred to as 'the Rules') the power to take disciplinary action against the officers and staff of the Municipality vests in the Empowered Standing Committee, there is no such resolution of the Empowered Standing Committee suspending the respondent no.7 and in which view of the matter the order bearing Memo no.16 dated 10.3.2014 passed by the Executive Officer recalling the earlier communication bearing No.1635 dated 21.2.2014 suffers no infirmity. Mr. Tiwari in support of his submission has referred to the communication of suspension order issued by the Executive Officer vide Memo no.1635 dated 21.2.2014 to submit that although the order refers to a resolution of the Empowered Standing Committee passed on 14.6.2013 but a bare perusal of the minutes of the meeting dated 14.6.2013 present at Annexure 3 manifest that it is not the resolution of the Empowered Standing Committee rather it is the minutes of an emergency meeting of the Municipality presided over by the



Chairman of the Municipality. Mr. Tiwari has referred to rule 10 of ‘ the Rules’ to submit that the power to take disciplinary action vests exclusively in the Empowered Standing Committee and since there is no such resolution of the Empowered Standing Committee to suspend the respondent no.7, the order bearing Memo No.1635 dated 21.2.2014 has rightly been withdrawn by the order impugned.

Surprisingly the Executive Officer, Nagar Parishad, Bettiah having registered appearance through Mr. Dhananjay Kumar has conveniently avoided to file any affidavit on the contest so taken note of.

Mr. Verma in his attempt to justify the order of suspension though has relied upon section 41 of the Bihar Municipal Act, 2007 (hereinafter referred to as ‘the Act’) to submit that there is no infirmity in the resolution dated 14.6.2013 present at Annexure-3 but in my opinion the reliance placed by Mr. Verma to the provisions of section 41 of ‘the Act’ is completely misplaced for section 41 only relates to posting of an officer of the State Government in the Municipality with a power to recall vested in the State Government or his services can also be returned on a resolution passed by two third majority of the total number of Councillors holding office in a meeting so held. The provision of section 41 exclusively relates to posting and withdrawal of services



of an officer of the State Government and does not relate to disciplinary action to be taken against him. The issue of disciplinary action is substantively dealt with rule 10 of 'the Rules' and exclusively vests jurisdiction in the Empowered Standing Committee to take any such decision.

Although Annexure-2 which is a communication of the order of suspension by the Executive Officer and is dated 21.2.2014 does refer to one such resolution taken by the Empowered Standing Committee in its meeting held on 14.6.2013 but as rightly pointed out by Mr. Tiwari the minutes of the meeting dated 14.6.2013 in which a decision to suspend the respondent no.7 was taken as is manifest from the concluding portion of the minutes present at Annexure-3, is not a meeting of the Empowered Standing Committee rather is a meeting of the Municipality.

There is a distinction between the resolution taken in a general body meeting and resolution taken in the meeting of the Empowered Standing Committee and where rule 10 of 'the Rules' specifically vests jurisdiction in the Empowered Standing Committee to take any disciplinary action against the officer and staff of the Municipality, this jurisdiction cannot be wrested from the committee nor can the Municipality in its general body meeting usurp such jurisdiction to take any such decision.

In view of the statutory prescriptions underlying rule 10 of 'the Rules' the order bearing Memo no.1635 dated 21.2.2014 of the Executive Officer referring to the resolution dated 14.6.2013 present at Annexure-3 to be a resolution of the Empowered Standing Committee is not a correct reflection of the situation and has rightly been recalled by the Executive Officer presently holding the post vide the impugned order bearing Memo No.16 dated 10.3.2014 which calls for no interference.

This writ petition is disposed of. The interlocutory application, if any, stands disposed of.

(Jyoti Saran, J)

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