

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7052 of 2016

1. Krishnanandan Singh, son of Sri Ram Padarath Singh, Resident of Village and P.O. Madhurapur-1, P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.22 of Nagar Panchayat, Teghra, District- Begusarai.
2. Uttam Kumar, son of Sri Rajendra Sharma, Resident of Village Daniyalpur, Behind S.B.I., Teghra, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.19 of Nagar Panchayat, Teghra, District- Begusarai.
3. Suman Devi, Wife of Sri Kanhaiya Kumar, Resident of Mohalla- Purani Bazar, Teghra, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.15 of Nagar Panchayat, Teghra, District- Begusarai.
4. Shankar Shah, son of Late Mannu Lal Sahu, Resident of Mohalla- Kali Asthan, Purani Bazar, Teghra, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.11 of Nagar Panchayat, Teghra, District- Begusarai.
5. Sunita Devi, wife of Sri Arun Kumar Singh, Resident of Mohalla- Bajalpur, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.13 of Nagar Panchayat, Teghra, District- Begusarai.
6. Meena Devi, wife of Lakshman Prasad Singh, Resident of Mohalla- Bajalpur, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.12 of Nagar Panchayat, Teghra, District- Begusarai.
7. Shalini Devi, wife of Sanjeev Kumar Singh, Resident of Mohalla- Hassanpur, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.3 of Nagar Panchayat, Teghra, District- Begusarai.
8. Niras Chaudhary, son of Late Ramprit Chaudhary, Resident of Mohalla- Chakdad, Madhurapur-1, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.21 of Nagar Panchayat, Teghra, District- Begusarai.
9. Lakshmi Devi, wife of Sunil Kumar Shah, Resident of Mohalla- Paigambarpur, P.O. & P.S. Teghra, District- Begusarai, presently Ward Councilor of Ward No.09 of Nagar Panchayat, Teghra, District- Begusarai.

.... Petitioner/s

Versus

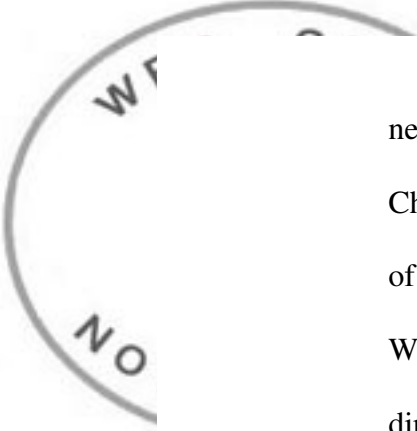
1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Begusarai, District- Begusarai.
5. The Executive Officer, Nagar Panchayat, Teghra, P.O. and P.S. Teghra, District- Begusarai.
6. Smt. Nasima Khatoon, Wife of Abdul Samad, Presently Chief Councilor of Nagar Panchayat, Teghra, P.O. and P.S. Teghra, District- Begusarai.

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. S.B.K.Manglam
Mrs. Anita Kumari
For the Respondent/s : Mr. Partha Sarthi

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 04-10-2016



Nagar Panchayat, Teghra in the district of Begusarai elected new office-bearers in June, 2012. Respondent no.6 was elected as the Chief Councillor of the Nagar Panchayat. The Nagar Panchayat consists of 25 elected members/Ward Councillors. The petitioners herein are 09 Ward Councillors of the Nagar Panchayat. They have prayed for a direction upon the respondent to produce the record of the order passed by respondent no.6 rejecting the requisition dated 28.03.2016 filed by the petitioner for convening special meeting to consider the no-confidence motion against respondent no.6 and upon such production, it is prayed, the same be quashed. They have also prayed for a direction commanding the respondent no.5 for issuance of notice for the special meeting in terms of the decision of the requisitionists taken on 04.04.2016 fixing 11.04.2016 for holding the special meeting. Any further relief to which the petitioners are entitled to may also be granted to them.

On 08.3.2016, a requisition (Annexure-1)) was filed to call in attendance the special meeting of Nagar Panchayat signed by 09 ward Councillors. It may be mentioned that under the relevant Rule at least 1/3rd elected Ward Councillors of the Nagar Panchayat are entitled to pray for such convening of the special meeting to consider the no-confidence motion. On 10.03.2016, the said requisition was placed before the respondent Chief Councillor. Respondent no.6 noticed that at least one of them had withdrawn herself from the requisition by a written application and placed/owed allegiance to the Chief Councillor. Having found so, the respondent no.6 declined to act on the said requisition as only 08 Ward



Councillors had filed the requisition for such special meeting of the Nagar Panchayat. As the respondent Chief Councillor rejected the requisition and refused to summon the special meeting of the Nagar Panchayat on 12.03.2016, the required number of the Ward Councillors (writ petitioners herein) filed another requisition on 28.03.2016 (Annexure-3) for summoning the special meeting of the Nagar Panchayat. Finding that the said requisition was not acted upon by the Chief Councillor, the requisitionists- petitioners on 04.04.2016 (Annexure-4) themselves resolved to convene the special meeting of the Nagar Panchayat on 11.04.2016. In the meantime, the Executive Officer vide communication dated 06.04.2016 (Annexure-5) communicated that the Chief Councillor had rejected the requisition dated 28.03.2016 as within one year of rejection of such requisition on 12.03.2016 the present requisition was filed. The said notice communicating the decision of the Chief Councillor was passed under section 25(4) of the Bihar Municipal Act, 2007 (in short 'the Act'). Said communication of the Executive Officer is also under challenge.

Heard Mr. S. B.K. Manglam for the petitioners and Mr. Rajendra Narayan for the respondent no.6.

It has been submitted by the petitioners that the Chief Councillor rejected the first requisition on 12.03.2016 whereafter the petitioners filed the second requisition on 28.03.2016 which was signed by as many as 09 Ward Councillors. The same was wrongly turned down by the respondent Chief Councillor. Before the communication dated 6.04.2016 (Annexure-5) issued by the Executive Officer of the Nagar Panchayat informing the rejection of the second requisition, the



requisitionists had themselves resolved to summon the special meeting on 11.04.2016 . It was an arbitrary or colourable exercise of power on the part of the State respondent. It is further submitted that such procedure is not in accord with the provision of the Act and the Bihar Municipal No-confidence Motion Process Rule 2010(for short 'the Rules'). The respondent Chief Councillor completely erred in law in rejecting the requisition dated 28.03.2016 as in the light of the requisition dated 08.3.2016 no meeting of the special committee of the Nagar Panchayat was convened in which the motion of no confidence was presented, discussed and thereafter put to vote. In the eye of law, no confidence motion was defeated.

Mr. Rajendra Narayan, per contra, would urge that aggrieved by the rejection of the first requisition dated 08.3.2016 the requisitionists had filed representation before the Executive Officer as well as the District Magistrate requesting appropriate enquiry into the matter whereafter the District Magistrate directed the Sub-Divisional Officer to inquire into the allegations/charges with regard to filing of the application by at least one signatory thereto withdrawing from the requisition and lending support to the respondent no.6. The Sub-Divisional Officer issued notice to all the signatories of the said requisition on 26.03.2016 (Annexure-C to the counter affidavit of private respondent). As the first requisition dated 08.3.2016 was under inquiry at the instance of the requisitionists themselves, there was no valid reason to file another requisition dated 28.03.2016. The first requisition having been rejected by the Chief Councillor, the second requisition dated 28.03.2016 is not maintainable in the eye of law as the same was filed within one year of the rejection of the

first requisition dated 12.03.2016. According to him, the no confidence motion contemplated under the Act and the Rules is a process which commenced from filing of the requisition for convening such special meeting.

Section 25 of the Act deals with removal of the Chief Councillor/Deputy Chief Councillor. Sub section 4 thereof reads as under:-

(4) The Chief Councillor/Deputy Chief Councillor may be removed from office by a resolution carried by a majority of the whole number of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner prescribed, upon a requisition made in writing by not less than one-third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed:

"Provided that a no confidence motion shall not be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking over the charge of the post:

Provided further that a no confidence motion shall not be brought again within one year of the first no confidence motion:

Provided further also that no confidence motion shall not be brought within the residual period of six months of the municipality."

Another relevant provisions to be noticed are provided in the Rules framed under section 25(4) of the Act. Rule 2 deals with the process of no confidence motion. Clause (i) thereof provides that for removal of the Chief Councillor/Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for which a requisition signed by not less than 1/3rd of the total number of the elected Councillors is required to be filed before the Chief Councillors whereafter the Chief Councillor will convene the special meeting within 07 days from the



receipt of the requisition and the meeting shall be convened within the outer limit of 15 days of the date of the notice. Clause (iii) thereof provides that in case the notice is not issued by the Chief Councillor within the stipulated date the special meeting shall be called as per the provision of section 48(3) of the Municipal Act and the notice for it shall be issued by the Chief Municipal Officer. Clause (iv) thereof mandates that the notice so issued to consider no confidence motion shall clearly contain the reasons/allegations on which the no confidence motion is to be brought. Clause (v) of Rule 2 requires notice in particular which states as under:-

“As soon as the meeting, called for, commences, the presiding member at the meeting shall read out the motion on which the meeting has been called, before the members present and declare it open for discussion. During discussion, opportunity shall be given to the Chief Councillor/Deputy Chief Councillor against whom no confidence motion is moved, to defend himself. The motion shall be put to vote by the presiding member by secret ballot on the same day after discussion and after counting result shall be declared.”

It is thus seen that as soon as the special meeting called for commences, the presiding member at the meeting shall read out the motion on which the meeting has been called before the members present and declare it open for discussion. Until the meeting is convened where the motion of no confidence is presented for discussion, it cannot be said that a motion of no confidence was presented. Clause (v) of Rule 2 further provides that the motion shall be put to vote by the presiding member by

secret ballot on the same date after discussion and after counting result shall be declared. Whether the no confidence motion so filed, carried through or not, would be seen only after the voting takes place and the result of the voting is announced.

Mr. Rajendra Narayan with all ingenuity at his command has argued that no sooner the requisition is filed the process of no confidence motion starts. If the same is turned down by the Chief Councillor for any good or valid reason, it will be tantamount to rejection of the no confidence motion and the second requisition for the no confidence motion would be barred under the relevance provision of the Act and the Rules having been filed before the expiry of the stipulated period.

Conversely, Mr. Manglam has submitted that the no confidence motion shall be considered, rejected or turned down only when a motion to this effect is presented to the House and put to vote.

I have purposely noted the relevant provision of the Act and the Rules.

Up-to Clause (iv) of Rule 2 it is the requisition or the notice to be issued by the Executive Officer are referred. Clause (v) of the Rule 2 provides that as soon as the meeting so called for commences the presiding member shall read out the motion on which the meeting has been called. The requisitionists will take colour of the motion of no confidence once presented to the House for discussion and voting. If it fails on voting then only in the eye of law it can be said that the no confidence motion on the basis of the requisition was rejected. Furthermore, any such no confidence motion can be either accepted or rejected by the House and not by the Chief Councillor who is one member of the House. In the present case,



the requisition for convening the special meeting to consider the no confidence motion was earlier rejected by the Chief Councillor on the ground that the earlier no confidence motion dated 08.3.2016 was rejected by her on 12.03.2016. Seen thus, it is evident that the earlier requisition dated 08.3.2016 remained a requisition for convening the special meeting of the Nagar Panchayat for consideration of the no confidence motion which never became a motion for no-confidence motion as the same was not presented before the House for discussion and voting.

Precisely for this reason Clause (ii), (iii) and (iv) of Rule 2 do not use the words 'no confidence motion'. They talk of requisition and notice. Clause (v) of Rule 2, as noticed above, provides that as soon as the meeting so called for commences the presiding officer would read out the motion on which the meeting has been called for. The word 'motion' is used in that clause of the Rules.

The Court has no manner of doubt that the submission of Mr. Narayan that the process of no-confidence motion commences by filing of requisition is not well-grounded.

In view of discussion made hereinabove, the reason for not convening the special meeting of the Nagar Panchayat for consideration of motion of no confidence is held as illegal. The order dated 02.04.2016, passed by the Chief Councillor placed at Annexure-E to the counter affidavit of respondent no.5 (Nagar Panchayat) consigning the requisitions dated 28.03.2016 filed by the required number of elected Ward Councillors/writ petitioners herein), is set aside. The respondent Executive Officer would get a fresh approval on the said requisition (Annexure-3) by the Chief Councillor within 02 days of production of a

copy of this order before him and if such approval or fixing of the date for convening the special meeting of the Nagar Panchayat is not granted/passed by the Chief Councillor within 04 days thereafter the requisitionists/writ petitioners may resolve to call in attendance the special meeting of the Nagar Panchayat on a particular date and time. The respondent Executive Officer shall, in accord with the said resolution, issue notice strictly complying with the rule provision(s), so that the motion of no-confidence is presented in the special meeting of the Nagar Panchayat, discussed and put to vote.

The writ application is disposed of with the aforesaid observation/direction.

(Kishore Kumar Mandal, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	5.10.2016
Transmission Date	