

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18258 of 2016

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Saimulan Khatoon, wife of Md. Khabir, resident of Dhaka Chainpur, PO+PS-
Dhaka, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department of Bihar, Patna.
2. The Commissioner, Tirhut division, Muzaffarpur.
3. The District Magistrate, East Champaran at Motihari.
4. The Sub-Divisional Officer cum Returning Officer, Shikrahana, District- East Champaran.
5. The Executive Officer, Nagar Panchayat, Dhaka, East Champaran.
6. Lalan Ram, Ward No. 18, Dhaka Ramchandra, PO+PS- Dhaka, District- East Champaran.
7. Jamshed Alam, Ward No.4, Pipra wajid, PO+PS- Dhaka, District- East Champaran.
8. Jakir Hussain, Ward No.5, Pipra Wajid, PO+PS- Dhaka, District- East Champaran.
9. Narayan Singh, Ward No.1, Rajepur, PO+PS- Dhaka, District- East Champaran.
10. Nayeema Khatoon, Ward No.3, Bisrahia, PO+PS- Dhaka, District- East Champaran.
11. Archana Pandey, Ward No.2, Bisrahia, PO+PS- Dhaka, District- East Champaran.
12. Sihansan Devi, Ward No.10, Chainpura, PO+PS- Dhaka, District- East Champaran.
13. Dinanath Prasad, Ward No.11, Chainpur Dhaka, PO+PS- Dhaka, District- East Champaran.
14. Devender Ray, Ward No.7, Auraiya, PO+PS- Dhaka, District- East Champaran.
15. Rubi Begam, Ward No.6, Auraiya, PO+PS- Dhaka, District- East Champaran.
16. Mehrun Nisha, Ward No.14, Dhaka Ramchandra, PO+PS- Dhaka, District- East Champaran.
17. Sabila Khatoon, Ward No.13, Mohabatpur Dhaka, PO+PS- Dhaka, District- East Champaran.
18. Tabrej Alam, Ward No.9, Chainpur Dhaka, PO+PS- Dhaka, District- East Champaran.
19. Khabira Khatoon, Ward No.20, Lahan Dhaka, PO+PS- Dhaka, District- East Champaran.
20. Mansoor Alam, Ward No.19, Lahan Dhaka, PO+PS- Dhaka, District- East Champaran.
21. Kuraisa Khatoon, Ward No.8, Chainpur Dhaka, PO+PS- Dhaka, District- East Champaran.
22. Ramudesa Shah, Ward No.16, Nayatola Dhaka, PO+PS- Dhaka, District- East Champaran.
23. The State Election Commission, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Advocate.
Mr. Vikash Kumar, Advocate.



Mr. Manoj Kumar Singh, Advocate.

For the State : Mr. Kumar Alok, SC-7

For the Resp. No. 5 : Mr. Rakesh Chandra, Advocate.

For the Pvt. Resp. : Mr. Raju Giri, Advocate.
Mr. Zaki Haider, Advocate.

For the Elec. Comm. : Mr. Amit Shrivastava, Advocate.
Mr. Ritesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-12-2016

Heard Mr. P.K.Shahi, learned senior counsel assisted by Mr. Vikash Kumar, learned counsel for the petitioner, Mr. Kumar Alok learned counsel for the State and Mr. Amit Shrivastava learned counsel for the State Election Commission, Mr. Raju Giri, learned counsel as well as Mr. Zaki Haider, learned counsel for the private respondents.

2. The challenge in the present writ application is to the notice dated 29.10.2016 issued by the Sub Divisional Officer, Shikrahana-cum-Returning Officer, communicating the date of election for the post of Chief Councillor, Nagar Panchayat, Dhaka fixed for 11.11.2016 at 11:00 A.M. Further prayer is to quash the proceeding of the special meeting of the Nagar Panchayat, Dhaka dated 15.10.2016, by which the No Confidence Motion against the petitioner, who was the then Chief Councillor, had been carried out.

3. The petitioner was the Chief Councillor of Nagar



Panchayat, Dhaka under Sub Division Shikrahana in the District of East Champaran. On 19.09.2016, 13 Councillors, out of 20, filed a requisition before the Chief Councillor for holding a special meeting to consider the No Confidence Motion against the petitioner. The same not having been acted upon, on 05.10.2016, the requisitionists fixed the date for holding special meeting on 15.10.2016 and communicated it to the Executive Officer of the Nagar Panchayat, Dhaka for sending notice for holding such a meeting. Pursuant to the meeting held on 15.10.2016, the motion against her was carried out, which is under challenge in the present writ application. Thereafter, a meeting was fixed for 11.11.2016 at 11:00 A.M. for election of Chief Councillor and notice to this effect was issued on 29.10.2016 by the Sub Divisional Officer, Shikrahana cum Returning Officer, which is also under challenge in the present writ application.

4. Learned counsel for the petitioner submitted that from the records it is clear that initial requisition of the requisitionists dated 19.09.2016 was neither served on her nor was ever put up before her or brought to her notice. He further submitted that on 19.09.2016, as another meeting was fixed from before, she had intimated about her illness to the Executive Officer and also stated that she was leaving the headquarters for her treatment. Learned counsel submitted that thereafter, on 14.10.2016, having been made aware of a meeting being



held on 15.10.2016 for considering the No Confidence Motion against her, she wrote to the Executive Officer on 14.10.2016, requesting that the same be postponed. It was contended that despite the same, the meeting was held where the No Confidence Motion was carried out. Learned counsel submitted that in terms of Rule 2(i) and (iv) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as the 'Rules'), requisition had to be first given to the Chief Councillor i.e., the petitioner, but in the present case, the same was not done and more importantly, the notice, for such Motion, had to contain the reasons/allegations on the basis of which the same was brought. Learned counsel submitted that once the requisition has not been served on the petitioner, consequently, convening of the meeting by the requisitionists themselves would not be permissible, which is apparent from the admitted facts of the case. He further submitted that notice for convening the meeting, for considering the No Confidence Motion, was also not served on the petitioner and, thus, it is established that she was not aware of the reasons/allegations on the basis of which the No Confidence Motion was sought to be brought. Learned counsel submitted that there has been a blatant disregard for the statutory provisions, which has vitiated the special meeting held on 15.10.2016 and the result of the meeting naturally cannot be sustained and as a corollary, all subsequent actions become



null and void.

5. Learned counsel for the Nagar Panchayat, Dhaka submitted that on 14.10.2016, the petitioner herself had filed an application before the Executive Officer, in which she had also made a request to postpone the meeting. It was, thus, submitted that she had the knowledge of the meeting to be held on 15.10.2016, which satisfies the requirement of law.

6. Learned counsel for the private respondents submitted that the law requires the Chief Councillor to fix a date within the specified period and failure to do so, gives them a right to fix the date of the meeting and the Executive Officer has only to communicate through notice about convening of the said special meeting, which, in the present case, has been complied with. Learned counsel submitted that on 19.09.2016 at 10:01 A.M., the requisitionists had served a copy of their requisition, which contained the reason, in the office of the Nagar Panchayat, Dhaka, which was duly received by the office peon and only thereafter the petitioner, at 10:03 A.M., had submitted her application to the Chief Executive Officer informing that she was leaving Headquarters due to her sudden illness. It was submitted that since the original requisition contains the reasons, the petitioner cannot, now, take the plea that the requirement of giving reasons/allegations, on the basis of which the No Confidence Motion



was sought to be brought, has not been complied with. Learned counsel submitted that later development on 11.11.2016, when the special meeting for electing a new Chief Councillor was held, the petitioner also participated as a candidate and, thus, now on the principle of waiver, she cannot be permitted to challenge her removal from the post.

7. For such proposition, learned counsel relied upon the judgments of the Division Bench of this Court in the cases of *Smt. Shamshad Khatun Vs. The State of Bihar & Ors.* reported as **2010(1) PLJR 929** and *Sanjay Kumar Mahajan vs. The State of Bihar & Ors.* reported as **2010(3) PLJR 98**, relevant being at paragraph nos. 10, 12, 15 and 16. He also relied upon the judgment of this Court in the case of *Sanjay Singh Som vs. The State of Bihar & Ors.* reported as **2002(3) PLJR 589**, which is a decision by the learned single Bench, and, according to learned counsel, has been affirmed by the Division Bench. He submitted that the Courts have held that once a person takes a chance and contests the election, even though a dispute may be *sub judice* before the Court, having lost, cannot be allowed to challenge his/her very removal from the post, which led to holding of the subsequent election.

8. Learned counsel for the petitioner, by way of reply, submitted that the contentions of the learned counsel for the



respondents that the petitioner was aware of the initial requisition dated 19.09.2016, cannot be sustained for the reason that she was ill a night before, about which she had informed the Executive Officer, which would be clear from the fact that she had already fixed a meeting for 19.09.2016 and in that context, she had intimated about her illness and being out of Headquarters. It was submitted that being the Chief Councillor, she was not subordinate to the Executive Officer so as to file an application for leave, as the same was not required and thus, the intimation of leaving Headquarters was in context to the meeting already scheduled for 19.09.2016. As far as the decisions of the Court relied upon by the learned counsel for the private respondents, learned counsel for the petitioner submitted that the right of the petitioner cannot be defeated on the principle of waiver since, in the present case, after mentioning the matter for out of turn hearing, the same was taken up on 10.11.2016 and there was also a prayer for interim stay in the main writ application itself and the Court, after hearing the matter, had directed the election to be proceeded, but the results were not to be declared, which had further been made subject to the outcome of the writ application. It was, thus, submitted that in clear terms, when the Court had directed for the results not to be declared and the same were also made subject to the outcome of the present writ application, the fact that the petitioner



participated or not participated, is not germane to the issue. It was submitted that the petitioner, in due deference to the order of the Court that the election should be held, being a Councillor, had participated, but that would not cause any prejudice to her in the writ application as she had been adequately protected by the Court when the result was made subject to the outcome of the present writ application.

9. Having considered the rival contentions, the Court finds that the meeting dated 15.10.2016 was not legal. The law clearly mandates that notice of the same has to be served on the Chief Councillor/the person against whom the No Confidence Motion is to be brought and such service of notice cannot be presumed, no matter what may be the attending circumstances.

10. In the present case, from the counter affidavit filed by the Executive Officer, Nagar Panchayat, Dhaka, East Champaran, there is a categorical statement that “the notice of no confidence motion could not be officially served upon the writ petitioner as she was evading the service of notice but she was aware of the requisition and was watchful of every activity and progress of no confidence motion”. This admission of there being no official service of notice, coupled with the fact that nothing has been brought to show that the petitioner was aware of the notice and more importantly, the



reasons/allegations on the basis of which the No Confidence Motion was to be brought, clearly is infraction of Rule 2(iv) of the Rules. The consequence of a No Confidence Motion is extreme, which may result in unseating of an elected person and this being the position, the statutory requirement of service of notice as well as the same to disclose the reasons/allegations cannot be over emphasised. The same is mandatory and there cannot be any dilution of such proposition. The same has also been held by a division bench of this Court in the case of **Meena Yadav vs. The State of Bihar & Ors.** reported as **2010(2) PLJR 388**, where at paragraph no. 13, it has been held as under:

“13. There is no vagueness or ambiguity in the language of the statute, be it sub-section (3)(b) of Section 44 or Sub-section (4)(i) of Section 70 of the Act so as to call for any interpretation. The relevant provisions in categorical terms require that the reasons/charges for no confidence motion shall be clearly mentioned in the notice of the meeting. Besides serving the twin purpose indicated above, the provision serves to protect and promote the meaning and purpose of true Democracy which requires meaningful debates and discussions. They improve the understanding and capability of the elected members and also educate the grass root constituents of Democracy i.e. the voters. Such laudable purpose which is sure to promote larger public good needs to be protected by all the constitutional authorities including courts. Hence, it must be held that the relevant provisions noticed above are mandatory. Whether the notice of meeting called to



consider “no confidence motion” has been issued by the elected office bearers or in default by the concerned officials, it must clearly mention the reasons/charges, failure to do so will render the notice and the consequent meeting void. Such clear and purposive provision by text and context should not be made ineffective by holding it directory so as to be violated with impunity. Violation of such a provision cannot be condoned on the ground that somehow the reasons/charges were known to the persons concerned or they did not care to know the reasons/charges. Allowing such a state of affairs to develop would go against the clear mandate of law and shall run counter to good and basic tenets of Democracy.”

11. The Court finds that the original requisition dated 19.09.2016 was not served on the petitioner, which is clearly established from the facts and circumstances of the case, the materials on record as well as the explanation advanced by the learned counsel for the petitioner, which is reasonable, cogent and, accordingly, acceptable. Once, the said requisition not having come before the petitioner, even if she was subsequently aware of the date of the meeting, the admitted fact remains that the notice for the meeting to be held on 15.10.2016 sent by the Executive Officer on 05.10.2016, which may have contained the reasons, but as per the service report of the process server of the Nagar Panchayat itself, was not served on her because she was out of station due to her illness, as also the categorical statement on oath in the counter affidavit of the Executive



Officer of the Nagar Panchayat stating that the notice of No Confidence Motion could not be officially served upon the petitioner. The Court has no reason to hold that the mandatory requirement of the petitioner being made aware of the reasons/allegations on which the No Confidence Motion was to be brought, having been breached, the meeting itself stands vitiated, moreso, for the reason that it was the petitioner alone, who had to answer and against whom, the said No Confidence Motion was brought.

12. In view thereof, the special meeting held on 15.10.2016 of the Nagar Panchayat, Dhaka as well as the resolution by which the No Confidence Motion, against the petitioner, was passed, stands quashed.

13. As a consequence, since the petitioner will be deemed to have not been removed from the post of Chief Councillor, any subsequent action of filling up the post, by holding a meeting for the purpose on 11.11.2016, also cannot be sustained and, accordingly, holding of the meeting and the election held is also declared null and void. The authorities are, thus, not required to declare the results.

14. On the issue of waiver by the petitioner, in view of the precedents relied upon by the learned counsel for the private respondents, the court is in agreement with the submissions of learned counsel for the petitioner that the ratio of such judgments is not



applicable in the present case for the reason that in the present case, the matter was heard prior to election and the Court had directed the results to be not declared and further, it made the same subject to the result of the writ application.

15. Since the writ application was pending, even if the petitioner participated in the election, it cannot be held against her and would definitely not cause any prejudice to her cause. In fact she in the capacity of a Councillor had rightly taken part in the meeting, but the said participation could not be at the cost of the present writ application itself becoming infructuous or not maintainable.

16. Accordingly, the writ application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

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