

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18264 of 2015

With

I.A. No. 9543 of 2015

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Amardeo Singh, son of late Jhakri Singh, Resident of Mohalla- Shivaji Nagar Colony, Ward No. 18, P.O and P.S- Bhabhua, District Kaimur at Bhabhua, presently Chief Councilor, Nagar Parishad, Bhabhua, district Kaimur at Bhabhua.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. 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, Kaimur at Bhabhua.
5. The Executive Officer, Nagar Parishad, Bhabhua, District kaimur at Bhabhua.
6. Sarfaraz Gaddi, son of not known to the petitioner,
7. Smt. Manju Devi, wife of not known to the petitioner.
8. Sri Guddu Singh Patel, son of not known to the petitioner.
9. Sri Shashi kumar, son of not known to the petitioner.
10. Smt. Kamlesh Devi, wife of not known to the petitioner.
11. Smt. Geeta Devi wife of not known to the petitioner.
12. Sri Madan Singh, son of not known to the petitioner.
13. Sri Raj Mohan Prasad, son of not known to the petitioner.
14. Md. Alimuddin Khan, son of not known to the petitioner.
15. Sri Baldau Singh, son of not known to the petitioner.
16. Smt. Madhu Devi, wife of not known to the petitioner.
17. Smt. Anita Devi, wife of not known to the petitioner.
18. Sri Vijay Devi, son of not known to the petitioner.
19. Smt. Ilambasi Devi, wife of not known to the petitioner.
20. Sri Bajrang Bahadur Singh, son of not known to the petitioner.
21. Smt. Asha Devi, wife of not known to the petitioner.
22. Smt. Khurshida Begum, wife of not known to the petitioner.
23. Sri Mungeri Paswan, son of not known to the petitioner.
24. Smt Veena Srivastava, wife of not known to the petitioner.
25. Smt. Mira Devi, wife of not known to the petitioner.
26. Sri Amjad Ali, son of not known to the petitioner.
27. Sri Rajesh Kumar Gaur, son of not known to the petitioner.
28. Sri Ramendra kumar, son of not known to the petitioner.
29. Smt. Deo Muni Devi, wife of not known to the petitioner.

Respondent nos. 7 to 29 are the elected Ward Councilors, Nagar Parishad, Bhabhua, through the Executive Officer, Nagar Parishad, Bhabhua, PO and PS Bhabhua, District Kaimur at Bhabhua.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Manglam
For the Respondent-State	:	Mr. Ravi Verma, AC to GP-12
For the Respondent-Municipality:		Mr. Sudama Singh
		Mr. Rajani Kant Singh

For the Private Respondents : Mr. Sourendra Pandey
Mr. Rajesh Kumar Mishra
For other set of Respondents : Mr. Shashi Bhushan Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 08-02-2016

The petitioner is the Ex-Chief Councillor of the Bhabhua Nagar Parishad in the district of Kaimur and is aggrieved by the *no confidence motion* passed against him in a special meeting held on 26.11.2015.

Initially the writ petition was filed questioning the requisition dated 5.11.2015 present at Annexure-2 along with the notice dated 2.11.2015 issued by the Executive Officer of the Municipality, whereby the Ward Councillors were requested to attend the special meeting to be held on 26.11.2015, a copy of which is present at Annexure-4 but since it is during the pendency of the proceedings that the special meeting was held on the scheduled date and in which the motion was passed against the petitioner which has been placed on record vide Annexure-8 to I.A. No.9543 of 2015 which also contains a prayer for amendment in the relief.

In consideration of the matter in contest the prayer made in the interlocutory application is allowed and the petitioner is permitted to question the same in the present proceedings.

Mr. S.B.K. Manglam, learned counsel has appeared for

the petitioner, the State is represented by the State Counsel, the Municipality is represented by Mr. Sudama Singh, Mr. Sourendra Pandey appears for the requisitionists as well as the councilors supporting motion while Mr. Shashi Bhushan Singh appears for the Ward Councillors opposing the motion.

The facts of the case briefly stated is that the petitioner after being elected as a Ward Councillor, was elected as the Chief Councillor of the Bhabhua Nagar Parishad in the district of Kaimur (hereinafter referred to as 'the Municipality') in the year 2012. A motion of *no confidence* was moved against the petitioner on 3.11.2014 which was rejected. One year thereafter that the requisition in question was again moved on 5.11.2015 which was admittedly received by the petitioner in file on 12.11.2015 and was objected to inter alia on grounds that it has not been presented to the petitioner nor the original copy thereof was available in the file which was returned back with such objection on 19.11.2015. On the failure of the petitioner as a Chief Councillor to fix the date of special meeting that the requisitionists proceeded to fix the date and which was circulated by the Executive Officer vide notice dated 21.11.2015 present at Annexure-4. It is at this stage that the petitioner filed the writ petition and during the pendency of the writ petition the special meeting took place on 26.11.2015 which was



not attended by the petitioner. Of the 25 elected Councillors 23 participated in the meeting but only 13 cast their votes while remaining 10 abstained and since all the 13 members who cast their votes supported the motion which constituted a majority of elected Councillors hence the motion was declared passed. The petitioner being aggrieved is before this Court.

Mr. Manglam, learned counsel appearing for the petitioner has questioned the motion primarily on two grounds, namely:

- (a) The requisition was not presented to the petitioner in the manner prescribed under rule 2(i) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as 'the Rules'); and
- (b) The notice of special meeting was not served on the petitioner and other Councillors within 72 hours from the date of special meeting as mandated under section 49 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

In support of his argument regarding non-service of requisition in the manner provided under 'the Rules', Mr. Manglam has submitted that when rule 2 (i) of 'the Rules' specifically provides that the requisition be given to the Chief Councillor then it



has to be served on the Chief Councillor. He submits that there is no document on record to support whether the requisition was ever attempted to be served on the petitioner. It is the submission of Mr. Manglam that a statutory requirement cannot be bypassed. He submits that bypassing the statutory requirement, that the requisition was placed before the petitioner in the file and which was returned by the petitioner on 19.11.2015 with objections. It is submitted that thereafter no steps were taken either by the requisitionists or the Executive Officer for service of the requisition on the petitioner. Mr. Manglam further with reference to the letter of the petitioner dated 19.11.2015 present at Annexure-3 submits that the petitioner again invited the attention of the Executive Officer towards such lapse but which was ignored and bypassing the statutory requirement that the requisitionists fixed the date of special meeting on 26.11.2015 which was circulated vide letter No.648 dated 21.11.2015 present at Annexure-4. He thus submits that in the circumstances where there is nothing to support that any steps were taken by the requisitionists to serve the requisition on the petitioner, its forwarding by the Executive Officer in the file, would not satisfy the statutory requirements.

Mr. Manglam next turned to the second issue raised in the present writ petition regarding the service of notice dated



21.11.2015 communicating the date of special meeting on 26.11.2015, not being in tune with the prescriptions of section 49 of 'the Act'. Mr. Manglam has referred to the service report present at Annexure-5 to submit that admittedly the notice was served on the petitioner on 24.11.2015 in respect of the meeting scheduled on 26.11.2015 and which apparently does not satisfy the statutory prescriptions of section 49 of 'the Act' requiring seventy-two hours advance notice of any meeting. It is the argument of Mr. Manglam that a service of notice of special meeting is not an empty formality rather since it contains the reasons/charges on which the motion is founded it makes the Ward Councillors aware of the agenda of the meeting. Learned counsel in support of his submission has relied upon a Division Bench judgment of this Court reported in **2010(2) PLJR 389 (Meena Yadav vs. The State of Bihar)** and with a particular reference to paragraph 12 of the judgment he submits that although the judgment is in context with the provisions of the Bihar Panchayat Raj Act but the purpose of notice so explained in context with the Panchayat Raj Act would equally apply in the present context. He submits that the purpose of giving advance notice is to enable the members to have a meaningful discussion and deliberation on the issue raised as well as to enable them to participate in the meeting.



The argument of Mr. Manglam has been contested by Mr. Sourendra Pandey, learned counsel appearing for the requisitionists. With specific reference to rule 2(i) of 'the Rules' it was argued by Mr. Pandey that the prescription of law is that a requisition signed by one third elected members is to be given to the Chief Councillor. He submits that there is no statutory requirement that it has to be personally served on the Chief Councillor rather all that the provisions prescribes is that it has to be given to him. He thus submits that the moment the requisition was brought to the notice of the Chief Councillor by the Executive Officer in the file, it satisfied the statutory requirement and no objection could have been taken by the Chief Councillor in any respect. It was argued that since the petitioner admits that the requisition was placed in the file, in absence of the statutory requirement requiring its presentation personally to the Chief Councillor, no infirmity can be found on service. In support of his submission regarding the mode of service of requisition, learned counsel has relied upon a decision of this Court reported in **2015(1) PLJR 830 (Amit Kumar vs. The State of Bihar)** and submits that the view expressed by the writ Court stands affirmed by the Division Bench in LPA No.1077 of 2014.

Contesting the argument of Mr. Manglam on the issue of



non-compliance of section 49 of 'the Act' in the matter of service of notice, it is argued by Mr. Pandey that identical issue came up for consideration before the Supreme Court in connection with the Mysore Town Municipal Act which has pari-materia provisions of service advance three days notice. Mr. Pandey refers to paragraphs 10, 11, 14, 19 and 20 of the judgment reported in **AIR 1966 SC 330 (Narasimhiah vs. Singri Gowda)** to canvass that the requirement is directory and unless any prejudice is claimed on this aspect, the motion cannot be invalidated. In support of his submission learned counsel has also relied upon a Full Bench judgment of the Orissa High Court reported in **AIR 1988 Orissa page 116 (Sarat Padhi vs. State of Orissa)**. On the strength of the judgments relied upon he submits that in the circumstances, the meeting cannot be held invalidated on the sole ground of non-service of advance notice of the special meeting maintaining seventy-two hours gap.

Mr. Sudama Singh, learned counsel appearing for the Municipality while supporting the argument of Mr. Pandey submitted that the requisition as well as the notice was attempted to be served on the petitioner by the office Peon as is manifest from Annexure-E/3 and Annexure-E/9 respectively but since there was a tendency on the part of the Ward Councillors supportive of the Chief Councillor to delay the meeting that it consumed some time.



It is submitted that since after the issuance of the notice on 21.11.2015 an attempt was made continuously for service of the notice on the Ward Councillors and a number of them were served on 21st and 22nd of November, 2015 but since the petitioner and his associates were opposed to the motion hence it could be belatedly served upon them on 24.11.2015, as confirmed from Annexure-E/10. He thus submits that the documents on record would confirm that there were no laches on the part of the Executive Officer to serve the notice on the petitioner and other Ward Councillors.

Mr. Manglam responding to the argument advanced by Mr. Pandey and Mr. Singh has submitted that whereas the judgment relied upon by Mr. Pandey rendered in the case of **Amit Kumar** (supra) was in a different context and in that case the Chief Councillor had acted upon the requisition but in so far as the present case is concerned, the petitioner has objected to the mode of service itself. Reiterating his submission on the issue of advance notice he submits that since the motion is for removal of an elected person, the modalities provided under 'the Act' should be strictly followed.

I have heard learned counsel for the parties and I have perused the records. The issues are in a very narrow compass and do not require very elaborate discussion.



I would be dealing with the issues raised by Mr. Manglam one by one. In so far as the objection raised by the petitioner on the mode of service of requisition is concerned, indisputably there is nothing on record to demonstrate that the requisitionists attempted to serve the requisition on the petitioner who happens to be the Chief Councillor. Now whereas it is the stand of the petitioner that the requisitionists never attempted to serve the requisition on him, a specific statement has been made by the requisitionists in paragraph 9 of the counter affidavit filed on their behalf in which it is stated that the requisition was sent to the Chief Councillor who conveniently refused to accept the same. This statement of the requisitionists has not been denied by the petitioner by filing a rejoinder.

Be that as it may, reverting to the statutory requirement it is seen that rule 2(i) of 'the Rules' provides that a special meeting shall be called for removal of the Chief Councillor/Deputy Chief Councillor and such special meeting shall be requisitioned and signed by not less than one third of the total number of elected members which shall be 'given' to the Chief Councillor. The prescription of law is, that the requisition is to be 'given' to the Chief Councillor. The law nowhere mandates that a personal service is to be made or any evidence is to be given by the



requisitionists that they attempted to serve the same. All that the law requires is that the requisition should be given to the Chief Councillor. This issue has been extensively dealt with by this Court while considering the identical issue in the case of **Amit Kumar** (supra) and the findings of this Court present at paragraphs 11 and 13 of the judgment would squarely cover the present issue.

The argument of Mr. Manglam in trying to distinguish the facts would again not come to his rescue for it is irrelevant. Whether the Chief Councillor has acted on placing of requisition in the file as in the case of **Amit Kumar** (supra) or has objected thereto as in the present case would bear no distinctive consequences. Per Contra once the requisition has invited the attention of the Chief Councillor by placement in file then the Chief Councillor cannot hide behind the technicalities either on direct presentation or absence of original copy. My opinion expressed would answer the first issue raised by Mr. Manglam.

Coming to the second issue raised regarding non-compliance of the requirements of section 49 of 'the Act' I would like to place on record the provisions itself which runs as follows:

“49. Notice of meeting and list of business. -

A list of business to be transacted at every meeting of the Municipality, except at an adjourned meeting, shall be sent to the registered address of each Councillor at least seventy-two hours before the time fixed for such meeting, and no business shall be brought before, or transacted at, any meeting

other than the business of which notice has been so given.

Provided that an emergent business may be brought before, and transacted in the meeting with the permission of the Chief Councillor.

Provided further that any Councillor may send or deliver to the Municipal Secretary notice of any resolution so as to reach him at least forty-eight hours before the time fixed for the meeting, and the Municipal Secretary shall, with all possible dispatch, take steps to circulate such resolution to every Councillor in such manner as he may think fit.

Provided also that no business, which has no relevance to the business of the Municipality, shall be brought before the Municipality.

Explanation. - For the purposes of this section, 'registered address' shall be the address for the time being entered in the register of addresses of Councillors to be maintained by the Municipal Secretary."

The heading of section 49 reads as 'Notice of meeting and list of business' and provides that a list of business to be transacted at every meeting of the Municipality, except at an adjourned meeting shall be sent to the registered address of each Councillor at least seventy-two hours before the time fixed for such meeting and no business shall be brought before or transacted at any meeting other than the business of which the notice has been so given. The provision reads in two parts and whereas the first part relates to service of list of business on each Councillor at least seventy-two hours in advance, the second part of the provisions prohibits any discussion on any business at such meeting other than the business of which notice has been given. Now whereas in the



case of meetings other than the special meeting, the agenda of the meeting normally accompanies the notice, in the case of special meeting the agenda is served in advance in the form of requisition on the Chief Councillor and it is only a communication of the date of special meeting that a notice is circulated under section 49 of 'the Act' which also accompanies the reasons/charges on which the special meeting is founded primarily for information to the Councillors other than the requisitionists who have introduced the motion. In my considered opinion the applicability and requirement present in section 49 of 'the Act' in context with the special meeting is slightly different than the case of other meetings of the municipality for in the case of special meeting the list of business i.e. the requisition is served on the Chief Councillor in advance giving him 15 days time to fix the date of special meeting. Thus even when rule 2(iv) of 'the Rules' does mandate the mention of reasons/charges to accompany the notice of the special meeting the requirement of seventy-two hours advance notice would stand satisfied by the service of requisition which by itself contains the agenda unless, the incumbent i.e. the Chief Councillor or the Deputy Chief Councillor as the case may be, would raise an issue of non-service of the requisition itself or are precluded from participation on this account.



In other words in a case of special meeting convened for consideration of a *no confidence motion* moved against a Chief Councillor or the Deputy Chief Councillor, considering that the requisition which contains the agenda/list of business for the special meeting is served much in advance on the Chief Councillor, affording him 15 days time to fix the date of special meeting unless any prejudice is claimed and established by the Chief Councillor or the Deputy Chief Councillor as the case may be, a mere delay in maintaining seventy-two hours advance notice simplicitor in my opinion, is not enough to invalidate the motion passed by a majority of elected Councillors for the intent and resolve of majority of the elected Councillors stands reflected in the motion.

The reliance of Mr. Manglam on the judgment rendered in the case of **Meena Yadav** (supra) is also on the principles that no prejudice be caused to the Ward Councillor by non-service of advance notice. The issue of advance notice again came up for consideration in the Bench decision of this Court reported in **2011(4) PLJR 802 (Shakuntala Devi Vs. The State Election Commission)** and the Court has supported the requirement of advance notice of seventy-two hours again in the backdrop of the prejudice theory. The view of the writ Court stands affirmed by the Division Bench in LPA No.393 of 2010.

The legal position which flows from the opinion expressed thus is that in case of a special meeting where the requisition moved by one third of the elected Councillors under rule 2(i) of 'the Rules' itself forms the list of business/agenda for the meeting and is given to the Chief Councillor more than 72 hours in advance, unless the Chief Councillor/the Deputy Chief Councillor in such circumstances is able to establish prejudice by non-service of notice of special meeting seventy-two hours in advance, he has no case for indulgence and a proceeding of special meeting cannot be invalidated on a mere raising of plea of non-service of advance notice of seventy-two hours simplicitor, as in the present case.

Similar is the view of the Supreme Court while considering identical issue arising from Mysore Town Municipal Corporation Act which mandated 3 days advance notice of special meeting in the case of **Narasimhiah** (supra).

For the discussions made hereinabove, I am not persuaded to uphold either of the two issues raised by Mr. Manglam to interfere with the motion passed against the Chief Councillor.

In the result, the writ petition is dismissed.

(Jyoti Saran, J)

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