

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2269 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 18258 of 2016**

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1. Sabila Khatoon, Wife of Molvi Alam, Resident of Ward No. 13, Mohalla- Mohbatpur, Dhaka.
 2. Jamshed Alam, Son of Late Abdul Wadood, Resident of Ward No. 4, Mohalla- Pipra Wajid.
 3. Jakir Hussain, Son of Late Jamal Hussain, Resident of Ward No. 5, Mohalla Pipra Wajid.
 4. Narayan Singh, Son of late Hari Kisun Singh, Resident of Ward No. 1, Mohalla- Rajepur.
 5. Nayeema Khatoon, Wife of Md. Sammiullah, Resident of Ward No. 3, Mohalla- Bisrahia.
 6. Archana Pandey, Wife of Rahul Pandey, Resident of Ward No. 2, Mohalla- Biswahia.
 7. Sihansan Devi, Wife of Brij Mohan Ram, Resident of Ward No. 10, Mohalla- Chainpura, Dhaka.
 8. Ruby Begam, Wife of Md. Hasim, Resident of Ward No. 6, Mohalla- Auraiya.
 9. Mehrun Nisha, Wife of Md. Faiz Akhtar, Resident of Ward No. 14, Mohalla- Dhaka.
 10. Tabrej Alam, Son of Late Abdul Manan, Resident o Ward No. 9, Mohalla- Chainpur, Dhaka.
 11. Khabira Khatoon, Wife of Md. Surffuddin, Resident of Ward No. 20, Mohalla- Lahan, Dhaka.
 12. Kuraisa Khatoon, Wife of Nek Mohammad, Resident of Ward No. 8, Mohalla- Chainpur, Dhaka, All under the Post Office and Police Station- Dhaka, District- East Champaran, Motihari.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Government of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District- Magistrate, East Champaran, Motihari.
4. The Sub Divisional Officer- Cum-Returning Officer, Sikrahana, District- East Champaran.
5. The Executive Officer, Nagar Panchayat, Dhaka, East Champaran.
6. Lalan Ram, Ward No. 18 Daka, Ramchandrar, Post Office + Police Station- Dhaka, District- East Champaran.
7. Dinanath Prasad, Ward No. 11, Chainpur, Dhaka, Post Office + Police Station- Dhaka, District- East Champaran.
8. Devendar Ray, Ward No. 7, Auraiya, Post Office + Police Station- Dhaka, District- East Champaran.
9. Mansoor Alam, Ward No. 19, Lahan Dhaka, Post office + Police Station- Dhaka, District- East Champaran.
10. Ramudeso Sah, Ward no. 16, Naya Tola Dhaka, Post Office + Police Station- Dhaka, District- East Champaran.
11. The State Election Commission, Bihar, Patna.

.....Respondent/Respondents



12. Saimulan Khatoon, Wife of Md. Khabir, Resident of Dhaka Chainpur, Post Office + Police Station- Dhaka, District- East Champaran.

..... Petitioner/Respondent

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kumar Roy, Adv.
For Respondent no. 1 to 4	:	Mr. Dharendra Kumar, A.C. to AAG-6
For Respondent No. 11	:	Mr. Amit Shrivastava, Adv.
	:	Mr. Sanjeev Nikesh, Adv.
For Pvt. Respondent	:	Mr. Pushkar Narain Shahi, Sr. Adv.
	:	Mr. Vikash Kumar, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-12-2016

The order date 1st December, 2016 passed by learned Single Bench in C.W.J.C. No. 18258 of 2016 is subject matter of challenge in the present Letters Patent Appeal whereby the writ application filed by respondent no.12 was allowed and No Confidence Motion passed against her in the meeting held on 15.10.2016 was set aside.

The writ applicant was elected as Chief Councillor, Nagar Panchayat, Dhaka, in the month of May, 2012. On 19th September, 2016, 13 ward councillors, made a written requisition for convening extra-ordinary meeting of councillors to consider the requisition of No Confidence against the writ applicant. Such requisition has been appended by the writ applicant as Annexure-3, which was delivered to one Bajrangi Kumar on 19th of September,



2016 at 10.01 AM. The writ applicant has attached the subsequent communication dated 19th of September, 2016 by her addressed to the Executive Officer, Nagar Panchayat, Dhaka, received by the same Bajrangi Kumar at 10.03 AM. The writ applicant has conveyed that she has suddenly fallen ill last night and that since she is undergoing treatment at Ganga Ram Hospital, New Delhi, therefore, she is leaving headquarter on 19th of September, 2016.

Thereafter, since the Chief Councillor failed to call meeting, the requisitionists fixed meeting for 15th October 2016, which date of meeting was communicated by the Executive Officer, Nagar Panchayat, Dhaka, vide communication dated 05.10.2016, Annexure-5 to all the councillors. The meeting was held on 15.10.2016 and No Confidence Motion was carried out against the writ applicant. It is therefore, fresh election was held on 11.11.2016 for the post of Chief Councillor in which the writ applicant has participated. The result of such election has not been declared in view of the order passed on 10.11.2016 in the writ application permitting the election to be held but it was ordered that the result shall not be declared.

Learned Single Bench allowed the writ application primarily on the ground that the requisition for convening the meeting for the purpose of No Confidence was not personally served on the



writ applicant. Therefore, it is not a valid requisition which allows the requisitionists to convene meeting on 15.10.2016. Consequently, the No Confidence passed in the meeting held on 15.10.2016 was found to be illegal.

Admittedly, the requisition has been received by one Bajrangi Kumar. The stand of the writ applicant in the writ application is not that Bajrangi Kumar is not a person entitled to receive requisition on her behalf. The relevant extract from the writ application reads as under:-

“7. That it appears that thirteen ward councillors made a written requisition dated 19.09.2016 address to the petitioner wherein they requested for convening an extraordinary meeting of the councillor to consider the requisition of no confidence against the petitioner.

8. That the petitioner is suffering from severe diabetes which has related infection to her kidney, she is undergoing treatment in Ganga Ram Hospital, New Delhi. On 19.09.2016 condition of petitioner deteriorated and she had to proceed immediately for her treatment. She is submitted a written information to the Executive Officer stating that in connection with her treatment, she is leaving the headquarters.”

It may be opined that the communication made by the writ applicant to Executive Officer on 19th of September, 2016 has again been received by Bajrangi Kumar. Thus, both the requisitionists as well as the writ applicant have delivered the



communication to Bajrangi Kumar, therefore, both have considered him as a person authorized to receive communications. Therefore, it cannot be said that the requisition was not served on her.

Learned counsel for the respondents referred to Rule 2(i) of the Bihar Municipal No Confidence Motion Process Rules, 2010, to contend that the requisition has to be given to the Chief Councillor. The relevant extract reads as under :-

“2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor shall be considered and disposed of as per the following process:-

(i) To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of requisition and the meeting shall be convened within fifteen days of the date of issuance of the notice.”

A perusal of the said provision shows that requisition has to be given to Chief Councillor. The provision does not satisfy that it has to be delivered to the Chief Councillor personally. It can be received by any person on her behalf. The requirement of serving of requisition personally on the Chief Councillor is otherwise also not



possible as the person against her No Confidence is proposed always can go hiding or otherwise delay the receipt of requisition defeating the purpose of sending the requisition itself. Such is the view taken by a Division Bench of this Court in L.P.A. No. 1077 of 2014 (Rajeshwar Prasad vs. The State of Bihar and Ors.) decided on 04.08.2014 wherein the Court has held the fact. Relevant extract reads as under:-

18. While answering the question, posed above, it needs to be borne in mind that it is the fundamental rule of the interpretation of statutes that a word, appearing in the statute, shall be given its ordinary meaning and nothing shall be added to the statutory provisions or subtracted therefrom. When the word “personally” does not appear in the statutory provisions embodied in Rule 2 (i) of 2010 Rules, it will be wholly unreasonable to insist that a requisition under Rule 2 (i) of 2010 Rules shall be given ‘personally’ to the Chief Councillor demanding holding of special meeting.

19. When Rule 2 (i) of 2010 Rules, nowhere, makes it obligatory, on the part of requisitionists, to give a Chief Councillor requisition for special meeting ‘personally’ Rule 2 (i) of 2010 Rules cannot be interpreted to either impose an obligation on the elected members, as requisitionists, to present ‘personally’ to the Chief Councillor the requisition nor can it be said that the Chief Councillor shall be given requisition ‘personally’. If Rule 2 (i) of 2010 Rules is interpreted to convey what Mr. Giri attributes to the provisions contained in Rule 2 (i) of 2010 Rules, the consequences may be disastrous inasmuch as a Chief Councillor can always avoid personal service of a requisition and would, thus, not call for any special meeting and thereby frustrate the whole purpose of no confidence motion and bring, as a sequel thereto, a complete collapse of a democratic institution, such as, Panchayat.”



In view of the Division Bench judgment wherein the similar issue was raised and decided, we find that the order of learned Single Bench holding that the requisition has to be served personally on the Chief Councillor cannot be sustained. Thus, the No Confidence Motion passed against the writ applicant in the meeting held on 15.10.2016 does not suffer from any illegality warranting interference in the writ application.

There is another reason as to why the writ applicant is not entitled to any indulgence. After No Confidence Motion was carried out against the writ applicant, the fresh election was convened for 11th November, 2016. Though, this Court has ordered that the result shall not be declared but the applicant contested the post of Chief Councillor, therefore, in view of the judgment of this Court as reported 2010(1) PLJR 929 - Smt. Shamshad Khatun vs. The State of Bihar and Ors. and 2010(3) PLJR 98 - Sanjay Kumar Mahajan and Ors. vs. State of Bihar and Ors., the writ applicant is estopped to challenge her removal. It has been held that once the person takes a chance and contests the election, even though a dispute may be *sub judice* before the court, cannot be allowed to challenge his/her very removal from the post which led to holding of the subsequent election. In view of the aforesaid judgment as well, we find that the writ applicant cannot be permitted to dispute the passing of the No



Confidence Motion having participated in the election held on 11th of November, 2016.

In view of the above, the Letters Patent Appeal is allowed. The order passed by learned Single Bench is set aside setting aside the No Confidence motion. Therefore, the result of election conducted on 11th November, 2016 be declared forthwith.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Amrendra/Ashwini

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