

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15545 of 2016

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Sindhu Jain, aged about 38 years, wife of Sanjay Kumar Jain, resident of Mohalla- Rakabganj, P.S.- Tekari, District- Gaya currently posted as Chairman, Tekari Nagar Panchayat, Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Department and Housing, Bihar at Patna.
2. The Executive Officer, Tikari Nagar Panchayat, Gaya.
3. Niru Kumari, Wife of Nandlal Prasad, Vice Chairman, Resident of Village- Titaiganj, P.O.+P.S.- Tikari, District- Gaya.
4. Murli Manohar Prasad, Son of Satyadev Prasad, Ward Member, Ward No. 7, Tikari Nagar Panchayat, Resident of Mohalla- Andarkila, P.O.+P.S.- Tikari, District- Gaya.
5. Md. Firoj Alam, Ward Member, Ward No. 12, Tikari Nagar Panchayat, Resident of Mohalla- Chawni, Beldar Tola, P.O.+P.S.- Tikari, District- Gaya.
6. Upendra Kumar, Ward Member, Ward No. 09, Tikari Nagar Panchayat, Resident of Mohalla- Andarkila, P.O.+P.S.- Tikari, District- Gaya.
7. Rajendra Prasad Gupta, Ward Member, Ward No. 01, Tikari Nagar Panchayat, Resident of Mohalla- Titrganj, P.O.+P.S.- Tikari, District- Gaya.
8. Shanti Devi, Ward Member, Ward No. 13, Tikari Nagar Panchayat, Resident of Mohalla- Vivekanand Colony, P.O.+P.S.- Tikari, District- Gaya.
9. Dulariya Devi, Ward Member, Ward No. 03, Tikari Nagar Panchayat, Resident of Mohalla- Dahiyar Tola, Raniganj, P.O.+P.S.- Tikari, District- Gaya.
10. Baliram Prasad, Ward Member, Ward No. 02, Tikari Nagar Panchayat, Resident of Mohalla- Andarkila, P.O.+P.S.- Tikari, District- Gaya.
11. Rajesh Kumar, Ward Member, Ward No. 11, Tikari Nagar Panchayat, Resident of Mohalla- Deodharpur front of Nagar Palika School, P.O.+P.S.- Tikari, District- Gaya.
12. Rupa Devi, Wife of Kamlesh Prasad, Ward Member, Ward No. 08, Tikari Nagar Panchayat, Resident of Mohalla- Rikabganj, P.O.+P.S.- Tikari, District- Gaya.
13. Chandrawati Devi, Ward Member, Ward No. 05, Tikari Nagar Panchayat, Resident of Mohalla- Rikabganj, P.O.+P.S.- Tikari, District- Gaya.
14. Rako Khatoon, Ward Member, Ward No. 10, Tikari Nagar Panchayat, Resident of Mohalla- Chawni, Beldar Tola, P.O.+P.S.- Tikari, District- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amar Nath Singh and Mr. Ashok Kumar, Advocates
For the State	:	Mr. Subhash Prasad Singh, G.A. 3
For the Respondent/s	:	Mr. D. K. Sinha, Sr. Advocate
For the Nagar Panchayat	:	Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-01-2017



Heard learned counsel for the parties.

The challenge in the present writ application was initially to the notice dated 08.09.2016 issued by the Executive Officer, Nagar Panchayat, Tikari, fixing 15.09.2016 the date and 12 o'clock the time for holding of a special meeting to consider the 'No Confidence Motion' against the petitioner, who was the Chairman of the said Nagar Panchayat. Subsequently, due to various developments having taken place during the pendency of the writ petition, by way of amendment, the passing of the 'No Confidence Motion' on 15.09.2016 was also allowed to be challenged in the present writ application and the further relief for quashing the notice dated 28.09.2016, fixing 07.10.2016 for holding the meeting for election of the new Chairman was also allowed. When the said meeting was held on 07.10.2016 and the respondent no. 11 was elected as the Chairman, the same was also sought to be challenged by way of an amendment which was also allowed.

Learned counsel for the petitioner submitted that from the materials on record and the evidence filed on behalf of the Nagar Panchayat, Tikari, it would be clear that for the first time, the petitioner can be said to have been aware of the requisition for holding a special meeting to consider the 'No Confidence Motion' against her was on 02.09.2016. It was submitted that in terms of the



provisions of Section 2(i) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as the 'Rules'), such requisition signed by not less than one third of the total numbers of the elected Councillors has to be given to the Chief Councillor and thereafter the Chief Councillor is required to issue notice for the special meeting within 7 days from receipt of requisition and further, the meeting shall be convened within 15 days of the date of issuance of the notice. He submitted that such provision leads to the obvious implication that the 7 days period, as contemplated in the said Rule can, at best, be counted from 02.09.2016 and adding 7 days to the same would mean that the time for the petitioner, being the Chief Councillor, to issue notice was till 09.09.2016. He submitted that only thereafter i.e., 10.09.2016 onwards, in terms of Rule 2(iii) of the Rules, the requisitionists could themselves fix a date and can convene the meeting. He submitted that in the present case such convening by the requisitionists was on 08.09.2016 itself i.e., before the expiry of the time which the statute provides to the Chief Councillor for issuing notice convening such meeting. He submitted that once the statutory provisions are not complied with, all subsequent acts shall be deemed to be nullity. He further submitted that by way of abundant caution, he has challenged the subsequent development, right till election of the respondent no. 11 as the Chairman of the said Nagar Panchayat,



though in law, he may not have been required to do so on the principle of *lis pendens* and as the matter was pending before the High Court, there was no fault or laches on his part if subsequent developments have taken place and further that law safeguards the interest of a person who approaches a particular forum and due to the systematic delay, the cause of the person who has approached the said forum in time, cannot be allowed to suffer.

Learned counsel for the respondent no. 11 submitted that as per the materials brought on record, it is apparent that the peon of the Nagar Panchayat had gone to the residence of the petitioner on 29.08.2016 i.e., the same day on which the requisition was signed, to serve the same but the relatives of the petitioner refused to take the said notice. It was submitted that once the relatives have refused to take notice, it shall be deemed that the petitioner was aware of such notice and, thus, the period of 7 days would start from 29.08.2016 itself. He further submitted that due to the subsequent events, when respondent no. 11 has been elected as the Chairman, the said transaction can now be assailed only by way of election petition, as provided under the statute.

Learned counsel for the Nagar Panchayat, Tekari, adopted the submissions advanced by learned counsel appearing for the respondent no. 11.



Having considered the rival contentions, in the considered opinion of the Court, the very exercise of convening of the special meeting for the 'No Confidence Motion' on 15.09.2016 is vitiated in law. The undisputed position from the records, as contained in the counter affidavit of the Nagar Panchayat itself, shows that for the first time on 02.09.2016, the petitioner was privy to the requisition sent, though she refused to accept it and, thus, the presumption in law would be that the refusal is deemed service, and the requisition can be said to have been 'given' to the petitioner, satisfying the condition of Rule 2(i) of the Rules. Thus, counting the period of 7 days would naturally mean that the time available to the petitioner to issue notice convening the special meeting was till 09.09.2016. The requisitionists seem to have lost patience and thus, have jumped the gun by fixing the date of the special meeting on 08.09.2016 itself, which cannot be permitted since their right to do so emanates from Rule 2(iii) of the Rules which starts with the presumption that in case, the notice not being issued by the Chief Councillor convening the meeting within the stipulated time, then only the requisitionists themselves can fix a date and proceed. Once, it is an admitted position that the petitioner, in the capacity of the Chairman, had the time till 09.09.2016 to issue notice fixing date of the special meeting, the action by the requisitionists themselves



fixing the date of such meeting, on 08.09.2016 itself, cannot be sustained.

As far as the objection of the respondents with regard to the remedy available to the petitioner now of only filing an election petition is concerned, the same is noticed only to be rejected, for the reason that once the Court has allowed the amendment challenging such action, such objection cannot be sustained. Furthermore, such actions are directly linked to and a natural consequence of the original holding of the special meeting leading to passing of the 'No Confidence Motion' against the petitioner and once the base is knocked off, all subsequent actions and the superstructure also, as a natural and necessary fallout, have to go.

As far as the contention of learned counsel for the respondents that on 29.08.2016 itself, when the requisition was sent to the residence of the petitioner and the family members have refused to accept the same, it would be deemed service, the same is also noticed for the sake of rejecting it. Law neither contemplates nor can contemplate such an absurd situation where a relative is fastened the liability to accept notice on behalf of his kin and refusal would be taken as valid service in law, binding the person to such service, without there being any legal obligation, under any law, cast upon the kin of any person to receive a notice on his or her behalf.



Accordingly, the meeting convened on 15.09.2016 on the basis of the date fixed by the requisitionists themselves, being impermissible and in the teeth of the statutory provisions, is quashed. As a natural consequence, any proceeding or action taken at the said meeting on 15.09.2016, including the passing of the 'No Confidence Motion' resulting in removal of the petitioner from the post of Chairman of the Nagar Panchayat, Tekari also stands set aside. Further, once the removal of the petitioner from the post of Chairman of the Nagar Panchayat is set aside, there being no vacancy in the eyes of law, the subsequent action of filling up the post by election of the respondent no. 11 to the post, as a natural corollary, is also set aside.

The petitioner stands restored as the Chairman of Nagar Panchayat, Tekari.

The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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