

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15438 of 2016

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Nasima Khatoon, wife of Ali Imam Resident of village- Sugauli Gaon, Thakurai Tola, Ward No. 16, P.O. and P.S. Sugauli, District- East Champaran at Motihari, presently Chief Councilor, Nagar Panchayat, Sugauli, P.O. and P.S. Sugauli, District- East Champaran at Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, 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, East Champaran at Motihari, District- East Champaran at Motihari.
5. The Executive Officer, Nagar Panchayat, Sugauli, P.O. and P.S. Sugauli, District- East Champaran at Motihari.
6. Sri Jitendra Kumar Singh, son of Sri Vishwanath Singh, Presently Deputy Chief Councilor, Nagar Panchayat, Sugauli, P.O. and P.S. Sugauli, District- East Champaran at Motihari.
7. Rambha Devi, wife of not known to the petitioner,
8. Ashok Kumar, son of not known to the petitioner,
9. Gopichand Chaudhary, son of not known to the petitioner,
10. Geeta Devi, wife of not known to the petitioner,
11. Fanindra Kumar Mishra, son of not known to the petitioner,
12. Ambeya Khatoon, wife of not known to the petitioner,
13. Sunaina Devi, wife of not known to the petitioner,
14. Manju Devi, wife of not known to the petitioner,
15. Hari Shankar Prasad Saraf, son of not known to the petitioner,
16. Lalpati Devi, wife of not known to the petitioner,
17. Md. Abulaish, son of not known to the petitioner,
18. Majaida Khatoon, wife of not known to the petitioner,
19. Pushpa Devi, wife of not known to the petitioner,
20. Md. Ajimullah, son of not known to the petitioner,



21. Umesh Prasad, son of not known to the petitioner,
22. Sauda Khatoon, wife of not known to the petitioner,
23. Godawari Devi, wife of not known to the petitioner,
24. Kabita Devi, wife of not known to the petitioner

Respondent nos. 7 to 24 are the elected Ward Councillors of Nagar Panchayat, Sugauli through the Executive Officer, Nagar Panchayat, Sugauli, P.O. and P.S. Sugauli, District- East Champaran at Motihari.

25. The State Election Commission (Bihar) through the Secretary, Sone Bhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. S. B. K. Manglam, Advocate
For the State	:	Mr. Ravish Chandra, AC to SC 6
For the SEC	:	Mr. Amit Shrivastava with Mr. Girish Pandey, Advocates
For the Nagar Panchayat	:	Mr. Syed Qaisar Hasan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-03-2017

Heard Mr. S. B. K. Manglam, learned counsel for the petitioner, Mr. Amit Shrivastava, learned counsel for the State Election Commission, Mr. Ravish Chandra, learned A.C. to S.C. 6 for the State, Mr. S. Q. Hasan, learned counsel for the respondent no. 5 and Mr. Sanjay Singh, learned counsel for the respondent no. 7.

Despite valid service of notice on the remaining private respondents, nobody is present to represent them.

The petitioner, who was at the relevant time holding the post of Chief Councillor of Nagar Panchayat, Sugauli, had moved the



Court for quashing of order dated 05.09.2016 passed by the respondent no. 6 fixing the date of Special Meeting on 19.09.2016 for consideration of a 'No Confidence Motion' against her. During the pendency of the writ petition, the meeting was held and the 'No Confidence Motion' was carried through and thereafter another meeting was held electing the respondent no. 12 as the Chief Councillor. Due to the aforesaid developments, through subsequent amendment, the Special Meeting which was convened by the requisitionists on 24.09.2016, was also challenged. Later on, besides the State Election Commission being made a party respondent, the petitioner also challenged the proceeding of the said meeting held on 24.09.2016, by which ultimately the petitioner was removed from the post of Chief Councillor and thereafter the petitioner also challenged the notice of convening the meeting on 15.10.2016 for electing the new Chief Councillor. By order dated 09.12.2016, such election scheduled for 10.12.2016 was allowed to proceed, but results were directed not to be declared. The said order was modified by the Division Bench in L.P.A. No. 41 of 2017 to the extent that the authorities were allowed to declare the results pursuant to which the respondent no. 12 stood elected and is occupying the post of Chief Councillor.

Mr. S.B.K. Manglam, learned counsel for the petitioner



has assailed the order inter alia on the ground that the requisition was never given to the petitioner, who was the Chief Councillor, as per the requirement of law. He submitted that from the admitted position, the requisition is said to have been submitted in the office of the Nagar Panchayat by the requisitionists on 01.09.2016 at 11.45 A.M. He submitted that equally admitted is the position that the information with regard to the petitioner being unwell and, thus, having to go out of town on health ground was also received in the office of the Nagar Panchayat on 01.09.2016 at 4.00 P.M. Learned counsel submitted that from the records it would transpire that the non presence of the petitioner is accepted, for the reason, that the Chief Executive Officer had put up the file before the Deputy Chief Councillor which clearly indicates that the petitioner was not present when the said requisition was delivered. Learned counsel further submitted that from the records also, it transpires that the requisition meant to be given to the petitioner was sent under Registered post by the Chief Executive Officer on 07.09.2016. It was his contention that the said requisition was ultimately delivered to the petitioner on 22.09.2016, which is corroborated by the certificate issued by the concerned postal authority. Learned counsel further submitted that the petitioner joined office on 12.09.2016 and then also the relevant file was never put up before her so that she could have been in a



position to take cognizance of the same and act accordingly. He submitted that till 12.09.2016, since the requisitionists had not fixed the date of the meeting, it was the requirement of law that the matter be placed before the petitioner in a manner which is not alien to law and in fact, the matter was placed before the Deputy Chief Councillor and nowhere the record indicates it was ever put up or brought to the notice of the petitioner. Learned counsel draws the attention of the Court to the fact that if at all, the requisitionists were confident that the petitioner was aware of the requisition on 01.09.2016 itself and had avoided to receive the same, then they were free to directly fix a meeting on 09.09.2016, but they also not having done that clearly shows that they were fully aware that the requisition had not reached the petitioner. Learned counsel submitted that the petitioner has moved the Court by filing the present writ petition on 08.09.2016 in which, though a copy of the requisition has been made an annexure, but the same was neither given to her by the requisitionists nor placed before her as per the requirement of law and, thus, without the said requirement being complete, just because the petitioner happened to get the copy of the requisition, would not make her obliged in law to act upon the same. Learned counsel submitted that it is a further admitted position that the original requisition addressed to the petitioner was in the office of the Nagar Panchayat from 01.09.2016



to 07.09.2016 and thereafter, it was sent under Registered post, which was ultimately delivered to the petitioner only on 22.09.2016 and thus, it is clear that the requisition was never placed before the petitioner prior to 22.09.2016. Learned counsel submitted that the Executive Officer as well as the requisitionists were also aware of the fact that the petitioner started attending office on 12.09.2016 and therefore, it was their responsibility to ensure that when she had started attending her office, either the file was put up before her or the requisition was given to her. Learned counsel submitted that the subsequent development when the requisitionists themselves fixed the date of meeting for 24.09.2016, by sending the notice to the Chief Executive Officer for informing the Councillors, on 16.09.2016, was equally bad in law, but for the present he is not addressing the Court on such point for the reason that if he succeeds on the initial point with regard to the requisition and the role of the petitioner in not summoning the Special Meeting, all subsequent events shall automatically have to go. Learned counsel submitted that 'giving' has been explained by the Hon'ble Supreme Court in the case of **Narasimhiah v. Singri Gowda** reported as **AIR 1966 SC 330**, the relevant being at paragraph no. 11 and such condition, in the present case, has not been fulfilled resulting in the requisition not having been given to the petitioner. Learned counsel further submitted that as



far as the requirement of the petitioner to convene the meeting, the time period is 7 days from the receipt of the requisition as per Rule 2(i) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as the 'Rules') which is also not satisfied, for the reason, that the said term 'receipt' as per the Black's Law Dictionary, 8th Edition is an act of receiving something, which in the present case is not satisfied since the actual requisition was not received by the petitioner till 22.09.2016. On this point he further referred to the definition in Bloomsbury Dictionary of Law, 4th Edition in which 'receipt' has been defined as, to stamp or sign something such as a document to show that it has been received or an invoice to show that it has been paid. Further, on the same point learned counsel referred to the definition in John Bourier's Law Dictionary, 6th Edition where 'receipt' has been defined as an acknowledgment in writing that the party giving the same has received from the person therein named, the money or other thing therein specified. He has also referred to the definition in KJ Aiyar Judicial Dictionary, 13th Edition, where 'receipt' has been defined as an acknowledgment in writing of having received a sum of money or other property, which includes any note, memorandum or writing: (i) whereby any money or any bill-of-exchange or promissory note is acknowledged to have been received; or (ii) whereby any other



movable property is acknowledged to have been received in satisfaction of a debt; or (iii) whereby any debt or demand is acknowledged to have been satisfied or discharged; or (iv) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person, and the word 'receipt' is construed as the 'tender of the letter by the postal peon at the address mentioned in the letter'.

Learned counsel submitted that the contentions of the private respondents in their counter affidavit that the requisition was served on the petitioner and upon her refusal was given in the office cannot be accepted for the reason that in the subsequent intimation dated 16.09.2016, by which the date of the special meeting was directly fixed by the requisitionists under Rule 2(iii) of the Rules, there is not even a whisper, that since the requisition had been refused to be received by the petitioner, the same was given in the office and thus, the requisitionists were proceeding with fixing the date of the meeting.

In this connection, learned counsel drew the attention of the Court to Section 106 of the Indian Evidence Act, 1872 and submitted that the burden of proof with regard to a fact especially within the knowledge of a person is on him and in the present case when the requisitionists assert that the requisition was served on the



petitioner, who refused, it is for them to prove such fact, which has not been done in the entire pleadings. In this connection, he submitted that for such fact there is only statement made in the counter affidavit against the statement made by the petitioner in the main writ petition of there being no service. He contended that in view of such fact, it is oath against oath and this would not satisfy the requirement of Section 106 of the Evidence Act and, thus, the said assertion cannot be given the status of a fact having been proved in the eye of law, as the onus is on the requisitionists who have asserted, by bald statement, that the requisition was given to the petitioner who refused to receive the same.

Mr. Amit Shrivastava, learned counsel appearing for the State Election Commission submitted that the contentions of the petitioner are misconceived. He submitted that a narrow interpretation is sought to be given to the wordings 'given' and 'receipt' used in the language of Rule 2(i) of the Rules, which are not proper. He submitted that the basic purpose of such requirement is that the person is aware of what is required of him and thus the moment such requirement is fulfilled, the onus shifts on the person, who is required to do a certain act as per the statute. He submitted that in the present case, when the writ petition was filed on 08.09.2016, a copy of the requisition has been made Anneuxre-1,



which leaves nothing to doubt that the petitioner was in receipt of the same, manner not being relevant for the same has not been specified in Rule 2(i) of the Rules. He also pointed out that para-6 of the writ petition which deals with the requisition, does not disclose as to from what source copy of the requisition was received so as to be made part of the writ petition. He submitted that in this connection, the court may read the statement made in paragraph no. 6 of the writ petition with paragraph no. 3 of the affidavit where it has been stated that the statements made in paragraph no. 6, were information derived from the records of the case. He further submitted that once the petitioner on affidavit/oath admits that the requisition is an information derived from the records of the case, the requirement of law for the same being received by the petitioner is complete and thus, in any case the clock would at least run from 08.09.2016. Learned counsel submitted that even for the sake of argument, if the Court may presume that the requisition was received by the petitioner on 08.09.2016, seven days thereafter would mean that by 15.09.2016, the date for Special Meeting was required to be fixed and thus, the same not having been done, the requisitionists themselves fixing a Special Meeting on 16.09.2016, cannot be faulted. Learned counsel submitted that the records would indicate that the requisition was received in the office of the Nagar Panchayat on 01.09.2016 by one



Pramod, who is the Office Clerk in the said office and the information with regard to the petitioner being ill and thus going out of station was also received by the same Pramod on 01.09.2016. He submitted that once it is the same person who has received both the requisition in the office of the Nagar Panchayata as well as the information with regard to the petitioner being ill and going out of station, the service on the said Clerk would be deemed to be service on the petitioner. For such proposition he has relied upon a Division Bench judgment of this Court in the case of **Sabila Khatoon & Ors. vs. The State of Bihar & Ors.** dated 21.12.2016 in L.P.A. No. 2269 of 2016, the relevant being the last paragraph at page no. 4 of the order, which reads as under:

“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.”

He further submitted that ‘given’ would not mean a personal service on the person concerned and knowledge of such requisition satisfies the requirement of law for such service/receipt. For such proposition he has relied upon a decision of the Division Bench of this Court in the case of **Rajeshwar Prasad vs. The State**



of Bihar & Ors. in L.P.A. No. 1077 of 2014 dated 04.08.2014, the relevant being at paragraphs no. 7, 9 and 17 to 20 which read as under:

“7. It has been noted by the learned single Judge in the order, dated 22.07.2012, that it had been submitted, on behalf of the writ petitioner (i.e., the appellant herein), that no requisition was ‘given’ to the Chief Councillor and, hence, the said requisition cannot become a basis for a valid special meeting. The learned single Judge has pointed out, in this regard, that the very fact that the Chief Councillor had called for a special meeting on 08.07.2014, it no longer remains open to the Chief Councillor, now, to turn back and question the validity of the no confidence motion. This apart, noticed the learned single Judge, the requisition was, admittedly, placed before the Chief Councillor, who had himself fixed the date of the special meeting and it, thus, was within his knowledge that a special meeting had been requisitioned by the required number of elected Ward Councillors of the said Nagar Panchayat.

x x x x x

9. Referring to the decision in CWJC No. 11869 of 2014, the learned single Judge has observed, in the order, dated 22.07.2014, aforementioned, that in the case at hand, when the Chief Councillor had, admittedly, the knowledge of requisition, the same having been placed before him and the Chief Councillor, having chosen not to question the validity of the requisition and having called the special meeting, it does not remain open to the Chief Councillor to, now, agitate the validity of the requisition.

x x x x x

17. The moot question, therefore, which falls for determination, in the present appeal, is: Whether the requisition for special meeting, given in the present case, by the requisitionists, was legally valid and could have been sustained?



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 substracted 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.

20. We are, therefore, unable to agree with the argument, advanced on behalf of the appellant, that a requisition for special meeting must be ‘personally’ served on the Chief Councillor.”

He submitted that there are serious disputed questions



of fact which cannot be gone into in writ proceedings under Article 226 of the Constitution of India. Learned counsel further submitted that even with regard to the information sent by the petitioner on 01.09.2016 with regard to her having to go out due to medical reasons, there is no supporting evidence to such effect, like doctor's certificate etc., which clearly indicates that the same had been given only to evade the receiving of the requisition which would have bound her to act in terms of the statutory provisions.

Mr. Sanjay Singh, learned counsel for the requisitionists, besides adopting the arguments of Mr. Amit Shrivastava, learned counsel for the State Election Commission, submitted, that the categorical assertion of the requisitionists in their counter affidavit that initially, the requisition was given to the petitioner and only upon her refusal, it was served on the Clerk of the office has not been rebutted by the petitioner in the present proceeding and thus, the presumption is that it stands admitted. He submitted that the issue being raised with regard to the requisitionists not stating in the notice fixing the date for the special meeting about the petitioner having refused to accept the requisition is not required under law and thus, it is irrelevant even if the same has not been stated in such requisition, which would be clear from reading of Rule 2(iii) of the Rules. Learned counsel submitted that besides the writ



petition enclosing photocopy of the requisition, there are copies of the noting on the file on which the requisition was dealt with in the Nagar Panchayat and with regard to the same, in the affidavit portion it has been stated that such copies were from the information derived from the records of the case. He submitted that the records were the original records of the Nagar Panchayat and once the same are derived from those records, the petitioner being privy to the entire records, the requisition being part of the said records, the requirement of law either for requisition to be 'given' by such requisitionists or be 'received', stands satisfied. Learned counsel further contended that the requisition was delivered in the office on 01.09.2016 and, thus, for the requisitionists, once the same is done, after the refusal by the petitioner, the time frame, as stipulated under Rule 2(i) of the Rules, required the petitioner to summon the meeting latest by 08.09.2016, and she not only having failed to do so and even after joining, as per the own admission on 12.09.2016, still not proceeding to fix the date of the meeting, the petitioners were rightfully entitled in law to issue such requisition, which they have done on 16.09.2016 and the same cannot be faulted. Learned counsel, while summing up his arguments, reiterated his objection that since there is serious dispute relating to the facts, the writ Court ought not to interfere. For such proposition he relies upon a Division Bench decision of this Court in



the case of **Sunita Devi vs. State of Bihar** reported as **2016(1) PLJR**

182, the relevant being at paragraphs no. 7 and 9 which read as under:

“7. Having regard to the fact that the requisition had allegedly been given to the writ petitioner-appellant (i.e., the Chief Councillor) and on her alleged refusal to receive the requisition, the requisition, according to the requisitionists, had been given to the Executive Officer, coupled with the fact that the writ petitioner-appellant knew that the special meeting was to be convened on 20.8.2015, the learned Single Judge refused to interfere. The relevant observations, appearing in the order, dated 15.9.2015, read as under:-

"Considering that it is the stand of the requisitionists that the attempt to serve the requisition did not meet with success and hence it was filed in the office of the Executive Officer as well as considering the fact that the requisition is now well within the knowledge of the Chief Councillor, in my opinion, the submission of Mr. Mangalam cannot be accepted. Once the requisition has come to the knowledge of the Chief Councillor she cannot take shelter on hyper-technicality. That the copy of the requisition is present at Annexure-1 and the requisitionists present before this Court press the same, in my opinion, the petitioner as the Chief Councillor cannot shirk away from the responsibility so cast upon her under the Rules to fix the date of special meeting.

In the circumstances discussed and finding no infirmity in the requisition, the petitioner as the Chief Councillor shall now proceed to fix the date of special meeting on/or before 28.9.2015 for consideration of the motion so moved against her vide the requisition dated 8.8.2015 placed at Annexure-1 and on the failure of the petitioner to abide by the same and ensure compliance of the order passed by this Court, that the requisitionists shall be at liberty to proceed in the matter in the light of the statutory provisions underlying Rule 2(iii) of 'the Rules' and take the motion to its logical



conclusion."

x x x x x

9. We do not find that the observations made, the conclusions reached and the directions given by the learned Single Judge suffer from any infirmity, factual or legal; more so, when we notice that it is a question of fact as to whether the requisition had or had not been given to the appellant and whether the appellant had or had not refused to accept the requisition. Such disputed question of fact, we emphasize, could not have been decided in a writ petition inasmuch as such an intensely disputed question of fact can be determined only by recording evidence, which is, ordinarily, neither permissible nor desirable in a proceeding under Article 226 of the Constitution of India. The remedy, therefore, with the appellant, lied in instituting appropriate suit in a Civil Court of competent jurisdiction, for redressal of her grievance, if any. This apart, if a requisition is given to a Chief Councillor and he/she refuses to accept the requisition, it cannot defeat the right of the requisitionist to call a special meeting if the special meeting is not convened by the Chief Councillor in accordance with law. Whether the requisitionists had given requisition to the appellant, as a Chief Councillor, seeking convening of a special meeting to discuss the motion of no confidence against her, is a matter of fact and since this fact is disputed, a writ proceeding is not the appropriate proceeding for determination of such dispute."

Mr. S. Q. Hasan, learned counsel appearing for the Nagar Panchayat, Sugauli adopted the arguments advanced by Mr. Sanjay Singh and Mr. Amit Shrivastava and has further submitted that when the petitioner was the Chief Councillor i.e., the elected head of the Nagar Panchayat and the Executive Officer was a mere



functionary, it was incumbent on her, upon joining on 12.09.2016, to have called for the relevant file, which was not done. He further submitted that once the original requisition addressed to the petitioner was already despatched under Registered cover to her on 07.09.2016, there was no requirement to again put up the file before her and under such circumstances, the office did not place the concerned file before the petitioner. He further submitted that though the statute does not prescribe any mode of the requisition being given, received or sent, the Chief Executive Officer, by way of abundant caution, resorted to the widely acceptable mode in law of sending the requisition, i.e., through Registered Post.

By way of reply, Mr. Manglam submitted that if the Bihar Municipal Act, 2007, is compared with Section 44(3)(i) of the Bihar Panchayat Raj Act, 2006, with regard to the requisition being served relating to 'No Confidence Motion', a provision is there that a copy shall be given to the Executive Officer, who shall place it before the Pramukh, whereas in the present case, there is no such *pari materia* provision. He submitted that in such background also, the fact that the Legislature in its wisdom has consciously omitted a likewise provision in the Municipal Act, indicates that the requisition has to be 'given' and such requisition has to be the one which is actually signed by the requisite number of Councillors for



requisitioning a Special Meeting for considering the 'No Confidence Motion'. He submitted that in the present case, the admitted position is that till 22.09.2016, the original was never either 'given' to or 'received' by the petitioner. Learned counsel submitted that the law, as it stands today, provides 7 days time to the Chief Councillor, from the date of 'receipt' of the requisition, and does not leave any scope for there being a presumption of 'knowledge' of such requisition. He submitted that the law being technical, every word has to be given its meaning and 'receipt' means actual possession of the document, which in the present case admittedly came into the possession of the petitioner only on 22.09.2016, and going by such presumption in law, she had time till 29.09.2016 to act upon and fix the date for such Special Meeting. He submitted that since the requisition was already in transit on 07.09.2016 under post, even when the petitioner joined office on 12.09.2016, the same could not have been brought before her and further even the file relating to such requisition, copy of which was served on the Chief Executive Officer was also admittedly not brought to her knowledge and, thus, in law there is no obligation on her to act upon a mere photocopy or some information she might have got from her well wishers. While summing up his argument, he reiterated that when in the present case, the requisition not having been 'given' or 'received' by the petitioner, the requisitionists on



16.09.2016 itself fixing the date of the meeting and the same being held on 24.09.2016, becomes illegal and whatever has happened becomes *non-est* in the eyes of law and, thus, all consequential acts are also liable to be set aside.

Learned counsel in reply to the stand taken on behalf of the respondents that the petitioner having annexed copy of the requisition shall be deemed to have been in 'receipt' of such requisition when filing the writ petition, submitted that since the law of pleadings, as far as writ petition is concerned, the averments have to be supported by evidence and since the petitioner was supplied with the copy of the requisition by her well wishers, she had annexed copy of the same in the writ petition in view of the requirement for supporting the averments with evidence. For such proposition, he relied upon the decision of the Hon'ble Supreme Court in the case of **Bharat Singh v. State of Haryana** reported as **A.I.R. 1988 SC 2181**, the relevant being at paragraph no. 13. He submitted that since he was fortunate to have a copy of the requisition, would not mean that the requirement under law for the same to be 'given' to her stands fulfilled so as to shift the onus on her to fix a date for such Special Meeting.

Having considered the rival contentions, the Court is of the opinion that the matter does not require interference. The



petitioner was on very sound footing that the requisition had to be 'given' to her, which admittedly was not done in the manner which is normally required of, till the time she approached the Court. However, in view of the fact that a copy of the requisition as well as copy of the official notings in the file have been brought on record and also the fact that the petitioner herself in the writ petition has never questioned the genuineness of such copy of requisition and the notings, the obvious presumption in law would be that, besides she being aware of there being a requisition addressed to her and the notings also disclosing such fact, and veracity of which was not questioned by the petitioner, a democratic process and the mandate of the statute which grants liberty to the majority of the elected members to bring a 'No Confidence Motion', cannot be thwarted on a hypertechnical ground that the original copy of the requisition was never produced before the petitioner. Had there been a statement that the petitioner was only aware that a requisition has been sent, would have completely changed the entire picture and would have lent credence to her stand that it was the requirement of law that actual copy of the 'document' be served upon her. However, when she is able to bring on record the copy of the requisition and the notings in the file, at least on 08.09.2016 when the writ petition was filed, upon joining on 10.09.2016, it was obligatory on her part to get it verified from the



office as to whether such a requisition, copy of which has been brought on record, was genuine and part of the records, if at all there was reason for her to believe otherwise. The Court also finds substance in the contention of the respondents with regard to the petitioner, at least in the admitted facts and circumstances of this case, being estopped from raising the plea that the original requisition was never ‘given’ to her or she was not in ‘receipt’ of the same. Even for the sake of argument, if the same is taken to be correct, by the conduct of the petitioner herself, this Court is of the opinion that she, having failed to act upon the requisition, even though being aware of it, at least on 08.09.2016, when the present writ petition was filed, the 7 days time available with her to fix the date of the Special Meeting, ended on 15.09.2016. Thus, the requisitionists, on 16.09.2016, fixing the date of such meeting, cannot be said to be illegal.

For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	AFR
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