

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18184 of 2016

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Sanjay Kumar S/o Late Radhakant Prasad Village- Kaswa Mehshi, Ward No. 11,
P.O. + P.S.-Mehsi, District-East Champaran

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department
2. The District Magistrate, East Champaran
3. The Municipal Executive Officer, Mehshi, District-East Champaran
4. The State Election Commissioner, Sone Bhawan, 3rd Veerchand Patel Path, Patna-800001, represented through its Secretary, the State Election Commission, Sone Bhawan, 3rd Veerchand patel Path, Patna-800001
5. The Secretary, the State Election Commission, Bihar Sone Bhawan, 3rd Veer Chand Patel Path, Patna-800001
6. Smt. Nasima Khatoon W/o Md. Maksud Alam, the Municipal President, Nagar Panchayat, Mehshi, District-East Champaran
7. Sri Subodh Kumar Thakur S/o Ramashish Thakur, Ward Councillor, Ward No.9
8. Smt. Urmila Devi W/o Ashok Kumar, Ward Concillor, Ward No. 11
9. Smt. Priti Kumari W/o Late Vijay Kumar, Ward Councillor, Ward No. 14
10. Smt. Nazma Khatoon W/o Tajul Haque Taj Ward Councillor, Ward No. 06
11. Smt. Indu Kumari W/o Raghunath Chaudhary, Ward Councillor, Ward No. 01
12. Sri Raj Kumar Mishra S/o Dharnidhar Mishra, Ward Concillor, Ward No.03
13. Sri Lal Babu Thakur S/o Mahadeo Thakur, Ward Councillor, Ward No. 05
14. Smt. Rumi Tabassum W/o Saukat Ali Ward Councillor, Ward No.08
15. Smt. Anita Gupta W/o Kamleshwar Prasad, Ward Councillor, Ward No.10
16. Sri Satrudhan Mahto S/o Jagannath Mahto, Ward Councillor, Ward No. 12
17. Sri Manoj Kumar S/o Ramakant Chaurasia, Ward Councillor, Ward No. 15
18. Sri Shailendra KUMar Srivastava S/o Dwarika Prasad, Ward Councillor, Ward No. 4
19. Sri Babu Lal Ram S/o Sahdeo Ram, Ward Concillor, Ward No.07

Respondents No. 6 to 19 are the Chair Person (Respondent No. 6) and the members of Nagar Panchayat, Mehshi, District-East Champaran, represented through its Municipal Executive Officer, Nagar panchayat, Mehshi, District-East-Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Raj Shekhar, Advocate
For the Respondent Nos. 1 & 2	: Mr. Ravish Chandra, AC to SC 6
For the Respondent No.3	: Mr. Sanjay Kumar, Advocate
For the Respondent Nos. 4 & 5	: Mr.Amit Shrivastava with Mr.Ritesh Kumar, Advocates
For the Respondent Nos. 6 to 10	: Mr. Satish Sinha, Advocate
For the Respondent Nos.11 to 19	: Mr. Shri Prakash Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 04-02-2017



Heard learned counsels for the parties.

2. The petitioner, who is elected Deputy Chief Councillor of Nagar Panchayat, Mehsi in the district of East Champaran has moved this Court for quashing of the notice dated 13.10.2016 (Annexure-3) bearing letter no. 1321 issued by the respondent no.3 calling for a Special Meeting on 20.10.2016 to consider a Motion of No Confidence against the petitioner as well as the Chief Councillor as also, in the meantime, to stay the resolution of such meeting.

3. The petitioner was elected as Deputy Chief Councillor of the instant Nagar Panchayat. On 27.09.2016 a requisition was submitted to the Chief Councillor by some of the Councillors for convening a Special Meeting to consider the Motion of No Confidence against the Chief Councillor as well as the petitioner. When the Chief Councillor did not act upon the same, the requisitionists themselves fixed the date of the meeting as 20.10.2016 by their requisition dated 13.10.2016. On 14.10.2016 a corrigendum was issued in order to specify that the Special Meeting was for the purpose of considering the No Confidence Motion against the Chief Councillor and the petitioner, who was the Deputy Chief Councillor. On 20.10.2016, the Special Meeting was held and Motion of No Confidence against the Chief Councillor and the Deputy Chief



Councillor was carried out.

4. Learned counsel for the petitioner submitted that as per the provisions of Section 25 (4) of the Bihar Municipal Act, 2007 (hereinafter referred to as the “Act”) read with Section 2(iv) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as the “Rules”) notice had to be issued within a stipulated time which shall clearly contain the reasons/allegations on which such No Confidence Motion is to be brought. Learned counsel has drawn the attention of the Court to the requisition as well as the notice and submitted that perusal of all the charges levelled clearly discloses that none of the charges is related to the functioning of the petitioner in the capacity of Deputy Chief Councillor. Learned counsel submitted that once none of the charges relate to the functions and duties of the petitioner as Deputy Chief Councillor, in law the situation is that the requirement of Rule 2(iv) is not fulfilled as there is no reason/allegation on the basis of which the No Confidence Motion was sought to be brought. Learned counsel submitted that all the charges are connected with the duties and functions of the Chief Councillor and once none of the charges relate to him, there being no charge to answer, the very consideration of the No Confidence Motion for his removal becomes *ab initio* void and thus, all consequential actions pursuant to and



based on such requisition are *non-est* in the eyes of law. Learned counsel submitted that the requirement of reasons to be mentioned is for the purpose of making the persons against whom the No Confidence Motion is brought to be fully aware of what he is required to answer in the Special Meeting to defend himself. In the present case, it was submitted that as the charges were not related to the petitioner, there was no occasion for him to defend himself and thus any resolution which may have been passed against the petitioner, based on such requisition, deserves to be set aside.

5. Learned counsel for the respondents no. 11 to 19 submitted that the writ petition is misconceived since the requirement of law is to the extent that charges and reasons have to be stated and only when the meeting is held, discussions take place and charges are deliberated upon, but not prior to that. He further submitted that in terms of Rule 2(v) of the Rules, as soon as the meeting commences, the Presiding Member is required to read out the motion for which the meeting has been called and then it shall be placed before the Members making it open for discussion where the Chief Councillor/Deputy Chief Councillor against whom No Confidence Motion is moved shall be given opportunity to defend themselves and only thereafter the Motion of No Confidence shall be put to vote by the Presiding Member. Learned counsel submitted that



such provision being there, the import is that the person has to attend the meeting and then defend himself, where he might also take a plea that the charges do not relate to him and thus not debatable. He submitted that the petitioner having been aware of the notice has chosen not to appear by giving an application. He further submitted that even the ground taken by the petitioner for not attending the meeting was clearly untenable, in view of the plea being that he had to take part in the *shradh* ceremony of the wife of his elder brother, who had died six months back. Learned counsel submitted that once the petitioner has chosen not to attend the meeting, it will be presumed that he voluntarily did not avail of the opportunity to defend himself and thus, in such background, if the resolution of No Confidence against him is carried out, the same cannot be assailed on the ground of it not being in accordance with law. He further submitted that Sections 21(2) (d) and 21(3) of the Act empower the Standing Committee, of which the petitioner is a Member to appoint an *Ad hoc* Committee under Section 33, which has not been done and thus, the petitioner being a Member of the Standing Committee is also collectively responsible for such lack of constitution of the *Ad hoc* Committee, for which charge the petitioner had to offer a valid defence which has not been done. Learned counsel has also drawn the attention of the Court to charge no.5 which states that in the



yearly development scheme the money spent in the last two years with regard to 15 Wards neither equitable distribution has been done nor it is in a transparent manner. Learned counsel submitted that the said relates to the functioning of the Empowered Standing Committee of which the petitioner being a member also has to own up his responsibility. Learned counsel submitted that there being no challenge to the requisition dated 27.09.2016, the writ petition itself is not maintainable in absence of such challenge. Learned counsel submitted that whatever explanation/clarification the petitioner has given before this Court could have been shown by him during the Special Meeting and this is the purpose of convening such Special Meeting, specifically Rule 2(v) of the Rules.

6. Learned counsel for the petitioner, by way of reply, submitted that there was no occasion for the petitioner to challenge the original requisition dated 27.09.2016 for the simple reason that the requisition is served upon the Chief Councillor and not on the Deputy Chief Councillor i.e., the petitioner. Thus, the said requisition admittedly was neither brought before the petitioner nor ever served upon him as the same is also not required under law. Learned counsel submitted that in such view of the matter, only the requisition fixing the date of the Special Meeting was known to the petitioner and that had been challenged in the present writ petition.



He further submitted that as far as charge no.5 is concerned, the same is too vague to answer as there are no details even to indicate as to what were the disparities and how there was lack of transparency. He reiterated that in any view of the matter, the petitioner being one out of five Members of the Empowered Standing Committee, the works and resolutions were carried out by the majority, for which the petitioner individually cannot be held responsible.

7. Having considered the rival contentions, the Court finds substance in the submissions of learned counsel for the petitioner. The charges, as contained in the requisitions and the notice, clearly indicate that the same cannot be held as charges, at least against the petitioner. The charge no.1 is that as per provisions of Section 31(1) of the Act, the Ad *hoc* Committee was not constituted. Upon going through the language of the Act, the same reads under:

“33. Ad hoc Committee.- (1) The Empowered Standing Committee may, from time to time, appoint an ad hoc Committee to perform such functions, or conduct such enquires, or undertake such studies including reports thereon, as may be specified by a resolution in this behalf.

(2) Any person, who is not a Councillor but possesses special qualifications useful for the



purpose of an Ad hoc Committee, may be associated therewith as its member.

(3) The manner of transaction of business in an Ad hoc Committee shall be such as may be laid down by the Empowered Standing Committee.”

8. Such language clearly indicates that the Standing Committee may, from time to time, appoint an *Ad hoc* Committee. This clearly means that the *Ad hoc* Committee is not required to be constituted mandatorily, but only for specific purposes and that too if required, by the Empowered Standing Committee for any specific function. If Empowered Standing Committee feels competent to discharge such function itself, there is no requirement of constitution of any *Ad hoc* Committee, as such provision is only to facilitate the Empowered Standing Committee. As far as charge no.2 is concerned, the allegation is that in terms of Section 47(6) of the Act, in the sphere of community relations, civic receptions to persons of distinction and paying homage on death to persons of repute, organization and management of fairs and exhibition and dissemination of information of public interest, the same are the duties of the Municipality, as would be clear from section 47 of the Act itself. The Municipality means the full body of the Municipality consisting of all the Councillors and thus full body of the



Municipality, which is the supreme body, being responsible to act in terms of Section 47, there cannot be any charge against the petitioner under Section 47(6) of the Act. Coming to charge no.3, the same relates to allegation of not holding a meeting of the Municipality once in a month in accordance with Section 48 (1) of the Act. In this regard, the said Section itself makes it clear that meeting of the Municipality shall be called by the Chief Councillor, and thus, there is no role of the petitioner as Deputy Chief Councillor as it is the Chief Councillor, who is entitled/responsible to call any meeting of the Municipality. Charge no.4 alleging that the functioning of the Empowered Standing Committee was not in accordance with Rule 3 of the Bihar Municipality Empowered Standing Committee Conduct of Business Rules, 2010 (hereinafter referred to as the “Business Rules”), perusal of Rule (5) thereof clearly indicates that the meeting is required to be called by the Chairman of the Committee, who in the present case is the Chief Councillor and not the petitioner, who is Deputy Chief Councillor. As far as charge no.5 is concerned, it alleges that yearly development schemes and the money spent on that for the last two years in all the 15 Wards were not equitable and there was no transparency in the said schemes. In the view of the Court, the said charge is too vague to be capable of being replied to.

9. In view of the discussions made hereinabove, the



Court has no hesitation to hold that none of the charges were required to be explained by the petitioner, as they do not relate to his functions and duties as Deputy Chief Councillor. In this context, the Court deems it appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others** reported as **2012(4) SCC 407**.

10. Contention of the learned counsel for the private respondents that the petitioner ought to have appeared in the meeting and explained that none of the charges related to him, cannot be sustained for the reason that it is the onus of the requisitionists first to specifically spell out the charges and only then, the petitioner can be called upon to explain. Charges which are either not related to the petitioner or which are vague to answer, cannot be held to be in accordance with the requirement of the statutes as it is the requisitionists, at the first instance, who are required to discharge their onus by specifying the charges/reasons and the petitioner cannot be faulted for not having attended the meeting and once the Court has come to the conclusion that none of the charges, as contained either in the requisition or in the notice, relate to the duties and function of the petitioner, he was not required to act upon such requisition and the said No Confidence Motion against the petitioner itself stands vitiated in law. In view of the aforesaid, notice dated



13.10.2016 (Annexure-1) and all consequential actions, including passing of the No Confidence Motion against the petitioner in the meeting dated 20.10.2016 being vitiated in law, stand set aside. The same is only done with respect to the petitioner. Accordingly, the petitioner is restored to the post of Deputy Chief Councillor with immediate effect. All consequential actions taken, including another person being elected as Deputy Chief Councillor during the pendency of the present writ petition, being covered under the principle of *lis pendens*, automatically stand set aside.

11. It goes without saying that the petitioner shall hold the post of Deputy Chief Councillor till removed in accordance with law. At this stage, the Court would like to clarify that once the requisition itself has been found to be vitiated in law, it shall be deemed that there was no requisition for any consideration of No Confidence Motion against the petitioner, and thus, the said transaction shall not be a bar in terms of the second proviso to Section 25(4) of the Act.

(Ahsanuddin Amanullah, J)

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