

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17276 of 2018

Dhirendra Kumar, Son of Phuleshwar Prasad Yadav, Resident of Village-Bariyahi, P.S. Khara, District-Saharsa, presently Member, Zila Parishad, Saharsa.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate, Saharsa, District-Saharsa.
4. The Deputy Development Commissioner, Saharsa-Cum-Chief Executive Officer, Zila Parishad, Saharsa.
5. Smt. Arahul Devi, Wife of not Known to the Petitioner, Presently Chairman, Zila Parishad, Saharsa, P.O. and P.S. Saharsa, District-Saharsa.
6. Sri Ganga Sagar Kumar @ Chhatri Yadav, Son of not Known to the Petitioner, Presently Deputy Chairman, Zila Parishad, Saharsa, P.O. and P.S. Saharsa, District-Saharsa.
7. Rozi Khan, Son of not Known to the Petitioner,
8. Sri Nitu Das, Son of not Known to the Petitioner,
9. Smt. Geeta Devi, Wife of Not Known to the Petitioner,
10. Smt. Kumari Neha, Wife of Not Known to the Petitioner,
11. Smt. Lalita Ranjan, Wife of Not Known to the Petitioner,
12. Smt. Priyanka Anand, Wife of Not Known to the Petitioner,
13. Sri Pintu Kumar, Son of not Known to the Petitioner.
14. Smt. Punam Devi, Wife of Not Known to the Petitioner,
15. Smt. Sujata Kumari, Wife of Not Known to the Petitioner,
16. Sri Ramesh Chandra Rana, Son of not Known to the Petitioner,
17. Sri Rabindra Prasad Yadav, Son of not Known to the Petitioner,
18. Smt. Rajani Bala, Wife of Not Known to the Petitioner,
19. Sri Amrenda Bhaskar, Son of not Known to the Petitioner,
20. Sri Arun Kumar Yadav, Son of not Known to the Petitioner,
21. Smt. Tila Devi, Wife of Not Known to the Petitioner,
22. Sri Om Prakash Narayan, Son of not Known to the Petitioner,



23. Smt. Shyamali Devi, Wife of Not Known to the Petitioner,
24. Md. Jafar Alam, Son of not Known to the Petitioner, Respondent nos.7 to 24
are the Members of Zila Parishad, Saharsa through the Deputy Development
Commissioner-Cum-Chief Executive Officer, Zila Parishad, Saharsa, P.O. and
P.S. Saharsa, District-Saharsa.

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr. S.B.K Manglam, Advocate
Mrs. Anita Kumari, Advocate

For the Respondent State : Mr. Dharendra Kumar, AC to AAG-6

For the Zila Parishad : Mr. Nikesh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-11-2018

Heard Mr. S.B.K Manglam, learned counsel for the
petitioner and Mr. Nikesh Kumar, learned counsel appearing for
the Zila Parishad.

2. The petitioner has made the following prayers in the
present writ petition:-

(I) For issuance of an appropriate writ in
the nature of certiorari for quashing the requisition
dated 30.07.2018 submitted by the Respondent by
the Respondent nos. 7, 10, 13, 15, 16, 17, 20, 21
and 23 and addressed to the Respondent no.5
whereby and whereunder the above named
Respondents had made a request from Respondent



no. 5 to convene the special meeting of Zila Parishad for consideration of No confidence Motion against the Respondent no. 5 on the ground that if the above named Respondents were the supporters of Respondent no.5, there was no occasion for them to summon the special meeting and remain absent there from.

(II) For issuance of an appropriate writ in the nature of certiorari for quashing the proceedings of special meeting dated 13.08.2018 of Zila Parishad, Saharsa convened for consideration of No confidence Motion against the Respondent no.5 and for a declaration that since the aforesaid meeting was convened by the Respondent no.5 on the requisition of the Respondent nos. 7, 10, 10, 13, 15, 16, 17, 20, 21 and 23, who were the supporters of Respondent no. 5 and, therefore, they had absented themselves from the special meeting and allowed their motion to fail, the special meeting convened on 13.08.2018 would not come in the way of other members of Zila Parishad to file their requisition before the Respondent no. 5 to convene the special meeting of Zila Parishad for consideration of their No Confidence Motion against her.

(III) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the Respondent Authority to disqualify the Respondent nos. 7, 10, 13, 15, 16, 17, 20, 21 and 23 from the membership of Zila Parishad on



the found that even though they had submitted their requisition for convening the special meeting to consider No Confidence Motion against the Respondent no.5 but since they were supporters of Respondent no.5 and they had filed their requisition in her connivance, they had absented themselves from the special meeting to support their motion which was convened on the basis of their requisition and thereby allowed their motion of No Confidence.

(IV) For issuance of any other appropriate writ/writs, order/ orders, direction/ directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.

3. Mr. S.B.K. Manglam, learned counsel appearing for the petitioner submitted that immediately after her election as Chairman of the Zila Parishad, Saharsa, the respondent no.5 started acting in contravention of the provisions of the Bihar Panchayat Raj Act, 2006 (for short 'the Act of 2006') and in her personal interest. She was not conducting herself in the Zila Parishad in the manner in which she was required to conduct in view of the statutory provisions. He submitted that immediately after respondent no.5 had completed two years in her office, the aggrieved members were shocked and surprised when they came to know that a requisition signed by nine members of Zila Parishad



had been submitted to respondent no. 5 on 30th July 2018 and on 2nd August 2018, the respondent no. 5 had acted upon the requisition and had fixed the date of special meeting on 13.08.2018 and had directed the respondent no. 4 to issue notice to the members to attend the same. He contended that in view of the requisition and the notice issued by the respondent no.4, the special meeting of the Zila Parishad was convened on 13.08.2018 for consideration of no confidence motion against respondent no.5. However, the proceeding of the meeting would show that in the meeting even the requisitionists did not turn up to support the motion. The respondent no.5, who had fixed the date of special meeting had also not turned up to attend the meeting. He contended that requisition was brought by nine of the supporters of the respondent no. 5 in collusion with respondent no.5 and they had conveniently absented themselves from the meeting and allowed the motion to fail.

4. Mr. Manglam, learned counsel submitted that from the conduct of the requisitionists and the respondent no.5, it would be evident that the requisition was brought to settle respondent no.5 in the office of Chairman of Zila Parishad for the left over period of Zila Parishad for which it was constituted by 2016 General Election. He contended that the act of the requisitionists is wholly



unbecoming of a public representative, as they had no respect for the other members of the Zila Parishad and they had deliberately committed an act of fraud with the object of the Act of 2006. He contended that in view of the fraud played by the requisitionists member it would be fit and proper for this Court to quash the requisition dated 30th July 2018 and hold that the said requisition would not come in the way of other members of Zila Parishad to file their requisition before respondent no.5 to convene the special meeting of Zila Parishad for consideration in future. He contended that the manner in which the proceeding was held it would also be proper to hold that the requisition was never brought, discussed and considered by the Zila Parishad.

5. *Per contra*, Mr. Nikesh Kumar, learned counsel for the Zila Parishad referring to the provisions prescribed under Section 70 of the Act of 2006 submitted that the said provision would make it clear that a resolution expressing want of confidence in the Chairman of a Zila Parishad could have been passed only by a majority of total number of elected members of the Zila Parishad. Further, such a no confidence motion can be brought only once in the whole tenure of the Chairman or Vice Chairman of the Zila Parishad. He contended that the requisition submitted by the nine members of the Zila Parishad did not suffer



from any illegality and the law does not mandate that the requisitionists must be present in the special meeting scheduled or held for discussing the no confidence motion. He contended that Section 70(4)(i) provides that no such meeting shall be postponed once a notice for the same had been issued and no quorum shall be required for the special meeting convened to discuss no confidence motion. According to him, in the instant case, as none of the elected members of the Zila Parishad attended the special meeting held on 13.08.2018, there was no occasion either for deliberation on the no confidence motion or for division of vote. He contended that since the motion had failed in the special meeting, no special meeting can be summoned for discussion on no confidence motion in future against the Chairman. He pleaded that merely because the elected representatives of the Zila Parishad did not attend the meeting on the scheduled date, it cannot be said that the requisitionists were in collusion with respondent no.5. He has argued that there was no reason for the petitioner or any other members for not attending the special meeting.

6. I have heard learned counsel for the parties and carefully perused the record.

7. A motion of no confidence means that a person in a position of responsibility is no longer deemed fit to hold that



position. In the context of Zila Parishad, it would be mean that the Zila Parishad has no longer confidence in the Chairman or Vice-chairman against whom the no confidence motion is brought. A no confidence motion can only be passed in the special meeting after a valid requisition at a meeting specially convened for the purpose. The law mandates that the requisition for convening the special meeting shall be signed by not less than 1/5 of total numbers of directly elected members of the Zila Parishad and shall be delivered to the Chairman with a copy to the District Magistrate whereafter the Chairman would be required within seven days to convene a special meeting of the Zila Parishad. Such meeting is required to be held on a date not later than fifteen days from the date of issuance of notice of the meeting. The provisions prescribed under Section 70 (4) (i) also provide that no such meeting shall be postponed once notice for the same has been issued and no quorum shall be required for the special meeting convened to discuss no confidence motion.

8. It would be apt at this stage to reproduce Section 70 (4) of the Act of 2006.

“70(4)(i). *Adhayaksha* and *Up-Adhyaksha* shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of



the total number of directly elected members from territorial constituencies of the *Zila Parishad* at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one fifth of the total number of directly elected members of the *Zila Parishad* and shall be delivered to the *Adhyaksha* with a copy to the District Magistrate. The *Adhyaksha* shall within seven days from the date of receipt of such requisition convene a special meeting of the *Zila Parishad*. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. The meeting shall be presided over by the *Adhyaksha* if the motion is against the *Up-dhayksha*; if it is against the *Adhyaksha* the *Upadhyaksha* shall preside over the meeting and if it is against *Adhyaksha* and *Upadhyaksha* both then the District Magistrate shall preside over the meeting.

In case of the post of *Up-adhyaksha* being vacant or his absence from the meeting convened for discussion on no confidence motion against the *Adhyaksha* or the post of *Adhyaksha* being vacant or his absence from the meeting convened for discussion on no confidence motion against the *Up-Adhyaksha*, as the case may be, the meeting shall be presided over by any member elected from



amongst the directly elected members from the territorial constituencies of the *Zila Parishad* present in the meeting.

In case of failure to convene the meeting by the *Adhyaksha*, the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided by him.

No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no confidence motion.

(ii) During the first two year period of the tenure, no confidence motion shall not be moved against the *Adhyaksha* or the *Upadhyaksha*. Such a no confidence motion may be brought only once in the whole tenure of *Adhyaksha* or *Up-Adhyaksha*.

(iii) No-confidence motion against the *Adhyaksha* or *Up-adhyaksha* or both, shall not be brought within six months of the expiry of the term of the *Zila Parishad*.

(iv) Such reasons/charges, on the basis of which no confidence motion is to be moved against the *Adhyaksha* or *Upadhyaksha*, shall be clearly mentioned in the notice of the meeting called to consider the no confidence motion.



(v) As soon as the meeting called under this Section commences, the presiding member at the meeting shall read out the motion on which the meeting has been called to consider, before the present members and declare it open for discussion. Any discussion on the motion under this Section shall not be adjourned.

(vi) During discussion, opportunity shall be given to the *Adhyaksha* or *Upadhyaksha* or both against whom no confidence motion is moved, for his defence before the *Zila Parishad*. The motion shall be put to vote on the same day after discussion which shall take place by secret ballot in the prescribed manner by the District Magistrate.

(emphasis mine)

9. It would be apparent from the provisions prescribed under Section 70 (4) (ii) that a no confidence motion can be brought only once in the whole tenure of the Chairman.

10. In the instant case, it is not the case of the petitioner that the requisition for the special meeting was not signed by the required number of directly elected members of the *Zila Parishad*. It is also not the case of the petitioner that there was any illegality in convening the special meeting for deliberation on the no confidence motion brought against the Chairman. The only grievance of the petitioner is that the special meeting was not



attended by the requisitionist members on the scheduled date fixed for the same. There is no statutory provision which mandates that the requisitionist members of a no confidence motion must attend the special meeting fixed for deliberation and voting on no confidence motion. In absence of any statutory provisions in this regard, merely because the requisitionist members did not attend the special meeting, it would not be proper for this Court to infer that they were in collusion with the Chairman against whom the motion was brought. Their absence can also not be considered to be a fraud on the object of the Act. Every elected representative of the Zila Parishad has a right to put signature on a requisition expressing want of confidence. They have also a right either to attend or not to attend the special meeting held for consideration of no confidence motion. Merely because they failed to attend the meeting, in the opinion of this Court, it cannot be held that the special meeting convened on 13.08.2018 was bad in law. In view of the statutory bar created under section 70(4)(ii) the other members of the Zila Parishad can not bring the motion against the respondent no.5 during the remaining period of the Zila Parishad. It would also not be proper for this Court to quash the requisition dated 30th July 2018, as the same does not suffer from any illegality.



11. Accordingly, I see no merit in this application. The writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/SKSuman

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2018
Transmission Date	NA

