

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13180 of 2018

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Nityanand Singh, Son of Late Bhagwan Singh, Resident of Village- Khan Kulipur,
P.S.- Arwal, District- Arwal. At present Chief councilor, Arwal Nagar Parishad,
Arwal, Bihar. Petitioners

Versus

1. The State of Bihar through the Principal Secretary Urban and Housing Department, Government of Bihar, Patna.
2. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Arwal, District- Arwal.
4. The Nagar Parishad through its Executive Officer, Nagar Parishad Arwal, District- Arwal.
5. Ramakant Kumar.
6. Chandrabhushan Singh.
7. Awadh Prasad.
8. Amrendra Kumar.
9. Binda Devi.
10. Yadu Chaudhary.
11. Smt. Gita Devi
12. Smt. Rajanti Devi.
13. Smt. Farzana Khatoon,
14. Smt. Reshma Devi.
15. Bano Pravin.
16. Shakila Khatoon.
17. Suresh Kumar Chaudhary
18. Kamala Devi.
19. Smt. Urmila Devi.
20. Smt. Pravina Devi.
21. Jyoti Ranjan Kumar.
22. Arvind Singh.
23. Akhilesh Sao.
24. Kamlesh Paswan.

Respondent no. 5 to 24 are ward councilor of Nagar Parishad Arwal, through its



Executive Officer, Nagar Parishad Arwal, District- Arwal.

... Respondents

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Appearance :

For the Petitioner/s : Mr. Bindyachal Singh, Advocate
Mr. Ranjeet Choubey, Advocate
For the State : Mr. Rajiv Ray, GP-1
Mr. Aman Kumar, AC to GP-1
For Nagar Parishad : Mr. Sanjeev Nikesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 01-08-2018

LA Nos. 5178 and 5553 of 2018

Learned counsel for the petitioner seeks leave to withdraw both the interlocutory applications in order to file a fresh writ petition for the additional reliefs which were claimed through these interlocutory applications.

2. Leave is granted.
3. These interlocutory applications are disposed of.

CWJC No. 13180 of 2016

4. In the instant writ petition, the petitioner has prayed for quashing of letter no. 3523 dated 05.07.2018 as contained in Annexure-P/7 issued under the signature of respondent no.2 whereby and whereunder it has been advised that the period of custody from 03.11.2017 to 01.04.2018 shall be counted in two years statutory period for bringing no confidence motion against Chief Councillor. The petitioner has further prayed for setting aside requisition dated



22.05.2018 (Annexure-P/5) filed by the members of Nagar Parishad, Arwal for fixing the date of special meeting for consideration of no confidence motion against him on the ground that he was not allowed to work as Chief Councillor since 03.11.2017 to 01.04.2018 and 04.04.2018 to 09.05.2018. The petitioner has also prayed for directing respondent-authorities not to fix the date of special meeting till disposal of the instant writ petition.

5. Learned counsel for the petitioner submitted that the petitioner was elected as Chief Councillor of Arwal Nagar Parishad on 16.05.2016. A malicious criminal case was instituted against him in which he was remanded to judicial custody between period 03.11.2017 to 01.04.2018 and, thus, he could not discharge his duties in the capacity of the Chief Councillor of Arwal Nagar Parishad during the said period. Further, the petitioner was removed from the post of Chief Councillor vide an illegal order passed by the respondent no.1 from 04.04.2018. The order of removal was challenged by the petitioner in writ petition bearing C.W.J.C. No. 6838 of 2018 and this Court, vide order dated 09.05.2018, stayed the impugned order dated 04.04.2018. He submitted that in view of the fact that the petitioner was illegally deprived from functioning as Chief Councillor between period 03.11.2017 and 01.04.2018 and 04.04.2018 and 09.05.2018, the said period also should not have



been counted in two years statutory period spent by the petitioner in the capacity of Chief Councillor of Arwal Nagar Parishad. He submitted that the requisition was filed in the office of Executive Officer on 25.05.2018 for fixing a date of special meeting for consideration of no confidence motion. The aforesaid no confidence motion was forwarded to the petitioner on 25.05.2018. However, the petitioner did not fix the special meeting in view of the fact that since 03.11.2017 to 01.04.2018 and 04.04.2018 to 09.05.2018, he was not allowed to function as Chief Councillor illegally. He urged that in view of the executive intervention, as the petitioner could not have discharged his function in the capacity of Chief Councillor for more or less six months, the requisition was not maintainable. He argued that the advice of the Law Department given to the Executive Officer to treat the period spent in jail and removal in statutory period of two years as contemplated under Section 25(4) of the Bihar Municipal Act, 2007 (for short 'the Act') is wholly illegal, arbitrarily and unjust.

6. On the other hand, drawing my attention to the proviso to Section 25(4) of the Bihar Municipal Act, learned counsel appearing for the State submitted that a no confidence motion can not be brought against the Chief Councillor within a period of two years of taking over charge of the post. In the present case, the



petitioner had taken over charge of the post on 16.05.2016. Hence, on expiry of two years, there was no prohibition in bringing no confidence motion against the petitioner. He contended that since the petitioner was made accused in a criminal case and was remanded to judicial custody under the orders of the court, he cannot take a plea that the said period has to be excluded while counting the two years period from the date of taking over charge of the post. He pleaded that even the period of removal from 04.04.2018 to 09.05.2018 cannot be excluded from being counted as there is no such provision under the Act. He further submitted that even if the said period is excluded, the period of two years had expired on the date on which requisition for no confidence motion was brought against the petitioner.

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

8. Section 25 of the Act deals with removal of Chief Councillor/Deputy Chief Councillor. The relevant clause (4) of Section 25 reads as under :-

“25. Removal of Chief Councillor/Deputy Chief Councillor. -

- | | | | |
|-----|-----|-----|-----|
| (1) | xxx | xxx | xxx |
| (2) | xxx | xxx | xxx |
| (3) | xxx | xxx | xxx |



(4) The Chief Councillor/Deputy Chief Councillor may be removed from office by a resolution carried by a majority of the whole number of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner prescribed, upon a requisition made in writing by not less than one-third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed:

"Provided that a no confidence motion shall not be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking over the charge of the post:

Provided further that a no confidence motion shall not be brought again within one year of the first no confidence motion:

Provided further also that no confidence motion shall not be brought within the residual period of six months of the municipality.”

9. From perusal of the first proviso to clause (4) of Section 25 of the Act, it would be evident that the law prohibits bringing of a no confidence motion against the Chief Councillor/Deputy Chief Councillor within a period of two years from the date of taking over the charge of the post.

10. The admitted case of the petitioner is that he was elected



as Chief Councillor of Arwal Nagar Parishad on 16.05.2016 and he took over charge of the post from that date.

11. Thus, on completion of two years from the date of taking over the charge of the post, there was no fetter on the members of the Arwal Nagar Parishad to bring a motion of no confidence against him.

12. In the opinion of this Court, the period of custody or the period of temporary removal order which was stayed by this Court cannot be excluded from the period of two years of taking over the charge of the petitioner. The plea taken by the petitioner has got absolutely no merit. The plain rule of interpretation of statutory provision enjoins a duty upon the court that the words used in the statute must be construed according to their literal meaning. Interpreting the first proviso to clause (4) of Section 25 in any other manner, in my view, would lead to absurdity and manifest injustice. It is the settled position in law that when the language is vague only then the legislative intention is to be taken into consideration. In the instant case, since there is no ambiguity in the language of clause (4) of Section 25 of the Act, it is not permissible for the Court to go beyond that language or words to give any other meaning. There may be several eventualities between the period of two years from the date of taking over charge of the post. If the plea of the petitioner



for excluding the period spent by him in custody or the temporary removal is accepted, the same would not only lead to absurdity but also amount to legislating law which is not permissible.

13. In view of the discussions made above, since the petitioner had already completed two years on 16.05.2018 from the date of taking over the charge of the post and the requisition for no confidence motion against him was brought on 22.05.2018, no illegality can be found with the requisition filed by the members of Nagar Parishad, Arwal for fixing date of special meeting for consideration of no confidence motion against him.

14. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2018
Transmission Date	NA

