

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17372 of 2018

1. Mithilesh Kumar, Son of Late Kamal Kishore Yadav, Resident of Village- Mohanpur, P.O. Thuthi, P.S. Choutham, District- Khagaria, presently Vice Chairman, Zila Parishad, Khagaria.
2. Priyadarshana Singh, Wife of Sri Manish Kumar Singh, Resident of Village- Sanhauuli, P.O.- Sanhauuli, P.S. Chitragupta Nagar, District- Khagaria, presently Member, Zila Parishad, Khagaria.

... .. Petitioners

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, Khagaria, District- Khagaria.
4. The Deputy Development Commissioner, Khagaria-cum-Chief Executive Officer, Zila Parishad, Khagaria.
5. Smt. Kumari Sweta Bharti, Wife of not known to the petitioners, presently Chairman Zila Parishad, Khagaria, P.O. and P.S.-Khagaria, District- Khagaria.
6. Sri Girish Kumar, son of not known to the petitioners.
7. Sri Shankar Tanti, son of not known to the petitioners.
8. Smt. Priyanka Devi, wife of not known to the petitioners.
9. Sri Pintu Kumar, son of not known to the petitioners.
10. Sri Yogendra Singh, Son of not known to the petitioners.
11. Smt. Abida Begum, Wife of not known to the petitioners.
12. Sri Pravin Kumar, S/o not known to the petitioners.
13. Smt. Ruby Devi, Wife of not known to the petitioners.
14. Smt. Mira Devi, Wife of not known to the petitioners.
15. Sri Chandan Kumar, Son of not known to the petitioners.
16. Sri Niranjana Kumar Nirala, S/o not known to the petitioners.
17. Smt. Mahua Singh, S/o not known to the petitioners.
18. Sri Gayasuddin S/o not known to the petitioners.
19. Smt. Kiran Kumari, Wife of not known to the petitioners,
20. Sri Ibrahim Sah, Son of not known to the petitioners.



Respondent nos. 6 to 20 are the members of Zila Parishad, Khagaria, through the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad Khagaria, P.O. and P.S. Khagaria, District- Khagaria.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Ms. Anita Kumari, Advocate
For the Respondent-State: Mr. Ajay, GA-5
for the Respondent-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 petitioners, learned counsel for the State and Mr. Nikesh Kumar, learned counsel appearing for the Zila Parishad.

2. The petitioners have made the following prayers in the present writ petition:-

(I) For issuance of an appropriate writ in the nature of certiorari for quashing the proceedings dated 14.07.2018 of Zila Parishad, Khagaria convened for no confidence motion against the Chairman (respondent No.5) on the following grounds:-

(II) For a declaration that even if the date of special meeting was fixed by the Respondent no.5 and the Respondent no.4 was directed to issue notice to the members, the action of the Respondent no.4 while issuing notice to the members was without jurisdiction since law does



not contemplate that on the direction of the Adhyaksh, the Respondent no.4 would issue notice to the members.

(III) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the Respondent Authorities to disqualify the Respondent nos. 6,7,12, 18 and 20 from the membership of Zila Parishad on the ground 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 a declaration that since the special meeting dated 14.07.2018 was convened on the request of the requisitionists, who were in connivance with the Respondent no.5, the said special meeting would not come in the way of writ petitioners to bring a fresh NO CONFIDENCE MOTION against the Respondent no.5 in accordance with law.

(V) 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 petitioners submitted that immediately after her election as Chairman of the Zila Parishad, Khagaria, 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. Even though, she was not even performing her duties as per requirements of the Act of 2006, the members had no occasion to remove her from the post during the first two years in view of the mandatory bar created under sub-section (4)(ii) of Section 70 of the Act of 2006. 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 five members of Zila Parishad had been submitted to respondent no. 5 on 5th July 2018 and on 5th July 2018 itself, the respondent no. 5 had acted upon the requisition and had fixed the date of special meeting on 14.07.2018 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 14.07.2018 for deliberation on 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 five supporters of the respondent no. 5 in collusion with respondent no.5 and they had conveniently absented themselves from the meeting. He submitted that in the special meeting apart from petitioner no.1, only the Chairman (respondent no.5) and one Smt. Abida Begum attended the meeting and the motion failed.

4. Mr. Manglam, learned counsel submitted that from the conduct of the requisitionists and the respondent no.5, it would be apparently 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 7th 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. He submitted that the aforestated act of the requisitionist members would also make them liable for disqualification from the membership of 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 can be passed only by a majority of total number of elected member 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 five 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 only three elected members of the Zila Parishad attended the special meeting held on 14.07.2018, there was no occasion for division of votes on the no confidence motion and voting on such requisition. He contended that merely because the majority of 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.

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 special meeting shall be signed by not less than one fifth 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. At this stage, I think it appropriate 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-adhyaksha; 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 petitioners 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 petitioners 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 petitioners is that the special meeting was not attended by the requisitionist members. There is no statutory provisions, 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 not be termed as 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 14.07.2018 was bad in law. There is no justifiable ground to hold that either the requisition dated 7th July, 2018 or the resolution passed in the special meeting on 14.07.2018 was bad in law, as the same did not suffer from any illegality. Further, in view of the statutory bar created under section 70(4)(ii), the member of the Zila Parishad can not bring motion of no confidence against the Chairman during the remaining period of Zila Parishad.

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

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2018
Transmission Date	NA

