

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12842 of 2019

1. Neelam Chaudhari, aged about 40 years, Female, Wife Bamshankar Chaudhari Resident of Ashogi Ward No.07, Bairagania, Sitamarhi, Dist. Sitamarhi
2. Urmila Devi, about 49 years (Female), W/o Ramahish Ray Resident of Siduriya Ward No.01, Bairagania, Sitamarhi, Dist.Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary,Urban Development and Housing Department,Govt. of Bihar,Patna.
2. The Principal Secretary, Urban Development and Housing Department,Govt. of Bihar,Patna
3. District Magistrate, Sitamarhi.
4. District Panchayat Raj Officer, Sitamarhi.
5. Executive Officer, Nagar Panchayat,Bargania,Sitamarhi
6. Yasoda Devi W/o Sri Mangar Mahto Resident of Village and PO Ashogi Ward No.02, Bairagania, Sitamarhi, Dist.Sitamarhi
7. Vigni Devi W/o Sri Thaga Paswan Resident of Village and PO Ashogi Ward No.03, Bairagania, Sitamarhi, Dist.Sitamarhi
8. Durga Devi W/o Rakesh Rajan Jha Resident of Village and PO Ashogi Ward No.04,Bairagania,Sitamarhi,Dist.Sitamarhi
9. Ganesh Chaudhari, S/o Late Indralal Chaudhari Resident of Village and PO Ashogi Ward No.05,Bairagania,Sitamarhi,Dist.Sitamarhi
10. Rajkumari Devi S/o Late Mahang Chaudhari Resident of Village and PO Ashogi Ward No.06,Bairagania,Sitamarhi,Dist.Sitamarhi
11. Dharmendra Paswan S/o Sri Rama Paswan Resident of Village and PO Ashogi Ward No.08,Bairagania,Sitamarhi,Dist.Sitamarhi
12. Veena Devi W/o Sri Ramji Sah Resident of Village and PO Ashogi Ward No.09, Bairagania,Sitamarhi,Dist.Sitamarhi
13. Veena Jaiswal W/o Late Nirmal Prasad Chaudhari Resident of Village and PO Bablal Das Makaan Road Bairagania,Sitamarhi,Dist.Sitamarhi
14. Prince Kumar S/o Sri Virendra Prasad Resident of Village and PO Mai Asthaan, Bairagania,Ward No.11, Sitamarhi,Dist.Sitamarhi
15. Meera Devi W/o Sanjay Prasad Resident of Village of Ward No.12,Village and PO Bairagania,Sitamarhi,Dist.Sitamarhi
16. Chandrajyoti Devi W/o Sri Milan Paswan Resident of ward No.13,Village and PO Bairagania,Sitamarhi,Dist.Sitamarhi
17. Renu Devi W/o Shyamnandan Singh Resident of Village and PO Pateltola,Ward No.14,Bairagania,Sitamarhi,Dist.Sitamarhi
18. Smt. Sagar Devi W/o Sri Shankar Mahto Resident of Village Na Po Nuniya Tola,Bhakurhar,Bairagania,Dist.Sitamarhi



19. Kaushliya Devi W/o Sri Bigan Sah Resident of Village and PO Chikna Tola Bhakurhar, Ward No.16, Bairagania, Dist. Sitamarhi
20. Munna Kumar S/o Late Vishwanath Prasad Resident of Village P.O. Bhakurhar Ward No.17, Bairagania, Dist. Sitamarhi
21. Umesh Srivastava S/o Late Jabla Prasad Srivastava Resident of Village and PO Bhakurhar, Ward No.18, Bairagania, Dist. Sitamarhi
22. Jamiri Lal Sah S/o Late Sitaram Sah Resident of Village and P.O. Dubkhana Ward No.19, Bairagania, Dist. Sitamarhi
23. Meena Devi W/o Jivachh Raut Resident of Village and P.O. Dubkhana Ward No.20, Bairagania, Dist. Sitamarhi
24. Anjali Devi W/o Sanjay Das Resident of Village and PO Sekhauna, Ward No.21, Dubkhana, Dist. Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate Mr. Sumit Kr. Jha, Advocate Mr. Rajat Kr. Tiwary, Advocate
For the Respondents	:	Mr. S.B.K. Mangalam, Advocate Mr. Syad Hussain Majeed, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 02-07-2019

Petitioners, in the present case, have moved this court for issuance of a writ in the nature of certiorari to quash and cancel the requisition dated 12.06.2019 addressed to the petitioner no. 1 for convening special meeting of No Confidence against the petitioners who are the Chief Councillor and Deputy Chief Councillor of Nagar Panchayat, Bairagania, Sitamarhi. Requisitions have been brought by 11 elected Councillors of the Nagar Panchayat, Bairagania, Sitamarhi vide Annexure '1' to the writ



application.

The petitioners have also prayed for quashing of letter no. 981 dated 18.06.2019 issued under the signature of the Executive Officer, Nagar Panchayat, Bairgania by which the petitioner no. 1 has been directed to convene a special meeting on the basis of the requisition dated 12.06.2019 written to the Executive Officer by those elected Councillors of the Nagar Panchayat.

Mr. Y.V. Giri, learned senior counsel representing the petitioners submits that in the present case the requisition as contained in Annexure '1' to the writ application is fit to be quashed at least on two grounds, firstly that the requisition, in the present case, has been routed through the Chief Executive Officer which is not in accordance with the provisions of the Rule 2 and the sub-rules thereunder as provided in the Bihar Municipal No Confidence Process Rules, 2010 (hereinafter referred to as the "No Confidence Rules"). It is his submission that the Chief Executive Officer has vide his letter no. 981 dated 18.06.2019 directed the Chief Councillor (petitioner no. 1) to fix a date convening special meeting of the No



Confidence Motion, therefore, the procedure adopted in bringing the No Confidence Motion against the petitioners is not in accordance with law. The second ground taken by Mr. Giri, learned senior counsel is that the requisition does not contain the specific charges against the petitioners and the allegations made in the requisition are only vague from which no discussions can take place. He has relied upon the judgment of the learned coordinate Bench of this court in CWJC No. 519/2019 and in the case of **Arti Kumari vs. State of Bihar** reported in **2015(3) PLJR 276** (paragraph '8') to submit that the requisition is fit to be quashed on the ground of it's vagueness. Learned senior counsel has relied upon the judgments of this court in the case of **Uday Shankar Singh Vs. State of Bihar** reported in **2003 (2) PLJR 123** and in the case of **Meena Yadav Vs. State of Bihar** reported in **2010 (2) PLJR 389**. Learned senior counsel has also relied on the judgments in the case of **Amit Kumar Vs. State of Bihar** reported in **2015(1) PLJR 830** and in the case of **Sheikh Hassmuddin vs. State of Bihar** reported in **2015(3) PLJR 203**.

On the other hand, Mr. S.B.K. Mangalam,



learned counsel representing some of the private respondents who are the requisitionists has opposed the writ application by filing a counter affidavit and relying upon the certain judgments of this court. It is submitted that the 11 Ward Councillors of the Nagar Panchayat has met petitioner no. 1 at her residence on 12.06.2019 to give their requisition only. There was a requisition to fix the date of special meeting for consideration of their no confidence motion. It is stated that petitioner no. 1 went through the contents of the requisition but refused to receive the same. This being the position, the requisitionists were left with no option but to file their requisition in the office of the Nagar Panchayat on 12.06.2019 itself with letter addressed to the Executive Officer wherein they had mentioned these facts. Copy of the letter addressed to the Executive Officer is enclosed as Annexure 'R-2' to the counter affidavit. It is stated that the Executive Officer forwarded the requisition to the Chief Councillor along with his letter dated 981 dated 18.06.2019. Even after receipt of the requisition with letter of the Executive Officer on 18.06.2019 when petitioner no. 1 did not convene the special meeting, in exercise of power



conferred upon the requisitionists by Rule 2(i) of the No Confidence Motion Rules, 2010 the requisitionists sat together and fixed the date of special meeting on 03.07.2019, which was accordingly informed to the Executive Officer vide letter dated 27.06.2019. Copy of which has been brought on record as Annexure 'R-4' to the counter affidavit.

Learned counsel submits that all the Ward Councillors including petitioner no. 1 has already received notice much before 72 hours from the date and time of meeting. It is further stated that petitioner no. 2 refused to receive the notice of the special meeting when the Peon of the Nagar Panchayat had gone to serve notice upon her. The said notice of petitioner no. 2 has been returned with remarks of the Peon that petitioner no. 2 had refused to receive the notice of special meeting.

Learned counsel has relied upon the judgment of this court rendered in CWJC No. 13513/2018 (Nitu Kumar Vs. State of Bihar and others) and in CWJC No. 12545/2019 (Priyam Vs. State of Bihar and others) to submit that in the case of Nitu Kumari (supra) this court had



taken note of the conduct of the petitioner and attending circumstances to deny the discretionary relief under Article 226 of the Constitution of India. In the case of Priyam (supra) this court relied upon the judgment of the Hon'ble Division Bench of this Court in the case of **Sunita Devi Vs. State of Bihar** reported in **2016(1) PLJR 182** to take a view that this court sitting under Article 226 of the Constitution of India would not go into intensely disputed question of facts which require determination only by recording evidence.

Learned counsel, therefore, submits that the writ application is wholly mis-conceived and is fit to be dismissed.

Having heard learned counsel for the parties and on perusal of the records, this court finds that so far as the plea of routing of the notice through Executive Officer is concerned, the same cannot be accepted as the materials available on the record would show that Annexure '1' which is the copy of the requisition is originally addressed to the Chief Councillor of the Nagar Panchayat and it refers the various allegations point-wise levelled against the Chief



Councillor as well as Deputy Chief Councillor. It is the case of the petitioner that when this requisition was sought to be served upon the Chief Councillor, she went through the same but refused to receive it. This fact is also mentioned in the letter addressed to the Chief Executive Officer (Annexure '2'). For the present, sitting in its writ jurisdiction, this court is not going to determine the factual aspect of the case as to whether or not the requisition was sought to be served upon petitioner no. 1 and whether the petitioner no. 1 refused to receive the same. Prima-facie documents available on the record shows that in Annexure '2' which is addressed to the Executive Officer these facts are very much mentioned. If this is the position then no fault may be found with the action of the Executive Officer in issuing letter no. 981 dated 18.06.2019 addressed to the Chief Councillor and it cannot be said that it is a case of routing through.

In the case of **Arti Kumari (supra)** the requisition was though addressed to the Pramukh but it was routed through the Block Development Officer cum Chief Executive Officer which was found to be contrary to the



provisions underlying section 44(3)(i) of the Bihar Panchayat Raj Act, 2006. The learned coordinate Bench of this court has noted the facts in paragraph '8' of the judgment wherein it is recorded that the requisition was though addressed to the Pramukh but it was routed through the Executive Officer. In the same paragraph, the learned coordinate Bench has taken a view that there may be circumstances where a Pramukh avoids service and in such situation the requisition may be filed in the Samit office for its transmission to Pramukh or other mode or manner of service can be effected as provided under law. Since the requisition was itself addressed to the Pramukh through the Executive Officer, the principle of routing through was applied and the requisition was held to be bad.

In the present case, facts are totally different. The requisition is addressed only to petitioner no. 1 and it is not through the Executive Officer. It is only when the petitioner no. 1 refused to receive the same, the service was effected through the Executive Officer, therefore no fault may be found with the same.

As regards the vagueness of the allegations,



again this court is not persuaded to agree with the submissions of learned senior counsel inasmuch as it appears to this court that the requisition contains clear allegation and conveys what is to be discussed in the special meeting considering the 'No Confidence Motion'.

Learned counsel for the petitioner has though relied upon various judgments, however it would appear from a reading of those judgments that the factual details mentioned therein are different from the present case. In the case of Maskhur Alam (supra) the learned coordinate Bench of this court interfered with the requisition when it was found that the reasons/charges mentioned are absolutely vague and no-specific and no purposeful or responsible discussion is possible on the basis of the same in the special meeting. One of the reasons in the said case provided in the requisition was that the petitioner had absented himself on 3 – 4 occasions out of 17 meetings of the Panchayat Samiti and all those days permission of the appropriate authority had been obtained for valid reasons like illness/treatment of ailment etc. In the said case, learned counsel for the respondents was unable to meet the contention of the



petitioner and to show to the court as to how a reasonable discussion is possible over the charge mentioned in the notice. In the present case, this court is satisfied that the requisition mentions the charges with sufficient clarity and those are capable of being discussed in the special meeting.

This court finds no reason to interfere with the requisition and the special meeting convened on 3rd July, 2019.

The Writ Application as well as I.A. No. 01/2019 have no merit. Both are, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	02.07.2019
Uploading Date	03.07.2019
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