

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.838 of 2019

In

Civil Writ Jurisdiction Case No.5258 of 2019

=====

Manik Lal Prasad, S/o Mahendra Prasad (Chief Councillor- Khusrupur Nagar Panchayat, Patna), R/o Ward No. 03, Mohalla- Badisangat Chakchanda, P.O. and P.S.- Khusrupur, District- Patna.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate Patna.
4. The Sub-Divisional Officer, Patna City.
5. The Executive Officer, Nagar Panchayat, Khusrupur, Patna.
6. Ramkali Devi, Deputy Chief Councillor, Khusrupur Nagar Panchayat, R/o Neemtal, Khusrupur, P.O. and P.S.- Khusrupur, District- Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. P. K. Shahi, Senior Advocate Mr. Ranjan Kumar, Advocate Mr. Dhananjay Kumar Gupta, Advocate
For the Respondent Nos. 1 to 4	:	Mr. Yogendra Prasad Sinha (AAG 7)
For the Respondent No.5	:	Mr. Alok Ranjan, Advocate
For the Respondent No.6	:	Mr. S. B. K. Manglam, Advocate Mr. Ravi Ranjan, Advocate Mr. Kislay Raj, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-08-2019

Heard Shri P. K. Shahi, learned Senior Counsel for the
appellant and Shri S. B. K. Manglam, learned counsel for the



respondent no.6 as well as Shri Yogendra Prasad Sinha, learned Additional Advocate General-7 for the respondent Nos. 1 to 4 and Shri Alok Ranjan, learned counsel for the respondent no.5.

The appeal questions the conclusion drawn by the learned Single Judge while dismissing the writ petition filed by the appellant in respect of a no confidence motion having been carried out against him removing him from the office of the Chief Councillor, Khusrupur Nagar Panchayat, Patna.

The facts in short which are not disputed are that a requisition for carrying out no confidence motion signed by seven members was sent on 14th of January, 2019. However, before the date of the meeting for considering the proposal of no confidence against the appellant, the very same Councillors, who had moved the requisition, withdrew their letter on 4th of February, 2019.

After the said withdrawal, meetings were held thereafter and a fresh requisition was sent for convening a meeting to consider a no confidence motion against the appellant on 20th of February, 2019.

The notice for the said requisition was made known to the petitioner vide letter dated 25th February, 2019. Challenging the said proceedings initiated for a fresh no confidence motion, the appellant came up before this Court contending that the said



initiation was in violation of the provisions of sub-section (4) of Section 25 of the Bihar Municipal Act, 2007, inasmuch as, once the earlier proceedings of no confidence motion had been withdrawn, then a fresh no confidence motion could not have been brought again within one year of the previous initiation and secondly, even otherwise such a motion could not have been considered as the residual period of six months as contemplated in the last proviso of sub-section (4) of Section 25 was only left which created a bar for bringing about the said no confidence motion. Consequently, for the aforesaid two grounds, the no confidence motion was untenable that came to be challenged in the writ petition giving rise to the present controversy.

The writ petition was entertained and an interim order was passed on 15th March, 2019 to the effect that the results of the no confidence motion which was to be tabled on 18th March, 2019 shall not be declared.

The writ petition was ultimately heard and finally dismissed on 22nd July, 2019 whereafter the results were declared and the appellant has been removed by virtue of the no confidence motion that was carried out on 18th March, 2019.

Section 25(4) of the 2007 Act is extracted hereinunder for the ready reference:



“(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.”

While advancing his submissions, Shri P. K. Shahi, learned Senior Counsel has urged that once the previous no confidence motion had been initiated under the statutory provision of Section 25(4) of 2007 Act, then the presumption in law would be that the motion has been brought about and, therefore, the bar contained in the proviso to sub-section (4) of Section 25 would be clearly attracted. The entire proceedings being a nullity, the same deserves to be set aside. He further submits that counting the



residual period also, since the tenure was to come to an end on 18th January, 2020, therefore, such a motion could not have been given effect to with the declaration of results after the dismissal of the writ petition on 22nd July, 2019 as that would fall within six months of the period prescribed in the last proviso of Section 25(4).

Shri Manglam, learned counsel, on the other hand, contends that the motion was only initiated earlier and was not brought about for consideration or tabled for being debated upon or deliberated and, therefore, the same would not amount to bringing about a no confidence motion in terms of Section 25(4) of the 2007 Act so as to attract the bar under the provisos referred to therein. He contends that unless the motion is tabled, discussed and deliberated upon, the same would not amount to bringing about a motion. In essence, the argument is that unless the motion is brought about and defeated, the bar would not operate.

We have heard learned counsel for the State as well, and having perused the impugned judgement, we find that a threadbare analysis has been made of the provisions applicable to the controversy and the law in relation thereto. The meaning of the respective words used in the statute have also been discussed in detail and, therefore, we see no reason to differ from the same.



We may, however, observe that the initiation of a process of a no confidence motion is a mere proposal made through a requisition for the consideration of the removal of a person against whom the no confidence motion is sought to be tabled. It was, therefore, a notice of intention to do so, and not the actual culmination of the act of carrying out of the no confidence motion. The sending of a requisition is only a step in aid under the statutory provision which is the procedure to be followed for the purpose of tabling a discussion on the issue of a no-confidence motion. The word 'requisition' to our understanding means to make a request by way of a proposition or a proposal for consideration of a resolution which is to be deliberated upon. The mere requisition, therefore, in our opinion, would by itself not amount to a defeat or the passing of a resolution of a no confidence motion. This has to be understood in the light of the bar under the proviso which is attracted only if a motion is brought about and defeated. It is in the said contingency only that the proviso intends to restrain bringing about of a fresh no confidence motion within the period that has been provided for in both the provisos.

We, therefore, find that the contention raised on behalf of the appellant cannot be accepted keeping in view not only the plain language used in the provisions but also the purpose for



which the bar has been created. Unless the motion is brought about and something is allowed to happen or caused to happen, the contingency of the bar would not arise, inasmuch as, the operation of the statute for the bar to operate against such a motion would only be possible if a motion is brought about and defeated.

Consequently, for all the reasons aforesaid, we see no reason to interfere with the judgement of the learned Single Judge. The appeal lacks merit and is accordingly dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	21.08.2019
Transmission Date	

