

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1094 of 2019

In
Civil Writ Jurisdiction Case No.17563 of 2019

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Kaushal Kaushik (male), aged about 57 years, Son of Late Jagdish Prasad, Resident of Village- Nisarpura, P.O.- Amarpura, P.s.- Naubatpur, District- Patna, presently Chief Councilor, Nagar Panchayat, Naubatpur, P.O. and P.S.- Naubatpur, District- Patna.

... ..Petitioner- Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Patna, District- Patna.
4. The Executive Officer, Nagar Panchayat, Naubatpur, P.O. and P.S. Naubatpur, District- Patna.
5. Smt. Mitu Kumari,(female) aged about- 28 years, Wife of Sri Chandra Prakash, Resident of Ward No.5, Naubatpur, P.O. and P.S. Naubatpur, District- Patna, Presently Deputy Chief Councilor, Nagar Panchayat, Naubatpur, P.O. and P.S. Naubatpur, District- Patna.
6. Pyare Lal Son of not known to the appellant,
7. Surendra Prasad Son of not known to the appellant
8. Ramsidh Ram Son of not known to the appellant
9. Sangeeta Devi Wife of not known to the appellant
10. Geeta Devi Wife of not known to the appellant
11. Dewanti Devi Wife of not known to the appellant
12. Ashok Kumar Son of not known to the appellant
13. Raj Kumar Paswan Son of not known to the appellant
14. Subhash Kumar Son of not known to the appellant
15. Shailesh Kumar Son of not known to the appellant
16. Rita Devi Wife of not known to the appellant
17. Mridula Devi Wife of not known to the appellant

Respondent Nos. 6 to 17 are the Ward Councilors of Nagar Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat, Naubatpur, P.O. and P.S. Naubatpur, District- Patna.



18. The Senior Superintendent of Police, Patna.
19. The Jail Superintendent, Model Central Jail, Beur, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Kislay Raj, Advocate

For the State : Mr. Yogendra Pd. Singh, AAG-7

For the Respondent Nos. 6 to 15: Mr. P. K. Shahi, Senior Advocate
Mr. Ranjeet Kumar, Advocate

For the Nagar Panchayat : Mr. Madanjeet Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-09-2019

Heard Shri S. B. K. Manglam, learned counsel for the appellant, Shri P. K. Shahi, learned Senior Counsel for the respondent nos. 6 to 15, Shri Yogendra Prasad Sinha, learned counsel for the State and Shri Madanjeet Kumar, learned counsel for the Nagar Panchayat, Naubatpur, District-Patna.

This appeal questions the correctness of the impugned order of the learned Single Judge dated 29th August, 2019 whereby a challenge raised to the convening of a special meeting for consideration of a No Confidence Motion against the appellant was turned down with a further direction to convene the meeting as directed under the impugned judgement. The appellant admittedly is in judicial custody and is lodged in



Beur Jail.

Shri Manglam has advanced his submissions contending that an order dated 11th of July, 2019 was passed removing him when the appellant was still in custody in terms of Section 25(5) of the Bihar Municipal Act, 2007. The same came to be challenged by the petitioner in CWJC No.15396 of 2019 and the following interim order has been passed therein on 31.07.2019:-

"Heard learned counsel for the petitioner and learned counsel representing the State.

I.A.No.1 of 2019 has been filed seeking stay of the election of the Chief Councillor of Naubatpur Nagar Panchayat which is scheduled to be fixed on 01.08.2019 and for which the State Election Commission has notified the date vide Annexure-P-16. A prayer has also been made to allow the petitioner to amend the writ application and to add the State Election Commission(Municipality) through the State Election Commissioner as party respondent no.5 in the writ petition.

Learned counsel for the State has no objection to the amendment and addition of parties as sought for on behalf of the petitioner.

Thus, let the State Election Commission (Municipality) through State Election Commissioner be added as party respondent no.5 in course of the day. Learned counsel for the petitioner undertakes to serve two copies of the



writ application and interlocutory application upon learned counsel representing the State Election Commission today itself.

Let the prayer made in the interlocutory application to amend the writ application be allowed. The statements and the prayer made in paragraph 2 of the interlocutory application be treated as part and parcel of the writ application.

So far as the prayer for grant of stay is concerned, learned counsel for the petitioner has drawn the attention of this Court towards the specific statements made in paragraphs 53, 54, 55, 56 and 57 of the writ application which read as under:-

“53. That, the aforesaid letter of respondent no.2 was since not served upon the petitioner before 1 P.M. of 18.06.2019, he was not aware about the date fixed for hearing. He was, therefore, neither in position to appear before the Respondent no.2 personally nor he had any occasion to authorize any lawyer to appear on his behalf while the matter was to be heard by the Hon’ble Minister at 1.00 P.M. of 18.06.2019.

54. That, the petitioner would state that the aforesaid letter of Respondent no.3 contained in memo no.2916 dated 10.06.2019 was served upon the petitioner through the Jail Superintendent on 18.06.2019 but at 4.55 P.M. and by that time everything was over.

55. That, at this juncture, it is relevant to state that along with the petitioner, the proceeding under Section 25(5) of the Municipal Act was initiated against the Deputy Chief Councilor of Naubatpur Nagar Panchayat also and she was also directed to appear in the office chamber of Hon’ble Minister on 18.06.2019 at 1.00 P.M. for the purposes of hearing.

56. That, the petitioner has been informed that on 18.06.2019, the Deputy Chief Councilor along with his lawyer went to the office chamber of Hon’ble Minister for the purposes of hearing but the Hon’ble



Minister was not available in his office, the learned Advocate of the Deputy Chief Councilor met the private Secretary of the Hon'ble Minister when he was told that the Hon'ble Minister would not hold the court today for the reason that in view of the sudden tour program of the Hon'ble Chief Minister of Muzaffarpur District, the Hon'ble Minister is staying at Muzaffarpur to receive the Hon'ble Chief Minister.

57. That, other lawyers had also gone to attend their cases fixed for hearing before the Hon'ble Minister at 1 P.M. of 18.06.2019 but since the Hon'ble Minister was not available, the learned Advocate of the Deputy Chief Councilor as also the other lawyers had filed their attendance before the private Secretary of the Hon'ble Minister and thereafter they came back."

Today a counter affidavit has been filed on behalf of the respondent nos.2, 3 and 4. Although the statements made in the writ application were before answering respondents but they have chosen not to specifically deny the statements. In one of the paragraphs after saying that the petitioner was informed regarding the date of hearing of the matter on 18.06.2019 at 1.00 PM a further statement has been made in the next paragraph that the Hon'ble Departmental Minister duly authorized the respondent no.2 on 20.06.2019 to pass an order in this matter on the basis of available documents and evidence in accordance with law. There is no denial of the fact that the notice calling upon the petitioner to appear for hearing on 18.06.2019 was served upon him through the Jail Superintendent on 18.06.2019 at 4.55. There is no denial of the fact stated in the writ application that on 18.06.2019 the Departmental Minister was not available for hearing and several counsel had returned after filing their attendance



before the private Secretary of the Hon'ble Minister.

Learned counsel for the State submits that although there is no specific denial of those statements, but the respondents have given statements in paragraph 8 of the counter affidavit that all facts which have not been denied shall be deemed to have been denied if not specifically admitted.

In the opinion of this Court, such statements are only vague statements and cannot be said to be a denial of the facts alleged in the writ application.

Learned counsel for the answering respondents submits that he would file an additional counter affidavit to meet the aforesaid points.

He can do so.

In the aforesaid view of the matter, this Court finds a prima-facie case for staying the operation of the impugned order as contained in Annexure-P-15 to the writ application. Accordingly, the impugned order as contained in Annexure-P-15 also also the subsequent action including scheduled election shall remain stayed.

I.A. No.2 of 2019 has been filed for impleading the intervenor as party respondents in this writ application.

I. A. is allowed. Let the intervenors be added as party respondents no.6 and 7 in this writ application.

Let this matter be listed on 19th August, 2019 under the heading 'To Be Mentioned.'

After the grant of the interim relief, the contesting



respondents proposed to requisition a special meeting for holding a No Confidence Motion against the appellant as well as the Deputy Chief Councillor. The appellant, who is the Chief Councillor, is admittedly behind bars on account of his alleged involvement in a criminal case and since he is in jail, a requisition signed by 10 of the Councillors was moved through the Superintendent, Beur Jail to the appellant, who is conferred with the authority of convening such a meeting in terms of Rule 2(i) of the Bihar Municipal No Confidence Motion Process Rules, 2010. On receipt of such requisition, the appellant instead of fixing a date for meeting despatched a request to the Principal Secretary, Urban Development Department on 17th August, 2019 requesting him to let him know as to whether a meeting could be convened by him or not. As per the submissions raised, no response was given by the Principal Secretary, and the Councillors who had moved the requisition, filed an application before the Executive Officer of the Nagar Panchayat on 21st of August, 2019 fixing the date of No Confidence Motion as 30th August, 2019.

Shri Manglam submits that since the appellant had asked the State Government itself as to whether he would be able to exercise the authority for convening the meeting or nor



as he was behind bars, there was no occasion for any application being entertained by the Executive Officer unless it was found that the appellant could not convene the meeting on any legal or valid basis. It is, therefore, submitted that the Executive Officer usurped the authority for convening the meeting and any meeting held pursuant thereto is a nullity.

Shri Manglam contends that the learned Single Judge has erroneously construed the provisions of the 2007 Act read with the 2010 Rules and even otherwise as an alternative argument he has urged that if the appellant could not perform his function by reason of his detention, then in view of the provisions of Section 26 of the Bihar Municipal Act, 2007, the Councillors could have moved before the Deputy Chief Councillor, who was competent to convene the meeting. Consequently, in this background, there was no occasion to have approached the Executive Officer for convening of the meeting. Thus, the entire meeting was held in violation of the statutory provisions aforesaid and the appellant being a public servant in terms of Section 20 read with Section 417 of the 2007 Act, such removal is unwarranted and undemocratic.

It is further submitted that there was no failure on the part of the appellant to perform his duty so as to enable the



Councillors and the Executive Officer to invoke the provisions under which the meeting has been convened. It is further submitted that in the event, it is found that the appellant's detention incapacitated him from functioning as the Chief Councillor, then the only recourse was to get the meeting convened through the Deputy Chief Councillor and not otherwise.

Shri Manglam has further urged that the manner in which the appellant was despatched for attending the meeting under the directions of the learned Single Judge were also not in accordance with the statutory provisions and he has also filed I.A. No.03 of 2019 praying for setting aside all consequential proceedings upon the meeting which has already been convened on 30th August, 2019 and the motion is said to have been carried out against him.

A supplementary affidavit has also been filed, but during the course of the arguments, Shri Manglam urged that the aforesaid I.A. No.03 of 2019 be permitted to be withdrawn as it is with regard to a cause of action relating to the merits of the No Confidence Motion which he will contest before the appropriate forum in accordance with law.

Having heard Shri Manglam, we allow him to



withdraw I.A. No.03 of 2019 which shall stand dismissed as withdrawn without prejudice to the rights of the appellant to contest the outcome of the No Confidence Meeting held on 30th August, 2019, except in so far as it stands concluded by the present proceedings.

Shri P. K. Shahi, learned Senior Counsel for the contesting respondents and the learned counsel for the State and the Nagar Panchayat have all come forward to contend that there is no legal bar in fixing the date of the meeting by the Chief Councillor even if he is behind bars and is lodged in Beur Jail. Their contention is that since the law and the statute do not prevent him from exercise of such power while remaining behind bars, there was no occasion for him to have carved out an excuse for seeking guidance from the Principal Secretary of the Department. They contend that this was done deliberately to forestall and scuttle the initiation of the process of the special meeting and consequently, there was a complete failure on his part to perform his duty as enjoined under Rule 2(i) of the 2010 Rules, whereupon the only option left was to get the meeting convened as per Rule 2(iii) of the 2010 Rules.

It is further submitted that to this extent, the appellant was neither incapacitated nor he was prevented from



anybody from participating in the meeting and which had also been assured by the learned Single Judge through the impugned order whereafter the appellant was produced in custody for participating in the meeting.

The contention, therefore, is that failure on the part of the appellant cannot be made an excuse for invoking the extraordinary writ jurisdiction of this Court for quashing of the process adopted for convening the meeting.

Shri Manglam, for the appellant, however contends that by virtue of such a method having been adopted, the appellant has been deprived of interacting with the members within the period of seven days as statutorily provided which gives a breathing time to muster support in a matter of No Confidence Motion. It is, therefore, urged that this deprivation of opportunity also vitiates the process of the meeting that was to be convened under the impugned directions. Shri Manglam, therefore, contends that the right of the appellant to continue as the Chief Councillor has been throttled without taking recourse to law and, therefore, the appeal deserves to be allowed and the impugned judgement as well as the entire process of convening the meeting should be declared a nullity.

Learned counsel for the State and for the Nagar



Panchayat have supported the arguments raised on behalf of the contesting respondents.

Having heard learned counsel for the parties, it is correct that the liberty of a person while in custody is temporarily curtailed. However, to what extent he cannot exercise his rights would depend upon the nature of the statutory powers conferred on such a person, in this case on the Chief Councillor of a Nagar Panchayat. We may extract the Rule 2(i) (ii) and (iii) of the 2010 Rules hereinunder which is relevant for the present controversy.

2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor shall be considered and disposed of as per the following process:-

- (i) To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. **Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of requisition and the meeting shall be convened within fifteen days of the**



date of issuance of the notice.

(ii) The Special Meeting shall be presided by the Chief Councillor, if the No Confidence motion is against the Deputy Chief Councillor and shall be presided by the Deputy Chief Councillor, if the No Confidence motion is against the Chief Councillor and if it is against both the Chief Councillor and the Deputy Chief Councillor, the meeting shall be presided over by the Councillor elected for the purpose by the Councillors in the meeting. In case of post of Deputy Chief Councillor being vacant or in his absence from the meeting convened for discussion on No Confidence Motion against the Chief Councillor or the post of the Chief Councillor being vacant or in his absence from the meeting convened for discussion against the Deputy Chief Councillor, the meeting shall be presided over by the member elected for the purpose in the meeting by the Councillors.

(iii) In case the notice not being issued by the Chief Councillor within the stipulated date or not convening the meeting within stipulated time, the special meeting shall be called by the requisitionists as per the provision of Section 48(3) of the Municipal Act, 2007 and the notice for it shall be issued by the Chief Municipal Officer.”

A perusal thereof leaves no room for doubt that the



requisition signed by not less than one third of the total numbers of the elected Councillors shall be given to the Chief Councillor for convening of the special meeting. The Chief Councillor within seven days of the requisition **shall issue notice** for convening of the said special meeting and the date of such meeting shall be within fifteen days of the date of the issuance of the notice. In the instant case, the notice was admittedly received by the appellant on 13th August, 2019. The appellant did not fix the date of the meeting which is also an admitted fact. It is in this background that the argument advanced on behalf of the appellant is that he had sought instruction from the Principal Secretary.

We find this not to be a correct approach, inasmuch as, if the appellant had any doubts about the exercise of his powers and he wanted to clarify it from anybody, then such an attempt made by him does not debar him from issuing an order for convening a meeting or for fixing a date of meeting. Rather the rule mandates that the Chief Councillor “shall” issue notice within seven days. He could have taken an advice but on the pretext of taking advice or seeking guidance, he could not have refused or even withheld the exercise of the powers conferred on him under Rule 2(i) of the 2010 Rules. We have been unable



to locate any such statutory bar in the said provision to this limited extent. It is something different that any other exercise of powers which may have required his attendance outside the jail could be treated to be curtailed, but so far as endorsing a date for convening of the meeting and fixing a date in relation thereto does not appear to be barred under the aforesaid statutory provision while the appellant was in detention.

The contention of Shri Manglam is that even otherwise there was an option that the Deputy Chief Councillor could have been approached for convening of such meeting. This option could be made available if the Chief Councillor was either unavailable on any of the counts as mentioned in Section 26 of the 2007 Act. Section 26 is extracted hereinunder for ready reference:-

26. Deputy Chief Councillor.- (1) The Deputy Chief Councillor shall, in the absence of the Chief Councillor, preside over the meetings of the Municipality.

(2) When-

- (a) the office of the Chief Councillor falls vacant by reason of death, resignation, removal or otherwise, or
- (b) the Chief Councillor is, by reason of leave, illness or other cause, temporarily unable to exercise the powers, perform the functions, or discharge the duties, of his office, the Deputy



Chief Councillor shall exercise the powers, perform the functions, and discharge the duties, of the Chief Councillor until a Chief Councillor is elected under sub-section (3) of section 23 and enters office or until the Chief Councillor resumes his duties.

(3) The Deputy Chief Councillor shall, at any time, exercise such other powers, perform such other functions, and discharge such other duties, as may be delegated to him under the provisions of this Act.

A permanent unavailability of the Chief Councillor authorizes the Deputy Chief Councillor to convene and preside over the meeting. The temporary disabilities of a Chief Councillor have also been included therein where the Deputy Chief Councillor can be approached. In the instant case, the Chief Councillor was available, but he was in jail. His availability was, therefore, not inaccessible and the requisition was made available to him through the jail authorities. The appellant has admitted having received the requisition on 13.08.2019. Thus, there was neither a permanent or a temporary unavailability condition that could have impelled the Councillors to approach the Deputy Chief Councillor. Consequently, this argument of Shri Manglam also does not hold water.



Shri Manglam has then urged that the appellant has lost the opportunity of interacting with his Councillors before the meeting could be held. This cannot be, in our opinion, claimed as a matter of right when his own liberty was curtailed in accordance with law and he was behind bars. If he wanted to communicate with his Councillors, he would have done it only in accordance with the Jail Manual or those persons desirous to meet him could have met him in accordance with the said provisions. Thus, there was no such total prohibition of interaction, but a right to interact cannot be claimed in the said given circumstances. Any such deprivation of interaction, therefore, cannot be a basis for raising a challenge merely because the statute provides for only a seven days gap and nothing more. The right to interact, therefore, is not a statutory right but is sought to be inferred on the strength of the time period which has been indicated in the statute. Consequently, there is no such vested right deprivation whereof cannot result in invalidity of the meeting that was convened.

As a passing reference, it may be observed that in matters like this where occupants of such offices are facing trial and are behind jail do not have a right in all circumstances to participate in the proceedings. The curtailment of liberty in such



circumstances has been dealt with in several cases including the right of legislators in the Assembly of Parliament to participate in the proceedings of the house. The illustrative judgement in the case of **Ankul Chandra Pradhan Versus Union of India & Ors.**, reported in (1997) 6 SCC 1. Paragraph 8 is extracted hereunder;-

8. There are other reasons justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police force and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62. A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called



unreasonable.”

Thus, a restriction on the movement is not on account of any unlawful act, but a result of the own conduct of the appellant which may have resulted in his detention. The same view has been taken in other judgements by several other High Courts that need not delineate herein.

We, therefore, find that the appellant was very much obligated to perform his duty of fixing a date for which requisite documents had been made available to him and he on his own volition and by exercising his own option not to fix the date denuded himself from any further action which stood conferred on the Chief Municipal Officer under the statutory terms who was well within his jurisdiction to have acted on the requisition made by the Councillors.

In the background aforesaid, the entire procedure for convening of the special meeting of no confidence motion on 30th August, 2019 did not suffer from any legal or factual infirmity. Apart from this, learned Single Judge has also taken care that the appellant is not deprived of his opportunity to participate in the said proceedings.

We, therefore, for all the reasons aforesaid, do not find any reason, much less a lawful reason to interfere with the



impugned judgement. The appeal lacks merits and is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.09.2019
Transmission Date	

