

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16628 of 2019

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Deepak Kumar Mandal Son of Prithwi Chandra Mandal Resident of Village-Shanti Tola Fashiya, P.S. Amdabad, District Katihar, at present resident of Ward No. 44, P.S. Town, District Katihar

... .. Petitioner/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 Director (Municipal Administration) Urban Development and Housing Department, Government of Bihar, Patna
4. The District Magistrate-cum-District Election Officer (Municipality) Katihar
5. The Mayor Municipal Corporation, Katihar
6. The Deputy Mayor Municipal Corporation, Katihar
7. The Municipal Commissioner Municipal Corporation, Katihar
8. Anita Sharma Wife of Jagdish Sharma Resident of Mohalla-Ward No. 1, Mirchaibari, P.S. Sahayak, District-Katihar
9. Anita Giri Wife of Radhe Shyam Giri Resident of Ward No. 2, P.S. Sahayak, District-Katihar
10. Arun Kumar Azad Son of Ange Lal Prasad R/o Ward No. 3, P.S. - Muffasil, District-Katihar
11. Suman Sharma Wife of Late Pameshwar Jha R/o Ward No. 4, P.S. Sahayak, District-Katihar
12. Gunjan Ghosh Wife of Sri Manish Ghosh Resident of Mohalla-Ward no. 5, ITI More, Mirchaibari, P.S. Sahayak, District-Katihar
13. Krishna Kumar Son of Sri Baldev Singh R/o Mohalla Ward No. 6, Mirchaibari, P.S. Sahayak, District-Katihar
14. Pushpa Devi Wife of Rajan Yadav R/o Ward No. 7, P.S. Sahayak, District-Katihar
15. Pappu Kumar Paswan Son of Late Nandlal Paswan R/o Mohalla-Ward No. 8, Sitla Asthan, Mirchaibari, P.S. Sahayak, District-Katihar
16. Chandra Shekhar Yadav Son of Shiv Raj Yadav R/o Ward No. 9, P.S. Sahayak, District-Katihar
17. Ramesh Yadav Son of not known to the petitioner R/o Ward No. 10, P.S. Sahayak, District-Katihar
18. Rupesh Kumar Das Son of Late Chandan Das R/o Ward No. 11, P.S. Sahayak, District-Katihar
19. Usha Devi Wife of Prithvi Chandra Yadav R/o Ward No. 12, P.S. Sahayak, District-Katihar
20. Anju Devi Wife of Vijay Kumar Baitha R/o Ward No. 13, P.S. Sahayak, District-Katihar



21. Deepak Paswan Son of not known to the petitioner R/o Ward No. 14, P.S. Sahayak, District-Katihar
22. Dipak Kumar son of Sri Nikhilesh Kumar Singh R/o Mohalla-Ward No. 15, Mirchaibari, P.S. Sahayak, District-Katihar
23. Shiv Raj Paswan Son of not know to the petitioner Resident of Ward No. 16, P.S. Town, District-Katihar
24. Manju Devi Wife of Shiv Raj Paswan Resident of Ward No. 17, P.S. Town, District-Katihar
25. Rinku Devi Wife of Raj Kumar Sah Resident of Ward No. 18, P.S. Town, District-Katihar
26. Geeta Devi Wife of Ganesh Paswan Resident of Ward No. 19, P.S. Town, District-Katihar
27. Babli Devi Wife of Sri Binod Prasad Gupta Resident of Ward No. 20, P.S. Town, District-Katihar
28. Naushad Kureshi Son of not known to the petitioner Resident of Ward No. 21, P.S. Town, District-Katihar
29. Poonam Devi Wife of Shatrughan Singh Resident of Ward No. 22, P.S. Town, District-Katihar
30. Sameema Ibrar Wife of Md. Ibrar Resident of Ward No. 23, P.S. Town, District-Katihar
31. Sama Praveen Wife of Md. Ashif Resident of Ward No. 24, P.S. Town, District-Katihar
32. Anuradha Devi Wife of Ranjeet Sah Resident of Ward No. 25, P.S. Town, District-Katihar
33. Gajala Khatoon Wife of Pappu Choudhary Resident of Ward No. 26, P.S. Town, District-Katihar
34. Naseem Ansari Son of not know to the petitioner Resident of Ward No. 27, P.S. Town, District-Katihar
35. Kishan Bazaz Son of not know to the petitioner Resident of Ward No. 28, P.S. Town, District-Katihar
36. Julekh Praveen Wife of Md. Zameel Resident of Ward No. 29, P.S. Town, District-Katihar
37. Bimal Singh Begani Son of Sobha Chandra Begani Resident of Ward No. 30, P.S. Town, District-Katihar
38. Arun Yadav Son of not know to the petitioner Resident of Ward No. 31, P.S. Town, District-Katihar
39. Kamal Das Son of not known to the petitioner Resident of Ward No. 32, P.S. Town, District-Katihar
40. Vijay Singh son of not known to the petitioner Resident of Ward No. 33, P.S. Town, District-Katihar
41. Kanchan Mahto Wife of Jay Prakash Mahto Resident of Ward No. 34 P.S. Town, District-Katihar
42. Nishi Mahto Wife of Pramod Mahto Resident of Ward No. 35, P.S. Town,



District-Katihar

43. Umesh Choudhary son of not known to the petitioner Resident of Ward No. 36, P.S. Town, District-Katihar
44. Suraj Rai Son of not known to the petitioner Resident of Ward No. 37, P.S. Town, District-Katihar
45. Sudha Mahto Wife of Sanjay Mahto Resident of Ward No. 38, P.S. Town, District-Katihar
46. Geeta Devi Wife of not known to the petitioner Resident of Ward No. 39, P.S. Town, District-Katihar
47. Bhola Sahni Son of not known to the petitioner Resident of Ward No. 40, P.S. Town, District-Katihar
48. Nusrat Khatoon Wife of Md. Khalik Resident of Ward No. 41, P.S. Town, District-Katihar
49. Md. Yaseen son of not known to the petitioner Resident of Ward No. 42, P.S. Town, District-Katihar
50. Babita Devi Wife of Kashi Mandal Resident of Ward No. 43, P.S. Town, District-Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh Mr. Vinay Ranjan
For the Respondent/s	:	Mr. Rajiv Roy (GP-1) With Mr. Arun Kumar, AC to GP-1
For Respondent Nos. 5 to 40:		Mr. P.K. Shahi, Sr. Advocate Mr. Arjun Kumar, Advocate
For Municipal Corporation:		Mr. Satya Prakash Tripathy, Advocate Mr. Satya Vrat, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

15 05-03-2020 Sub-section (4) of Section 25 of the Bihar Municipal Act, 2007 (hereinafter referred to as ‘the Act’) provides that a Chief Municipal Councillor of a Municipal Corporation may be removed from the office by a resolution carried out by majority of the whole number of Councillors holding the office for the time being, at a special meeting to be called for this purpose, in the manner prescribed, upon requisition made in writing by not



less than 1/3rd of the total number of Councillors. It further contemplates that the procedure for conduct of business in the special meeting shall be such 'as may be prescribed'.

2. It may be noted at this stage that in relation to Municipal Corporation, Chief Councillors means the Mayor as defined under sub-section (20) of Section 2 of the Act. The present matter relates to Municipal Corporation, Katihar and a 'no confidence motion' brought against its Mayor, which has been declared to have been defeated.

3. It must also be noted at this stage that Rules have been framed by the State Government in exercise of the powers conferred by Sections 25(4) and 419 of the Act, namely, Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as 'the Rules'). Keeping in view the nature of controversy, which has emerged in the present proceeding, based on the pleadings on record and submissions advanced on behalf of the parties, I consider it apt to refer to Rule 2 (viii) of the Rules, which reads as under:-

“2(viii) On completion of the process the Chief Municipal Officer shall submit a written report to the State Election Commission.”



4. A Chief Municipal Officer, in relation to Municipal Corporation is called Municipal Commissioner within the meaning of the Act. In the background of the aforesaid statutory provisions, the facts of the case need to be discussed for addressing the controversy which has arisen.

5. I have heard Mr. Bindyachal Singh, learned counsel appearing on behalf of the petitioner, Mr. P.K. Shahi, learned Senior counsel, appearing on behalf of the Mayor, Municipal Corporation, Katihar, who has been impleaded as respondent No.40 also in individual capacity.

6. Mr. Satya Prakash Tripathi, learned counsel has represented, Katihar Municipal Corporation, whereas Mr. Arun Kumar, learned Assistant Counsel to Government Pleader No.1, has appeared on behalf of the State of Bihar.

7. The petitioner in the present writ application has sought for a direction to send forthwith, a copy of the minutes of the special meeting of no confidence motion held on 16.07.2019 to the State Election Commission, and according to the petitioner the said motion was successfully carried out. An Interlocutory Application seeking amendment in the writ application has been filed on behalf of the petitioner registered as I.A. No. 2 of 2019 seeking quashing of the minutes of the



proceeding dated 16.07.2019, which has been brought on record by way of Annexure R/4 to the counter affidavit filed on behalf of respondent No.7, whereby the no confidence motion brought against the Mayor of Katihar, Municipal Corporation (hereinafter referred to as 'the Corporation'), is said to have been defeated and dropped on the ground that out of 31 votes which were cast, only 22 were found to be valid, which were in favour of no confidence motion. The whole number of Councillors holding the office of the Corporation is 45 and, therefore, in order to successfully carry out the no confidence motion, 23 votes were required. The petitioner, in such situation, intends to amend his relief in the main writ application by seeking following reliefs, in addition to the main relief:-

“i. For issuance of a writ in the nature of certiorari and any other appropriate writ for quashing the minute of the proceeding dated 16.07.2019 (Annexure R/4 and Annexure F of the respective Counter Affidavit) whereby No Confidence Motion against the Mayor of the Katihar Municipal Corporation (herein after referred as KMC) is said to be



defeated and dropped as only 22 votes out of 31 casted votes are in favour of No confidence Motion whereas 9 votes are declared to be invalid.

ii. For holding that the minute of the proceeding dated 16.07.2019 to consider the proposal for No confidence against the Mayor is absolutely illegal and unsustainable being violative of the statutory provision and also is not signed and authenticated by the Deputy Mayor who presided the said meeting.

iii. For producing the all the ballot papers which was casted by the Counselors in the proceeding/meeting dated 16.07.2019 and also for holding that only 8 votes are invalid whereas 23 votes are casted in favour of No confidence Motion and accordingly No Confidence Motion against the Mayor is deemed to have been passed against him as per the statutory requirement as



prescribed under Section 25(4) of the Bihar Municipal Act, 2007.

iv. For issuance of appropriate writ either for quashing or recalling of all subsequent communications to different authorities mentioning therein that No Confidence Motion against the Mayor is defeated.”

8. The relief which the petitioner intends to seek by amendment, is evidently integrally connected with the main relief as sought in the writ application.

9. I.A. No. 02 of 2019 is, accordingly, allowed. The averments made in I.A. No. 02 of 2019 shall form part of the pleadings on behalf of the petitioner. The relief, which the petitioner is seeking stands amended accordingly.

10. All the Councillors of the Corporation have been impleaded as parties in the writ application and upon most of whom the notices of the present writ application have been served. When the matter was taken up on 06.01.2020, the Court had desired Municipal Corporation, Katihar to ensure that respondent Nos. 23,24,32,37,38,43,45 and 47, who are



Councillors are informed about filing of the present application. From order dated 09.12.2019, it appears that the process server had reported that the said respondents did not meet and their notices were hung on their respective doors. The Municipal Commissioner was also asked to inform the said respondents about the pendency of the present case. Rest of the respondents have either been served notices or have entered appearance.

11. In order to come to the main controversy, certain facts, which are not in dispute and have been stated in the counter affidavits filed on behalf of the contesting respondents, viz, the Mayor and Municipal Commissioner of the Corporation are being taken note of, first. Respondent No.40 is the elected Mayor of the Corporation. A requisition under Section 25(4) of the Act read with Rule 2 of the Rules was presented on 25.06.2019 before him to fix a date of special meeting for bringing no confidence motion against him on certain allegations of financial and other irregularities, as mentioned in the requisition. On such requisition, the Municipal Commissioner convened a special meeting on 16.07.2019 for no confidence motion, which was communicated to all the Municipal Councillors of the Corporation. A special meeting was held, which was presided over by the Deputy Mayor, the no



confidence motion being against the Mayor. A request was made by the Municipal Commissioner to the District Magistrate to appoint an Observer for the voting and further to depute a Magistrate along with male and female constables to maintain law and order during the meeting. The Director, DRDA, Katihar was appointed as an Observer. In the said meeting, out of 45 Councillors, 35 were present. Four of the Councillors declined to participate in the voting, when the Councillors were put to vote.

12. Dispute begins here. It is the case of the petitioner that eight votes were declared invalid and there were 23 valid votes cast to support the no confidence motion. It is the case of the respondents, on the other hand, that nine votes were declared invalid and there were 22 votes cast in support of the no confidence motion and, therefore, less than half of the whole number of Councillors (45) cast their votes in favour of no confidence motion, the no confidence motion stood defeated, which was declared by the Deputy Mayor. It is the case of the contesting respondents that outcome of the special meeting convened to discuss and vote on no confidence motion was duly communicated to the District Magistrate, Katihar, Principal Secretary, Urban Development and Housing Department, Bihar



and the Secretary, the State Election Commission, Bihar.

13. It is the case of the petitioner that contesting respondents have bungled the entire records/proceedings of the special meeting held on 16.07.2019 and incorrect stand is being taken on their behalf that the no confidence motion has failed.

14. I have quoted the sub-rule (viii) of Rule 2 of the Rules in the very beginning for the purpose that the said provision casts an obligation on the Municipal Commissioner to submit a written report to the State Election Commission on completion of the process. The said specific provisions makes me to consider the facts narrated in the counter affidavit filed by the Municipal Commissioner, Katihar.

15. The Municipal Commissioner, Katihar has stated that nine votes were declared invalid and, therefore, since there were only 22 votes cast in support of no confidence motion, the same was declared to have failed. He has further stated that the minutes of the proceeding of the special meeting was signed by the Municipal Commissioner on the same day and the City Manager, Afzar Islam was directed to get it signed by Deputy Mayor, once he came to his office. The said Afzar Islam was directed to keep entire records in his safe custody. He further states that through letter No. 924 dated 16.07.2019, report of the



proceeding of no confidence motion and outcome of the meeting of the special Committee of failure of no confidence motion was sent to the District Magistrate, the Principal Secretary, Urban Development and Housing Department, Bihar, and Secretary, the State Election Commission, Bihar. A copy of the said report has been brought on record by way of Annexure-R/4 to the counter affidavit. He has also stated that the Observer too, sent a report to the District Magistrate, Katihar, regarding failure of the no confidence motion by a separate communication. There is no averment in the counter affidavit as to when was the proceedings of the meeting was signed by the Deputy Mayor as according to the own case of respondent No.7, he had handed over the minutes of the proceeding to the City Manager on 16.07.2019 itself.

16. He further states that three days thereafter on 19.07.2019, the City Manager came to his residence with certain papers and upon having been asked by the Municipal Commissioner, he informed that same related to proceedings of the special meeting regarding no confidence motion. It is also his case that despite that he was asked by the Municipal Commissioner to carry the papers to the office, he left them behind at the residence of the Municipal Commissioner. He has



also narrated that thereafter the Municipal Commissioner was going to his office in a two wheeler with another person with the entire papers relating to the said no confidence motion, which were left behind by the City Manager. He has asserted that when he was on way to his office, one Kishan Bajaj, claiming himself to be a veteran criminal aided by other persons intercepted him and abducted him in the car. Entire papers relating to no confidence motion were snatched by them and they forcibly obtained signatures of the Municipal Commissioner on certain papers. Names of certain other persons have been mentioned in the counter affidavit, who are said to have reached when they were summoned by the miscreants. All of them are said to have torn the papers of the proceeding which were already affixed on the file of the proceeding and another papers signed by one Manjar Khan was affixed on the register. The Municipal Commissioner asserts that he was thrown out of the car on an over-Bridge whereafter he got registered a police case as Katihar Town P.S. Case No. 57 of 2019. On the same day, he got instituted Town P.S. Case No. 458 of 2019 against the City Manager with the accusation that he had made certain interpolations/interferences with the records relating to no confidence motion, which were kept in his safe custody, in



connivance with some of the Councillors.

17. He has stated in paragraph 17 that the person who presides over the meeting does not participate in the voting as per mandate of Section 51(2) of the Act and he can vote in case of a tie only. He has averred that the Deputy Mayor, who was presiding over the meeting illegally cast his vote and later on, he committed offence against the Municipal Commissioner. It is curious to note that the Municipal Commissioner has relied on the newspapers report in support of the fact that no confidence motion was defeated.

18. The facts, which have been averred in the counter affidavit filed on behalf of the Municipal Commissioner have been duly supported in the counter affidavit filed on behalf of the Mayor.

19. Mr. Bindyachal Singh, learned counsel appearing on behalf of the petitioner has submitted that the Municipal Commissioner has got frustrated the very objective of sub-Rule (viii) of Rule 2 of the Rules by failing to maintain and produce the original records of the proceedings of the special meeting held for no confidence motion on false pretext of the original documents having been destroyed by the persons named in the two First Information Reports. He has argued that the admitted



fact that all such votes which were cast and were treated to be valid were in support of no confidence motion, goes to suggest that majority of the Councilors of the Corporation were in support of no confidence motion and by the act of manipulation, a vote which was cast in favour of no confidence motion has been counted as invalid for the sole purpose of defeating the motion.

20. *Per contra*, Mr. P.K. Sahi, learned Senior Counsel appearing for the Mayor of the Corporation has contended that there has been no infraction of any statutory provision and requirement of communication of the report to the State Election Commission has been complied, as can be seen from the counter affidavit filed on behalf of the Municipal Commissioner. He has argued that the events subsequent to holding of the special meeting as narrated in the counter affidavits of the Municipal Commissioner and the Mayor of the Corporation leading to lodging of the criminal cases have been perpetrated at the behest of disgruntled Councillors whose whose design to dislodge the duly elected Mayor stood defeated, with the failure of the no confidence motion. He has also submitted that the disputed questions of facts arising out of rival pleadings of parties may not be gone into by this Court in the



present proceedings under Article 226 of the Constitution of India.

21. The case of the Municipal Commissioner and the Mayor of absence of the original proceedings of the special meeting held to discuss no confidence motion, in my view, casts shadow on the *bona fide* of the stand taken on behalf of the respondents, as discussed above. This, in my opinion, has rendered the sanctity of the meeting itself, vulnerable. The plea that communication of the written report by the Municipal Commissioner to the State Election Commissioner amounts to full compliance of the requirement under sub- rule (viii) of Rule 2 of the Rules cannot be accepted by the Court also for the reason that there is complete silence over the fact whether the proceedings were signed by the Deputy Mayor or not, who had presided over the meeting. It is made clear that the observation made herein, should not be understood as the Court's finding that the report, which was sent by the Municipal Commissioner on 16.07.2019 contained incorrect facts. It is, however, the Court's opinion that there is no material basis available, which can be examined and put to scrutiny to reach a definite conclusion as to whether the said report was correct or not, according to the case of the contesting respondents themselves.



22. In my opinion, on careful consideration of facts pleaded and submissions advanced on behalf of the parties as noted above, interest of justice shall be subserved, if this application is disposed of with following directions and observations:-

(a) Let a special meeting be re-convened by the Municipal Commissioner of the Corporation on 21.03.2020, of the Councillors of the Corporation, which shall proceed from the stage of sub-rule (v) of Rule 2 of the Rules.

(b) The District Magistrate, Katihar shall himself be the Observer of the meeting as an Officer of this Court in the light of the present order.

(c) On completion of the process, the Municipal Commissioner and the District Magistrate, being the Observer shall send their reports to the State Election Commission, enclosing therewith the copies of the minutes of the proceedings with other relevant documents, connected with the meeting. The minutes of the proceeding shall be drawn in the presence of the District Magistrate himself, who shall, it is reiterated, act as an Observer and an Officer of this Court, under this order. The minutes of the proceeding and all relevant records/registers shall be scanned immediately after completion of the proceeding for



being transmitted to the State Election Commission, which shall form the part of the written report, within the meaning of sub-rule (viii) of Rule 2 of the Rules. Necessary preparations must be made in this regard by putting in placed the required equipments at the venue of the meeting.

(d) Considering the nature of controversy, which has emerged and which involves the role of the then Municipal Commissioner also in some way or the other as has been noticed hereinabove, the Court directs that the same Municipal Commissioner shall not act as Municipal Commissioner, if he is still posted as such, for the purpose of holding of special Committee meeting for no confidence motion, to be held under the present order. The State of Bihar, through the Principal Secretary, Urban Development Department is directed to ensure issuance of a notification appointing a Municipal Commissioner of the Corporation, at least, for the present purpose, if required in the light of above observation.

(e) The Superintendent of Police, Katihar is directed that he himself shall supervise security arrangements for peaceful and orderly holding of the special meeting and depute adequate police force for the said purpose. He shall be obliged to take all necessary measures so that the Councillors are not



unduly obstructed or prevented from participating in the meeting.

23. Let this order be transmitted to the Principal Secretary, Urban Development and Housing Department, Government of Bihar, the District Magistrate, Katihar, the Superintendent of Police, Katihar and the Municipal Commissioner, Katihar forthwith.

(Chakradhari Sharan Singh, J)

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