

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16606 of 2019

Along with
Interlocutory Application No. 1 of 2019
and
Interlocutory application No. 2 of 2019

Sumitra Devi (Female), aged about 41 years, Wife of Kishore Kumar Singh, Resident of Village- Gopalpur, P.O- Natuapara, P.S. Bahadurganj, District- Kishanganj, presently Chief Councilor, Nagar Panchayat Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.

... .. 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 District Magistrate-cum-District Election Officer Kishanganj District- Kishanganj.
4. The Sub-Divisional Officer, Kishanganj.
5. The Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
6. Md. Safrul @ Md. Sakrul (Male) aged about 41 years, Son of Naim Miya, Resident of Mohalla- Rahmat Nagar, Ward No. 7, P.O. and P.S. Bahadurganj, District- Kishanganj, presently Deputy Chief Councilor, Nagar Panchayat Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
7. Mujtawa Anwar Rahi (Male), Son of not known to the petitioner, Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
8. Sanjay Kumar (Male) Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
9. Deepak Kumar (Male) Son of not known tot he petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
10. Saidur Rahman (Male) Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
11. Md. Faiyaz Alam (Male) Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
12. Sunita Devi (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
13. Rafat Naz (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar



Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.

14. Husna Sabana (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
15. Rasmani Devi (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
16. Md. Shakir (Male) Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
17. Kamrun Nisha (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
18. Nujhat Praveen (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
19. Tamana Begum (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
20. Punam Sinha (Female) Wife of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District- Kishanganj.
21. Rajiv Kumar Sinha (Male) Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
22. Pawan Kumar Agrawal (Male), Son of not known to the petitioner Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 16555 of 2019
Along with
Interlocutory Application No. 1 of 2019
and
Interlocutory Application No. 2 of 2019

Md. Safrul @ Md. Sakrul (Male), aged about 41 years, Son of Naim Miya, Resident of Mohalla-Rahmat Nagar, Ward No.7, P.O. and P.S. Bahadurganj, District-Kishanganj, Presently, Deputy Chief Councilor, Nagar Panchayat Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.



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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-cum-District Officer, Kishanganj District-Kishanganj.
4. The Sub-Divisional Officer, Kishanganj, District-Kishanganj.
5. The Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
6. Sumitra Devi (Female) aged about 41 years, Wife of Kishore Kumar Singh, Resident of Village-Gopalpur, P.O. Natuapara, P.S. Bahadurganj, District-Kishanganj, Presently Chief Councilor, Nagar Panchayat Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
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21. Rajiv Kumar Sinha (Male) Son of not Known to the Petitioner, the Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.
22. Pawan Kumar Agrawal (Male) Son of not Known to the Petitioner, the Ward Councilors of Nagar Panchayat, Bahadurganj through the Executive Officer, Nagar Panchayat, Bahadurganj, P.O. and P.S. Bahadurganj, District-Kishanganj.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 16606 of 2019)

For the Petitioner/s	:	Mr. S B K Mangalam, Advocate
For the State	:	Mr. Kinkar Kumar, SC 9
		Mr. Yogesh Kumar, AC to SC 9
For the Respondent No. 5	:	Mr. Nityanand Mishra, Advocate
For the Respondent No. 22	:	Mr. Devendra Kumar Sinha, Sr. Advocate
		Mr. Bhola Prasad, Advocate

(In Civil Writ Jurisdiction Case No. 16555 of 2019)

For the Petitioner/s	:	Mr. S B K Mangalam, Advocate
For the State	:	Mr. Syed Hussain Majeed, AC to SC 6
For the Respondent No. 5	:	Mr. Nityanand Mishra, Advocate
For the Respondent No. 22	:	Mr. Mukesh Kumar Jha, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT



Date : 20-01-2020

Heard learned counsel for the petitioners; learned counsel for the State; learned counsel for the Nagar Panchayat, Bahadurganj (hereinafter referred to as the 'Nagar Panchayat') and learned counsel for the respondent no. 22 in both the writ petitions.

2. The petitioner in CWJC No. 16606 of 2019 has moved the Court for the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the requisition dated 01.07.2019 submitted by the Respondent nos. 6 to 21 before the Respondent no. 5, though addressed to the petitioner in which a request was made from the writ petitioner to fix the date of special meeting of Bahadurganj Nagar Panchayat for consideration of No Confidence Motion against her on the ground that the said requisition dated 01.07.2019 is not a valid requisition in the eye of law as it was never given to the petitioner by the requisitionists as mandatorily required under Rule-2 (I) of the Bihar Municipal No Confidence Motion Rules, 2010 (hereinafter referred to as No Confidence Motion Rules, 2010).*

*(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the notice dated 02.08.2019 issued under the signature of the Respondent no. 5 and contained in his memo no. 651 dated 02.08.2019 whereby and where under the Respondent no. 5 has been pleased to issue notice to the Chief Councilor and Deputy Chief Councilor and all other Ward Councilors of Bahadurganj Nagar Panchayat to attend the special meeting of Nagar Panchayat on 13.08.2019 for consideration of No Confidence Motion against the Chief Councilor and Deputy Chief Councilor both on the following Grounds:-*



(a) In view of the provisions contained under No Confidence Rules, 2010, if a valid requisition has been filed by the requisitionists in the manner as provided under Rule- 2 (I) of No Confidence Motion Rules, 2010 power to fix the date of special meeting is vested either in the Chief Councilor or in the requisitionists themselves. Law has not conferred any power upon the Executive Officer to fix the date of special meeting and since the date of special meeting on 13.08.2019 has been fixed by the Executive Officer, the action of the Executive Officer is without jurisdiction; and

(b) The impugned notice dated 02.08.2019 issued by the Respondent no. 5 is not a valid notice on the ground that it does not comply the mandatory requirement of Rule- 2 (iv) of the No Confidence Motion Rules, 2010.

(iii) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The petitioner in CWJC No. 16555 of 2019 has

sought the following reliefs:

*“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the requisition dated 01.07.2019 submitted by the Respondent nos. 7 to 21 before the Respondent no. 5, though addressed to the Chief Councilor in which a request was made from the Chief Councilor to fix the date of special meeting of Bahadurganj Nagar Panchayat for consideration of No Confidence Motion against the petitioner on the ground that the said requisition dated 01.07.2019 is not a valid requisition in the eye of law as it was never given to the Chief Councilor by the requisitionists as mandatorily required under Rule 2 (I) of the Bihar Municipal No Confidence Motion Rules, 2010 (hereinafter referred to as No Confidence Motion Rules, 2010)*



as also on the ground that the said requisition was never presented before the Chief Councilor even by the Respondent no. 5 for fixing the date of special meeting for consideration of No Confidence Motion against the petitioner.

*(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the notice dated 02.08.2019 issued under the signature of the Respondent no. 5 and contained in his memo no. 651 dated 02.08.2019 whereby and where under the Respondent no. 5 has been pleased to issue notice to the Chief Councilor, Deputy Chief Councilor and all other Ward Councilors of Bahadurganj Nagar Panchayat to attend the special meeting of Nagar Panchayat on 13.08.2019 for consideration of No Confidence Motion against the Chief Councilor and Deputy Chief Councilor both on the following grounds:-*

(a) In view of the provisions contained under No Confidence Rules, 2010, if a valid requisition has been filed by the requisitionists in the manner as provided under Rule- 2(i) of No Confidence Motion Rules, 2010 power to fix the date of special meeting is vested either in the Chief Councilor or in the requisitionists themselves. Law has not conferred any power upon the Executive Officer to fix the date of special meeting and since the date of special meeting on 13.08.2019 has been fixed by the Executive Officer, the action of the Executive Officer is without jurisdiction; and

(b) The impugned notice dated 02.08.2019 issued by the Respondent no. 5 is not a valid notice on the ground that it does not comply the mandatory requirement of Rule-2 (iv) of the No Confidence Motion Rules, 2010.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”



4. The petitioner in CWJC No. 16606 of 2019 was the then Chief Councilor at the relevant time of the Nagar Panchayat, whereas the petitioner of CWJC No. 16555 of 2019 was the Deputy Chief Councilor of the Nagar Panchayat at the relevant time.

5. In essence, both are aggrieved by the notice issued fixing the date for special meeting to consider a motion of No Confidence against them. As during the pendency of the writ application, the meeting was held and motion passed, the petitioner of CWJC No. 16606 of 2019, filed Interlocutory Application No. 1 of 2019, seeking amendment challenging the proceedings of the special meeting dated 13.08.2019, in which the motion of No Confidence against her was passed. The aforesaid, Interlocutory Application was allowed.

6. Thereafter, when the petitioner of Interlocutory Application No. 2 of 2019 challenging the proceeding of the election held on 03.10.2019, in which the respondent no. 22 was elected to the post of Chief Councilor. In view of the said amendment sought directly related to the initial cause for which the original writ petition was filed, the same is also allowed. Interlocutory Application No. 2 of 2019 stands disposed off.



7. In CWJC No. 16555 of 2019 also during the pendency of the writ application as the motion was passed, the same was assailed through amendment sought of by Interlocutory Application No. 1 of 2019, which was allowed.

8. Further, the petitioner also sought amendment through Interlocutory Application No. 2 of 2019 in the writ petition assailing the election of respondent no. 11 as the Deputy Chief Councilor in the meeting held on 03.10.2019. As the cause of action is in continuation of the initial relief sought, the prayer made is allowed. The same shall form part of the relief made in the writ application. Interlocutory Application No. 2 of 2019 stands disposed off.

9. In essence, the challenge of the writ petitioners was initially to the requisition on the ground that it was not validly served on the petitioners and not in terms of the statutory provisions and further for quashing the notice issued by the respondent no. 5 fixing the date 13.08.2019 for holding of special meeting to consider the No Confidence Motion against the petitioners. Thereafter, challenge to the subsequent holding of the meeting for passing of the No Confidence Motion and election of respondents no. 22 and 11 to the said posts respectively was also made, which has been allowed.



10. Learned counsel for the petitioners submitted that the law with regard to issuing of notice convening the special meeting is now well settled. It was contended that the first and foremost mandatory requirement is that the requisition has to be submitted directly to the Chief Councilor requesting for convening of the meeting giving detailed reasons and grounds on which such meeting is requisitioned and upon refusal to convene the meeting within seven days, the requisitionists have the authority to inform the Executive Officer to issue notice for the meeting, the date for which has to be fixed by the requisitionists themselves. It was submitted that the requisitionists had sent communication to the Executive Officer of the Nagar Panchayat on 27.07.2019 fixing the date 02.08.2019 for the special meeting but for reasons known to the Executive Officer, he issued notice dated 02.08.2019 fixing the date 13.08.2019 for such special meeting. It was submitted that the said notice stands vitiated on at least two grounds. Learned counsel contended that firstly the date, as fixed by the requisitionists i.e., 02.08.2018 could not have been changed to 13.08.2019 and secondly, the said notice, admittedly did not contain or disclose the charges and reasons on the basis of which the special meeting was called. Learned counsel submitted that such irregularity is fatal to holding of such meeting and all



subsequent actions, accordingly, have also to be held to be bad in law.

11. For such proposition, learned counsel relied upon the decision of a Division Bench of this Court in **Meena Yadav vs. State of Bihar** reported as **2010 (2) PLJR 389**.

12. Learned counsel for the State fairly submitted that in view of the decision in the case of **Meena Yadav** (supra), the entire exercise stands vitiated.

13. Learned counsel for the Nagar Panchayat, who has not filed any affidavit on merits submitted that the affidavit as was required to be filed showing service of notice to the members has been filed on its behalf.

14. However, on a direct query of the Court with regard to his stand relating to change of date from 02.08.2019, as was fixed by the requisitionists to 13.08.2019, as also non-communication of the reasons and grounds for holding such special meeting not being communicated with the notice issued by the Executive Officer of the Nagar Panchayat dated 02.08.2019, learned counsel could not controvert the submissions of learned counsel for the petitioners.

15. Learned counsel for the respondent no. 22 submitted that in the requisition, which was served on the then Chief



Councilor, who is petitioner in CWJC No. 16606 of 2019, detailed reasons have been mentioned and, thus, she was aware of the same and such plea of non-communication of the reasons is not tenable. However, on a specific query of the Court that when such requisition to the then Chief Councilor, no copy having been marked to the Deputy Chief Councilor and the special meeting convened for the purpose of considering the No Confidence against both the persons, how the same can be deemed to satisfy the requirement of the statute, learned counsel could not controvert the fact that no copy containing reasons was ever served on the then Deputy Chief Councilor. Further, on a specific query of the Court with regard to law settled in **Meena Yadav** (supra) which supports the contentions of the petitioners, which mandatorily requires notice to all the Ward Councilors to be accompanied with the reasons/grounds/charges levelled, admittedly not being complied with, learned counsel fairly submitted that the law once having been settled by the Court, the consequences would follow. Learned counsel could also not justify the change of date of the meeting by the Executive Officer of the Nagar Panchayat from 02.08.2019 to 13.08.2019.

16. At this juncture, learned counsel for the petitioners submitted that the manner in which the respondent no. 22 has



subsequently been elected to the post of Chief Councilor is shocking. It was submitted that firstly he got elected from a Ward which was reserved for the Extremely Backward Class to which he did not belong and on the basis of wrong caste certificate, he had won the election and upon complaint and thorough enquiry, it was detected that the certificate was wrongly issued which has been cancelled. It was submitted that even the post of Chief Councilor is reserved for an Extremely Backward Class, and once it has been held that respondent no. 22 does not belong to the Extremely Backward Class category, he was not eligible to even contest the election and further he was not even eligible to be the Ward Member of the Ward from which he has been elected. It was submitted that complaint made to the Returning Officer was negated which itself speaks volumes with regard to the manner in which the authorities have acted in the present case. However, it was submitted that the matter is still pending before the State Election Commission.

17. Having regard to the aforesaid facts and circumstances of the case, and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.



18. The facts which have been noted and discussed in this order earlier and are not disputed are as follows:

(a) A requisition by 15 Ward Councilors of the Nagar Panchayat out of total of 18 was submitted on 01.07.2019 to the then Chief Councilor of the Nagar Panchayat asking her to convene a special meeting for considering a motion of No Confidence against the Chief Councilor as well as the Deputy Chief Councilor. Copies of the same were sent to the District Magistrate, Kishanganj; Sub Divisional Officer, Kishanganj and Executive Officer of the Nagar Panchayat. However, no copy was marked to the then Deputy Chief Councilor.

(b) Thereafter, 12 Councilors out of the aforesaid 15 sent communication to the Executive Officer of the Nagar Panchayat on 24.07.2019 asking him to convene a special meeting for considering the motion of No Confidence. Again on 27.07.2019 they wrote to the Executive Officer of the Nagar Panchayat fixing the date 02.08.2019 for convening the special meeting for considering the No Confidence Motion against the petitioners.

(c) Pursuant thereto, the Executive Officer of the Nagar Panchayat under Letter No. 651 dated 02.08.2019, sent notice to the petitioners as well as all the other Ward Councilors fixing the



date 13.08.2019 for the meeting, though without disclosing any ground/reason/charges against the petitioners.

(d) Subsequently, the meeting was held on 13.08.2019 and the motion of No Confidence against the petitioners was passed and thereafter in the meeting held on 03.10.2019 the respondent no. 22 was elected to the post of Chief Councilor and respondent no. 11 to the post of Deputy Chief Councilor.

19. Having regard to the fact that the notice issued by the Executive Officer of the Nagar Panchayat dated 02.08.2019 did not contain any reasons or grounds on which the special meeting for considering of No Confidence Motion against the petitioners was communicated and also the date having been fixed as 13.08.2019 by the Executive Officer himself despite the requisitionits fixing it for 02.08.2019, the notice itself cannot be sustained. The judgment in **Meena Yadav** (supra) squarely covers the issue in favour of the petitioners.

20. Once the notice for convening the meeting on 13.08.2019 is held to be illegal, any meeting held on that day followed by the resolution passed in such meeting, also has to be held to be bad in law. Thereafter the subsequent development of fresh elections being held to the post from which the petitioners were removed and respondents no. 22 and 11 being elected, in the



meeting dated 13.08.2019, as a consequence, also has to be held to be illegal.

21. For the reasons aforesaid, the writ petitions are allowed. The notice contained in Letter No. 651 dated 02.08.2019 issued by the Executive Officer of the Nagar Panchayat being bad in law stands quashed. As a consequence, the holding of the meeting, the passing of the No Confidence Motion against the petitioners and the election of the respondents no. 22 and 11 to the post of Chief Councilor and Deputy Chief Councilor of the Nagar Panchayat, respectively stands set aside.

22. It goes without saying that the petitioners stand reinstated to the post of Chief Councilor and Deputy Chief Councilor of the Nagar Panchayat with immediate effect.

23. The Executive Officer of the Nagar Panchayat shall ensure that full co-operation is rendered to the petitioners in the discharge of their duties on the said posts.

24. However, as the notice itself has been held to be unsustainable, it shall be open to the private respondents to take steps in the matter afresh, in accordance with law.

(Ahsanuddin Amanullah, J.)

Anand Kr.

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