

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.164 of 2020

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Amit Kumar Singh S/o Shri Ashok Kumar Singh, Elected Ward Councilor of Ward No. - 35, resident of 1, Makhdoom Sarai, Babunia More, Siwan, P.O. and P.s. and District- Siwan

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
2. The District Magistrate-cum-District Election Officer, Nagar Parishad, Siwan
3. The Sub-Divisional Officer, Siwan
4. The Nagar Parishad, Siwan represented through its Municipal Executive Officer, Nagar Parishad, Siwan
5. Smt. Sindhu Singh, W/o Not Known to the Petitioner, the Municipal Chairperson, Siwan, represented through the Nagar Parishad, Siwan
6. Shri Bablu Kumar, S/o Not Known to the Petitioner, the Dy. Municipal Chairperson, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
7. Smt. Priyanka Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 06, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
8. Smt. Soni Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 11, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
9. Smt. Minu Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 38, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
10. Smt. Noortara, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 03, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
11. Smt. Manju Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 01, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
12. Smt. Babita Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 04, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
13. Shri Mansoor Alam, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 08, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
14. Shri Rajan sah, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 16, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
15. Smt. Ladli Khatoon, W/o Not Known to the Petitioner, Elected Ward



Councilor of Ward No. - 25, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan

16. Smt. Parmil Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 27, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
17. Shri Jai Prakash Upadhyay, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 15, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
18. Smt. Reeta Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 07, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
19. Smt. Renu Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 23, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
20. Smt. Lisa Lal, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 02, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
21. Shri Uday Kumar Verma, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 14, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
22. Smt. Ranjana Shrivastava, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 13, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
23. Shri Pawan Kumar, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 21, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
24. Smt. Najma Khatoon, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 31, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
25. Smt. Shahnaz Bano, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 30, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
26. Smt. Shaida Khatoon, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 28, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
27. Smt. Mazsham Parveen, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 18, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
28. Shri Irfan Khan, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 12, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
29. Shri Satyam Bharti, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 22, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
30. Smt. Anuradha Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 19, Nagar Parishad, Siwan, represented through the



Nagar Parishad, Siwan

31. Md. Jawed Ali, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 24, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
32. Smt. Geeta Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 26, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
33. Sufia Khatoon, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 29, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
34. Shri Raj Kumar Bansfor, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 32, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
35. Smt. Saroj Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 33, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
36. Shri Shambhu Sharan Singh, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 34, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
37. Smt. Radhika Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 36, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
38. Jayeda Khatoon, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 37, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
39. Md. Salim Siddiqui, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 09, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
40. Smt. Bacchi Devi, W/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 10, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
41. Shri Sunil Kumar, S/o Not Known to the Petitioner, Elected Ward Councilor of Ward No. - 17, Nagar Parishad, Siwan, represented through the Nagar Parishad, Siwan
42. The State Election Commission, represented through its Secretary, Sone Bhawan, 5th Floor, Beer Chand Patel Path, Patna-800001
43. The Secretary, State Election Commission, Sone Bhawan, 5th Floor, Beer Chand Patel Path, Patna-800001
44. The Joint Election Commissioner, State Election Commission, Sone Bhawan, 5th Floor, Beer Chand Patel Path, Patna-800001

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shri Prakash Srivastava
Ms. Anu Priyadarshni



For the Respondent/s : Mr.Subash Pd. Yadav (GA-3)
Mr. Shiv Kumar, AC to GA-3
For Nagar Parishad : Mr. Ravi Bhushan Verma, Advocate
For State Election Commission: Mr. Amit Shrivastava

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 31-01-2020 Heard learned counsel for the parties.

2. This writ application has been filed seeking quashing of letter dated 07.11.2019, issued by the State Election Commission, whereby the District Magistrate-cum-District Election Officer (Municipality), Siwan has been communicated that the decision taken in the special meeting convened for pressing *no confidence motion* against the Chairman and Deputy Chairman of the Nagar Parishad, Siwan was contrary to the provision under Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act').

3. The brief facts of the case are that the Nagar Parishad in question has altogether 36 Councillors. Respondent Nos. 5 and 6 are Chairperson and Deputy Chairperson of the said Nagar Parishad, respectively. It is the petitioner's case, who is one of the Councillors of the Nagar Parishad, that a requisition for *no confidence motion* was placed for removal of respondent Nos. 5 and 6 on 27.09.2019. A date was fixed for convening special meeting and after due notice, a special meeting was held on 17.10.2019. In the said meeting dated



17.10.2019, there were altogether 26 members present. The process of the meeting was initiated with the petitioner as Chairperson of the said meeting. After discussion, the *no confidence motion* was put to vote. Out of 26 Councillors who were present, 10 opted not to cast vote and out of rest 16, 15 voted in support of *no confidence motion*. It is the petitioner's case that as 15 members out of 26 present in the special meeting had voted in favour of requisition of *no confidence motion*, the *no confidence motion* against respondent Nos. 5 and 6 was successfully carried out. It transpires that thereafter, respondent Nos. 5 and 6 approached the State Election Commission, questioning the legality of the decision taken in specially convened meeting with specific plea that the requisition for *no confidence motion* could not be said to have been successfully carried out. It is in the aforesaid background, it transpires that the Secretary of the State Election Commission sent the impugned communication dated 17.10.2019, to the District Magistrate.

4. Mr. Shri Prakash Shrivastava, learned counsel appearing on behalf of the petitioner has submitted that the approach of the Commission in referring to Section 25(4) of the Act to hold that no confidence motion could not be said to have



been validly passed is completely erroneous and misconceived, in view of the provisions under Bihar Municipal No Confidence Motion Process Rules, 2010. He has relied on Rule 2(v) of the Rules to contend that if majority of the Councillors present in the special meeting convened for carrying out for *no confidence motion* vote in favour of the requisition, the requisition for *no confidence motion* is to be treated to have been successfully carried out. He has further submitted that in any view of the matter, the State Election Commission has no jurisdiction to declare the decision taken in specially convened meeting, illegal or to decide legality of passing of *no confidence motion*.

5. He has relied on a decision of this Court reported in **2009(2) PLJR 557 (Orsil Paswan Vrs. The State of Bihar and others)** to submit that the State Election Commission has no role to play in the matter, concerning *no confidence motion*, which are internal affairs of Panchayat Institutions.

6. Admitted facts have already been taken note of. The Nagar Parishad consists of 36 Councillors. In the said special meeting convened for *no confidence motion*, there were 26 members present. 15 out of 26 voted in favour of the requisition for *no confidence motion*, 10 opted out and 10 voted against the said motion. The clear language of Section 25(4) of



the Act leaves no scope of ambiguity which reads thus:-

“25. Removal of Chief Councillor/Deputy Chief Councillor .-

(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”

(Underlined for emphasis)

7. It is manifest on simple reading of the said provision that a Chief Councillor/Deputy Chief Councillor can be removed from the office by a resolution carried out by a majority of “ the whole number of Councillors holding post for the time being” at a special meeting to be called for this purpose. It is clear thus, that the said office bearer of Nagar Parishad could be removed from office by a resolution of majority of the total number of Councillors of Nagar Parishad and not on the basis of number of Councillors present in the special meeting. The State Election Commission has, by the impugned communication, not interfered with any decision. The Commission has just referred to the provision under Section



25(4) of the Act to inform that the said decision taken in the meeting of the Special Committee cannot lead to removal of Chief Councillors and Deputy Chief Councillors of Nagar Parishad. The impugned order does not require any interference.

8. I have no hesitation, at this juncture, to observe that on the basis of what has been averred in the writ application, it cannot be said that the requisition for no confidence motion was successfully carried out in the meeting held on 17.10.2019, which was supported by 15 members, less than the half of the total number of Councillors.

9. There is no merit in this application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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