

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7279 of 2020

1. Mira Devi, Late Dilip Kumar, Resident of Maner Bazar, P.O. and P.S. Maner, District- Patna.
2. Farid Hussain Khan, Son of Wahid Hussain Khan, Resident of Char Hazar, near Maner Dargah, P.O. and P.S. Maner, District- Patna.

... .. 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 (Municipality), Patna, District- Patna.
4. The Sub- Divisional Officer Danapur, District- Patna.
5. The Executive Officer, Nagar Panchayat, Maner, P.O. and P.S.- Maner, District- Patna.
6. Smt. Sunita Verma, Wife of not known to the petitioner.
7. Sri Manoj Kumar Son of not known to the petitioner.
8. Smt. Amrita Devi Wife of not known to the petitioner.
9. Smt. Manju Devi Wife of not known to the petitioner.
10. Sri Ravindra Kumar Saundik Son of not known to the petitioner.
11. Smt. Mira Devi Wife of not known to the petitioner.
12. Smt. Rekha Rai Wife of not known to the petitioner.
13. Sri Amol Bajaj Son of not known to the petitioner.
14. Sri Sanjay Kumar Son of not known to the petitioner.
15. Smt. Babita Devi Wife of not known to the petitioner.
16. Sri Sanjay Singh Son of not known to the petitioner.
17. Smt. Asha Devi Wife of not known to the petitioner.
18. Smt. Karuna Devi Wife of not known to the petitioner.
19. Smt. Meena Kumari Wife of not known to the petitioner.
20. Smt. Rinku Devi Wife of not known to the petitioner.
21. Smt. Madhuri Devi Wife of not known to the petitioner.
22. Smt. Meena Devi Wife of not known to the petitioner.

Respondent Nos. 6 to 22 are the Ward Councillors of Nagar Panchayat, Maner, through the Executive Officer, Nagar Panchayat, Maner, P.O. and P.S.- Maner, District- Patna.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Respondent/s : Mr. Y.P. Sinha, AAG-7
Mr. Y.C. Verma, Sr. Advocate
Mr. Vinay Kumar Mishra, Advocate
Sri Prakash Srivastava, Advocate
Mr. Sandeep Kumar, Advocate
Mr. Amit Srivastava, Advocate
Mr. Girish Pandey, Advocate
For Nagar Panchayat : Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 05-02-2021

Heard learned counsel for the parties and perused the records of the case.

In the present case, the petitioners are seeking quashing of the proceedings of special meeting dated 07.08.2020 of Nagar Panchayat, Maner, which was convened for consideration of "No Confidence Motion" against the petitioners, who were holding the post of Chief Councillor and Deputy Chief Councillor respectively and further seeking direction to the respondent authorities for reinstatement of the petitioners to the post, which they were holding before they were removed i.e. on 07.08.2020 through the "No Confidence Motion" passed against them by the majority of Ward Councillors of the said Nagar Panchayat.

The petitioners contested the election of Ward Councillors of Maner Nagar Panchayat and they were declared successful. Both the petitioners again contested the election for the post of Chief Councillor and Deputy Chief Councillor and both



have been declared successful, accordingly, they started discharging their respective duties. It has been alleged that in the year 2019, a move was made for “No Confidence Motion” against the petitioners, but the majority of the Ward Councillors did not support the motion, ensued the rejection of motion. After completion of one year, they mustered the courage and made a second move for “No Confidence Motion” by allegedly serving a notice dated 14.07.2020 through the office of the Executive Officer, Nagar Panchayat, Maner vide letter no. 531 dated 15.07.2020 bearing the signatures of ten Ward Councillors being more than 1/3rd Ward Councillors, which is required under the Bihar Municipal Act, 2007 (hereinafter mentioned Bihar Municipal Act).

As per the petitioners, the husband of petitioner no.1 died in July, 2020, the copy of requisition was not served upon the petitioner no.1, on account of fact that it is a custom in her society that after the death of her husband, she was to stay at her parental house for one and quarter month. On account of death of her husband, her mother-in-law could not bear the shock and she had fallen seriously ill, on account of serious illness of her mother-in-law, she had no alternative option but to come back to her in-laws house on 13.07.2020, but she was not attending the office. It has



been asserted that requisition was sent by the office of Executive Officer, but the same could not be served upon her as she had to leave her house for the purpose of treatment of her mother-in-law and when she returned back on 22.07.2020, a copy of requisition was served upon her on 23.07.2020. In the requisition, charges have been mentioned that while discharging their duties, they do not follow the provisions of Bihar Municipal Act. It has further been alleged that they engaged themselves in changing, manipulating and fabricating the decision taken in the meeting and thereby they altered the decision for their own convenience. It has further been alleged that the Chief Councillor and the Deputy Chief Councillor were indulged in illegal act and misappropriated the public fund and the money spent in the Nagar Panchayat was converted for their own benefits. In the charges, it has further been alleged that they obstructed the development of Nagar Panchayat. A serious allegation has been made against the petitioners that they, being the Chief Councillors and Deputy Chief Councillor, were obtaining a contract of Maner Nagar Panchayat in the names of their family members and near relatives and the work done is very low quality and thereby they misappropriated the huge fund of Nagar Panchayat, Maner. It is stated that unfortunately, ailing mother-in-law of the petitioner no. 1 died on 24.07.2020 and her



dead body was cremated on the next day and, as such, whole family was under deep shock on account of two deaths of her family member, even though, she was reeling under the deep shock, the petitioner no.1 continued to discharge her duty as per statutory provision. On receipt of requisition, the petitioner no.1 addressed a letter dated 28.07.2020 (Annexure-2) to the Executive Officer, Nagar Panchayat, Maner giving details of the fact and has stated that as she is feeling difficulty to, it will not be proper and desirable to fix a date for “No Confidence Motion” as she remained busy in the ‘Sharadh Karm’ up to 10.08.2020. It has also mentioned in the letter that the Hon’ble Ward Councillor had acted de-hors to the provision of the Bihar Municipal Act and, as such, the date cannot be fixed for holding the special meeting of “No Confidence Motion”. The petitioner no. 1 failed to call the special meeting of Nagar Panchayat, even then, the requisitionists vide letter dated 07.08.2020 (Annexue-3) requested the Executive Officer to fix a date of special meeting on 07.08.2020 mentioning the charges in the said letter. It has been mentioned that this notice has been served in terms of Rule 2 (iii) of Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as the No Confidence Motion Rules) read with Section 48 (3) and



Section 23 (4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Municipal Act, 2007').

In pursuance thereof, the Executive Officer, Nagar Panchayat, Maner vide its letter no. 565 dated 31.07.2020 (Annexure-4) fixed a date of special meeting for "No Confidence Motion" on 07.08.2020, as the requisitionists were feeling that the Executive Officer is helping the petitioners on the fact that the letter fixing the special meeting was not mentioned the charges which has been alleged against the petitioners.

So, the letter no. 565 dated 31.07.2020 (Annexure-4) issued by the Executive Officer was not in terms of the provisions of Bihar Municipal Act, 2007 and No Confidence Motion Rules, 2010. In turn, they addressed a letter dated 3.08.2020 to the Executive Officer wherein it has been mentioned that the notice which has been served upon the Chief Councillor and Deputy Chief Councillor is not in terms of No Confidence Motion Rules, 2010 as has not given clear seven days notice which is required for valid notice for "No Confidence Motion" as per the Rule 2 (iv) of No Confidence Motion Rules, 2010 inasmuch as in order to save the petitioners, charges, which was required to be communicated, were not mentioned in the said notice, on that, they intended to allow them to withdraw the earlier notice for



holding the special meeting for “No Confidence Motion” and next date for special meeting should be fixed on 13.08.2020 mentioning the charges properly. As the letter dated 31.07.2020 is against the Rules, so it may be recalled and further the date for “No Confidence Motion” be fixed on 13.08.2020 at 12.30 P:M.

As per the claim of the petitioners that they were under an impression that the requisitionists had fixed a date for special meeting of “No Confidence Motion” on 13.08.2020, so the special meeting for “No Confidence Motion” would be conducted on 13.08.2020, but instead, the Executive Officer vide its letter no.568 dated 03.08.2020 (Annexure-6) fixed the date of special meeting for “No Confidence Motion” on 07.08.2020 at 12:00 P.M. wherein the charges have been mentioned as alleged against the petitioners. As per the claim of the petitioners, the petitioners and their supporters were of the view that special meeting for “No Confidence Motion” to be held on 13.08.2020 and, as such, there was no occasion for them to participate in the special meeting on 07.08.2020, but the special meeting for “No Confidence Motion” was conducted and the "No Confidence Motion" has been passed against both the petitioners.

As the requisitionists had fixed for special meeting on 13.08.2020, but the Executive Officer without authority, illegally



addressed a letter no. 574 dated 05.08.2020 to all requisitionists informing them that a special meeting would be conducted on 07.08.2020 in view of fact that as per Section 49 of the Municipal Act, 72 hours motion is required for holding the special meeting. It has been stated that notice should have been given to the petitioners and other members who had not signed the requisition and, as such, the entire proceeding is vitiated.

The Executive Officer, Maner Nagar Panchayat has also filed its counter affidavit stating therein that the aggrieved Councillor has sent his requisition to the petitioners on early occasion and the copy of the same requisition was forwarded to the office of the answering respondent for knowledge of the office and intimation for special meeting for “No Confidence Motion”. The office of the Executive Officer was duty bound to accept the copy of the requisition or other documents and further to intimate to the Chief and Deputy Chief Councillor of the Nagar Panchayat and, as such, the copy of the same was sent vide letter no. 531 dated 15.07.2020 to the petitioners. It has also been asserted that the notice dated 31.07.2020 was not in terms of Municipal Act, 2007 and after realizing the mistake, a fresh notice dated 3.08.2020 was issued for holding a special meeting for “No Confidence Motion” on 07.08.2020 wherein the charge has been



mentioned, which was served upon them, fixing a date of special meeting on 07.08.2020. The said notice was issued to all the stakeholders as well as to the petitioners with a view to remove any confusion in holding the special meeting for “No Confidence Motion”. As there was no extension of date of special meeting for 13.08.2020, in that circumstances, there was no occasion to serve the further notice to the petitioners about the date fixed for the special meeting of “No Confidence Motion”.

The respondent nos. 6, 7, 9, 11, 14, 15, 16, 18, 20 & 22 have filed their counter affidavit wherein in paragraphs 10 & 11, it has been asserted that ten Ward Councillors handed over the requisition to the petitioners for convening special meeting to discuss “No Confidence Motion” against them and forwarded the same to the Office of Executive Officer, Maner Nagar Panchayat. It has been stated in paragraph 12 that the respondent no. 5, Executive Officer of the Nagar Panchayat, Maner vide letter no. 531 dated 15.07.2020 sent the requisition to the petitioner no.1, but she refused to receive the same and, later on, the Executive Officer sent the requisition to the petitioner no. 1 by registered post dated 17.07.2020 which was not received by her. It has further been stated in paragraph 14 that when the petitioner no. 1 failed to fix the date of special meeting for “No Confidence Motion”, the



requisitionists themselves issued a notice dated 24.07.2020 fixing a date of special meeting for “No Confidence Motion” on 5.08.2020.

It has been asserted in the counter affidavit that the Executive Officer did not receive the letter and she orally informed that on 23.07.2020 itself the requisition had been pasted at the house of the petitioner no.1 and videography and photography had also been made as proof of service. On request, the respondent no. 5 provided the copy of the report regarding notice on the house of the petitioner no.1.

It has been asserted that the Executive Officer has informed that if the petitioner no. 1 does not fix a date for special meeting to discuss about “No Confidence Motion”, in that circumstances, fresh steps would be taken. When the date for “No Confidence Motion” meeting was not fixed, in that circumstances, a letter was addressed to the Executive Officer for fixing the date of special meeting for “No Confidence Motion” on 07.08.2020 bearing the signatures of twelve Ward Councillors, in turn, the Executive Office vide letter no. 565 dated 31.07.2020 informed the date of special meeting was fixed on 07.08.2020 and subsequently, meeting was held on 07.08.2020. The requisition to extend the date of meeting to 13.08.2020 was not served to the



petitioners, as such, the Executive Officer intimated about the date of meeting to the requisitionists only, not the petitioners. It has been informed by the Executive Officer that in terms of Section 59 of the Bihar Municipal Act, there is no need for giving seven clear days notice and as under the Act, the period of notice requires is 72 hours and, as such, they withdrew the fresh notice dated 3.08.2020 and later on the Executive Officer informed the requisitionists that the meeting of “No Confidence Motion” will be held on due date as fixed earlier.

The respondent nos. 13 and 17 have filed their counter affidavit in which they have taken the same stand as has been taken by aforesaid respondents as has been mentioned here-in-above. They have taken stand that “No Confidence Motion” has been conducted as per the Rules. The letter dated 3.08.2020 is nothing but a corrigendum to the earlier notice dated 31.07.2020 to correct the notice and making it in consonance with the Bihar Municipal Act, 2007 read with No Confidence Motion Rules.

A supplementary counter affidavit has been filed by respondent nos. 6, 7, 8, 9, 11, 14, 15, 16, 18, 20 and 22 bringing new development to the notice of the Court that during the pendency of the writ application, as per the direction of the State Election Commission, a fresh election has been conducted on



10.09.2020 in which 19 Ward Councillors including the petitioners participated in the proceeding without any demur in which the respondent no. 9 Manju Devi filed her nomination for the post of Chief Councillor and the respondent no.7 Manoj Kumar filed his nomination for the post of Deputy Chief Councillor and both have been elected accordingly.

This Court vide order dated 10.09.2020 called the original records of the proceeding for perusal from the Executive Officer, Nagar Panchayat, Maner and stayed the election for selecting a new Chief Ward Councillor and Deputy Chief Ward Councillor and also a direction has been given that if any election has taken place today that will not be acted upon till the disposal of the case. In pursuance thereof, the original records have been received.

Counsel for the petitioners has submitted that as per Rule 2 (iii) of No Confidence Motion Rules, 2010, the requisition was required to be served upon the Chief Councillor and Deputy Chief Councillor physically, which has not been done, in such view of the matter, service of notice through the Executive Officer cannot be said to be a valid notice of requisition. He has further submitted that it is the requisitionist, who was to fix the date of special meeting for “No Confidence Motion”, which they earlier



fixed on 7.08.2020, but later on, it was withdrawn and fixed the another date for “No Confidence Motion” on 13.08.2020. It has further been Submitted that the Executive Officer has no authority to fix the date of special meeting for "No Confidence Motion", but it is the requisitionist, who has an authority under the Act and the Rules to serve the notice of requisition as well as to fix a date of special meeting for “No Confidence Motion”. It has further been submitted that as per the notice addressed to the Executive Officer by the requisitionists requesting for fixing another date of special meeting for “No Confidence Motion” on 13.08.2020, as the earlier notice was suffered from illegality and, later on, the Executive Officer has addressed a letter to only requisitionists excluding the petitioners and their supporters reiterating the date of “No Confidence Motion” on 07.08.2020, is completely the violation of principles of natural justice in the sense that they were under the impression that “No Confidence Motion” will not be conducted on 07.08.2020, but later on, the same would be conducted on 13.08.2020, so initiation of proceeding for “No Confidence Motion” itself suffers from the illegality as no notice was personally served upon the petitioners nor the change of date of special meeting was communicated to these petitioners. So, the entire “No Confidence Motion” is vitiated and be declared illegal



and be set aside, which has been contradicted by the respondents as has stated that every steps has been taken as per law and does not require any interference.

Section 25 of the Bihar Municipal Act, 2007 deals with the provision of removal of Chief Councillor/Deputy Chief Councillor. In clause (4) of Section 25 of the Act stipulates that 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 conducted as per the Rules prescribed.

Section 48 of the Act provides the meetings and Sub-section (2) thereof says that the Chief Councillor may, whenever he thinks fit, and shall, upon a requisition in writing by not less than 2/5th of the Councillors, convene a meeting of the Municipality within fifteen days. Clause (3) of Section 48 of the Act prescribes that in the event the Chief Councillor fails to call the requisition meeting provided in sub-section (2), the meeting may be called by the persons who signed the requisition.



Section 49 of the Act stipulates that a list of business to be transacted at every meeting of the Municipality, except at an adjourned meeting, shall be sent to the registered address of each Councillor at least seventy-two hours before the time fixed for such meeting, and no business shall be brought before, or transacted at, any meeting other than the business of which notice has been so given. So, Section 49 of the Act prescribes that there should be 72 hours notice on or before the meeting is to be conducted.

Sub Rule (i) of Rule 2 of the Bihar Municipal No Confidence Motion Process Rules, 2010 stipulates that to remove the Chief Councillor/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. Sub-rule (iii) thereof provides that 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 Bihar Municipal Act, 2007 and the notice for it shall be issued by the Chief Municipal Officer. Sub-rule (iv) thereof provides that the notice issued for considering “No Confidence Motion” against the Chief Councillor/Deputy Chief Councillor shall clearly contain the reasons/allegations on which basis the “No Confidence Motion” is to be brought and Sub-rule (v) of the Rules provides that as soon as the meeting, called for, commences, the presiding member at the meeting shall read out the motion on which the meeting has been called, before the members present and declare it open for discussion. During discussion, opportunity shall be given to the Chief Councillor/Deputy Chief Councillor against whom “No Confidence Motion” is moved, to defend himself. The motion shall be put to vote by the presiding member by secret ballot on the same day after discussion and after counting result shall be declared.

In such view of the matter, it is prescribed that the notice has to be given to the Chief Councillor and Deputy Chief Councillor by the requisitionists, but the situation it does not provide, it should be given hand to hand and only prescribes that the notice would be given to the person concerned who is going to



be affected by the motion. If the Chief Councillor has failed to receive the notice then, in that circumstances, it cannot be said that the further mode cannot be adopted by serving notice upon them. The notice may be served through post or pasted in the house through office of the Executive Officer or the notice may be published in the newspaper circulated in that area, but there is no necessity that it has to be served in a physical mode, there may be a different mode for service of notice upon them. In normal circumstances, no one would like to receive the notice adverse to his or her interest and will try to avoid to receive the notice, that cannot be a ground for him/her to take this story for his own benefit. The law is well known that a person cannot take the advantage of his own wrong, he cannot be allowed to play hot and cool at the same time.

This Court has perused the original records from where it appears that notice was sent to the petitioners on different occasions and also on 3.08.2020 informing the date of meeting on 07.08.2020. As has been explained by the respondents that as the notice dated 31.07.2020 was not containing the charges and to avoid this complication, a corrigendum was issued in the notice dated 03.08.2020 mentioning therein the list of charges levelled against them and the Executive Officer has again sent a notice to



the requisitionists to participate in the proceeding as there was no mandate of clear seven days notice from the date of notice for holding the special meeting for “No Confidence Motion” rather it is 72 hours notice to be given and thereby the meeting for “No Confidence Motion” was conducted in which the petitioners failed to participate therein. Later on, fresh meeting of Councillors was held for election and selection of Chief Councillor and Deputy Chief Councillor in which the respondent no.9 Manju Devi and respondent no. 7 Manoj Kumar have been declared successful for the post of Chief Councillor and Deputy Chief Councillor respectively.

The petitioner no. 1 has taken a plea that the notice dated 14.07.2020 was not addressed personally nor she has received the letter of Executive Officer dated 15.05.2020 as because she was busy in the treatment of her mother-in-law, but certainly she has accepted that she received the notice on 23.07.2020, in such circumstances, the further notice by the requisitionists fixing the date for “No Confidence Motion” on 07.08.2020 cannot be said to be violated any provision as required under the law and she was to respond within 7 days on receipt of notice of requisition for conducting the “No Confidence Motion”, but in the present case, the petitioner no.1 has specifically rejected



the motion on her personal reason, that is not permissible in law. When she received a notice, she was bound to fix a date of special meeting for “No Confidence Motion”, failure to conduct the motion, the requisitionist does have right to hold the special meeting and take a decision as per the law provides.

From the records, it does not show that adjournment of the date from 07.08.2020 to 13.08.2020 was communicated to the petitioners as well as the notice of special meeting was never and ever withdrawn, but letter dated 05.08.2020 was confined to the requisitionist confirming the date of meeting, so she cannot take a plea that she failed to participate in the proceeding of “No Confidence Motion” as because of want of notice or knowledge.

The plea has been taken that the Executive Officer has no authority to initiate the proceeding of “No Confidence Motion” and issue notice to the contesting parties. Facts from the record shows that proceeding was set in motion by requisitionist by giving “No Confidence Motion” notice to the petitioners and, as such, this plea is not sustainable. The “No Confidence Motion” Rule expositis that the Executive Officer is the only authority to issue notice relating to convening the meeting or special meeting. Thus, this point is not sustainable.



In that view of the matter, this Court does not find any merit in this application and, accordingly, the same is dismissed.

The interim order dated 10.09.2020 passed in favour of the petitioners is vacated.

The office is directed to return the original records to the concerned of Nagar Panchayat, Maner.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	08.02.2021
Transmission Date	N.A.

