

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.518 of 2021

In
Civil Writ Jurisdiction Case No.12295 of 2021

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Rubi Devi (Female), aged about 28 years, Wife of Arun Kumar Ojha,
Resident of Vilalge-Ojhawalia, Ward No.1, P.S.-Kochas, District-Rohtas
(Sasaram).

... .. Petitioner/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate-Cum-District Election Officer (Municipality), Rohtas (Sasaram).
3. The Executive Officer, Nagar Panchayat, Kochas, District- Rohtas (Sasaram).
4. The Sub-Divisional Officer, Sasaram, District-Rohtas.
5. The Secretary, State Election Commission, Bihar, Patna.
6. Shri Jai Prakash Chauhan Son of Chandrama, Resident of Village-Bahtutia, Ward No.2, P.O. and P.s.-Kochas, District-Rohtas.
7. Smt. Sneha Kumari Wife of Malik Paswan, Resident of Kochas Ward No.3, P.O. and P.S.-Kochas, District-Rohtas.
8. Smt. Bibha devi Wife of Sanjay Pandey, Resident of Kochas Ward No.4, P.O. and P.S.-Kochas, District-Rohtas.
9. Smt. Nisha Kumar Wife of Govind Kumar Gupta Resident of Kochas Ward No.5, P.O. and P.S.-Kochas, District-Rohtas.
10. Shri Umesh Kumar Singh Son of Hira Prasad Singh Resident of Ward No.6, North Patel Nagar, Kochas, P.O. and P.S.-Kochas, District-Rohtas.
11. Shri Mundrika Singh Son of Late Bimal Singh Resident of Ward No.7, Kochas, P.O. and P.S.-Kochas, District-Rohtas.
12. Mumtas Idrisi Son of Mustaqim Idrisi Resident of Village- Parasia, Ward No.8, P.O. and P.S.-Kochas, District-Rohtas.
13. Shri Kashinath Singh Son of Ram Vyas Singh Resident of Vilalge-Parasia, Ward No.9, P.O. and P.S.-Kochas, District-Rohtas.
14. Smt. Rajbanshi Devi Wife of Shiv Lal Singh Resident of Ward No.10, Kochas, P.O. and P.S.-Kochas, District-Rohtas.
15. Shri Birendr Chaudhary Son of Ram Bachan Chaudhary, Resident of Ward No.11, Near Petrol Pump, Kochas, P.O. and P.S.-Kochas, District-Rohtas.
16. Smt. Madina Khatoon Wife of Naushad Alam, Resident of Ward No.12, Purani Bazar Kochas, P.O. and P.S.-Kochas, District-Rohtas.
17. Smt. Dharmshila Devi Wife of Manoj Chakraborty, Resident of Ward No.13, Kochas, P.O. and P.S.-Kochas, District-Rohtas.
18. Shri Anshu Chaudhary Son of Rohit Chauhan, Resident of Kochas Ward No.14, P.O. and P.S.-Kochas, District-Rohtas.



19. Smt. Kusum Devi Wife of Nathuni sah Resident of Kochas Ward No.15, P.O. and P.S.-Kochas, District-Rohtas.
20. Smt. Anjan Devi Wife of Ashok Dubey Resident of Kochas Ward No.16, P.O. and P.S.-Kochas, District-Rohtas.

... .. Respondents/Respondents

Appearance :

For the Appellant/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Ram Pravesh Nath Tiwari, Adv.
For the State	:	Mr. Yogendra Pd. Sinha (AAG7)
For the Respondent No.5	:	Mr. Amit Srivastava, Sr. Adv. Mr. Girish Pandey, Adv.
For the Pvt. Respondents	:	Mr. S.B.K. Manglam, Adv.

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date : 08-10-2021

Heard learned counsel for the appellant and learned counsel for the respondents. Learned counsel for the appellant hereby undertakes to remove all defects pointed out by the Stamp Reporter as and when required. It is accordingly directed that all defects pointed out by the Stamp Reporter be removed within one month hereof.

2. I. A. No. 01 of 2021 has been filed on behalf of the appellant for restraining the respondents from convening a fresh special meeting for No Confidence Motion against the appellant, which is placed on record.

3. With the consent of the parties and having regard to the urgency expressed in the matter as a special meeting is said to



have been fixed on 11.10.2021, the instant appeal is being taken up for disposal on merits.

4. The appellant is aggrieved by the order dated 13.08.2021 passed in C.W.J.C. No. 12295 of 2021 by the Hon'ble Single Judge, which has been disposed of with the following observations:-

“After having heard learned Counsel for the parties concerned and upon taking into consideration the rival submissions and the fact that clear 72 hours notice was not given to the petitioner, Ruby Devi, as per the requirement of law, I am of the considered opinion that the notice convening special meeting, dated 30.04.2021 (Annexure-2) is unsustainable in law. Accordingly, the impugned decision taken in the special meeting, dated 03.05.2021 (Annexure-1) is hereby quashed.

In view of the fact that the notice, for convening the special meeting, was not in accordance with the statutory provisions and in view of the order passed in CWJC No. 4165 of 2021, the respondents are at liberty to convene a fresh special meeting for considering the No Confidence Motion in accordance with law.”

5. The short facts of the case according to the appellant as stated in her writ petition are that she was duly elected on 22.04.2019 as Deputy Chief Councillor of Nagar Panchayat Kochas, District Rohtas. On 27.04.2021, a requisition was sent to the Chief Councillor for convening a special meeting for No Confidence Motion against the appellant which was accordingly



convened on 03.05.2021 after issuance of notice. In the said special meeting, the No Confidence Motion was passed against the appellant and she was removed from the post of Deputy Chief Councillor of Nagar Panchayat Kochas.

6. The said action was challenged before this Court in C.W.J.C. No. 11164 of 2021. The writ application was disposed of by the Hon'ble Single Judge of this Court mainly on the ground that clear 72 hours notice was not given to the appellant as per requirement of law. As a consequence, the decision in the said meeting dated 03.05.2021 was quashed with liberty to convene a fresh special meeting for considering the No Confidence Motion in accordance with law.

7. Mr. Chitranjan Sinha, learned senior counsel for the appellant, has raised a limited issue in the present appeal to the effect that the Hon'ble Single Judge has erred in granting liberty to convene a fresh special meeting for considering the No Confidence Motion. He invites reference to the 2nd proviso to Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter "the Act"), which reads as follows:-

"Provided further that a no confidence motion shall not be brought again within one year of the first no confidence motion."



8. It is submitted that the No Confidence Motion having been passed in the meeting dated 03.05.2021, no liberty for convening a fresh special meeting could have been granted by the Hon'ble Single Judge in view of the statutory bar by way of the 2nd proviso to Section 25(4) of the Act and no such special meeting could be convened for a period of one year.

9. Learned counsel for the State Election Commission (Respondent No.5), learned counsel for the State as well as learned counsel for the private respondents appear and have been heard. It has been submitted that no fault can be found in the order of the Hon'ble Single Judge, inasmuch as the decision in the special meeting dated 03.05.2021 had been quashed on technical ground of the requisite notice not having been served in accordance with Section 49 of the Act, namely, at least 72 hours before the time fixed for the meeting.

10. Having heard the parties and on consideration of materials on record, we find the appeal to be devoid of merit. It is not in dispute that the decision in the special meeting dated 03.05.2021, in which the No Confidence Motion was passed against the appellant, was quashed by the Hon'ble Single Judge on the ground of infirmity in the procedure of service of notice on the appellant at least 72 hours prior to the meeting. In other words, the



notice having not been legally and validly served, all actions pursuant thereto were treated to be illegal and hence, as an obvious consequence, the decision in the special meeting was quashed.

11. The 2nd proviso to Section 25(4) of the Act cannot be interpreted in the manner the appellant seeks which would otherwise amount to the appellant taking double advantage of the situation. On the one hand, the appellant obtained a favourable order by which the decision in the special meeting was quashed on a technicality; while on the other, the appellant wants to preempt a special meeting being convened validly for a period of one year. The decision of the special meeting held on 03.05.2021 has been quashed and thus stands obliterated as if such decision never came to pass. This part of the order of the Hon'ble Single Judge has been accepted by the appellant.

12. To our mind, the 2nd proviso to Section 25(4) of the Act would come into operation in a case where a special meeting has legally and validly been convened in which the No Confidence Motion has been moved unsuccessfully. It is only then that the bar to a fresh No Confidence Motion being brought would operate for one year. The obvious purpose behind this provision is to enable a duly elected representative against whom a No Confidence Motion has failed, to work unhindered and unobstructed at least for a year.



Such bar cannot apply in a case where the special meeting was not validly held at all as a consequence of invalidity in the procedure having been committed, as in the present case.

13. We do not find any error in the order of the Hon'ble Single Judge and no interference is called for. Accordingly, the L.P.A. stands dismissed.

14. I.A. No. 01 of 2021 also stands disposed of.

15. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the appellant within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

(Sunil Kumar Panwar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2021
Transmission Date	

