

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.898 of 2022

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Babita Gupta Wife of Dilip Kumar Gupta Resident of Mohalla- Chainpur Dhaka, Ward No.9, P.O. and P.S. Dhaka, District- East Champaran at Motihari, presently Deputy Chief Councilor, Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
6. The Officer on Special Duty, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
7. The District Magistrate-cum-District Election Officer (Municipality), East Champaran at Motihari, District- East Champaran at Motihari.
8. The District Panchayat Raj Officer, East Champaran at Motihari, District- East Champaran at Motihari.
9. The Executive Officer, Nagar Parishad, Dhaka, P.O. and P.S. Dhaka, District- East Champaran at Motihari.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 16460 of 2021

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1. Md. Salauddin Son of Abdul Zabbar Resident of Mohalla - Auraiya, P.O. and P.S. Dhaka, District- East Champaran at Motihari, presently Ward Councilor of Ward No. 7 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District - East Champaran at Motihari.
 2. Jamshed Alam Son of late Abdul badud Resident of Mohalla - Pipra Wazid, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 4 of Dhaka Nagar parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
 3. Md. Mohiuddin Son of Late Shamshul Resident of Mohalla - Pipra Wazid, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 6 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
 4. Md. Jakir Hussain Son of Late Jamaluddin Resident of Mohalla - Pipra Wazid, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 5 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.



5. Kuraisha Khatoon Wife of Nek Mohammad, Resident of Mohalla - Chainpur, P.O. and P.S. Dhaka District- East Champaran at Motihari, presently ward councilor of Ward No. 9 of Dhaka Nagar parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
6. Kamrun Nesha Wife of Md. Julfekar Resident of Mohalla - Chainpur, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 13 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
7. Samina Begum Wife of Wasiullah Resident of Mohalla - Islampur, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 19 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
8. Sunita Devi Wife of Narayan Baitha Resident of Mohalla - Chainpur, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 45 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
9. Babita Gupta Wife of Dilip Gupta Resident of Mohalla - Chainpur, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 10 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
10. Nazra Khatoon Wife of Abdul Matin Resident of Mohalla - Mohabbatpur, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 5 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
11. Kalima Khatoon Wife of Sabir Ahmad Resident of Mohalla - Lahan, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 25 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
12. Amutun Nehsa Wife of Mansoor Alam Resident of Mohalla - Lahan, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 24 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
13. Ramudesh Sah Son of Late Sahdeo Sah Resident of Mohalla - Naya Tola, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 21 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
14. Renu Gupta Wife of Atul Gupta Resident of Mohalla -Ramchandra, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 16 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
15. Shahjahan Khatoon Wife of Haroon Khan Resident of Mohalla - Birta Tola, P.O. and P.S. Dhaka, District- East Champaran at Motihari, Presently Ward Councilor of Ward No. 22 of Dhaka Nagar Parishad, P.O. and P.S. Dhaka, District- East Champaran at Motihari.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.



2. The Additional Chief 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, East Champaran at Motihari, District- East Champaran at Motihari.
5. The Executive Officer, Nagar Parishad, Dhaka, P.O. and P.S. Dhaka, District- East Champaran at Motihari.
6. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
7. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.

... .. Respondents

Appearance :

(In both cases)

For the Petitioner(s) : Mr. S.B.K.Mangalam, Advocate
Mr. Awnish Kumar, Advocate
For the Respondent State: Mr. Kinkar Kumar, SC-9
Ms. Deepika Sharma, AC to SC-9
For the Respondent S.E.C. : Mr. Sanjeev Nikesh, Advocate
For the Respondent Nagar Parishad : Mr. Prashant Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 09-03-2022

Since the foundational facts of these two cases are integrally connected, though reliefs claimed in these applications are different, they have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

2. We have heard Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the petitioners, Mr. Sanjeev Nikesh, learned Advocate for the State Election Commission, Bihar, Mr. Kinkar



Kumar, learned Standing Counsel No.9 assisted by Ms. Deepika Sharma, learned A.C. for the respondent State and Mr. Prashant Kumar, learned counsel for Nagar Parishad, Dhaka in both the cases.

3. To begin with, the relevant admitted facts leading to the filing of these two cases are being briefly taken note of.

4. A requisition was filed by the Ward Councilors for convening a special meeting for no-confidence motion against the Deputy Chief Councilor of Dhaka Nagar Parishad. It is the petitioners' case that the said no-confidence motion was carried in its meeting held on 23.06.2021. The petitioners are seeking a declaration in C.W.J.C. No. 16460 of 2021 that in the light of the Rules 93 and 97 of the Bihar Municipal Election Rules, 2007 read with Section 35 of the Bihar Municipal Act, 2007 (in short 'the Municipal Act'), the power to convene the meeting for election to the post of Chief Councilor and Deputy Chief Councilor of a Nagar Parishad vests in the concerned District Magistrate or any other Executive Magistrate authorized by the District Magistrate in this behalf and that the State Election Commission does not have any jurisdiction to interject and that the District Magistrate is not required to refer the matter to the State Election Commission for fixing the date of election of the Chief Councilor and the Deputy



Chief Councilor. The petitioners are also seeking quashing of a letter dated 19.08.2020 issued by the Secretary, State Election Commission, Bihar, whereby it had refused to fix a date for the election to the said vacant post of Deputy Chief Councilor of Dhaka, since, according to the Commission, the procedure adopted for removal of the Deputy Chief Councilor by way of no-confidence motion by a majority of the Ward Councilors was not in accordance with the law. It is the petitioners' case in C.W.J.C. No. 16460 of 2021 that the State Election Commission has no jurisdiction to comment upon any decision relating to removal of a Chief Councilor or a Deputy Chief Councilor on the basis of no-confidence motion.

5. The District Magistrate, East Champaran, without any direction from and without any intimation to the State Election Commission, subsequently convened the meeting for election on 25.10.2021 for filling up the post of Deputy Chief Councilor, which, according to the petitioners, had fallen vacant consequent upon passing of no-confidence motion against him. In the said meeting held on 25.10.2021, the petitioner of C.W.J.C. No. 898 of 2022 was declared elected-unopposed as she was the only person who had filed her nomination for the said post. The State Election Commission, through its letter dated 24.12.2021 addressed to the



District Election Officer (Municipality)-cum-District Magistrate, East Champaran, has intimated that the election of Deputy Chief Councilor, which was held on 25.10.2021 for election to the post of Deputy Chief Councilor was in breach of the provision under Article 243-ZA of the Constitution of India and Section 23(1) of the Municipal Act. Article 243-ZA vests in the State Election Commission the powers of superintendence, direction and control etc. for conduct of all elections to the Municipalities. The State Election Commission has accordingly cancelled the election of the Deputy Chief Councilor in the meeting held on 25.10.2021 by an order issued vide letter No. 9248 dated 24.12.2021 addressed to the District Magistrate, East Champaran. The said letter dated 24.12.2021 is under challenge in C.W.J.C. No. 898 of 2022.

6. Before proceeding to take note of the submissions made on behalf of the parties, a fact, which is also relevant for adjudication of the controversies arising in the present writ applications, needs to be taken note of. In respect of the no-confidence motion brought against the Deputy Chief Councilor, the State Election Commission through its letter dated 19.08.2021 addressed to the District Election Officer (Municipality)-cum-District Magistrate, East Champaran (Motihari) had pointed out that the special meeting for no-



confidence motion was held in defiance of the provisions under Section 49 and Section 377(1)(d)(ii) of the Municipal Act. In the said communication dated 19.08.2021, the State Election Commission further recorded that the Executive Officer of Nagar Parishad, Dhaka, had submitted incorrect information regarding the manner in which the no-confidence motion was passed against the Deputy Chief Councilor to the extent the same related to valid service of notice upon the Deputy Chief Councilor in accordance with the provision under Section 377(1)(d)(ii) of the Municipal Act. After having recorded its opinion to the aforesaid effect, the State Election Commission has chosen not to pass any order in respect of the no-confidence motion in view of its statutory limitations. The Commission accordingly recommended to the State Government to initiate disciplinary action against the Executive Officer of Nagar Parishad. As has been noted above, the said communication dated 19.08.2021 is under challenge in C.W.J.C. No. 16460 of 2021.

7. A counter affidavit has been filed on behalf of the State Election Commission in C.W.J.C. No. 898 of 2022. The averments made in the counter affidavit have not been controverted by the petitioner in C.W.J.C. No. 898 of 2022. In paragraph 14 of the counter affidavit, it has been stated that the



special meeting for consideration of no-confidence motion was held on 23.06.2021 and the report of the vacant post was submitted by the District Election Officer (Municipality)-cum-District Magistrate, East Champaran (Motihari), vide letters dated 29.06.2021 and 31.07.2021. Upon considering the entire report, the State Election Commission had reached a conclusion that the notice of the special meeting was not served within 72 hours prior to the meeting as contemplated under Section 49 of the Municipal Act to the Member of Ward No. 2 (the Deputy Chief Councilor) and Member of Ward No. 20 (the Chief Councilor). Taking into account the procedural illegality in carrying the no-confidence motion, the State Election Commission had declined to fix a date for a special election for the post of Deputy Chief Councilor. It has been stated in the counter affidavit that the State Election Commission having no jurisdiction to set aside the outcome of the said special meeting of no-confidence motion did not consider it appropriate to interfere with the same. It, however, indicated to the District Election Officer about the illegality in convening the special meeting for no-confidence motion.

8. Mr. Mangalam, learned counsel appearing on behalf of the petitioners has made his extensive submissions to bring home his point that the State Election Commission has no role to



play in the matter of an election for filling up of a post of Chief Councilor/Deputy Chief Councilor falling vacant consequent upon removal of the holder of such post with the passing of the no-confidence motion. He has vehemently argued that the State Election Commission has no supervisory role in the matter of such elections. He has further submitted that it is the District Magistrate and the District Magistrate of the concerned district only, who is vested with the power to convene a meeting for election to the vacant post of Deputy Chief Councilor of the Nagar Parishad. He has submitted, accordingly that the District Magistrate had validly and rightly convened the meeting for the election of Deputy Chief Councilor. According to him, the impugned order dated 24.12.2021 issued by the State Election Commission cancelling election of the petitioner of C.W.J.C. No. 898 of 2022 is illegal, arbitrary, and beyond jurisdiction.

9. Assailing the communication of the State Election Commission dated 19.08.2021, wherein it had recorded illegality in convening of the said meeting for no-confidence motion, he has submitted that the State Election Commission has acted completely beyond jurisdiction. He has further submitted that the person, who stood removed from the post of Deputy Chief Councilor after passing of the no-confidence motion, has not



questioned her removal before any forum. He has submitted that there is no procedural irregularity in the removal of the Deputy Chief Councilor after a resolution having been carried by a majority of Councilors of the said Nagar Parishad.

10. Mr. Sanjeev Nikesh, learned counsel representing the State Election Commission has, *per contra*, submitted that the issue in relation to the supervisory jurisdiction of the State Election Commission in respect of election for filling up vacant posts under a Municipality is no more *res integra* and has been decided by this Court in case of ***Sanjay Das and Others vs. The State of Bihar and others*** reported in **2009(4) PLJR 347 (S.B.)** [***Sanjay Das (S.B.)*** in short], which has subsequently been affirmed by a Division Bench in a decision reported in **2009(4) PLJR 1036 (D.B.)** (***Sanjay Das and Others vs. The State of Bihar and others***) [***Sanjay Das (D.B.)*** in short].

11. In view of the nature of the controversy, which has emerged from the pleadings on record and submissions advanced on behalf of the parties, we have considered it apt to deal with the case of the petitioner of C.W.J.C. No. 898 of 2022, first.

12. This is an admitted fact that the District Magistrate-cum- District Election Officer (Municipality), East Champaran (Motihari) had convened the meeting for holding election to the



post of Deputy Chief Councilor on 25.10.2021. Referring to Article 243-ZA of the Constitution and Section 23(1) of the Municipal Act, the State Election Commission has declared the election held on 25.10.2021 to be illegal. Article 243-ZA of the Constitution reads as under: -

"243-ZA. Elections to the Municipalities.—*(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243-K.*

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities."

13. This Court in the case of ***Sanjay Das and Others (S.B.)*** (supra) has dealt extensively with the supervisory jurisdiction of the State Election Commission for holding an election to fill up a vacant post in a local body. Though the case of ***Sanjay Das and Others (S.B.)*** (supra) relates to Bihar Panchayat Raj Act, 2006, it is not in dispute that the provision under the Municipal Act and Bihar Panchayat Raj Act, 2006 are *in pari materia*, both enacted to carry out the purposes of the



constitutional provisions under Part IX and Part IX-A of the Constitution. This Court held in paragraph 28 in the case of **Sanjay Das and Others (S.B.)** (supra) as under: -

“28. It is evident from the aforesaid provisions that so far as the elections of Pramukh/Up-Pramukh are concerned, the same is to be done under the superintendence, control and direction of the State Election Commission and similarly for the vacancy arising in the office of Pramukh or Up-Pramukh also election has to be conducted accordingly under the superintendence, control and direction of the State Election Commission. Only an elected member of the Panchayat Samiti is entitled to be elected to such post and the right to elect also belongs exclusively to the elected members. However, such rights to either get elected for the said post or to elect on the said post of the members of the Panchayat Samiti can only be exercised as per Section 40 of the Act under the supervision, control and direction of the State Election Commission. It is evident from the provisions of Section 40(1) of the Act that an election to the office of Pramukh or Up-Pramukh whether originally or on any subsequent vacancy arising on the said post would be a valid election in the eye of law if the same is conducted under the superintendence, control



and direction of the State Election Commission. The said interpretation is further reinforced by the provisions of sub- section (4) of Section 40 which provides that the election of Pramukh and Up-Pramukh as also filling up of vacancies and determination of disputes relating to such election have to be in accordance with such Rules or procedures as laid down by the State Election Commission. Thus so far as the matter of elections, whether original or subsequent to the said offices, are concerned the overriding rules or procedure in that regard can only be those as may be prescribed by the State Election Commission. It has been pointed out by learned counsel for the State Election Commission that at present no such statutory rules have been framed by the State Election Commission. In that view of the matter the same would be governed by Rules to the extent applicable as provided in the Bihar Panchayat Election Rules, 2006. Rule 121 clearly lays down that in case of any vacancy on any post in the office of the Panchayat the District Election Officer shall inform the State Election Commission and the State Election Commission shall fill up the said post in accordance with the provisions of the Act and the Rules. It is evident that the vacancy cannot be filled up by any authority until the Election Commission has been informed by the District



Election Officer and steps are taken by the Election Commission to fill up the said vacancies in accordance with the Act and the Rules.”

14. Affirming the said view in case of ***Sanjay Das and Others (S.B.)*** (supra), the Division Bench held in case of ***Sanjay Das and Others (D.B.)*** (supra) as under: -

“4. So far as judgement of the writ court relating to validity of his first election is concerned, we are in agreement that the election held without the authority of the State Election Commission can never be an election in the eyes of law. Such an election has to be ignored by all the concerned authorities. That having been done by the State Election Commission, we find no good reason to interfere with that part of order of the writ court or with the order of the State Election Commission.”

15. Further, in case of ***Ranjana Devi Vs. The State of Bihar and Others*** reported in (2010)2 PLJR 686 (S.B.), this Court has concluded in paragraph 10 as under: -

“10. On a consideration of the aforesaid submissions of learned counsels for the parties, this Court does not find any force in the submissions of learned counsel for the



petitioner. It is trite that the Constitution is the fundamental law of the land and all other Legislatures, whether the Parliament or the State Legislatures, must act in accordance with the said fundamental law of the land and cannot over-ride the same. When the Constitution itself confers the power of superintendence, direction and control to the State Election Commission over all the elections to the Municipalities, which would evidently include an election to the post of the Chief Councillor, it is not open to the State Legislature to exclude any such power by legislative enactment or by statutory rules. The said proposition has been clearly laid down in paragraph No. 15 of the aforesaid decision of this Court in the case of Sanjay Das, etc. (supra).”

16. Upon examination of the provisions under Article 243-ZA and Article 243-K of the Constitution, which are in *pari materia* and the provisions under the Municipal Act, we do not find any reason to take a different view than what has been taken by this Court in the case of **Sanjay Das and Others (S.B.)** (supra), **Sanjay Das and Others (D.B.)** (supra) and **Ranjana Devi** (supra).

17. In our opinion, thus, the letter of the State Election Commission dated 24.12.2021 cancelling the very election held on



25.10.2021 under the direction of the District Magistrate, East Champaran, without any intimation to the State Election Commission does not suffer from any legal infirmity requiring this Court's interference. C.W.J.C. No. 898 of 2022 is accordingly dismissed.

18. The basic facts of C.W.J.C. No. 16460 of 2021 have been noted hereinabove. The no-confidence motion was carried against the Deputy Chief Councilor in the meeting held on 23.06.2021. In the communication dated 19.08.2021 addressed to the District Election Officer by the Secretary, State Election Commission, which has been clearly mentioned that the special meeting was convened without proper compliance with the requirement of service of notice under Section 377(1)(d)(ii) of the Municipal Act. The Commission had sought for a report from the Executive Officer of Dhaka Nagar Parishad, as is evident from the said communication dated 19.08.2021. It is also mentioned in the said communication that the Executive Officer had given incorrect information regarding valid service of notice upon the Deputy Chief Councilor.

19. Mr. Mangalam, learned counsel for the petitioners has relied on a letter dated 29.07.2021 of the Executive Officer, Nagar Parishad, Dhaka, to contend that it is evident from the said



communication that notices were sent to the Ward Members and the Deputy Chief Councilor through registered post and as a matter of fact the Deputy Chief Councilor had refused to receive notice. He contends that refusal to receive notice is valid service of notice and in the said background, the observations made by the State Election Commission in its letter dated 19.08.2021 were completely uncalled for.

20. At this juncture, we consider it appropriate to note Section 377 of the Act, which lays down the procedure for service of notices, etc. It states that every notice, bill, summons, order, requisition, or other document required or authorized by this Act or the Rules or the Regulations made thereunder to be served or issued by or on behalf of the Municipality or by any of the Municipal Authorities referred to in Section 20, or by any other officer or other employee of the Municipality, shall be deemed to be duly served,

(i) if it is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the municipal area, or is given or tendered to some adult member of his family, or is affixed on some conspicuous part of the land or building, if any, to which it relates, or



(iii) is sent by registered post to such person.

21. In response to a query made by this Court Mr. Mangalam, learned counsel for the petitioners has failed on the basis of pleadings on record to convince this Court that notice could be said to be validly served in terms of Section 377 of the Municipal Act inasmuch as, admittedly, if the person was not found, it was to be affixed on some conspicuous part of his last known place of residence or business. He, however, contended on the basis of the report of the Executive Officer of the Nagar Parishad that since the notice was sent to the Deputy Chief Councilor by registered post, the very dispatch by registered post is to be treated to be valid service of notice under Section 377 of the Municipal Act.

22. This submission is palpably misconceived and untenable, particularly in the context of the process of no-confidence motion against a Chief Councillor or Deputy Chief Councillor, which is governed by the Bihar Municipal No-Confidence Motion Process Rules ('No Confidence Motion Rules, in short) framed under Section 25(4) and Section 419 of the Municipal Act. Rule 2(i) No Confidence Motion Rules requires *inter alia* that special meeting for no-confidence shall be convened



within fifteen days of the issuance of notice. In such circumstance, it is preposterous to contend that issuance of notice through registered post should be deemed to be a valid service of notice. Further, admittedly, there had been no compliance with the requirement under Section 377(d) of the Municipal Act for valid service of notice. The observations made by the State Election Commission in its letter dated 19.08.2021, in such circumstances, cannot be treated to be invalid and unjustified.

23. Before we conclude, we must take note of the letter dated 19.01.2022 of the District Magistrate-cum- District Election Officer (Municipality), East Champaran (Motihari), addressed to the Officer on Special Duty, State Election Commission, wherein he has himself admitted the mistake committed by him in holding a meeting for election to fill up the vacant post of Deputy Chief Councilor.

24. Mr. Mangalam has submitted that if this Court declines to interfere with the order of the State Election Commission dated 24.12.2021, which is under challenge in C.W.J.C. No. 898 of 2022, the second relief sought in C.W.J.C. No. 16460 of 2021 may be considered.

25. The relief No. (ii) in C.W.J.C. No. 16460 of 2021 reads as under: -



“For issuance of an appropriate writ in the nature of CERTIORARI for quashing the paragraph no.4 (Ka) of the letter dated 19.08.2021 issued under the signature of the Respondent no.7 and contained in his letter no. 3195 dated 19.08.2021, whereby and where under the Respondent Commission has refused to fix the date for election to the vacant post of Deputy Chief Councilor of Dhaka Nagar Parishad on the ground that if under the scheme of the Act and the Rules framed there under the State Election Commission has not been vested with power to fix the date of election to the post of Chief Councilor or Deputy Chief Councilor of a municipality, it has equally no jurisdiction to refuse to fix the date of election and equally the Commission does not have any jurisdiction to comment upon the procedure adopted in removal of the Chief Councilor and Deputy Chief Councilor by way of No Confidence Motion by the majority of the Ward Councilors.”

26. In view of the aforesaid discussion, however, we are not inclined to interfere with the said communication dated 19.08.2021.

27. Mr. Mangalam has lastly submitted that this Court may not permit a vacuum to continue in the light of cancellation of



the election in question by the State Election Commission and at the same time its refusal to convene a meeting for the purpose of election in accordance with the statutory provisions. In our opinion, a situation has arisen in the facts and circumstances of the case for the State Government of Bihar to take a call for restoration of a local self-government of Dhaka Nagar Parishad by invoking extant statutory provision under the Municipal Act. The Court would expect the State Election Commission, Bihar, and the Principal Secretary, Urban Development and Housing Department, Government of Bihar, to take a decision in this regard in accordance with law within two weeks from the date of receipt/production of a copy of this order.

28. For the foregoing reasons, both these writ applications are dismissed with the observations and direction as above.

29. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.03.2022
Transmission Date	N/A

