

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8834 of 2020**

---

---

Jayanti Devi C/o Ramnath Prasad, Quarter no.- B-5/8, Birchand Patel Marg,  
A.G. Office Campus, R-Block, Patna, P.s. and P.o.- Sachivalaya, Patna G.P.O.,  
Bihar

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Urban Development and Housing Department,  
Govt. of Bihar, Patna
3. District Magistrate, Nalanda-Biharshariff
4. S.D.O. Nalanda
5. Chief Executive Officer, Nagar Parishad, Hilsa,
6. Satendra Prasad, Ward Counselor, Ward No. 4, Nagar Parishad, Hilsa
7. Sadhana Devi Ward Counselor, Ward No. 14, Nagar Parishad, Hilsa
8. Basisth Kumar Ward Counselor, Ward No. 3, Nagar Parishad, Hilsa
9. Manorma Devi Ward Counselor, Ward No. 5, Nagar Parishad, Hilsa
10. Rita Devi @ Karuna Kumari Ward Counselor, Ward No. 25, Nagar Parishad,  
Hilsa
11. Tribhuvan Kumar, Ward Counselor, Ward No. 20, Nagar Parishad, Hilsa
12. Shailendra Kumar, Ward Counselor, Ward No. 10, Nagar Parishad, Hilsa
13. Rina Devi Ward Counselor, Ward No. 19, Nagar Parishad, Hilsa
14. Bilkish Khatoon Ward Counselor, Ward No. 6, Nagar Parishad, Hilsa
15. Shabuja Devi Ward Counselor, Ward No. 1, Nagar Parishad, Hilsa
16. Avanti Kumari Ward Counselor, Ward No. 2, Nagar Parishad, Hilsa
17. Surendra Kumar Ward Counselor, Ward No. 15, Nagar Parishad, Hilsa
18. Baby Devi Ward Counselor, Ward No. 23, Nagar Parishad, Hilsa
19. Mukesh Kumar Ward Counselor, Ward No. 21, Nagar Parishad, Hilsa
20. Vijay Kumar Vijeta Ward Counselor, Ward No. 16, Nagar Parishad, Hilsa

... .. Respondents

---

---

**Appearance :**

For the Petitioner	:	Mr.Sarva Deo Singh
For the Respondents	:	Mr.S.B.K. Mangalam with
	:	Mr.Ravi Shanker Pankaj
For the State	:	Mr.Rakesh Ambastha (AC to AAG 7)

---

---

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 22-03-2021**



Sub-Section (4) of Section 25 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') prescribes for removal from office of a Chief Councillor/Deputy Chief Councillor of a Municipal Corporation/Municipal Council/Nagar Parishad by a resolution carried by a majority of whole number of councillors at a special meeting, to be called for the said purpose 'in the manner prescribed' upon a requisition made in writing by not less than one-third of the total number of councillors. It further states that the procedure for conduct of business in the special meeting shall be such as may be prescribed. The first proviso to Sub-Section (4) of Section 27 states that a no-confidence motion shall not be brought against a Chief Councillor/Deputy Chief Councillor within a period of two years of taking over the charge of post.

2. Section 419 of the Act confers upon the State Government power to make rules for carrying out the purposes of the Act.

3. The Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as 'the Rules') have been framed by the State of Bihar in exercise of the powers conferred under Section 25(4) and 419 of the Act, which lays down the process for bringing a motion of no confidence under Section 25(4) of the Act. The interpretation of Sub-Rule (i) and (iii) of



Rule 2 is at the core of the controversy which the present writ application involves and, therefore, they are being reproduced hereinbelow:-

*“(i) To remove the Chief Councillor/the 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.*

*xx xx xx xx xx xx xx xx*

*(iii) 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 Municipal Act, 2007 and the notice for it shall be issued by the Chief Municipal Officer.”*

4. On plain reading of Sub-Rule (i) of Rule 2, it can be easily noticed that it stipulates calling for a special meeting of elected councillors to remove a Chief Councillor/Deputy Chief Councillor to be requisitioned and signed by not less than one-third of the total number of the elected councillors, which is to be



given to the chief councillor whereafter the chief councillor is obligated to issue a notice for special meeting within seven days from receipt of requisition to be convened within fifteen days of the date of issuance of the notice. In the event, the chief councillor refuses or fails, to issue notice within the stipulated date or to convene meeting within the stipulated time, the special meeting can be called by the requisitionists in accordance with Section 48(3) of the Act.

5. The admitted facts of the present case are that the petitioner was elected as the chief councillor of Nagar Parishad, Hilsa on 16.09.2016 and was subsequently removed on a motion of no confidence brought against her. She was again elected as chief councillor on 15.10.2018. She was communicated by a letter dated 16.10.2020 issued by the Executive Officer, Nagar Parishad, Hilsa that 15 ward councillors had given in writing, expressing their no confidence in the petitioner as chief councillor and had requested for convening a special meeting. A copy of the requisition made by the ward councillors was admittedly shown enclosed with the said letter dated 16.10.2020, which was received by the petitioner on 20.10.2020. Though it was within the petitioner's knowledge that the ward councillors had requisitioned special meeting, she did not call such meeting within 7 days from the receipt of the said letter dated 16.10.2020.



6. The petitioner has filed the present writ application seeking quashing of the letter dated 16.10.2020, as also the requisition of the same date made by the ward councillors for convening special meeting of no-confidence motion. It is the petitioner's case that the requisition by the ward councillors dated 16.10.2020 was not served upon her. The petitioner has put to challenge the said communication dated 16.10.2020 of the Executive Officer on the ground that a requisition cannot be served by an Executive Officer directly on the chief councillor which can be done only by the councillors in terms of statutory prescriptions. Subsequent to filing of the present writ application, by a letter dated 29.10.2020, a special meeting was convened for no-confidence motion on 05.11.2020. The petitioner has put to challenge the said letter dated 29.10.2020 by seeking amendment in the petition through I.A. No. 01 of 2020. Considering the nature of relief sought in the main application, as the subsequent development is integrally connected, I.A. No. 01 of 2020 is allowed. Statements made in I.A. No. 01 of 2020 shall form part of the main application.

7. Subsequently, a special meeting was held for the said purpose and this is an admitted fact that no-confidence motion was discussed and passed in the special meeting held on 05.11.2020, in which, out of total 26 ward councillors 19 voted in favour of the



no-confidence motion and accordingly, the petitioner stood removed from the post of the chief councillor. In a meeting held on 09.12.2020, a new chief councillor was elected.

8. I have heard Mr. Sarva Deo Singh, learned counsel for the petitioner, Mr. Siddharth Prasad, learned counsel representing the Nagar Parishad, Hilsa and Mr. S.B.K. Mangalam, learned counsel representing Respondents no. 6, 7, 8, 9, 11, 12, 13, 14, 17, 18 and 19. Respondent No. 7 has been elected as chief councillor in the meeting held on 09.12.2020.

9. Mr. Sarva Deo Singh, learned counsel for the petitioner made two main submissions to assail the impugned process of carrying the no-confidence motion passed against her. He has firstly submitted that for adherence to the provisions under Sub-Rule (i) of Rule 2 of the Rules, the requisition was to be essentially given by the ward councillors to the chief councillor (the petitioner), which was not done. He has submitted that the ward councillors wrongly informed the Executive Officer that the petitioner had avoided receiving the requisition for convening meeting for no-confidence motion and there is no evidence to support that any attempt was ever made for giving the requisition to the petitioner. He has referred to Section 20 to the first proviso to Sub-Section (4) of Section 25 of the Act to contend that since the petitioner was elected on 15.10.2018, no no-confidence motion



could be brought against her within a period of two years of taking over the charge of the post i.e. before 16.10.2020. Situated thus, the issuance of the letter by the Executive Officer on 16.10.2020 referring to the requisition for no-confidence motion stating that according to the requisitionists the petitioner was refusing to accept the notice does not satisfy statutory mandate. He has submitted accordingly that issuance of letter dated 16.10.2020 by the Executive Officer to the petitioner relating to requisitioning, special meeting for no-confidence motion being wholly without jurisdiction deserves interference by this Court in the present proceeding. He has urged that since the very foundation of initiation of the process for removal of the petitioner from office by invoking Section 25 (4) of the Act read with Rule 2 of the Rules is in clear breach of the procedure laid down under the Rules, the entire process of petitioner's removal and subsequent election of Respondent No. 7, as Chief Ward Councillor is vitiated. He has secondly submitted, with reference to Sub-Rule (iii) of Rule 2 of the Rules that the same needs to be read with Section 48(3) of the Act. According to him, if the chief councillor fails to issue notice within the stipulated date or convene the meeting within stipulated time, the special meeting is to be called by the requisitionists, as per the provision of Section 48(3) of the Act. Referring to Section 48 of the Act, he has submitted that Sub-Section (2) of Section 48



mandates a chief councillor to convene a meeting of municipality within 15 days from the date of requisition made by not less than 2/5<sup>th</sup> of the councillors. According to him, by virtue of Sub-Section (3) of Section 48 of the Act read with Sub-Rule (iii) of Rule 2 of the Rules, the requisitionists could have called the meeting only if no meeting was called within 15 days by the chief councillor, which has been violated in the present case.

10. *Per contra*, Mr. S.B.K. Mangalam, learned counsel representing the contesting private respondents has submitted that the petitioner is raising dispute in relation to the fact, as to whether, she had refused to accept the requisition or not. This being a disputed question of fact, this Court exercising power of judicial review in a proceeding under Article 226 of the Constitution of India may not go into such question. He has relied on a Division Bench decision of this Court in case of *Sunita Devi v. The State of Bihar & Others* reported in 2016 (1) PLJR 182. He has relied on another Division Bench decision reported in 2017 (2) PLJR 29 in case of *Sabila Khatoon & Others v. The State of Bihar through the Principal Secretary, Panchayat Raj Department & Others* and has submitted that Sub-Rule (i) of Rule 2 of the Rules does not require delivery of a requisition to the chief councillor personally and the same can be received by a person on his/her behalf. He has argued that in this case, the requisition was



received by the Executive Officer who is an officer of Nagar Parishad, as the petitioner had refused to receive it and she was not available in the office, which was served on her subsequently by the Executive Officer. He has further submitted that since the petitioner has elected not to challenge election of respondent no. 7 as Chief Ward Councillor after she lost in the no-confidence motion, no relief, as sought for by the petitioner can be granted by this Court in the present proceeding.

11. Mr. Siddharth Prasad, learned counsel appearing on behalf of the Nagar Parishad, Hilsa on the other hand has relied on a coordinate Bench decision of this Court rendered on 22.07.2014 in C.W.J.C. No. 11142 of 2014 (*Amit Kumar & Others v. The State of Bihar & Others*) and another analogous cases to contend that the only requirement under the Act and the Rules is that requisition for moving a no-confidence motion against Chief Councillor/Deputy Chief Councillor is given to the chief councillor and there is no mandate for personal service of such requisition upon him/her. He has argued that at least on 20.10.2020 the petitioner had indisputably learnt about the requisition for convening the special meeting. As she did not issue notice for convening the meeting within 7 days from the date of receipt of requisition as stipulated under Sub-Rule (i) of Rule 2 of the Rules, there is no illegality in issuance of notice by the requisitionists 7



days thereafter for convening the special meeting. Reliance has also been placed by him on another Division Bench decision rendered on 04.08.2014 in LPA No. 1077 of 2014 (***Rajeshwar Prasad v. The State of Bihar & Others***) wherein it has been held that there is no statutory stipulation that requisition for special meeting must be 'personally' served on the chief councillor. He has referred to yet another co-ordinate Bench decision in support of his contention in case of ***Nasima Khatoon v. The State of Bihar & Others*** to bolster his stand that mandate of the statute for bringing no-confidence motion cannot be questioned on a hyper technical ground that original copy of the requisition was never produced before her.

12. In reply, Mr. Sarva Deo Singh has placed reliance on a Division Bench decision of this Court in case of ***Sheikh Hassmuddin & Anr. v. The State of Bihar & Others*** reported in **2015 (3) PLJR 203** wherein it has been held that in the absence of non-service of requisition, the action of issuance of notice by the requisitionists for convening special meeting for no-confidence motion and any notice calling for such special meeting is invalid.

13. I have gone through the rival pleadings on record and I have given my anxious consideration to the submissions made on behalf of the contesting parties.



14. Before I proceed to deal with rival contentions, it is apt to note at the outset that 'giving' of the requisition to the petitioner for no-confidence motion is the bone of contention in the present case. It has been stated in paragraph 1 of the writ application that the requisition dated 16.10.2020 had not been served upon the petitioner. She has not and cannot dispute that she had received the letter bearing no. 920 dated 06.10.2020 issued by the Executive Officer. The petitioner did not disclose in her petition that she had received the notice on 20.10.2020. It is only on the basis of the counter affidavit filed on behalf of the Respondent No. 5 that this Court could notice that she had received the said letter dated 16.10.2020 on 20.10.2020. Further, she did put her signature acknowledging receipt of the said letter, which is evident from Annexure- A to the counter affidavit filed on behalf of Respondent no. 5. The requisition for no-confidence motion signed by 15 ward councillors has been shown to have been enclosed with the said letter. The petitioner's signature finds place just below the noting in the letter dated 16.10.2020 to the effect that requisition of 15 ward councillors for no-confidence motion in 18 pages was enclosed. In such background, her statement made in paragraph 1 of the writ application that the requisition dated 16.10.2020 was not served on her stands falsified. The Court has thus no hesitation in recording a clear



finding that the statement made in paragraph 1 of the writ petition to the aforesaid extent is false and misleading.

15. Though the writ application deserves to be dismissed on the ground of falsehood alone, I have considered it apt to deal with the above mentioned legal issues raised on behalf of the parties.

16. As is evident from the preamble of the Rules, the same has been framed in exercise of power under Section 25(4) and 419 of the Act. Sub-Section (4) of Section 25 deals with 'special meeting' for the purpose of introducing no-confidence motion for removal of Chief Councillor/Deputy Councillor. The provision under Sub-Section (4) of Section 25 for calling special meeting is not controlled by Section 48 of the Act, which pertains to holding of meetings on regular basis and on requisition as may be made by 2/5<sup>th</sup> of the councillors to convene a meeting. For the purpose of calling special meeting for no-confidence motion, the substantive provisions under Sub-Section (4) of Section 25 of the Act needs to be read with the provisions under the Rules. When Sub-Rule (iii) of Rule 2 prescribes that in case of notice not being issued by the chief councillor within stipulated date, the same refers to the date stipulated under Sub-Rule (i) of Rule 2 (7 days). When it refers to failure or refusal to convene special meeting within stipulated time, it refers to 15 days of the date of issuance



of the notice provided under Sub-Rule (i) of Rule 2. In case of failure on the part of the chief councillor in these two respects, Sub-Rule (iii) of Rule 2 requires calling for special meeting by the requisitionists as per the provision of Section 48(3) which simply enables the persons, who signed the requisition to call special meeting.

17. In my opinion, the stipulation under Sub-Rule (iii) of Rule 2 of the Rules is not relatable to Sub-Section (2) of Section 48 of the Act. Reference to Sub-Section (3) of Section 48 of the Act in Sub-Rule (iii) of Rule 2 of the Rules is only for the purpose of enabling requisitionists to call a meeting in case of failure on the part of the chief councillor to convene a meeting.

18. I find force in the submissions advanced on behalf of the respondents with reference to the decisions of this Court in case of *Sunita Devi* (supra), *Rajeshwar Prasad* (supra) and *Sabila Khatoon* (supra) laying down the law that there is no requirement of personal service of requisition on the chief councillor to satisfy the requirement under Sub-Rule (i) of Rule 2 of the Rules. I am in complete agreement with the coordinate Bench decision of this Court in case of *Amit Kumar* (supra).

19. In view of the aforesaid discussion, I do not find any merit in this application. This application is accordingly rejected.



20. Since the Court is of the opinion that the petitioner has attempted to mislead this Court by making a false statement, as noticed above, it is considered apposite to impose reasonable cost which is assessed at Rs. 10,000/- to be paid by the petitioner to Respondent No. 7 within two months.

21. Interlocutory applications, if any, stand disposed of.

**(Chakradhari Sharan Singh, J)**

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/03/2021
Transmission Date	N/A

