

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17563 of 2019

Kaushal Kaushik S/o late Jagdish Prasad Resident of Village- Nisarpura, P.O.-
Amarpura, P.S.- Naubatpur, District- Patna, presently Chief Councilor, Nagar
Panchayat, Naubatpur, P.O. and P.S.- Naubatpur, District- Patna

... .. 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. The District Magistrate Patna, Distt.- Patna
4. The Executive Officer Nagar Panchayat, Naubatpur, P.O. and P.S.-
Naubatpur, Distt.- Patna
5. Smt. Mitu Kumari W/o Sri Chandra Prakash, Resident of Ward No. 5,
Naubatpur, P.O. and P.S.- Naubatpur, Distt.- Patna, presently Deputy Chief
Councilor, Nagar Panchayat, Naubatpur, P.O. and P.s.- Naubatpur, Distt.-
Patna
6. Pyare Lal S/o Not known to the petitioner. Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.S.- Naubatpur, District- Patna
7. Surendra Prasad S/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
8. Ramsidh Ram S/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
9. Sangeeta Devi W/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
10. Geeta Devi W/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
11. Dewanti Devi W/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
12. Ashok Kumar S/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
13. Raj Kumar Paswan S/o Not known to the petitioner Ward Councilor of
Nagar Panchayat, Naubatpur through the Executive Officer, Nagar
Panchayat, Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
14. Subhash Kumar S/o Not known to the petitioner Ward Councilor of Nagar
Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat,
Naubatpur, P.o. and P.s.- Naubatpur, District- Patna



15. Shailesh Sharma S/o Not known to the petitioner Ward Councilor of Nagar Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat, Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
16. Rita Devi W/o Not known to the petitioner Ward Councilor of Nagar Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat, Naubatpur, P.o. and P.s.- Naubatpur, District- Patna
17. Mridula Devi W/o Not known to the petitioner Ward Councilor of Nagar Panchayat, Naubatpur through the Executive Officer, Nagar Panchayat, Naubatpur, P.o. and P.s.- Naubatpur, District- Patna.
18. The Senior Superintendent of Police, Patna.
19. The Jail Superintendent, Model Central Jail Beur, Patna.

... .. Respondent/s

Appearance :

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| For the Petitioner/s | : | Mr.Shashi Bhushan Kumar Mangalam, Advocate |
| For the State | : | Mr.Kinkar Kumar, SC-9 Mr.Yogesh Kumar, AC to SC-9 |
| For the S.E.C. | : | Mr.Amit Shirvastava, Advocate Mr.Girish Pandey, Advocate |
| For the Nagar Panchayat : | | Mr.Anil Kumar, Advocate |
| For the Pvt. Res. | : | Mr. P.K. Shahi, Advocate Mr.Ranjeet Kumar, Advocate |

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 29-08-2019 In view of the directions required to be issued in this case learned counsel for the petitioner is directed to make Senior Superintendent of Police, Patna and the Jail Superintendent, Model Central Jail Beur, Patna as party respondent no. 18 and 19 respectively in course of the day. Learned counsel for the State takes notice on their behalf and shall inform them immediately.

Heard Mr. S.B.K. Mangalam, learned counsel representing the petitioner, Mr. P.K. Shahi, learned Senior Counsel representing the respondent nos. 6 to 19, as also learned



counsel for the State and learned counsel for the State Election Commission.

Petitioner in the present case is seeking quashing of the requisition dated 02.08.2019 addressed to the petitioner but said to have been filed in the office of respondent no. 4 on 05.08.2019 by which the requisitionists have made a request from the petitioner to convene a special meeting of Naubatpur Nagar Panchayat for consideration of No Confidence Motion against the petitioner and the Deputy Chief Councilor. The requisition has been assailed on the grounds inter-alia that because the petitioner is presently detained in custody in connection with Naubatpur P.S. Case No. 46 of 2018, he would not be authorised under the law to deal with the official records in the capacity of Chief Councilor of the Municipality and hence he could not have fixed any date of the special meeting.

By filing Interlocutory Application No. 1 of 2019 an additional relief has been prayed seeking quashing of letter dated 21.08.2019 filed by requisitionist and addressed to the respondent no. 4 whereby the requisitionist have fixed the date of special meeting for consideration of 'No Confidence Motion' against the Chief Councilor and Deputy Chief Councilor on 30.08.2019 and has requested the Executive Officer to issue



notice to all the Ward Councilors and the Chief Councilor and Deputy Chief Councilor.

Mr. Mangalam, learned counsel for the petitioner submits that during pendency of this writ application and in view of the exercise of power by the requisitionist fixing the date of special meeting the respondent no. 4 had issued notice to the petitioner and other Ward Councilors including the Deputy Chief Councilor, therefore, the present Interlocutory Application has been filed in order to get a complete relief. I.A. No. 1 of 2019 is not opposed for purpose of consideration and hence it is allowed.

Let the statements made in the Interlocutory Application be treated as part and parcel of the writ application.

In course of argument, Mr. Mangalam has taken this Court through the provisions made in the Bihar Municipal No Confidence Motion Rules, 2010 (hereinafter referred to as the 'Rules of 2010'). It is submitted that in terms of Rule 2(i) of the Rules of 2010 in order to remove the Chief Councilor/Deputy Chief Councilor a special meeting of the elected councilor has to be called for and for that special meeting a requisition signed by not less than 1/3rd of the total number of the Councilors is to be given to the Chief Councilor. The emphasis is that the Rule



mandates the requisition for calling of the special meeting to discuss the No Confidence Motion must be given to the Chief Councilor and then a notice shall be issued by the Chief Councilor for the special meeting of the Urban Local Body within seven days from the receipt of the application and the notice shall convene within 15 days on the date of issuance of the notice.

It is his submission that if the Chief Councilor is in Judicial Custody and is unable to discharge his statutory function because of his detention in jail, the notice for special meeting even if served upon him, he is unable to exercise his power to fix a date for the special meeting. It is his further submission that he would also not be in position to attain the No Confidence Motion, therefore, the right to defend himself as envisaged under Rule 2(v) of the Rules of 2010 would not be available to him which in turn would be a violation of principle of natural justice embodied in sub-rule (v) of Rule 2 of the Rules of 2010. It is submitted that for this reason when the petitioner received the official file in jail to fix a date for a special meeting, he has written a letter to the Principal Secretary of the Department looking for a guideline which is still awaited. Submission in sum and substance is that if the petitioner is not



acting deliberately to avoid his duties, the Executive Officer or even the requisitionists cannot assume upon themselves a power to fix the date of special meeting and issue notice accordingly.

Opposing the writ application Mr. P.K. Shahi, learned Senior Counsel submits that what is being submitted by learned counsel for the petitioner if accepted would result in a very anomalous situation inasmuch as any person willing to avoid a No Confidence Motion may in collusion with the other capable of helping him would put himself in such a position from where he can take a plea that he would be unable to discharge his statutory duties.

Learned Senior counsel submits that the requisition in question was served upon the petitioner is not in dispute, it was served because the rule mandates it. It was also required to be served because it was unlike other business of the councilor which are capable of being discharged by the Deputy Chief Councilor in absence of the Chief Councilor in terms of Section 26 of the Bihar Municipal Act, 2007.

It is his submission that once the official file containing the requisition of the adequate number of the councilors were placed before the petitioner, there was no bar in law restraining or restricting him from exercising his statutory



power as the power conferred upon him has not been specifically taken away or suspended or otherwise interfered with in accordance with law, therefore, the petitioner cannot be allowed to take a plea that he was unable to fix a date of special meeting for a legal and valid reason. Learned Senior Counsel submits that the petitioner could have very well fixed a date of special meeting but instead of doing that in order to waste time and some how allow the six months period before next election become due to reach so that he can avoid a subsequent No Confidence Motion within six months period as per Rule he chose to write a letter to the Principal Secretary of the department. This according to learned Senior Counsel is nothing but a tact adopted by the petitioner to avoid the No Confidence Motion.

Learned Senior Counsel further submits that the plea which is being taken by the petitioner that he cannot defend in No Confidence Motion, he is also liable to be rejected inasmuch as there are examples that a duly elected representative of the body may be allowed to participate in the meeting of the councilor if so required where he has to defend himself. For this purpose the petitioner could have very well made a request to the concerned authorities to allow him to participate in the



meeting and so that he can defend himself but unfortunately the petitioner has not acted bonafide and has never made any application seeking permission to participate in the meeting to defend the No Confidence Motion brought against him.

Learned Senior Counsel for the Respondent Nos. 7 to 15 submits that petitioner may still be allowed to defend himself tomorrow in the meeting as there are several precedences, to take note of an elected Member of the Legislative Assembly or Parliament or even the councilors have been allowed to participate in the sessions of the assembly and parliament and the council to participate in the votes where ever required.

On these grounds learned Senior Counsel representing the respondent no. 6 to 15 submits that the writ application has no merit and is fit to be dismissed.

Learned counsel for the State is present and submits that if this Court directs that the petitioner be allowed to participate in the meeting to be held tomorrow, necessary arrangements may be made to allow him to participate in the meeting tomorrow.

In the given facts and circumstances and having gone through the materials available on the record and upon



consideration of the submission of the learned counsel for the parties, this Court is of the considered opinion that the scheme of the No Confidence Motion Process Rules, 2010 read with the relevant provisions of the Act of 2007 clearly mandate that a notice of the no confidence motion has to be given to the Chief Councilor. It is for this reason, the requisition was sent to the petitioner in jail which he had duly received and had occasion to take a view on that when he wrote a letter to the Principal Secretary of the Department. In law there is no bar against the petitioner to exercise the mandatory statutory function where the Statute does not provide for an alternate mode of discharge of duties of the Chief Councilor. In this case so far as calling of the special meeting is concerned it appears as has been agreed at the bar that no statutory provision is there which restricts the power of the Chief Councilor to fix a date of the special meeting during the period of his detention in jail. Unfortunately the petitioner has not fixed the date for the special meeting and instead chose to write a letter to the Principal Secretary of the Department. In the opinion of this Court, there was no bar against the petitioner in exercising his powers and functions with regard to fixing of the special meeting. Secondly, this Court finds



that the submissions of learned Senior Counsel for the respondents that the petitioner may still be allowed to participate in the meeting to be held tomorrow is also fit to be accepted.

In the opinion of this Court the petitioner may be provided an opportunity to defend himself by allowing him to participate in the meeting to be held to discuss the no confidence motion tomorrow. On merit, however, this Court is of the opinion that the petitioner is not able to make out a case for interference with the requisitions or the decision of the requisitioner to fix the special meeting or with the notice issued by the Executive Officer fixing the date of special meeting tomorrow. The writ application in so far as the reliefs prayed therein to the aforesaid extent is not fit to be accepted and hence it is hereby dismissed but the dismissal of the writ application to that extent will not preclude this Court from giving effect to the aforesaid view of this Court that petitioner may still be allowed to participate in the meeting tomorrow. This Court, therefore, directs the Senior Superintendent of Police, Patna and the Jail Superintendent, Model Central Jail Beur, Patna to take appropriate steps in tandem with each other to ensure that the petitioner participates in the meeting



tomorrow to be held in the office of Naubatpur Nagar Panchayat at 12.30 P.M. Necessary arrangements for the same will be made accordingly and after the discussions and voting the petitioner will be brought back to the jail.

The writ application stands disposed of.

Let a copy of the order be served upon learned counsel for the State by tomorrow.

(Rajeev Ranjan Prasad, J)

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