

(2018) 04 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5506 Of 2018

Kaushalya Devi

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Bihar Municipal No-confidence Motion Process Rules, 2010 — Rule 2, 2(i), 2(1)
Bihar Municipal Act, 2007 — Section 25(4), 25(6), 29, 48(3), 50, 419

Citation : (2018) 3 PLJR 42

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : S. B. K. Mangalam, Anita Kumari, Abbas Haider

Final Decision : Dismissed

Judgement

1. In the instant writ petition, the petitioner has made two prayers. First is for quashing the requisition filed by respondent nos. 7 to 14 addressed to her

whereby they made a request to convene the special meeting of the Nagar Parishad for consideration of no confidence motion against her and the

second to hold that since there is no candidate other than the petitioner suitable for the post to be elected as Chief Councillor, the notice of motion

brought against her is non est. By way of filing interlocutory application vide IA No. 2576 of 2018, the petitioner has prayed for quashing the notice

dated 27.03.2018 issued under the signature of respondent no.5 whereby he has issued notice of special meeting to be convened on 03.04.2018 for

consideration of no confidence motion against the petitioner.

2. The only ground for challenging the requisition filed by respondent nos. 7 to 14 is that the same was not filed in accordance with the requirement of

Section 25(4) of the Bihar Municipal Act, 2007 (for short "the Act of 2007")

and Rule 2(i) of the Bihar Municipal No-confidence Motion

Process Rules, 2010 (for short "the Rules of 2010"). Mr. S. B. K. Mangalam, learned counsel for the petitioner submitted that the requisitionist

Councillors were required to directly submit their no confidence motion to the Chief Councillor but the same was submitted to her through the office of

the Executive Officer which is contrary to law. Hence, the same cannot be acted upon. He submitted that the petitioner is the elected Chief Councillor

of the Mahua Nagar Panchayat which has been reserved for the female of scheduled caste under Section 29 of the Act of 2007. He submitted that

the said Nagar Panchayat is constituted by 16 Ward Councillors from 16 territorial wards. Out of 16 wards only two were reserved for scheduled

caste category out of which one was for scheduled caste (general) and the ward no.5 from which the petitioner got elected was reserved for

scheduled caste (female). Since the post of Chief Councillor is reserved for female scheduled caste category voting on no confidence motion would be

of no consequence.

3. On the other hand, learned counsel for the State submitted that in compliance with the Rules of 2010 the special meeting of the elected Councillors

was requisitioned and the same was given to the Chief Councillor. After receiving the notice it was incumbent upon him to issue notice of no

confidence motion within seven days from the date of requisition and convene the meeting within 15 days of the date of issuance of notice. Since the

petitioner failed to issue notice within the stipulated date and time, the meeting has been called by the requisitionists as per provision of Section 48(3)

of the Act of 2007. He submitted that in case the motion is carried out the petitioner would be removed from the office and shall not be eligible for re-

election as Chief Councillor, Deputy Chief Councillor or Councillor during the remaining term of such municipality in terms of Section 25(6) of the Act

of 2007.

4. I have heard learned counsel for the parties and perused the record.

5. Sub-sections (4) and (6) of Section 25 of the Act of 2007 which are relevant for adjudicating the case read as under :-

"25. Removal of Chief Councillor/Deputy Chief Councillor. -

(4) 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 such

as may be prescribed:

Provided that a no confidence motion shall not be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking

over the charge of the post:

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

Provided further also that no confidence motion shall not be brought within the residual period of six months of the municipality.

(6) The Chief Councillor/Deputy Chief Councillor so removed, shall not be eligible for re- election as Chief Councillor/Deputy Chief Councillor or

Councillor during the remaining term of office of such Municipality.â??

6. In exercise of powers conferred by Sections 25(4) and 419 of the Act of 2007 for deciding the process and conduct of no confidence motion

against the Chief Councillor/Deputy Chief Councillor of the Urban Local Bodies the State Government has framed Rules of 2010. The process has

been incorporated in Rule 2 which reads as under :-

â??2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor

shall be considered and disposed of as per the following process:-

(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.

(ii) The Special Meeting shall be presided by the Chief Councillor, if the No Confidence motion is against the Deputy Chief Councillor and shall be

presided by the Deputy Chief Councillor, if the No Confidence motion is against the Chief Councillor and if it is against both the Chief Councillor and

the Deputy Chief Councillor, the meeting shall be presided by the Councillor elected for the purpose by the Councillors in the meeting. In case of post

of Deputy Chief Councillor being vacant or in his absence from the meeting convened for discussion on No Confidence Motion against the Chief

Councillor or the post of the Chief Councillor being vacant or in his absence from the meeting convened for discussion against the Deputy Chief

Councillor, the meeting shall be presided over by the member elected for the purpose in the meeting by the Councillors.

(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 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.

(iv) The notice issued for considering no confidence motion against the Chief Councillor/Deputy Chief Councillor shall clearly contain the

reasons/allegations on which the No Confidence Motion is to be brought.

(v) 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.

(vi) Quorum for the meeting shall be as per the provision of Section 50 of the Bihar Municipal Act, 2007.

(vii) In the event of both the posts, Chief Councillor and Deputy Chief Councillor falling vacant as a sequel to the passage of the No Confidence

Motion, till the new Chief Councillor and Deputy Chief Councillor are elected, all the powers and duties which, under the provisions of the Act or the

Rules or the regulations made thereunder or any other law for the time being in force, are to be exercised or performed by the Chief Councillor, shall

be exercised or performed by the Chief Municipal Officer of the Municipality.

(viii) On completion of the process, the Chief Municipal Officer shall submit a written report to the State Election Commission.

(ix) Where the posts of Chief Councillor/Deputy Chief Councillor fall vacant as a consequence of no confidence motion, the process of electing new

Chief Councillor or Deputy Chief Councillor shall be completed within 30 days of report to the State Election Commission.â??

7. A requisition signed by 8 Ward Councillors of the Municipality was handed over to the petitioner with a copy of the same to the Executive Officer,

Nagar Panchayat, Mahua, the Sub- divisional Officer, Mahua and the District Magistrate, Vaishali on 17.03.2018 as would be evident from annexure-

P/4 of the writ petition. Even a cursory look at Section 25(4) of the Act of 2007 will show that the number required to requisition a special meeting is

not less than one third of total number of Councillors. In the present case, the total number of Ward Councillors of Nagar Panchayat, Mahua is 16 out

of whom 8 had made written requisition for calling a special meeting. The requisition is addressed to Chief Councillor and has been received by him on

17.03.2018. There is no merit in the submission of the petitioner that the same was not handed over to him. Once the requisition was served upon him

in terms of Rule 2(1) of the Rules of 2010 the Chief Councillor was required to issue notice for the special meeting within seven days from the date of

receipt of requisition and convene the meeting within 15 days of issuance of the notice signed by not less than one third of the total numbers of the

elected Councillors. Since the petitioner failed to call the meeting the requisitionists rightly called the meeting as per the provision prescribed under

Section 48(3) of the Act of 2007 which provides that if the Chief Councillor fails to call the requisition meeting, the meeting may be called by the

persons who signed the requisition.

8. Thus, it is manifest that there was neither any error in requisitioning the meeting nor any error in calling the meeting by the members on failure by

the Chief Councillor to call the special meeting within stipulated time.

9. The other point argued by the learned counsel for the petitioner that since the petitioner is the only female scheduled caste ward Councillor and the

post of Chief Ward Councillor is reserved for female scheduled caste ward Councillor no purpose would be served by calling a special meeting for

voting on the no confidence motion is totally misconceived. The ward Councillors cannot remain a silent spectator to the misconduct of the Chief

Ward Councillor only because the post is reserved for a particular category. Since

the post of Chief Ward Councillor is to be elected by the majority of the ward Councillors, the Chief Ward Councillor, if she has lost the confidence of the majority ward councillors, should not be allowed to continue.

Her continuance would be against the democratic process and the concept of holding office by majority. Furthermore, in view of the provision

prescribed under sub-section (6) of Section 25 of the Act of 2007 the Chief Councillor who is removed shall not be eligible for re-election as Chief

Councillor or Councillor during the remaining term of the office of such municipality.

10. Simply because the petitioner is the only lady scheduled caste category ward Councillor, she has no indefeasible right to continue on the post of

Chief Ward Councillor. In her absence the business of the Nagar Panchayat would be transacted in the meeting presided over by the Deputy Chief

Ward Councillors.

11. In view of the discussions made above, the writ petition and the interlocutory application being devoid of any merit are hereby dismissed.