

(2011) 11 PAT CK 0054
In the Patna High Court
Case No : CWJC No. 14067 of 2011

Md. Jalaluddin Khan

APPELLANT

Vs

The State of Bihar The Principal Secretary, Urban
Development-cum-Housing Department, Bihar, Patna and
Others

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0054

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—The petitioner who is the Chief Councillor of Nagar Parishad, Sitamarhi originally prayed for the following reliefs:- (i) To issue an appropriate writ/ order/direction in the nature of Mandamus commanding the respondent no. 4 Executive Officer, Nagar Parishad, Sitamarhi not to issue notice of the special meeting of no confidence motion, if the meeting of no confidence motion is fixed by the requisitionists, as per Rule 2(iii) of the Bihar Municipal No Confidence Motion Process Rules, 2010.

(ii) To issue an appropriate writ/ order/direction in the nature of Certiorari for quashing the requisition dated Nil issued by the Councillors of Nagar Parishad, Sitamarhi (hereinafter referred to as the "Nagar Parishad") for calling special meeting of no confidence motion against the petitioner which has been received in the office on 5.8.2011 (as contained in Annexure-10).

(iii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

In view of the subsequent developments, the petitioner filed I.A. No. 5813 of 2011 for adding the following reliefs, which are quoted hereinbelow:- (iv) To issue an appropriate writ/ order/direction in the nature of Certiorari for quashing the requisition dated 18.8.2011 by 11 Councillors of Nagar Parishad, Sitamarhi addressed to the Executive Officer by which they have fixed 26.8.2011 as the date of special meeting of no confidence motion against the petitioner (as

contained in Annexure-14)

(v) To further issue an appropriate writ/order/direction in the nature of Certiorari for quashing the notice contained in letter no. 767 dated 19.8.2011 by which the 28 Councillors have been informed by the Executive Officer, Nagar Parishad, Sitamarhi that the date of special meeting of no confidence motion against the petitioner is 26.8.2011 at 11 A.M. (as contained in Annexure-15).

2. this Court by order dated 26.8.2011 allowed the application seeking amendment in relief portions. The Court also passed interim order observing that the tabling of no confidence motion would not be held if it has not already been held by then. In paragraph 8 of the order the substance of issue involved in the case was noted, which is being reproduced hereinbelow:-

8. The petitioner has raised issue regarding reckoning of date of protection under 1st proviso of Section 25(4) of the Act, 2007, in case he is once installed then removed and again installed. The issue requires due consideration.

3. Before we deal with the issue it would be necessary to indicate the relevant facts. The petitioner was elected as Chief Councillor of Nagar Parishad, Sitamarhi on 4.8.2009, consequent to passing of no confidence motion against the sitting Chief Councillor Jai Muni Devi, who challenged her removal in this Court vide C.W.J.C. No. 7540 of 2009. The writ petition was allowed by a learned Single Judge on 5.3.2010 and Jai Muni Devi again assumed charge of Chief Councillor on 6.3.2010 replacing the petitioner. The petitioner being aggrieved by order dated 5.3.2010 passed in C.W.J.C. No. 7540 of 2009, preferred appeal being L.P.A. No. 670 of 2010, which was allowed by a Division Bench by order dated 20.4.2010 and the order of the learned Single Judge was set aside. A copy of the order dated 20.4.2010 is annexed as Annexure-6 to the writ petition. In view of the order dated 20.4.2010, passed in L.P.A. No. 670 of 2010, the petitioner again took charge of the post of Chief Councillor on 21.4.2010 and since then he has been continuing in the same capacity. Jai Muni Devi preferred Special Leave to Appeal (Civil) No. 15462 of 2010 before the Hon'ble Apex Court against the order dated 20.4.2010 passed in L.P.A. No. 670 of 2010, which was dismissed on 6.7.2010. A copy of the order is annexed at Annexure-7.

4. It appears that on 26.8.2010 eleven Councillors requisitioned the petitioner for convening of a special meeting for tabling of no confidence motion. As the requisition was made within two years of assumption of charge in teeth of first proviso to Section 25(4) of the Act, the petitioner filed a writ petition bearing C.W.J.C. No. 17121 of 2010. C.W.J.C. No. 17121 of 2010 was tagged with the case of Awdhesh Yadav vs. State of Bihar & Ors. (CWJC No. 12523 of 2010) which was being heard with a batch of writ petitions wherein similar issue as raised in this case was involved. The common issue that came for consideration before a learned Single Judge was whether a no confidence can be brought against a new incumbent succeeding to the post of Chief Councillor or the Deputy Chief Councillor within two years of assumption of charge of Chief Councillor/

Deputy Chief Councillor after vacation of office by earlier incumbent to the post.

5. All these cases were heard analogous with the case of Awdhesh Kumar Yadav vs. State of Bihar (CWJC No. 12523 of 2010). The aforesaid batch of writ petition was disposed of by order dated 10.5.2011 by a learned Single Judge who held that no confidence motion cannot be brought within two years of assuming charge of the post. The operative portion of the order is quoted hereinbelow:-

The court holds that an incumbent who occupies the post of Chief Councillor after the original Chief Councillor vacates shall also have the protection for further two years from the date of his assuming the office before a no confidence motion could have been brought against him. Depending on the outcome of this no confidence motion, a fresh no confidence motion cannot be brought against the new incumbent for the next one year thereafter.

6. The Councillors again made a requisition which was received in the office of the Chief Councillor on 5.8.2011 for convening a special meeting of no confidence motion against the petitioner which has been impugned as relief no. 2 in the instant writ petition. Their case is that petitioner first assumed charge on 4.8.2009 and notwithstanding that thereafter he was removed from post of the Chief Councillor temporarily which was ultimately found not sustainable, still a no confidence motion can be brought after lapse of two years (e.g. 4.8.2011) from the date of assumption of charge. They contend that no confidence thus brought on 5.8.2011 would be maintainable in terms of first proviso to Section 25(4) of the Act.

7. On the other hand the case of the petitioner is that the impugned requisition is in teeth of Section 25(4) and its proviso, which are quoted hereinbelow:-

25(4) The Chief Councillor/Deputy Chief Councillor may be removed from the 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 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.

8. The petitioner submits that he would be entitled to a total period of two years

of tenure of taking over charge before a no confidence motion is brought in terms of proviso to Section 25(4) of the Act. The petitioner further submits that he took over charge on 4.8.2009 but had to subsequently step down on 5.3.2010 in view of the order of the learned Single Judge in C.W.J.C. No. 7540 of 2009 which was ultimately found unsustainable in L.P.A. No. 670 of 2010. The petitioner again took over charge on 21.4.2010. He thus submits that the date 5.8.2011 on which a requisition was made for convening special meeting for tabling of no confidence motion, he had not completed two years of total tenure as Chief Councillor from the date of assumption of first charge. The total period of two years would expire only on 21.9.2011.

9. Mr. S.B.K. Mangalam, Learned Counsel appearing for private respondent, on the other hand, submits that two years period would be calculated from the date the petitioner first assumed charge on 4.8.2009 notwithstanding his ouster from his post for a period of more than 1/2 months in view of the Court's order. He submits that as per the proviso to section 25(4) of the Act a no confidence cannot be brought within two years of taking over charge.

10. I have heard counsel for the petitioner, Mr. Mangalam Learned Counsel appearing for private respondent no. 18 as well as Ms. Sushmita Mishra appearing for the respondent no. 17. The main issue for consideration of this Court is as follows:-

Whether the period for which a Chief Councillor was ousted by the order of the Court which was ultimately found to be non-sustainable could be counted towards the period of two years for the purposes of calculating two years period, within which tabling of no confidence motion is prohibited in view of first proviso to Section 25(4) of the Act.

11. The proviso to Section 25(4) of the Act prohibits bringing of no confidence motion against the Chief Councillor or Deputy Chief Councillor within two years of taking over charge.

12. The term within two years of taking over charge mentioned in the first proviso foresees uninterrupted period of complete two years. Here in this case a peculiar situation has arisen. The petitioner was elected as Chief Councillor on 4.8.2009 on ouster of Jai Muni Devi, pursuant to passing of no confidence motion against her. Jai Muni Devi filed a writ petition against her removal which was allowed on 5.3.2010. Consequently, Jai Muni Devi assumed the charge of Chief Councillor and the petitioner had to step down. The petitioner challenged the order of the learned Single Judge in L.P.A. which was allowed on 20.4.2010 and the petitioner again took over charge on 21.4.2010. The issue which arises for consideration is whether the period for which he remained ousted in view of the Court's order would also be reckoned for calculating the period of two years for the purposes of bringing a requisition for convening a special meeting for tabling of no confidence motion.

13. The proviso to Section 25(4) of the Act was incorporated to provide stability

to the Chief Councillor or the Deputy Chief Councillor to ensure stable governance and to allow the democracy to play. Chapter-VI deals with functional domain of Municipality which covers a large area of operation. If Chief Councillor or the Deputy Chief Councillor are not assured of due protection or prohibition on bringing of no confidence motion, they would become more engaged in protecting their seats instead of discharging their functions without fear or favour. The statutory prohibition on bringing of no confidence motion within two years of time frame is to provide a reasonable certainty and confidence to the elected representatives to discharge their function under the Act and show their merit and efficiency as proof of the confidence, the electors reposed in them.

14. As stated above, it would appear from the literal interpretation of proviso to Section 25(4) of the Act that the intent of the legislature was to provide two years tenure to a Chief Councillor or a Deputy Chief Councillor to achieve the object of good self-governance without a threat to their office. If a contrary view as professed by the private respondent is accepted, the same would lead to anomalous situation. For instance, some of the succeeding Chief Councillor or Deputy Chief Councillors on vacation of post by their predecessors would in a given situation may have total period of two years of continuation in office before a no confidence is brought against them, whereas in the case akin to that of the petitioner and similarly situated councilors, the same can be brought even though they might not have completed one year of actual functioning as Chief Councillor or the Deputy Chief Councillor. For example, if on ouster of "X", V is elected as Chief Councillor (to say as on 4.8.2009). "X" moves the Court against his ouster, which is allowed within 2-3 months {e.g. 4.11.2009} of assumption of charge as Chief Councillor. "Y" prefers an appeal which is allowed after 1 1/2 year. V again assumes the charge of Chief Councillor. If the two years period is counted from the date he first assumed charge say on 4.8.2009, the same come to end on 4.8.2011. If the plea put forth by the private respondent is accepted, then a no confidence motion can be brought against such Chief Councillor by 5.8.2011 though in fact he may not have put in even six months of total period as Chief Councillor. This could not be the object of the legislature which obviously would be to provide uniformly a total period of two years immunity from facing a no confidence to all who assumes post of Chief Councillor or Deputy Chief Councillor on vacation of posts by their predecessors. The interpretation which would subserve the purpose and further the object of the Act should be adopted, as it would ensure both non-arbitrariness and equality enshrined in Article 14 of the Constitution of India. Thus, a succeeding Chief Councillor or Deputy Chief Councillor would be entitled to a immunity of total period of two years from the date of assumption of charge.

15. Let us examine the issue from another perspective. It is a well accepted maxim that the act of Court would prejudice none. When on account of an act of a party persuading the Court to pass an order which at the end is held is not sustainable has resulted in one party suffering a prejudice, which it would not have suffered but for the order of the court then the successful party is entitled

to be compensated, if otherwise not prohibited by the statute. The dictum of "actus curiae heminem gravabit" or that the act of court would prejudice none has been well explained in case of Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, approvingly referred in case of Cantonment Board, Meerut and Another Vs. K.P. Singh and Others, The relevant extract of judgment rendered in the case of Karnataka Rare Earth (supra) is quoted in paragraph 16 of the decision rendered in the case of Cantonment Board (supra) which reads as under:-

The doctrine of actus curiae neminem gravabit is not confined in its application only to such acts of the court which are erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand:-(a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.

16. Mr. Mangalam, Learned Counsel for the private respondent next contended that if the plea of the petitioner regarding interpretation of 1st proviso to Section 25(4) of the Act is accepted then an employee whose dismissal has been set aside, can make a plea for extension of matching number of days for which he had remained under illegal dismissal. In my view, the example cited by the Learned Counsel for the respondent is totally mis- conceived and has no relevance in the facts and circumstances of the case. In the instant case, the petitioner is not seeking any extension of tenure of a Municipal Office which is limited to five years u/s 16 of the Municipal Act, but he is seeking prohibition on bringing of no confidence motion before he completes a total period of two years in office as Chief Councillor after assuming charge of the same in view of statutory protection provided in proviso to Section 25(4) of the Act.

17. Thus, I hold that a no confidence motion cannot be brought against the succeeding Chief Councillor/Deputy Chief Councillor on vacation of post by the earlier incumbent till he completes a total period of two years of taking over charge as enumerated in first proviso of Section 25(4) of the Act.

18. For the reasons stated above, the impugned notices dated 19.8.2011 contained in letter no. 767 issued by the Executive Officer, Nagar Parishad, Sitamarhi fixing the date of special meeting of no-confidence motion against the petitioner as well as the letter no. 8800 dated 12.9.2011 issued by the Secretary,

State Election Commission, Bihar by which the District Magistrate-cum-District Election Officer (Nagarpalika), Sitamarhi has been directed to hold election for the post of Chief Councillor of Nagar Parishad, Sitamarhi on 27.9.2011 are hereby quashed. In the result, this writ petition is allowed but with no order as to costs.