
(2014) 12 PAT CK 0043

In the Patna High Court

Case No : CWJC No. 14029 of 2014 and I.A. Nos. 6156, 6502 and 8636 of 2014

Shardanand Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Bihar Municipal Act, 2007 — Section 2(iii), 25(4)

Citation : (2015) 2 PLJR 598

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Sanjay Kumar, for the Appellant; Raisul Haque, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J. Heard Mr. Sanjay Kumar, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Chandan, learned counsel appearing for the respondent Nos. 5, 6, 7, 10, 11 and 12 who were requisitionists in respect of the proceedings in question as well as the participants in the special meeting. Since respondent Nos. 8 and 9 did not choose to participate in the proceedings hence in the opinion of this Court, no notice is required to be issued to these respondents.

2. With the consent of the parties the writ petition is taken up for consideration with a view to final disposal at the stage of admission itself.

3. The petitioners are Chief Councillor and Deputy Chief Councillor respectively of Nagar Panchayat, Shahpur in the district of Bhojpur at Arrah and are aggrieved by the no confidence motion passed against them in a special meeting held on 27.8.2014 under Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act") read with the provisions of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as "the Rules").

4. The facts of the case briefly stated is that the no confidence motion was moved against the petitioners vide requisition placed at Annexures-3 and 4 which

are dated 9.7.2014. Whereas the requisition moved against the Chief Councillor placed at Annexure-3 is correctly addressed to him, the requisition moved against the Deputy Chief Councillor is illegally addressed to the Deputy Chief Councillor which is contrary to the statutory provisions.

5. It is not in contest that the Chief Councillor did not choose to fix the date of special meeting which was fixed, by the requisitionists themselves and has finally culminated into the proceedings in which no confidence motion was passed on 27.8.2014. The proceeding is placed at Annexure-15 to I.A. No. 6502 of 2014. In between the petitioner has also filed I.A. No. 6156 of 2014 placing on records the various notices issued by the Executive Officer of the Nagar Panchayat rescheduling the meeting. The special meeting was held on 27.8.2014 and which was passed against the petitioners and they have been unseated.

6. Although several issues have been raised by Mr. Sanjay Kumar to contest the no confidence motion but the writ petition is fit to be allowed on a short point that the no confidence motion has been passed in utter violation of Rule 2(v) of "the Rules" which mandates that no sooner a meeting for consideration of a no confidence motion commences, the presiding member shall read out the motion and which is to be followed by secret ballots.

7. Mr. Sanjay Kumar learned counsel for the petitioner with reference to the proceedings of the special meeting placed at Annexure-15 submits that though the presiding member did read out the motion but thereafter neither any discussion has taken place nor it was followed by secret ballots as mandated under Rule 2(v) of "the Rules" rather the no confidence motion was passed by a resolution. The arguments advanced are supported by records of the meeting.

8. In such circumstances and taking into consideration that the requisition as against the Deputy Chief Councillor placed at Annexure-4 is not in tune with the legal provision, the requisition moved against the Deputy Chief Councillor placed at Annexure-4 as well as the no confidence motion passed against the Chief Councillor and Deputy Chief Councillor on 27.8.2014 placed at Annexure-15 cannot be upheld and is accordingly set aside. As a consequence, the re-election of the Chief Councillor and the Deputy Chief Councillor stands set aside. The petitioners stand restored to the post of Chief Councillor and the Deputy Chief Councillor respectively.

9. Having held as such, it is further directed that in so far as the Chief Councillor is concerned, since this Court does not find any infirmity in the requisition placed at Annexure-3, hence the Chief Councillor would be required to fix the date of special meeting by following the provisions of Rule 2(i) of "the Rules" on or before 24.12.2014, failing which the requisitionists shall be at liberty to go ahead with the matter by observing Section 2(iii) of "the Rules". However, in so far as the Deputy Chief Councillor is concerned, since the requisition is not in tune with the legal provisions and has been quashed the requisitionists, if so advised, can proceed afresh in the matter after observing the legal provisions. The writ

petition is allowed with the directions aforementioned. The interlocutory applications stand disposed of.