
(2015) 10 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17227 of 2014

Shyam Sahani and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Bihar Municipal Act, 2007 — Section 25, 50

Citation : (2015) 10 PAT CK 0066

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Y.V. Giri, Sr. Advocate and Rewti Kant Raman, for the Appellant;
Ashutosh Singh, AC to SC-1, for the Respondent

Final Decision : Allowed

Judgement

Jyoti Saran, J.—Heard Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioners, learned counsel for the State, Mr. Onkar Kumar, learned counsel appearing for the Executive Officer, learned counsel for the State Election Commission and Mr. Mrigank Mauli, learned counsel appearing for the private respondents.

2. The petitioner No. 2 happens to be the Deputy Chief Councillor of Nagar Panchayat, Belsand in the district of Sitamarhi. The writ petition initially was filed questioning the letter dated 8.9.2014 of the Executive Officer, a copy of which is placed at Annexure-5 whereby the State Election Commission was requested to fill up the post of Chief Councillor and the Deputy Chief Councillor, Nagar Parishad, Belsand which had fallen vacant by virtue of the no confidence motion passed against the persons holding the posts. While the writ petition was pending that the election has taken place and which is sought to be questioned by the petitioners vide I.A. No. 7738 of 2014. The petitioner No. 2 realizing that even while questioning the process of filling up the post by the reelection, he had not chosen to question his own ouster, has filed I.A. No. 8839 of 2015 questioning the no confidence motion passed against him in the special meeting

held on 4.9.2014.

3. Considering the nature of dispute raised, the prayer made in the interlocutory application(s) are allowed.

4. The short submission that has been advanced by Mr. Giri, learned senior counsel appearing for the petitioners to question the entire process of the no confidence motion whereunder the petitioner No. 2 has been ousted and the respondent No. 9 has been elected as the new Deputy Chief Councillor, is on grounds that the notice of special meeting held on 4.9.14 was not validly served on the petitioner No. 2.

5. The facts of the case briefly stated is that a no confidence motion was moved for removal of the Chief Councillor as well as the Deputy Chief Councillor and which was questioned by the Chief Councillor in CWJC No. 11869 of 2014, inter alia, on grounds that the requisition was not validly served and the notice circulated for holding the special meeting was not in consonance with the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as "the Rules"). This Court taking into consideration the facts available on record and finding substance in the issues raised, disposed of the writ petition holding the notice invalid and requiring the Chief Councillor to fix a date of special meeting on or before 21.7.2014. The Chief Councillor fixed the date of special meeting on 1.8.2014 but one day earlier thereto he chose to resign from the post on 31.7.2014. In the circumstances prevailing the Presiding Officer, the Executive Officer and the Councillors so present in the special meeting fixed on 1.8.2014 decided to suspend the same seeking clarification from the department in view of the resignation submitted by the Chief Councillor. The Executive Officer sought guidelines from the Urban Development Department who advised him to proceed as per the statutory provisions underlying section 25 and section 50 of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act") and "the Rules" framed thereunder. In between the Chief Councillor withdrew his resignation on 4.8.2014. Since it is on account of the resignation of the Chief Councillor that the special meeting fixed on 1.8.2014 could not proceed and since the Chief Councillor even after withdrawing his resignation did not choose to fix the date of special meeting and since the meeting so fixed on 1.8.2014 remained inconclusive that the requisitionists decided among themselves to hold the special meeting in the light of the guidelines and a notice to such effect was circulated amongst the members. In addition thereto even postal service was effected, the evidence of which is present in the counter affidavit filed by the private respondents.

6. Since the notice of special meeting had already been circulated fixing the date of special meeting on 1.8.2014 and which meeting could not take place due to the resignation of the Chief Councillor and had to be adjourned hence it was now the exclusive privilege of the Presiding Officer alone to fix the date of the adjourned special meeting in tune with section 50 of "the Act". The Presiding Officer along with the requisitionists decided to fix the date on 4.9.2014 and

circulated the same which circulation is present at Annexure-G to the counter affidavit of the private respondents. The postal communication present at Annexure-H shows that the notice was attempted to be served on the Chief Councillor but he refused to accept the same as manifest from the refusal present in the note of the postal peon. There is however no evidence on record to show that any such attempt of service of notice on the Deputy Chief Councillor who is petitioner No. 2 before this Court was made by the Presiding Officer. Neither the decision circulated vide Annexure-G series bears the signature of the writ petitioners nor there is any such postal report reflecting refusal by the Deputy Chief Councillor as is in the case of Chief Councillor. There is in fact nothing on record to show that the writ petitioner No. 2 herein was served with notice with regard to the next date for consideration of the no confidence motion as is present in the case of Chief Councillor.

7. Neither the Executive Officer who has appeared through counsel nor Mr. Mauli, learned counsel appearing for the private respondents have been able to place on record any document to show any service of notice on the writ petitioner No. 2 regarding the date of special meeting fixed on 4.9.2014.

8. Rule 2(v) of "the Rules" requires that an opportunity be given to the Chief Councillor/Deputy Chief Councillor to defend himself and thus even if the refusal by the Chief Councillor to accept the notice would mean wilful abstention from meeting, in absence of any service on the Deputy Chief Councillor, he has been precluded to defend himself as per the statutory provisions underlying rule 2(v) of "the Rules". In these uncontested circumstances the no confidence motion passed against the Deputy Chief Councillor who is writ petitioner No. 2 herein, cannot be upheld and the no confidence motion passed on 4.9.2014 in so far as it removes the writ petitioner No. 2 from the post of Deputy Councillor is held invalid.

9. This Court is conscious of the fact that in the meanwhile a reelection has taken place and respondent No. 9 holds the post of Deputy Chief Councillor presently. Since it is only on the issue of statutory violation that the motion is sought to be disturbed hence at the present stage this Court would not interfere with the election of respondent No. 9 to the post of Deputy Chief Councillor rather would keep her election in abeyance subject to the outcome of the special meeting to be held by the Ward Councillors to consider the motion moved against the writ petitioner No. 2.

10. It is stated at the Bar by learned counsel representing the Executive Officer that the post of Chief Councillor is presently held by the respondent No. 7. Since this Court has not found any infirmity in the requisition moved against the Deputy Chief Councillor hence the Chief Councillor is directed to fix the date of special meeting for consideration of the no confidence motion moved against the writ petitioner No. 2 on or before 9.11.2015 and shall communicate the same accordingly to the Executive Officer for its circulation on the Deputy Chief Councillor who is the writ petitioner No. 2 before this Court. The Executive Officer

shall ensure that the notice of the date of special meeting is in accordance with rule 2(iv) and is validly served upon the Deputy Chief Councillor who is writ petitioner No. 2 herein and the other Councillors. Since the Deputy Chief Councillor is represented through counsel any attempt by him to avoid service of notice would be taken adverse against him.

11. As I have already observed the election of respondent No. 9 to the post of Deputy Chief Councillor shall be kept in abeyance and shall be subject to the final outcome of the proceedings of the special meeting to be held in the light of the order passed hereinabove.

12. The writ petition is allowed to the extent indicated hereinabove. Interlocutory application stands disposed of.