
(2011) 10 PAT CK 0040
In the Patna High Court
Case No : CWJC No. 15000 of 2011

Mohan Prasad Rastogi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-2011

Acts Referred:

Bihar Municipal Act, 2007 — Section 25, 25(1), 25(2), 25(3), 25(4)
Bihar Panchayat Raj Act, 2006 — Section 44, 44(3), 44(4)

Citation : (2012) 1 PLJR 112

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—Whether sub-rule (iii) of Rule 2 of the Bihar Municipal No-Confidence Motion Process Rules, 2010 (hereinafter referred to as the No-Confidence Motion Rules, 2010) vests power in the Chief Municipal Officer or the Ward Councillors to fix the date of special meeting for tabling of no-confidence motion against the Chief Councillor or the Deputy Chief Councillor is the core issue in this case.

2. The petitioner prays for quashing the proceedings of the special meeting of Birpur Nagar Panchayat dated 28.7.2011 as well as passing of No-confidence removing him from the post of Chief Councillor of Nagar Panchayat, Birpur.

3. The prayer of the petitioner is founded on the ground that an Executive Officer does not have power to fix the date of special meeting for tabling of No-confidence motion in view of sub-rule (iii) of Rule 2 of No-Confidence Motion Rules, 2010, and as such the entire proceeding including his removal is bad in law.

4. The facts relevant for adjudication of the case are stated hereinbelow in short. The petitioner was elected as the Chief Councillor and one Tanvir Alam, Respondent No. 6 was elected as Deputy Chief Councilor of Birpur Nagar

Panchayat. The petitioner's case is that Respondent No. 6 was ill disposed towards him and had made attempts to unseat him from his post. He alleged that respondent no. 6 obtained signatures of Ward Councillors on a plain paper and converted it in a requisition requesting petitioner to convene a special meeting for consideration of No-confidence motion against him. According to the petitioner, as the requisition was not in accordance with law, he did not fix the date of special meeting. The requisitionists then approached the Executive Officer for fixing a date of special meeting and issuing notice to the Members. The Executive Officer, respondent no. 5, accepted the request of the requisitionists and fixed 28.7.2011 as the date of special meeting for tabling of no-confidence motion. On 28.7.2011, a no-confidence motion was passed against the petitioner and he stood removed from the post of the Chief Councillor.

5. The petitioner submits that both special meeting and its proceeding are void ab initio as respondent no. 5 was not vested with power to fix the date of such meeting. The petitioner further argued that even if the Ward Councillors had not fixed any date in their requisition for calling a special meeting, still the Executive Officer would not get any right to fix the date of his own, as no power is conferred on him under sub-rule (iii) of Rule 2 of the No-Confidence Motion Rules, 2010.

6. The petitioner next raised the point that no individual notice was issued to the members as required under No-Confidence Motion Rules, 2010. The alleged notice dated 25.7.2011 fixing the meeting on 28.7.2011 was served on the petitioner and other Ward Councillors on 26.7.2011. Thus, they did not have 72 hours prior notice as required u/s 49 of the Act which vitiated the proceedings of special meeting dated 28.7.2011, and is fit to be quashed.

7. On the other hand, counsel for the respondent State submits that the notice contained in Annexure-1 fixing the date of special meeting for tabling of no confidence against the petitioner did not suffer from any illegality. The requisition was made by more than required number of Ward Councillors u/s 25(4) of the Act and No-Confidence Rules, 2010. The notice issued to Ward Councillors contained the charges/allegations on basis of which such requisition for no-confidence motion was brought. The entire proceeding of the meeting dated 28.7.2011 is already on record vide Annexure-2 to the writ application.

8. I have heard learned counsel for the petitioner and the State. The provisions of removal of Chief Councillor/Deputy Chief Councillor is enshrined in Section 25 of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act, 2007"). The section provides that in three situations, a Chief Councillor/Deputy Chief Councillor can be removed. These circumstances are mentioned in Section 25(1), Section 25(2) and Section 25(4) of the Act. Section 25(1) states that a Chief Councillor/Deputy Chief Councillor shall cease to hold the office if he or she ceases to be a Councillor. Section 25(2) of the Act states that the Chief Councillor/Deputy Chief Councillor may resign his office by writing to appropriate authority. Section 25(3) of the Act states that every such resignation shall take

effect on expiry of 7 days from the date of such resignation unless he withdraws the resignation within 7 days by writing to the competent authority. The third and last mode of removal which is relevant with context of the issue is enumerated in Section 25(4). It states that a Chief Councillor/Deputy Chief Councillor would stand removed on losing vote of confidence as provided therein. As we are concerned with removal u/s 25(4) of the Act, the same is 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 also that no confidence motion shall not be brought within the residual period of six months of the Municipality.

9. It appears from bare perusal of Section 25(4) of the Act that the Chief Councillor or the Deputy Chief Councillor can be removed from the office by a majority of whole number of Councillors holding the office for the time being at a special meeting for this purpose in the manner prescribed. The section requires that requisition for special meeting is to be made in writing by not less than 1/3rd of total number of Councillors is to be passed by majority of whole number of Councillors holding office.

10. In order to carry out the purposes of Section 25(4) of the Act, the Governor of Bihar was pleased to make Bihar Municipal No-Confidence Motion Process Rules, 2010. According to Rule 2, a no-confidence motion brought u/s 25(4) of the Act would be considered and disposed of as per sub-rules (i) to (v) thereof.

11. Sub-rule (i) of Rule 2 states that on a requisition made by not less than 1/3rd of the total number of elected Councillors for removal of Chief Councillors/Deputy Chief Councillors, a special meeting shall be called by the Chief Councillor within the time frame mentioned thereof in the provision. Sub-rule (ii) of Rule 2 deals with the aspect as to who would preside if motion is brought against the Chief Councillor or Deputy Chief Councillor or both. Sub-rule (iii) states if the Chief Councillor does not call the meeting, the special meeting shall be called by requisitionists as per Section 48(3) of Municipal Act and notice for it shall be issued by the Chief Municipal Officer. The other sub-rules are not being referred to as they are not relevant in the context of the issue.

12. The issue involved is whether sub-rule (iii) of Rule 2 vests power in the Ward Councillors or Chief Municipal Officer to fix the date of meeting. It would be apt to quote sub-rules (i), (ii) and (iii) as well as Section 48(3) of the Act to which sub-rule (iii) refers:--

2(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 over 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 over 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 the requisitionists as per the provision of Section 48(3) of the Bihar Municipal Act, 2007 and the notice for it shall be issued by the Chief Municipal Officer.

48(3) If the Chief Councillor fails to call the requisition meeting provided in sub-section (2), the meeting may be called by the persons who signed by requisition.

13. The petitioner has argued that Municipality being a form of urban self-Government is governed by Councillors and its Committee. The Municipal Officers appointed by the Government is only to aid the Councillors in implementing the decision of Municipalities and its policies. The term "the Special Meeting shall be called by the requisitionists as per Section 48(3) of Bihar Municipal Act, 2007" mentioned in Rule 2(iii) would include a right to fix the date of meeting as well.

14. The State would submit that as per Rule 2(iii), the Councillors can call a special meeting for the purpose of moving No-Confidence against Chief Councillor or Deputy Chief Councillor on failure of Chief Councillor to call a meeting within stipulated period and the notice for it is to be given by the Chief Municipal Officer. The State asserts that issuance of notice would include fixing a date of meeting.

15. The answer to the issue as to who would fix the date of special meeting under sub-rule (iii) of Rule 2 of No-Confidence Rules, 2010 is not far to seek and can be gathered from the conjoint reading of the Rules itself.

16. Sub-rule (i) of Rule 2 provides that the Chief Councillor or the Deputy Chief Councillor can be removed in a special meeting called by the elected Councillors for which requisition has to be made to the Chief Councillor by no less than 1/3rd of the total Councillors as also procedure in Section 25(4) of the Act. Sub-rule (i) of Rule 2 further provides that once such meeting is called by elected Councillors, the notice shall be issued by the Chief Councillors for the special meeting within 7 days from the receipt of the requisition and the meeting shall be convened within 15 days of the date of issuance of the notice. Sub-rule (iii) of Rule 2 states that if the Chief Councillor does not issue notice within the stipulated date or does not convene the special meeting within the stipulated time, the special meeting shall be called by the requisitionists as per Section 48(3) of the Act. Section 48(3) of the Act states that if the Chief Councillor failed to call the requisition meeting provided in sub-section (2) of Section 48, the meeting can be called by the person who signed the requisition. In other words, the persons who sign the requisition for calling the special meeting, on failure of the Chief Councillor to call the requisition meeting must be from amongst the Councillors who had made requisition before the Chief Councillor to call such a special meeting. If we look at Rule 2(i) and Rules 2(iii) closely, we find matching similarity in respect of making of requisition and issuance of notice for such meeting. Only the stage changes and the authority who would issue notice for the special meeting changes as we move from Rule 1 to Rule 3.

17. Sub-rule (i) prescribes the first stage of procedure of removal. The Councillors make a requisition to the Chief Councillor for calling a special meeting for moving no-confidence against him and Deputy Chief Councillor, as the case may be. Sub-rule (iii) comes into play, when the Chief Councillor defaults to issue notice and fix a date of the special meeting within the stipulated time. Furthermore, both Rules 2(i) and 2(iii) provides for filing of requisition by the elected Councillors for removal of Chief Councillor or Deputy Chief Councillor. In the first stage, under Rule 2(i) the requisition is made by Councillors before the Chief Councillors, who will issue notice of special meeting within 7 days and convene the meeting within 15 days of the notice. If Chief Councillor fails to do so, the same procedure is inherent in rule 2(iii). This time the Councillors will make requisition calling for the special meeting before the Chief Municipal Officer, a Government official, who would follow the same procedure as prescribed in Rule 2(i) in order to maintain uniformity of purpose within same time frame. Though sub-rule (iii) of Rule 2 does not in so many words say that the Chief Municipal Officer would fix a date of meeting, it is noticeable that this rule is in consonance and in sequence with Rule 2(i).

18. Thus the Rules state that the right to make requisition and call a special meeting for tabling of no-confidence against the Chief Councillor or the Deputy

Chief Councillor or both is vested in the Councillors and right to fix the date of special meeting for the above purpose is vested in Chief Municipal Officer.

19. The issue can be seen from another angle with reference to provision in Panchayat Raj Act, 2006, another form of local self-Government. Section 44 of the Bihar Panchayat Raj Act provides for removal of Pramukh and Up-Pramukh on more or less on similar line as provided for removal of Chief Councillors and Deputy Chief Councillors in case of Municipal Act, 2007 and the rules framed thereunder sub-section (3) of Section 44 of the Bihar Panchayat Raj Act is quoted hereinbelow for easy reference:--

(3)(i) A Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat Samiti, by not less than one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one third of the total number of directly elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no-confidence motion.

(ii) No-confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two years period of their tenure.

(iii) If the motion of no-confidence brought against the Pramukh or the Up-Pramukh or both is once rejected, no fresh motion of no-confidence against the Pramukh or the Up-Pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year from the date of such rejection of the motion.

(iv) No-confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the term of the Panchayat Samiti as mentioned in Section 39(1) of this Act.

(v) Such reasons/charges, on the basis of which no-confidence motion has to be moved against the Pramukh or Up-Pramukh, shall be clearly mentioned in the notice of the meeting called to consider the no-confidence motion.

(vi) As soon as the meeting called under this section begins, the Presiding

Member of this meeting shall read out the motion on which the meeting has been called to consider before the members present and declare it open for discussion. Any discussion on the motion shall not be adjourned.

(vii) During discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no-confidence motion has been moved for his defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.

(viii) In case of no-confidence motion against a Pramukh, the meeting shall be presided by the Up-Pramukh in case of motion against Up-Pramukh by the Pramukh and in case of motion against both Pramukh and Up-Pramukh, by any member elected from among the members of the Panchayat Samiti present in the meeting.

In case of the post of Up-Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the Up-Pramukh, as the case, may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the Panchayat Samiti present in the meeting.

(Note: The underlining is mine for emphasis)

2Q. Sub-section (3)(i) of Section 44 of the Act states that a Pramukh/Up-Pramukh would be deemed to have vacated his office, if motion of confidence is passed against him by a majority of total number of elected members of the Panchayat Samiti. It further provides that requisition for such a special meeting shall be presented to the Pramukh of the Panchayat Samiti with a copy to the Chief Executive Officer. The Pramukh would be obliged to convene such meeting within 15 days of such requisition. The provisions further state that if the Pramukh fails to convene such meeting, the Up-Pramukh or 1/3rd of the total number of directly elected members, "may fix a date for such meeting and require the Executive Officer to give notice to the members" and to take such action as may be necessary to convene the meeting.

21. Both Panchayat and Municipality have been introduced under Part IX and IXA of the Constitution effected by Constitution 73rd and 74th Amendment Act, 1992 w.e.f. 1.6.1993. Both are constitutionally established and recognized system of local self-Government for rural and urban areas respectively. Both the local self-Governments have three tier system of governance. Both Panchayat Act and Municipal Act provide for removal of head or deputy head of the local self-Governments. The provisions of their removal as mentioned in Section 44 of the Act and section 25(4) read with Rules 2(i), (ii), (iii) of No-Confidence Rules, 2010 have similarities. Both the Acts provide that for removing the head of the governance, the requisition would be first made before the head of the local self-Government itself as provided in Section 44(3) of the Bihar Panchayat Raj Act

and Section 25(4) of the Municipal Act. Both Panchayat Raj Act and Municipal Act provide that in case the Pramukh or Up-Pramukh so far as Panchayat Raj is concerned or Chief Councillor or Deputy Chief Councillor so far as Municipal Act is concerned, do not convene special meeting for tabling of no-confidence motion, they would make a requisition to the Executive Officer or the Chief Municipal Officer of the two local self-Governments for giving notice. Whereas Section 44(3) of the Bihar Panchayat Raj Act specifically states that in such circumstances the requisitionists would themselves fix a date for such meeting and require the Executive Officer to give notice to the Members. In Bihar Municipal Act, 2007, the provision is silent and does not say that requisitionists would fix a date of meeting as incorporated in Section 44(3) of the Panchayat Act. As Bihar Municipal Act, 2007 is a later Act having been enacted one year after the enactment of the Bihar Panchayat Raj Act, 2006, it would be deemed that the legislature which is conscious of previous enactments made deliberate omissions to vest such right to fix date of meeting in the Councillors, in case of Municipality. The legislature otherwise would have made similar incorporations regarding fixing a date of special meeting in the Municipal Act, vesting such power with the Ward Councillors, which is missing. Thus, there is no substance in the contention of the petitioner that the power of fixing date of meeting under Rule 2(ii) of No-Confidence Rules, 2010 is vested in the Ward Councillors.

22. Further, from perusal of the writ petition, it is evident that the Councillors and rightly so, had not fixed any date for tabling of no-confidence motion. The aforesaid fact would become clear from paragraph 8 of the writ petition which is quoted hereinbelow:--

8. That, since the petitioner did not accede to the request of the Ward Councillors, the requisitionists approached the Executive Officer and persuaded him to fix the date of special meeting and issue notice to the members. They had filed a written report before the Executive Officer, praying therein before, the Respondent No. 5 to fix the date of special meeting and issue notice to the members.

23. An apprehension has been raised as to what happen, if Chief Municipal Officer delays the issuance of notice. It is relevant to state that Panchayat Act also does not spell the consequences, if the Chief Executive Officer or Executive Officer does not comply with the provisions of the Act. Though the Municipal Act, 2007 like the Panchayat Act, 2006 and the Rules, do not provide consequences of non-compliance of the provisions by the Chief Municipal Officer or the Chief Executive Officer/Executive Officer, there would be no reason for any such apprehension, as the Government or even the Court can take suitable action against such officer. It would be apt to quote relevant extract of paragraph 14 of judgment of Division Bench of this court in the case of Meena Yadav vs. State of Bihar & Ors., reported in 2010(2) PUR 389. In the aforesaid case, the Court was addressing similar concerns under the Bihar Panchayat Raj Act, 2006.

14. The arguments advanced on behalf of the respondents that the provisions be

treated as directory rest on the ground that such lapses in the notice may be resorted to deliberately only to avoid a valid meeting to consider a valid requisition for no-confidence motion. It has been further submitted that for this reason the Legislature has not indicated as to what would be the consequences of non-compliance with such provision. In our considered view this argument and submission has no merits because we are of the clear view that failure of Panchayat Samiti or that of an Adhyaksha of Zila Parishad to issue a proper notice as required by law for considering a requisition for no-confidence motion can, in proper circumstances be viewed as a misconduct in the discharge of his duties in the context of provisions for removal provided under sub-section (4) of Section 44 or sub-section (5) of Section 70 of the Act. In case of deliberate disregard of law noticed above, the Commissioner would be well advised to take action against them. In case of deliberate disregard of such statutory provision by the Executive Officer or the District Magistrate, as the case may be, the higher authorities of the Government or in appropriate cases the Courts will be free to take appropriate action in accordance with law.....

24. The petitioner next contended that there was no individual notice to the members and he received the notice of the meeting for 28.7.2011 on 26.7.2011 at 9 P.M. No material has been brought on record to show that the notice was served on him on 26.7.2011. Furthermore, nothing is on the record to show that any other Councillors complained that they did not receive a copy of the notice. It has not been denied that the notice was issued on 25.7.2011, as such requirement of 72 hours prior notice as contained in Section 49 of the Act has not been complied with.

25. Thus, it is apparent from the conjoint reading of sub-rules (i) and (iii) of Rule 2 of No-Confidence Rules, 2010 that the right to fix the date of special meeting for removal of Chief Councillor/Deputy Chief Councillor u/s 25(4) of the Act is vested in the Chief Municipal Officer. The issue is answered against the petitioner.

26. In the result, this writ application is dismissed but no order as to costs.