

(2011) 11 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 9843 of 2011

Rajeshwar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Bihar Municipal Act, 2007 — Section 2, 21(2), 25(4), 46(7), 51
Constitution of India, 1950 — Article 100, 100(1), 189, 243W

Citation : (2012) 2 PLJR 525

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : Rajiv Kumar Verma, Bindhyachal Singh, Sushil Kumar Singh and Vipin Kumar, for the Appellant; Siddharth Shankar Pandey, Sanjay Kumar for the State, Mr. Ashutosh Ranjan Pandey For the Respondent No. 8, M/s Mrigank Mouli, for the Intervener, Rakesh Kumar and Umesh Pathak, for the Respondent

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—I.A. No. 4546 of 2011 has been filed by petitioner no. 4, Ram Dish Thakur, praying therein for deleting his name from the array of petitioners. In view of reasons stated in I.A. application, but without prejudice to any of the parties. I direct the deletion of his name as a petitioner in this case. I.A. No. 4546 of 2011 is thus disposed of. I.A. No. 4527 of 2011 has been filed on behalf of Upendra Choudhary, Ward Commissioner from Ward No. 12 of Nabinagar Nagar Panchayat for being added as respondent. The prayer is allowed. The office would add Upendra Choudhary as respondent no. 9 to this writ application.

2. All the seven petitioners (now excluding petitioner no. 4), who are Ward Councillors of Nabinagar Nagar Panchayat, pray for quashing the order contained in Memo No. 3308 dated 13.6.2011 (Annexure-7), issued under the signature of Deputy Secretary-cum-Director, Urban Development and Housing Department, Government of Bihar, Patna, whereby the resolution of No Confidence Motion

passed on 28.4.2011 in the meeting of Ward Councillors of Nabinagar Nagar Panchayat against private respondent no. 8 has been annulled/quashed and it was declared that the post of Chief Councillor of Nabinagar Nagar Panchayat is not vacant. The petitioners also pray for a declaration that the, resolution passed on 28.4.2011 is legal and valid and the post of Chief Councillor of Nabinagar Nagar Panchayat has fallen vacant.

3. The reliefs prayed by the petitioners is founded on the grounds that the respondent State in exercise of Section 67 read with Section 62 of the Bihar Municipal Act, 2007 cannot interfere in democratic process and decision of a local self-government. According to the petitioners, the respondent State can interfere only in administrative matters and that too not before providing a hearing to the Municipal authority. The petitioners have also raised the ground that a Councillor, who is disentitled to vote pursuant to have been chosen to preside over a special meeting under Rule 2(iii) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (hereinafter referred to as "the No Confidence Rules, 2010"), cannot be counted towards the whole number of the house u/s 25(4) of the Bihar Municipal Act, 2007.

4. Before I deal with the issues involved in this case, the brief facts of the case and provisions of law are required to be noticed; The petitioners, are Ward Councillors of Nabinagar Nagar Panchayat in the district of Aurangabad having a total strength of fourteen members. All 14 Councillors were elected in the year, 2007. On 7.3.2011, eight Councillors, seven of whom are petitioners herein this writ, submitted a requisition before the Chief Councillor (respondent no. 8) for calling a special meeting of the house of Nabinagar Nagar Panchayat to consider the proposal of no confidence motion against him. The respondent no. 8 did not summon the meeting, whereupon the Councillors made a requisition before the Executive Officer, Nabinagar Nagar Panchayat for calling such meeting. The special meeting was accordingly fixed for 28.4.2011. Nine (9) out of total fourteen (14) Councillors participated in the business of the meeting. As no confidence motion was proposed against the Chief Councillor and the post of the Deputy Chief Councillor was vacant, one Ram Dish Thakur was elected to preside over the meeting in terms of Rule 2(ii) of No Confidence Rules, 2010. After required deliberations, no confidence motion was carried against respondent no. 8 by seven votes to one. In other words, seven votes were cast for removal of the Chief Councillor, whereas one vote was against the motion. According to the petitioners, Ram Dish Thakur, the Councillor elected for the purpose of presiding over the meeting was not permitted to cast his vote by the Executive Officer, Nabinagar Nagar Panchayat. The Presiding Officer, Ram Dish Thakur declared that no confidence motion has been passed against respondent no. 8. The Executive Officer, Nabinagar Nagar Panchayat vide letter no. 149 dated 5.5.2011 requested District Magistrate-cum-District Election Officer, Aurangabad to take necessary action for election of new Chief Councillor of Nabinagar Nagar Panchayat, as the post of Chief Councillor had become vacant. A copy of letter dated 5.5.2011 of Executive Officer, Nabinagar Nagar Panchayat is annexed as

Annexure-4 to this writ application.

5. The private respondent no. 3 made representation to the Principal Secretary, respondent no. 2, that the resolution dated 28.4.2011 removing him from his post is in violation of Section 25(4) of the Act. Simultaneously, he also filed a writ application bearing C.W.J.C. No. 8971 of 2011 before this Court challenging the resolution dated 28.4.2011 removing him from the post of Chief Councillor. On 20.5.2011, learned Single Judge issued notice to respondents to file their counter affidavits. The learned Single Judge, however, did not accede to the prayer of respondent no. 8 to stay the operation of impugned resolution, dated 28.4.2011. A copy of order dated 20.5.2011 passed in C.W.J.C. No. 8971 of 2011 is annexed as Annexure-5. C.W.J.C. No.8971 of 2011 was later on withdrawn on 21.6.2011. In the meantime, the State Government referred the representation of the petitioner to the Law Department for its opinion. On receipt of the opinion, the Government vide Memo No. 3308, dated 13.6.2011 annulled the resolution dated 28.4.2011 under Sections 62 and 67 of the Act on the ground that the same has not been passed by a majority of whole number of Councillors and thus the post of Chief Councilors would not be deemed to have fallen vacant. The aforesaid Memo dated 13.6.2011 is under challenge in this writ application alongwith other reliefs earlier stated.

6. The following issues arise for consideration in view of the pleas taken by the parties:-

(i) What would be the meaning of a "majority of whole number of Councillors holding office for the time being" as occurring in Section 25(4) of the Bihar Municipal Act, 2007.

(ii) Whether the Presiding Officer is entitled to vote in a meeting called for removal of Chief Councillor/Deputy Chief Councillor u/s 25(4) of the Bihar Municipal Act, 2007 read with Bihar Municipal No Confidence Motion Process Rules, 2010.

(iii) Whether the action of the State Government annulling the resolution dated 28.4.2011 unseating respondent no. 8 in no confidence vote amounts to interference in the democratic function of the institution of self-governance.

(iv) Whether an opportunity providing show cause was necessary u/s 67 of the Municipal Act by the Government before annulling the resolution of the Councillors regarding passing of no confidence motion against respondent no. 8.

7 Issue No. i--What would be the meaning of the term a majority of whole number of Councillors holding office for the time being", as occurring in Section 25(4) of the Bihar Municipal Act, 2007:

Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act") states that a Chief Councillor/Deputy Chief Councillor may be removed from the office by a resolution carried out by a majority of whole number of Councillors for the time being at a special meeting in accordance with the

procedure prescribed under the No Confidence Motion Rules, 2010. The meaning of the term "majority of the whole number" is one of the issues for consideration. To appreciate the issue section 25(4) of the Act is quoted hereinbelow:-

25(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.

8. The term "Councillor" occurring in Section 25(4) of the Act too has been defined in sub-section (27) of Section 2 of the Act, as a person chosen by direct election from a ward of a Municipality. The term "Councillor" thus refers to an elected Councillor.

9. The petitioners state that Nabinagar Nagar Panchayat has 14 elected Councillors, out of which 9 Councillors attended the no confidence meeting held on 28.4.2011. As the post of Deputy Chief Councillor was vacant and motion of no confidence was being moved against the Chief Councillor, one Ram Dish Thakur, one of the 9 participating Councillors was elected to preside over the meeting. During voting, while the other 8 Councillors were allowed to cast their votes, the above mentioned Ram Dish Thakur was not allowed to do so, on the ground that the Presiding Officer in term of Section 51(2), can cast his vote only in case of equality of votes. He thus submits that as Ram Dish Thakur was debarred from voting, the whole number or the total number of Councillors would be 13 and not 14. He accordingly inferred that majority of the whole number in such circumstances would be 7 and not 8 as suggested by the respondents. He submits that as the resolution was passed by 7:1 vote, the respondent no. 8 would be deemed to be removed by force of Section 25(4) of the Act, 2007.

10. In nutshell, the petitioners submit that the whole number is to be construed vis-a-viz the persons, who are entitled to vote. In support of their submissions, the petitioners have referred to the decisions in the case of Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, particularly paragraphs 9 and 11. The petitioners have also relied upon a decision in the case of Prem Raj Bohra & Ors vs. Jairoopa & Ors., reported in AIR 2003 Rajasthan 128.

11. Mr. Mrigank Mouli, who appears for the intervener respondent Upendra Choudhary submits that the whole number would be deemed to be a total number of elected members holding office for the time being at a special meeting having right to vote. Mr. Mouli in support of his submissions, has tried to draw parity from decisions rendered in respect of meaning of term "majority of the whole number" occurring in the Bihar & Orissa Municipal Act, 1922 as well as Bihar Panchayat Raj Act, 2006, also a form of local self-government duly recognized under our Constitution. In support of his contention, Mr. Mouli relied

upon decisions in the case of (i) Sukhdeo Narayan vs. Municipal Commissioner of Arrah Municipality, reported in AIR 1956 Patna 367(D.B.); (ii) Binay Kumar Srivastava vs. State of Bihar & Ors., reported in 1990(1) BLJ 736 (D.B.); (iii) Brij Nandan Sharma Vs. The State of Bihar, ; (iv) Sarita Kumari Vs. The State of Bihar and Others, ; (v) Sunita Devi and Others Vs. The State of Bihar and Others, and (vi) Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, .

12. Mr. Ashutosh Pandey who appeared for respondent no. 8 while adopting the argument of Mr. Mouli relied upon the decisions rendered in the case of (i) Ramesh Mehta vs. Sanwal Chand Singhvi & Ors., reported in 2004 SC 2258, (ii) Brij Nandan Sharma Vs. The State of Bihar, , (iii) Sarita Kumari Vs. The State of Bihar and Others, , (iv) Sunita Devi and Others Vs. The State of Bihar and Others, , (v) Sukhdeo Narayan & Ors vs. Municipal Commissioner of Arrah, Municipality & Ors., reported in 1956 Patna 367, and (vi) Binay Kumar Shrivastava & Anr. vs. State of Bihar & Ors., reported in 1990 (1) BLJ 736.

13. I need not refer to different case laws individually cited by Mr. Mouli and Mr. Pandey appearing for the private respondents as the meaning of the term "the whole number of Councillors/Members" holding the office for the time being is well settled by authoritative pronouncements of this court as well as Hon"ble Apex Court. It would be suffice to refer to the case of Ramesh Mehta (supra), wherein the Hon"ble Apex Court was considering a similar issue with reference to Rajasthan Municipality (Motion of No Confidence against Chairman or Vice-Chairman) Rules, 1974. The Apex Court observed that the expression "whole number" of Members or "total number" of members shall mean total number of members holding the office at the given time and would include only such members who have been elected directly and have been given right to vote. A dispute was raised whether the two nominated members and one co-opted member would be included in the expression "whole number" or "total number". The Hon"ble Apex Court held that "total number" or "whole number" shall not include the two nominated and co-opted members and whole number or total number would include only elected member of the Municipal Board.

14. Mr. Rajiv Kumar Verma, though did not dispute the interpretation or the meaning of "whole number" to mean total number of the Councillors holding office for the time being, but he argued that the whole number should be counted only in reference to the members, who would be entitled to vote. He submits that for instance, a member who is under suspension at the time of such proceeding or has resigned cannot be counted towards the whole number, as he would not be entitled to vote in view of the observations of the Hon"ble Apex Court, in paragraph-11, in the case of Ramesh Mehta (supra), which is quoted hereinbelow:-

11.... Hence in our view, the expression whole number or total number connotes the total number of elected members. While considering the word majority in para 9 of the judgment the Hon"ble Court was pleased to find that Therefore, the word majority would mean majority of persons entitled to vote.

15. There is no difficulty in accepting the aforesaid submissions, as Section 25(4) of the Act refers to "whole number of Councillor" holding office for the time being at a special meeting. The Councillor who has resigned or ceases to be a member or otherwise disqualified or barred from voting at the relevant time, cannot be deemed to be holding office. In such circumstances, while calculating the total of whole number, the number of such members has to be excluded. However, such is not the position in the instant case, as none of the Councillors has vacated the office, or is dead or has been otherwise disqualified/suspended or barred from voting. The whole number of councillors holding office during the proceedings of no confidence motion was 14, and thus 8 votes were needed for passing of the resolution of removal of Chief Councillor (Respondent No. 8). The motion was carried only by 7:1 which would not form majority of whole number. The issue is decided against the petitioner.

16. This brings us to the next issue:-

(ii) Whether the Presiding Officer is entitled to vote in a meeting called for removal of Chief Councillor/Deputy Chief Councillor u/s 25(4) of the Bihar Municipal Act, 2007 read with Bihar Municipal No Confidence Motion Process Rules, 2010.

As the motion was moved against the Chief Councillor and the post of Deputy Chief Councillor being vacant, so in terms of Rule 2(iii) of the No Confidence Rules, 2010, one of the participating Councillors, namely Ram Dish Thakur was elected to preside over the meeting. After the usual deliberations and discussions, the motion was put to vote. 8 out of 9 Councillors participated in the voting process. It is in dispute whether the Presiding Officer Ram Dish Thakur was prevented from voting or he himself did not vote. The net result is that Ram Dish Thakur, who presided over the meeting did not vote.

17. Mr. Rajiv Kumar Verma, learned Senior Counsel submits that as Ram Dish Thakur presided over the meeting, he lost his voting right in view of Section 51(2) of the Act. He submits that in view of Section 51 (2) of the Act, a Presiding Officer would have a right to exercise a casting vote only in cases of equality of votes. In support of his submissions, learned counsel has referred to Articles 100(1) and 189 of the Constitution of India which bars voting right to Chairman or Speaker of Parliament and House of Legislature of a State respectively, save and except for a casting vote in case of an equality of votes. Learned counsel submits that as Ram Dish Thakur was not entitled to vote, he ought not to have been included towards counting of total number of Councillors, which in the circumstances would narrow down to 13 from 14. Thus, passing of the motion by 7:1 would form majority of whole number, which in the circumstance has to be counted as 13.

18. Mr. Mouli submits that a Councillor presiding a special meeting has two votes under the Municipal Act. He states that in the Panchayati Raj Act, similar provisions exist where two votes have been granted; one as Member and the

other in case of a tie. The relevant provisions relating to Mukhiya is Section 21(2); for Pramukh, it is Section 46(7) and for Adhyakshya it is Section 72(3) read with Section 72(5) of the Act.

19. The point in issue is whether a Councillor who presides over a no confidence meeting would have a regular voting right apart from a casting vote in case of equality of votes as provided u/s 51(2) of the Act. Section 25(4) of the Act states that a Chief Councillor or Deputy Chief Councillor may be removed from the office by a resolution carried by a majority of whole number of Councillors holding office for the time being at a special meeting. In no ambiguous term, the section states that all the Councillors who are holding office for the time being can participate and exercise their vote in a proceeding relating to removal of a Chief Councillor/Deputy Chief Councillor. The term that the Chief Councillor/Deputy Chief Councillor may be removed from office by a resolution carried by majority of whole number of Councillors holding office for the time being, would include the Councillor who is presiding over the meeting, as he is also holding office like other Councillors for the time being. A Speaker or Chairman of Parliament or the State Legislature under Article 100(1) and Article 189 of the Constitution of India are barred by specific provisions contained therein which is not the situation under the Municipal Act, 2007. Article 100(1) and Article 189 of the Constitution of India are quoted to illustrate the point mentioned above:-

Article 100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.---(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."

"Article 189. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.--(1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

20. It is also evident from bare perusal of Section 51(1) & (2) of the Act that a Presiding Officer will have a regular voting right apart from casting vote in case of equality of votes. Section 51 and its proviso would not be only applicable to transaction of business of Municipality, but would be equally applicable to special meeting convened for removal of Chief Councillor/Deputy Chief Councillor. Section 51(1) & (2) of the Act is quoted hereinunder-

51. Presiding Officer of a meeting of Municipality.--(1) The Chief Councillor shall preside at every meeting of the Municipality and in his absence the Deputy Chief Councillor shall preside the meeting (and if both the Chief Councillor and Deputy Chief Councillor are absent from the meeting, the members present shall choose one of their members to preside:

Provided that when a meeting is held to consider a motion for the removal of the Chief Councillor, the Chief Councillor shall not preside at such meeting:

Provided further that if the meeting is convened for the removal of both Chief Councillor and Deputy Chief Councillor, the members present shall choose one of the members to preside.

51(2). The Chief Councillor, or the person presiding over a meeting of the Municipality, shall also have, and may exercise, a casting vote in all cases of equality of votes.

Section 51(2) of the Act provides that a Chief Councillor or the person presiding over the meeting of a Municipality shall also have and may exercise a casting vote in all cases of equality of votes. The underlining is mine for emphasis. The word "shall also" referred to the provision, is of utmost significance. The section provides that such Councillor who presides over a meeting apart from the regular vote as implicit in Section 25(4) of the Act, would also have a casting vote. If the intention of the legislature was to provide only a casting vote to a Presiding Officer and that too, in case of equality of votes, the word "shall also" have and may exercise, a casting vote in case of equality would not have been incorporated in Section 52(2) of the Act in one go. Further, more, Section 25(4) of the Act, which is quoted in paragraph 8, states that the Chief Councillor or Deputy Chief Councillor may be removed by a resolution in a special meeting in the manner prescribed, which has been detailed in No Confidence Motion Rules, 2010. Rule 2(v) states that the motion of no confidence shall be put to votes by presiding member by secret ballot which is quoted hereinbelow:-

2(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

The provision does not bar presiding member (Councillor) from voting. It states that the Councillor elected to preside the meeting would put the motion to vote by secret ballot. As per Section 25(4) of the Act, even all Councillors holding office at the relevant time thus, can vote. A Councillor who is elected to preside a meeting cannot lose his voting right unless and until it is prohibited by law. A Chief Councillor or a presiding Councillor elected so to preside a particular meeting, merely monitors the proceeding of the meeting. Merely because one

monitors the meeting, he/she cannot be deemed to have lost or forfeited the voting right, while other Co-Councillors continue to avail the same.

21. Thus, I hold that the Councillor who is elected to preside over the special meeting in absence of Chief Councillor/ Deputy Chief Councillor has a regular voting right, apart from having a casting vote in case of equality in view of Sections 25(4) and 51(2) of the Municipal Act, 2007.

22. Issues (iii) & (iv):-

(iii) Whether the action of the State Government annulling resolution dated 28.4.2011 unseating respondent no. 8 in no confidence vote amounts to interference in the democratic function of the institution of self-governance.

(iv) Whether an opportunity providing show cause was necessary u/s 67 of the Municipal Act by the Government before annulling the resolution of the Councillors regarding passing of no confidence motion against respondent no. 8.

The issues nos. (iii) and (iv) are taken up together for consideration as they are inter-linked. The petitioners submit that the impugned order dated 13.6.2011 passed by the Government annulling the resolution of no confidence dated 28.4.2011 carried against Respondent No. 8 is without jurisdiction, as it would not come within the domain of Sections 62 and 67 of the Act. He further submits that the impugned order dated 13.6.2011 was supposedly passed under Sections 62 and 67 of the Act by respondent no. 3, which do not confer power to intervene in decisions taken in course of general governance by a House of Nagar Panchayat or Municipality. This would amount to interference in the democratic functioning of local bodies. In case of any dispute, the Court can decide the same. Sections 62 and 67 of the Act can be used for administrative purposes only, i.e. for giving directions to the Municipal Officers. On the other hand, the Councillors are not the officers of the Nagar Panchayat rather they are representatives of the people elected by the people. The respondent no. 3 had annulled the resolution passed by the House, dated 28.4.2011. Learned counsel submits that in any view of the matter, the Government did not comply with the mandatory provisions of providing an opportunity of show cause u/s 67 before annulling the said resolution. He stated that there was no urgency, as Deputy Chief Councillor of the Nagar Parishad had started to discharge official duty of the Councillors.

23. On the other hand, Mr. Mouli states that Article 243W of the Constitution while conferring powers on the Municipality to function as institution of self-government, also empowers the State to impose such conditions, as it may deem fit and proper. He further submits that the democratic process of carrying no confidence motion comes to an end once such resolution is passed under sub-rule (vi) of Rule 2 of No Confidence Motion Rules, 2010. Sub-rule (viii) of Rule 2 speaks of forwarding of report by the Chief Municipal Officer on completion of process to State Election Commission. Rule 2(viii) does not visualize the Chief Municipal Officer to declare the post of Chief Councillor or Deputy Chief Councillor

to be vacant. He submits that the earlier Chief Municipal Officer over reached his authority in declaring the post to be vacant. He submits that an opportunity of show cause is not mandatory in cases where providing such opportunity would be an empty formality, or where the result is known. In support of his contentions, he has relied upon decisions in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, ; P.p. Agrawal vs. State Bank of India & Ors., reported in (2006)8 SCC 776, The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, and Canara Bank and Others Vs. Shri Debasis Das and Others, .

24. Learned counsel for private respondent no. 8 adds that as no prejudice has been caused to the writ petitioners, there was no need for giving show cause. He has placed reliance on decisions reported in P.D. Agrawal (supra), State of Maharashtra (supra) and Canara Bank (supra).

25. I have heard counsel for the parties on this issue at length. As the issue centers round, Section 67 of the Act, the same is quoted hereinbelow:

67. Power of State Government to require municipal authorities to take action.-- If, after considering the records required u/s 65, Or the report u/s 66, or any information received by Government the State Government is of opinion that-

(a) any action taken by a municipal authority is unlawful or irregular or any duty imposed on such authority by or under this Act has not been performed or has been performed in an imperfect, insufficient or unsuitable manner, or

(b) adequate financial provision has not been made for the performance of any duty under this Act, the State Government may, by order, annul such action, or require such municipal authority to regularize such unlawful or irregular action or perform such duty or restrain such authority from taking such unlawful or irregular action or direct such authority to make, to the satisfaction of the State Government or within such period as may be specified in the order, arrangement, or financial provision, as the case may be, for the proper performance of such duty:

Provided that the State Government shall, unless in its opinion the immediate execution of such order is necessary, before making an order under this section, give such municipal authority, in writing, an opportunity of showing cause, within such period as may be specified by the State Government, why such order should not be made.

26. It is not in dispute that in the meeting dated 28.4.2011, the resolution of no confidence was passed against respondent no. 8. Consequent to the passing of the resolution, the Chief Municipal Officer declared the seat to be vacant. Thereafter, on application of respondent no. 8 and the Chief Municipal Officer, the State Government annulled the resolution of no confidence against respondent no. 8. It cannot be said that the petitioners would not be prejudiced by the impugned action of the Government as the no confidence motion was brought on

given charges against respondent no. 8. The Councillors have a right to retain or drop a Chief Councillor or Deputy Chief Councillor. The Government by the impugned order has annulled the decision of the house of Nagar Panchayat on the ground that passing of resolution of no confidence by 7:1 would not form majority of whole number of Councillors, which consisted of 14 Councillors. In such circumstances, even assuming the impugned action of Government may not be an interference in democratic process, still it was required to give a hearing to the Municipal authority, as provided under proviso to Section 67 of the Act. As the petitioners succeed on this point, I refrain from examining the issue whether the action of the Government was in administrative sphere, or it interfered with the democratic functioning of a Municipality, which is not permissible under the provisions of Municipal Law. The parties can raise this issue itself before the Government. In such circumstances, I am not able to agree with the submissions of the respondents that providing an opportunity of hearing would be an empty formality.

27. The impugned order dated 13.6.2011, contained in memo no.3308 admittedly being passed without providing an opportunity of hearing, u/s 67 of the Act, is hereby quashed. It will be open for the respondent authorities to proceed afresh in accordance with law after providing due opportunity of hearing u/s 67 of the Act. In the result, this writ petition is allowed but with no order as to costs.