
(2024) 05 PAT CK 0022

In the Patna High Court

Case No : Letters Patent Appeal No. 125 Of 2024 In Civil Writ Jurisdiction Case No. 1726 Of 2024, Letters Patent Appeal No. 146 Of 2024 In Civil Writ Jurisdiction Case No. 1439 Of 2024, Civil Writ Jurisdiction Case No. 1507, 1521, 1851, 2516, 2717, 2733, 4315, 5497

Sangeeta Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 16-05-2024

Acts Referred:

Adhyaksh or Upadhyaksh of Zila Parishad under the Bihar Panchayat Raj Act, 2006 — Section 44, 44(3), 46, 70, 70(1), 70(4)

Citation : (2024) 05 PAT CK 0022

Hon'ble Judges : K. Vinod Chandran, CJ; Ashutosh Kumar, J; Harish Kumar, J

Bench : Full Bench

Advocate : K.N. Choubey, Sanjeev Kumar Singh, Umakant Prasad, P.K. Shahi, Ajay, Amish Kumar, Dhananjay Kumar, Y.V. Giri, Suraj Samdarshi, Vijay Shanker Tiwary, Rohit Singh, Avinash Shekhar, Kumar Harshvardhan, Niranjan Kumar, Surya Partap Kumar

Judgement

1. An issue of seminal importance has arisen as to whether in a "no confidence" motion brought against a Adhyaksh or Upadhyaksh of Zila Parishad under the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act'), the motion would be successfully carried out by a majority of the total number of directly elected members from the territorial constituencies of Zila Parishad or by the majority of the directly elected members present and voting.

2. A Division Bench of this Court in Sarita Kumari vs. the State of Bihar and Others (L.P.A. No. 940 of 2008) had held that such a motion could be carried out only by the majority of the total of the directly elected members of the Zila Parishad. In that case, a motion of "no confidence" against the Chairman of the Zila Parishad, Patna having 46 directly elected members was brought about. At the special meeting held for the purpose of considering the "no confidence" motion, 27 members had participated. Three out of them had not taken part in

actual voting. Out of 24 members, who had voted, 23 had voted in favour of "no confidence" and one had voted against the motion. Since 23 members did not constitute the majority of the directly elected members, it was held that the "no confidence" motion stood defeated and the Chairman was allowed to continue.

3. It was contended that since majority of the members present and voting had supported the motion, the Chairman ought to have been removed from the office.

4. A learned Single Judge of this Court, on a plain reading of Section 70 (4) (1) of the Act, rejected the contention that the motion had successfully been carried out, as the members present and voting did not constitute the majority of the directly elected members.

5. In the intra Court appeal against the afore-noted decision of the learned Single Judge, the Division Bench, while dismissing the appeal, held that Section 70(4) of the Act makes it very clear that only when the majority of the total number of directly elected members support the motion of "no confidence", then only such motion can be said to have been carried out. The requirement is not of the members present and voting, but of the majority of the directly elected members.

6. About twelve years later, in *Dharamsheela Kumari Vs. Hemant Kumar and Ors.* : (2021) 3 PLJR 346, a Division Bench dealing with Sections 44 and 46 of the Act, concerning "no confidence" motion against the Pramukh and Up-Pramukh held that under Section 44 (3) of the Act, a "no confidence" motion would be carried out if voted for by the members of the Panchayat Samiti, present and voting, as no quorum is prescribed for carrying out the motion of "no confidence".

7. It may be noted that Section 44, falling in Chapter-IV of the Act is exactly similar to Section 70, which falls in Chapter-V of the Act. Chapter-IV of the Act deals with Panchayat Samitis, whereas Chapter-V deals with Zila Parishad.

8. Faced with this difference of opinion with respect to the construction of the relevant clause dealing with "no confidence" motion, the issue has been placed before this Full Bench for a resolution.

9. In *Dharamsheela Kumari* (supra), 10 out of 22 members of the Panchayat Samiti, Vaishali had submitted a requisition for a "no confidence" motion against both the Pramukh and Up-Pramukh. In the special meeting held for the purpose, only 10 out of 22 elected members of the Samiti had participated in the proceedings in which the requisitionists and the Pramukh as well as the Up-Pramukh were not present. In the said meeting, 7 members by voice vote supported the motion. However, it was opined by the person who had presided over the meeting that since only 10 out of 22 members had voted for the motion, it had to be rejected as the majority would require the voting by at least 12 members.

10. It was in this context that the issue had arisen whether Section 44 (3) of the

Act mandated any quorum for the special meeting convened to discuss and vote for a "no confidence" motion.

11. For the sake of completeness, we deem it appropriate to extract the entire Section 70 of the Act, which reads as hereunder:-

70. Resignations or Removal of Adhyaksha and Up-adhyaksha.-(1) The Adhyaksha may resign his office by writing under his hand addressed to the District Magistrate and the Up-adhyaksha may resign his office by writing under his hand addressed to the Adhyaksha.

(2) Every resignation under sub-section (1) shall take effect on the expiry of seven days from the date of such resignation, unless within the said period of seven days he withdraws such resignation by writing under his hand addressed to the District Magistrate or the Adhyaksha, as the case may be.

(3) Adhyaksha or Up-adhyaksha shall vacate the office if he ceases to be a member of the Zila Parishad.

(4) (i) Adhayaksha and Up-Adhayaksha 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 directly elected members from territorial constituencies of the Zila Parishad at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one fifth of the total number of directly elected members of the Zila Parishad and shall be delivered to the Adhyaksha with a copy to the District Magistrate. The Adhyaksha shall within seven days from the date of receipt of such requisition convene a special meeting of the Zila Parishad. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. The meeting shall be presided over by the Adhyaksha if the motion is against the Up-adhayaksha; if it is against the Adhyaksha the Upadhyaksha shall preside over the meeting and if it is against Adhyaksha and Upadhyaksha both then the District Magistrate shall preside over the meeting.

In case of the post of Up-adhyaksha being vacant or his absence from the meeting convened for discussion on "no confidence" motion against the Adhyaksha or the post of Adhyaksha being vacant or his absence from the meeting convened for discussion on "no confidence" motion against the Up-adhyaksha, as the case may be, the meeting shall be presided over by any member elected from amongst the directly elected members from the territorial constituencies of the Zila Parishad present in the meeting. In case of failure to convene the meeting by the Adhyaksha, the District Magistrate shall convene the meeting in the same manner and the meeting shall be presided by him. 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.

(emphasis provided)

(ii) During the first two year period of the tenure, "no confidence" motion shall not be moved against the Adhyaksha or the Upadhyaksha.

(iii) No-confidence motion against the Adhyaksha or Upadhyaksha or both, shall not be brought within six months of the expiry of the term of the Zila Parishad.

(iv) Such reasons/charges, on the basis of which "no confidence" motion is to be moved against the Adhyaksha or Upadhyaksha, shall be clearly mentioned in the notice of the meeting called to consider the "no confidence" motion.

(v) As soon as the meeting called under this Section commences, the presiding member at the meeting shall read out the motion on which the meeting has been called to consider, before the present members and declare it open for discussion. Any discussion on the motion under this Section shall not be adjourned.

(vi) During discussion, opportunity shall be given to the Adhyaksha or Upadhyaksha or both against whom "no confidence" motion is moved, for his defence before the Zila Parishad. The motion shall be put to vote on the same day after discussion which shall take place by secret ballot in the prescribed manner by the District Magistrate.

(vii) If the motion of "no confidence" against the Adhyaksha or the Upadhyaksha or both is once rejected, no fresh motion of "no confidence" against the Adhyaksha or the Upadhyaksha or both, as the case may be shall be brought before the Zila Parishad within a period of one year from the date of rejection of such motion.

(5) Without prejudice to the provisions under this Act, if in opinion of the [Government] [Substituted vide Section 4 of Amdt. Act 8 of 2008.] having territorial jurisdiction over the Zila Parishad, a Adhyaksha or the Upadhyaksha of Zila Parishad absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the [Government] [Substituted vide Section 4 of Amdt. Act 8 of 2008.] may, after giving the Adhyaksha or the Upadhyaksha, as the case may be, a reasonable opportunity for explanation, by order, remove such Adhyaksha or the Upadhyaksha, as the case may be, from office.

[Provided when a system of Lok Prahari, instituted under sub-Section (5) of Section 152 comes into force by a valid notification of the State Government, the Government may only pass order of removal of such Adhyaksha or Upadhyaksha, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.]

[The Adhyaksha or Up-Adhyaksha so removed on the charge of being found

guilty of misuse of vested powers or of misconduct in the discharge of his duties shall not be eligible for election to any panchayat bodies till further five years from the date of such removal. The Adhyaksha or Up-Adhyaksha so removed on rest of the charges shall not be eligible for re-election as Adhyaksha or Up-Adhyaksha during the remaining term of office of such Zila Parishad.]

(2) An Adhyaksha or Up-adhyaksha removed from the office under subsection (1) may also be removed by the Government from the membership of the Zila Parishad.

12. It may be noted that Chapter-V of the Act, which deals with establishment of Zila Parishad, provides for its composition; the manner in which the members could be elected; reservation of seats; duration of the Parishad; election of Adhyaksh and Upadhyaksh; their allowances and the powers, functions and duties of the

13. Section 70 of the Act provides for the procedure concerning the resignations or removal of Adhyaksh and Upadhyaksh. The Adhyaksh could resign by addressing his resignation letter to the District Magistrate, whereas Upadhyaksh could resign by addressing it to the Adhyaksh. The resignation would be deemed to be effected on the expiry of seven days from the date of such resignation, unless within the aforesaid period, it is withdrawn by the maker. The other eventuality in which the Adhyaksh or Upadhyaksh would be required to vacate the office and cease to be a member of the Zila Parishad is when a "no confidence" motion is carried against them.

14. The procedure has been well laid out in Section 70 (4) of the Act. It provides that Adhyaksh and Upadhyaksh would be deemed to have vacated their offices forthwith if a resolution expressing want of confidence in them is passed by a majority of total number of directly elected members from the territorial constituencies of the Zila Parishad at a meeting especially convened for the purpose.

(emphasis provided)

15. It ought not to be lost sight of that the opening part of the clause clearly provides that the motion would be carried out by the majority of the total number of directly elected members at a meeting especially convened for the purpose. The phrase "at a meeting especially convened for the purpose" has to be read as a necessary adjunct to the earlier part of the provision viz. the majority of the total of the directly elected members. The number which is conceived of for majority is the number of members who would be present in the meeting, especially convened for the purposes of discussing the "no confidence" motion.

16. A Zila Parishad consists of members directly elected from the territorial constituencies in the district as also the Pramukhs of all Panchayat Samitis in the district and such members of the Lok Sabha and the members of the State

Legislative Assembly who represent any part which falls wholly or partly within the district and whose constituency falls within the district and the members of the Rajya Sabha and the members of the State Legislative Council who are registered as electors within the district.

17. Each of the members of the Zila Parishad have a right to vote in its meetings, but in case of election and removal of Adhyaksh and Upadhyaksh, only the members directly elected from the territorial constituencies in the district have a right to vote.

18. The majority of votes as prescribed in Section 70 of the Act is thus of directly elected members at a meeting especially convened for the purpose.

19. The intention of the Legislature becomes absolutely clear as Section 70 (4) provides that no such meeting which has been so especially convened, would be postponed and no quorum shall be required for the special meeting convened to discuss the "no confidence" motion.

20. The afore-noted two such provisions are not mere surplusage; but specific indication that in the absence of any quorum provided, the majority would mean only the members present and voting and not the majority of the total number of elected members.

21. We say so for another reason as well.

22. "no confidence" motion is not be notified during the first two years of the tenure of Adhyaksh and Upadhyaksh. Such motion shall also not be brought within the last six months of the expiry of the term of the Zila Parishad. Additionally, an amendment was brought about by the Amending Act 15 of 2015 (w.e.f. 01/01/2016) that a "no confidence" motion can be brought only once in the whole tenure of Adhyaksh or Upadhyaksh. There appears to be some reason behind this amendment.

23. The experience had been that "no confidence" motions were brought about in a causal and cavalier manner and that many a times, when it was brought about, the discussions and voting were thwarted by the machinations of some, which rendered the entire tenure of the Zila Parishad non-functional and the Parishad being reduced to an omphalous of artifice and corruption.

24. The nuances of democracy and its working come only with experience; usage; and practices. It was with some reason that it was thought that in the first two years of the tenure of the Zila Parishad, "no confidence" motion would not be entertained. The experience had shown that repeated motions of ""no confidence"" were brought by warring members, leaving no time for the Adhyaksh and Upadhyaksh to pursue the mission and the objectives under the Act.

25. Thus, by an amendment of 2015 (w.e.f. 01/01/2016), it was clarified that in the tenure of Adhyaksh or Upadhyaksh, "no confidence" motion could be brought

against them for one time only.

26. It is in this background that the wordings of Section 70 (4) have to be construed.

27. Even otherwise, it is a settled principle of law and also a cardinal principle of construction of Statute that no part or a word of Statute be construed in isolation and that effect should be given to all the provisions, lest it would not be a harmonious construction. The effort should be to give effect to all the provisions and not reduce one of the provisions to be a dead letter or a "useless lumber".

28. It is the duty of the Courts to avoid any head-on clash between two provisions of the Act and to construe the provisions which may appear to be in conflict with each other, in such a manner as to harmonize them. (Refer to Azmal Imam Vs. The State of Bihar : (2011) 5 SCC 729; Sultana Begum Vs. Premchand Jain : (1197) 1 SCC 373).

29. The difficulty appears to have arisen in a truncated reading of Section 70 (4) (1) of the Act that Adhyaksh and Upadhyaksh shall be deemed to have vacated his office forthwith, if a resolution expressing want of confidence in him is passed by a majority of total number of directly elected members from territorial constituencies of the Zila Parishad and not reading the latter part of the sentence, namely, at a meeting especially convened for the purpose and a stand alone provision that no quorum shall be required for the special meeting convened to discuss the "no confidence" motion. Also understood in the context of a "no confidence" motion being restricted to a solitary instance.

30. In Sarita Kumari (supra), the Division Bench only referred to the first part of Section 70 (4) of the Act and did not notice the entire provision which provides that no quorum is necessary in such a meeting.

31. The learned Advocate General, while supporting the postulate in Sarita Kumari (supra), namely, that majority of the total of the elected members would be required for the removal of the Adhyaksh and Upadhyaksh, submitted that if no quorum is required, then, perhaps, the outcome of the meeting would not reflect the intention or the desire of the entire body. There could be a possibility of fraud not only on the Statute, but also on the basic principle of the democracy. There could be a situation where, the learned Advocate General argued, the Adhyaksh or Upadhyaksh would not have lost confidence of the House and still, with the machinations of a few get the motion passed.

32. This argument is not acceptable for the reason that the converse could also be true in certain circumstances. The law is not to be understood or interpreted taking into account the extremities or the outliers. A Adhyaksh or Upadhyaksh must have the confidence of the House for them to remain on their positions and be accountable for the missions and objectives of the Zila Parishad. Any organisation, be it a local body, can run only if the elected representatives enjoy the faith of the entire body, which will be reflected by the number of votes they

garner.

33. The right to vote lies at the heart of any democratic set-up, but it ought not to be forgotten that the very purpose to have a seamless functioning of the Zila Parishad or any other body, cannot be put on hold by preventing people to come and vote for or against the motion or coerce them to vote in any manner.

34. A requisition for "no confidence" motion can be brought by the approval of not less than 1/5th of the total number of directly elected members of the Zila Parishad.

35. The manner in which the discussions and voting are to be held have been provided for.

36. Many contingencies have been taken into account like what would happen if the Adhyaksh or Upadhyaksh fail to convene the meeting and how would the discussions be carried out and the motion would be put to vote. The motion is required to be put to vote on the same day after discussions which has to take place by secret ballot in the prescribed manner by the District Magistrate.

37. Mr. K.N. Choubey, the learned Senior Advocate urged the Court to consider that there has to be a primacy of vox populi. He also made references to various parts of the Constitution of India dealing with the election of high functionaries, where majority of the entire body was required.

38. In our estimation, such comparison is not apt for the reason of total clarity in the Statute. If the opening sentence of Section 70 (4) of the Act is read as a whole, it would appear that what the Legislature intended was the majority of the directly elected members at especially convened meeting. This can only mean members present and voting and nothing else.

39. We do not find any insurmountable inexactitude in the language used in Section 70 (4) of the Act. It does not present before us a situation where some specific tool of interpretation is required to be pitched in and that not doing so would reduce the legislation to futility and render the manifest purpose of the legislation, nugatory.

40. With utmost deference, we say that in Sarita Kumari (supra), perhaps, the entire scheme of Section 70 (4) of the Act was not gone into. It has succinctly been explained in Dharamsheela Kumari (supra), which dealt with the "no confidence" motion of Pramukh and Up-Pramukh under Chapter-IV, which provision, namely, Section 44 (3) is exactly similar to Section 70 (4) of the Act.

41. We, thus, conclude that for a motion of "no confidence" to be carried out successfully, the requirement is of the majority of the members present and voting and not majority of the total of the elected members of the Zila Parishad.

42. We have not referred to the facts of any one of the writ petitions or appeals before us, which shall be decided on the principle enunciated by us.

43. The reference stands answered accordingly.