

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11145 of 2016

Usha Devi, W/o- Ramnivas Bharti, Resident of Ward No. 03, P.O+P.S- Raxaul, District- East Champaran, Motihari, presently holding the post of the Chairman, nagar parishad, Raxaul, District, East Champaran, Motihari

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Sub- Divisional Officer, Raxaul, East Champaran, Motihari.
4. The Executive Officer, Nagar Parishad, Raxaul, East Champaran, Motihari.
5. Rajeev Kumar, S/o- Late Vishwanath Kuwar, Resident of Ward No. 01, P.O+P.S- Raxaul, District- East Champaran, Motihari.
6. Sheela Devi, W/o- Shree Yogendra Bharti, Resident of Ward No. 02, P.O+P.S- Raxaul, District- East Champaran, Motihari.
7. Prushotam Kumar, S/o- Late Nand Lal Prasad, Resident of Ward No. 04, P.O+P.S- Raxaul, District- East Champaran, Motihari.
8. Brijkishore Sah, S/o- Shree Jang Bahadur Sah, Resident of Ward No. 05, P.O+P.S- Raxaul, District- East Champaran, Motihari.
9. Pramod Singh, S/o- Late Paramhansh Singh, Resident of Ward No. 06, P.O+P.S- Raxaul, District- East Champaran, Motihari.
10. Salma Khatoon, W/o- Majid Mian, Resident of Ward No. 07, P.O+P.S- Raxaul, District- East Champaran, Motihari.
11. Shakil Ahmad, S/o- Late Sheikh Sarfuddin, Resident of Ward No. 08, P.O+P.S- Raxaul, District- East Champaran, Motihari.
12. Sabnam Ara, W/o- Nurula Khan, Resident of Ward No. 09, P.O+P.S- Raxaul, District- East Champaran, Motihari.
13. Meena Devi, W/o- Late Harendra Verma, Resident of Ward No. 10, P.O+P.S- Raxaul, District- East Champaran, Motihari.
14. Ashok Agrawal, S/o- Late Braj Lal Agarwal, Resident of Ward No. 11, P.O+P.S- Raxaul, District- East Champaran, Motihari.
15. Suresh Kumar, S/o- Late Harihar Sah, Resident of Ward No. 12, P.O+P.S- Raxaul, District- East Champaran, Motihari.
16. Kashinath Prasad, S/o- Late Shiv Prasad Sah, Resident of Ward No. 13, P.O+P.S- Raxaul, District- East Champaran, Motihari.
17. Vindhayachal Paswan, S/o- Late Ramashray Paswan, Resident of Ward No. 14, P.O+P.S- Raxaul, District- East Champaran, Motihari.
18. Shanti Devi, W/o- Raj Kishore Prasad, Resident of Ward No. 15, P.O+P.S- Raxaul, District- East Champaran, Motihari.
19. Murtaza Khatoon, W/o- Md. Abbas, Resident of Ward No. 16, P.O+P.S- Raxaul, District- East Champaran, Motihari.
20. Amul Nesha, W/o- Moktar Ansari, Resident of Ward No. 17, P.O+P.S- Raxaul, District- East Champaran, Motihari.
21. Suresh Kumar, S/o- Late Bhuneshwar Raut, Resident of Ward No. 18, P.O+P.S- Raxaul, District- East Champaran, Motihari.
22. Renu Gupta, W/o- Mantu Gupta, Resident of Ward No. 19, P.O+P.S- Raxaul, District- East Champaran, Motihari.

23. Surendra Kumar, S/o- Madan Das, Resident of Ward No. 20, P.O+P.S- Raxaul, District- East Champaran, Motihari.
 24. Om Prakash Pandey, S/o- Narmadeshwar Pandey, Resident of Ward No. 21, P.O+P.S- Raxaul, District- East Champaran, Motihari.
 25. Rajendra Sah, S/o- Late Babulal Sah, Resident of Ward No. 22, P.O+P.S- Raxaul, District- East Champaran, Motihari.
 26. Shubra Devi, W/o- Ashok Sah, Resident of Ward No. 23, P.O+P.S- Raxaul, District- East Champaran, Motihari.
 27. Jitendra Kumar, S/o- Late Sonalal Sah, Resident of Ward No. 24, P.O+P.S- Raxaul, District- East Champaran, Motihari.
 28. Gayatri Devi, W/o- Premchandra Kushwaha, Resident of Ward No. 25, P.O+P.S- Raxaul, District- East Champaran, Motihari.

.... Respondents

Appearance :

For the Petitioner : Mr. Y.V. Giri, Sr. Advocate,
 Mr. Vikas Ratan Bharti, Advocate
 For the State : AC to AAG11
 For Respondent Nos. 5, 7, 8
 10 to 17, 20 to 23 & 25 to 27: M/s Sanjay Singh, Umakant Prasad and
 Sanjeev Kumar Singh, Advocates

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 21-07-2016

I have heard learned counsel for the petitioner, the State and the private respondents.

The notice dated 18.07.2016 issued by the Executive Officer, Nagar Parishad, Raxaul, as contained in Annexure 8, communicating that a special meeting has been convened under the Chairmanship of the Deputy Chief Councillor on 22.07.2016 to consider the “No Confidence Motion” brought against the petitioner, who happens to be the Chief Councillor of the aforesaid Nagar Parishad, is under challenge.

Initially, the writ petition was filed for a direction to the



Executive Officer, Nagar Parishad, Raxaul not to issue any notice for convening special meeting for the purpose of consideration of “No Confidence Motion” against the petitioner pursuant to the third requisition dated 04.07.2016, as contained in Annexure 7.

Factual matrix of this case which would be necessary for proper consideration of the *lis*, and which emanates from the writ petition, stands narrated as under:

The petitioner was elected and administered oath of the office of the Chief Councillor of Nagar Parishad, Raxaul, District East Champaran, on 09.06.2012. A requisition was filed and received by the petitioner on 12.06.2014 for convening a special meeting on 20.06.2014 for consideration of “No Confidence Motion”, however, the meeting was held and motion was defeated. Thereafter, a second requisition signed by nine elected members of the Nagar Parishad, Raxaul was again filed and received by the petitioner on 22.06.2015. Again a meeting was held on 01.07.2015 and the “No Confidence Motion” was defeated. Again a third notice was issued vide impugned Annexure 7 dated 04.07.2016 and pursuant to that Annexure 8 has been issued by the Executive Officer of the Nagar Parishad, Raxaul fixing the date of a special meeting as 22.07.2016 at 11.30 A.M. for consideration of the third “No Confidence Motion”.



Mr. Y.V. Giri, learned senior counsel appearing on behalf of the petitioner has submitted that from perusal of Section 25 of the Bihar Municipal Act, 2007(hereinafter to be referred to as “the Act”), it would be apparent that there is no concept of third requisition for bringing “No Confidence Motion” after the earlier two having failed, thus, the petitioner seeks declaration that the requisition calling upon the Executive Officer to hold a special meeting for consideration of “No Confidence Motion” as well as his notice for convening such special meeting vide Annexure 8 are without jurisdiction and, as such, the Executive Officer, Nagar Parishad, Raxaul, should be restrained from convening such special meeting. Since the date of aforesaid meeting has been fixed during the pendency of the writ petition, the petitioner sought amendment of relief by filing I.A. No. 5711 of 2016 for induction of relief for quashing of the notice as contained in Annexure 8 which was allowed by this Court on 20.07.2016.

The question which falls for consideration of this Court is whether, in view of the provisions contained in Section 25(4) of the Act, third requisition and, consequent thereupon, the third notice convening a special meeting for consideration of “No Confidence Motion” against the petitioner, would be permissible in law?

For better appreciation of the matter, the relevant provision

contained in Section 25(4) of the Act is being extracted as under:

**“Section 25. Removal of Chief Councillor/
Deputy Chief Councillor:-**

- (1) xx xx xx
- (2) xx xx xx
- (3) xx xx xx

(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:

"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.”

- (5) xx xx xx
- (6) xx xx xx”

From perusal of the aforesaid statutory provisions, it is



apparent that the elected Chief Councillor/Deputy Chief Councillor can be removed from office by a resolution carried by a majority of the whole number of Councillors having participated in special meeting called for that purpose. However, the requisition for convening such special meeting should be in writing by not less than one-third of the total number of Councillors and, thereafter, three Provisos have been inducted. First Proviso restrains anybody from bringing “No Confidence Motion” within a period of two years of taking over the charge of the post of the Chief Councillor/Deputy Chief Councillor. The second Proviso declares that “No Confidence Motion” cannot be brought again within one year of the first “No Confidence Motion”. The third proviso lays down that “No Confidence Motion” cannot be brought within the residual period of six months of the municipality.

Mr. Giri has submitted that the aforesaid provisos have been inducted for proper protection to the elected Chief Councillor/Deputy Chief Councillor by ensuring that “No Confidence Motion” is not brought again and again only for the purpose of harassing the incumbent of the office as such act would also hamper the smooth functioning of the elected body. He drew attention of this Court towards a decision of a Division Bench of this Court in **Smt. Shyama Devi v. The State of Bihar and**



others(2002(2) PLJR 765) to impress upon that the Division Bench, which was considering the “No Confidence Motion” with respect to the Panchayati Raj Act, had opined that, no such protection was given to the incumbent to the chair of the elected representatives which was not proper and, thus, a suggestion was made to the State of Bihar to examine the legislation, in context, with the law in other States and come out with necessary legislation. He submits that, thereafter, the present provision was inserted in the Panchayati Raj Act as well as the present Statute. It is contended that for the aforesaid purpose, the Legislature in its wisdom, has provided that “No Confidence Motion” can be brought against the chair only twice within its term of five years. There is no concept of bringing or allowing third “No Confidence Motion” at all. Thus, it is urged that since two opportunities having already been exhausted no third “No Confidence Motion” can be brought against the petitioner till the end of her tenure as the Chief Councillor.

It is next contended by Mr. Giri that Section 44 of the Bihar Panchayat Raj Act, 2006, which is a provision for requisition and removal of Pramukh or the Up-Pramukh, lays down in clear terms under sub-section 3(ii) thereof that “No Confidence Motion” cannot be brought within first two years period of their tenure, and, thereafter, by bringing amendment by Act 15 of 2015 it has been



inserted that, within whole tenure of Pramukh/Up Pramukh, “No Confidence Motion” can be brought only once. At the strength of the aforesaid, it is urged that the intention of the Legislature is quite clear that the provision is for preventing of the chair from unnecessarily facing “No Confidence Motion” again and again and to ensure that he works properly without any hindrance.

Per contra, Mr. Sanjay Singh, learned counsel appearing for the private respondents, has submitted that there is no bar in bringing “No Confidence Motion” third time. It is contended that had that been the intention of the Legislature the same would have been inducted in the provision in clear terms as the Legislature never legislates in a hidden manner.

Upon consideration of rival contentions of the parties, this Court does not find force in the submission made on behalf of the petitioner. In order to appreciate the intent of the Legislature, one should keep in mind the well settled principle of interpretation that perusal of the whole provision again and again would be fruitful. Reference is made in this regard to the phrase “*nemo enim aliquam partem recte intelligere potest antequam totum interum atque iterum perlegerit*” (at the foot note 35 of Craies on Statute Law, 6th Edition by S.G.C. Edgar, M.A.), i.e., no one can rightly understand any part without perusing the whole again and again.



It is stated in the “Maxwell on The Interpretation of Statute” in the Chapter, namely, “Construction Most Agreeable to Justice and Reason” that artificiality and anomaly is to be avoided during construction. Where possible, a construction should be adopted which will facilitate the smooth working of the scheme of legislation established by the Act and would not produce anomalous results.

Of course, the provisos are there to protect the Chair from unnecessary harassment by bringing “No Confidence Motion” again and again and to ensure smooth functioning of the elected body, however, from perusal of the entire scheme as contained in subsection (4) of Section 25 of the Act it would appear that right has been given to the majority to dislodge even the elected chair by following the procedure prescribed. It is a democratic right given to the Councillors. However, the three provisos have been inducted by way of restriction, exception and bar so that such chair does not face repeated threats of “No Confidence Motion” within a short period. For achieving that, the first proviso ensures that “No Confidence Motion” cannot be brought against the Chief Councillor/Deputy Chief Councillor within a period of two years of taking over the charge of the post. However, it is the second proviso from which the petitioner is trying to take help. It lays down further that “No

Confidence Motion” shall not be brought within one year of the first “No Confidence Motion”. It has been contended that it would definitely mean that after the first only one more Motion would be allowed and that, too, only after one year of the first one.

In my considered opinion, such interpretation would not be acceptable as the second proviso is in continuity of the first one, therefore, it only refers the time period of second one after the first one. First proviso says that first such motion can be brought only after two years of assuming charge of office. Thus, the second proviso restricts bringing of another motion after the first to be only after a year. It does not bar the third “No Confidence Motions”. The word ‘First’ has to be read here as the earlier or the previous otherwise the Legislature ought to have barred third motion in express term as it has done under Section 44(3)(ii) of the Panchayati Raj Act, 2006. It only brings out a scheme that gap between the first “No Confidence Motion” and the second “No Confidence Motion” should not be less than one year which does not mean that, thereafter, third “No Confidence Motion” cannot be brought. In my view, the third “No Confidence Motion” can also be brought being a democratic right but it should pass the test of three Provisos.

The submission made on behalf of the petitioner at the strength of Section 44(3)(ii) of the Panchayati Raj Act, 2006 would

also be of no help. It is evident that such insertion has been brought specially for the Pramukh/Up-Pramukh stating that there can be only one “No Confidence Motion” during the entire tenure can be brought which clearly indicates its intention but under sub-section (4) of Section 25 of the Act nothing has been inserted like that and whatever restriction, bar or limitation has been provided that does not indicate at all that there cannot be more than two “No Confidence Motions” and, as such, only the Legislature would be entitled to insert the same and the Court cannot insert those words in the statute.

In my considered view, the democratic right of removal of Chief Councillor or the Deputy Chief Councillor by bringing “No Confidence Motion” has been provided only with the protection given to the Chief Councillor/Deputy Chief Councillor in the three Provisos to the Section 25 of the Act. Reading the provisos otherwise would lead to anomalous result. Hence, the issue involved is answered in affirmative.

As a result, this writ applications fails and is dismissed.

(Dr. Ravi Ranjan, J)

SC/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.07.2016
Transmission Date	NA