

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13788 of 2016

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1. Bijay Kumar Bimal, son of Sri Pulkit Prasad Yadav, resident of Mohalla- Vidyapuri, Ward No. 18, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No.18, Nagar Parishad, Madhepura.
 2. Manorma Devi, Wife of Late Pram Bahadur Yadav, resident of Mohalla- Bhirkhi, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No. 22 Nagar Parishad, Madhepura.
 3. Asha Srivastava, son of Late Dinesh Prasad Srivastava, resident of Mohalla- Lakshmipur, Ward No. 17, P.O. and P. S. Madhepura, presently Ward Councilor of Ward No. 17, Nagar Parishad, Madhepura.
 4. Ravi Shankar Yadav, son of Late Harish Chandra Yadav, resident of Mohalla- Jagjiwan Ashram, Ward No.13, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No,13, Nagar Parishad, Madhepura.
 5. Dukha Mahto, son of Late Chalitar Mahto, resident of Mohalla- Navtolia, Ward No.1, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No.1, Nagar Parishad, Madhepura.
 6. Kumari Vinita Bharti, Wife of Sri Pankaj Kuamr, resident of Mohalla- Nav Lakhia, Ward No. 2. P.O. and P.S. Madhepura, presently Ward Councilor of Ward No.2, Nagar Parishad, Madhepura.
 7. Abhilasha Kumari, Wife of Lalan Kumar Lalan, resident of Ward No. 3, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No,3, Nagar Parishad, Madhepura.
 8. Anita Srivastava, wife of Sri Om Prakash Srivastava, resident of Mohalla- Gulzarbag, Ward No. 20, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No- 20, Nagar Parishad, Madhepura.
 9. Mira Devi, Wife of Sri Ram Narayan Prasad Kannaujia, resident of Mohalla- Bhirkhi, Ward No. 25, P.O. and P.S. Madhepura presently Ward Councilor of Ward No. 25, Nagar Parishad, Madhepura.
 10. Rita Kumari, Wife of Sri Vijay Pandit, resident of Mohalla- Bhirkhi, Ward No. 26, P.O. and P.S. Madhepura presently Ward Councilor of Ward No. 26, Nagar Parishad, Madhepura.
 11. Nauzahat Praveen, Wife of Sri Nazrul Hoda resident of Mohalla- Purani Bazar, Ward No. 16, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No. 16, Nagar Parishad, Madhepura.
 12. Reshma Praveen, wife of Shafiq Alam resident of Mohalla- Azahar Colony, Ward No.12, P.O. and P.S. Madhepura, presently Ward Councilor of Ward No. 12, Nagar Parishad, Madhepura.
 13. Kumari Ruby, wife of Rudra Narayan Kumar, Resident of Mohalla- Professor Colony, Ward No. 5, P.O. and P.S.-Madhepura, presently Ward Councilor of Ward No. 5, Nagar Parishad, Madhepura

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing, Department, Government of Bihar, Patna.
3. The District Magistrate, Madhepura District- Madhepura



4. The District Supply Officer, Madhepura, District- Madhepura
5. The Chief Executive Officer, Nagar Parishad, Madhepura, District- Madhepura.
6. Sri Vishal Kumar Bablu son of not known to the petitioners, presently Chief Councilor, Nagar Parishad, Madhepura P.O. and P.S. Madhepura, District- Madhepura.
7. Sri Ram Krishna Yadav, son of not known to the petitioner, presently Deputy Chief Councilor, Nagar Parishad, Madhepura, P.O. and P.S. Madhepura, District- Madhepura.
8. The State Election Commission (Municipality) Bihar through the State Election Commission.

.... Respondents

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Appearance:

For the Petitioners : Mr. S.B.K.Mangalam, Advocate
Mr. Ravi Ranjan, Advocate

For the State : Mr. Yogendra Prasad Sinha, AAG 7
Mr. Ram Subhas Singh, AC to AAG 7

For the Respondents : Mr. Gomendra Kumar Jha, Advocate
Mr. Bam Bahadur Jha, Advocate
Mr. Gajendra Pratap Singh, Advocate
Mr. Sushil Kumar Jha, Advocate

For the S.E.C. : Mr. Amit Shrivastava, Advocate
Mr. Girish Pandey, Advocate

For the Nagar Parishad: Mr. Ravi Bhushan Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE VIKASH JAIN

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date: 14-02-2017

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The present matter is under consideration by this Bench on a reference by a learned Single Judge of this Court, who was of the view that "Section 25(4) of the Act requiring a particular minimum number for a no confidence motion to be passed, would not mean that when 50% of the whole number of Councillors have voted one way, irrespective of the actual number of votes cast, the same would also



be a case of 'equality of votes' as contemplated in Section 51(2) of the Act", which was contrary to the decisions of two co-ordinate Benches of this Court as reported in *Sanjay Kumar Singh & Ors. vs. The State of Bihar & Ors.* [2015(1) PLJR 394] and *Rajeshwar Prasad vs. The State of Bihar & Ors.* [2012(2) PLJR 525].

3. The short facts of the case according to the reference order are that pursuant to a requisition for bringing a no confidence motion against the Chief Councillor and Deputy Chief Councillor of Nagar Parishad, Madhepura which was constituted of a total 26 elected Ward Councillors at the relevant time, a special meeting under Section 25(4) of the Bihar Municipal Act, 2007 (for short, "the Act") was held on 05.08.2016. Out of the 26 members, 15 attended the meeting and the petitioner no. 1 was nominated by the attending members to preside over the special meeting. After discussions, the no confidence motion was put to vote. Out of the votes cast, 13 votes were in favour of the no confidence motion, one vote was cast against the motion, while one ballot paper was blank and hence declared invalid. It was claimed by the petitioner no. 1 that this resulted in an equality of votes, there being 26 members in all, and therefore he had a right to a casting vote in terms of Section 51(2) of the Act, which right he was, however, prevented from exercising by the respondent no. 5. After counting, the respondent no. 5 declared the no confidence motion to have failed in the absence of majority of votes being in



favour of the motion.

4. The learned Single Judge has opined that the right of a casting vote would arise only in a situation where the number of votes cast were equally divided and led to a tie. Though the Learned Single Judge has not framed a specific question for reference to the Division Bench, the core questions arising in the present controversy may be formulated as under –

- i) Whether the term “equality of votes” as occurring in Section 51(2) of the Act contemplates an equal division in the number of votes cast by the members present and voting?
- ii) Whether the said term “equality of votes” covers a situation where only half the total number of members vote one way while the remaining half of the members remain absent or abstain from voting or some of them vote the other way?

5. The core issues that require to be decided are, therefore, the interpretation of the terms “votes” and “equality of votes” and whether votes cast by half of the whole number of members in favour of the no confidence motion can be viewed as an equality of votes by treating the votes of the members who remained absent from the meeting or abstained from voting as being against the motion for the purposes of sec 51(2) of the Act in order to afford the Chief Councillor or the Presiding Officer the right to exercise a casting vote.

6. On a careful consideration of the issue in controversy and



on a perusal of the various provisions of the Act and Rules as a whole, I am in agreement with the view expressed by the learned Single Judge in his reference order.

7. The relevant provisions of Section 25(4), Section 50(4) and Section 51(2) of the Act are reproduced hereinbelow for the sake of easy reference —

“Section 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:

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.

Section 50(4) All matters required to be decided at a meeting of the Municipality shall, save as otherwise provided in this Act, be **determined by a majority of votes of the Councillors present and voting.**

Section 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.**”

8. At the outset it must be noted that the intent and purpose of Section 25(4) and Section 51(2) of the Act are quite distinct from each other, as are the pre-conditions for operation thereof. While Section 25(4) provides for removal of the Chief Councillor and Deputy Chief Councillor, Section 51(2) lays down that the Chief Councillor or the Presiding Officer would have the right of a casting vote in a meeting under certain circumstances. It may be clarified that a meeting in terms of Section 25(4) is a special meeting, while other meetings for the purposes of transaction of business in terms of Section 48 are general meetings. The decisions of the Municipality at its general meetings are determined by a majority of votes by **Councillors present and voting**, as provided in Section 50(4) of the Act. However, for the removal of Chief Councillor or the Deputy Chief Councillor, Section 25(4) requires a resolution in this regard to be carried by **a majority of the whole number** of Councillors holding office for the time being. In other words, if the number of votes cast in favour of the no confidence motion at the special meeting falls short of the **majority of the whole number of members** holding office, then the resolution is not carried in favour of the motion. Section 51(2) comes into play only in a situation involving “equality of votes” in order to decide whether or not a right accrues to the Chief Councillor



or the person presiding over the meeting for exercising a casting vote.

9. It is further relevant to note that Section 51(2) is applicable to both a general meeting as well as a special meeting, as there is nothing therein to suggest that it is intended to apply only to one or the other. Besides, as is well-known, a special meeting is nothing but a general meeting, merely with a special agenda. Therefore, the right of a casting vote accrues if the circumstances exist, namely, there is an “equality of votes”, both in the case of a general meeting as well as a special meeting.

10. A casting vote as is generally understood, is a second vote given to the Chairperson of a meeting to help break a deadlock amongst members present and voting on a resolution. Where a resolution is to be carried by majority of members “**present and voting**” and there is a tie, the Chairperson can break the tie by his casting vote. But, in case the resolution requires “**majority of the whole membership of the house**”, and only half of the whole membership votes in favour of the resolution, the voting not being in majority of the whole house nor there being a tie, the motion is defeated and the Chairperson has no occasion to use his casting vote.

11. To decide the issue at hand, therefore, the meaning of the term “vote” must first be ascertained. According to Black’s Law Dictionary, a vote is “an **expression** of one’s preference or opinion in a meeting or election by ballot, show of hands, or other types of



communication". The Oxford Dictionary defines the term as "A formal **indication of a choice** between two or more candidates or courses of action, **expressed** typically through a ballot or a show of hands; an act of **expressing** such an indication of choice."

12. Clearly, the term 'vote' requires a positive act of expressing one's opinion, and by its very nature and definition, cannot have regard to the members absent and abstaining from the meeting, which amounts to non-voting and cannot be equated with voting, either for or against. No authority has been shown by learned counsel for the petitioner that a dual presumption arises to the effect that not only have the absent and abstaining members voted, but that they have voted *against* the no confidence motion.

13. The term "equality of votes" used in Section 51(2) must be understood to mean an equal division of **votes** among the members **present and voting**, whether it be in a general meeting or in a special meeting. The term cannot change its shade of meaning merely because a general meeting under Section 50(4) requires a decision by majority of the members present and voting, while a special meeting under Section 25(4) requires a resolution to be carried by a majority of the whole number of members holding the office.

14. In this view of the matter, I hold that the expression "equality of votes" means equal division, amongst for and against, of votes actually cast by the members present at a meeting, and the



absence or abstinence by some of them would not be counted as votes for or against the motion. Equality of votes can therefore, arise only when the ballots cast by the members present and voting is equally divided and not otherwise.

15. The controversy is further taken beyond the pale of doubt on a plain reading of Section 25(4) of the Act, which provides that “the procedure for conduct of business in a meeting shall be such as may be prescribed.” The term “prescribed” has been defined in Section 2(76) to mean “prescribed by rules made under this Act.” It is under this specific provision that the ‘Bihar Municipal No Confidence Motion Process Rules, 2010’ have been prescribed, Rule 2(v) whereof reads as follows —

“Rule 2(v) — As soon as the meeting called for commences, the Presiding Officer 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 Officer by secret ballot on the same day after discussion and after counting result shall be declared.”

This Rule categorically and unequivocally lays down that voting must be by means of secret ballot, which must be counted before the results are declared. The ballots can be counted only with respect to votes actually cast by the members present and voting, and the



question of counting of ballots with regard to absent and abstaining members cannot obviously arise.

16. In the present case, 13 out of the total number of 26 Councillors voted in favour of the no confidence motion, which fell short of the minimum of 14 votes required for a majority of the whole number of members, it being a special meeting under Section 25(4) of the Act. The only possible way for achieving such a majority would be if a casting vote were available to the Presiding Officer under Section 51(2) and it were to be cast in favour of the no confidence motion, resulting in addition of one vote for the count to go up to 14 votes. Such right of a casting vote could, however, arise only if each of the 26 members had turned up in the meeting and voted, with the votes so cast being equally divided as 13:13, inasmuch as only then could it be said that there was an "equality of votes". In other words "equality of votes" necessarily means equality amongst votes actually cast. Absence or abstention is not a vote cast as there is no expression of intent.

17. In any other case of equality of votes cast, for example, if the 14 members present had cast their votes as 7:7, the right to a casting vote by the Presiding Officer would no doubt have arisen, but it would have been of little significance as it would have merely added one vote either in favour or against the motion thereby bringing up the total to 8 votes which would still fall short of the majority of the



whole number of members holding office. Similarly, if even a single member out of the total 26 members failed to vote, then at best it would end up with a ratio of 13:12 and would not result in a tie. Equally, a tie at any other level, say 12: 12, would no doubt entitle the Presiding Officer to a casting vote, but with little consequence as even with the additional vote, there would be no majority.

18. However, the results would play out quite differently in the case of a general meeting with the same statistics of votes, where a decision is required by a majority of those **present and voting**. The equality of votes resulting from the 14 members present and voting having cast their votes in the ratio of 7:7 for and against the motion, would give the right to a casting vote to the Chief Councillor or the Presiding Officer, and this if exercised, would tilt the scale one way or the other by creating a majority.

19. It must be remembered that Section 25(4) is relevant for a special meeting for the purpose of bringing a no confidence motion against the Chief Councillor or the Deputy Chief Councillor who are elected members, and whose removal requires strict observance of stringent procedures. In this regard, the observations of the Apex Court in *Tarlochan Dev Sharma vs. The State of Punjab and Ors., (2001) 6 SCC 260* may be taken note of, as follows —

“7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has



been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office ...”

The observation of the Apex Court in *Ravi Yashwant Bhoir vs. District Collector, Raigad and others*, (2012) 4 SCC 407 may also be taken note of as follows —

“35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal [Vide: Jyoti Basu & Ors. vs. Debi Ghosal & Ors.; Mohan Lal Tripathi vs. District Magistrate, Rai Bareilly & Ors.; and Ram Beti etc. etc. vs. District Panchayat Rajadhikari ...]”

20. The view I am taking accords with the above principles that removal of the elected office bearers calls for stringent measures by requiring the entire body of members holding office to be present



and casting their vote to determine whether or not in fact the members are equally divided in their opinion on the no confidence motion. Mere inferential presumption regarding the votes of absent and abstaining members is not permissible. It is only if each member is present and casts a vote in the meeting which results in a tie, that a casting vote may be made in order to create a majority, and not otherwise.

21. For the above reasons, I am in agreement with the view expressed by the learned Single Judge and I hold that in the facts and circumstances of the present case, the Presiding Officer did not have a right of a casting vote under Section 51(2) of the Act in absence of an “equality of votes”.

22. I am conscious that the two earlier decisions of the learned Single Judges of this Court as reported in *Sanjay Kumar Singh & Ors. vs. The State of Bihar & Ors.* [2015(1) PLJR 394] and in *Rajeshwar Prasad vs. The State of Bihar & Ors.* [2012(2) PLJR 525] (*supra*) respectively did not specifically address the issue at hand, which was neither raised nor argued before them and hence those decisions cannot be treated as authority for the present proposition, having merely proceeded on the assumption that the Presiding Officer had a right of a casting vote in a case where half the whole number of members had voted in favour of the no confidence motion while out of the remaining half of the members, only a small number had voted



against the motion, while some did not participate in the meeting. However, having regard to the general importance of the issue raised by the Learned Single Judge, the reference has been taken up and answered.

23. In the above view of the matter, the writ petition is devoid of any merit and is accordingly dismissed.

(Vikash Jain, J)

Navaniti Prasad Singh, J – I agree

(Navaniti Prasad Singh, J)

Chandran

AFR/NAFR	AFR
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