

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.971 of 2015
IN
Civil Writ Jurisdiction Case No. 21450 of 2014**

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Raju Mahto, son of Sri Jageshwar Mahto, Chairman, Nagar Parishad, Saharsa.

.... Appellant

Versus

1. Ranjana Singh W/o Sanjay Kumar Singh, resident of village Batraha, Police Station Saharsa, District Saharsa, Presently Deputy Chairman, Nagar Parishad, Saharsa
2. The State of Bihar.
3. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
4. The Commissioner, Koshi Division, Saharsa.
5. The District Magistrate, Saharsa.
6. The Executive Officer, Nagar Parishad, Saharsa

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Advocate
Mr. Pramod Mishra

For the Respondent no.1 : Mr. Bindhyachal Singh
Mr. Satya Prakash

For Respondent nos. 2 to 5: Mr. Raju Giri, GP30
Ms. Aditi Hansria, AC to GP 30

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-05-2015

The subject matter of this Appeal is the no confidence motion, tabled against the appellant herein.

Briefly stated, the facts of the case are as follows –

The appellant was elected as Chief Councillor of Saharsa Municipality. A requisition to convene a meeting to take up a motion, to express want of confidence in the appellant was signed and delivered by more than one-third members of the Council. The Chief Executive Officer of the Council convened a meeting on 8.11.2014.

However, on that date, not a single Councillor, including those who signed the requisition had attended. The Chief Executive Officer issued proceeding dated 8.11.2014, recording the developments.

The first respondent herein filed CWJC No. 21450 of 2014 challenging the action of the Chief Executive Officer in issuing letter 8.11.2014. The learned Single Judge allowed the writ petition through order dated 27.4.2015, setting aside the proceedings dated 8.11.2014, and directing that a fresh meeting be convened, for taking up the motion, to express want of confidence. Heavy reliance was placed upon Section 50 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'). The same is challenged in this Appeal.

The contention of Sri Chittaranjan Sinha, learned Senior Counsel for the appellant is that once the meeting was convened, the question of adjourning the same, as contemplated under Section 50 of the Act, does not arise, particularly when not a single Councilor had attended. Another contention is that the question of adjourning the meeting for want of quorum would arise only in respect of general meetings of the Council provided for under Section 50, and not special meetings, which are dealt with under Section 25 of the Act.

Learned counsel for the 1st respondent Shri Bindhyachal Singh has placed reliance upon the judgment of a Division Bench of this Court in the case of *Vibha Devi vs. State of Bihar [2015(2) LJR 167]*. In that case, a meeting to take up the motion to express want of confidence in the Deputy Chairman of Gaya Municipality was fixed on 10.7.2014 and, on that date, only 7 out of 53 elected Ward Councilors attended. The meeting was adjourned for want of quorum, by referring to Section 50 of the Act and in the adjourned meeting, the motion was carried out. When the

same was challenged, the Division Bench of this Court held that adjournment of the meeting as provided for under Section 50 of the Act was very much legal and that no confidence motion was upheld.

We are unable to convince ourselves to fall in line with the judgment referred to above. The reason is that sub-section (4) of Section 50 makes it amply clear that requirement as to the quorum for a meeting is not absolute and it is save as otherwise provided and a resolution can be passed by majority of the members present, whereas for the resolution expressing the want of confidence requires the majority of the total membership under sub-section (4) of Section 25 of the Act. This can be demonstrated by taking a typical example. Let it be assumed that total of the number of Councillors of a municipality is 51 and for a meeting contemplated under Section 50 of the Act the minimum quorum is 17. If in a particular meeting only 15 Councillors turned up, the meeting has to be adjourned for want of quorum, as provided for under sub-section (2) of Section 50. Sub-section (3) thereof is to the effect that in the adjourned meeting, there shall not be any necessity of quorum and a resolution can be carried out by majority of the Councillors present. Thus, if in the adjourned meeting only 10 Councillors are present, the resolution can be passed, even if 6 Councillors voted in its favour. In contrast, the requirement under Section 25(4) of the Act is majority of the total number and the machination referable to Section 50 of the Act can not be applied to the meeting contemplated under Section 25 of the Act. Another aspect is that when none had turned up in a meeting, the question of adjournment may not arise.

Thus, we are of the view that the matter needs to be dealt with by a Full Bench to deal with the following questions, viz.

- (a) Whether the procedure stipulated in Section 50 of

the Act would apply to the meeting referable to Section 25(4) of the Act, particularly in view of the saving clause contained in sub-section (4) of Section 50 of the Act?

(b) Whether there exists any possibility or occasion, for adjourning a meeting to take up a meeting for motion to express want of confidence; when Section 25(4) and the Rules specially made for this purpose, do not provide for it ?

(c) Whether it becomes necessary to adjourn a meeting convened under Section 25(4) of the Act, when not a single Councillor and the person who was expected to preside over the meeting, did not turn up?

(d) Whether the recording of the developments of a meeting by the Executive Officer can be treated as the expression of views about the resolution or meeting?

Learned counsel for the appellant shall make available additional set of papers by re-opening of the Court.

The interim order dated 13.5.2015 shall remain in force.

The Registry shall place this matter before Hon'ble the Chief Justice for direction, in this behalf.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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