

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5258 of 2019

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Manik Lal Prasad, (Chief Councillor- Khusrupur Nagar Panchayat, Patna), male aged about 52 years, S/o Mahendra Prasad, R/o Ward No. 03, Mohalla-Badisangat Chakchanda, P.O. and P.S.- Khusrupur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through 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, Patna.
4. The Sub-Divisional Officer, Patna City.
5. The Executive Officer, Nagar Panchayat, Khusrupur, Patna.
6. Ramkali Devi, Deputy Chief Councillor, Khusrupur Nagar Panchayat, R/o Neemtal, Khusrupur, P.O. and P.S.- Khusrupur, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Sahi, Sr. Advocaet Mr. Dhananjay Kumar Gupta, Advocate
For the Respondent/s	:	Mr. Ravi Ranjan, Advocate Mr. Kislay Raj, Advocate Mr. Rajiv Roy, Advocate
For Res. No. 5	:	Mr. Alok Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 22-07-2019

The present writ application has been preferred seeking the following reliefs:-

“1. For issuance of a writ or writs in nature of Certiorari for quashing the requisition as contained in **letter dated 20.02.2019**, issued under the signature of Deputy Chief Councillor, Nagar Panchayat, Khusrupur, by which a requisition has been made in writing addressed to the petitioner requesting for calling upon special



meeting for no confidence motion as against the Chief Councillor, Nagar Panchayat, Khusrupur, i.e. against the petitioner, though the requisition is addressed to the petitioner but never served to the petitioner and has directly been made to the Executive Officer, Nagar Panchayat, Khusrupur, and further for quashing the letter as contained in **letter no. 131 dated 25.02.2019** issued under the signature of the Executive Officer, Nagar Panchayat, Khusrupur, whereby and where under the petitioner has been requested to give his opinion with regard to no confidence motion against the petitioner as the same is contrary to statutory provision of the Act and also contrary to settled principle of law as laid down through various judicial pronouncement made by Hon'le court from time to time.

(II). For a direction to the respondent authorities not to take any action or create any impediment in smooth functioning of the office of the petitioner.

(III). For any other relief or reliefs for which the petitioner is entitled under law in the facts and circumstances of the present case.”

The petitioner is the Chief Councillor of Nagar Panchayat, Khusrupur, Patna. There are 10 Wards under the said Nagar Panchayat. On 14.01.2019 some of the Councillors including the respondent no. 6 who is the Deputy Chief Councillor brought a requisition for calling a Special Meeting to discuss a



No Confidence Motion against the petitioner. It is stated that copy of the said requisition was sent to the Executive Officer, Nagar Panchayat, Khusrupur which was sent to the petitioner vide Memo No. 36 dated 14.01.2019 (Annexure '1'). The said requisition was, however, withdrawn vide letter dated 04.02.2019 a copy of which has been enclosed as Annexure '2' to the writ application. It is the case of the petitioner that after withdrawal of the requisition, there were General Meeting of the Nagar Panchyat on 14.02.2019, 18.02.2019 and thereafter but in those Meetings there was no whisper from any Ward Members against the petitioner. All of a sudden, it is stated that the petitioner came to know through some reliable sources that vide Letter Dated 20.02.2019 issued under the signature of the Deputy Chief Councillor a requisition has been made in writing addressed to the petitioner requesting for calling a Special Meeting to discuss No Confidence Motion against him.

The petitioner claims that this was never served upon him as it was sent directly to the Executive Officer, Nagar Panchayat, Khusrupur. The petitioner states that as soon as he came to know about the requisition for No Confidence Motion, he represented before the Executive Officer vide her Letter Dated 23.02.2019 (Annexure '3'). The petitioner was served



thereafter vide Letter No. 131 dated 25.02.2019, the said requisition dated 22.02.2019 by which the petitioner was requested to give his opinion in writing on the issue.

The petitioner has moved this Court claiming that the impugned letter dated 20.02.2019 and letter No. 131 dated 25.02.2019 are in violation of the statutory provisions as contained in Section 25(4) of the Bihar Municipal Act, 2017 (hereinafter referred to as the 'Act of 2007'). It is submitted that in terms of Section 25(4) of the Act of 2007 No Confidence Motion cannot be brought again within one year of the first No Confidence Motion. According to the petitioner the requisition for first No Confidence Motion was brought on 14.01.2019, the same was withdrawn on 04.02.2019, therefore the subsequent requisition dated 20.02.2019 is against the statutory provisions.

During pendency of the writ petition since the Special Meeting was held on 18.03.2019, the petitioner has filed I. A. No. 01 of 2019 for quashing of letter dated 13.03.2019 by which the Executive Officer, Nagar Panchayat, Khusrupur had fixed the date of Special Meeting on 18.03.2019 to move the 'No Confidence Motion'. I. A. No. 01 of 2019 was allowed vide order dated 06.05.2019.

A counter affidavit has been filed in this case on behalf



of respondent no. 5 who is the Executive Officer of the Nagar Panchayat, Khusrupur. It is her stand that the requisition for No Confidence Motion has been brought by the Deputy Chairman, Nagar Panchayat, Khusrupur along with signature of six other Ward Members as contained in Letter Dated 20.02.2019 and soon thereafter, she vide letter No. 132 dated 25.02.2019 sent letter to the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar seeking guidelines. She also sought guidelines from the Sub-Divisional officer, Patna City vide letter No. 140 dated 01.03.2019 (Annexure 'B'). It is further stated that the respondent no. 5 informed the respondent no. 6 and other Ward Members that since the petitioner had approached the Hon'ble High Court by filing a writ application, any action shall be taken after outcome of the writ application. On the same day the respondent no. 6 and six other Ward Councillors vide their letter dated 08.03.2019 informed respondent no. 5 that in exercise of their power under Section 25 (4) of the Act of 2007 read with 2(iii) of the Bihar Municipal No Confidence Motion Process Rules, 2010 they had fixed 14.03.2019 to discuss the No Confidence Motion subsequently while responding to the stand of respondent no. 5, the respondent no. 6 and other Councillors vide their letter dated 13.03.2019 (Annexure



‘G’) fixed the date of Special Meeting on 18.03.2019. Subsequently Meeting was held but in view of the interim order of this Court, result was not declared.

In this case respondent no. 6 has also appeared and filed Interlocutory Application No. 02 of 2019 in which a prayer has been made for vacating the partial stay of the result of the Special Meeting held on 18.03.2019. It is stated that in the Special Meeting the No Confidence Motion against the petitioner has been put to secret voting.

It is the stand of respondent no. 6 that earlier vide their requisition dated 14.01.2019 respondent no. 6 and six other elected Ward Councillors requested the petitioner to fix a date for Special Meeting for discussing ‘No Confidence Motion’ as also to issue notice for such Special Meeting. Copy of the said application was forwarded to the other respondent authorities. The requisition was served upon the petitioner on 14.01.2019 itself and a copy to respondent no. 5 was also served upon her on the same day. It is alleged that respondent no. 5 was acting in collusion with the writ petitioner and one of the requisitionists namely, Ashok Kumar parted with the writ petitioner for reasons best known to him, no Special Meeting of any sort was fixed by the petitioner. It is stated that on a blank paper signatures of all



requisitionists were taken under some false pretext and it was converted into an application for withdrawal of requisition dated 14.01.2019. Neither respondent no. 6 nor other Ward Councilors requisitionists signed any such application for withdrawal of the requisition but in order to avoid any unnecessary controversy they decided to draft a fresh requisition and accordingly it was drafted on 20.02.2019. On 20.02.2019 the requisition dated 20.02.2019 could not be served upon the petitioner or respondent no. 5 as none of them could be approached on that date.

It is alleged that on 21.02.2019 the writ petitioner took the requisition, read it but refused to give any receiving for the same, then further a copy of the said requisition was served upon respondent no. 5. Photo copy of the requisition dated 20.02.2019 has been enclosed as Annexure 'R6-1'. The copy of the requisition was also dispatched to this petitioner vide speed post on 23.02.2019. According to respondent no. 6, it is only because the petitioner came to know about the requisition for 'No Confidence Motion' on 21.02.2019, he plotted a story by filing representation before the respondent no. 5 alleging that the elected members are planning to file a fresh requisition against her, he requested the respondent no. 5 not to act on such requisition as earlier requisition has been withdrawn. It is further stated



that copy of the requisition was served upon respondent no. 5 on 21.02.2019 itself but for the reasons best known to her, she chose to forward the said requisition to Chief Ward Councillor vide her letter dated 25.02.2019 as contained in Annexure '4' to the writ petition. Since seven days period had elapsed and no action whatsoever has been taken by the petitioner, the respondent no. 6 claims that he and other requisitionists exercising their power under the Section 48 (3) of the Act of 2007 and the Bihar Municipal No Confidence Motion Process Rules 2010 (hereinafter referred to as the 'No Confidence Motion Process Rules of 2010') chose to fix a date for Special Meeting on 14.03.2019, respondent no. 5 was informed in this regard and she was asked to issue notice for No Confidence Motion. The respondent no. 5, however, after receiving the letter dated 08.03.2019 did not fix the Special Meeting and informed respondent no. 6 that because the matter is pending before the Hon'ble Court and a decision in this regard will be taken only after the judgment of the Hon'ble Court. Since no notice was issued by respondent no. 5 for the meeting to be held on 14.03.2019, the respondent no. 6 and other requisitionists members took a decision to conduct the Special Meeting on 18.03.2019, accordingly, respondent no. 5 was informed about the date for issuing notice which was ac-



cordingly done, the meeting was held on 18.03.2019 in which it was decided to go for secret ballot. Minutes of the Special Meeting held on 18.03.2019 is Annexure 'R6/4' to the interlocutory application. It is submitted that the meeting was attended by the petitioner. The Councillors demanded secret voting, accordingly, the secret voting was allowed by the authorized officer who was present in absence of the Executive Officer.

In the aforementioned background of the facts, this case has been argued by learned counsel for the parties solely on the ground that in terms of Section 25(4) of the Act of 2007 read with the provisions of the No Confidence Motion Rules of 2010 the requisition dated 20.02.2019 cannot be brought against the petitioner within one year of first No Confidence Motion. It is submitted that once the first requisition was withdrawn on 14.02.2019, the subsequent requisition would be wholly barred and cannot be acted upon.

Before this Court proceeds to consider the aforesaid issue, it is made clear that although in the pleadings certain disputes have been raised with regard to service of requisition but in course of argument the parties have proceeded to argue the matter without raising any factual disputes. Even otherwise this Court finds that the facts stated in the Interlocutory Application



No. 02 of 2019 by respondent no. 6 have not been disputed / denied by filing any counter affidavit thereto. The fact that the parties agreed at the Bar for hearing of the writ application and disposal of the same based on legal construction of the second proviso to sub-section (4) of Section 25 of the Act of 2007 is duly mentioned in this Court's order dated 06.05.2019.

The Bihar Municipal At, 2007 has been enacted with an object "to consolidate and amend the laws relating to the municipal governments in the State of Bihar in conformity with the provisions of the Constitution of India as amended by the Constitution (74th Amendment) Act 1992, based on the principles of participation in, and decentralization, autonomy and accountability of, urban self government at various levels, to introduce the reforms and financial management and accounting systems, internal resource generation capacity and an organizational design of Municipalities, to ensure professionalization of the Municipal personnel, and to provide for matters connected therewith or incidental thereto."

For a better appreciation of the issues involved in the present writ application it would be necessary to quote Section 25 of the Act of 2007 which reads as under:

**"25. Removal of Chief Councillor/Deputy
Chief Councillor .- (1) The Chief**



Councillor/Deputy Chief Councillor shall cease to hold office as such if he ceases to be a Councillor.

(2) The Chief Councillor may resign his office by writing under his hand addressed ¹[Government] and Deputy Chief Councillor may resign his office by writing under his hand addressed to the Chief Councillor.

(3) Every resignation under sub-section(2) 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 Divisional Commissioner or the Chief Councillor, as the case may be.

(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.

“Without prejudice to the provisions under this Act, if, in opinion of the Divisional Commissioner having territorial jurisdiction over the Municipality the Chief Councillor/Deputy Chief Councillor absents himself without sufficient cause for more than three consecutive meetings or sittings or wilfully omits or refuses to perform his duties and functions under this Act, 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 Divisional Commissioner may, after giving the Chief Councillor/Deputy Chief Councillor a reasonable opportunity for explanation, by order, remove such Chief Councillor from office.

(6)The Chief Councillor/Deputy Chief Councillor so removed shall not be eligible for re-election as Chief councillor/Deputy Chief Councillor or councillor during the remaining term of office of such Municipality.”

Rule 2 of the No Confidence Motion Rules, 2010 lays down the process to be followed which read as under:

2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor shall be considered and disposed of as per the



following process:-

(i) To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of requisition and the meeting shall be convened within fifteen days of the date of issuance of the notice.

(ii) The Special Meeting shall be presided by the Chief Councillor, if the No Confidence motion is against the Deputy Chief Councillor and shall be presided by the Deputy Chief Councillor, if the No Confidence motion is against the Chief Councillor and if it is against both the Chief Councillor and the Deputy Chief Councillor, the meeting shall be presided by the Councillor elected for the purpose by the Councillors in the meeting. In case of post of Deputy Chief Councillor being vacant or in his absence from the meeting convened for discussion on No Confidence Motion against the Chief Councillor or the post of the Chief Councillor being vacant or in his absence from the meeting convened for discussion against the Deputy Chief Councillor, the meeting shall be presided over by the member elected for the purpose in the meeting by the Councillors.

(iii) In case the notice not being issued by the Chief Councillor within the stipulated date or not convening the meeting within stipulated time, the special meeting shall be called by as per the provision of Section 48(3) of the



Municipal Act, 2007 and the notice for it shall be issued by the Chief Municipal Officer.

(iv) The notice issued for considering no confidence motion against the Chief Councillor/Deputy Chief Councillor shall clearly contain the reasons/allegations on which the No Confidence Motion is to be brought.

(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.

(vi) Quorum for the meeting shall be as per the provision of Section 50 of the Bihar Municipal Act, 2007.

(vii) In the event of both the posts, Chief Councillor and Deputy Chief Councillor falling vacant as a sequel to the passage of the No Confidence Motion, till the new Chief Councillor and Deputy Chief Councillor are elected, all the powers and duties which, under the provisions of the Act or the Rules or the regulations made thereunder or any other law for the time being in force, are to be exercised or performed by the Chief Councillor, shall be exercised or performed by the Chief Municipal Officer of the Municipality.

(viii) On completion of the process, the Chief



Municipal Officer shall submit a written report to the State Election Commission.

(ix) Where the posts of Chief Councillor/Deputy Chief Councillor fall vacant as a consequence of no confidence motion, the process of electing new Chief Councillor or Deputy Chief Councillor shall be completed within 30 days of report to the State Election Commission.

This Court has taken note of the Object of the Act as it would help resolving the issues by construing the words of the statute where the parties are contesting on two possible interpretations. This would also require a simultaneous look at Section 44 (3) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act of 2006'). Section 44 (3) of the Act of 2006 reads as under:

44. (3) (i) A Pramukh/*Up-Pramukh* of the *Panchayat Samiti* 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 elected members of the *Panchayat Samiti* at a meeting specially convened for the purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the *Panchayat Samiti*, by not less than one third of the total number of members elected directly from the territorial constituencies of the *Panchayat Samiti*. The Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling within 15 days of such requisition. If the



Pramukh fails to call the special meeting, the *Up-Pramukh* or one third of the total number of directly elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. 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.

(ii) No confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two year period of their tenure. ¹[Such a no confidence motion may be brought only once in the whole tenure of Pramukh/*Up-Pramukh*.]

[xxx]²

³[(iii) No confidence motion against the Pramukh or *Up-Pramukh* or both, as the case may be, shall not be brought during the last six months of the term of the *Panchayat* Samiti as mentioned in section 39 (1) of this Act.

(iv) Such reasons/charges, on the basis of which no confidence motion has to be moved against the Pramukh or *Up-Pramukh*, shall be clearly mentioned in the notice of meeting called to consider the no confidence motion.

(v) As soon as the meeting called under this section begins, the presiding member of this meeting shall read out the motion on which the meeting has been

1. *Ins. vide* Sec. 10 of Amdt. Act 15 of 2015 (w.e.f. 1.1.2016)

2. Cl. '(iii) deleted *vide* Sec. 10(2) by *ibid*

3. Cl. (iv) renumbered as cl. (iii) by *ibid*



called to consider before the members present and declare it open for discussion. Any discussion on the motion shall not be adjourned.

(vi) During discussion, opportunity shall be given to the Pramukh/*Up-Pramukh* against whom no confidence motion has been moved for his defence before the *Panchayat Samiti*. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the prescribed manner.

(vii) In case of no confidence motion against a Pramukh, the meeting shall be presided by the *Up-Pramukh*; in case of motion against *Up-Pramukh* by the Pramukh and in case of motion against both Pramukh and up Pramukh, by any member elected from among the members of the *Panchayat Samiti* present in the meeting.

In case of the post of *Up-Pramukh* being vacant or his absence from the meeting convened for discussion on no confidence motion against the Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no confidence motion against the *Up-Pramukh*, as the case may be, shall be presided over by any member elected from amongst the directly elected members from the territorial constituency of the *Panchayat Samiti* present in the meeting."

Mr. P. K. Sahi, learned Senior Counsel representing the petitioner has centered his arguments submitting that a conjoint reading of second proviso to sub-section (4) of Section 25 of the Act of 2007 would show that a Chief Councillor may be re-



moved from his office by resolution carried by a majority of whole number of Councillors holding office for the time being at a Special Meeting which is to be called for in the given manner upon a requisition made in the writing by not less than 1/3rd of total number of the Councillors. The first proviso clearly stipulates that a No Confidence Motion shall not be brought against the Chief Councillor / Deputy Chief Councillor within a period of 2 years from taking over the charge of the post. According to learned Senior Counsel, the moment a requisition is made in writing by the given number of the Councillors, it amounts to bringing a 'No Confidence Motion', therefore, by virtue of the first proviso to sub-section (4) of Section 25 of the Act of 2007 no requisition for a 'No Confidence Motion' shall be brought within two years. Extending his argument, learned Senior Counsel further submits that the second proviso should be read in consonance with the entire scheme of sub-section 4 of Section 25 of the Act of 2007. According to the second proviso, a No Confidence Motion shall not be brought again within one year of the first No Confidence Motion. According to the learned Senior Counsel the cluster of words "first No Confidence Motion" has to be understood as if once a requisition has been made for bringing a No Confidence Motion after the re-



striction of two years ends, it would amount to “the first No Confidence Motion” and therefore the moment the requisition was withdrawn in this case on 14.02.2019, the consequences of the second proviso to sub-section (4) of Section 25 of the Act of 2007 shall follow.

The submission of Mr. Sahi, learned Senior Counsel has been opposed with some confidence by Mr. Ravi Ranjan, learned counsel representing respondent no. 6. He has relied upon the dictionary meaning of word ‘withdrawal’ as provided in the Black’s Law Dictionary 9th Edition which reads as under:

withdrawal, n. (18c) 1. The act of taking back or away; removal<withdrawal of consent>. 2. The act of retreating from a place, position, or situation<withdrawal from the moot-court competition>. 3. The removal of money from a depository<withdrawal of funds from the checking account>. 4 RENUNCIATION (3) <withdrawal from the conspiracy to commit arson>. 5. RETRACTION (4) 6. *Parliamentary law.* A motion’s removal from consideration by its mover. The mover controls a motion only until the chair states the question, after which the motion belongs to the assembly and the mover cannot withdraw it without the assembly’s permission. See *request for permission to withdraw a motion* under REQUEST . 7. *Parliamentary law.* See



DISCHARGE (9). - withdraw. vb.”.

According to him a No Confidence Motion takes place only when it is put before the House and until the Chair states the question it would not be said to be a ‘No Confidence Motion’. Learned counsel has submitted that the word “requisition” and the word “No Confidence Motion” are not synonyms to each other. A No Confidence Motion takes place only when a Special Meeting is convened to discuss on the allegations made in the requisition and it is placed before the House for a consideration. It is submitted that if the interpretation as is being sought to be given by learned Senior Counsel for the petitioner is allowed to be accepted, it would result in taking away a valuable democratic right vested with the Councillors to remove the Chief Councillors /Deputy Chief Councillor from his/her office. He has also submitted that any such interpretation would allow a person like the petitioner to indulge in getting a requisition for No Confidence Motion issued through his/her favoured Councillors at one point of time immediately after expiry of two years or taking over the charge of the post and then by getting the requisition withdrawn he may ensure that no second requisition seeking holding of a Special Meeting to discuss No Confidence Motion may be brought. Learned counsel submits that the



required number for bringing requisition is only 1/3rd of total number of Councillors therefore, a Chief Councillor / Deputy Chief Councillor who may have lost the confidence of the majority of the whole number of Councillors but is having confidence of only 1/3rd of the total number of Councillors would immediately bring a requisition after expiry of two years, will get it withdrawn and shall ensure thereby that despite not having confidence of the majority of the whole number of Councillors, he/she continues in his office. Learned counsel for respondent no. 6 submits that the writ petition is liable to fail on a purposing interpretation of Section 25(4) of the Act of 2007. It is also submitted that petitioner has lost confidence of the majority of the Councillors is also apparent from the fact that the requisition has been signed by the Deputy Chief Councillor and six Councillors. The six Councillors are necessary parties but they have not been made party respondent and on this ground alone the writ is fit to be dismissed.

Consideration

Having heard learned Senior Counsel for the petitioner and learned counsel for the State and respondent no. 6, this Court is of the considered opinion that second proviso to subsection (4) of Section 25 must be harmonized with the subject



of the enactment and its object which the Legislatures had in view must be kept in mind. Sometimes strict grammatical meaning may give way to the object to be attained and the Court may decline to be bound by the same if any such interpretation frustrates the patent purpose of the statute. Second proviso to subsection (4) of Section 25 of the Act of 2007, in the opinion of this Court must be read in the light of the well settled Rule of interpretation of statutes 'expressions used therein should ordinarily be understood in a sense in which they posed harmonize with the object of the statute and therefore when two interpretations are feasible, the Court of laws always prefer that which advances the remedy and suppresses the mischief. This Court would therefore, in the present case adopt an object oriented approach.

Advanced Law Lexicon (3rd Edition reprint 2009) compiled and edited by P. Ramanathn Aiyar under the General Editorship of Hon'ble Mr. Justice Y. V. Chandrachud, former Chief Justice of India provides the dictionary meaning of the word "requisition". Which reads as under:

"Requisitionthe act of formally requiring one to perform some action, discharge some duty *etc*....."

Further the word "motion" has been defined in the con-



text of Parliamentary law as under:

“MOTION (*In parliamentary law.*) A motion is a “proposition made to the house by a member, which, if adopted, becomes the resolution, vote or order of the house.”

“NOTICE OF MOTION. A notice of a motion is not a motion, and should not be so treated”. A motion is said to be a proposal or suggestion looking to, action a deliberate assembly”.

To this Court it appears that the Legislatures being fully aware of the different and distinct meaning of the word ‘requisition’ and ‘No Confidence Motion’ used these two words at two different places in the same section. In the main Section 4 the mode and manner of removal of the Chief Councillor/ Deputy Chief Councillor has been provided. The first step towards the same is a requisition to be made in writing by not less than 1/3rd of the total number of Councillors. By bringing the first proviso, however, the Legislatures assured that even as a requisition may be made in writing by 1/3rd of the total number of Councillors the same would not result in a ‘No Confidence Motion’ if it is within a period of two years of taking over the charge of the post. Thus, the Legislatures very carefully being aware of the fact that they had conferred power upon 1/3rd of total number of Councillors to bring a requisition for removal of the Chief



Councillor / Deputy Chief Councillor imposed a bar on bringing a No Confidence Motion. The Legislatures, thus, nullified any attempt on the part of the requisite number of Councillors to initiate a proposal for bringing a 'No Confidence Motion' within first two years. Further in the second proviso the Legislatures ensured that once a 'No Confidence Motion' has been brought, another No Confidence Motion cannot be brought within one year of the first No Confidence Motion. The question is whether submission of a requisition by 1/3rd of the total number of Councillors proposing to convene a Special Meeting to discuss a No Confidence Motion may be said to be a 'No Confidence Motion' brought. Whether bringing a requisition is the same and one as 'No Confidence Motion' and if it is so then why the Legislatures used these two words in the same section at two different places.

To this Court, it appears that to bring a requisition is not the same and one thing as a No Confidence Motion. Bringing of requisition is a procedure alone to bring a 'No Confidence Motion' in a Special Meeting to be convened for this purpose after giving notices to all the Councillors in accordance with law. Unless the requisition results in convening and holding of a Special Meeting for moving of No Confidence Motion before the House, it cannot be said that a 'No Confidence Motion' has



been brought against the Chief Councillor / Deputy Chief Councillor. 'Requisition' unless placed in the special meeting does not become 'Motion'.

This Court finds strength in its interpretation of the second proviso to sub-section (4) of Section 25 of the Act of 2007 also from the fact that knowing fully well that under sub-section (4) power has been conferred upon the Councillors to bring a requisition, the Legislatures imposed a ban that a No Confidence Motion shall not be brought and thereafter, in the second proviso they use the word '.....no confidence motion shall not be brought again within one year of the first no confidence motion' meaning thereby that once a requisition results in convening of a Special Meeting in which a No Confidence Motion is moved / brought before the House, it has to be taken as first No Confidence Motion and thereafter, the second No Confidence Motion cannot be brought within one year from the date of bringing of the first No Confidence Motion.

This Court is of the opinion that if the Legislatures wanted to take a requisition itself as a No Confidence Motion, there was no reason for them to choose a different word such as 'No Confidence Motion' as they could have easily stated in the first and second proviso that a requisition shall not be brought



against the Chief Councillor /Deputy Chief Councillor again within one year of the first requisition. This is something what learned Senior Counsel for the petitioner has attempted to argue before this Court.

A bare look at the provisions of sub-section 3 of Section 44 of the Act of 2006 would show that there is some difference in the provisions of the Act of 2006 with that of the Act of 2007. By amending Act 15 of 2015 with effect from 01.01.2016 Clause (ii) of sub-section 3 of Section 44 of the Act of 2006 has been amended and by way of insertion a provision has been thereunder that a No Confidence Motion may be brought only once in the whole tenure of Pramukh / Up Pramukh. Further it is provided under Clause (iii) of sub-section 3 of Section 44 that No Confidence Motion against Pramukh / Up Pramukh or both as the case may be shall not be brought during last six months of the terms of the Panchayat Samiti as mentioned in Section 39 (i) of this Act. This Court has taken note of the entire provisions of Section 44 of the Act of 2006 hereinabove.

In the context of the said provision, a learned co-ordinate Bench of this Court had occasion to consider the earlier provision of Section 44 (3) (iii) as existing prior to its deletion



in the year 2016. There was a provision whereunder if the motion of No Confidence brought against the Pramukh or the Up Pramukh or both is once rejected, no fresh motion of No Confidence against the Pramukh or the Up Pramukh or both as the case may be could have been brought before the Panchayat Samiti within a period of one year from the date of such requisition of the motion.

In the context of the said provision, this Court in the case of **Krishna Devi Vs. The State of Bihar and Others (C.W.J.C. No. 15476 of 2010 disposed of on 28.09.2010)** held that a mere withdrawal of requisition cannot be taken as a rejection and hence, there was no bar for the requisitionists to send a fresh requisition for holding no confidence motion against the Pramukh.

In the present case, the Act of 2007 only states that a No Confidence Motion shall not be brought again within one year of the first No Confidence Motion. It means the second No Confidence Motion is bar within one year of the first No Confidence Motion whether rejected or otherwise dropped. What is essential is that the No Confidence Motion have been moved. There may be a situation where after the Special Meeting is fixed and the House assembles, the requisitionists place the Motion, discuss



the same but then decides to withdraw the No Confidence Motion with the permission of the Chair. In the present case, however, situation is that even before convening of the Special Meeting the requisition itself was withdrawn. Thus, there was no occasion to bring the No Confidence Motion before the House.

This Court agrees with the submission of learned counsel for respondent no. 6 that the Legislatures have conferred a valuable right upon the Councillors to bring a 'No Confidence Motion'. If the interpretation sought to be given by learned Senior Counsel for the petitioner is accepted then the whole scheme of Section 25(4) shall get frustrated and any such interpretation would have a tendency to do a mischief inasmuch as a Chief Councillor / Deputy Chief Councillor with support of only 1/3rd of the total number of Councillors shall get a requisition submitted immediately on the next day of completion of 2 years period and then will get it withdrawn. Thereafter he will take a plea that no requisition for a 'No Confidence Motion' may be brought.

This Court regrets it's inability to agree with the submissions of learned Senior Counsel that if his interpretation is not accepted then sword of No Confidence Motion shall keep on



hanging against a duly elected Chief Councillor /Deputy Chief Councillor. This Court is of the view that unless a requisition for fixing a Special Meeting to move No Confidence Motion results in convening and holding of the Special Meeting it cannot be said to be a 'No Confidence Motion' brought as envisaged under the second proviso to sub-section (4) of Section 25 of the Act of 2007. The word 'brought again' as occurring in the second proviso is a word of significance hence it must be given its full meaning. Withdrawal of a requisition even before it results in actual moving of the No Confidence Motion before the House cannot be said to be a 'No Confidence Motion' brought. Rule 2(v) of the No Confidence Motion Process Rules, 2010 talks of reading out the motion on which the Meeting has been called before the Members present and declare it open for discussion.

A reading of the Rule further strengthen the view of this Court that a 'No Confidence Motion' takes place and may be said to have been brought when it is placed in the Special meeting by reading out the same before the members present. The Rule makes it obligatory to read out the Motion. In Rule 2(iv) it is provided that notice issued for considering No Confidence Motion against the Chief Councillor/Deputy Chief Councilor shall clearly contain the reasons/allegations on which the No



Confidence Motion is to be brought (emphasis supplied). The use of words 'to be brought' make it clear that up to this stage the 'No Confidence Motion' cannot be said to have been brought.

In the light of the discussions made hereinabove, this Court is of the considered opinion that in the present case, the withdrawal of requisition on 14.01.2019 cannot come in the way of respondent no. 6 and other six Ward Councillors to submit another requisition which they decided to submit on 20.02.2019. The first requisition having been withdrawn even before convening much less holding of the Special Meeting, it cannot be said that the same had culminated in the 'No Confidence Motion' as envisaged under the second proviso to subsection (4) of Section 35 of the Act, 2006.

In result, this Court finds no merit in the writ application. It is dismissed accordingly.

By virtue of the dismissal of the writ application now the effect of interim order dated 15.03.2019 would automatically come to an end. The result of the voting in the Special Meeting held on 18.03.2019 shall be declared forthwith and other consequences shall follow.

Before this Court parts with this judgment, it is required



to be stated that after receipt of the requisition the kind of stand taken by the Executive Officer, Nagar Panchayat, Khusrupur was not in accordance with law. She was required to proceed as per law, instead she indulged in writing letters to the Principal Secretary and others as if she was acting as their subordinates. The Executive Officer is a statutory authority under the Act of 2007 who has been conferred with certain powers, he/she must act independently and dispassionately without wasting any time.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	11.07.2019
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