

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10778 of 2021

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Shailendra Kumar @ Shailendra Kumar Garhwal, Son of Sri Prem Narayan Garhwal, resident of Jamunia, Ward no.-8, Sahodra, P.S.-Sahodra, Jamunia, District-West Champaran, Bihar-845455.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayat Raj Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayat Raj Department, Government of Bihar, Patna.
3. The District Development Commissioner, West Champaran, Bettiah.
4. The Chief Executive Officer, Zila Parishad, West Champaran, Bettiah.
5. The District Magistrate, West Champaran.
6. Renu Devi @ Renu Yadav (Female), wife of Sri Amar Yadav, resident of Mohalla Sant Ghat, Ward No. 15, P.O. Bettiah Town, District West Champaran at Bettiah, presently Vice Chairman, Zila Parishad, West Champaran, P.O. and P.S. Bettiah, District West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Mr. Pranav Kumar, Advocate
For the State	:	Mr. Ajay, GA-5 Mr. Pratik Kumar Sinha, AC to GA-5
for the Intervener	:	Mr. S.B.K. Manglam, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 23-08-2021

Invoking sub-section (5) of Section 70 of Bihar *Panchayat Raj* Act, 2006 (hereinafter referred to as 'the Act') the Additional Chief Secretary, *Panchayati Raj* Department, Government of Bihar, by an order No. 2490 dated 18.05.2021, has removed the petitioner from the post of *Adhyaksha*, *Zila Parishad*, West Champaran. The petitioner has challenged the



said order in the present writ application under Article 226 of the Constitution of India.

2. Sub-section (5) of Section 70 of the Act reads as under :-

“(5) Without prejudice to the provisions under this Act, if in opinion of the [Government] having territorial jurisdiction over the Zila Parishad, a Adhyakshaa or the UpAdhyakshaa of Zila Parishadabsents 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] may, after giving the Adhyakshaa or the UpAdhyakshaa, as the case may be, a reasonable opportunity for explanation, by order, remove such Adhyakshaa or the UpAdhyakshaa, 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 Adhyakshaa or Upadhaksha, as the case may be in the light of inquiry and recommendation of Lok Prahari for the removal.]



[The Adhyakshaa or Up-Adhyakshaa 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 Adhyakshaa or Up-Adhyakshaa so removed on rest of the charges shall not be eligible for re-election as Adhyakshaa or Up-Adhyakshaa during the remaining term of office of such Zila Parishad.]

(2) An Adhyakshaa or Up-Adhyakshaa removed from the office under sub-section (1) may also be removed by the Government from the membership of the Zila Parishad.”

3. From the impugned order, it is evident that two members of the *Nagar Parishad* had complained to the Additional Chief Secretary in writing on 20.08.2019 alleging that the petitioner had convened only three general meetings from 30.06.2016. Allegation was also made in respect of the petitioner's functioning as *Adhyaksha* of the *Parishad* in whimsical, capricious and despotic manner, in the matter of distribution of funds in different regional electoral areas (*Pradeshic Nirwahan Kshetra*). On receipt of the complain, response of the District Magistrate, West Champaran was called for. As no report was received from the District Magistrate, reminders were sent on 20.09.2019 and 15.10.2019.



Subsequently, by letter dated 22.10.2019, the opinion of Divisional Commissioner, Tirhut Division was solicited, keeping in view the provisions under Bihar *Panchayat (Karyalaya Ka Nirikshan Ewam Karyakalapo ki Janch, Paryawekshan Ewam Margdarshan)* Rules, 2014. As no report could be received, a reminder was sent to the Divisional Commissioner, Tirhut Division. Subsequently, a writ petition was filed before this Court by one Renu Devi giving rise to CWJC No. 843 of 2020 and in the light of order dated 04.03.2020, passed in the said case by this Court, an action taken report was sought from the Divisional Commissioner. Again, when no report was coming forth from the Divisional Commission, a reminder was sent on 09.03.2020, whereafter the Divisional Commissioner submitted his report dated 21.03.2020, based on the report of the District Magistrate, West Champaran dated 05.03.2020.

4. Based on the report sent by the Divisional Commissioner, Tirhut Division and the District Magistrate, West Champaran, the Additional Chief Secretary reached a conclusion that general meetings were convened on 10.09.2016, 08.10.2018 and 24.12.2019. Special meetings were convened on 20.12.2017 and 18.02.2019. Further, on 12.10.2019, a special meeting was convened. Thus, during his tenure as the *Adhyaksha* of *Zila*



Parishad from 10.09.2016 to 24.12.2019 only seven meetings were held out of which four were general meetings and three special meetings. Section 72(1) of the Act mandates that *Zila Parishad* shall hold its meetings at-least once in every three months at such time and place within the local limits of the district concerned 'as the *Zila Parishad* may fix at the immediately preceding meeting'. The Additional Chief Secretary, noticing the said provision under Section 72(1) of the Act as also the provision under Section 69(1) of the Act, opined that the duty to convene and preside over and conduct the meetings of *Zila Parishad* was solely on the *Adhyaksha* of *Zila Parishad*. He accordingly opined that during the period in question at-least 12-13 meetings ought to have been convened. The petitioner thus violated the statutory duty under Section 72(1) of the Act, in the opinion of the Additional Chief Secretary.

5. On the question of distribution of fund whimsically and in capricious manner, the Divisional Commissioner had opined that there is no requirement of distribution of such funds on the basis of regional electoral area. The *Zila Parishad*, being a democratic organisation, decisions taken by the majority shall have to be implemented by the concerned *Panchayati Raj* Institutions, the Divisional Commissioner opined. He had



accordingly opined that no action could be initiated against the petitioner on the said allegation. The Additional Chief Secretary had sought for a report from the Deputy Development Commissioner- cum- Chief Executive Officer of the *Zila Parishad* asking him to explain as to whether any written advice was given for convening meetings at regular intervals. The Deputy Development Commissioner informed that his responsibility in the matter of convening meetings of *Zila Parishad* was confined to issue notice for convening meetings on the direction of the *Adhyaksha* of the *Zila Parishad*. He mentioned in his report that since his posting as Chief Executive Officer of the *Parishad* i.e. 29.06.2018 he has been discharging his duties in accordance with the provisions of the Act.

6. The Additional Chief Secretary in his order has recorded his opinion that it is true that the power to convene meeting of *Zila Parishad* is vested in the *Adhyaksha* of the Parishad but in view of statutory provisions under the Act it is imperative for the Chief Executive Officer also to submit proposals before the *Adhyaksha* for convening such meetings. In case the *Adhyaksha* of the *Parishad* ignores such proposals presented by the Chief Executive officer, the allegation of not convening meetings in accordance with the Act shall be



established against the *Adhyaksha* of *Zila Parishad*. He has mentioned in his order that there was no initiative taken by the Chief Executive Officer for convening meetings.

The aforementioned facts have been taken from the order impugned.

7. Thereafter, the Additional Chief Secretary sought an explanation from the petitioner through his letter dated 02.06.2020 to be submitted within one week. After subsequent reminders the petitioner submitted his report stating that the Deputy Development Commissioner- cum- Chief Executive Officer and other superior officers were requested on various occasions, on 23.08.2016, 18.03.2017, 24.03.2017, 11.11.2017 and 16.04.2018 for convening meetings of *Zila Parishad*. On analysing the explanation submitted by the petitioner the Additional Chief Secretary found that through letter dated 23.08.2016 the petitioner had requested for convening a meeting between 07.09.2018 to 10.09.2018. After six months thereafter through letter dated 18.03.2017 he had made a request for immediately convening general meeting. Eight months thereafter, on 11.11.2017, the petitioner had requested for convening a meeting between 30.11.2017 to 02.12.2017. He accordingly concluded on the basis of the petitioner's explanation that no



action was taken by the petitioner for convening the meetings of *Zila Parishad* in accordance with the statutory provisions could not be accepted. The Additional Chief Secretary noticed the report of the Divisional Commissioner, Tirhut Division on the point of allegation of uneven distribution of funds in different areas and did not differ with the said allegation.

8. Evidently thus, on the sole allegation against the petitioner that he failed to convene meetings of the *Zila Parishad* in accordance with the provisions under Section 72(1) of the Act, the Additional Chief Secretary decided to proceed against the petitioner for his removal by invoking sub-section (5) of Section 70 of the Act. Accordingly a show cause notice was issued to the petitioner through letter dated 05.03.2021, asking him to explain as to why action should not be taken for his removal from the post of *Adhyaksha, Zila Parishad* as the charge against him for not convening meetings in accordance with the provisions under the Act stood, *prima facie*, established.

9. The petitioner submitted his reply to the show cause notice on the date as fixed in the show cause notice. He stated in his show cause notice that he was not getting desired cooperation from the Chief Executive Officer and despite repeated requests, the Chief Executive Officer failed to convene meetings which



was explained in his earlier explanation dated 16.07.2020. After having noticed the petitioner's reply to the show cause notice the Additional Chief Secretary recorded his finding that it was the petitioner's own admission that meetings were not held in accordance with the provisions of the Act. He recorded his opinion that if the Chief Executive Officer was not extending necessary cooperation, he should have informed the superior authorities in this regard. He considered the petitioner's allegation of non-cooperation by the Chief Executive Officer as a subterfuge for not holding meetings in accordance with the provisions of the Act which was not acceptable. Rejecting the petitioner's case that it was the duty of the Chief Executive Officer to have initiated the file for holding meetings in accordance with the statutory provisions, relying on departmental guidelines issued on 14.05.2008, the Additional Chief Secretary recorded in his order that it has not been mentioned in the guideline dated 14.05.2008 that the Chief Executive officer should take initiative for holding meetings of *Zila Parishad*. Referring thereafter to the provisions under Section 69(1)(a) and Section 72(1) of the Act the Additional Chief Secretary reached a conclusion that the said provisions were mandatory, for violation of which *Adhyaksha* of *Zila Parishad* can be removed invoking Section 70 (5) of the Act.



He has quoted a passage from a Division Bench decision of this Court dated 14.08.2008 (sic 22.03.2008), passed in LPA No. 689 (sic 679) of 2008, wherein this Court justified the action of removal of a *Pramukh* and the plea of the role of Chief Executive Officer in calling such meetings was turned down.

The passage quoted in the impugned order find place in Division Bench decision of this Court in case of ***Sunaina Devi v. The State of Bihar*** (AIR 2010 Patna 98).

10. After having concluded thus, the Additional Chief Secretary, by the impugned order dated 18.05.2021, has ordered for removal of the petitioner from the post of *Adhyaksha* in exercise of power under Section 70(5) of the Act. In paragraph 12 of the impugned order, the Additional Chief Secretary has, however, recorded that it is the duty of the Deputy Development Commissioner also, being the Chief Executive Officer of *Zila Parishad*, to have advised the *Adhyaksha* of the *Zila Parishad* to convene meetings in accordance with the statutory provisions. He found, on the basis of the materials available in the file, that no such attempt was ever made at the level of the Deputy Development Commissioner. He accordingly, directed the Divisional Commissioner, Tirhut Division to enquire into the role of the Deputy Development Commissioner cum Chief Executive



Officer as regards his role because of which the meetings could not be convened, and take action in accordance with law.

11. This is to be noted that the tenure of the body of *Gram Panchayats* in the State of Bihar has come to an end and interim arrangements have been made for the interregnum period, till the elections are held which could not be held because of COVID-19 pandemic situation, with the promulgation of Bihar *Panchayat Raj* (Amendment) Ordinance, 2021.

12. It has been argued by Mr. Y.V. Giri, learned Senior counsel appearing on behalf of the petitioner, however, that in view of provisions under Section 70(5) of the Act the petitioner may be held not eligible for election for any *panchayat* bodies till further five years. As the order impugned casts stigma, the petitioner still has a locus to question the legality of the impugned order and this application cannot be said to have become infructuous with the termination of the term of *panchayats* in the State of Bihar, he contends.

13. Assailing the impugned order, Mr. Y.V. Giri, learned Senior Counsel has, at the very outset, questioned the competence of the Additional Chief Secretary to pass the impugned order. He has submitted with reference to sub-section (5) of Section 70 of the Act that the said power can be exercised



by the Government which is State Government within the meaning of Section 2 (o) of the Act, which defines Government as the State Government of Bihar. It is his contention that the impugned order is unsustainable for the reason that it does not disclose any compliance with Article 166 of the Constitution of India as the same has neither been expressed to have been passed in the name of the Governor of the State nor, to the petitioner's knowledge, any such permission or delegation has been granted in favour of the Additional Chief Secretary, *Panchayati Raj* Department.

14. In support of his contention he has relied on a coordinate Bench decision of this Court dated 01.03.2016, passed in CWJC No. 4218 of 2015 (*Radha Devi vs. The State of Bihar and others*). He has also relied on another coordinate Bench decision of this Court dated 22.03.2021, passed in CWJC No. 3647 of 2021 (*Anil Thakur vs. The State of Bihar and others*) in support of the said proposition.

15. He has next submitted that removal of a person democratically elected to a public office, from such office, is a serious matter and the very removal casts stigma on the holder of the office, on allegations having been held proved, rendering him unworthy of office, which he held. He has submitted that



considering the seriousness of the action of removing a democratically elected person to an office, utmost care and caution ought to have been taken by the Additional Chief Secretary while taking such action. He has contended that the Chief Executive Officers of *Zila Parishads* are generally senior officers, normally belonging to India Administrative Cadre who have the tendency to impose their supremacy in respect of the functioning of democratic body at *panchayat* level. Such officers are next hierarchy to the District Collectors of a district. In such background, the explanation of the petitioner that despite his requests the Chief Executive Officer was not issuing notices for convening the meetings ought to have been duly appreciated by the Additional Chief Secretary, exercising his onerous duty and power conferred on the State Government under the provisions available under sub-section (5) of Section 70 of the Act. He has relied on Supreme Court's decision in case of ***Tarlochan Dev Sharma vs. State of Punjab and others*** reported in ***(2001) 6 SCC 260*** and in case of ***Sharda Kailash Mittal vs. State of Madhya Pradesh and others*** reported in ***(2010) 2 SCC 319***.

16. He has contended that in terms of Section 72 of the Act read with Rules 28, 29 and 34 of Bihar *Panchayat Raj* Institution (Conduct of Vigilance) Rules, 2015, a meeting cannot



be called without the Chief Executive Officer, who has to issue notice and also to note the proceedings of the meeting. According to him, the Chief Executive Officer is an integral part of *Zila Parishad* specially for conducting meetings. He has referred to an order dated 28.11.2019, passed by the Additional Chief Secretary of the same department, whereby taking note of the significant role of the Chief Executive Officer, he refused to take action under Section 70(5) of the Act against one Anju Devi, *Adhyaksha*, *Zila Parishad*, Patna. He has referred to paragraphs 4 and 5 of the said order which reads thus :-

“4. जिला परिषद की बैठकों के आयोजन का अधिकार अध्यक्ष में अवश्य निहित है, किन्तु जिला परिषद् की बैठकें अधिनियम के प्रावधानों के अनुसार नियमित रूप से आयोजित होती रहें, इस हेतु यह भी आवश्यक है कि मुख्य कार्यपालक पदाधिकारी के स्तर से भी समय पर बैठक आयोजित कराने का प्रस्ताव अध्यक्ष के समक्ष उपस्थापित किया जाये। अगर उनके प्रस्ताव की अध्यक्ष द्वारा अनदेखी या उपेक्षा की जाती है, तो बैठक नहीं बुलाने का आरोप अध्यक्ष पर स्थापित किया जा सकता है। पटना जिला परिषद् के मामले में बैठक बुलाने संबंधी कोई पहल मुख्य कार्यपालक पदाधिकारी के स्तर से नहीं की गई है।

5. अधिनियम की धारा 69 के अधीन अध्यक्ष को मुख्य कार्यपालक पदाधिकारी एवं उसके माध्यम से जिला परिषद् के अन्य कर्मियों पर पर्यवेक्षण एवं नियंत्रण रखने की अधिकारिता प्राप्त है। उक्त परिप्रेक्ष्य में जिला परिषद कर्मियों से खराब संबंध के आधार पर अध्यक्ष के विरुद्ध मुख्य कार्यपालक पदाधिकारी द्वारा धारा 70(5) के अधीन कार्रवाई करने की राय प्रकट करना सरासर अनुचित है।”

17. He has contended that the Additional Chief



Secretary had adopted altogether a different standard while considering the petitioner's case for his removal, in exercise of power under sub-section (5) of Section 70 of the Act.

18. He has further argued that despite statutory prescription under Section 152 (5) of the Act, no system of *Lok Prahri* has been established which could have made proper inquiry into the affairs of the local bodies at various levels under the Act.

19. An Interlocutory Application being I.A. No. 01 of 2021 has been filed by one Renu Devi who, it has been stated, is discharging the duties of the *Adhyaksha* of the *Parishad* on petitioner's removal, in accordance with the provisions of the Act. It is her case that she is a necessary party who needs to be impleaded.

20. Mr. S.B.K. Manglam, learned counsel has represented the intervener applicant. Considering the averments made in I.A. No. 01 of 2021, the same is allowed. Let the intervener applicant Renu Devi @ Renu Yadav be impleaded as Respondent No. 6.

21. Mr. Manglam, learned counsel appearing on behalf of newly added intervener respondent No. 6 has, countering the submission of Mr. Giri, learned Senior Counsel, submitted that



the Additional Chief Secretary is competent to pass the order of removal under Section 70(5) of the Act, which power is vested with the State Government. He has relied on a Division Bench decision of this Court in case of *Amrawati Devi vs. The State of Bihar and others* reported in *2016(3) PLJR 302*. He has contended that there is similar provision under Section 25(5) of Bihar Municipal Act, 2007 which is *pari materia* with Section 70(5) of the Act. He has argued that admittedly the impugned order was issued after approval by the concerned Minister of the Department. This Court, upon analyzing various Supreme Court's decisions including the decision in case of *Gullapalli Nageswara Rao and others vs. Andhra Pradesh State Road Transport Corporation and another (AIR 1959 SC 308)*, *A. Sanjeevi Naidu, etc., vs. State of Madras and another (AIR 1970 SC 1102)* and *Samsher Singh Vs. State of Punjab and another (AIR 1974 SC 2192)* and the statutory provisions under Bihar Municipal Act, 2007 has concluded that Bihar Rules of Executive Business framed by the Governor in terms of Article 166 of the Constitution of India and the standing order issued under Clause 22 of the Rules of Executive Business had framed the following issues in paragraph 21 as under :-

“21. After hearing learned counsel for the parties, we find that the issues raised



are required to be examined in two parts; first part being whether the powers of the State Government in terms of Section 25(5) read with Section 2(106) of the Act means the Minister-in-Charge or the Principal Secretary to the Government. This question needs to be examined in order to determine whether the quasi-judicial order of removal falls within the realm of Executive Business required to be performed in the manner prescribed therein or it can be exercised by the Principal Secretary to the Government. The second part being that if the powers of the State Government have to be exercised by the Minister-in-Charge, whether such power can be exercised only by virtue of a standing order issued under Clause (22) of the Rules or whether approval by the Minister-in-Charge of the order passed by the Principal Secretary to the Government is sufficient delegation in terms of Clause (22) of the Rules.”

22. The Division Bench, on in dept analysis of all legal aspects has finally concluded in paragraph 31 as under :-

“31. Rule 22 of the Rules empowers the Minister to arrange, by way of standing order, with the Principal Secretary concerned as to what matters or classes of matters are to be brought to his notice. Therefore, even if the decision was required to be taken by the Minister in terms of Rules 21 and 22 of the Rules, the fact remains that once the Minister had approved the decision of the



Principal Secretary, it was an approval in terms of Rule 22 of the Rules. The standing orders are required to be issued in a class of cases to bring certainty to the affairs of the Department; but in an individual case, the approval of the Minister would mean delegation to the Principal Secretary and, thus, there is compliance of the Rules as well. Though the Rules have been held to be mandatory, the fact remains that the decision approving an order passed by the Principal Secretary by the Minister does not contradict any of the provisions of the Rules; rather, it supplements such Rules. It is well settled that there cannot be any action contradictory to the Rules, but the action can always be supplemented. Therefore, approval by the Minister of an order passed by the Principal Secretary complies with the rigours of the Rules as well and. therefore, in either situation, we find that the order of the learned Single Bench is not sustainable.”

23. It is his contention that the law laid down by the Division Bench in case of **Amrawati Devi** (supra) has not been noticed in the decision rendered by the learned Single Judge in case of **Anil Thakur** (supra) and **Kaushal Rai** (supra).

24. Mr. Manglam has placed reliance on a Division Bench decision of this Court in case of **Sunaina Devi** (supra) to contend that in that case failure of a *Pramukh* to perform his/ her



duty under the statute by not calling for meetings invited the wrath of similar provision under Section 44(4) of the Act because of breach of Section 46(3) thereof. After having held so, the Division Bench upheld the order directing removal of *Pramukh* from the post. A similar plea taken by *Pramukh* in that case of the duty of the Executive Officer to issue notice convening meeting was rejected by the Division Bench, he contends.

25. Mr. Pratik Kumar Sinha, learned AC to GA-5 has also relied on the said decisions rendered by the Division Bench in case of *Sunaina Devi* (supra) and *Amrawati Devi* (supra) to defend the impugned order. He has submitted that Additional Chief Secretary is duly authorised under the law to take a decision for removal of *Adhyaksha* of *Zila Parishad* and since the order has been issued after approval of the concerned Minister of the Department, the challenge to the order on the ground of incompetence is unsustainable. He has argued that the impugned order is wholly justified in the facts and circumstances of the case.

26. On close perusal and scrutiny of the impugned order, it is evident that the Additional Chief Secretary has noticed the significant role which the Chief Executive Officer of a *Zila Parishad*, who is an officer of the rank of Deputy Development



Commissioner of the district, has to play in convening the meetings. There is no finding recorded in the impugned order that the petitioner, in his capacity as *Adhyaksha* of *Zila Parishad* had requested the Chief Executive Officer to convene meetings on various dates as mentioned in his reply to the second show cause notice. It is evident from paragraph 12 of the impugned order that he has directed the Divisional Commissioner, Tirhut Division to enquire into the conduct of the Deputy Development Commissioner(s) cum Chief Executive Officer(s) for not ensuring that the meetings are held in accordance with the provisions of the Act. There is no ambiguity in the language of Section 69 (1) (a) of the Act which lays down convening, presiding over and conducting meeting of *Zila Parishad* as one of the main functions of *Adhyaksha*.

27. Further, sub-section (1) of Section 72 of the Act is a mandatory provision which requires that meetings of *Zila Parishad* must be held at-least once in every three months. Considering the nature of the order, which I intend to pass in the present writ application for strict compliance of Section 72 (1) of the Act, it is deemed useful to reproduce the said provision which reads as under:-

“72. (1) The Zila Parishad shall hold its meetings at least once in every three



months, at such time and at such place within the local limit of the district concerned as the Zila Parishad may fix at the immediately preceding meeting:

Provided, that the first meeting of a newly constituted Zila Parishad shall be held at such time and at such place within the local limits of the district concerned, as the District Magistrate may fix and shall be presided over by him:

Provided further that the Adhyakshaa when required in writing by one-fifth of the members of the Zila Parishad to call a meeting shall do so within ten days failing which the aforesaid members may call a meeting after giving intimation to the District Magistrate and seven clear days notice to the Adhyakshaa and the other members of the Zila Parishad.”

28. In exercise of powers conferred by Section 146 of the Act, the State Government has made Bihar *Panchayat Raj* Institution (Conduct of Business) Rules, 2015 (hereinafter referred to as ‘the Rules’). Rule 25 of the Rules is simply reiteration of the requirement under Section 72(1) of the Act to the effect that every *Zila Parishad* shall meet once in every three months in the office of *Zila Parishad* for transaction of its business on the date and time appointed by the *Adhyaksha*. Rule 28 of the Rules prescribes that at-least 10 days previous notice for an ordinary meeting and seven days previous notice for a special



meeting of *Zila Parishad* shall be given by the Chief Executive Officer to the members and to such officers as may be specified by the Government and it shall be affixed at the Board of the *Zila Parishad* at a conspicuous place. Sub-rule (2) of Rule 21 requires the notice to each member of *Zila Parishad*, to be generally sent by post or in such other matter which the Chief Executive Officer thinks fit. Rule 29 casts an obligation on the Chief Executive Officer in consultation with the *Adhyaksha* to prepare minutes for meeting of *Zila Parishad*. It is to be kept in mind that the aforesaid Rules have been framed much after the decision rendered by the Division Bench in case of ***Sunaina Devi*** (supra), which clearly delineate the duties, functions of the Chief Executive Officer in the matter of issuance of notice for convening meetings. Clause (b) of sub-section (1) of Section 88 of the Act casts an obligation on the Chief Executive Officer to discharge the duties imposed upon him by or under the Act or the Rules and Regulations made thereunder. Sub-section (2) of Section 88 of the Act requires the Chief Executive Officer to attend every meeting of *Zila Parishad* and permits him to take part in the discussion, without any right to vote. It further states that if in the opinion of the Chief Executive Officer any proposal before the *Zila Parishad* is violative of or inconsistent with the



provisions of the Act or any other law or the Rules or order made thereunder 'it shall be his duty to bring the same to the notice of *Zila Parishad*'.

29. Coming back to sub-section (1) of Section 72 of the Act, in the Court's opinion, the said provision is couched in such definite unambiguous language and manner that in ordinary circumstance there cannot be any deviation from the strict statutory requirement of holding of meetings.

30. The first proviso to sub-section (1) of Section 72 of the Act requires that first meeting made of a newly constituted *Zila Parishad* shall be held at such time and at such place as the District Magistrate may fix and shall be presided over by him. Sub-section (1) of Section 72 states that *Zila Parishad* shall hold its meeting at such time and such place 'as *Zila Parishad* may fix at the immediately preceding meeting'. The apparent meaning of sub-section (1) of Section 72 is that *Zila Parishad* should ordinarily fix a date, time and place in its meetings, for the next meeting. For example, in the first meeting held in accordance with proviso to Section 72(1) of the Act presided over by the District Magistrate, a date and time of the next meeting could be fixed as sub-section (1) of Section 72 permits the date, time and place of the meeting of *Zila Parishad* to be fixed at immediately



‘preceding meeting’. The statutory requirement under Section 72(1) of the Act that the *Zila Parishad* should hold its meeting at such time and at such place as *Zila Parishad* may fix at the immediately preceding meeting, in my opinion, casts a corresponding statutory duty on *Zila Parishad* to fix the time and place for next meeting, in each of its meetings.

31. As has been noticed above, the statutory Rules framed under the Act requires participation of the Chief Executive Officer in each and every meeting. There is no reason why the *Zila Parishad* in one of its meetings should not decide the next date of meeting, in the presence of the Chief Executive Officer, who shall ensure the decision of the *Zila Parishad* for its next meeting to be incorporated in the minutes of the proceedings of the meeting of *Zila Parishad*. Once date and time is decided by the *Zila Parishad*, it will become an obligation for the Chief Executive Officer to issue notice accordingly as prescribed under the provisions of the Act and the Rules framed thereunder.

32. The Court is surprised to notice the controversy which has arisen in the present case and has not been properly addressed by the Additional Chief Secretary before passing the order that despite requests being made by the *Adhyaksha* of *Zila Parishad*, the Chief Executive Officer refused to issue notice for



convening the meetings on several occasions. Functions of the Chief Executive Officers have been clearly laid down in Section 88 of the Act which provides, *inter alia*, that they have to carry out the policies and directions of *Zila Parishad* and take necessary measures for speedy execution of all works and development schemes of *Zila Parishad*. They cannot deviate the directions of *Zila Parishad* and refuse to carry out the policies of *Zila Parishad* unless, in his opinion, such policies/ directions of *Zila Parishad* are violative of or inconsistent with the provisions of the Act or any other law or Rules or order made thereunder.

33. In my opinion, the impugned order requires interference on the sole ground that it has been passed without recording any finding on the conduct of the Chief Executive Officer(s) as alleged in the reply of the petitioner to the show cause notice that despite his requests Chief Executive Officer refused to issue notice for convening meetings.

34. Further, Mr. Giri, learned Senior Counsel has rightly pointed out to an order passed by the Additional Chief Secretary in case of *Adhyaksha*, Patna *Zila Parishad* dated 28.11.2019, Annexure-9, relevant portion of which has been quoted hereinabove, wherein the Additional Chief Secretary had emphasized on the role of the Chief Executive Officer in the



matter of convening meetings. Failure in convening meetings, as required under the Act, could not have been attributed solely to the petitioner, in the present facts and circumstances of the case, as discussed above.

35. Mr. Giri has rightly referred to the Supreme Court's decision in case of ***Tarlochan Dev Sharma*** (supra), wherein the Supreme Court dealing with similar provision under Section 22 of Punjab Municipal Act, 1911 has held in paragraph 7 as under :-

“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. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a



case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of “abuse of his powers” (of President), inter alia. This is the phrase with which we are concerned in the present case.”

36. In case of ***Sharda Kailash Mittal*** (supra), the Supreme Court dealing with M.P. Municipalities Act, 1961 had held that keeping in view the nature of the power and consequences that follows in its exercise, removal of a person from an elected office, such power can be invoked by the State Government only for a very strong and weighty reason. The Court observed that such provision should be construed in strict manner because ‘holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation’.

37. The challenge on the ground that the order was not passed by the State Government and was rather passed by the Additional Chief Secretary, who is not the Government within the meaning of Section 2(o) of the Act, is not sustainable in the Court’s opinion in view of the Division Bench decision rendered in case of ***Amrawati Devi*** (supra).



38. Before I part with this order, I am of the view that the respondents, particularly the State of Bihar, should ensure strict compliance of Section 72 (1) of the Act by issuing necessary guidelines to the effect that the *Zila Parishad* by requiring that date, time and place for the next meeting of *Zila Parishad* is fixed in the very first meeting as stipulated in the first proviso to sub-section (1) of Section 72(1) of the Act. This will facilitate holding of meeting in compliance of sub-section (1) of Section 72 which stipulates holding of a meeting 'fixed at the immediate preceding meeting'. It is noteworthy that whereas Section 69 authorises the *Adhyaksha* of *Zila Parishad* to convene a meeting, meetings as contemplated under Section 72(1) of the Act should be fixed by *Zila Parishad* in one of its meetings.

39. Till such necessary guidelines are issued by the State Government, it is directed that the *Zila Parishads*, in order to give effect to the provision of Section 72 of the Act, decide the date, time and place of the next meeting in its first meeting held in accordance with the proviso to Section 72(1) of the Act and in the second meeting, date, time and place of the next meeting so on and so forth, shall be determined. The Chief Executive Officer shall be under obligation to duly notify such meetings and in case, for any reason, meetings are not being convened in



accordance with the provisions under the Act, he shall be required to inform in writing his opinion to the *Adhyaksha* in this regard forthwith.

40. This application is accordingly allowed, with the aforesaid directions and observations.

41. Let this order be communicated to the Additional Chief Secretary for strict compliance, forthwith.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25 .08.2021
Transmission Date	NA

