

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1652 of 2022

1. Sanjay Kumar Sinha the Municipal Councilor of Ward No.21, Bhagalpur Municipal Corporation, Bhagalpur, Son of Late Jai Narain Prasad Sinha, Resident of Digamber Sarkar Lane, Mohalla- Jogsar, P.S.- Kotwali, (Aadampur), Town and District- Bhagalpur.
2. Pankaj Kumar Das the Municipal Councilor of Ward No.6, Bhagalpur Municipal Corporation, Bhagalpur, Son of Late Ganesh Ravidas, Resident of C.T. Lane, Mohalla- Champanagar, P.S.- Nath Nagar, Town and District- Bhagalpur.
3. Md Umar Chand the Municipal Councilor of Ward No.27, Bhagalpur Municipal Corporation, Bhagalpur, Son of Md Al Farooq, Resident of Mohalla- Mayaganj, P.S.- Barari, Town and District- Bhagalpur.
4. Govind Banerjee the Municipal Councilor of Ward No.25, Bhagalpur Municipal Corporation, Bhagalpur, Son of Purnendu Kumar Banerjee, Maharaj Ghat Road, Badi Khanjarpur, P.S.- Barari (Kotwali), Town and District- Bhagalpur.
5. Saryug Prasad Sah the Municipal Councilor of Ward No. 42 of Bhagalpur Municipal Corporation, Bhagalpur, Son of Late Singheswar Prasad Sah, Resident of Mohalla- Aliganj, Town and District- Bhagalpur.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Bhagalpur.
5. Seema Saha, the Mayor, Bhagalpur Municipal Corporation, Bhagalpur.
6. The Deputy Mayor, Bhagalpur Municipal Corporation, Bhagalpur.
7. The Municipal Commissioner, Bhagalpur Municipal Corporation, Bhagalpur.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Das, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9
		Ms. Deepika Sharma, AC to SC-9
For Corporation (Bhagalpur)	:	Mr. Manish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. Judgment



(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 04-04-2022

Sub-section (4) of Section 25 of the Bihar Municipal Act, 2007 ('Municipal Act' for short) postulates the removal of a Chief Councillor/Deputy Chief Councillor of a Municipality within the meaning of Section 12 of the Municipal Act read with Article 243 Q of the Constitution of India, from office by a resolution carried by a majority of a whole number of the Councillors holding office for the time being in force at a special meeting to be called for this purpose in the manner prescribed, once a requisition is made in this regard, in writing by not less than one-third of the total number of Councillors, in accordance with the procedure of conduct of business, in a special meeting as may be prescribed.

2. There are three *provisos* to sub-section (4) of Section 25, which prohibit bringing the No-Confidence Motion in three different circumstances. The third *proviso* states that No Confidence Motion shall not be brought within the Municipality's residual period of six months.

3. The Bihar Municipal No Confidence Motion Process Rules, 2010 ('the Rules' for short) have been framed in exercise of powers conferred by the aforesaid sub-section (4) of



Section 25 and 419 of the Municipal Act for deciding the process and conduct of No Confidence Motion to be brought against Chief Councillor/Deputy Chief Councillor of urban local bodies. Sub Rule (i) of Rule 2 of the Rules requires that a special meeting of the elected Councillor shall be called for removal of the Chief Councillor/Deputy Chief Councillor under sub-section (4) of Section 25 of the Act. Such special meeting shall be requisitioned and signed by not less than one-third of the total number of elected Councillors which shall be given to the Chief Councillor. It further requires issuance of a notice by the Chief Councillor for convening the special meeting of the urban local body within 7 days from the receipt of requisition and further, the meeting shall be convened within 15 days from the date of issuance of notice.

4. On a plain reading of sub Rule (i) of Rule 2 of the Rules would suggest that it is incumbent upon the Chief Councillor to issue a notice within seven days from the receipt of requisition and convening a meeting within 15 days of the issuance of notice. The Chief Councillor, thus, may take a maximum of 22 days to convene a meeting under the Rules. Sub Rule (iii) of Rule 2 of the Rules deals with a situation where the Chief Councillor refuses or fails to issue a notice convening the



meeting within the stipulated time and prescribes that the special meeting shall be convened under Section 48(3) of the Act, in such circumstance. In the present case, admittedly, the residual period of six months of the Municipal Corporation, Bhagalpur was ending on 09.06.2022. The petitioners submitted a requisition on 01.12.2021, which, according to them, was signed by 21 Councillors out of 51 Councillors. The requisitionist came to be communicated through a letter dated 11.12.2021 issued under the signature of the Municipal Commissioner, Bhagalpur, based on a legal opinion obtained in this regard, that No-Confidence Motion upon the said requisition dated 01.12.2021 is impermissible as per the provision under Section 25 of the Act.

5. It is the petitioners' case that the date of filing of requisition should be treated to be the date of bringing No-Confidence Motion and, therefore, the requisition having been filed more than six months before the term of the Corporation was coming to an end, the third *proviso* could not be said to be putting a bar on the No-Confidence Motion. In the background described above, the petitioners have filed the present writ application seeking quashing of the aforementioned communication dated 11.12.2021 issued by the Municipal



Commissioner, Bhagalpur. They seek a Mandamus from this Court to the Municipal Commissioner, Bhagalpur, to convene a special meeting of No Confidence Motion based on the requisition mentioned above dated 01.12.2021. The only legal question that has arisen in the present writ application is whether the act of submission of requisition by the Councillors can be treated to bring a No-Confidence Motion under Section 25(4) of the Municipal Act with the provisions under the Rules.

6. We have heard Mr Purushottam Kumar, learned counsel for the petitioners, Mr Manish Kumar, learned counsel for the Corporation, and Mr Kinkar Kumar, learned Standing Counsel No. 9 for the State of Bihar.

7. Mr Purushottam Kumar, learned counsel appearing on behalf of the petitioners, with his usual vehemence, has argued that the third proviso to sub-section (4) of Section 25 does not have any application in this case as the requisition was filed adequately before the residual period of six months of the Municipality had started on 09.12.2021. According to him, it was the duty of the Chief Councillor to have called a special meeting within one week from the date of submission of the requisition that would have been a date before 09.12.2021, and the special meeting could have been convened before



09.06.2021 for carrying No-Confidence Motion. He has asserted that the Chief Councillor failed in its statutory obligation to convene No-Confidence Motion with the issuance of notice as stipulated under the Rules. He has urged that the Chief Councillor cannot take advantage of his own lapse in not calling a special meeting for No-Confidence Motion.

8. Mr Manish Kumar, learned counsel appearing on behalf of the Corporation, has, on the other hand, made twofold submissions. Firstly, he has contended that earlier, a No-Confidence Motion was brought against the Chief Councillor of the Corporation on 25.09.2019, which was defeated. A second No-Confidence Motion was brought on 09.12.2021, which too was defeated. The second *proviso* of sub-section (4) of Section 25 prohibits bringing a No-Confidence Motion again within one year of the first No-Confidence Motion. According to him, therefore, no No-Confidence Motion could have been brought before 09.12.2021. He contends that if the petitioners' case were to be accepted and the date of requisition is treated as the date of bringing the No-Confidence Motion, such contention is self-defeating for the reason that within one year of the second No-Confidence Motion, the third No-Confidence Motion could not have been brought. He has secondly submitted that the tenure of



the Municipal Corporation is coming to an end on 09.06.2022, a No-Confidence Motion could not be brought before 09.12.2021. He has placed reliance on a Division Bench decision of this Court in support of his submission in the case of ***Manik Lal Prasad Vs. State of Bihar and Ors.*** reported in ***2019 (3) PLJR 1310*** with special reference to paragraph 12 thereof.

"12. We may, however, observe that the initiation of a process of a no confidence motion is a mere proposal made through a requisition for the consideration of the removal of a person against whom the no confidence motion is sought to be tabled. It was, therefore, a notice of intention to do so, and not the actual culmination of the act of carrying out of the no confidence motion. The sending of a requisition is only a step in aid under the statutory provision which is the procedure to be followed for the purpose of tabling a discussion on the issue of a no-confidence motion. The word 'requisition' to our understanding means to make a request by way of a proposition or a proposal for consideration of a resolution which is to be deliberated upon. The mere requisition, therefore, in our opinion, would by itself not amount to a defeat or the passing of a resolution of a no confidence motion. This has to be understood in the light of the bar under the proviso which is attracted only if a motion is brought about and defeated. It is in the said contingency only that the proviso intends to restrain bringing about of a fresh no confidence motion within the period that has been provided for in both the provisos."

9. We find force in the submission made on behalf of



the Corporation. In the case of ***Manik Lal Prasad*** (supra), the Division Bench has conclusively laid down the law on the point noted above. However, given the submissions advanced on behalf of the petitioner, we have considered it appropriate to scrutinize the relevant statutory provisions again. On close examination of sub-section (4) of Section 25 of the Act, it is manifest that any No Confidence Motion for removal of a Chief Councillor/Deputy Chief Councillor under the Act must pass the test of the three *provisos* to sub-section (4) of Section 25 of the Act.

10. It is a fundamental rule of statutory interpretation that a statutory provision should be read as it is in the statute book and that every use of a word in a statutory provision should be given a meaning. Sub-section (4) of Section 25 stated clearly that removal from the office of a Chief Councillor or Deputy Chief Councillor could be by a resolution to be carried by a majority or the whole number of Councillors "at a special meeting to be called for this purpose".

11. Apparently, thus, unless there is a special meeting, No-Confidence Motion cannot be brought.

Sub-section (4) of Section 25 of the Act reads as under:-

".....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."

12. Rule 2 of the Rules provides for consideration and disposal of No Confidence Motion brought under Section 25 (4) of the Act, which reads 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 oh 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."

13. Sub Rule (i) of Rule 2 lays down clearly the requirement of issuance of notice within seven days of receipt of requisition and holding of special meeting within 15 days of the issuance of notice. Sub Rule (iv) of Rule 2 specifies that notice issued for considering No-Confidence Motion against the Chief



Councillor/Deputy Chief Councillor shall clearly contain reasons/allegations on which No Confidence Motion is brought. The Division Bench of this Court in the case of **Manik Lal Prasad** (supra) has lucidly dealt with question laying down that the word "requisition" means to make a request by way of proposition or a proposal for consideration of a resolution which is to be deliberated upon. The requisition for convening a special meeting is a notice of motion and not a motion itself. The meaning of "Notice of Motion" finds place in 6th Edition of Volume 3 of the Advanced Law Lexicon by P. Ramanatha Aiyar as "A notice of motion is not a motion, and should not be so treated". The meaning of the word "Motion" finds place in the same volume of the Advanced Law Lexicon as under:-

"Broadly speaking a 'motion' is a proposal brought by a member before a House of the Parliament or State Legislature for eliciting decision or expressing the opinion of the House on a matter of public importance. No discussion can take place in a House except on a motion made with the consent of the Speaker or the Chairman of the House, as the case may be."

14. Situated thus, in our considered view, the motion of No-Confidence within the meaning of sub-section (4) of Section 25 of the Act read with Rule 2 of the Rules can only be brought in a special meeting convened therefor. The date of



requisition/submission of requisition is immaterial for the purpose of determining the date of the No-Confidence motion. The date of No-Confidence Motion is the date when the motion is moved in a special meeting of the Councillors called for the said purpose.

15. For the foregoing reasons, we do not find any merit in the submissions advanced on behalf of the petitioner. This application is accordingly dismissed.

16. There shall be no orders as to costs.

(Chakradhari Sharan Singh, J)

I agree.
Madhuresh Prasad, J:

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	24.03.2022
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