

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4361 of 2022

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Gupteshwar Prasad, Son of Mahabir Sah, Resident of Sasaram Road, Tenduni, Ward No. 3, P.O. and P.S. Bikramganj, District- Rohtas at Sasaram, presently Ward Councilor of Ward No. 3 of Nagar Parishad, Bikramganj, P.O. and P.S. Bikramganj, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Municipal Administration, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Rohtas at Sasaram, District- Rohtas at Sasaram.
5. The Sub- Divisional Officer, Bikramganj, District- Rohtas at Sasaram.
6. The Executive Officer Nagar Parishad, Bikramganj, P.O. and P.S. Bikramganj, District - Rohtas at Sasaram.
7. The State Election Commission (Municipality), Sone Bhawan, Birchand patel path, patna through the State Election commissioner.
8. The Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
9. Rub Nawaz, son of Late Shahnawaz Khan, resident of Ward No. 24, Near Bikramganj Police Station, Ara-Sasaram Road, Bikramganj, P.O. and P.S. Bikramganj, District Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. S.B.K. Manglam, Advocate Mr. Awnish Kumar, Advocate
For the State	:	Mr. Rajeev Kumar Sinha, AC to AAG-7
For the SEC	:	Mr. Sanjeev Nikesh, Advocate
For Nagar Parishad	:	Mr. Vijay Shankar Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-06-2022

The petitioner claims to be a Ward Councillor of Ward



No. 3 of Nagar Parishad, Bikramganj in the district of Rohtas. It is his case that though one Rub Nawaz Khan (added as respondent No. 9), who was elected as the Chief Councillor of the said Nagar Parishad, stands removed with a resolution of No Confidence Motion carried out against him in accordance with the provisions under Section 25(4) of the Bihar Municipal Act, 2007(for short 'the Act') read with Bihar Municipal No-Confidence Motion Process Rules, 2010 (for short 'the Rules'), the State Election Commission, Bihar (for short 'the SEC') has declined the request made by the Ward Councillors of the said Nagar Parishad for holding a fresh election for the said post of Chief Councillor, by an order dated 17.02.2022.

2. In the present writ application, the petitioner is seeking quashing of the aforesaid order dated 17.02.2022, passed by the SEC. The petitioner is seeking a declaration from this Court that since the proceeding of the special meeting held on 27.07.2021 containing resolution of carrying No Confidence Motion against the said respondent No. 9 has not been challenged by him on any ground and it is not his case that the special meeting was convened without service of memo of charge/ allegations against the Ward Councillors, the SEC lacks jurisdiction to refuse the request for holding election to the post



which fell vacant, consequent upon passing of No Confidence Motion, in violation of the provision under Rule 2(ix) of the Rules. In addition, the petitioner is seeking a direction to the District Magistrate, Rohtas to fix a date of meeting of the elected Ward Councillors, in exercise of power under Rule 93 of the Bihar Municipal Election Rules, 2007 for election to the vacant post of Chief Councillor which is vacant since 27.07.2021.

3. Upon perusal of the impugned order dated 17.02.2022 it transpires that the SEC, upon considering the materials before it, has arrived at a conclusion that the No Confidence Motion against the Chief Councillor cannot be said to have been validly brought in accordance with the statutory provision, rather the same was in breach of statutory prescription under Rule 2(iv) of the Rules, and, therefore, the SEC could not treat the post of Chief Councillor vacant, requiring the SEC to hold election for the said post. The SEC, in its order dated 17.02.2022, has further recorded that unless a special meeting for No Confidence Motion was convened afresh and a resolution of No Confidence Motion was passed in accordance with the prescribed statutory procedure, no election could be notified by the SEC, treating the post of Chief



Councillor as vacant.

4. It is noted at this stage, that the said reasoned order of the SEC dated 17.02.2022 has been passed in the light of an order of this Court dated 22.12.2021, passed in CWJC No. 17990 of 2021.

5. It is noteworthy at this juncture that the Municipal Administration Directorate of the Urban Development Department, Government of Bihar has issued letter No. 1535 dated 25.03.2022, addressed to the Chief Executive Officer, Nagar Parishad, Bikramganj recording therein that the Chief Councillor of Nagar Parishad shall function till a fresh No Confidence Motion is brought and carried against him in accordance with the prescribed procedure. The State Government has taken note of the aforesaid findings recorded by the SEC on the point of removal of the Chief Councillor after passing of resolution of No Confidence Motion as is being claimed in the present writ application. The said order dated 25.03.2022 is sought to be challenged in the present writ application by filing I.A. No. 01 of 2022.

6. Considering the fact that the said letter dated 1535 dated 25.03.2022, issued by the Municipal Administration Directorate of the Bihar Government, is integrally connected



with the issue involved in the present writ application, I.A. No. 01 of 2022 is allowed. The relief sought in the main writ application stands amended accordingly. The relief sought in paragraph 4(A) of I.A. No. 01 of 2022 has been treated to be one of the reliefs sought by the petitioner, in the present writ petition.

7. The averments made in I.A. No. 01 of 2022 have been treated to be part of the pleadings in the main writ application for the purpose of present adjudication.

8. There is a further prayer made in I.A. No. 01 of 2022 i.e. for impleadment of the said Rub Nawaz Khan as party respondent No. 9, who, according to the petitioner, has now become a necessary party in the light of the impugned letter dated 25.03.2022.

9. Considering the facts and circumstances of the case, prayer for impleadment of Rub Nawaz Khan as a party respondent is allowed. Let Rub Nawaz Khan be impleaded as respondent No. 9 with his description as furnished in paragraph-5 of I.A. No. 01 of 2022.

10. We have heard Mr. S.B.K. Manglam, learned counsel for the petitioner, Mr. Sanjeev Nikesh, learned counsel representing the SEC, Mr. Rajeev Kumar Sinha, learned AC to



AAG-7 for the State of Bihar and Mr. Vijay Shankar Upadhyay, learned counsel for the Bikramganj Nagar Parishad.

11. The foregoing introductory facts have been noted for quick reference of the background in which the petitioner has put to challenge the impugned order dated 17.02.2022 of the SEC and the order dated 25.03.2022 of the Municipal Administration Directorate of the State Government of Bihar.

12. Since, upon perusal of the pleadings on record and submissions made on behalf of the petitioner we could not be persuaded to interfere in the present case, exercising power of judicial review in view of the discussions hereunder, we did not consider it desirable to send notice of these proceedings to the newly added respondent No. 9.

13. The facts of the case, as asserted in the writ application, are that respondent No. 9 was elected as Chief Councillor of the Nagar Parishad, Bikramganj on 09.06.2018, whereas the petitioner was elected as its Deputy Chief Councillor. The petitioner asserts that from the very beginning, after his election as the Chief Councillor, respondent No. 9 was not discharging his duties in accordance with the scheme of the statute. Majority of the elected Ward Councillors had grievance against respondent No. 9 from the very beginning. However,



there being statutory bar under the first *proviso* to sub-section (4) of Section 25 of the Act, they waited for expiry of two years for a No Confidence Motion to be brought about against him.

14. Subsequently, twelve of the Ward Councillors of the Nagar Parishad attempted to serve a notice upon respondent No. 9 for convening special meeting to bring about a No Confidence Motion through requisition dated 13.07.2021. A request was made to him to fix the date of special meeting. The respondent No. 9 is said to have refused to receive the requisition on 13.07.2021 itself. Accordingly, the original requisition was sent to him through registered post on 13.07.2021 which was delivered on 14.07.2021. Consequent upon refusal by respondent No. 9 to receive the requisition, a copy of the requisition was filed in the office of the Executive Officer of the Nagar Parishad through special messenger on 14.07.2021. The Executive Officer is said to have forwarded the requisition to respondent No. 9 through special messenger on 14.07.2021 vide Memo No. 780 dated 14.07.2021. It has been asserted in the writ petition that a copy of the requisition was sent to respondent No. 9 also by the Executive Officer, through registered post. It is the petitioner's further case that respondent No. 9 declined to perform his statutory duty cast upon him



under Rule 2(i) of the Rules, inasmuch as, he did not fix the date of special meeting for discussion on No Confidence Motion within seven days from the date of receipt of the requisition. The said situation left the requisitionists with no other option but to fix the date of special meeting on their own by invoking the provision under Rule 2(ii) of the Rules. The requisitionists had fixed the date of special meeting for bringing about No Confidence Motion against respondent No. 9 on 22.07.2021 and information in this regard was given to the Executive Officer of the Nagar Parishad. Consequent upon the decision of the requisitionists dated 22.07.2021, the Executive Officer issued notice of special meeting to all the office bearers i.e. the Chief Councillor, Deputy Chief Councillor and all other Ward Councillors of Nagar Parishad vide Memo No. 827 dated 22.07.2021, a copy of which has been brought on record by way of Annexure-P-4 to the writ application. There is averment made in the writ petition that the charges against respondent No. 9, based on which No Confidence Motion was to be brought against him, were mentioned at page 2 of the said notice dated 22.07.2021.

15. We consider it apt to record, at this juncture itself, that on careful reading of Anneuxre-P-4 it can be easily



discerned that the notice said to have been issued vide Memo No. 827 dated 22.07.2021 does not clearly contain the reasons/ allegations on which No Confidence Motion was to be brought. It is the petitioner's case that there was a second page to the said notice in which the charges against respondent No. 9 were mentioned. The said second page of the notice issued vide Memo No. 827 dated 22.07.2021 is available at page 33 of the writ petition, which reads as under :-

“विशेष बैठक का विचारणीय विषय :-

1. वित्तिय एवं अन्य अनियमितता पर विचार।
2. नियमानुसार प्रतिमाह वार्ड की बैठक आयोजित नहीं करने पर विचार।
3. गैर जरूरी एवं अनुपयोगी वस्तुओं की खरीदारी का सरकारी राशि का दुरुपयोग करना।
4. पार्षदों के साथ दुर्भावनापूर्वक भेद-भाव एवं दुर्भाव्यवहार करना।
5. नियम कानून से परे मनमाने ढंग से पक्षपातपूर्ण कार्य करना।
6. पार्षदों को जरूरी सूचना से वंचित रखना।
7. कामकाज में तानाशाही रवैया अपना कर पार्षदों को डराने धमकाने इत्यादि का गंभीर आरोप।”

16. The aforesaid second page of the notice does not bear the signature of the Executive Officer put on 22.07.2021 rather it bears signature of the Executive Officer dated 27.07.2021 on which date the special meeting was convened.

17. It is further stated in the writ petition that the notice of the special meeting was received by all the Ward Councillors much before 72 hours from the commencement of



the meeting. The meeting was held on the date fixed which was attended by 19 Ward Councillors including the Chief Councillor and Deputy Chief Councillor. Nineteen votes were polled and upon counting of votes it was found that 15 votes were polled in favour of No Confidence Motion and accordingly the No Confidence Motion was passed against respondent No. 9 and thus he stood removed from the said post. Passing of resolution of No Confidence Motion against respondent No. 9 created a vacancy, consequent upon which the SEC was under statutory obligation to conduct election against the said vacant post. It is the petitioner's case that in view of clear provision under Rule 2(ix) of the Rules, process of electing new Chief Councillor was required to be completed within 30 days of the submission of report to the SEC regarding the vacancy against the post of Chief Councillor.

18. It is the petitioner's case that SEC has no authority to interfere with the decision of the Councillors taken in the special meeting for No Confidence Motion. It is further the petitioner's case that the SEC has taken hypertechnical approach in the matter and only on the ground that there was no signature of the Executive Officer on the second page of the notice which contained the charges/ reasons for which the No Confidence



Motion was brought against respondent No. 9, the SEC directed for an enquiry in this regard through letter dated 26.08.2021. As called upon by the SEC, a report was submitted by the District Magistrate to the SEC based upon an enquiry conducted by the Deputy Collector Land Reforms, a copy of which has been brought on record by way of Annexure-P-12 to the writ application.

19. We notice from the said report available at Annexure-P-12 that the SEC had wanted a response to the question, *inter alia*, as to why on the photostat copy of the notice dated 22.07.2021 signature of the Executive Officer was available at only one place, whereas in the original copy of the said notice his signatures were available at two places. During the enquiry, the Executive Officer appears to have himself disclosed that he had learnt only during the process of sending the original copy of the notice to the SEC that his signature was required also on the second page of the notice dated 22.07.2021. He appears to have explained that for certifying the notice he put his first signature on 27.07.2021 and at the time of sending the notice dated 22.07.2021, he had put his second signature with date, 27.07.2021. The Deputy Collector Land Reforms opined in his report that the discrepancy in the photostat copy of



the notice for No Confidence Motion issued vide Memo No. 827 dated 22.07.2021 and that in the original copy was not an act of manipulation or fabrication of documents rather the same was because the Executive Officer had put his signature on the second page of the said notice while sending the original copy of the second page to the SEC.

20. Considering the materials facts available with the SEC and the report of the Deputy Collector Land Reforms, Bikramganj, the SEC reached a conclusion that there was non-compliance of the requirement under Rule 2(iv) of the Rules in bringing about No Confidence Motion and, therefore, based on such resolution the SEC could not fix a date for holding election. The SEC, at the same time, did not make any comments upon the proceedings of the special meeting of the No Confidence Motion. The SEC was of the opinion that the Executive Officer, Bikramganj Nagar Parishad put his back-dated signature in order to mislead the SEC to conceal his misconduct. The SEC through its letter dated 18.09.2021 addressed to the District Election Officer-cum-District Magistrate, Rohtas recommended for initiation of departmental proceeding against the Executive Officer of Nagar Parishad for his conduct. The SEC found the report submitted by the Deputy



Collector Land Reforms, Bikramganj to be partisan. The SEC recorded its displeasure over the manner in which the enquiry was got conducted.

21. After the SEC had taken a decision not to hold election as the No Confidence Motion brought about against respondent No. 9 was in its opinion not in accordance with the statutory prescription, a Public Interest Litigation was filed before this Court giving rise to CWJC No. 17990 of 2021. The said writ petition came to be disposed of by an order dated 22.12.2021, passed by a coordinate Bench of this Court, which reads as under :-

“Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

(I) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent no.4 for convening the meeting of elected Ward Councilors of Bikramganj Nagar Parishad for the purposes of election to the vacant post of Chief Councilor of the said Nagar Parishad in view of the statutory duty cast upon him under Rule 93 of the Bihar Municipal Election Rules, 2007 which has fallen vacant on 27.07.2021 when the then Chief Councilor was removed from the post by a No Confidence Motion passed against him.

(II) For a declaration that since the jurisdiction for holding the meeting to fill up the vacancy in the office of Chief Councilor or Deputy Chief Councilor of a Municipality has been vested in the District



Magistrate by virtue of Rule 93 of the Bihar Municipal Election Rules, 2007 neither the District Magistrate is required to consult the State Election Commission for the purposes of convening the said meeting nor the State Election Commission has any jurisdiction to usurp the power, which has been vested in the District Magistrate and allow the post to remain vacant for months thereafter.

(III) For issuance of any other appropriate writ / writs, order / orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

Having heard learned counsel for the parties, we are of the considered view that issue can be best resolved with the petitioners approaching the respondent no.7, namely, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner, as also respondent no.8, namely, the Secretary, The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna, who, upon receipt of the request of the petitioners, shall positively take appropriate action in accordance with law within a period of four weeks thereafter.

The issue of maintainability of the present petition is left open.

Liberty reserved to the petitioners to take recourse to such remedies, as are otherwise available in accordance with law.

Petition stands disposed of.”

22. It is significant to note, at this juncture, that the said communication dated 18.09.2021 (Annexure- P-13) of the SEC was not under challenge before this Court in CWJC No. 17990 of 2021, which is evident from this Court's order dated 22.12.2021, as reproduced hereinabove. There is no averment in the present writ application that the aforesaid communication



issued vide memo No. 4120 dated 18.09.2021 was under challenge in CWJC No. 17990 of 2021. The reliefs sought in the said writ application have been quoted verbatim in the order passed by the Division Bench of this Court dated 22.12.2021.

23. It is the petitioner's case that in the light of this Court's order dated 22.12.2021, passed in CWJC No. 17990 of 2021, a detailed representation was filed before respondent No. 7 on 28.12.2021 by 24 Ward Councillors for fixing a date for election to the post of Chief Councillor which had fallen vacant since 27.07.2021 consequent upon passing of the No Confidence Motion. A copy of the representation filed pursuant to this Court's order dated 22.12.2021 has been brought on record by way of Annexure-P-16 to the writ application. The said representation begins with the following sentence :-

“निवेदन पूर्वक कहना है कि विषयांकित समादेश याचिका में याचिकाकर्ताओं ने आयोग के पत्रांक 4120 दिनांक 18.09.2021 को रद्द करने का अनुरोध किया था।”

24. The petitioner was one of the signatories of the said representation dated 28.12.2021. There is apparent misrepresentation in the said representation dated 28.12.2021 to the extent it had been mentioned that the petitioners of CWJC No. 17990 of 2021 had sought for quashing of the letter issued by the SEC vide Memo No. 4120 dated 18.09.2021. As a matter



of fact, the said letter dated 18.09.2021 was not at all under challenge in the said CWJC No. 17990 of 2021 nor is under challenge in the present proceeding before this Court.

25. In view of the aforesaid observations made by this Court in the order dated 22.12.2021, the SEC has passed a reasoned order dated 17.02.2022, which is under challenge in the present writ application.

26. It is manifest from the order of this Court dated 22.12.2021, passed in CWJC No. 17990 of 2021 that the Division Bench of this Court had simply asked the SEC to take appropriate action in accordance with law.

27. Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioner has submitted that the SEC was under obligation to hold election as the post of Chief Councillor had fallen vacant consequent upon passing of No Confidence Motion against the respondent No. 9. He has contended that respondent No. 9 did not question the validity of the resolution passed by the majority of the Ward Councillors and he, thus, accepted the decision of his removal on the basis of No Confidence Motion carried against him. In such circumstance, he contends that the SEC had no jurisdiction to decline holding of election for the vacant post of Chief Councillor by entering



into the legality of passing of No Confidence Motion. He has placed reliance on a Single Bench decision of this Court in case of *Orsil Paswan vs. The State of Bihar and others* reported in **2009(2) PLJR 557** to contend that matters concerning No Confidence Motion are internal affairs of the Panchayat/ Urban Local Body Institutions. He has further submitted that there is no requirement of proving the charges of misconduct in a proceeding of No Confidence Motion.

28. Relying on another Single Bench decision of this Court in case of *Smt. Kiran Sinha vs. The State of Bihar & Ors.* reported in **2009(4) PLJR 225** he has submitted that the charges/ reasons are required only for the purpose of discussion by the Ward Councillors and to enable the Chief Councillor/ Deputy Chief Councillor to explain his/ her stand with regard to the said charges before the members, during course of discussion.

29. He has also placed reliance on a co-ordinate Bench decision of this court in case of *Meena Yadav & Anr. vs. The State of Bihar and others* reported in **2010 (2) PLJC 389**. He has vehemently argued that in the absence of any challenge made by respondent No. 9 to the No Confidence Motion carried against him in the special meeting, the SEC cannot treat



respondent No. 9 not to have been validly removed under Section 25(4) of the Act.

30. *Per contra*, Mr. Sanjeev Nikesh, learned counsel representing the SEC has justified the impugned decision of the SEC as contained in its order dated 17.02.2022 and has submitted that since the notice convening special meeting for No Confidence Motion was itself illegal and void, the No Confidence Motion cannot be said to have been validly carried. Therefore, he contends, respondent No. 9 could not be treated to have been validly removed under Section 25(4) of the Act. He has submitted that the SEC, after having come to a definite conclusion that mandatory statutory requirement under Rule 2(iv) of the Rules were complied with while issuing notice for convening special meeting for No Confidence Motion, was right in refusing to treat the post of Chief Councillor as vacant under Section 25(4) of the Act read with the provisions under the Rules. He submits that the impugned order dated 17.02.2022 cannot be said to be suffering from any legal infirmity which clearly indicated that the date of election would not be notified till a special meeting was convened afresh for bring about No Confidence Motion in accordance with law. He has placed reliance on a coordinate Bench decision of this Court dated



09.03.2022, rendered in CWJC No. 898 of 2022 (*Babita Gupta vs. The State of Bihar and another analogous case*) wherein this Court refused to interfere with a communication of the SEC, whereby it had refused to fix a date for election to the post of Deputy Chief Councillor of Dhaka Nagar Parishad on the ground that the procedure adopted for his removal by way of No Confidence Motion by a majority of the Ward Councillors was not in accordance with law.

31. Before advertng to rival submissions advanced on behalf of the parties as noted above, we need to refer to relevant statutory provisions in relation to removal of Chief Councillor/ Deputy Chief Councillor under the Act in order to appropriately and effectively test the legality of the impugned order passed by the SEC based on the facts of the case as disclosed hereinabove.

32. On careful reading of Section 25 of the Act it can be easily discerned that in following circumstances the Chief Councillor/ Deputy Chief Councillor shall cease to hold office or can be removed from office :

- (i) If he ceases to be a Councillor [Section 25(1)]
- (ii) Upon resignation in accordance with Section 25(2) of the Act. [Section 25(3)]
- (iii) Upon a resolution carried by a majority of the whole number of Councillors holding the office at a special meeting to be called for the said purpose in



the manner prescribed. [Section (4)](Emphasis laid)

(iv) If, in the opinion of the Government, the Chief Councillor/ Deputy Chief Councillor absents himself without sufficient cause for more than three consecutive meetings or sittings. [Section 25(5)]

(v) If, in the opinion of the Government, the Chief Councillor/ Deputy Chief Councillor willfully omits or refuses to perform his duties and functions under the Act. [Section 25(5)]

(vi) If, in the opinion of the Government, he has been found to be guilty of misconduct in discharge of his duties. [Section 25(5)]

(vii) If, in the opinion of the Government, he becomes physically or mentally incapacitated for performing his duties.[Section 25(5)]

(viii) If, in the opinion of the Government, he is absconding being an accused in a criminal case for more than six months. [Section 25(5)]

33. It is clearly prescribed under Section 25(5) of the Act that before removal of a Chief Councillor/ Deputy Chief Councillor, in exercise of power under the said provision of the Act, a reasonable opportunity for explanation is required to be given to the person sought to be removed.

34. There is no gainsaying that a vacancy of a post either of Chief Councillor or Deputy Chief Councillor would occur consequent only upon removal in accordance with the



procedure prescribed under Section 25 of the Act. Illustratively, sub-section (2) of Section 25 of the Act prescribes a particular manner for submission of resignation by Chief Councillor and Deputy Chief Councillor. A resignation submitted in breach of sub-section (2) of Section 25 of the Act cannot be said to be a valid resignation for the purpose of treating the said post to be vacant. The question of holding an election by SEC for the post falling vacant consequent upon resignation will arise only if such resignation is in accordance with statutory stipulation.

35. The present case concerns removal of a Chief Councillor on the basis of No Confidence Motion carried against him by the majority of whole number of Councillors. Section 25(4) 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.”

36. On close scrutiny of Section 25(4) of the Act, it can be easily discerned that following are the mandatory statutory requirements for valid removal of a Chief Councillor/ Deputy Chief Councillor on the basis of No Confidence Motion :-

- (i) There must be a requisition made in writing by not less than 1/3rd of the total number of Councillors.
- (ii) The resolution must be carried by majority of the whole number of Councillors holding office for the time being.
- (iii) Such resolution must have been carried at a special meeting to be called for this purpose in the manner prescribed.
- (iv) The procedure for conduct of business in the special meeting should be valid as may be prescribed. (Underscored for emphasis)

37. We are of the definite view that all such requirements for removal of Chief Councillor under Section 25(4) of the Act are mandatory in character. Any breach of the aforesaid mandatory statutory requirements shall render holding of the special meeting or decision in the special meeting on No Confidence Motion, void. The State of Bihar has framed the Rules in exercise of powers conferred by Sections 25(4) and 419 of the Act. Section 419 of the Act is the general rule making power vested in the State Government of Bihar. Rule 2 of the



Rules lays down process for consideration and disposal of No Confidence Motion brought under Section 25(4) of the Act. Under sub-rule (i) of Rule 2 of the Rules, at least 1/3rd of the total members of the elected Councillors may requisition special meeting to remove the Chief Councillor/ Deputy Chief Councillor by bringing about a No Confidence Motion. Sub-rule (ii) of Rule 2 enjoins upon the Chief Councillor a duty to issue notice for the special meeting within seven days from the date of requisition. Sub-rule (iii) of Rule 2 of the Rules prescribes that if the Chief Councillor fails to issue notice within the stipulated date for not convening the meeting within stipulated time the special meeting shall be called as per the provision of Section 48(3) of the Act and the notice for it shall be issued by the Chief Municipal Officer. In quick succession, sub-rule (iv) of Rule 2 mandates that 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. Sub-rule (iv) of Rule 2 is at the core of the controversy in the present writ proceeding and is, therefore, being reproduced hereinbelow :-

“2(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.”



38. We do not have any hesitation in recording our definite opinion, at this juncture, that a notice issued for convening special meeting for No Confidence Motion against the Chief Councillor in breach of sub-rule (iv) of Rule 2 of the Rules is, *per se*, invalid and, therefore, any meeting held on the basis of such notice cannot have any sanctity in the eye of law.

39. The core issue, which deserves determination in the present case, is as to whether the notice issued by the Chief Municipal Officer under sub-rule (iii) of Rule 2 of the Rules can be said to have fulfilled the mandatory statutory requirement under sub-rule (iv) of Rule 2 of the Rules.

40. Evidently, the process of electing a new Chief Councillor or Deputy Chief Councillor can be undertaken if the said post falls vacant as a consequence of No Confidence Motion, validly carried in accordance with the statutory prescriptions.

41. It would be apt to notice, at this juncture, that there is similar provision under Clause (iv) of sub-section (3) of Section 44 of the Bihar Panchayat Raj Act, 2006 containing similar requirement of clearly mentioning the reasons/ charges in the notice of meeting called to consider No Confidence Motion for removal of Pramukh or Up-Pramukh, which reads



thus :-

“44(3)(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.”

42. A coordinate Bench of this Court had the occasion to deal with the said provision in case of **Meena Yadav** (supra). The Division Bench in case of **Meena Yadav** (supra) while dealing with the provisions contained in Bihar Panchayat Raj Act, 1993 and the subsequent Bihar Panchayat Raj Act, 2006 has, in no uncertain terms, held that the subsequent 2006 Act casts an explicit obligation upon the authority issuing notice of meeting to mention the reasons/ charges in the notice. Paragraphs 12, 14 and 16 of the said decision in case of **Meena Yadav** (supra) are relevant for the present purpose, which are being reproduced hereinbelow :-

“12. The subsequent Act of 2006 whose relevant provisions have been extracted earlier, has now cast an explicit obligation upon the Authority issuing the notice of meeting, be it the Pramukh or the Executive Officer to mention the reasons/charges in the notice. The purpose of this provision is not confined to giving notice to the Pramukh or Up-Pramukh of the meeting for a no confidence motion along with reasons/charges so as to comply with requirements of natural justice, rather the purpose is clearly a much larger one, to subserve the basic ideology and purpose of Democracy which require free flow of relevant facts to all the members of a democratically elected body if those members are to have any meaningful discussions or deliberations



over the concerned issues. The right of the members to have minimum fifteen days of notice along with reasons/charges so that they may come ready to participate meaningfully, in the meeting relating to a 'no confidence motion' has an important value which can not be denied either by the Pramukh or the Executive Officer who are obliged to give notice of such meeting once a valid requisition is made by the required number of elected members. This provision requiring mentioning of reasons/charges in the notice of the meeting called to consider a no confidence motion serves the twin purpose of promoting informed debate amongst the members and enabling the office bearer against whom the motion is directed to defend himself against the alleged charges. The Legislature has incorporated such a provision in the Act when it was not there in such clear terms in the earlier Act of 1993, with a purpose which must be given full meaning and play.

X X X X

14. The arguments advanced on behalf of the respondents that the provisions be treated as directory rest on the ground that such lapses in the notice may be resorted to deliberately only to avoid a valid meeting to consider a valid requisition for no confidence motion. It has been further submitted that for this reason the Legislature has not indicated as to what would be the consequences of non-compliance with such provision. In our considered view this argument and submission has no merits because we are of the clear view that failure of Panchayat Samiti or that of an Adhyaksha of Zila Parishad to issue a proper notice as required by law for considering a requisition for no confidence motion can, in proper circumstances be viewed as a misconduct in the discharge of his duties in the context of provisions for removal provided under sub-section (4) of Section 44 or sub-section (5) of Section 70 of the Act. In case of deliberate disregard of law noticed above, the Commissioner would be well advised to take action against them. In case of deliberate disregard of such salutary provision by the Executive Officer or the District Magistrate, as the case may be, the higher authorities of the Government or in appropriate cases the Courts will



be free to take appropriate action in accordance with law. Only on account of such apprehensions the clear mandate of Legislature cannot be declared, as directory so as to allow its disregard.

X X X X

16. On the other hand, learned counsel for the respondents pointed out that in the case of P.T. Rajan v. T.P.M. Sahir, (2003) 8 SCC 498 : AIR 2003 SC 4603, the Supreme Court reiterated that use of the word 'shall' or 'may' is not decisive and that a statute may require a statutory functionary to perform a statutory duty within the time prescribed but still it will be directory because provision which is procedural in nature, even if it employs the word 'shall' may not be mandatory if no prejudice is caused due to such interpretation. This submission, in the context of statutory provision under consideration cannot be accepted because the provision does not relate to a simple time schedule or to a simple procedural matter. Generally a time schedule or procedural step does not go to the root of a proceeding unless it causes prejudice but a notice for "no confidence" motion and meeting for that purpose cannot be treated as a mere ministerial or procedural act. Mentioning of allegations or charges in such a notice are matters of immense substance on which meaningful and informed debate depends, which is necessary to protect and promote Democracy. On the outcome of such debate may depend the fate of an elected representative. Such matters of significance cannot be treated as matters prescribing only a procedure. These provisions are substantial provisions and breach of the same would go to the root of the matter and shall vitiate the notice at the threshold as held by the earlier Division Bench in the case of Sindhu Devi (supra): We find no good reasons to take a different view in the context of the Act of 2006 which has made the relevant provisions more stringent and explicit. The requirement to mention the charges in the notice was not deemed sufficient and the Legislature used the word "clearly" before the word "mention" Thus, the text as well as the context requires the provision to be treated as mandatory. We hold accordingly. The learned Single Judges while



deciding the case of Bindu Devi (supra) and Nirmala Singh (supra) did not have the occasion to consider the provisions of 2006 Act nor the Division Bench judgment in the case of Sindu Devi (supra) was brought to its notice. Hence, these judgments cannot stand in the way of our view which we have taken above in the context of provisions of 2006 Act.”

43. We concur with the opinion of the coordinate Bench of this Court in case of **Meena Yadav** (supra) dealing with the provision under Section 44(3) of the Bihar Panchayat Raj Act, 2006, which is similar to the provision under sub-rule (iv) of Rule 2 of the Rules.

44. In the present case, it is the petitioner's contention that when respondent No. 9 failed to issue notice within seven days for convening special meeting for bringing about No Confidence Motion despite requisition made for the said purpose by more than 1/3rd of the total number of Councillors, they had decided themselves to convene a meeting on 27.07.2021. A request was made to the Executive Officer, Nagar Parishad, Bikramganj for issuance of notice. The notice was issued on the same date through Memo No. 827 dated 22.07.2021, a copy of which has been brought on record by way of Annexure-P-4 to the writ application. It has already been noted above that the first page of the notice did not contain any reason/ allegation whatsoever on which No Confidence Motion



was to be brought. The second page of the said notice which allegedly contained the reasons/allegations in support of the No Confidence Motion bears the signature of the Executive Officer of a subsequent date i.e. 27.07.2021, on which date the meeting was held. In our considered opinion, the said notice, copy of which has been brought on record by way of Annexure-P-4 convening special meeting for No Confidence Motion cannot be said to be fulfilling the mandatory statutory requirement under sub-rule (iv) of Rule 2 of the Rules. The special meeting said to have been held on 27.07.2021 based on the said notice issued vide memo No. 827 dated 22.07.2021, did not contain any reasons/allegations as required under Rule 2(iv) of the Rules, and, thus, cannot be held to be valid for the purpose of bringing about No Confidence Motion against respondent No. 9.

45. It is noteworthy that the District Election Officer-cum-District Magistrate, Rohtas had made a request to the SEC for holding an election apparently in accordance with Rule 2(ix) of the Rules. Certain reports were called for by the SEC before taking a decision on the point of holding election in view of certain apparent discrepancies which have been referred to hereinabove. Upon considering all materials available before the SEC, the SEC reached a definite conclusion as communicated to



the District Election Officer-cum-District Magistrate, Rohtas in its letter issued vide Memo No. 4120 dated 18.09.2021 that the No Confidence Motion against the Chief Councillor was illegal, having been brought against respondent No. 9 without complying with Rule 2(iv) of the Rules and, therefore, no date could be fixed for holding election on the basis of No Confidence Motion.

46. We reiterate, at this juncture, that the said finding recorded by the SEC in its letter No. 4120 dated 18.09.2021 was not subjected to challenge by the petitioner though he had the option to challenge the same in CWJC No. 17990 of 2021 in which he was one of the petitioners.

47. The petitioners of said writ application sought a relief seeking a direction to the SEC to hold election without putting to challenge the decision of the SEC as contained in the letter dated 18.09.2021. A false statement was apparently made in the representation before the SEC of which petitioner is also a signatory that the letter of the SEC, issued vide Memo No. 4120 dated 18.09.2021, was sought to be quashed in CWJC No. 17990 of 2021. We are of the opinion that the petitioner having chosen not to question the validity of letter No. 4120 dated 18.09.2021, in CWJC No. 17990 of 2021, now cannot be



permitted to raise the issue already decided by the SEC in the said order.

48. On perusal of the impugned order dated 17.02.2022 we notice that the same is mere reiteration by the SEC of the opinion already recorded in its earlier letter dated 18.09.2021. In our opinion, compliance of provision under sub-rule (iv) of Rule 2 of the Rules is an essential requirement for convening a special meeting for bringing about a No Confidence Motion. The illegality in holding of a meeting convened in defiance of the provision under sub-rule (iv) of Rule 2 of the Rules is incurable as it defeats the very purpose of the said provision as has been lucidly explained by the coordinate Bench of this Court while considering a similar provision for carrying out a No Confidence Motion for removal of *Pramukh/Up Pramukh* under the Panchayat Raj Act in case of **Meena Yadav** (supra). The purpose of the provision under sub-rule (iv) of Rule 2 is evidently not confined to giving notice to the Chief Councillor or Deputy Chief Councillor of the meeting for a No Confidence Motion along with reasons/ charges so as to comply only with the requirements of the principles of natural justice. As has been held in case of **Meena Yadav** (supra), it has a larger purpose i.e. to subserve the basic ideology and purpose



of democracy which requires free flow of relevant facts to all members of a democratically elected body, if those members are to have any meaningful discussions or deliberations over the concerned issues. The requirement serves twin purpose of promoting informed debate amongst the members and enabling the chief Councillor/ Deputy Chief Councillor against whom the motion is directed, to defend himself against the charges. This Court cannot overlook the expression 'shall clearly contain the reasons/ allegations' on which the No Confidence Motion is to be brought. The said requirement is apparently mandatory and any action contrary to the said provision cannot have any legal sanctity.

49. The submission made on behalf of the petitioner that it is not within the jurisdiction of the SEC to enter into the disputes concerning No Confidence Motion which are internal affairs of the Panchayat Institutions, relying on a Single Bench decision of this Court in case of **Orsil Paswan** (supra), is not tenable to assail the impugned order of the SEC. The said observation was made in entirely different context. We concur with the observation made by the learned Single Judge in case of **Orsil Paswan** (supra), wherein noticing the fact that the notice convening meeting for No Confidence Motion did not



contain any reasons/ charges, the Court held that the proceeding on the basis of such illegal notice being contrary to law was liable to be quashed. Paragraphs 6 and 7 of the said decision in case of **Orsil Paswan** (supra) is being reproduced hereinbelow :-

“6. Mr. Shri Prakash Srivastava, learned counsel appearing for the contesting private respondents does not seriously contest the fact that the notice dated 11.7.2008 being devoid of any reasons/charges is violative of the mandatory provisions of the Panchayat Raj Act and further admits that even the requisition does not disclose any such reasons/charges.

7. In the above circumstances, it is evident that the entire proceedings would stand vitiated and the requisition (Annexure-1), the notice dated 11.7.2008 as also the proceedings held on the basis of the said illegal notice being contrary to law are liable to be quashed. They are accordingly quashed.”

50. Submission has been made by Mr. Manglam that since respondent No. 9 did not challenge his removal on the basis of resolution of No Confidence Motion carried against him, the SEC could not have entered into the question of legality of the said No Confidence Motion. It is accordingly his submission that on this ground alone the impugned order of the SEC deserves interference.

51. We are not inclined to accept the said submission for more than one reason. Firstly, on the analysis of the statutory provision under sub-rule (iv) of Rule 2 of the Rules read with



Section 25(4) of the Act and the decisions rendered by this Court in case of **Meena Yadav** (supra) and **Orsil Paswan** (supra), the notice convening special meeting for No Confidence Motion being itself invalid, the meeting held on 27.07.2021 of the Ward Councillors cannot be treated to be a meeting held for bringing about a No Confidence Motion. In such view of the matter, no resolution could be passed in the said meeting for removal of respondent No. 9 on the basis of No Confidence Motion. The said resolution said to have been passed on 27.07.2021 cannot be held to have been passed 'in the manner prescribed' requisite under Section 25(4) of the Act.

52. Secondly, if for any reason, the Court interferes with the impugned order and grants any relief to the petitioner by asking the SEC to hold election as sought, treating the post of Chief Councillor to be vacant on the basis of the resolution of No Confidence Motion, the same shall amount to perpetuating illegality because the notice dated 22.07.2021 was patently illegal in violation of sub-rule (iv) of Rule 2 of the Rules.

53. We have refrained ourselves from making any comment on such findings recorded by the SEC in its communication dated 18.09.2021 and the impugned order dated 17.02.2022 which pertain to the role of the Executive Officer of



the Nagar Parishad and the Deputy Collector Land Reforms, since they are not parties to the present proceeding.

54. For the aforesaid reasons, we are not inclined to interfere with the impugned order of the SEC dated 17.02.2022 and grant other reliefs as have been sought in the present writ application.

55. In our opinion, this writ application is devoid of any merit and is accordingly dismissed.

56. No order as to costs.

(Chakradhari Sharan Singh, J)

**I agree
Madhuresh Prasad, J.**

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	12.04.2022
Uploading Date	27.07.2022
Transmission Date	NA

