

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6170 of 2022

Manik Lal Prasad (Male) aged about 50 years, son of Mahendra Prasad Ward
No. 3, Badi Sangat, Chakchanda, Khusrupur, District Patna, Bihar (803202),
Presently Chief Councilor, Khusrupur Nagar Panchayat, District Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Sub Divisional Officer, Patna City, District Patna.
5. Khusrupur Nagar Panchayat through the Executive Officer, Khusrupur Nagar
Panchayat, District Patna.
6. Vishal Kumar Son of not known to the petitioner, presently Deputy Chief
Councilor, Khusrupur Nagar Panchayat, District Patna.
7. Rekha Devi, Wife of not known to the petitioner, elected member of
Khusrupur Nagar Panchayat, District Patna through Respondent No. 5,
Executive Officer, Khusrupur Nagar Panchayat, District Patna.
8. Suruchi Kumari Wife of not Known to the petitioner, elected member of
Khusrupur Nagar Panchayat, District Patna through Respondent No. 5,
Executive Officer, Khusrupur Nagar Panchayat, District Patna.
9. Ranju Singh, Wife of not Known to the petitioner, elected member of
Khusrupur Nagar Panchayat, District Patna through Respondent No. 5,
Executive Officer, Khusrupur Nagar Panchayat, District Patna.
10. Ashok Kumar, Son of not Known to the petitioner, elected member of
Khusrupur Nagar Panchayat, District Patna through Respondent No. 5,
Executive Officer, Khusrupur Nagar Panchayat, District Patna.
11. Najma Khatoon, Wife of not Known to the petitioner, elected member of
Khusrupur Nagar Panchayat, District Patna through Respondent No. 5,



Executive Officer, Khusrupur Nagar Panchayat, District Patna.

12. Pratima Kumari, Wife of not Known to the petitioner, elected member of Khusrupur Nagar Panchayat, District Patna through Respondent No. 5, Executive Officer, Khusrupur Nagar Panchayat, District Patna.
13. Mintu Kumar, elected member of Khusrupur Nagar Panchayat, District Patna through Respondent No. 5, Executive Officer, Khusrupur Nagar Panchayat, District Patna.
14. Guddu Kumar elected member of Khusrupur Nagar Panchayat, District Patna through Respondent No. 5, Executive Officer, Khusrupur Nagar Panchayat, District Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Ravi Ranjan, Adv.
For the State	:	Mr. Lalit Kishore AG with Mr. Shankar Kumar AC to AAG-7
For the State Election Commission	:	Mr. Sanjeev Nikesh, Adv.
For the Respondent No.5:	:	Mr. Alok Ranjan, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

**HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT**

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 22-06-2022

The petitioner claims to be ‘Chief Councillor’ of the Khusrupur *Nagar Panchayat*. He is aggrieved by the efforts of Respondent No.6, the ‘Deputy Chief Councillor’, to bring about a ‘No Confidence Motion’ for removal of the petitioner from the post of ‘Chief Councillor’. He has sought quashing of two requisitions made for convening the special meeting of the *Nagar Panchayat* for considering the ‘No Confidence Motion’



for his removal from the office of the ‘Chief Councillor’.

2. For appreciating the submission of Mr. Ravi Ranjan, learned counsel for the petitioner, this Court considers it useful to take note of the unamended provisions contained in Bihar Municipal Act, 2007 (‘Act of 2007’ for brevity) for removal of a ‘Chief Councillor’, as contained in Section 25(4) of the Act of 2007, which reads as follows:-

“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.”

3. In terms of sub-section (4) of Section 25, the State Government prescribed the process for conduct of the ‘No Confidence Motion’ to be brought against the ‘Chief Councillor’/ ‘Deputy Chief Councillor’ of an Urban local self



body by framing the Bihar Municipal No-Confidence Motion Process Rules, 2010, ('Rules of 2010' for short) published in the Bihar Gazette Extraordinary No. 359, dated 10-06-2010. The same specifies the process for bringing about a 'No Confidence Motion' with respect to manner in which the notice is to be served, meeting is to be convened, and quorum etc.

4. The petitioner has sought quashing of two requisitions for convening special meeting which are dated 14-02-2022 (first resolution), and 13-04-2022 (second resolution).

5. The first requisition has been assailed on the ground that on 13-01-2022 Bihar Ordinance No. 01, 2022, namely, the Bihar Municipal (Amendment) Ordinance, 2022 ('Amendment Ordinance of 2022' for short) had already been promulgated. This Ordinance substituted Section 25 of the Act of 2007 and, the substituted Section 25 did not contain any provision akin to Section 25(4) of the Act of 2007, taken note of above, providing for removal of 'Chief Councillor' and 'Deputy Chief Councillor', on the basis of no-confidence motion. The petitioner's counsel has submitted that in view of absence of any statutory provision for removal of the 'Chief Councillor'/'Deputy Chief Councillor' w.e.f. 13-01-2022, the first requisition dated 14-02-2022 after promulgation of the



Amendment Ordinance of 2022, was without any statutory/legal basis and unsustainable. The submission of the petitioner's counsel, in this regard, in the Court's opinion is indubitable.

6. This Court, however, must observe that events, subsequent to issuance of the requisition dated 14-02-2022, has rendered the aforesaid submission infructuous. The relevant subsequent events, in this regard, is the second requisition dated 13-04-2022 subsequent to enactment of the Bihar Municipal (Amendment) Act, 2022 ('Amendment Act of 2022' for short) which came into effect on 2nd April 2022, by virtue of its publication in the Bihar Gazette Extraordinary. Resultantly, the provision for removal of 'Chief Councillor'/'Deputy Chief Councillor' came to be re-enacted; only under a different subsection, being Section 25(3) instead of Section 25(4), as it existed in the Act of 2007.

7. The Amendment Act of 2022, which has rendered infructuous the grounds for assailing the first requisition dated 14-02-2022, however, has been relied upon by the petitioner for seeking quashing of second requisition dated 13-04-2022.

8. The re-enacted provision for removal of the 'Chief Councillor'/'Deputy Councillor' in Section 25(3) of the Amendment Act of 2022 reads as follows:-



*“25(3) 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, **(emphasis ours)** 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: **(emphasis ours)***

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 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 a no confidence motion shall not be brought within the residual period of six months of the municipality:

Provided further also that a no confidence motion shall not be brought against the direct elected Chief Councillor/Deputy Chief Councillor.”

9. Mr. Ravi Ranjan, learned counsel for the petitioner submits that Section 25(3) mandates that the special meeting for removal of ‘Chief Councillor’/ ‘Deputy Chief Councillor’ is to be called for in the manner prescribed and by a procedure for conduct of business in the special meeting, which procedure also was required to be prescribed.

10. The earlier Rules of 2010 was framed in exercise of powers conferred under Section 25(4) of the Act of 2007 and specifically provides the process for bringing about ‘No



Confidence Motion’ under Section 25(4) of the Act of 2007. These Rules of 2010 and the process contained therein are no longer in existence, in view of the fact that re-enacted Section 25(4) of the Bihar Municipal Act, 2007, does not deal with removal of ‘Chief Councillor’/ ‘Deputy Chief Councillor’ by a no confidence motion. He further submits that even if it is to be presumed that the Rules of 2010 are in existence, they provide for bringing about a ‘No Confidence Motion’ in terms of Section 25(4) of the Act of 2007, which no longer exists. There being no statutory prescription for calling of a special meeting; and procedure for conduct of business in the special meeting under Section 25(4) of the Amendment Act of 2022, the requisition dated 13-04-2022, is, thus, without any statutory basis, and is, therefore, illegal.

11. It is also submitted by the petitioner’s counsel that in view of the amendment in sub-section (4) of Section 12 of the Act of 2007, by virtue of Amendment Act of 2022, there is no basis for the elected members to have a right to vote in a ‘No Confidence Motion’.

12. In order to appreciate this submission, this Court would first reproduce sub-section (4) of Section 12, as it existed originally in the Act of 2007, which reads as follows:-



“12(4) Every member of the Municipality shall have the right to vote in the meeting but in case of election and removal of the Chief Councillor/ Deputy Chief Councillor, only the members elected under sub-section(i) shall have the right to vote.”

13. Sub-section (4) of Section 12 of the Act of 2007 has been substituted by the Amendment Act of 2022, which reads as follows:-

“(iii) In the said Act in sub-section(4) of Section 12 shall be substituted by the following:- Every member of the Municipality shall have the right to vote in the meeting.”

14. The issues raised by the petitioner are essentially issues of law. Petitioner's counsel therefore, has made submission with reference to the statutory provision. The dates of the two requisitions for 'No Confidence Motion' are admitted and, therefore, there are no dubitable facts that arise in the instant case.

15. Whether by virtue of issuance of the Amendment Ordinance of 2022 and enactment of the Amendment Act of 2022, the two requisitions, were legal and maintainable, or not, is the only issue for determination. Therefore, Mr. Lalit Kishore, learned Advocate General, has assisted the Court with reference to the statutory provision only. It has been submitted that the first requisition dated 14-02-2022 has become redundant, in



view of the fact that the same was made during operation of the Amendment Ordinance 2022, which came into force with effect from 13-01-2022, and stood repealed with enactment of the Amendment Act of 2022 on 2nd April, 2022.

16. As regards, the second requisition dated 13-04-2022, he submits that amended Section 25(3) provides for removal of the 'Chief Councillor'/'Deputy Chief Councillor', through no-confidence motion upon a requisition made in writing in the manner prescribed, by the prescribed majority, and as per procedure prescribed for conduct of business in the special meeting, for which, the prescription under the Rules of 2010, shall continue to apply. He submits that there has been no repealing of the Rules of 2010 by any legislative action. The Rules of 2010 are very much in existence in the statute book he contends. He has further urged that since no Rules have been prescribed under Section 25(3) of the Amendment Act of 2022, the Rules of 2010 framed under Section 25(4) of the Act of 2007 would be deemed to be the Rules framed under the Amendment Act of 2022, as per Section 27 Bihar and Orissa General Clauses Act, 1917, (for short 'General Clauses Act').

17. He submits that the petitioner's other submission, based on amendment of sub-section 4 of Section 12 of the Act is



without any substance. The said amendment is of no consequence in view of the fact that the quorum for special meeting for bringing a 'No Confidence Motion' against the 'Chief Councillor' / 'Deputy Chief Councillor' has been prescribed under Section 25(3) of the Amendment Act of 2022 itself.

18. He has relied upon decision of a Division Bench of this Court in the case of ***Bhola Singh and others vs. State of Bihar & Anr.*** reported in ***AIR 1972 Patna 412*** to support his submissions.

19. Mr. Sanjeev Nikesh, learned counsel has appeared for the State Election Commission. He has adopted the arguments advanced by the learned Advocate General and in addition thereto has placed reliance on two decisions of this Court which are reported in ***2010(1) PLJR 272 (Pawan kumar Purvey and Anr. vs. The State of Bihar & Ors*** and ***2010(3) PLJR 411 (Ruby Singh vs. The State of Bihar & Ors)***. He has submitted that even if the Rules of 2010 are not treated to be Rules framed under Section 25(3) of the Amendment Act of 2022, the purpose of Section 25(3) of the Amendment Act of 2022 can be effectively carried out as per the existing other statutory provision in the Bihar Municipal Act, 2007, namely, Chapter-



VII of Act of 2007, which provides the procedure for conduct of business, including meetings and notice in respect thereof.

20. Mr. Alok Ranjan has appeared on behalf of the Respondent No.5 and also made submissions.

21. Having considered the submissions advanced on behalf of the parties, this Court would observe that it would be futile for this Court to venture to examine the legality/maintainability of the first requisition dated 14-02-2022 since the requisition was issued at a time when there was no provision for removal of 'Chief Councillor'/ 'Deputy Chief Councillor' based on no confidence motion, due to promulgation of the (Amendment) Ordinance, 2022 w.e.f. 13-01-2022; and also because second requisition dated 13-04-2022 under the Amendment Act of 2022 has rendered infructuous the issues arising out of the first requisition dated 14-02-2022.

22. This Court considers it useful to consider the background in which Section 25(4) of the Act of 2007 has been substituted by Section 25(3) of the Amendment Act of 2022.

23. Section 12 of the Act of 2007 provided for filling up of the seats in the municipalities by persons elected from the territorial constituencies known as 'Wards'. These elected Ward representatives are known as "Councillor" under Section 2(27)



of the Act of 2007. Section 12(3) of the Act of 2007 made provision for certain other ‘members’ in a municipality as follows:-

“12(3) Notwithstanding the provisions as contained in sub-section(2) the following shall also be members in a municipality:-

(i) the members of the House of People and members of the Legislative Assembly representing constituencies which comprise wholly or partly the municipal area.

(ii) the members of the Council of States and members of the State Legislative Council registered as electors within the municipal area and members of State Legislative Council elected from the Local Bodies Constituencies of the municipal area.”

24. Section 12 of the Act of 2007 provided the right to vote in the meeting for every member of the municipalities. However, in case of election and removal of ‘Chief Councillor/Deputy Chief Councillor’, only the members elected under sub-section 3(i) had the right to vote. The Act of 2007 contained provisions to meet the requirement for indirect election; and removal of the ‘Chief Councillor and Deputy Chief Councillor’ by a No Confidence Motion at a special meeting by the ‘Councillors’ and some ‘members’ elected under sub-section 3(i) of the Act of 2007, as per procedure prescribed.

25. The Amendment Ordinance of 2022 brought about a substantial change in the procedure for election of ‘Chief



Councillor and Deputy Chief Councillor’ of the municipality directly by the voters enrolled in the voters list of that municipality instead of the earlier procedure of indirect election by the councillors and some members of the Municipalities. The Ordinance of 2022, thus, did not contain any provision for removal of Chief Councillor / Deputy Chief Councillor by a No Confidence Motion of the Councillors.

26. The Ordinance of 2022, apparently, did not take into consideration the fact that various indirectly elected ‘Chief Councillors and Deputy Chief Councillors’ were already occupying post/s, having been indirectly elected by the ‘Councillors’ and ‘members’ under the earlier statutory provisions contained in the Act of 2007. At the time of promulgation of the Ordinance, therefore, two class of ‘Chief Councillors and Deputy Chief Councillors’ were brought into existence by virtue of the Ordinance. One, who had already been indirectly elected under the Act of 2007, and the other, who now under the Ordinance of 2022 were to be directly elected by the voters of a municipality in its voters list.

27. Apparently, the Legislature, in its wisdom, felt the need to retain the provisions for removal of ‘Chief Councillors and Deputy Chief Councillor’ indirectly elected under the



provisions of the Act of 2007. At the same time, the Legislature was apparently conscious of the fact that the ‘Chief Councillors and Deputy Chief Councillor’ who as per the Ordinance of 2022; and now as per the Amendment Act of 2022, were to be directly elected by the voters enrolled in the voters list of the respective municipality, should not be removed by the ‘Councillors/ members’ of the municipality. It is, in this background, that Section 25(3) of the Amendment Act of 2022 (quoted above) appears to have been re-enacted.

28. Thus, the provision for removal of ‘Chief Councillor’ like the instant petitioner, and ‘Deputy Chief Councillor’ other than directly elected ‘Chief Councillor’/ ‘Deputy Chief Councillor’, was re-enacted under Section 25(3) by enactment of the Amendment Act 2022, w.e.f. 02.04.2022. Thereafter, a fresh requisition has been made by Respondent No.6 and other ‘Councillors’ on 13-04-2022, calling for convening of a special meeting for removal of the ‘Chief Councillor’(petitioner). As of today, it is only this second requisition dated 13-04-2022, which survives. This Court, would, therefore, conclude that the relief, insofar as quashing of the first requisition dated 14.02.2022, has become infructuous.

29. The only issue, therefore, that remains for



consideration, is whether the second requisition dated 13-04-2022, is maintainable and can be made the basis of convening a special meeting for bringing about 'No Confidence Motion' against the petitioner ('Chief Councillor'). In this connection, this Court would observe that the Amendment Act of 2022 has re-enacted the provision for removal of indirectly elected 'Chief Councillor', based on no-confidence motion, but with a different numbering of the sub-section, namely, Section 25(3), instead of Section 25(4) as it existed in the Act of 2007, prior to the Amendment Ordinance of 2022. The substantial statutory right of the 'Councillors' to make a requisition for convening a special meeting for removal of 'Chief Councillor'/ Deputy Chief Councillor' indirectly elected under the Act of 2007, therefore, again came to exist in the Statute w.e.f. 02-04-2022, by virtue of the Act of 2022. The second requisition was made 12 days thereafter. Therefore, this Court would observe that there was a statutory basis for making the second requisition dated 13-04-2022.

30. The issue raised by the petitioner's counsel regarding there being no prescription of procedure by virtue of any Rules framed under Section 25(3) of the Amendment Act of 2022, this Court would consider with approval the submission advanced



by learned Advocate General as also Mr. Sanjeev Nikesh learned counsel for the State Election Commission, to support the legality of the second requisition dated 13-04-2022.

31. Since the learned Advocate General has placed reliance on Section 27 of the Bihar and Orissa General Clauses Act, 1917, (for short General Clause Act), this Court would consider it apposite to reproduce the same, which reads as follows:-

“27. Continuation of orders, etc., issued under enactments repealed and reenacted.-
Where any enactment is repealed and re-enacted by a Bihar and Orissa Act [or Bihar Act] with or without modification then unless it is otherwise expressly provided, any appointment, notification, order, scheme rule, bye-laws or form, made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, bye-law or form, made or issued under the provisions so re-enacted.”

32. Having taken note of Section 27 of the General Clauses Act, this Court would observe that, there is no dispute regarding the fact that the Rules of 2010, earlier issued under Section 25(4) of the unamended Act of 2007, have never been superseded. It is also apparent that Rules of 2010, issued under Section 25(4) of the unamended Act of 2007, are not



inconsistent with the re-enacted Section 25(3) of the Amendment Act of 2022. This Court, therefore, would have no hesitation, in holding that the Rules of 2010, issued under Section 25(4) of the unamended Act of 2007 are deemed to have been made or issued under Section 25(3) of the Amendment Act of 2022, by virtue of the legal fiction created by Section 27 of the General Clauses Act.

33. The Rules of 2010 framed under the repealed enactment applied by virtue of a deeming fiction in terms of Section 27 of the General Clauses Act. This provision also specifies the circumstances, when any appointment, notification, order, scheme, Rule, bye-laws or form made or issued under a repealed enactment shall not apply. It is obvious from a reading of this provision that Rules made or issued under the repealed enactment are required to be excluded by express provision in the re-enactment. The other circumstance in which the Rule under the repealed enactment can be excluded, is when it is inconsistent with the provisions re-enacted. In the instant case, the re-enacted provision (Section 25(3) of the Act of 2007) neither contains an express provision to the extent that the Rules of 2010 shall not apply to the re-enacted provision; nor the Rules of 2010, are in any way inconsistent with the re-enacted



provision (Section 25(3) of the Act of 2007).

34. The third circumstance under Section 27 of the General Clauses Act, in which, the Rules of 2010 may have ceased to apply, is if it had been superseded by any Rule made or issued under the re-enacted provision (Section 25(3) of the Act of 2007). In the instant case, no Rule has been made under Section 25(3) of the Amendment Act of 2022.

35. It is, thus, clear that by virtue of deeming fiction created by Section 27 of the General Clauses Act, the Rules of 2010 issued under Section 25(4) of the unamended Act of 2007 must be deemed to have been made or issued under the re-enacted provision (Section 25(3) of the Act of 2007) and shall continue to apply for the purposes of Section 25(3) of the Act of 2007, as it exists, after the Amendment Act of 2022.

36. In this regard, the instant case is squarely covered by the Division Bench decision in the case of **Bhola Singh** (supra) relied upon by the learned Advocate General.

37. The submissions advanced by Mr. Sanjeev Nikesh learned counsel regarding there being other substantial provisions in the Act of 2007 for conduct of meetings under Chapter-VII of the Act of 2007 is also worth consideration.

38. Chapter-VII of the Act of 2007 contains clear



provisions regarding requisition for convening a meeting, quorum of meeting and other procedure for conduct of meetings. It is, in this context, that a Division Bench of this Court, also relying upon the provisions, contained under Chapter-VII of the Act of 2007, has held in the case of **Ruby Singh** (supra) that *“a vote of no confidence can be mooted and carried out without framing of the rules and, hence, the provisions of the statute are workable.”*

39. This Court, however, must take note of the fact that the decision in the case of **Ruby Singh** (supra) is dated 15-04-2010. The relevance of the date of judgment is that on the day the Division Bench delivered the judgment in the case of **Ruby Singh** (supra) the Rules of 2010 had not come into existence. The Rules of 2010 was published in the Bihar Gazette Extraordinary on 10-06-2010 nearly two months after decision of the Division Bench in the case of **Ruby Singh** (supra). Submission of Mr. Sanjeev Nikesh based on decision in the case of Ruby Singh (supra), however, has no bearing on the continuance and applicability of the Rules of 2010, as per the legislative intent and mandate, contained in Section 27 of the General Clauses Act, as discussed above.

40. Coming to the submissions based on amendment of



Section 12(4) of the Act, advanced by the petitioner's counsel to contend that the prescription for quorum of special meeting has been deleted and, therefore, there can be 'No Confidence Motion' based on the second requisition dated 13-04-2022. This Court would observe that adequate safeguards and provisions, in this regard, are manifest from bare reading of Section 25(3) of the Amendment Act of 2022, taken note of above. The same clearly prescribes that resolution has to be carried by majority of the whole number of '**Councillors**' holding office. It also provides that requisition has to be made in writing by not less than one-third of the total number of '**Councillors**'. Insofar as the process of removal of '**Chief Councillor/Deputy Councillors**' at a special meeting, the Act is clear in its intent that the requisition for convening the special meeting as well as majority at the special meeting convened for the purpose, are all to be carried out by the '**Councillors**' only and not the '**members**'. The Amendment to Section 12(4), therefore, in the opinion of this Court, is of no consequence, has no effect, much less any adverse effect on maintainability of the second requisition dated 13-04-2022.

41. Viewed thus, this Court does not find any substance in submission advanced by the petitioner's counsel that second



requisition dated 13-04-2022, suffers from any illegality.

42. In view of the foregoing consideration and discussion, this Court would observe that no ground have been made out to assail the second requisition dated 13-04-2022

43. The writ petition is, therefore, devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:-

(Chakradhari Sharan Singh, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	20-06-2022
Uploading Date	25-07-2022
Transmission Date	

