

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7363 of 2022**

=====

Devkant Prasad Son of Late Sugriv Prasad Resident of Chak Hussain, Ward No.8, P.O. and P.S.- Khusrupur, Patna- 803202.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
2. The Under Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
3. The Secretary, Department of Law, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. Nagar Panchayat, Khusrupur, District- Patna through its Executive Officer.
6. The State Election Commission, Bihar, 3rd Floor, Sone Bhawan, Daroga Rai Path, R- Block Chauraha, Bir Chand Patel Path, Patna through the State Election Commissioner, Bihar.

... .. Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Shivam, Advocate  
For the Respondent/s : Mr. Pawan Kumar, AC to AG

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE RAJIV ROY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 03-10-2023**

The writ petition is filed challenging Rule 97 of the Bihar Municipal Election Rules, 2007, as amended by the Bihar Municipal Election (Amendment) Rules 2022, to be *ultra vires* Section 23 of the Bihar Municipal Act, 2007 as amended by the Bihar Municipal (Amendment) Act, 2022.

2. The amendments in the Act and the Rules,



challenged herein are with reference to the election of the Chief Councillor and Deputy Chief Councillor in the municipalities and the filling up of casual vacancies. Prior to the amendment, the Chief Councillor and the Deputy Chief Councillor were elected from among the Councillors. On any casual vacancy arising in either of the said two posts; by reason of death, resignation, removal or otherwise, as per the procedure prescribed, election of one of the Councillors has to be conducted, who would continue in office for the unexpired term of his predecessor. The Rules provided for the casual vacancy to be filled up as per the procedure prescribed in Rules 93 to 96.

3. By amendment Act of 2022, a system of direct election of Chief Councillor and the Deputy Chief Councillor by the voters enrolled in the municipality themselves, was brought in. Such election was also to be done under the control and supervision of the State Election Commission, which was the amended Section 23(1).

4. Section 23(2) again permitted the casual vacancies in the office of the Chief Councillor and the Deputy Chief Councillor caused by death, resignation,



removal or otherwise to be held by such procedure as may be prescribed.

5. The prescription under the Rule was as follows:-

*“In case of an indirectly elected Chief Councillor and Deputy Chief Councillor to fill a casual vacancy in a Municipality, the procedure prescribed in Rules 93 to 96 shall apply”.*

6. Hence, when a casual vacancy arises the prescription was that there should be an election from the existing Councillors and the elected person would continue for the balance of the term.

7. The contention of the petitioner is that when direct elections are prescribed under sub-section (1) there cannot be an indirect election to fill up the casual vacancy and the Rule is *ultra vires*. By sub-section (1) of Section 23 the Act provides for a direct election by the voters of the municipality to the post of Chief Councillor and the Deputy Chief Councillor. Any casual vacancy arising in the said post is to be filled up as prescribed. The prescription now, is



taht when a casual vacancy arises, the election will be an indirect one from the Councillors themselves. Sub-sections (1) and (2) of Section 23 are in different aspects, one on the filling up of the vacancy when it arises on the term of the elected Councillors end. This has to be through election by the voters. However, when a casual vacancy arises, it can be as prescribed; which prescription is of an indirect election. We find the amendment in the rules to be perfectly valid; brought about only to fill up casual vacancies.

8 . We find absolutely no reason to entertain the writ petition and dismiss the same.

**(K. Vinod Chandran, CJ)**

**( Rajiv Roy, J)**

aditya/-

|                   |             |
|-------------------|-------------|
| AFR/NAFR          |             |
| CAV DATE          |             |
| Uploading Date    | 06.10.2023. |
| Transmission Date |             |

