

Mohan Prasad Rastogi Vs The State of Bihar and Others

Court: Patna High Court

Date of Decision: Oct. 17, 2011

Acts Referred: Bihar Municipal Act, 2007 " Section 25, 25(1), 25(2), 25(3), 25(4)
Bihar Panchayat Raj Act, 2006 " Section 44, 44(3), 44(4)

Citation: (2012) 1 PLJR 112

Hon'ble Judges: Samarendra Pratap Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samarendra Pratap Singh, J.

Whether sub-rule (iii) of Rule 2 of the Bihar Municipal No-Confidence Motion Process Rules, 2010

(hereinafter referred to as the No-Confidence Motion Rules, 2010) vests power in the Chief Municipal Officer or the Ward Councillors to fix the

date of special meeting for tabling of no-confidence motion against the Chief Councillor or the Deputy Chief Councillor is the core issue in this

case.

2. The petitioner prays for quashing the proceedings of the special meeting of Birpur Nagar Panchayat dated 28.7.2011 as well as passing of No-

confidence removing him from the post of Chief Councillor of Nagar Panchayat, Birpur.

3. The prayer of the petitioner is founded on the ground that an Executive Officer does not have power to fix the date of special meeting for tabling

of No-confidence motion in view of sub-rule (iii) of Rule 2 of No-Confidence Motion Rules, 2010, and as such the entire proceeding including his

removal is bad in law.

4. The facts relevant for adjudication of the case are stated hereinbelow in short. The petitioner was elected as the Chief Councillor and one Tanvir

Alam, Respondent No. 6 was elected as Deputy Chief Councilor of Birpur Nagar Panchayat. The petitioner's case is that Respondent No. 6 was

ill disposed towards him and had made attempts to unseat him from his post. He alleged that respondent no. 6 obtained signatures of Ward

Councillors on a plain paper and converted it in a requisition requesting petitioner to convene a special meeting for consideration of No-confidence

motion against him. According to the petitioner, as the requisition was not in accordance with law, he did not fix the date of special meeting. The

requisitionists then approached the Executive Officer for fixing a date of special meeting and issuing notice to the Members. The Executive Officer,

respondent no. 5, accepted the request of the requisitionists and fixed 28.7.2011 as the date of special meeting for tabling of no-confidence

motion. On 28.7.2011, a no-confidence motion was passed against the petitioner and he stood removed from the post of the Chief Councillor.

5. The petitioner submits that both special meeting and its proceeding are void ab initio as respondent no. 5 was not vested with power to fix the

date of such meeting. The petitioner further argued that even if the Ward Councillors had not fixed any date in their requisition for calling a special

meeting, still the Executive Officer would not get any right to fix the date of his own, as no power is conferred on him under sub-rule (iii) of Rule 2

of the No-Confidence Motion Rules, 2010.

6. The petitioner next raised the point that no individual notice was issued to the members as required under No-Confidence Motion Rules, 2010.

The alleged notice dated 25.7.2011 fixing the meeting on 28.7.2011 was served on the petitioner and other Ward Councillors on 26.7.2011.

Thus, they did not have 72 hours prior notice as required u/s 49 of the Act which vitiated the proceedings of special meeting dated 28.7.2011, and

is fit to be quashed.

7. On the other hand, counsel for the respondent State submits that the notice contained in Annexure-1 fixing the date of special meeting for tabling

of no confidence against the petitioner did not suffer from any illegality. The requisition was made by more than required number of Ward

Councillors u/s 25(4) of the Act and No-Confidence Rules, 2010. The notice issued to Ward Councillors contained the charges/allegations on

basis of which such requisition for no-confidence motion was brought. The entire proceeding of the meeting dated 28.7.2011 is already on record

vide Annexure-2 to the writ application.

8. I have heard learned counsel for the petitioner and the State. The provisions of removal of Chief Councillor/Deputy Chief Councillor is enshrined

in Section 25 of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act, 2007"). The section provides that in three situations, a Chief

Councillor/Deputy Chief Councillor can be removed. These circumstances are mentioned in Section 25(1), Section 25(2) and Section 25(4) of the

Act. Section 25(1) states that a Chief Councillor/Deputy Chief Councillor shall cease to hold the office if he or she ceases to be a Councillor.

Section 25(2) of the Act states that the Chief Councillor/Deputy Chief Councillor may resign his office by writing to appropriate authority Section

25(3) of the Act states that every such resignation shall take effect on expiry of 7 days from the date of such resignation unless he withdraws the

resignation within 7 days by writing to the competent authority. The third and last mode of removal which is relevant with context of the issue is

enumerated in Section 25(4). It states that a Chief Councillor/Deputy Chief Councillor would stand removed on losing vote of confidence as

provided therein. As we are concerned with removal u/s 25(4) of the Act, the same is quoted hereinbelow:--

25(4). The Chief Councillor/Deputy Chief Councillor may be removed from the office by a resolution carried by a majority of the whole number of

Councillors holding office for the time being at a specials 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.

9. It appears from bare perusal of Section 25(4) of the Act that the Chief Councillor or the Deputy Chief Councillor can be removed from the

office by a majority of whole number of Councillors holding the office for the time being at a special meeting for this purpose in the manner

prescribed. The section requires that requisition for special meeting is to be made in writing by not less than 1/3rd of total number of Councillors is

to be passed by majority of whole number of Councillors holding office.

10. In order to carry out the purposes of Section 25(4) of the Act, the Governor of Bihar was pleased to make Bihar Municipal No-Confidence

Motion Process Rules, 2010. According to Rule 2, a no-confidence motion brought u/s 25(4) of the Act would be considered and disposed of as

per sub-rules (i) to (v) thereof.

11. Sub-rule (i) of Rule 2 states that on a requisition made by not less than 1/3rd of the total number of elected Councillors for removal of Chief

Councillors/Deputy Chief Councillors, a special meeting shall be called by the Chief Councillor within the time frame mentioned thereof in the

provision. Sub-rule (ii) of Rule 2 deals with the aspect as to who would preside if motion is brought against the Chief Councillor or Deputy Chief

Councillor or both. Sub-rule (iii) states if the Chief Councillor does not call the meeting, the special meeting shall be called by requisitionists as per

Section 48(3) of Municipal Act and notice for it shall be issued by the Chief Municipal Officer. The other sub-rules are not being referred to as

they are not relevant in the context of the issue.

12. The issue involved is whether sub-rule (iii) of Rule 2 vests power in the Ward Councillors or Chief Municipal Officer to fix the date of meeting.

It would be apt to quote sub-rules (i), (ii) and (iii) as well as Section 48(3) of the Act to which sub-rule (iii) refers:--

2(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 over 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 over 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 on 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 the requisitionists as per the provision of Section 48(3) of the Bihar Municipal Act, 2007 and the notice for it

shall be issued by the Chief Municipal Officer.

48(3) If the Chief Councillor fails to call the requisition meeting provided in sub-section (2), the meeting may be called by the persons who signed

by requisition.

13. The petitioner has argued that Municipality being a form of urban self-Government is governed by Councillors and its Committee. The

Municipal Officers appointed by the Government is only to aid the Councillors in implementing the decision of Municipalities and its policies. The

term "the Special Meeting shall be called by the requisitionists as per Section 48(3) of Bihar Municipal Act, 2007" mentioned in Rule 2(iii) would

include a right to fix the date of meeting as well.

14. The State would submit that as per Rule 2(iii), the Councillors can call a special meeting for the purpose of moving No-Confidence against

Chief Councillor or Deputy Chief Councillor on failure of Chief Councillor to call a meeting within stipulated period and the notice for it is to be

given by the Chief Municipal Officer. The State asserts that issuance of notice would include fixing a date of meeting.

15. The answer to the issue as to who would fix the date of special meeting under sub-rule (iii) of Rule 2 of No-Confidence Rules, 2010 is not far

to seek and can be gathered from the conjoint reading of the Rules itself.

16. Sub-rule (i) of Rule 2 provides that the Chief Councillor or the Deputy Chief Councillor can be removed in a special meeting called by the

elected Councillors for which requisition has to be made to the Chief Councillor by no less than 1/3rd of the total Councillors as also procedure in

Section 25(4) of the Act. Sub-rule (i) of Rule 2 further provides that once such meeting is called by elected Councillors, the notice shall be issued

by the Chief Councillors for the special meeting within 7 days from the receipt of the requisition and the meeting shall be convened within 15 days

of the date of issuance of the notice. Sub-rule (iii) of Rule 2 states that if the Chief Councillor does not issue notice within the stipulated date or

does not convene the special meeting within the stipulated time, the special meeting shall be called by the requisitionists as per Section 48(3) of the

Act. Section 48(3) of the Act states that if the Chief Councillor failed to call the requisition meeting provided in sub-section (2) of Section 48, the

meeting can be called by the person who signed the requisition. In other words, the persons who sign the requisition for calling the special meeting,

on failure of the Chief Councillor to call the requisition meeting must be from amongst the Councillors who had made requisition before the Chief

Councillor to call such a special meeting. If we look at Rule 2(i) and Rules 2(iii) closely, we find matching similarity in respect of making of

requisition and issuance of notice for such meeting. Only the stage changes and the authority who would issue notice for the special meeting

changes as we move from Rule 1 to Rule 3.

17. Sub-rule (i) prescribes the first stage of procedure of removal. The Councillors make a requisition to the Chief Councillor for calling a special

meeting for moving no-confidence against him and Deputy Chief Councillor, as the case may be. Sub-rule (iii) comes into play, when the Chief

Councillor defaults to issue notice and fix a date of the special meeting within the stipulated time. Furthermore, both Rules 2(i) and 2(iii) provides

for filing of requisition by the elected Councillors for removal of Chief Councillor or Deputy Chief Councillor. In the first stage, under Rule 2(i) the

requisition is made by Councillors before the Chief Councillors, who will issue notice of special meeting within 7 days and convene the meeting

within 15 days of the notice. If Chief Councillor fails to do so, the same procedure is inherent in rule 2(iii). This time the Councillors will make

requisition calling for the special meeting before the Chief Municipal Officer, a Government official, who would follow the same procedure as

prescribed in Rule 2(i) in order to maintain uniformity of purpose within same time frame. Though sub-rule (iii) of Rule 2 does not in so many

words say that the Chief Municipal Officer would fix a date of meeting, it is noticeable that this rule is in consonance and in sequence with Rule

2(i).

18. Thus the Rules state that the right to make requisition and call a special meeting for tabling of no-confidence against the Chief Councillor or the

Deputy Chief Councillor or both is vested in the Councillors and right to fix the date of special meeting for the above purpose is vested in Chief

Municipal Officer.

19. The issue can be seen from another angle with reference to provision in Panchayat Raj Act, 2006, another form of local self-Government.

Section 44 of the Bihar Panchayat Raj Act provides for removal of Pramukh and Up-Pramukh on more or less on similar line as provided for

removal of Chief Councillors and Deputy Chief Councillors in case of Municipal Act, 2007 and the rules framed thereunder sub-section (3) of

Section 44 of the Bihar Panchayat Raj Act is quoted hereinbelow for easy reference:--

(3)(i) A Pramukh/Up-Pramukh of the Panchayat Samiti shall be deemed to have vacated his office forthwith if a resolution expressing want of

confidence in him is passed by a majority of the total number of elected members of the Panchayat Samiti at a meeting specially convened for the

purpose.

The requisition for such a special meeting shall be presented to the Pramukh in writing with a copy to the Executive Officer of the Panchayat

Samiti, by not less than one third of the total number of members elected directly from the territorial constituencies of the Panchayat Samiti. The

Executive Officer shall immediately bring the requisition to the notice of the Pramukh. The Pramukh shall convene such meeting on a date falling

within 15 days of such requisition. If the Pramukh fails to call the special meeting, the Up-Pramukh or one third of the total number of directly

elected members may fix a date for such meeting and require the Executive Officer to give notice to the members and to take such action as may

be necessary to convene the meeting. The Executive Officer shall necessarily issue such notice in time and convene the meeting. No such meeting

shall be postponed once the notice for the same has been issued. No quorum shall be required for the special meeting convened to discuss no-

confidence motion.

(ii) No-confidence motion shall not be moved against the Pramukh or the Up-Pramukh within the first two years period of their tenure.

(iii) If the motion of no-confidence brought against the Pramukh or the Up-Pramukh or both is once rejected, no fresh motion of no-confidence

against the Pramukh or the Up-Pramukh or both, as the case may be, shall be brought before the Panchayat Samiti within a period of one year

from the date of such rejection of the motion.

(iv) No-confidence motion against the Pramukh or Up-Pramukh or both, as the case may be, shall not be brought during the last six months of the

term of the Panchayat Samiti as mentioned in Section 39(1) of this Act.

(v) 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 the meeting called to consider the no-confidence motion.

(vi) As soon as the meeting called under this section begins, the Presiding Member of this meeting shall read out the motion on which the meeting

has been called to consider before the members present and declare it open for discussion. Any discussion on the motion shall not be adjourned.

(vii) During discussion, opportunity shall be given to the Pramukh/Up-Pramukh against whom no-confidence motion has been moved for his

defence before the Panchayat Samiti. The motion shall be put to vote on the same day after discussion and shall take place by secret ballot in the

prescribed manner.

(viii) In case of no-confidence motion against a Pramukh, the meeting shall be presided by the Up-Pramukh in case of motion against Up-Pramukh

by the Pramukh and in case of motion against both Pramukh and Up-Pramukh, by any member elected from among the members of the Panchayat

Samiti present in the meeting.

In case of the post of Up-Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the

Pramukh or the post of Pramukh being vacant or his absence from the meeting convened for discussion on no-confidence motion against the Up-

Pramukh, as the case, may be, shall be presided over by any member elected from amongst the directly elected members from the territorial

constituency of the Panchayat Samiti present in the meeting.

(Note: The underlining is mine for emphasis)

2Q. Sub-section (3)(i) of Section 44 of the Act states that a Pramukh/Up-Pramukh would be deemed to have vacated his office, if motion of

confidence is passed against him by a majority of total number of elected members of the Panchayat Samiti. It further provides that requisition for

such a special meeting shall be presented to the Pramukh of the Panchayat Samiti with a copy to the Chief Executive Officer. The Pramukh would

be obliged to convene such meeting within 15 days of such requisition. The provisions further state that if the Pramukh fails to convene such

meeting, the Up-Pramukh or 1/3rd of the total number of directly elected members, ""may fix a date for such meeting and require the Executive

Officer to give notice to the members"" and to take such action as may be necessary to convene the meeting.

21. Both Panchayat and Municipality have been introduced under Part IX and IXA of the Constitution effected by Constitution 73rd and 74th

Amendment Act, 1992 w.e.f. 1.6.1993. Both are constitutionally established and recognized system of local self-Government for rural and urban

areas respectively. Both the local self-Governments have three tier system of governance. Both Panchayat Act and Municipal Act provide for

removal of head or deputy head of the local self-Governments. The provisions of their removal as mentioned in Section 44 of the Act and section

25(4) read with Rules 2(i), (ii), (iii) of No-Confidence Rules, 2010 have similarities. Both the Acts provide that for removing the head of the

governance, the requisition would be first made before the head of the local self-Government itself as provided in Section 44(3) of the Bihar

Panchayat Raj Act and Section 25(4) of the Municipal Act. Both Panchayat Raj Act and Municipal Act provide that in case the Pramukh or Up-

Pramukh so far as Panchayat Raj is concerned or Chief Councillor or Deputy Chief Councillor so far as Municipal Act is concerned, do not

convene special meeting for tabling of no-confidence motion, they would make a requisition to the Executive Officer or the Chief Municipal Officer

of the two local self-Governments for giving notice. Whereas Section 44(3) of the Bihar Panchayat Raj Act specifically states that in such

circumstances the requisitionists would themselves fix a date for such meeting and require the Executive Officer to give notice to the Members. In

Bihar Municipal Act, 2007, the provision is silent and does not say that requisitionists would fix a date of meeting as incorporated in Section 44(3)

of the Panchayat Act. As Bihar Municipal Act, 2007 is a later Act having been enacted one year after the enactment of the Bihar Panchayat Raj

Act, 2006, it would be deemed that the legislature which is conscious of previous enactments made deliberate omissions to vest such right to fix

date of meeting in the Councillors, in case of Municipality. The legislature otherwise would have made similar incorporations regarding fixing a date

of special meeting in the Municipal Act, vesting such power with the Ward Councillors, which is missing. Thus, there is no substance in the

contention of the petitioner that the power of fixing date of meeting under Rule 2(ii) of No-Confidence Rules, 2010 is vested in the Ward

Councillors.

22. Further, from perusal of the writ petition, it is evident that the Councillors and rightly so, had not fixed any date for tabling of no-confidence

motion. The aforesaid fact would become clear from paragraph 8 of the writ petition which is quoted hereinbelow:--

8. That, since the petitioner did not accede to the request of the Ward Councillors, the requisitionists approached the Executive Officer and

persuaded him to fix the date of special meeting and issue notice to the members. They had filed a written report before the Executive Officer,

praying therein before, the Respondent No. 5 to fix the date of special meeting and issue notice to the members.

23. An apprehension has been raised as to what happen, if Chief Municipal Officer delays the issuance of notice. It is relevant to state that

Panchayat Act also does not spell the consequences, if the Chief Executive Officer or Executive Officer does not comply with the provisions of the

Act. Though the Municipal Act, 2007 like the Panchayat Act, 2006 and the Rules, do not provide consequences of non-compliance of the

provisions by the Chief Municipal Officer or the Chief Executive Officer/Executive Officer, there would be no reason for any such apprehension,

as the Government or even the Court can take suitable action against such officer. It would be apt to quote relevant extract of paragraph 14 of

judgment of Division Bench of this court in the case of Meena Yadav vs. State of Bihar & Ors., reported in 2010(2) PUR 389. In the aforesaid

case, the Court was addressing similar concerns under the Bihar Panchayat Raj Act, 2006.

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 statutory 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.....

24. The petitioner next contended that there was no individual notice to the members and he received the notice of the meeting for 28.7.2011 on

26.7.2011 at 9 P.M. No material has been brought on record to show that the notice was served on him on 26.7.2011. Furthermore, nothing is on

the record to show that any other Councillors complained that they did not receive a copy of the notice. It has not been denied that the notice was

issued on 25.7.2011, as such requirement of 72 hours prior notice as contained in Section 49 of the Act has not been complied with.

25. Thus, it is apparent from the conjoint reading of sub-rules (i) and (iii) of Rule 2 of No-Confidence Rules, 2010 that the right to fix the date of

special meeting for removal of Chief Councillor/Deputy Chief Councillor u/s 25(4) of the Act is vested in the Chief Municipal Officer. The issue is

answered against the petitioner.

26. In the result, this writ application is dismissed but no order as to costs.