

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.971 of 2015**

**In**

**Civil Writ Jurisdiction Case No.21450 of 2014**

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Raju Mahto, son of Sri Jageshwar Mahto, Chairman, Nagar Parishad, Saharsa.

... .. (Respondent No.6 in the writ petition)/ Appellant/s

Versus

1. Ranjana Singh, W/o Sanjay Kumar Singh, resident of village- Batraha, Police Station-Saharsa, District -Saharsa, presently Deputy Chairman, Nagar Parishad, Saharsa.

.....Writ petitioner-Respondent 1 st Set.

2. The State of Bihar.
3. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Commissioner, Koshi Division, Saharsa.
5. The District Magistrate, Saharsa.
6. The Executive Officer, Nagar Parishad, Saharsa.

..... Respondents- Respondent 2 nd Set.

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Bihar Municipal Act, 2007—Sections 20 and 50—Bihar Municipal No Confidence Motion Process Rules, 2010—Rule 2—No Confidence Motion—matter was referred to Full Bench for consideration of few issues framed by the Division Bench—present appeal become infructuous by afflux of time—no confidence motion was moved against the Chief Councillor—the procedure stipulated in Section 50 of the Act, 2007 would apply to the meeting referable to

Section 25(4) of the Act, 2007 particularly in view of the provision of sub-section (4) of Section 50 of the Act, 2007—in case of non-quorum at a special meeting called under Section 25(4) of the Act, 2007, the meeting is required to be adjourned as provided under sub-section (2) of Section 50 of the Act, 2007 and the motion can be considered at the adjourned meeting as per sub-section (3) of Section 50—in case, the meeting is convened under Section 25(4) of the Act, 2007 when not a single Councillor and the person who is expected to preside over the meeting, do not turn up, in that case, the meeting is required to be adjourned in case there is a non-quorum, however, it is clarified that if there is a quorum and the person who is expected to preside over the meeting do not turn up, in that case, the meeting shall be carried out as per Section 25 of the Act, 2007 read with Rule 2 of Rules 2010—recording of the developments of the meeting by the Executive Officer can never be treated as the expression of the views about the resolution of the meeting and the same can be said to be recording the events to adjourn the meeting due to non-quorum only—appeal dismissed—no error committed by the learned Single Judge in directing that a fresh meeting be convened, for taking up the motion, to express want of confidence.**(Paras 3 to 5)**

Vibha Devi vs. State of Bihar—**Affirmed.**

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Raju Mahto, son of Sri Jageshwar Mahto, Chairman, Nagar Parishad, Saharsa.  
... .. (Respondent No.6 in the writ petition)/ Appellant/s

Versus

1. Ranjana Singh, W/o Sanjay Kumar Singh, resident of village- Batraha, Police Station-Saharsa, District -Saharsa, presently Deputy Chairman, Nagar Parishad, Saharsa.

Writ petitioner-Respondent 1<sup>st</sup> Set.

2. The State of Bihar.  
3. The Principal Secretary, Urban Development and Housing Department, Goverment of Bihar, Patna.  
4. The Commissioner, Koshi Division, Saharsa.  
5. The District Magistrate, Saharsa.  
6. The Executive Officer, Nagar Parishad, Saharsa.

... .. Respondents- Respondent 2<sup>nd</sup> Set.

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**Appearance :**

|                         |   |  |
|-------------------------|---|--|
| For the Appellant       | : | Mr. Pramod Mishra, Advocate<br>Mr. Vijay Kumar Mukul, Advocate   |
| For the Respondent No.1 | : | Mr. Bindhyachal Singh, Advocate<br>Mr. Satya Prakash, Advocate<br>Mr. Sachin Kumar, Advocate<br>Mr. Ashwini Kr. Upadhyay, Advocate |
| For the State           | : | Mr. Manish Kumar, G.P.-4<br>Mr. Manoj Kumar, AC to G.P-4   |
| For Respondent No.6     | : | Mr. Abhay Shankar Singh, Advocate<br>Mr. Prabhakar Sahai, Advocate   |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**



**CAV JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 01-11-2018**

1. Having not agreeing with the decision of the Division Bench of this Court in the case of **Vibha Devi vs. State of Bihar** [2015 (2) PLJR 167], the Division Bench of this Court vide order dated 18.05.2015 has referred the matter to the Full Bench to deal with the following questions, viz.

- (a) Whether the procedure stipulated in Section 50 of the Act would apply to the meeting referable to Section 25(4) of the Act, particularly in view of the saving clause contained in sub-section (4) of Section 50 of the Act?*
- (b) Whether there exists any possibility or occasion for adjourning a meeting to take up a meeting for motion to express want of confidence; when Section 25(4) and the Rules specially made for this purpose, do not provide for it?*
- (c) Whether it becomes necessary to adjourn a meeting convened under Section 25(4) of the Act, when not a single Councillor and the person who was expected to preside over the meeting, did not turn up?*
- (d) Whether the recording of the developments of a meeting by the Executive Officer can be treated as the expression of views about the resolution or meeting?*



1.1. At the outset, it is required to be noted that according to learned counsel appearing on behalf of the respective parties as such the present Appeal has become infructuous by afflux of time. However, as the aforesaid questions are referred to the Full Bench, we proceed further to answer the aforesaid questions.

2. The subject matter is the no confidence motion moved against the appellant herein. The appellant was elected as Chief Councillor of Saharsa Municipality. A requisition to convene a meeting to take up a motion, to express want of confidence in the appellant was signed and delivered by more than one-third members of the Council. The Chief Executive Officer of the Council convened a meeting on 08.11.2014. However, on that date, not a single Councillor, including those who signed the requisition had attended. The Chief Executive Officer issued the proceeding dated 08.11.2014, recording the developments.

2.1. The first respondent herein filed CWJC No.21450 of 2014 challenging the action of the Chief Executive Officer in issuing letter dated 08.11.2014. The learned Single Judge allowed the writ petition vide judgment and order dated 27.04.2015, setting aside the proceedings dated 08.11.2014, and directed that a fresh meeting be convened, for taking up the motion, to express want of confidence. Heavy reliance was placed upon Section 50 of



the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act, 2007'). The judgment and order passed by the learned Single Judge dated 27.04.2015 passed in CWJC No.21450 of 2014 is the subject matter of appeal.

2.2. It was the case on behalf of the appellant herein that once the meeting was convened, the question of adjourning the same, as contemplated under Section 50 of the Act, does not arise, particularly when not a single Councillor had attended. It was also his case that question of adjourning the meeting for want of quorum would arise only in respect of general meeting of the Council provided for under Section 50, and not special meetings, which are dealt with under Section 25 of the Act, 2007.

2.3. At the time of hearing of the Appeal, learned counsel appearing on behalf of respondent no.1 herein- the original writ petitioner placed reliance upon a decision of the Division Bench of this Court in the case of **Vibha Devi** (supra) by which it was held that adjournment of the meeting as provided for under Section 50 of the Act was very much legal and that no confidence motion was upheld. In that case before the Division Bench, a meeting to take up the motion to express want of confidence was fixed on 10<sup>th</sup> July, 2014 and, on that date, only 7 out of 53 elected Ward Councillors attended. The meeting was adjourned for want



of quorum, by referring to Section 50 of the Act and in the adjourned meeting, the motion was carried out. When the same was challenged, the Division Bench held that the adjournment for meeting as provided for under Section 50 of the Act was very much legal and consequently no confidence motion was upheld. Not agreeing with the view taken by the Division Bench of this Court in the case of **Vibha Devi** (supra), the Division Bench vide order dated 18.05.2015 referred the matter to the Full Bench to deal with the aforesaid questions.

3. We have heard learned counsel appearing on behalf of the respective parties at length and perused and considered the relevant provisions of the Act and the Rules. The relevant provisions are Section 25, more particularly Section 25(4) of the Act and Section 50 and more particularly Section 50 (2) of the Act and Rule 2 of the Bihar Municipal No Confidence Motion Process Rules 2010 (hereafter referred to as the 'Rules 2010,') which read as under:-

**Bihar Municipal Act, 2007**

***“25. Removal of Chief Councillor/Deputy Chief Councillor .-(1) xx xx***

*(2) xx xx*

*(3) xx xx*

*(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.*

*(5) xx xx*

*(6) xx xx*

**50. Quorum for transaction of business at a meeting of municipality and method of deciding questions.-** (1) *The quorum necessary for the transaction of business at a meeting of the Municipality shall be one-third of the total number of meeting of Councillors.*

(2) *If at any time during a meeting of the Municipality there is no quorum, it shall be the duty of the person presiding over such meeting either to adjourn the meeting or to suspend the meeting until there is a quorum.*

(3) *Where a meeting has been adjourned under sub-section (2), the presiding authority shall fix date,*





*time and place for the same as he shall think convenient which shall not be earlier than three days from the date of adjournment.*

*A notice of adjournment exhibited in the Municipal Office on the day on which the meeting is adjourned shall be sufficient notice of the subsequent meeting. The business which would have been brought before such meeting shall be brought before, and may be transacted at, the adjourned meeting, and no quorum shall be necessary for such adjourned meeting.*

*(4) All matters required to be decided at a meeting of the Municipality shall, save as otherwise provided in this Act, be determined by a majority of votes of the Councillors present and voting.*

*(5) xx xx xx*

*(6) xx xx xx*

*(7) xx xx xx*

### ***Bihar Municipal No Confidence Motion Process Rules 2010***

***“2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor shall be considered and disposed of as per the following process:—***

- (i) To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of*



*requisition and the meeting shall be convened within fifteen days of the date of issuance of the notice.*

- (ii) *The Special Meeting shall be presided 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.*
- (iv) *The notice issued for considering no confidence motion against the chief Councillor/Deputy Chief Councillor shall clearly contain the reasons/allegations on which basis the no confidence motion is to be brought.*



- (v) *As soon as the meeting, called for, commences, the presiding member at the meeting shall read out the motion on which the meeting has been called, before the members present and declare it open for discussion. During discussion, opportunity shall be given to the Chief Councillor/ Deputy Chief Councillor against whom no confidence motion is moved, to defend himself. The motion shall be put to vote by the presiding member by secret ballot on the same day after discussion and after counting result shall be declared.*
- (vi) *Quorum for the meeting shall be as per the provision of section 50 of the Bihar Municipal Act, 2007*
- (vii) *In the event of both the posts, Chief Councillor and Deputy Chief Councillor falling vacant as a sequel to the passage of the No Confidence Motion, till the new Chief Councillor and Deputy Chief Councillor are elected, all the powers and duties which, under the provisions of the Act or the rules or the regulations made thereunder or any other law for the time being in force, are to be exercised or performed by the Chief Councillor, shall be exercised or performed by the Chief Municipal Officer of the Municipality.*
- (viii) *On completion of the process, the Chief Municipal Officer shall submit a written report to the State Election Commission.*
- (ix) *Where the posts of Chief Councillor/ Deputy Chief Councillor fall vacant as a consequence of no confidence motion, the process of electing new chief Councillor or Deputy Chief Councillor shall be*



*completed within 30 days of report to the State Election Commission.”*

3.1. Section 25 of Act, 2007 provides for removal of Chief Councillor/Deputy Chief Councillor. As per sub-section (4) of Section 25, 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. It further provides that the procedure for the conduct of business in the special meeting shall be such as may be prescribed.

3.2. Rule 2 of Rules 2010 provides the process and manner to consider and dispose of the no confidence motion brought under Section 25(4) of the 2007 Act, against the Chief Councillor/Deputy Chief Councillor reproduced hereinabove. As per sub-rule (vi) of Rule 2 of Rules 2010, the quorum for the meeting shall be as per the provision of Section 50 of the Act, 2007.

3.3. Sub-section (2) of Section 50 of Act, 2007 makes it clear that the procedure, for conduct of business, in the special meeting, for removal of a Chief Councillor from his/her office by



way of a motion of no confidence, shall be such as may be prescribed. It further provides that if any time during a meeting of the Municipality, there is no quorum, it shall be the duty of the person presiding over such meeting either to adjourn the meeting or to suspend the meeting until there is a quorum.

3.4. Therefore, on conjoint reading of sub-section (4) of Section 25, sub-section (2) of Section 50 of the Act, 2007 and Rule 2 of Rules 2010, it becomes clear that special meeting shall be convened if one-third member of the total number of councillors give requisition, in writing, for a special meeting to discuss the motion of no confidence against the Chief Councillor and a Chief Councillor shall stand removed from his/her office if a resolution is carried out by a majority of the whole number of Councillors at a special meeting, which may be requisitioned. It also becomes clear from the aforesaid provisions that if there is no quorum, it shall be the duty of the person presiding over such meeting either to adjourn the meeting or to suspend the meeting until there is a quorum. Therefore, by virtue of Section 25(4) read with Rule 2 of Rules 2010 read with sub-section (2) of Section 50 of Act, 2007 even in case of special meeting convened to consider the question of no confidence motion against the Chief Councillor or the Deputy Chief Councillor under Section 25(4) of the Act,



2007 also if there is no quorum, it shall be the duty of the person presiding over such meeting either to adjourn the meeting or to suspend the meeting until there is a quorum. The same is also required to be read with sub-section (3) of Section 50 which provides that where a meeting has been adjourned under sub-section (2) due to non-quorum, the presiding authority shall fix date, time and place of the next meeting and the subject may be transacted at the adjourned meeting and no quorum shall be necessary for such adjourned meeting. Thus, quorum is required in the first meeting even in the case of special meeting under Section 25(4) of the Act 2007, however, at the adjourned meeting no quorum shall be necessary for such adjourned meeting.

3.5. Therefore, considering the relevant provisions of Sections 25 and 50, referred to hereinabove of the Act, 2007 and Rule 2 of Rules 2010, we are in complete agreement with the view taken by the Division Bench in the case of **Vibha Devi** (supra).

4. In view of the above and for the reasons stated above, the questions referred to the Full Bench reproduced hereinabove are answered as under:

- (a) The procedure stipulated in Section 50 of the Act would apply to the meeting referable to Section 25(4) of the Act, particularly in view



of the provision of sub-section (4) of Section 50 of the Act.

(b) In case of non-quorum at a special meeting called under Section 25(4) of the Act 2007, the meeting is required to be adjourned as provided under sub-section (2) of Section 50 of the Act and the motion can be considered at the adjourned meeting as per sub-section (3) of Section 50.

(c) In case, the meeting is convened under Section 25(4) of the Act, 2007 when not a single Councillor and the person who is expected to preside over the meeting, do not turn up, in that case, the meeting is required to be adjourned in case there is a non-quorum. However, it is clarified that if there is a quorum and the person who is expected to preside over the meeting do not turn up, in that case, the meeting shall be carried out as per Section 25 of the Act, 2007 read with Rule 2 of Rules 2010.



(d) The recording of the developments of the meeting by the Executive Officer can never be treated as the expression of the views about the resolution of the meeting and the same can be said to be recording the events to adjourn the meeting due to non-quorum only.

- 4.1. The aforesaid questions are answered accordingly.
5. With this the present Letters Patent Appeal is dismissed as no error has been committed by the learned Single Judge in directing that a fresh meeting be convened, for taking up the motion, to express want of confidence.

**(Mukesh R. Shah, CJ)**

**Ashutosh Kumar, J                      I agree.**

**(Ashutosh Kumar, J)**

**Mohit Kumar Shah, J                      I agree.**

**(Mohit Kumar Shah, J)**

Sunil/-

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| AFR/NAFR          | AFR        |
| CAV DATE          | 28.09.2018 |
| Uploading Date    | 01.11.2018 |
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