

Rakesh Kumar Vs. State of Jharkhand Through the Principal Secretary Urban Development Department and Ors

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Court : Jharkhand

Decided On : Aug-05-2016

Appellant : Rakesh Kumar

Respondent : State of Jharkhand Through the Principal Secretary Urban Development Department and Ors

Judgement :

1 L.P.A.No.219of2016 Againstthejudgmentandorderdated26.04.2016passedinW.P.(C)No.1340of2016 Rakesh Kumar, son of Shri Pradip Kumar Modi, Resident of Bara Chowk,P.OGiridih,P.S.GiridihTown,DistrictGiridih,PIN815301 ... Appellant Versus

1.StateofJharkhand,throughthePrincipalSecretary,Urban DevelopmentDepartment,ProjectBuilding,Dhurwa,POandPS Dhurwa,Ranchi834004,DistrictRanchi

2.DeputyCommissioner,Giridih,POandPSGiridih,DistrictGiridih, PIN815301

3.PresidingOfficercumAdditionalCollector,Giridih,POandPS Giridih,DistrictGiridih,PIN815301

4.GiridihMunicipalCouncil(GiridihNagarParishad),throughits ExecutiveOfficer,havingitsofficeatGiridih,POandPSGiridih, DistrictGiridih,PIN815301

5.ShriMukeshSahu,sonofShriBasoSaw,ResidentofRazzak Chowk,Pachamba,POPachamba,PSGiridihTown,DistrictGiridih

6.Smt.RaniDevi,wifeofShriS.Verma,ResidentofKoireTola,PO Pachamba,PSGiridihTown,DistrictGiridih

7.ShriShakilAkhtar,sonofMd.MumtazMirza,Residentof Bisanpur,OppositePetrolPumpStation,POPachamba,PSGiridih Town,DistrictGiridih

8.Smt.MayaDevi,wifeofShriNiranjanRay,ResidentofKrishna Nagar,Alkapuri,POGiridih,PSGiridihTown,DistrictGiridih

9.Smt.FirdowshParveen,wifeofMd.IslamQueraise,Residentof Bhandaridih,NewRoad,POGiridih,PSGiridih,DistrictGiridih

10.ShriAmitBadriyar,sonofLateAshokMadriyar,Residentof ShastriNagar,POGiridih,PSGiridihTown,DistrictGiridih

11.Smt.PunamBarnwal,wifeofShriSurendraBarnwal,Residentof NewOldTelephoneExchange,CourtRoad,POGiridih,PSGiridih, DistrictGiridih

12.Smt.SunitaDevi,wifeofShriAjaySaw,ResidentofDoctorLine, Makatpur,POMakatpur,PSGiridihTown,DistrictGiridih

13.Smt.NeelamJha,wifeofSriAjayKantJha,ResidentofChiraya GhatRoad,Giridih,POGiridih,PSGiridihTown,DistrictGiridih

14.Smt.MunniDevi,wifeofShriShankarPandit,ResidentofMasan GhatRoad,Barmasia,POGiridih,PSGiridihTown,DistrictGiridih

15.ShriSunitKumar,sonofShriShivPrakashRam,Residentof B.B.C.Road,NearBajrangChowk,POGiridih,PSGiridihTown, DistrictGiridih

16.ShriChaitaDas,sonofLateBhattuDas,ResidentofMohlichuwa, NearKiranPublicSchool,Giridih,POGiridih,PSGiridihTown, DistrictGiridih

17. Shri Chandra Dev Yadav, son of late Devi Yadav, Resident of Darji Mohalla, PO Giridih, PS Giridih Town, District Giridih
 18. Smt. Ganga Devi, wife of Shri Vijay Pilonia, Resident of Tiranga Chowk, Kali Manda Road, Giridih, PO Giridih, PS Giridih Town, 2 District Giridih
 19. Smt. Rita Chourasia, wife of Shri Naresh Chourasia, Resident of Gardena Gali, Babhan Toli Road, Giridih, PO Giridih, PS Giridih Town, District Giridih
 20. Shri Babul Prasad Gupta, son of Late Hanuman Prasad Gupta, Resident of Police Line Road, Barwadih, PO Giridih, PS Giridih Town, District Giridih
 21. Shri Bijendra Yadav, son of Sri Dev Nandan Singh Yadav, Resident of Tundi Road, Opposite of Mansarowar Hotel, Giridih, PO Giridih, PS Giridih Town, District Giridih ...
 ... Respondents For Appellant : Mr. Sumeet Gadodia, Advocate Mr. Prem Pujari Roy, Advocate For the State
 : Mr. Rajesh Kumar, G.P.V Mrs. Shweta Singh, J. Cto G.P.V For Respondent Nos. 5 to 21 : Mr. R.N. Sahay, Sr. Advocate,
 Mr. Yashwardhan Sahay, Advocate Mr. Ankit Vijay, Advocate Mr. Ashutosh Pd. Joshi, Advocate PRESENT CORAM
 : HON'BLE MR. JUSTICE VIRENDERSINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREECHANDRASHEKHAR
 C.A.V. on 25/07/2016 Pronounced on: 05/08/2016 Per Shree Chandrashekhar, J.

Legality of the No Confidence Motion initiated against the appellant writ petitioner (hereinafter to be referred as petitioner) was challenged before the Writ Court on the grounds of absence of the condition precedent under Rule 3(1) and breach of Rule 3(8) of Jharkhand Municipal (Procedure for conduct of No Confidence Motion against Deputy Mayor/Vice Chairperson) Rules, 2014. Holding that, the procedure prescribed and followed in the matter of No Confidence Motion does not appear to suffer from any vice of arbitrariness, unreasonableness or violation of Principles of Natural Justice, the Writ Court dismissed the writ petition. 2. Facts which are not in dispute are summarized hereunder;

Election for Giridih Municipal Council was held in the month of February/March, 2013. The election was held in terms of Jharkhand Municipal Act, 2011, for electing Ward Councillors for 30 constituencies under Giridih Municipal Council. The petitioner was declared elected 3 from Ward No. 25 under Giridih Municipal Council. Under Section 26 post of Mayor/Chairperson is filled up through direct election and Deputy Mayor/Vice Chairperson is elected by the elected Councillors from amongst themselves. The petitioner was elected Deputy Mayor/Vice Chairperson of Giridih Municipal Council and the Electoral Officer cum Deputy Commissioner, Giridih issued certificate dated 04.05.2013. A proposal for initiating No Confidence Motion against the petitioner was submitted on 23.02.2016 by 16 Ward Councillors to the Executive Officer of Giridih Municipal Council, who on the same day, vide letter dated 23.02.2016 forwarded the said proposal to the Deputy Commissioner, Giridih for initiating the proceeding of No Confidence Motion against the petitioner. On 25.02.2016, the Deputy Commissioner authorised one Ajay Shikari Kachhap, Additional Collector, Giridih to act as Presiding Officer, for conducting the proceeding of No Confidence Motion. Misc. Case No. 02 of 2016 was, thus, instituted for the said purpose. It appears that letter dated 25.02.2016 of the Deputy Commissioner was received by the Additional Collector on 29.02.2016, who vide order dated 03.03.2016 constituted a 4 member Enquiry Team to enquire into the basis for No Confidence Motion. A

report was submitted on 05.03.2016, on the basis of which the Presiding Officer (Municipal Council) cum Additional Collector, Giridih formed an opinion to convene a meeting for discussion and voting on the No Confidence Motion. The Presiding Officer fixed 14.03.2016, the date for the aforesaid purpose. The petitioner received notice dated 05.03.2016 on 06.03.2016. In the aforesaid background, contending that initiation of No Confidence Motion was in breach of Rule 3(1) of Jharkhand Municipal (Procedure for conduct of No Confidence Motion against Deputy Mayor/Vice Chairperson) Rules, 2014 and thus, void ab initio, the petitioner approached the Writ Court, however, as noticed above, unsuccessfully.

3. Heard the learned counsel for the parties and perused the documents on record. 4. Mr. Sumeet Gadodia, the learned counsel for the petitioner 4 assailed the impugned order dated 26.04.2016 passed in W.P.(C) No. 1340 of 2016, inter alia, on the following grounds: (i) Amendments in the Rules of 2014 which were

notified on 22.10.2014 and Gazetted on 5.11.2014 are not part of the 2014 Rule and the aforesaid amendments are deemed to be repealed/substituted by the Rules published in the Official Gazette on 11.02.2015. (ii) The No Confidence Motion initiated against the petitioner lacks the fundamental condition for initiating a No Confidence Motion against the Deputy Mayor/ Vice Chairperson. (iii) The No Confidence Motion was held beyond the statutory period of 15 days and hence, deemed to be lapsed. (iv) The validity of the Rules of 2014 cannot be challenged by the respondent in the Letters Patent Appeal preferred by the petitioner, and, in any case, since there is no separate challenge by the respondent to the Rules of 2014, this Court cannot adjudicate the validity of the Rules.

5. Per contra, Mr. R.N. Sahay, the learned Senior Counsel for the respondent nos. 5 to 21 reiterating the stand taken before the Writ Court, contended that: (i) Once the amended Rules were notified on 22.10.2014 and published in the Gazette, irrespective of its incorporation in the Rules of 2014, it became operative with effect from 22.10.2014. (ii) Formulation of Rules is a Legislative function whereas, publication of the Rules is an Executive function. (iii) There is no violation of statutory provision under Rule 3(8) of the Rules of 2014 in as much as, the Presiding Officer convened the meeting for 5 No Confidence Motion within 15 days from receipt of communication on 29.02.2016. (iv) There is no pleading on the issue of breach of Rule 3(8) of the Rules of 2014 nor there is a finding returned by the Writ Court on the said issue and therefore, the petitioner cannot canvas this issue in the instant Letters Patent Appeal.

6. On the basis of the pleadings of the parties and their rival contentions, the following issues arise for our consideration: (a) Whether the amendments which were notified on 22.10.2014 and published in Official Gazette would govern the initiation of No Confidence Motion against the petitioner? (b) Whether there is sufficient foundation laid by the petitioner to canvas breach of Rule 3(8), and if yes, whether the special meeting convened for No Confidence Motion against the petitioner was in breach of the said Rule? 7. There is no dispute that proceeding for removal of the Deputy Mayor/ Vice Chairperson is regulated in terms of Jharkhand Municipal (Procedure for conduct of No Confidence Motion against Deputy Mayor/ Vice Chairperson) Rules, 2014, and the rules which are in vogue were published in Jharkhand Gazette on 11.02.2015. The bone of contention is Rule 3(1).

A notification was issued on 28.08.2014 whereby in exercise of powers conferred under Section 590(1) r/w Section 30(5) of Jharkhand Municipal Act, 2011, by the order of the Governor of Jharkhand, Jharkhand Municipal (Procedure for conduct of No Confidence Motion against Deputy Mayor/ Vice Chairperson) Rules, 2014 were notified, and made effective from the date of notification. Rule 3(1) reads as under:

3. 1) uxj fuxe] uxj ifj"kn ;k uxj iapk;r dk izR;{k :i ls fuokZfpr ik"kZn] ;FkkfLFkfr] fdlh uxj fuxe dk miegkikSj rFkk uxj ifj"kn ;k uxj iapk;r ds mik/;{k ds fo:) vfo'okl izLrko is'k dj ldrk gSA6ijUrq ;g fd miegkikSj@mik/;{k ds fo:) vfo'okl izLrko oSlh ifjfLFkfr esa gh yk;h tk ldsxh tc og miegkikSj@mik/;{k vf/kfu;e dh /kkjk 32 ds v;/khu egkikSj@v/;{k dh 'kfDr;ksa dk iz;ksx] d`R;ksa dk IEiknu rFkk drZO;ksa dk fuoZgu dj jgk gksA English Translation Directly elected councillor or of Municipal Corporation, Municipal Council or Nagar Panchayat, as the case may be, may move No Confidence Motion against Deputy Mayor of Municipal Corporation and Vice Chairperson of Municipal Council or Nagar Panchayat. Provided that No Confidence Motion against a Deputy Mayor/ Vice Chairperson can be brought only when Deputy Mayor/ Vice Chairperson was exercising the powers, performing the functions and discharging the duties of the Mayor/ Chairperson under Section 32 of the Act.

8. Subsequently, vide notification dated 22.10.2014 which was published in the Jharkhand Gazette on 05.11.2014, Rule 3(1) was amended to the effect that the condition precedent for initiating a No Confidence Motion against Deputy Mayor/ Vice Chairperson of Municipal Council, that the No Confidence Motion can be held only if the Deputy Mayor/ Vice Chairperson was exercising powers and discharging functions of Mayor/ Chairperson under Section 32 of Jharkhand Municipal Act, 2011, was deleted. The effect of the aforesaid amendment in Rule 3(1) was that a No Confidence Motion can be initiated against the Deputy Mayor/ Chairperson of Municipal Council by the directly elected Councillors at any time, subject to other conditions under the Rules. 9. The learned counsel for the petitioner contended that before republication of the Rules of 2014 in the Official Gazette, there cannot be an

amendment in Rule 3(1) and, in any case, the amendment dated 22.10.2014 stands replaced by Rule 3(1) which was published in Official Gazette on 11.02.2015. It is submitted that it is the unamended Rule 3(1) which is in force today, and the amended Rule 3(1) does not form part of the Rules of 2014. The learned counsel has relied on a decision in *Bhagat Ram Sharma Vs. Union of India and others* reported in (1988) Supp. SCC 30. The stand taken by the respondents is that the amended Rule 3(1) once published in Official Gazette on 05.11.2014 became operative and still continues to govern the field.

10. A perusal of notification dated 28.08.2014, which was published in Jharkhand Gazette on 11.02.2015, discloses that the Rules of 2014 were made 'effective' from the date of notification, however, Rule 1(Kh) provides that Jharkhand Municipal (Procedure for conduct of No Confidence Motion against the Deputy Mayor/Vice Chairperson) Rules, 2014 would be 'operative' from the date of publication in Official Gazette. At this stage, provision of 2011 Act under which the Rules of 2014 were framed assumes significance. Section 590(1) of Jharkhand Municipal Act, 2011 provides that the State Government may, by notification, and subject to the condition of previous publication make Rules for carrying out the purposes of the Act. The Rules of 2014, though made effective from the date of notification, became law enforceable only after publication in Official Gazette. Prior to its publication in Official Gazette, the Rules of 2014 remained in Statute book, but without force of law. Section 590(1) of Jharkhand Municipal Act, 2011 permits enactment of Rules without publication in Official Gazette, however, it also contemplates a situation in which a condition is incorporated in the Rules itself subject to which the State Government may make Rules, and the condition in the instant case is previous publication. Rule 1(Kh) makes the Rules of 2014 operative only from the date of publication in the Official Gazette. The provision under Section 590(1), that the State Government may make Rules subject to the condition of previous publication, when read with the requirement under Rule 1(Kh) makes the intention of the State Government abundantly clear that before it is enforced, publication of the Rules of 2014 in the Official Gazette is mandatory. In the celebrated judgment, *Nazir Ahmad Vs. King Emperor* reported in AIR 1936 PC 253(2), it was observed by the Privy Council that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all.

11. As indicated in the case of *Rajendra Agricultural University Vs. Ashok Kumar Prasad and Ors.* reported in (2010) 1 SCC 730, wherein the issue involved was, whether a Statute made under the Act providing benefits to the teaching staff for which assent was given by the Chancellor can be enforced in the absence of publication in the Official Gazette and the issue was answered by the Hon'ble Supreme Court in negative, the Rules of 2014 would govern the procedure for No Confidence Motion only after its publication in Official Gazette. In the *Rajendra Agricultural University* case, the Supreme Court has held; 19. But once the law lays down that publication of a Statute in the Official Gazette is a part of the process of making a statute, the object of making such a provision for publication recedes into the background and becomes irrelevant, and on the other hand, fulfilment of the requirement to make public the Statute by publication in the Official Gazette becomes mandatory and binding.

12. In the context of publication, the landmark judgment in *Harla Vs. The State of Rajasthan* reported in AIR 1951 SC 467 makes the law on the controversy involved in the present case, clear. In the said case, under Section 3 of Jaipur Laws Act, 1923 the Court of Jaipur State was to administer the law passed by the State and published in the Official Gazette. It was an admitted position that the Councils of Ministers in the Jaipur State passed a Resolution purporting to enact Jaipur Opium Act, however, it was never published in the Official Gazette. The Hon'ble Supreme Court observed as under:

8. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can

nevertheless affect their lives, liberty and property by their mere passing of a Resolution without anything more is abhorrent to

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civilised man. Its shock to his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some reasonable sort is essential.

13. The enforceability and effect of the amended Rule 3(1) has been dealt with by the learned Single Judge in the following manner: From perusal of the notification dated 28th August, 2014 gazetted on 11th February, 2015 which is Annexure 2 to the writ application also, it appears that the rules have been made effective from the date of notification i.e. 28.08.2014 though the gazette notification also says that the rules would be effective from the date it is published in the Gazette. The amendment to the original rules are contained in notification dated 22nd October, 2014 which have been gazetted on 5th November, 2014 (Annexure 3). A combined reading of the notification dated 28th August, 2014 contained in Annexure 2 with the gazette notification dated 5th November, 2014 notifying the amendment to the Rules leads to the conclusion that the provisions of rule 3(1) have been duly amended by the rule making authority in exercise of the powers conferred under Section 590(1) of the Jharkhand Municipal Act, 2011 and have come on the statute book. The gazette notification of the original rules on 11th February, 2015 after the amendment to the original rules have been already gazetted on 5th November, 2014 would in no way dilute the force of the amendment to Rule 3(1) carried out by the competent authority i.e. the delegatee, State Government. Petitioner, therefore, cannot seek reliance upon the unamended rules containing the original Rule 3(1) which require that for moving of no confidence motion against a Chairperson/Vice Chairperson of Nagar Parishad, the person concerned was required to be acting in such capacity and would have discharged the duties and responsibilities of such post. That requirement having been done away with the amended Rules notified on 5th November, 2014 and impugned no confidence motion having been moved on 10 23rd February, 2016, the initiation of no confidence motion conforms to the amended rules. Therefore, it was not a requirement of law that the Vice Chairperson should be acting in the capacity of a Chairperson and discharging the duties and responsibilities of the Chairperson in respect of which the no confidence can only be moved. The first ground of challenge raised by the petitioner, therefore, does not succeed.

14. The finding recorded by the Writ Court, that the provisions of Rule 3(1) have been duly amended and the petitioner cannot seek reliance on the unamended Rule 3(1), overlooks the mandatory requirement of publication of Rules under Section 590(1) read with Rule 1(Kh).

15. As on the date, when a proposal for initiating No Confidence Motion against the petitioner was initiated, that is, on 23.02.2016, the Rules which are in force were published in Official Gazette on 11.02.2015. Both the learned counsels, appearing for rival parties, extensively referred to the Rules of 2014, a copy of which is appended to the instant appeal vide Annexure 2, and these Rules are which were notified on 28.08.2014 and published on 11.02.2015. The controversy centred around implication of amendment in Rule 3(1) which was published in Official Gazette on 05.11.2014. The expressions 'made effective' and 'made operative' have been used interchangeably and both connote similar meaning, however, when both the expressions are used in the Rules, insofar as, the enforceability of the Rules is concerned, the law on the subject confirms that the Rules come into force from the date it is made operative or on fulfillment of the condition precedent, if any.

The Rules of 2014 came into force on 11.02.2015 when the Rules were published in Official Gazette. The plea raised on behalf of respondent nos. 5 to 21 that notification dated 28.08.2014 was amended by notification dated 22.10.2014 which was duly published in Jharkhand Gazette on 05.11.2014, and thus the amended Rule 3(1) would be the law governing the field, least to say, is simply 11 misconceived. The Writ Court also recorded an erroneous finding that the Gazette Notification of the Rules on 11.02.2015 would not dilute the force of amendment in Rule 3(1) which was Gazetted on 05.11.2014.

16. PresentisacaseinwhichevenbeforetheRulesof2014 werepublishedintheOfficialGazette,differentprovisionsincluding, Rule3(1)oftheRulesof2014wereamended.Inthelegalparlance theexpression'amendment'hasaspecificconnotationanditsignifies substitution of a provision by a new provision in the Act/Rules/Statute etc. The dictionary meaning of the word 'amendment'is;correction;improvement;analterationoraddition toadocument,agreement,etc.;asmallchangeorimprovementthat is made to a law or a document. A similar meaning has been assigned to 'amendment' by the Supreme Court; the word amendmentconnoteschange,per M.NagarajVs.UnionofIndia reportedin(2006)8SCC212.

17. The facts disclosed in the present proceeding indicate thatthe allegedamendmentvide notification dated22.10.2014is not an amendment in true sense,rather, it was a modification in someoftheprovisionsincludingRule3(1),whichatthatpointin time,that is,priortopublicationofRulesof2014,werenotrequired tobepublishedintheOfficialGazette.Admittedly,theRulesof2014 whichwereinitiallynotifiedon28.08.2014werenotpublishedin the Official Gazette as on 22.10.2014 or on 05.11.2014, when amended Rule 3(1) was published in the Official Gazette. The publicationoftheamendmentsvidenotificationdated22.10.2014in theOfficialGazetteon05.11.2014isofnoconsequenceinasmuch as, even if it is deemed to have been incorporated in the Rules notifiedon28.08.2014,theamendmentsmustnowbedeemedto havebeensubstituted,oncetheRuleswhichhavebeenpublishedin OfficialGazetteon11.02.2015donotincorporatetheamendments. Theremaybecaseinwhichinitiallyforabriefperiodapartofthe Statute ismade operative andthe wholeof the enactmentcomes into force from a subsequent date, however, in that case also Act/Rules must have been published. No such necessity has been pleadedordisclosedinthepresentproceeding. 18. Theofficialrespondentsaswellasprivaterespondents, both,haveassertedthattheRulesof2014arevalidandtheyhave contestedthecaseonapremiseofvalidRules.Itisnotpleadedthat itwasamistakeonthepartoftheexecutiveinnotincorporatingthe amended Rule 3(1) in the Rules of 2014, nor has such mistake soughttoberectifiedafterpublicationofRuleson11.02.2015.This is also not a case of amendment by implication nor can this be pleaded by the respondents that the amendment published on 05.11.2014,byimplication,hassubstitutedRule3(1)of2014Rules whichwerepublishedon11.02.2015;theamendmentsbeingprior intime.Thepetitioner,however,hascontendedthatafterpublication of the Rules of 2014 in Official Gazette on 11.02.2015, the amendment in the Rules deemed to have been replaced by implication. ThefactremainsthattheRuleswhichareinoperation today, and which would regulate a proceeding for No Confidence Motionagainstthepetitioneraretheonewhichwerepublishedin the Official Gazette on 11.02.2015; Rule 3(1) of which puts a condition for initiating No Confidence Motion against Deputy Mayor/ViceChairperson.

19. Now,advertingtothefactsofthecase,wenoticethatit is not in dispute that the post of Mayor/Chairperson of Giridih Municipal Council never fell vacant on account of any reason whatsoeveroratleast,thepetitionerneverdischargedfunctionsof MayorunderSection32ofJharkhandMunicipalAct,2011afterhis electionon04.05.2013asDeputyMayor/ViceChairperson. Inthe aforesaid facts, the mandatory condition that a No Confidence MotionagainsttheDeputyMayor/ViceChairpersoncanbeinitiated onlywhenhe/shewasdischargingfunctionofMayor/Chairperson underSection32oftheAct,isabsentinthecaseofthepetitioner, and thus, it must be held that the initiation of No Confidence Motion, which was held on 14.03.2016, was illegal and void abinitio.Thepetitionersucceedsonthiscount. 20. Let us now enter into discussion with regard to Rule3(8)visavis15days'limit. 21. Objecting to the plea raised by the petitioner that

NoConfidenceMotionwasheldbeyondstatutoryperiodof15days
asprescribedunderRule3(8)oftheRulesof2014,Mr.R.N.Sahay, the learned Senior Counsel for the respondent nos. 5 to 21 contended that neither there was sufficient pleading in the writ petitionnortheWritCourthasreturnedafindingonthisissue. 22. Inapagraphno.33ofthewritpetition,thepetitioner haspleadednoncomplianceofthemandatoryrequirementsunder theRulesof2014,however,theissue wasnotfurtherelaborated. The learned counsel for the petitioner submitted that the notice dated05.03.2016wasreceivedbythepetitioneron06.03.2016and the writ petition was filed on 08.03.2016. In the aforesaid circumstance,thewritpetition,though,doesnotelaborateuponthe saidissue, however,the foundation for raising suchplea isthere. Moreover, in the rejoinder affidavit, a specific challenge based on Rule3(8)oftheRulesof2014hasbeenpleadedbythepetitioner,in detail. 23. A perusal of the impugned order dated 26.04.2016 revealsthattheaforesaidissuewasdebatedbeforetheWritCourt and in this regard the respondents took a specific stand that NoConfidenceMotionwascarriedoutwithin15daysfromthedata ofreceiptofcommunicationdated25.02.2016on29.02.2016bythe AdditionalCollector,Giridih.Itbecomesapparentthatthecounsel forthe partiesledargumentson thisissue,when one noticesthe discussion in the impugned order, wherein the Writ Court has observedasunder: Now let me address the second ground of challenge. Upon consideration of the materials available on record and perusal of the relevant Rules 3(7) read with 14 Rule3(8)and3(11)itisevidentthattheyspecifyaparticular procedure to be followed in the matter of initiation and carryingoutofnoconfidencemotion.....

24. ItisanotherissuethattheWritCourthasnotdeliberated uponthesaidissuechronologically,however,thefactremainsthat thelearnedSingleJudgehasheldthat,theNoConfidenceMotion does not appear to suffer from any vice of arbitrariness, unreasonableness orviolationsofprinciplesofnaturaljustice.In the aforesaid facts, it is held that the petitioner has thrown a challengetotheNoConfidenceMotionheldon14.03.2016alsoon thegroundthatthespecialsession/meetingwasconvenedbeyond thestatutoryperiodof15days,asprescribedunderRule3(8). 25.

Thelearnedcounselforthepetitionercontendedthatthe Additional Collector, who was authorised by the Deputy CommissionertoactasthePresidingOfficerunderRule3(8),actsas adelegateeandwhileso,thestatutoryprovisionwhichmandates thataspecialmeetingshallbeconvenedfordiscussionandvotingon NoConfidenceMotionwithin15daysofthereceiptoftheproposal does not get extended. It is submitted that since discussion and votingfortheNoConfidenceMotionwereheldbeyond15daysof the date of communication of the proposal to the Deputy Commissioner, Giridih on 23.02.2016, the No Confidence Motion dated14.03.2016washeldbeyond15days'statutorylimit,andthis is so even from 25.02.2016 when the Additional Collector was authorisedbythePresidingOfficer.Rule3(8)isreproducedbelow: 3(8) uxj fuxe] uxj ifj"kn@uxj iapk;r dk ihBklhu inkf/kdkjh ;FkkfLFkfr lwpuk izkIr gksus ds 15 fnuksa ds Hkhrj vfo'okl izLrko ij ppkZ ,oa ernku gsrq fo'ks"k cSBd dk vk;kstu lqfuf'pr djsxk(ijUrq bl cSBd gsrq izR;sd ik"kZn dks] cSBd vk;ksfr djus dh fu/kkZfjr frfFk ls de ls de 7 iwjs fnu igys ihBklhu inkf/kdkjh }kjk fu;ekoyh ds izi=&2 esa lwpuk rkfeyk@gLrxr dj;k tk,xk ,oa mldh ikorh jlhn lqjif{kr j[kh tk,xhA15EnglishTranslation The Presiding Officer of Municipal Corporation, Municipal Council/Nagar Panchayat, as the case may be, within 15 days of receipt of information, shall convene special meeting for the discussion and vote on NoConfidenceMotion. However,forthismeeting,atleastsevendays'notice in Prapatra2 of the Rules shall be served upon every councillor prior to the scheduled date for convening the meetinganditsacknowledgmentsshallbekeptsafely. 26.

ThelearnedSeniorCounselfortheprivaterespondents submittedthatwhenastatutoryfunctionaryisaskedtoperforma statutory duty within the prescribed period, the same would be directory and not mandatory. Moreover, Section 30(5) of the Act, 2011 does not prescribe a time limit as provided under Rule3(8)oftheRulesof2014and,therefore,thePresidingOfficer wasnotboundtoconvenethe specialmeetingforNoConfidence Motion within 15 days, though in the present case it has been convenedwithinthestatutorylimitof15days.ThelearnedSenior Counselreliedondecisionsin SalesTaxOfficerVs.K.I.Abraham reportedinAIR1967SC1823,TheStateofRajasthanVs.TheMewar SugarMillsLtd.reportedinAIR1969SC880andtwojudgmentsof MadhyaPradeshHighCourtviz,

DhumadandhinVs.StateofM.P. reportedin1997(2)MPLJ175andNanchiBai&Ors.Vs.Stateof M.P.reportedin2005(1)MPLJ200. 27. Thefacts onthisissuearenotindispute.Theproposal forNoConfidenceMotionsignedby16WardCouncillors,received bytheExecutiveOfficerofGiridihMunicipalCouncil,wasforwarded to the Deputy Commissioner on 23.02.2016, who on 25.02.2016 nominatedtheAdditionalCollector,Giridih toactasthePresiding Officer.ThiscommunicationwasreceivedbytheAdditionalCollector on 29.02.2016 and the special meeting was convened on 14.03.2016. 16 28. Inthefirstplace,ithastobekeptinmindthatwhile interpretingaprovision,theobject,purposeandtheschemeofthe Act/Rules have to be ascertained. The language employed in Rule 3(8) is imperative in nature. The expression used is within 15days.Theuseofthewordwithinmakesitabundantlyclear that adherence to the period prescribed is mandatory and not directory.ThefactsofthecaseandtheprovisionunderRule3(8) clearlybringoutdistinctionbetweenthepresentoneandtheones citedbythelearnedSeniorCounselfortheprivaterespondents.

29. There cannot be a dispute to the proposition that a delegatecannotexerciseafunctionwhichisnotlegallyvestedin theprincipal,however,theissueinvolvedintheinstantappealisa little different, on account of power conferred upon the Deputy Commissioner to authorise a person under Rule 3(4) to act as the Presiding Officer. Rule 3(4) reads as under:

3.

4) uxj fuxe ds miegkikSj rFkk uxj ifj"kn@uxj iapk;r ds mik/;{k ds fo:) is'k vfo'okl izLrko dk ihBklhu inkf/kdkjh ml ftyk dk mik;qDr ;k muds }kjk izkf/kd`r inkf/kdkjh gksxkA English Translation TheDeputyCommissioner of thedistrictor an officerauthorizedbyhimshallbethePresidingOfficerofNo ConfidenceMotionbroughtagainsttheDeputyMayorofthe MunicipalCorporationandViceChairpersonoftheMunicipal Council/NagarPanchayat. 30. TheuseofthewordorinRule3(4)signifiesthatboth theDeputyCommissionerandtheAuthorisedOfficeraretoactas PresidingOfficer.This is not a case of delegation of power by the Deputy Commissioner. Rule 3(4) recognises both the Deputy Commissioner as well as the person authorised by the Deputy Commissioner as, Presiding Officer. Rule 3(4) merely confers power on the Deputy Commissioner to authorise an officer to act as Presiding Officer. The authorisation is, in fact, under the subordinate 17 legislation and by such authorisation the Deputy Commissioner is not delegating its power to the Authorised Officer. Once a person is authorised by the Deputy Commissioner, 15 days' period starts from the date when he receives the communication to act as the Presiding Officer. The contention raised on behalf of the petitioner carries with it innumerable source of mischief. Every possible delay at the end of Deputy Commissioner would frustrate the No Confidence Motion, and, in turn, the very object for enacting the Rules gets frustrated. Rule 4(3)(ga) provides that a second No Confidence Motion cannot be initiated within two years. In cases where another person has been authorised to act as Presiding Officer, if it has to be held that 15 days' limit commences from the receipt of communication for No Confidence Motion by the Deputy Commissioner, the office of the Deputy commissioner itself may become a fertile source of mischief. A purposive construction of Rule 3(8), indeed, is the most wanted thing to do. There is no dispute that the Additional Collector, Giridih received communication dated 25.02.2016 on 29.02.2016, and from that date the No Confidence Motion convened on 14.03.2015 falls within 15 days' limit. It is thus, held that the No Confidence Motion was held within the prescribed period under Rule 3(8).

31. What follows from the aforesaid discussions is that the instant Letters Patent Appeals succeed on the first issue, and it is held that initiation of No Confidence Motion against the petitioner was illegal and void ab initio. Resultantly, impugned order dated 26.04.2016 passed in W.P.(C) No. 1340 of 2016 is set aside, and the writ petition stands allowed. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Jharkhand High Court, Ranchi, Dated: 5th/08/2016

Amit/Manish/A.F.R.

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