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**(2019) 11 MAN CK 0015**

**In the Manipur High Court**

**Case No : Writ Petition (c) No. 951, 962 Of 2018**

Akoijam Sanatomba Singh

APPELLANT

Vs

State Of Manipur

RESPONDENT

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**Date of Decision : 22-11-2019**

**Acts Referred:**

Manipur Municipalities Act, 1994 — Section 31, 31A

**Citation : (2019) 11 MAN CK 0015**

**Hon'ble Judges : Kh. Nobin Singh, J**

**Bench : Single Bench**

**Advocate : M. Hemchandra, Romendro Sharma, N. Ibotombi, M. Rarry, Priyashimala**

**Final Decision : Dismissed**

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## **Judgement**

Kh. Nobin Singh, J

[1] Heard Shri M. Hemchandra, learned Senior Advocate appearing for the petitioner in WP(C) No.951 of 2018 and Shri Romendro Sharma, learned Advocate appearing for the petitioner in WP(C) No.962 of 2018; Shri N. Ibotombi, learned Senior Advocate appearing for the private respondents; Shri M. Rarry, learned Addl. Advocate General appearing for the State respondent and Smt. Priyashimala, learned Advocate appearing for the respondent Nos.2 and 3.

[2] The above two writ petitions have arisen out of a similar set of facts and accordingly, the same are being disposed of by this court by way of a common judgment and order.

[3.1] The Thoubal Municipal Council (hereinafter referred to as "the Council") is a body constituted under the provisions of the Manipur Municipality Act, 1994 (hereinafter referred to as "the Act, 1994") and after the election being held, eighteen persons were elected as the Councilors of the Council vide Notification dated 15-01-2016. After the swearing in of the newly elected Councillors, Shri Th. Shyamo Singh and Shri Kh. Thambal Singh were elected as the Chairperson

and Vice-Chairperson of the Council.

[3.2] A requisition dated 29-10-2016 was submitted to the Executive Officer of the Council to convene a special meeting of no-confidence motion against Shri Kh. Thambal Singh, the Vice-Chairperson of the Council. On 22-08-2017, the Executive Officer of the Council issued a notice convening a special meeting of no-confidence motion against Shri Kh. Thambal Singh to be held on 01-09-2017 on which fourteen Councillors supported the motion and consequently, the election of the new Vice-Chairperson of the Council was held on 29-09-2017. The present petitioner was elected uncontested as the new Vice-Chairperson of the Council. Upon assuming the office of the Vice-Chairperson, the petitioner has been performing his duties and functions without any blemish.

[3.3] To his shock and surprise, nine councilors submitted a requisition dated 05-12-2017 for holding a special meeting of no-confidence motion against the petitioner by making unfounded and baseless allegations that he had filed many cases. Being aggrieved by it, the petitioner approached this court by way a writ petition being WP(C) No.441 of 2018 praying for quashing the requisition dated 05-12-2017. Despite number of opportunities being given to the respondents therein, no counter was filed on their behalf and on 27-07-2018 this Court disposed of the said writ petition with a direction. In compliance with the Court's order, the Executive Officer issued an Office Memorandum dated 06-10-2018 stating that the requisition dated 05-12-2017 was found in order. Being aggrieved by the said O.M. dated 06-10-2018, the instant writ petition being WP(C) No.951 of 2018 was filed by the petitioner on the inter-alia grounds that the said requisition dated 05-12-2018 was not in order as per the provisions of Section 31 of the Act, 1994; that no opportunity of being heard was given to the petitioner before the issuance of the said O.M; that the said O.M was issued without application of mind and in a mechanical manner; that there was no official notice asking the nine councilors to submit their respective affidavits and that the Executive Officer acted unfairly and in a bias manner instead of performing his statutory duty without taking sides.

[4] The stand of the respondent Nos.2 and 3 as stated in their affidavit, is that a motion of no-confidence is a part of democratic process and it can be convened without an allegation. It has further been stated that in order to comply with the Court's order dated 27-07-2018, the Executive Officer issued a letter dated 25-09-2018 thereby requesting the Councillors to be present before its office in person on 28-09-2018 for authentication of the requisition dated 05-12-2018. After the letter having been received by them, the Councillors submitted their respective certificates/ affidavits and only after verifying the authenticity/ genuineness of the requisition, the O.M was issued by him. The allegation that the petitioner was not given an opportunity of being heard, was specifically denied by him. The stand of the private respondent No.4 is similar to that of the respondent No.2 & 3 and therefore, the averments made in his affidavit, are not repeated here for the sake of brevity and in addition thereto, it has been stated

by him that the said O.M was issued by the Executive Officer in compliance with the Court's order dated 27-07-2018. An affidavit on behalf of the respondent No.1 has also been filed stating that the requisition was submitted after about 2 months 6 days after the petitioner being declared as successful in the election held for the post of Vice-Chairperson on 29-09-2017 and therefore, the protected period and benefit of one year moratorium as provided in Section 31A of the Act is mandatory to be extended to the petitioner for which the respondent No.1 has relied upon the decision rendered by the Hon'ble Supreme Court in Vipulbhai M. Chaudhary Vs. Gujarat Cooperation Mill Marketing Federation Ltd., (2015) 8 SCC 1.

[5.1] After the issuance of the O.M dated 06-10-2018, the Executive Officer issued a notice dated 09-10-2018 for convening a special meeting for consideration of no-confidence motion to be held on 19-10-2019 in pursuance to the order dated 26-09-2018 passed by this court in WP(C) No.324 of 2018 wherein the petitioner was not arrayed as a party respondent. Being aggrieved by the said notice, the petitioner filed the instant writ petition being WP(C) No.962 of 2018 on the inter-alia grounds that the Chairperson of the council cannot preside over the meeting to be held on 19-10-2018 and he himself was facing disqualification for which the State Government directed the Deputy Commissioner to conduct an enquiry against the Chairperson vide letter dated 13-04-2018. The Deputy Commissioner submitted a report which was forwarded to the Executive Officer for placing the same before the Council in a special meeting to be held on 03-08-2018. The executive Officer issued a notice dated 07-08-2018 informing that a special meeting be held on 17-10-2018. This notice dated 07-10-2018 came to be challenged by Shri Th. Shyamo Singh by way of a writ petition being WP(C) No.740 of 2018 wherein this court vide order dated 16-10-2018 allowed the special meeting to be held but directed that the same should not be given effect to without the leave of the Court. Accordingly, the no-confidence motion was held on 21-08-2018 and although the resolution was passed by the majority, the same could not be given effect to because of the order dated 16-08-2018 passed by this Court. If the Chairperson is allowed to preside over the no-confidence motion against the petitioner on 19-10-2018, it would lead to a peculiar situation wherein the petitioner is removed from the post of the Vice-Chairperson by a vote of a person who is deemed to be disqualified from the Council for misconduct.

[5.2] An affidavit has been filed by the respondent No. 4 stating that the motion of no-confidence being a part of a democratic process, it can be convened without an allegation and even if nine councilors are making false and baseless allegations against the petitioner, the same could not be the reasons for rejecting the requisition. The O.M dated 06-10-2018 was issued by the Executive Officer in compliance with the order passed by this Court on 27-07-2018. After the receipt of the requisition dated 05-12-2017, the Executive Officer wrote a letter dated 06-12-2017 to the State Government for granting permission/ approval for holding a meeting of no-confidence motion but no such permission/ approval was

granted. Accordingly, two councilors filed a writ petition being WP(C) No.324 of 2018 praying for directing the Executive Officer to convene a special meeting. This Court disposed it of by passing an order dated 26-09-2018 with the direction to convene a special meeting for consideration of the no-confidence motion against the Vice-Chairperson. In the enquiry report submitted by the Deputy Commissioner, there were no adverse remarks against the private respondent. In a special meeting held on 22-08-2017 for removal of the then Vice-Chairperson, the private respondent presided over the said meeting and therefore, there is nothing wrong, if the meeting is chaired by the private respondent. In a meeting for removal of the Vice-Chairperson, the Chairperson is the appropriate person who shall preside the meeting and the Deputy Commissioner cannot be permitted to do the needful. An affidavit on behalf of the respondent Nos. 2 and 3 has been filed but the stand taken therein by them is similar to that of the stand taken by them in their affidavit filed in writ petition being WP(C) No.951 of 2018 and therefore, the same are not repeated here for the sake of brevity.

[6] It has been submitted by Shri M. Hemchandra, the learned Senior Advocate appearing for the petitioner that the grave imputation were made against the petitioner raising doubts as to his conduct in the requisition; that the allegation made in the requisition that the petitioner being the Vice-Chairperson of the Council, filed many cases against the Council, was totally false; that since the Executive Officer failed to see whether the requisition was in order or not for more than two months, the requisition would be deemed to have lapsed because the Executive Officer did not act within 21 days as directed by this Court; that the requisition dated 05-12-2017 was not in order as per Section 31 of the Act, 1994, as it did contain serious allegations against the petitioner and that the Executive Officer issued the OM dated 06-10-2018 without application of mind and in a mechanical manner. Relying upon the decision rendered by the Hon<sup>ble</sup> Supreme Court in *State of Punjab Vs. Gurdial Singh*, (1980) 2 SCC 471, it has further been submitted by him that since the Executive Officer was empowered by this Court to verify as to whether the requisition was in order, he should have done it in a free, fair, transparent and reasonable manner. Combating his contention, the learned counsel appearing for the private respondent and the Executive Officer relied upon the decision rendered by the Hon<sup>ble</sup> Supreme Court in *Vipulbhai M. Chaudhary Vs. Gujarat Co-operative Marketing Federation Ltd.*, (1974) 2 SCC 706. The stand of the State Government as submitted by Shri M. Rarry, the learned Addl. Advocate General, is that the requisition ought not to have been accepted by the Executive Officer in terms of the law laid down by the Hon<sup>ble</sup> Supreme Court in *Vipulbhai M. Chaudhary* case (supra), as it was submitted within hardly three months from the day on which the petitioner took charge of the Vice-Chairperson.

[7] In order to decide the issues involved herein, the interpretation of the provisions of Section 31 of the Act, 1994 is indispensable and in other words, Section 31 which relates to the procedure to be followed in matters relating to no-

confidence motion against the Chairperson and the Vice-Chairperson of the Council, is relevant for the present case. Section 31 reads as under:

"31(1) The State Government may remove by a notification in the Official Gazette, from office the Chairperson or the Vice-Chairperson, in pursuance of a resolution passed by a majority of the total number of the Councillors and supported by not less than two third of the Councillors present and voting at a meeting specially convened for the purpose under sub-section (2).

(2) For the purposes of sub-section (1) a meeting of the Nagar Panchayat or of the Council shall be held in the following manner, namely:-

(i) The meeting shall be convened by the Executive Officer on a requisition signed by not less than one-fifth of the total number of Councillors constituting the Nagar Panchayat or the Council for the time being;

(ii) The notice of such a meeting specifying the time and place thereof shall be dispatched by the Executive Officer to every Councillor ten days before the meeting;

(iii) The Chairperson or the Vice-Chairperson, as the case may be, against whom the resolution referred to in sub-section (1) is to be moved, shall not preside over the meeting;

(iv) A copy of the notice shall be sent to the State Government.

(3) If the office of the Chairperson becomes vacant all powers and duties of the Chairperson, may, until the election of a new Chairperson be exercised and performed by the Vice-Chairperson.

(4) The removal of the Chairperson or the Vice-Chairperson under sub-section (1) shall be effective from the date of its resolution in this regard."

Sub-section (1) talks about the power of the State Government for removal of the Chairperson or the Vice-Chairperson by issuing a Notification in the official gazette and such power can be exercised by it only after a resolution is passed by a majority of the total number of Councillors and supported by not less than two-third of the Councillors present and voting at a meeting specially convened for the purpose. The manner in which such a meeting shall be held, is specified in sub-section (2) which provides that a meeting shall be convened by the Executive Officer on a requisition signed by not less than one-fifth of the total number of Councillors. The notice of such a meeting specifying the time and place thereof shall be dispatched by the Executive Officer to every Councillor ten days before the meeting. What does the term "requisition" mean? The term "requisition" is not defined in the Act, 1994 and therefore, the same needs to be understood with reference to the meaning given in the Dictionary. According to the Advanced Learner's Dictionary, it means 'a formal, official written request or demand for something'. In other words and in the context of the present case, it is nothing but a formal, official request made by the Councillors for convening a

special meeting for consideration of no-confidence motion. In sub-section (2) (a), it is only qualified by the expression "signed by not less than by one-fifth of the total number of Councillors" and nothing else.

[8] In the present case, admittedly, a requisition dated 05-12-2017, signed by nine Councillors out of eighteen Councillors of the Council, was submitted to the Executive Officer for convening a special meeting for consideration of no-confidence motion against the petitioner. But the Executive Officer appears to have not issued a notice immediately thereafter but it came to be challenged before this Court by the present petitioner by way of a writ petition being WP(C) No.441 of 2018 on the inter-alia grounds that there were serious allegations made against him in the requisition for which an opportunity of being heard was required to be given to him and that the signatures of the Councillors who were signatories to the requisition, were obtained on a sheet of paper without disclosing the contents thereof. This writ petition was disposed of on 27-07-2018 by this Court, the operative portion of which reads as under:

"...It is directed that if the said requisition is found to be in order, the Executive Officer shall proceed further for convening the meeting for considering the no-confidence motion and on the other hand, if it is not found to be in order, he may reject the same and inform the petitioner of the same. However, the same must be without any further delay and be done preferably within a period of 3 (three) weeks from today."

The present petitioner appears to be fully satisfied with the said Court's order dated 27-07-2018 with the result that he did not prefer any appeal against it and consequently, this Court's order dated 27-07-2018 had attained its finality. It may be noted that no liberty was given to the present petitioner to approach this Court again questioning the said requisition, in the sense that the grounds on which he did file the said writ petition, were no longer available with him and that no fresh writ petition could be filed by him for the same purpose. There is no ambiguity in this Court's order dated 27-07-2018 and the direction was that if the requisition was found to be in order, the Executive Officer should proceed for convening the meeting for considering the no-confidence motion. In other words, the only task that was entrusted to him, was that he should find out whether the requisition was in order and if yes, he should proceed with it in accordance with the provisions of the Act, 1994.

[9] At this juncture, one aspect which needs to be considered by this Court is that instead of convening a meeting in terms of the requisition dated 05-12-2017, the Executive Officer wrote a letter dated 06-12-2017 to the State Government seeking permission/ approval for holding a meeting for no-confidence motion against the petitioner. This letter dated 06-12-2017 was challenged before this Court by two Councillors in writ petition being WP(C) No.324 of 2018 on the ground that there was no need of seeking approval/ permission for convening a special meeting for consideration of no-confidence motion and that the Executive Officer failed to discharge his duties as cast upon

him under Section 31 of the Act, 1994. It was contested by the Council raising objections in its affidavit contending that in view of the letter dated 31-05-2003 of the State Government, the Executive Office was required to obtain permission from the State Government for convening a meeting for consideration of no-confidence motion. But during the course of hearing, it was submitted by Shri N. Ibotombi, the learned counsel appearing for the petitioners therein that the issue had already been decided by the Hon'ble Gauhati High Court, Imphal Bench in WP(C) No.468 of 2007, Ch. Yaimabi Devi Vs. State of Manipur based on the submission of the learned Advocate General that Section 31 of the Act, 1994 did not prescribe any requirement of prior permission from the State Government for holding a special meeting for consideration of no-confidence of motion. On the strength of the said decision, this Court had disposed of a writ petition being WP(C) No.19 of 2017. Considering the aforesaid circumstances including the said decisions, this Court vide its order dated 26-09-2018 allowed the writ petition being WP(C) No.324 of 2018 and setting aside the letter dated 06-12-2017, this Court directed that the Executive Officer should convene a special meeting for consideration of the no-confidence motion against the present petitioner within two weeks from the date of receipt of the order, the relevant paragraph 7 of which reads as under:

"7. From the aforesaid decisions, it is absolutely clear that in order to convene a special meeting for consideration of No-Confidence Motion, the local bodies and in particular, the Executive Officers thereof are not required to obtain prior approval from the State Government. This Court has no option but to allow the writ petition and consequently, the letter dated 06-12-2017 stands quashed and set aside with the direction that the respondent No. 3 shall convene a special meeting for consideration of the No-Confidence Motion against the Vice-Chairperson of the Thoubal Municipal Council within a period of two weeks from the date of receipt of a copy of this order."

The said Court's order dated 26-09-2018, too, appears to have not been challenged before the appropriate forum by anyone or for that matter, the petitioner herein and therefore, it has attained its finality. Therefore, it ought to be complied with by all the concerned authorities without any further delay but unfortunately, it remains unimplemented.

[10] In order to comply with this Court's order dated 27-07-2018, the Executive Officer appears to have taken appropriate steps, as is evident from the OM dated 06-10-2018 issued by him. On perusal of this OM, it is seen that the Councillors verified the authenticity of the requisition by submitting their certificates/affidavits and only after the requisition was found to be in order, the Executive Officer decided to proceed further for convening the meeting for consideration of no-confidence motion against the petitioner. In fact, the Executive Officer ought to have issued the notice straightway specifying the time and place for holding a meeting, when it was found by him that the requisition was in order. Nothing prevented him from doing that and moreover, this Court vide its order dated

26-09-2018 had directed him to convene a meeting within two weeks from the date of receipt of the order and in compliance thereof, the Executive Officer issued the notice dated 09-10-2018 to the Councillors informing them that the meeting be held on 19-10-2018. This notice dated 09-10-2018 came to be challenged by the petitioner in WP(C) No.962 of 2018 wherein this Court, while issuing notice to the respondents, was pleased to direct that it should remain suspended, because of which the meeting for consideration of no-confidence motion against the petitioner had not been held so far.

[11] Some of the grounds raised in these two writ petitions are the ones which had been taken by the petitioner in WP(C) No.441 of 2018 and since the order disposing it of, had attained its finality, it was not open to the petitioner to raise them again in these writ petitions. The only thing which the Executive Officer ought to do pursuant to the Court's order dated 27-07-2018, was to examine and verify as to whether the requisition was in order within the bounds of the provisions of Section 31 of the Act, 1994 which he did and issued the OM dated 06-10-2018. Hardly, few days later, he issued the notice dated 09-10-2018 for convening the meeting for consideration of no-confidence motion. One of the contentions of the learned counsel appearing for the petitioner is that since the requisition was submitted within three months from the date on which he assumed the charge of the Vice-Chairperson, the Executive Officer ought to have rejected it. His contention finds support from Shri M. Rarry, the learned Addl. Advocate General who has submitted that the requisition ought not to have been accepted by the Executive Officer in terms of the law laid down by the Hon'ble Supreme Court in Vipulbhai M. Chaudhary case (supra), as it was submitted within hardly three months from the day on which the petitioner took charge of the Vice-Chairperson. Their contention has no substance for the reason that the time period for submission of the requisition is nowhere provided in Section 31 of the Act, 1994. By an amendment of the Act, 1994 vide Notification dated 29-08-2005 inserting Section 31A, it has been provided that if the motion of no-confidence against the Chairperson or the Vice-Chairperson is defeated, no fresh motion of no-confidence against them shall be brought within a year from the date of such defeat of the motion. This Section 31A will have no application to the facts of the present case because there is no any motion of no-confidence which has been defeated against the petitioner, rather the motion of no-confidence taken up against Shri Kh. Thambal Singh was voted by the majority in favour of the motion. The question of defeat of a motion of no-confidence did not arise at all. The decision rendered by the Hon'ble Supreme Court in Vipulbhai M. Chaudhary case (supra) and relied upon by the learned Addl. Advocate General is not applicable, as the facts of that case are not identical with that of the present case. The issue involved therein was as to whether in the absence of a specific provision on removal by no-confidence in the Act, Rules or even bye-laws of a co-operative society, the Chairperson/ elected officer bearers can be removed by a motion of no-confidence. The Hon'ble Supreme Court answered it in the affirmative. In the State of Manipur, an Act called 'the Manipur Municipality Act,

1994? was enacted by the State Legislature wherein a specific provision relating to motion of no-confidence is provided in Section 31 thereof. This Act or any other similar Act was not the subject matter in issue in Vipulbhai M. Chaudhary case. The second point which the learned counsel appearing for the petitioner has emphasized, is that there are many allegations in the requisition against the petitioner which the Executive Officer failed to consider at the time of complying with the Court's order dated 27-07-2018. As has been observed hereinabove, the requisition is nothing but a formal and official request for convening a meeting for consideration of no-confidence motion and only the condition as mentioned therein which is required to be fulfilled, is that the requisition shall be signed by not less than by one-fifth of the total number of the Councillors. The nature and the content of the requisition are not prescribed in Section 31 of the Act, 1994. It does not make any difference whether a requisition contains an allegation or not, provided it fulfills the conditions mentioned in the Act, 1994. In the affidavit filed on behalf of the respondent Nos.2 and 3, it has been categorically stated that a motion of no-confidence is a part of democratic process and it can be convened without an allegation. In order to comply with the Court's order dated 27-07-2018, the Executive Officer issued a letter dated 25-09-2018 thereby requesting the Councillors to be present before its office in person on 28-09-2018 for authentication of the requisition dated 05-12-2018. After the letter having been received by them, the Councillors submitted their respective certificates/ affidavits and only after verifying the authenticity/ genuineness of the requisition, the O.M. dated 06-10-2018 was issued by him. In this regard, the decision of the Hon'ble Supreme Court rendered in Babubhai Muljibhai Patel case (supra) to the effect that a motion of no-confidence need not set out any ground on which it is based and in other words, the existence of a ground is not a prerequisite of a motion of no-confidence, is important, relevant and applicable. The other argument advanced by the counsel appearing for the petitioner is that even though the direction of the Court was to be complied with within three weeks from the date of order, the Executive Officer took almost three months for it, because of which the requisition should be deemed to have lapsed. It may be noted that the non-compliance with the Court's order may amount to a contemptuous act but that itself will not render the requisition invalid and illegal. If the Executive Officer failed to comply with the Court's order in time, it could have been brought to the notice of this Court so that appropriate action could have been taken against him. There was no any such grievance being brought to the notice of this Court in that regard. There is no and can be no any dispute as regards the law laid down by the Hon'ble Supreme Court in State of Punjab Vs. Gurdial Singh case (supra) but it will have no application to the facts of the present case, as the facts that case are not similar to the facts of the present case. Considering the submissions of the counsel appearing for the parties, this Court is of the view that the writ petitions are devoid of any merit and are liable to be dismissed by this Court. Moreover, the purpose of filing these writ petitions is nothing but to defeat indirectly the very purpose of Section 31 of the Act, 1994 and also to delay in convening the special meeting for

consideration of no-confidence motion against the petitioner which needs to be discouraged by this Court. In a democratic country, the process of election shall not be disturbed at all except in cases where the procedures as prescribed in the relevant Act and the rules made thereunder, are not strictly followed by the concerned authority.

[12] In view of the above and for the reasons stated hereinabove, the instant writ petitions are dismissed, with no order as to costs, with the direction that the respondent No.3, the Executive Officer of the Council shall take immediate and appropriate step/ action as provided in Section 31 of the Act, 1994 to ensure that a special meeting of the Council for consideration of no-confidence motion against the petitioner is convened within three weeks from today without fail. Since the motion of no-confidence is against the Vice-Chairperson, the special meeting to be convened shall be presided over by the Chairperson.