

(2011) 12 GAU CK 0054

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s).60 and 75 of 2011

Chingangbam Kunjo Singh and Ors.

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Manipur Panchayati Raj Act, 1994 — Section 57(4), 57(4)

Citation : AIR 2012 Guw 78 : (2012) 1 GLR 516

Hon'ble Judges : T.Nandakumar Singh, J

Bench : Single Bench

Advocate : Mr. H.S. Paonam and Mr. A. Arunkumar for the petitioners., Mr. N. Kumarjit Singh, Mr. N. Surendrajit and Mr. Tamphamani for the respondents.,
Advocates appearing for Parties

Judgement

1. WP(C) No.60 of 2011 and WP(C) No.75 of 2011 are jointly heard for disposal by a common judgment and order, since the two writ petitions are challenging the Notification dated 24.1.2011 issued by the Chief Executive Officer, Imphal East Zilla Parishad and also the same proceedings of the Special Meeting of Imphal East Zilla Parishad held on 27.1.2011 and being disposed of by this common judgment and order.

2. Heard Mr. H.S. Paonam, learned senior counsel assisted by Mr. Arunkumar, learned counsel for the petitioners and also Mr. N. Kumarjit, learned senior counsel assisted by Mr. P. Tamphamani, Advocate appearing for respondent No.6 (Smt. P. Bimola Devi, Adhyaksha, Imphal East Zilla Parishad, Porompat, Manipur, and Mr. R.S. Reisang, GA appearing for the State respondents.

3. The core questions for consideration by this court in these two writ petitions are : (1) as to whether the time frame under section 57(4) of the Manipur Panchayati Raj Act, 1994 in the matter of noconfidence motion against the Adhyaksha and UpAdhyaksha, is mandatory or directory in its nature; and (2) as to whether notice for convening Special Meeting of the Zilla Parishad for consideration of noconfidence motion against the Adhyaksha or UpAdhyaksha

under section 57(4) of the Manipur Panchayati Raj Act, 1994 is to be signed by the Adhyaksha only and not by Chief Executive Officer as he is not empowered to sign such notice.

Factual background

4. In order to decide the said questions only the relevant facts, sans unnecessary details, are noted.

Election of the Zilla Parishad for the purpose of constituting and establishing new Zilla Parishad for the relevant term is held under section 50 of the Manipur Panchayati Raj Act, 1994 ("Act, 1994"). By Notification dated 28.9.2007 Government of Manipur notified the elected members of the Imphal East Zilla Parishad which consists of 19 Zilla Parishad constituencies. The said Notification was also published in the Extraordinary Manipur Gazette on 28.9.2007. The writ petitioners are elected members of the Imphal East Zilla Parishad. Eight of the elected members of the Imphal East Zilla Parishad submitted requisition notice on 22.1.2011 to the respondent No.6 (Adhyaksha) for convening a special meeting of the Imphal Zilla Parishad for consideration of noconfidence motion against the Adhyaksha and UpAdhyaksha under section 57(4) of the Act, 1994. The said requisition notice dated 22.1.2011 was duly received by the Adhyaksha in the early part of the office hour and the Adhyaksha by writing a note on the said requisition letter itself endorsed the same to the Chief Executive Officer, Imphal East Zilla Parishad for holding special meeting on 27.1.2011 at 11.00 a.m. in the office chamber of Adhyaksha. In pursuance of the said endorsement the Chief Executive Officer, Imphal East Zilla Parishad issued the impugned Notification being No.4/25/IEZP/NCM/2007/42 Porompat, 24.1.2011 to all the elected hon"ble Zilla Parishad Members of the Imphal East Zilla Parishad that "NoConfidenceMotion against both the hon"ble Adhyaksha and UpAdhyaksha, Imphal East Zilla Parishad has been initiated by the 8(eight) elected hon"ble Zilla Parishad Members on the ground of activities of both Adhyaksha and UpAdhyaksha. In pursuance of the subsection (4) of section 57 of the MPR Act, 1994 read with the subsequent amendment, a Special Meeting of the elected members of Imphal East Zilla Parishad for considering the NoConfidence Motion against both the Adhyaksha and UpAdhyaksha of Imphal East Zilla Parishad will be held on Thursday, the 27th January, 2011 at 11 a.m. at the office chamber of the Adhyaksha, Imphal East Zilla Parishad, Porompat. All the elected hon"ble Zilla Parishad Members are, therefore, requested to make it convenient to attend the meeting in time".

5. It is the case of the petitioners that the impugned Notification dated 24.1.2011 is not valid inasmuch as the Notification for convening a special meeting of the Zilla Parishad for consideration of noconfidence motion under subsection (4) of section 57 is to be signed by the Adhyaksha only and the Chief Executive Officer is not competent to issue such Notification. Both the parties are not disputing that after issuing the impugned Notification dated 24.1.2011 a Special Meeting of the Imphal East Zilla Parishad for consideration of

noconfidencemotion against both the Adhyaksha and UpAdhyaksha was held as per the schedule mentioned in the impugned Notification and also that all the 19 elected members of the Imphal East Zilla Parishad were present in the said meeting, i.e., Special Meeting dated 27.1.2011. The noconfidencemotion against UpAdhyaksha, namely, Shri K. Nilakamal Singh [writ petitioner of WP(C) No.75 of 2011] was passed by a majority of votes as eleven members had cast their votes in support of the motion; but the noconfidencemotion against the Adhyaksha (respondent No. 6, Smt. P. Bimola Devi) was defeated by a majority of votes as the ten members had cast their votes through secret ballot against the motion. Accordingly, the UpAdhyaksha Shri K. Nilakamal Singh vacated the office of the UpAdhyaksha. Later on, new UpAdhyaksha, namely, Shri K. Rajen Singh, had been elected in the Special Meeting of Imphal East Zilla Parishad held on 10.2.2011.

6. The Zilla Parishad is a democratic institution at the grassroot level. In democracy majority counts the vote. All the democratic process not only include chose one's own representative but also dislodging such elected representatives from their office in accordance with law. The whole democratic process should not come to an end because of pedantic approach in convening the Special Meeting for consideration of noconfidencemotion against the Adhyaksha and UpAdhyaksha. In the democratic process all the questions relating to election to the office under the democratic institutions are decided by a majority of votes. Section 59(3) of the Act, 1994 clearly stated that all questions coming before the Zilla Parishad shall be decided by a majority of votes. Any interpretation of the provisions of the Act, 1994 which result to abrogation of the democratic process for deciding any question for a democratic institute, more particularly, election to the democratic office by a majority of votes is not acceptable.

7. Section 57(4) of the Panchayati Raj Act, 1994 speaks the procedures and the requirement for requisition of the special meeting of the Zilla Parishad for consideration of the noconfidence motion against the Adhyaksha and UpAdhyaksha. By the Manipur Panchayati Raj Amendment Act, 1996, Manipur Panchayati Raj (Third Amendment) Act, 1998, and Manipur Panchayati Raj (Fourth Amendment) Act, 2005 section 57 of the Act had been amended. For ready reference original section 57 as well as the amended portions of the section 57 are quoted hereunder :

"Manipur Panchayati Raj Act, 1994.

57.(1) The Adhyaksha may resign his office by writing under his hand addressed to the Commissioner and the UpAdhyaksha may resign his office by writing under his hand addressed to the Adhyaksha.

(2) Every resignation under subsection (1) shall take effect on the expiry of fifteen days from the date of its receipt by the prescribed authority, unless within this period of fifteen days he withdraws such resignation by writing under his hand and addressed to the prescribed authority.

(3) Every Adhyaksha or UpAdhyaksha 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 territorial constituencies of the Zilla Parishad at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than one fifth of the total membership of the Zilla Parishad and shall be delivered to the Adhyaksha. The Adhyaksha shall, within seven days from the date of receipt of the requisition, convene a special meeting of the Zilla Parishad. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. The meeting shall be presided over by the Adhyaksha, if the motion is against the UpAdhyaksha and in the case of Adhyaksha, the UpAdhyaksha shall preside over the meeting, if it is against both a member nominated from amongst themselves by the members present in such meeting shall preside over such meeting. In the initial two years of their term as Adhyaksha or UpAdhyaksha, as the case may be of Zilla Parishad, no motion of noconfidence motion shall be brought against them.

(b) If the motion of noconfidence motion against the Adhyaksha or UpAdhyaksha or both is once rejected, no fresh motion of noconfidence motion against the Adhyaksha or UpAdhyaksha or both, as the case may be, shall be brought before the Zilla Parishad within a period of one year from the date of such rejection of the motion.

Manipur Panchayati Raj (Amendment) Act, 1996.

Amendment of section 57: (a) In section 57 of the Principal Act, (i) for subsection (2), the following shall be substituted, namely "(2) Every resignation under subsection (1) shall have immediate effect."

(ii) after subsection (4), the following provisos shall be added, namely

"Provided that if the Adhyaksha fails to convene the said meeting within the stipulated time, the members shall request the Deputy Commissioner for the purpose, who shall, within five days from the date on which he receives the request, direct the Chief Executive Officer of the Zilla Parishad to convene the meeting within seven days :

Provided further that withdrawal of noconfidence motion against the Adhyaksha or UpAdhyaksha or both, as the case may be, shall not be allowed";

Manipur Panchayati Raj (Third Amendment) Act, 1998.

Amendment of section 57 : In section 57 of the Manipur Panchayati Raj Act, 1994

(a) In subsection (4)

(i) for the words "one half the words "one third" shall be substituted.

(ii) the last sentence "in the initial two years of their term as Adhyaksha or UpAdhyaksha, as the case may be, of Zilla Parishad, no motion of

noconfidencemotion shall be brought against them" shall be deleted.

(b) In subsection (5), for the words "once rejected" and "rejection", the words "defeated" and "defeat" respectively shall be substituted.

Manipur Panchayati Raj (Fourth Amendment) Act, 2005.

Amendment of section 7: (a) In section 57 of the Principal Act, (i) for subsection (2), the following shall be substituted, namely

"(2) Every resignation under subsection (1) shall have immediate effect."

(ii) after subsection (4), the following provisos shall be added, namely

"Provided that if the Adhvaksha fails to convene the said meeting within the stipulated time, the members shall request the Deputy Commissioner for the purpose, who shall, within five days from the date on which he receives the request, direct the Chief Executive Officer of the Zilla Parishad to convene the meeting within seven days :

Provided further that withdrawal of noconfidencemotion against the Adhyaksha or UpAdhyaksha or both, as the case may be, shall not be allowed";

8. In the present case, no doubt, all the elected members of the Imphal Bast Zilla Parishad were present in the said Special Meeting held on 27.1.2011 for consideration of the noconfidencemotion against both the Adhyaksha and UpAdhyaksha and the Special Meeting was held within fifteen days from the date of issue of the notice of the meeting and also within seven days from the date of receipt of the requisition letter dated 22.1.2011.

It is neither pleaded nor explained as to how and in what manner any prejudice had been caused to the writ petitioners in convening Special Meeting, i.e., 27.1.2011 within seven days from the date of receipt of the requisition. In this given fact, this court is not required to answer the core question No.1, as to whether the time frame under section 57(4) of the Manipur Panchayati Raj Act, 1994 in the matter of noconfidencemotion against the Adhyaksha and UpAdhyaksha, is mandatory or directory in its nature; but only for academic purpose this court is answering the core question No.1.

9. For deciding as to whether a statute is mandatory or directory, it is required to see the intent of the Legislature and not upon the language in which the intent is clothed. Further, what is required to see is the consequence of noncompliance. No doubt, there is no universal rule laid down to decide as to whether mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience. It is now well settled that it is the duty of the court of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of statute.

10. The Apex Court in *State of U.P. v. Manmohan Lal Srivastava*, AIR 1957 SC 912 quoted the passage from Crawford, which is to the following effect:

"The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other."

11. For ascertaining the real intention of the Legislature, the court may consider, inter alia, the nature and design of the statute and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances namely, that the statute provides for a contingency of the noncompliance with the provisions; the fact that the noncompliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered. [See *State of UP v. Babu Ram Upadhyaya*, AIR 1961 SC 751].

12. The following passage from Maxwell on The Interpretation of Statute is instructive:

"The first such question is: when a statute requires that something shall be done, or done a particular manner or from, without expressly declaring what shall be the consequence of noncompliance, is the requirement to be regarded as imperative (or mandatory) or merely as directory (or permissive)? In some cases, the conditions or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. "An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

The learned author having stated the principle observed that it is impermissible to lay down any general rule for determining whether a provision is imperative or directory. That, a provision may be mandatory as to one person and permissive as to another.

13. This Court (Division Bench) in *Mumtaz Rana Raskar and Ors. v. State of Assam and Ors.*, 2006 (1) GLT 46: (2006) 2 GLR 5 had decided the issue "as to whether the provisions and procedure for noconfidence motion against the President and Vice President of a Gram Panchayat under section 15(1) of the Assam Panchayat Act, 1994 is mandatory or directory? Justice B.S. Reddy (Chief Justice, as then he was) who authored the judgment in *Mumtaz Rana Raskar*'s case (*supra*) made the finding that:

"17. That a number of decisions have been cited at the Bar but we do not propose to burden this judgment by citing all those decisions in which the

obvious principle has been stated and restated and precisely for that reason we have noted the basic principle in the preceding paragraphs. That a critical analysis of numerous authoritative pronouncements on the topic does not lead us to formation of any universal rule. Therefore, we bear in mind that due regard must be had to context, subjectmatter and object of the provisions in question in order to determine whether the same is a mandatory or directory one. We shall bear in mind the caution administered by Lord Denning :

"We sit here to find the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis" [See *Mftgor and St. Mellons Rural District Council v. Newport Corporation*, (1950) 2 All ER 1126.]

18. We shall, therefore, notice only such decisions of the Supreme Court which are apt since the provision of law dealt with therein are quite near to the provision under consideration by us.

19. In *Shyabuddinsab Mohidinsab Akki v. Gadag Betgeri Municipal Borough and Ors.*, AIR 1955 SC 314 an interesting question arose for consideration of the Apex Court. Section 35(3) of Bombay Municipal Boroughs Act required the notice of special general meeting to be given in writing but the same had not been given in writing but had only been intimated to all the Councilors who were present at a prior meeting and the notice was not served in the manner indicated in subsection (3) of section 35 of the Act. It had been contended that the notice required by section 35(3) contemplates written notices be served and published in a manner specified and that the meeting on 3.8.1954 could not be said to have been held after complying with the terms of subsection (3) of section 35. The contention was that the special meeting convened for the purposes of electing President/Vice President was vitiated. The Supreme Court observed.

"It is true that the notice of the meeting of 3.8.1954 had not been given in writing but had only been intimated to all the Councilors who were present at the meeting of 30.7.1954. The notice amply satisfies the requirement of three days clear notice, though it was not in writing ... the provision of section 35(3) are directory and not mandatory and that any omissions in the manner of service of the notice are mere irregularities which would not vitiate the proceedings unless it was shown that those irregularities had prejudicially affected the proceedings ... it has not been either alleged or proved that the irregularities in the service of the notice or the omissions complained of had prejudicially affected the proceedings... It must, therefore, be held that the meeting of 3.8.1954 in substance, though not in form, complied with the requirements of the law for holding a valid special general meeting and that, therefore, that meeting was not invalid."

20. *K. Narasimhiah v. H. C. Singri Gowda and Ors.*, AIR 1966 SC 330 is another apt decision which is required to be noticed. In *K. Narasimhiah's* case the appellant was elected as President of Municipality on 11.9.1962. In the special

general meeting of the Municipal Council held on 14.10.1963, a resolution was passed expressing no confidence in him. He approached the High Court seeking quashing of the notice of the meeting. The Municipal Council had altogether twenty Councillors. Thirteen out of them sent a requisition to the president to convene a special general meeting to discuss the resolution expressing no confidence in him as President. It was handed over to the President on 25.9.1963. The President did not act on the notice but the Vice President having acted called meeting of the Councillors to discuss the resolution and notice under the Vice President's signature proposing to hold a special general body meeting on 14.10.1963 was sent to the Councillors. It bore the date 10.10.1963. Notice was personally served on fifteen Councillors on 11.10.1963. On three Councillors it was served on 13.10.1963 and on two it was served on 11.10.1963 and 12.10.1963. When the meeting was held on 14.10.1963, nineteen out of twenty Councillors were present including the President. The noconfidencemotion was carried. Challenge to the legality of the proceedings, inter alia, was on the ground that the requisite three days notice was not served on all the members and so the meeting was not validly held. The High Court rejected the contention of the petitioner therein, but took the view that the notices were sent on 10.10.1963, therefore, they must have been held to be served on the same day even though they were actually served on 11.10.1963, 12.10.1963 and 13.10.1963. The court further took the view that the requirement of three days notice is only directory and not mandatory and so the omission to give notice would not affect the validity of the resolution. The matter was carried to the Supreme Court. The Supreme Court framed the question: is the provision of three clear days notice mandatory, i.e., does the failure to give such notice make the proceedings of the meeting and the resolution passed there invalid? We are, therefore, of opinion that some of the Councillors received less than three clear day's notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no confidence against the appellant. There is, thus, absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the irregularity in the service of notice" (emphasis added)

21. In the case on hand there are no irregularities alleged either in convening or holding the meeting where the resolution expressing no confidence against the appellant has been passed. The whole controversy centers round the delay on the part of the Secretary of Gaon Panchayat in making reference to Anchalik Panchayat. It is neither pleaded nor explained as to how and in what manner any prejudice has been caused to the petitioner. It is not explained as to how and in what manner the irregularity on the part of the Secretary is likely to affect the result of the resolution."

14. The Apex Curt in *Dr. Ram Deen Maurya v. State of Uttar Pradesh and Ors.*, (2009) 6 SCC 735 held that for deciding an order or statute is mandatory or not,

it is required to construe strictly the effect of noncompliance. When the consequence effect is not provided it could be treated as directory.

15. The Apex Court in *P.T. Rajan v. T.P.M. Sahir and Ors.*, (2003) 8 SCC 498 held that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. The Court cannot supply *casus omissus*. Paras 48, 49 and 50 of the SCC in *P.T. Rajan's* case (*supra*) read as follows :

"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. [See *Shiveshwar Prasad Sinha v. District Magistrate of Monghyr*, AIR 1966 Pat. 144, *Nomita Chowdhury v. State of W.B.*, (1999)2 Cal. LJ21, and *Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana*, (1997) 1 CHN189]

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. [See *Raja Buland Sugar Co. Ltd v. Municipal Board, Rampur*, AIR 1965 SC 895, *State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364, *Venкатaswam appa v. Special Dy. Commr. (Revenue)*, (1997) 9 SCC 128 and *Rai Vimal Krishna v. State of Bihar*, (2003) 6 SCC 401).

50. The court cannot, it is trite, supply *casus omissus*. Reference in this regard may be made to *Baliram Waman Hiray (Dr.) v. Justice B. Lentin*, (1988) 4 SCC 419 wherein it was observed : (SCC p.443, para 27)

"27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book "The Concept of Law", depicting the difficult task of a judge to strike a balance between certainty and flexibility :

"Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges "find" and do not "make" law that

conceals this, and presents their decisions as if they were deductions smoothly made from clear preexisting rules without intrusion of the judge's choice".

See also *Kanta Devi v. Union of India*, (2003) 4 SCC 753.

16. This Court (Division Bench) in *Mosira Bibi v. State of Assam and Ors.*, 2006 (4) GLT 460 in paras 16 and 17 reiterated as under :

"16. We shall now proceed to examine as to whether the requirement at convening the special meeting for consideration of the noconfidence motion within seven days from the date when the Secretary of the Gaon Panchayat referred the matter to the President of the Anchalik Panchayat, means holding such meeting within the said period of seven days.

17. Section 15(1) of the Act requires the President of the Anchalik Panchayat to "convene" the meeting within seven days from the date of receipt of the information from the Secretary of the Gaon Panchayat. This Court had the occasion to deal with the said question in *Swapna Sen v. State of Assam and Ors.*, 2006 (2) GLT 14 (against which though petition for special leave to appeal filed, the same was dismissed on 24.3.2006) wherein it has been held that the requirement of convening the meeting by Anchalik Panchayat within seven days under section 15(1) of the Act does not mean actual holding of such meeting, as "convene" means to cause to assemble to discuss the noconfidence motion, i.e., directing to hold such meeting.

Viewed from this angle also, even in case, the provision relating to the adherence of time schedule given in section 15(1) of the Act, is taken to be mandatory in nature, in the instant case the appellant is not entitled to any relief, as, it is not her case that the proceeding of the special meeting dated 28.9.2005 is not valid, as the same was not convened by the Anchalik Panchayat, within seven days of referring the matter by the Secretary of the Gaon Panchayat to the President of the Anchalik Panchayat."

17. This Court (Division Bench) in *Sorojini Devi and Anr. v. Oinam Jugeshwar Singh and Ors.*, 2008 (2) GLT 198 : (2009) 3 GLR 279 held (in para 22 of the GLT) as follows :

"22. The provision for delivery of the said requisition to the Adhyaksha is obviously for giving notice to the Adhyaksha about the motion of noconfidence motion as against him/her or UpAdhyaksha so that he/she may take proper steps for convening a special meeting without delay, and as far as possible within the time stipulated by section 57(4). In our considered opinion, what is actually required is that the requisition must be brought to the notice of the Adhyaksha either directly by delivering it to him/her or indirectly through some reliable means, it has to be taken that there has been substantial compliance with the provisions of section 57 of the Act. On the other hand, if it is to be held that unless the requisition is delivered to the Adhyaksha directly or personally, the said requisition is to be treated as invalid, there would be many practical

difficulties leading to jeopardy in democratic functioning of the Zilla Parishad."

18. The argument of learned senior counsel appearing for the petitioners that special meeting held on 27.1.2011 is vitiated inasmuch as it was held within five days from the date of receiving requisition letter dated 22.1.2011 for convening special meeting for consideration of noconfidence motion against both the Adhyaksha and UpAdhyaksha has no footing either on law or fact. Petitioners neither pleaded nor explained in the writ petition as to how and in what manner any prejudice is caused to the petitioners in convening special meeting on 27.1.2011 within five days from the date of receiving requisition letter dated 22.1.2011, i.e., within the time prescribed under section 57(4) of the Act, 1994. It is the intent of the Legislature under section 57 of the Manipur Panchayati Raj Act, 1994 that special meeting for consideration of the noconfidence motion against the Adhyaksha or UpAdhyaksha should not be delayed for a considerable period and also that there shall not be such special meeting for consideration of noconfidence motion against the Adhyaksha or UpAdhyaksha without giving notice to the sitting Adhyaksha or/sitting UpAdhyaksya, as the case may be. In the present case, writ petitioner of WP(C) No.75 of 2011, i.e., Shri K. Nilakamal Singh, the then UpAdhyaksha had the clear knowledge that special meeting for consideration of noconfidence motion would be held on 27.1.2011 and he himself was present in the said special meeting.

19. In the given case, for the aforesaid discussion, this court is of view that time frame under section 57(4) of the Manipur Panchayati Raj Act, 1994 is only directory and also that noncompliance with the time prescribed in section 54(7) of the Manipur Panchayati Raj Act, 1994 in convening the Special Meeting for consideration of the noconfidence motion against the Adhyaksha or UpAdhyaksha, as the case may be, has no consequence of nullifying the proceeding or fatal to its validity. Regarding the core question No.2, it is not clearly mentioned in section 57(4) of the Manipur Panchayati Raj Act, 1994 that notice for convening special meeting for consideration of noconfidence motion against the Adhyaksha and UpAdhyaksha as the case may be, shall be signed by Adhyaksha only. What are clear are that (1) requisition notice/letter for special meeting shall be signed by not less than 1/3rd of the total membership of the Zilla Parishad and (2) the Adhyaksha shall take proper steps for convening a Special Meeting without delay.

20. The Apex Court in *Tarulata Shyam v. CIT*, (1977) 3 SCC 305 held that if there be a *casus omissus*, the defect can be remedied only by legislation and not by judicial interpretation.

21. On conjoint reading of section 57(4) and section 56 of the Manipur Panchayati Raj Act, 1994 and rule 47 of the Manipur Gram Panchayat and Zilla Parishad (General) Rules, 1995, it can be infer that the Chief Executive Officer, Imphal East Zilla Parishad, in the given case, can sign/issue the impugned Notification dated 24.1.2011.

For the aforesaid reasons, writ petitions are dismissed.