

(2007) 09 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (C) No. 468 of 2007

Chongtham Yaimbi Devi and Others	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 243Q
Manipur Municipalities Act, 1994 — Section 31, 31(1), 31(2)
Manipur Municipality (Amendment) Act, 2005 — Section 31(2)

Citation : (2008) 4 GLT 723

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : H.S. Paonam, for the Appellant; Ashok Potsangbam, Jagjit, S. Jayanta Singh, O. Kiranjit Singh and K. Rabei Singh, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The instant writ petition is filed by the 5 (five) elected councillors of Wangjing-Lamding Nagar Panchayat, Thoubal, Manipur, namely (1) Chongtham Yaimbi Devi, (2) Laishram Maimu Singh, (3) Maibam Rashini Devi, (4) Pechimayum Roni Devi and (5) Narengbam Binoy Singh respectively, for a direction to the Respondent No. 3, Executive Officer of the aforesaid Nagar Panchayat, Thoubal District to perform his duty as contemplated by Section 31(2) (i) and (ii) of the Manipur Municipality Act, 1994 (hereinafter refers to as the "Act"), without further delay by convening a special meeting for consideration of no confidence motion against the sitting Chairperson, Respondent No. 4 and the Vice-Chairperson, Respondent No. 5 as they have lost their confidence in the functioning of the present Chairperson and the Vice-Chairperson in pursuance of the letter dated 11.6.2007.

2. Heard Mr. H.S. Paonam, learned Counsel appearing for the Petitioner and Mr. Ashok Potsangbam, learned Advocate General, Manipur as assisted by Mr. S. Suresh, learned Advocate and also Mr. Jagjit, learned Addl. G.A., who appears for

the Respondents-1 and 2, Mr. K. Rabei Singh, learned Counsel appearing for the Respondent No. 3 as well as Mr. S. Jayanta, learned Sr. Counsel being assisted by Mr. O. Kiranjit Singh, Advocate appearing for the Respondents-4 and 5 respectively.

3. The simple facts which require to be narrated in order to decide the issue involved in the instant writ petition are that the Petitioners' case being that out of the 9 elected councillors of the Wangjing-Lamding Nagar Panchayat, Thoubal Manipur, the Petitioners, 5 in number, who were elected from ward, Nos.- 9, 4, 3, 7, 5, submitted a requisition letter dated 11.6.07 (Annexure-A/8 to the writ petition) to the Executive Officer, Respondent No. 3 for convening a special meeting for consideration of no confidence motion against the Chairperson (Respondent No. 4) and the vice Chairperson (Respondent No. 5) of the said Nagar Panchayat, as they, after assuming the charge of their Office, had started monopolizing the function of the said Nagar Panchayat as their personal Institute without taking consent of the other councillors including the Petitioners and also they started releasing fund in respect of the scheme undertaken by the Nagar Panchayat. As the Respondents-4 and 5 used public office for their personal interest, the Petitioners in the instant writ petition, who have endured the various omissions and commission of the Chairperson and the Vice-Chairperson have come to the conclusion that in case the nature of function of the Respondents-4 and 5 is allowed to continue, the aforesaid Nagar Panchayat as a whole would meet slow death which would be quite detrimental to the larger public interest. Keeping the above facts, in mind, the writ Petitioners have made a requisition on 11.6.07 to the E.O., Respondent No. 3, to convene meeting for consideration of the no confidence motion against the sitting Chairperson and the Vice-Chairperson of the said Nagar Panchayat in terms of the Section 31 of the Act, which was received by the office of the Executive Officer under R.R. No. 89/WLNP/2006-07 at 2 p.m. the aforesaid letter was also endorsed to the Government, Dy. Commissioner Thoubal and other important functionaries including the Circle M.L.A. Since the Executive Officer did not take up any action in terms of the Section 31 of the Act on the plea that for convening said meeting for no confidence motion, approval from the Govt, is required in view of the letter dated 31.5.03 of the Joint Secretary, MAHUD, Govt. of Manipur addressed to all the Executive Officers of the Municipality and Nagar Panchayat and as such the Executive Officer of the Nagar Panchayat under his office letter dated 19.6.07 moved the Govt. for giving permission to convene the meeting in pursuance of the Joint representation dated 11.6.07. Being the aforesaid letter dated 19.6.07 of the Executive Officer for seeking permission from the Govt. to give approval for convening the special meeting is without any authority of law and the aforesaid letter dated 31.5.03 had also no legal basis as considered by this Court in W.P. (C) No. 1037 of 2004, particularly this Court observed that Section 31 of the Act nowhere stated that approval of the Govt. is necessary for convening special meeting for consideration of no confidence motion against the Chairperson or the Vice-Chairperson and the Executive Officer should not have

acted upon the said letter of the Govt. dated 31.5.03 as held by this Court in W.P. (C) No. 830 of 2003. Even after the specific observation of this Court, the Executive Officer, Respondent No. 3, sought permission vide aforesaid letter dated 19.6.07 only to frustrate the statutory prescription and on the exertion and pressures from the Respondent No. 4. Hence the present writ petition.

4. The Respondent No. 3 did not file any counter affidavit for resisting the prayer of the Petitioners. But the Chairperson and the Vice Chairperson, Respondent Nos.-4 and 5 have filed their affidavit-in-opposition denying the allegations of the Petitioners.

5. Mr. Paonam, learned Counsel for the Petitioners submits that in view of the judgment and order dated 20.6.2003 passed in W.P. (C) No. 830 of 2003 and the judgment and order dated 28.1.05 in W.P. (C) No. 1037 of 2004 it is abundantly clear that no approval from the Govt, is necessary for convening special meeting for consideration of no confidence motion against the sitting Chairperson and the Vice-Chairperson u/s 31 of the Act. He also submits that though no approval is required from the Govt, the Executive Officer sought for permission vide his letter dated 19.6.07 which shows that the Executive Officer fails to discharge his statutory duties as prescribed by the provisions of the Act, rather he tried to act as an Agent of the Govt, which is unwarranted. He also submits that in Section 31 there is no prescription for obtaining approval for convening a meeting for consideration of no confidence motion against the sitting Chairperson and the Vice-Chairperson seeking permission for convening the special meeting for consideration of no confidence motion, the Executive Officer fails to discharge his statutory duties as entrusted on him by the legislature. He also submits that statutory authority is required to do a thing in a particular manner as prescribed by the statute or not at all as the statutory authority is bound to act within the four corners of the Act.

6. Mr. Paonam again submits that by way of issuing the aforesaid letter dated 31.5.03 the Govt. wants to interfere with the democratic functioning of an institution like the Municipal Councils as well as the Nagar Panchayats within the State of Manipur and the Executive Officer also fails to consider the aspect that the parliament by way of amendment of the Constitution inserted provisions, namely Article 243Q for giving more autonomy to the Municipal Councils and the Nagar Panchayat and keeping in mind the aforesaid provisions of the Constitution the legislature also laid down the law in that respect, i.e. Manipur Municipal Act and the Section 31 of the said Act gives power to the Executive Officer to act independently without any subordination from any authority including the Government.

7. Mr. Rabei, learned Counsel appears for the Respondent No. 3, Executive Officer, submits that no wrong was committed by the Executive Officer following the letter dated 31.5.03 (Annexure-A/11 to the writ petition) as well as seeking permission vide letter dated 19.6.07 to convene the special meeting in pursuance of the Joint representation of the Petitioners for convening of a meeting for

consideration of no confidence motion against the said Chairperson and Vice-Chairperson, Respondents- 4 and 5 respectively. He also submits that the judgment and order dated 28.1.05 passed in W.P. (C) No. 1037 of 2004 whereby and whereunder this Court declined to interfere with the proceedings of the meeting held on 13.12.2004 where no confidence motion was passed, has already been set aside by a Division Bench of this Court on 10.2.2005 in W.A. No. 132 of 2001.

8. Mr. K. Rabei, also referring to the order dated 10.2.2005 passed in the W.A. No. 132 of 2005, submits that the Division Bench of this Court has already held that prior approval of the Government to hold meeting to consider the no confidence motion is proper as communicated vide letter dated 31.5.03 and the said letter is not challenged in any of the writ petitions till date and unless the said letter is challenged this Court cannot interfere with the said letter.

9. Mr. Jayanta, learned Sr. Counsel appearing for the Respondents-4 and 5 also echoed in the line of what has been submitted by Mr. K. Rabei, learned Counsel for the Respondent No. 3, the Executive Officer.

10. The learned Addl. G.A. Mr. Jagjit, on instruction, submits that vide letter dated 12.7.07 Govt. has conveyed its approval for holding the special meeting for consideration of no confidence motion against the Chairperson and the Vice-Chairperson of Wangjing-Lamding, Nagar Panchayat and the S.D.O. Thoubal is appointed to preside over the special meeting for consideration of no confidence motion against the Chairperson and the Vice-Chairperson, Wangjing-Lamding Nagar Panchayat as provided u/s 31 of the Act.

11. As the assistance of the learned Advocate General is required, this Court requested him to appear and assist the Court. Accordingly, the learned Advocate General appears as assisted by Mr. S. Suresh and submits that the Govt. has already communicated its approval to the Executive Officer, Respondent No. 3 for holding special general meeting pursuant to the joint representation submitted by the Petitioners proposing no confidence motion against the present Chairperson and the Vice-Chairperson, i.e. the Respondent Nos-4 and 5. He also fairly submits that Section 31 of the Act does not prescribe any requirement of prior approval from the Government for holding the special meeting for consideration of no confidence motion against the sitting Chairperson and the Vice-Chairperson of the Municipal Council and/or Nagar Panchayats in the State of Manipur. He also submits that by the letter dated 5.9.07 the Joint Secretary (MAHUD), Govt. of Manipur informed the Jr. Government Advocate (HC) who is assisting him in the instant case that prior approval of the Government for holding of the special meeting for consideration of no confidence motion may not be mandatory since there is no specific provisions in the Municipality Act for such prior approval of the State Govt. to convene such meeting. If certain situation arises as mentioned u/s 31(2)(a) of the Manipur Municipal Council, 3rd Amendment 2005 Deputy Commissioner or the S.D.O. concerned shall be nominated by the Government to preside over such meeting. In the instant case

also, the Govt. appointed the S.D.O. Thoubal to preside over the special meeting for consideration of no confidence motion against the Chairperson, Respondent No. 4, and the Vice-Chairperson, Respondent No. 5, of the Wangjing-Lamding Nagar Panchayat. The two letters placed before this Court by the Advocate General, Manipur bearing No. 2/10/2077-MAHUD dated 5th Sept. 2007 and No. 2/90/96-MAHUD dated 12th July, 2007 are marked as "X" and these two letters shall form part of the record.

12. This Court has given anxious thought to the submissions of the learned Counsel of the parties and the relevant records as available before this Court.

13. To appreciate the submission of the learned Counsel of the parties, it would be proper for this Court to extract the provisions of Section 31 of the Act as the same is relevant to come to a proper decision in the matter:

31(1) Every Chairperson or Vice-Chairperson shall be deemed to have vacated his office forthwith if the resolution expressing want of confidence in him is passed by a majority of the total number of councillors constituting the Council or the Nagar Panchayat at a meeting specially convened for the purpose.

(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-third 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 councillors 10 (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 Govt.

(2a) Notwithstanding anything contained in this Act where the Chairperson or the Vice-Chairperson or a Councilor is one of the signatories to the requisition for such meeting, the Chairperson or the Vice-Chairperson or the Councilor, as the case may be, shall not preside over such meeting and in such eventuality, the Deputy Commissioner of the concerned district, in case of a Council or the Sub-Divisional Officer nominated by the State Government for the purpose, in case of a Nagar Panchayat, shall preside over such meeting.

(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.

14. Sub-section (1) of Section 31 of the Act makes it clear that the Chairperson or the Vice-Chairperson shall be deemed to have vacated his/her office forthwith and the meeting shall be convened by the Executive Officer on a requisition signed by not less than one third of the total number of councillors and when such requisition has been made it is the statutory duty of the Executive Officer to convene a meeting for consideration of the no confidence motion on the aforesaid requisition as he has no other alternative except to do the same which is also the prescription of the statute. Again Sub-section (ii) of Section 31(2) a notice of such meeting shall be dispatched by the Executive Officer 10 days before the proposed meeting and when a requisition is made by the number of councillors the statutory mandate upon the Executive Officer is to call a meeting for consideration of such no confidence motion as stated above. In the instant case, the question which is required to be considered is as to whether the Executive Officer has any obligation to obtain approval of the State Govt. before convening the special meeting for consideration of no confidence motion against the sitting Chairperson and the Vice-Chairperson of any Municipal Council or Nagar Panchayat within the State of Manipur.

15. This Court has gone through the judgment and order of the Division Bench of this Court passed in W.A. No. 132 of 2005 and on perusal of the judgment it appears that the Division Bench did not consider and examine regarding intents of the legislature as stated in Section 31 of the Act, rather decided the matter involved in that case on concession of the parties, which will be evident from the observation of the Court. Hence, according to this Court the aforesaid observation of the Division Bench in the said judgment cannot be treated as precedent so far the Section 31 of the Act is concerned. It would be proper for this Court to reproduce the said observation hereinunder:

Thereafter by a communication dated 22.12.2004 the Government conveyed its approval to hold a meeting for election of the new Chairman of the Panchayat. The meeting for the said purpose is fixed tomorrow, i.e., on 11.02.2005. The learned Counsels for the parties are not in dispute that a prior approval of the Government to hold a meeting to consider the no confidence motion as conveyed by the communication dated 31.05.2003 is an essential pre-condition.

16. We should not forget that Parliament with a view to provide for setting up democratic institutions like the Municipality and Nagar Panchayat at the grass-root level by virtue of Seventy-fourth Amendment of the Constitution, Part-IX-A providing for establishment of Municipality was incorporated in the Constitution and Article 243Q deals with Constitution of Municipality.

17. According to this Court, there is no obligation on the part of the Executive Officer, Respondent No. 3 the statutory authority to obtain permission/approval from the State Government before convening said meeting for consideration of no confidence motion on the basis of the requisition submitted by not less than

one-third of the total number of the councillors constituting the Nagar Panchayat or the Council for the time being. More so, Government has no authority under law to issue any administrative order either in the form of notification or letter to encroach the power of statutory authority like Executive Officer, Respondent No. 3, as vested on him by the statute and also to frustrate the prescription of the statute like the provision of Section 31 of the Act. When the legislature within its competence made a specific law/procedure for convening a meeting for consideration of no confidence motion without approval from any other authority including the Government, the Statutory authority like the Executive Officer, Respondent No. 3, is bound to act in conformity with the said provisions of law, particularly Section 31 of the Act. If any other authority except the authority prescribed by the statute instructed or issued any notification and/or letter in the form of order contrary to the provisions of statute to frustrate the mandate of the legislature or try to encroach the power of the statutory authority then it would be the duty of the said statutory authority to ignore the same for attaining the object of the statute and particularly in the instant case the interest of democracy in the grass-root level as the object of the legislature was not to obtain any approval from such a non-statutory authority including the Government. The Executive Officer being a statutory authority is to act independently to fulfill the object of the statute as that is the duty cast on him. In paragraph 25 of the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, . Their Lordships observed that:

a century ago, in Taylor v. Taylor (1875) 1 Ch D 426 Jessel M.R. adopted the rule 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 and that other methods of performance are necessarily forbidden.

Their Lordship also stated in the said judgment that the aforesaid principle was also applied by the AIR 1936 253 (Privy Council) , in the case of Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and also in the case of Deep Chand Vs. The State of Rajasthan, Again the said principle was discussed in the case of Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, . In the case of K. Prasad and Others Vs. Union of India (UOI) and Others, wherein Their Lordships further observed that:

it is well settled principle that, if a statutory power has to be exercised in a particular manner, any exercise of that power has to comply with that procedure. It follows, therefore, that if the initial composition can be only drawn up in consultation with the State Government and by regulations, it will not be permissible for the Central Government to modify or alter the same save in the same manner.

See also; the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and Ram Phal Kundu Vs. Kamal Sharma,

18. In the instant case, the Executive Officer, Respondent No. 3, should have

ignored the letter dated 31.05.2003 issued by the Joint Secretary (MAHUD) without any authority of law, as the same is contrary to the prescription of the statute. In the present case, Executive Officer, the statutory authority fails to understand the duty cast on him by the statute as a result of which, his act of seeking permission for approval creates problem for smooth running of democratic institution in the grass-root level, like the institution of Wangjing-Lamding Nagar Panchayat, as well as the right of the elected members like the Petitioners of the said institution, as guaranteed by the provisions of the Act. Not only that the said action of the Respondent No. 3, Executive Officer, also offends the Constitutional scheme/object of setting up of democratic institution like Municipal Council and Nagar Panchayat as well as the legislative mandate as enshrined u/s 31 of the Act.

19. In the case of Union of India and Another Vs. Charanjit S. Gill and Others, also the Apex Court observed that the administrative instruction or any letter issued contrary to the prescription of the statute asking the statutory authority to act on the basis of the said administrative instructions are not permissible under law as the same would frustrate the object of the statute itself. Hence, according to this Court, the action of the Executive Officer so far as seeking permission for approval to convene a special meeting for consideration of no confidence motion as requested by the Petitioners is concerned, is illegal, unwarranted and violative of Article 14 of the Constitution as the same frustrates the democratic rights of the elected councillors like the Petitioners as stated above. Therefore, the Executive Officer of the Nagar Panchayat of Wangjing Lamding, Respondent No. 3, is hereby directed to convene a meeting of the Nagar Panchayat for consideration of no confidence motion on the basis of the requisition given by the Petitioners vide Annexure-A/8 in terms of Section 31 of the Act forthwith.

20. In the result, the writ petition is allowed. No order as to costs.