

(2000) 03 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 1465 of 1999

Dr. M. Ibeyaima Devi and Others

APPELLANT

Vs

Smt. Mutum Babita Devi and Others

RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

General Clauses Act, 1897 — Section 21
Manipur Panchayati Raj Act, 1994 — Section 57, 57(4)

Citation : AIR 2000 Guw 124 : (2000) 2 GLT 421

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Advocate : N. Kerani Singh and Umakanta Singh, for the Appellant; Ashok Postsangbam H.S. Paonam and R.K. Jayanta, Addl. Govt. Advs., for the Respondent

Final Decision : Dismissed

Judgement

H.K.K. Singh, J.—In this application under Article 226 of the Constitution of India the petitioners who are members of Imphal East Zilla Parishad have questioned the legality and validity of a proceeding held on 1-10-1999 by which no-confidence motion against Adhakshya and Up-Adhakshya was defeated and also the validity of the letter dated 2-11-1999 by which the respondent No. 1 stated that no-confidence motion having been defeated on 1-10-1999, no further requisition by letter dated 25-10-1999 for convening a special meeting for moving no-confidence motion against the Adhakshya and Up-Adhakshya is not permissible under the law.

2. In Imphal East Zilla Parishad which was constituted in January, 1997 under the provisions of the Manipur Panchayati Raj Act, 1994 (hereinafter referred to as the Act) there are 19 elected members. On 8-9-1999 a requisition letter signed by 10 members of Imphal East Zilla Parishad for no-confidence motion was addressed to the Adhyaksha (Annexure-A/2 to the writ petition). On 22-9-1999 a notice was issued for special meeting to be held on 1-10-1999 for consideration

of the no-confidence motion. Subsequently, it so happened that on 27-9-1999 nine members out of 10 signatories in the requisition letter dated 8-9-1999 (Annexure-A/2) made an application to the Adhyaksha withdrawing their earlier requisition of no-confidence motion against the Adhyaksha and the Up-Adhyaksha. The copy of the said withdrawal application is at Annexure-A/5. Even on receipt of the letter dated 27-9-1999 (Annexure-A/5), the meeting was not cancelled. It was held on 1-10-1999 and no-confidence motion was defeated. A copy of the proceeding of the no-confidence motion is at Annexure-A/6. Thereafter again on 25-10-1999 12 members including the 10 petitioners submitted another requisition to the Adhyaksha for convening a special meeting to consider a no-confidence motion against Adhyaksha and Up-Adhyaksha stating inter alia, that earlier requisition letter dated 8-9-1999 had already been withdrawn by application dated 27-9-1999. A copy of the letter dated 25-10-1999 is at Annexure-A/7. Even a reminder was sent on 3-11-1999 for calling a special meeting to consider the no-confidence motion against the Adhyaksha and Up-Adhyaksha. Thereafter, finally the respondent No. 1 Adhyaksha issued a letter to Smt. M. Ibeyaima Devi, Member on 2-11-1999 stating that no meeting could be called as it is prohibited by Section 57(4)(b) of the Act.

3. Mr. N. Kerani Singh, the learned senior counsel for the petitioner has submitted that the requisition for convening special meeting was made on 8-9-1999 and it was delivered to Adhyaksha and by the mandate of Section 57(4) of the Act a notice for convening meeting should have been issued within a period of 7 days of receipt of the requisition. Thus, the notice issued on 22-9-1999 is not in accordance with the provisions of law, in other words, according to the learned counsel, the said notice cannot be treated as a legal notice under the provisions of the Act. In this regard, Mr. Ashokpotsangbam, learned senior counsel appearing with Mr. H. S. Paonam, learned counsel for the respondents has submitted that the said requisition notice dated 8-9-1999 was received by the Adhyaksha only on 20-9-1999. In respect of this disputed question of fact, the learned counsel of both sides based their reliance upon some documents. From the said of (sic) the petitioners reliance has been made on Ext. A-2(1) of the additional affidavit which is a copy of the receipt in which the endorsement shown against the names of (1) Adhyaksha, (2) Up-Adhyaksha and (3) Chief Executive Officer discloses that notices were received on 8-9-1999 whereas on behalf of respondent No. 1, Annexure-R/11 discloses that Adhyaksha had been on leave from 7-9-1999 to 4-10-1999 and Annexure-R/12 which is a copy of the receipt register discloses at page 20 that Adhyaksha had been on leave from 7th September, 1999 to 4th October, 1999 and an endorsement to the effect was made on 8-9-1999 and Annexure-R/14 indicates that Adhyaksha had shortened the leave and joined duty on 20th September, 1999, Annexure-R/15 discloses that Adhyaksha received requisition letter dated 8-9-1999 on 20-9-1999. This vexed question of fact whether requisition notice dated 8-9-1999 was received by Adhyaksha on 8-9-1999 or 20-9-1999, in view of the

above documents produced by the rival parties which are not only contrary but also contradictory to each other, I am not inclined to delve into the matter any further in the proceeding under Article 226 of the Constitution.

4. According to Mr. Kerani the requisition letter dated 8-9-1999 was withdrawn by letter dated 27-9-1999. Thus, the Adhyaksha should have cancelled the meeting, or at any rate, meeting should not have been held. In this regard Mr. Ashokpotsangbam has vehemently submitted that the law in this regard i.e. the Act and the Rules framed thereunder never mentioned regarding withdrawal of such letter of requisition and the learned counsel in support of his argument has cited some decision and ever quoted some well known maxim. I am not going into details in view of the order, I propose to pass. Mr. Kerani, in support of his argument has taken the shelter under the provisions of Section 21 of the General Clauses Act and according to the learned counsel when a power is conferred upon the requisitionists to make a requisition then the power to recall or withdraw the requisition is inbuilt under the provisions of Section 21 of the General Clauses Act which is applicable in case of State laws in the State of Manipur.

5. Again Mr. Ashokpotsangbam has advanced his argument on 3 counts viz. firstly that there is no specific provision for withdrawal of a requisition and as such no such withdrawal is permissible. Secondly, the requisition letter was by 10 members but the so-called withdrawal letter was signed by 9 members and thus the requisition letter cannot be split and severed as number of 10 is not separable and thirdly, the learned counsel has submitted that at any rate when the requisition had been received and acted upon by the Adhyaksha under the mandatory provisions of law, it was not open for the requisitionist to withdraw the requisition.

6. For Constitution and Organisation of Panchayats as units of local self-Government in the rural areas of Manipur and for matters connected therewith and incidental thereto the Act was passed by the Parliament in the year 1994 acting as the legislature of the State of Manipur (while Manipur was under President Rule) and after enforcement of the Act various democratic Institutions under the Act were constituted and citizens in the rural areas have been taking part in these democratic Institutions of local self-Government. Adhyaksha and Up-Adhyaksha are elected by majority of votes and they will be in the office as long as they command majority of member and when no-confidence motion is passed the Adhyaksha and Up-Adhyaksha, as the case may be, will cease to hold the office. These democratic forms and procedures are regulated by law. Democracy, without rule of law is meaningless. The Act and Rules prescribe statutory provisions and procedures for holding of no-confidence motion against Adhyaksha and Up-Adhyaksha.

7. Section 57 is the relevant provision for resignation or removal of the Adhyaksha and Up-Adhyaksha. Under Sub-section (4) of Section 57 of the Act one-third of the members may make requisition for no-confidence motion and on

receipt of such requisition Adhyaksha shall convene a special meeting within a period of 7 days on receipt of the notice and the meeting shall be held on a day not later than fifteen days from the date of Issue of the notice. A resolution expressing want of confidence in Adhyaksha and Up-Adhyaksha, as the case may be, shall be passed by a majority of total number of elected members of the Parishad and when resolution is so passed the Adhyaksha and Up-Adhyaksha shall be deemed to have vacated his office forthwith. Sub-section (5) of Section 57 of the Act speaks that once a motion of no-confidence against the Adhyaksha or Up-Adhyaksha or both, as the case may be, is defeated no fresh notice of motion of no-confidence against Adhyaksha or Up-Adhyaksha, or both, as the case may be, shall be brought before Zilla Parishad within a period of one year from the date of such defeat of the motion. The provision prescribed u/s 57 of the Act should be meticulously complied with as the matter relates to demitting of office of a duly elected member.

8. As noted above, there was some dispute with regard to the receipt of notice of requisition of no-confidence motion (Annex-ure-A/2) by the Adhyaksha and I have already expressed that I will not decide the matter for the reasons given below.

9. Now the next question is in the petition the petitioner has not challenged the notice of meeting dated 22-9-1999 (Annexure-A/3) but according to Mr. Kerani this notice of meeting should not have been acted upon as the same had already been withdrawn. As noted above, the provision for requisition is there in the Act but there is no provision enabling the requisitionist (or some of them) to withdraw the requisition. The prescribed procedures in this regard are to be followed. But there is no procedure prescribed for withdrawal of nomination. Section 21 of the General Clauses Act cannot be of any help in the present case. Mr. Kerani cited the case of Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others, In this case the Mayor under Bombay Provincial Municipal Corporations Act (59 of 1949), Section 453 and Sch. Chap, II. Clause 1(c) had the power to convene meeting but no express power was mentioned for postponement or cancellation of the meeting. In that case it was held by the Apex Court that the Mayor could exercise the power of cancelling or postponing the notice convening the meeting under the provisions of Section 21 of the Bombay General Clauses Act. The said Bombay Act may be in pari materia with Section 21 of the General Clauses Act. This case may not be of any help, u/s 21 of the General Clauses Act, if a Central Act (in our case, a State Act) or Regulation empowers an authority to issue notification, orders, rules or bye-laws then that power may be exercised in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws issued. Before applying the provision of Section 21 of the General Clauses Act we are to see the whole scheme/ scope/ ambit of the Act. In our present case, as noted above, the entire gamut regarding removal of Adhyaksha and Up-Adhyaksha is prescribed in Section 57 of the Act and we cannot supplement or supplant any other provision which is not

expressly prescribed and more so when a reading down of a provision which may amount to stultifying some action taken under the enacted provision will not be taken to be in consonance with the intention of the legislature. In other words, in our present case provision for requisition is there but there is no provision for withdrawal of the requisition; Considering the nature and scheme of the Act and also considering the power mentioned in Section 21 of the General Clauses Act, I am of the considered opinion that this enabling provision u/s 21 which is applicable in respect of power to issue notifications, orders, rules or bye-laws cannot be applied in the case of requisition letters submitted by some members of the Parishad for the purpose of direction or asking the Adhyakshya to call a no-confidence motion in the fact and circumstances of our present case.

10. In our present case no-confidence letter dated 8-9-1999 had been acted upon by the Adhyakshya by issuing notice of meeting dated 22-9-1999 (Annexure-A/3) and as such an option for withdrawal will not be available. Thus the meeting held on 1-10-1999 cannot be faulted with.

11. With the above reasons and conclusion, I find no merit in the present case. Accordingly the writ petition is dismissed. Stay order, if any stands vacated. No costs. Petition dismissed.