
(2012) 08 GAU CK 0053
In the Gauhati High Court
Case No : Writ Petition (Civil) No.5927 of 2011

Jyotirmoy Paul

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Assam Municipal Act, 1956 — Section 28, 28, 43(2), 43(2)

Citation : (2013) 2 GLR 760

Hon'ble Judges : A.K.Goswami, J

Bench : Single Bench

Advocate : Mr. O.K. Mishra, Mr. R. P. Sarmah, Mr. M.R. Adhikari, , Ms. H.Terangpiforthe petitioner.??Mr. B.J. Ghosh, Mr. S.P. Roy, Mr. N.N. Jha, Mr. K. Rajbongshi , Mr. RK. Roy for the respondents., Advocates appearing for Parties

Judgement

1. This is an application under article 226 of the Constitution of India calling in question the notice dated 11.11.2011 issued by the respondent Nos. 4, 5 and 6 on the basis of requisition notice dated 10.10.2011, proceeding of special meeting dated 14.11.2011 in which want of confidence was expressed against the petitioners and the proceeding of the meeting dated 18.11.2011 in which the respondent No. 4 was elected as Chairman of the Rangapara Town Committee, for short, the Town Committee. A prayer is also made in this petition to allow the petitioners to continue to function as Chairman and ViceChairman of the Town Committee, respectively.

2. The basic facts as pleaded in the writ petition are that the Town Committee has four elected members and two ExOfficio Members, one of whom is a Member of the House of the People and the other a Member of the Legislative Assembly of the State of Assam. There are two members, nominated by the State Government in exercise of its powers under section 11(2) of the Assam Municipal Act, 1956, for short, the Act. In the election that was held in the year 2009, the petitioners along with private respondent Nos. 4 and 5 were elected as Ward Commissioners of the Town Committee and in the first meeting of the newly

elected members of the Town Committee held on 15.9.2009, newly elected Ward Commissioners were administered oath and in the said meeting, the petitioner No. 1 was unanimously elected as the Chairman of the Town Committee. The petitioner No.2 was elected as ViceChairman on 3.11.2009. On the basis of a requisition notice dated 25.7.2011, the petitioners were removed from the offices held by them through a No Confidence Motion in a meeting held on 23.8.2011, which was subsequently approved on 29.8.2011.

3. The said actions were under challenge in WP(C) No. 4526 of 2011 and this court on 7.9.2011, had stayed the operation of the resolution of No Confidence Motion dated 23.8.2011 till the returnable date. On an application filed by the respondent Nos. 4, 5 and 6 for vacation of the said interim order, registered as Misc. Case No. 2871 of 2011, by an order dated 29.9.2011, this court, while declining to alter, vacate or modify the order dated 7.9.2011, observed that the Ward Commissioners may bring fresh No Confidence Motion against the petitioners, if so advised.

4. While the petitioners were continuing as Chairman and ViceChairman, respectively of the Town Committee, notice dated 11.11.2011 was served upon the petitioners personally. By the said notice dated 11.11.2011, a requisition meeting was convened on 14.11.2011 to discuss the No Confidence Motion against the petitioners on the basis of the requisition dated 10.10.2011. It is pleaded that copy of the requisition notice dated 10.10.2011 was not personally served as required under section 43 (2) of the Act and that the same was also not received in the office as per record. It is also pleaded that no notice of any kind in connection with the issue of requisition notice prior to the notice dated 11.11.2011 was ever served upon the petitioners. A meeting was held on 14.11.2011 and on the basis of the earlier requisition notice dated 25.7.2011, a resolution was adopted expressing want of confidence against the present petitioners thereby removing them from the respective offices held by them. By notice dated 15.11.2011, a meeting was convened by the respondent No.5 on 18.11.2011 for election of Chairman of the Town Committee and said meeting was presided over by her. In the said meeting, the respondent No.6 proposed the name of respondent No.4 for Chairman, which was supported by the respondent No. 5. It is pleaded that no Notification as required under the Act was issued indicating inclusion of respondent Nos. 6 and 7 as ExOfficio Members of the Town Committee and further, the respondent No. 6 was yet to take oath as required under section 25 of the Act. Yet, the notice dated 11.11.2011 was signed, amongst others, by the respondent No. 6.

5. An affidavit in opposition is filed on behalf, of the respondent Nos. 4 to 7. In the said affidavit, the statements made in paragraphs 8 and 9 of the writ petition regarding requisition notice dated 10.10.2011 were branded as a pack of lies. It is stated that the respondent Nos. 4, 5 and 6 had personally tendered the notice dated 10.10.2011 to the petitioners and they had refused to accept the same and thereafter, the notice was served upon the Head Assistant of the Town

Committee and on receipt of the same, she had put her signature and seal on the office copy of the notice dated 10.10.2011. As the petitioner did not call the special meeting for consideration of the No Confidence Motion, the respondent Nos. 4,5 and 6 had issued two notices dated 11.11.2011 to the petitioners and other members calling a requisition meeting of the Board at 11:00 a.m. on 14.11.2011 in the office of the Town Committee to transact agenda, amongst others, relating to consideration of the No Confidence Motion against the Chairman and ViceChairman of the Town Committee. The said notice dated 11.11.2011 was received by the petitioners personally by putting their signature and seal. On 14.11.2011, a meeting was held in the office of the Town Committee. While asserting that a noconfidence resolution was adopted against the petitioners in the special meeting held on 14.11.2011, it is denied that the said meeting was held in the residence of respondent No. 6 and that resolution was adopted expressing No Confidence Motion against the petitioners on the basis of the earlier requisition notice dated 25.7.2011. The letter dated 15.11.2011 issued by the respondent No. 5 was sent to the present petitioners by Regd. Post with A/D as well as by Speed Post and on inquiry with the Post Office, it was learnt that letters were duly served upon the addressees. It is also pleaded that respondent Nos. 4 and 5 had attempted to serve a copy of the resolution dated 14.11.2011 but as the petitioners had refused to accept the copy of the resolution, through the intervention of the Deputy Commissioner, Sonitpur, the letter dated 15.11.2011 and the proceeding of the meeting dated 14.11.2011 were served through Rangapara Police Station upon the petitioners on 16.11.2011. They, however, put the date as 16.12.2011 and the petitioner No. 2 had done so through over writing after changing the figure "11" to "12". The Assistant Police Inspector who served the letters, submitted a report to the OfficerinCharge of the Rangapara Police Station stating that letters were served on 16.11.2011. It is also stated that the allegation of the respondent No. 6 not taking oath is a false statement inasmuch he had taken oath on 2.7.2011 and the proceeding bears the signature and seal of the petitioner No. 1.

6. An affidavitinreply is filed by the petitioner to the affidavitinopposition filed by the respondent Nos. 4, 5, 6 and 7. In the said affidavit, it is reaffirmed that the notice dated 10.10.2011 was never served on the petitioners either personally or in any other manner. The service of notice upon the Head Assistant is proclaimed as hardly believable as the same was not recorded in the Office Receipt Register. It is reiterated that the meeting dated 14.11.2011 was held in the residence of respondent No. 6 and it is stated that there was a local "Bandh" on 14.11.2011 and no one turned up in the office of the Town Committee. The allegation of the petitioners refusing to accept the copy of the resolution dated 14.11.2011 is also denied. However, writing of the date as 16.12.2011 is admitted and is sought to be explained by saying that it was due to inadvertence and not intended. It is stated that the respondent No.6 had not taken oath in the manner prescribed.

7. Heard Mr. D.K. Misra, learned senior counsel for the petitioners. Also heard Mr. S.P Roy, learned counsel for the respondent Nos. 4 to 8 and Mr. B.J. Ghosh,

learned Government Advocate appearing for the respondent Nos. 1, 2 and 3.

8. Mr. D.K. Misra, learned senior counsel for the petitioner, drawing attention of the court to the Annexure B letter dated 11.11.2011, submits that the clear and categorical stand in the said notice is that the respondent Nos. 4, 5 and 6 had served upon the petitioners the letter dated 10.10.2011 requesting them to call a meeting of the Board to consider the No Confidence Motion. He submits that in the writ petition, a categorical stand is taken by the petitioners that the notice dated 10.10.2011 was not served upon the petitioners and notice was also not received in the office of the Town Committee as per record. The learned senior counsel submits that as the respondent Nos. 4 to 6 had not even attempted to serve a copy of the notice dated 10.10.2011, now concocted the story of refusal by the petitioners to accept the notice and the service of notice dated 10.10.2011 upon the Head Assistant. Learned senior counsel wonders what prevented the requisitionists to bring to the notice of the petitioners letter dated 10.10.2011 by Regd. Post with A/D or by Speed Post, when they had gone to the extraordinary length of serving the petitioners the notice dated 15.11.2011 not only by Speed Post and Regd. Post but through the Rangapara Police Station. The learned senior counsel submits that as the notice was not admittedly served on the petitioners by the requisitionists, the notice dated 11.11.2011, resolution expressing No Confidence Motion against the petitioners on 14.11.2011, notice dated 15.11.2011 and the election of the respondent No.4 as the Chairman of the Town Committee on 18.11.2011 are liable to be adjudged illegal and void.

9. Referring to section 44(2)(c) of the Act, without prejudice to his contention that all subsequent actions beginning from the issuance of the letter from 11.11.2011 are illegal and not sustainable in law, the notice dated 10.10.2011 having not been served upon the petitioners, it is submitted by him that Smt. M. Deka, respondent No.5, who presided over the meeting dated 14.11.2011, was not duly elected to preside over the said meeting as enjoined by section 44(2)(c) as the meeting was for simultaneous removal of both the Chairman and the ViceChairman of the Town Committee. He submits that there was no election electing the respondent No. 5 to preside over the meeting as would be demonstrated by the proceeding of the meeting dated 14.11.2011 but her name was only proposed by the respondent No. 4 and seconded by the respondent No. 6. As such, the entire proceeding of the meeting dated 14.11.2011 is liable to be set aside.

10. The third ground urged by Mr. Mishra is that having regard to the provisions of section 33(2), 41(1), 41(2), 41(3) and 41(4), the casual vacancies arising out of the alleged removal of the petitioners under section 28(2) could have been filled up only in a meeting convened by the Deputy Commissioner or the SubDivisional Officer and in the instant case, meeting was convened on 18.11.2011 by a notice dated 15.11.2011 signed by the respondent No. 5 as Convener and the same being, per se, illegal, election of the respondent No.4 as Chairman in the said meeting dated 18.11.2011 is void and nonest in law. Mr.

Mishra relies upon the case of Surprakash Sarkar and Others v. State of Assam and Others, 2009 (1) GLT 297 to impress upon the court that the provisions of the Act have to be strictly complied with for safeguarding the protection of democratic institutions and democratically elected members. Mr. Mishra has not made any other submission including in respect of alleged inability of respondent Nos. 6 and 7 to participate in the proceedings of No Confidence Motion on the grounds of nonissuance of a Notification to include them as ExOfficio Members of the Town Committee or for not taking oath.

11. Mr. S.P. Roy, learned counsel appearing for the respondent Nos. 4 to 8, submits that the case of the petitioner is based on falsehood. He submits that the letter dated 10.10.2011 was served on the Head Assistant and she has committed mischief. He submits that if really the petitioners had not received the notice dated 10.10.2011, it would have been only logical and reasonable to expect some reaction from the petitioners when the letter dated 11.11.2011 was served. However, the petitioners did not react at all and according to him, it is a very unusual circumstance. It is submitted by him that the writ petition is totally silent with regard to service of notice on the Head Assistant and there is collusion between the petitioners and the Head Assistant and submits that the meeting was held in the office of the Town Committee on 14.11.2011.

12. Mr. Roy submits that though section 43(2) does not provide for personal service of notice, the notice was, nevertheless, personally tendered to the petitioners, who refused to accept the same and accordingly, notice dated 10.10.2011 was served upon the Head Assistant. He relies on order 29 and order 5, CPC to contend that service upon the Head Assistant will amount to service upon the petitioner. He also submits that the Act having not provided for any mode of service, provision of CPC will apply. According to him, removal by way of No. Confidence Motion does not result in a casual vacancy, and as such, contentions advanced on behalf of the petitioners in connection with election of respondent No.4 is ill founded. He further submits that there could not have been any occasion for suppression of notice dated 10.10.2011 when the requisitionists had a clear majority. Lastly, he submits that even if there is any irregularity in the proceedings of the meeting dated 14.11.2011 and 18.11.2011, such irregularity will not invalidate the proceedings. He relies on the following judgments :

(1) Moran Mar Basselios Catholicos v. Thukalan Paulo Avira and Ors, AIR 1959 SCS, (2) Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti and Others, AIR 1962 SC 666, (3) K. Narashimiah v. H.C. Singri Gowda, AIR 1966 SC 330, (4) Rai Vimal Krishna and Others v. State of Bihar and Others, AIR 2003 SC 2676, (5) MCD v. State of Delhi and Another, (2005) 4 SCC 605, (6) Uttar Pradesh Resi. Emp. CoOp. House B. Society v. N.O.I. D.A, 2003 AIR SCW 3304, (7) Subal Rabha and Others v. State of Assam, 2012 (2) GLT 505 (2012) 3 GLR 450 (8) The Management of Maijan Tea Estate v. K.C. Das, 1974 ALR 46, (9) Puran Singh and Others v. State of Punjab and Others, AIR 1996 SC 1092, (10)

Teja Singh v. U.T. of Chandigarh and Others, AIR 1982 P and H 169, (II) Dilip Singh v. State of Assam and Others, (2008) 1 GLR 715, (12) AIR 2012 SCW 3017 and (13) Races Ahmad v. State of Uttar Pradesh and Others, (2000) 1 SCC 432.

13. In reply, it is submitted that provision of CPC is not applicable in a proceeding of the Board in view of the section 141 CPC. It is also contended that the proceeding of the meetings dated 14.11.2011 and 18.11.2011 go to the root of the matter and the irregularity committed in holding the said meetings invalidates the proceedings as a whole.

14. Removal of Chairman and ViceChairman provided in section 28 (2) of the Act reads as follows :

, "An elected Chairman or ViceChairman may be removed from his office by a resolution of the Board in favour of which not less than half of the whole number of Commissioners shall have given their votes at a meeting specially convened for the purpose."

15. The aforesaid provision, thus, provides that the elected Chairman or ViceChairman may be removed from the office by resolution of the Board in favour of which not less half of the whole number of Commissioners shall have given their votes in a meeting specially convened for the purpose. This takes us to section 43(2) and section 43(3) of the Act. Section 43(2) and section 43(3) read as follows :

"43(2) The Chairman, or in his absence, the ViceChairman may call a special meeting whenever he thinks fit and shall call one on a requisition signed by not less than three of the Commissioners.

43(3) If the Chairman or the ViceChairman fails to call special meeting to meet within twenty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition."

16. A perusal of section 28 and section 43 (2) goes to show that for the purpose of convening a special meeting in which votes are to be given for the removal of an elected Chairman or ViceChairman, a requisition signed by not less than three of the Commissioners shall have to be given and when such a requisition is given, the Chairman shall call a special meeting. Section 43(3) provides that if a Chairman or ViceChairman fails to call a special meeting within 20 days after such requisition is made, the meeting may be called by the persons who signed the requisition. Noticeably, the provisions are silent with regard to how the requisition is to be served or on whom.

17. In Rai Virnal Krishna (supra), the Supreme Court had laid down that the object of giving notice is to draw the attention of the persons sought to be affected to the matter notified. Purpose of specifying a particular mode of giving notice is to raise a legal presumption against such person of knowledge of the subject of the notice.

18. In *Nilakantha* (supra), taking note of the difference of the language in subsection 1 of section 14 of the Arbitration Act, 1940 requiring the Arbitrator or Empire to give notice in writing to the parties making and signing of the award with subsection (2) thereof requiring the court, after filing of the award, to give notice to the parties of the filing of the award, the Supreme Court stated that giving of a notice orally is also sufficient compliance with the requirement of subsection 2 of section 14.

19. Relying upon *Moran* (supra), as noted in the said judgement, submission was advanced by Mr. Roy that there was no incentive on the part of the defendants to suppress the notice. The Supreme Court had laid down that in absence of any particular mode of service for a meeting in the proceeding of the constitution of the association, the mode of service determined by the Managing Committee should prevail. Supreme Court also recorded that advertisement in newspaper in the said case negated the allegation of attempt of suppression of notice.

20. In *K. Narashimhiah* (supra), the question that fell for consideration was as to whether requirement of three clear days' notice for the holding of a general meeting as embodied in section 27(3) of the Mysore Town Municipality Act 1951 is a mandatory provision? In the said case, a request was made to the president of Holanaksipur Municipality consisting of 20 Councilors by 13 Councilors to convene a special general meeting to discuss resolution expressing no confidence against him on 25.9.1963. He having not convened the meeting, a meeting was convened on 14.10.1963 by a notice dated 10.10.1963. The notice was served on three Councilors on 13.10.1963, 12.10.1963 and 11.10.1963. In the meeting held on 14.10.1963, the President was voted out and it is in these circumstances the aforesaid question had fallen into consideration. The Apex Court, taking note of section 36 of the Act which provided that no resolution shall be deemed invalid on account of any irregularity in the service of notice upon any Councilors, held that provision of notice in section 27(3) is only directory.

21. In *Maijan Tea Estate* (supra), this court had held that although provision of CPC in terms may not apply in full vigour to the writ proceeding, nonetheless, it would be governed by the principles analogous to those contained in CPC so far as they are not inconsistent with the Rules made by the High Court on the subject. Accordingly, it was held that an application under order 9 rule 13 CPC for setting aside an ex parte judgement in a writ petition may not be said to be not maintainable at all.

22. In *Teja Singh* (supra), a similar view was taken by the Punjab and Haryana High Court that in the matters which have not been specifically dealt with by the Writ Rules, the provisions of CPC, so far as they can be made applicable, would apply to the proceedings under article 226 of the Constitution.

23. In *Puran Singh* (supra), the Apex Court held that after the amendment of CPC, by the CPC Amendment Act, 1976 introducing the explanation to section 141 of the Code, the procedure provided in the Code does not include a

proceeding under article 226 of the Constitution. The explanation of section 141 was construed to be more or less in the nature of a proviso. The Apex Court, however, laid down that on many questions the provision and procedure prescribed under the Code can be taken up as a guide while exercising the powers under articles 226 and 227 of the Constitution of India.

24. The aforesaid three cases are in connection with applicability of the CPC to the writ proceeding and the same do not in any way advance the case of the respondents that provision of CPC will have to be made applicable with regard to service of notice in the instant case in view of there being no provision for effecting service in the Act.

25. Dilip Singh (supra), relied upon by Mr. Roy is a case where this court was considering the meaning of expression "given their votes" as appearing in section 28(2) of the Act, which is of no relevance in the instant case. The other aspect considered in the said case was as to what would be the effect if in a meeting to discuss a vote of No Confidence Motion against a person, he himself had presided over the meeting. This court held that such an act may be improper but the same cannot have the effect of invalidating or nullifying the proceeding of the meeting.

26. Subal Rabha (supra), another case relied upon by Mr. Roy, deals with a question as to whether the ExOfficio Member of the Town Committee has right to issue requisition and vote in a no confidence proceeding against the Chairman and ViceChairman of the Town Committee. That is not a question posed in this petition.

27. Same is the position with the decision in Races Ahmed (supra), which deals with a question as to whether the number of the nominated members of the Municipality, who are not entitled to vote, can be taken into consideration for the purpose of composition of a Municipality with reference to a No Confidence Motion.

28. Section 43(2) does not provide to whom the requisition shall be given. There is no requirement of service of notice personally to the Chairman and therefore, it is not necessary that the requisition has to be personally served on the Chairman or ViceChairman as the case may be. As section 43(2) warrants calling of a special meeting on a requisition signed by not less than three Commissioners, the Chairman or the ViceChairman must have information of the requisition so as to enable them to call a meeting within the outer limit of 20 days. The Chairman and the ViceChairman are elected by the Commissioners, which in other words, signifies that they had the majority support at the time of election. They may lose confidence of their electors with the passage of time and if in terms of the provisions of the Act, requisition is given complying with the required formalities to hold a special meeting to discuss a No Confidence Motion, it is imperative that a special meeting is to be held to discuss the No Confidence Motion. Section 43(3) is a safeguard given to the requisitionists because a

Chairman or a ViceChairman can ignore a requisition and not hold a meeting to frustrate the requisitionists. It is equally possible, to checkmate the Chairman or the ViceChairman, the requisitionists may profess to have brought the requisition to the notice of the Chairman without really doing so. There is time limit of 20 days for holding a meeting from the date of requisition made. On failure of Chairman to hold a special meeting within the specified time, as it appears, the requisitionists can hold a meeting immediately thereafter. This is of some moment and importance. On a reading of sections 43(2) and 43(3) together, this court is of the opinion that the legislative mandate demands that the requisition must be brought to the notice of the Chairman or ViceChairman and there must be some evidence and/or material to show that a conclusion can be arrived at that the requisition was so brought to the notice of the Chairman and/or the ViceChairman. Since a right has been conferred upon the requisitionists to convene a meeting after 20 days of the requisition made, in order to enable them to exercise that right, the requisitionists must be able to show some acceptable material that the Chairman and/or the ViceChairman was served personally or through any other method or that the requisition was brought to the notice of the Chairman and/or ViceChairman through the intervention of any authority in an official manner. If any functionary within the Town Committee establishment is trying to play truant and cause mischief by trying to side with either of the two camps, as alleged in this case, appropriate steps can surely be taken to ensure the imperative of section 43(2) and 43(3).

29. In the instant case, the notice dated 11.11.2011 is clear and categorical that letter dated 10.10.2011 was served upon the petitioners to call a meeting of the Board to consider the No Confidence Motion against them. The assertion is unequivocal and emphatic admitting of no other possible interpretation. This assertion is repudiated by the petitioners in the writ petition in no uncertain terms. If the notice dated 10.10.2011 was actually refused by the petitioners and on such refusal, the notice was delivered to the Head Assistant, it would be reasonable to expect that when the requisitionists had broached the subject of the letter dated 10.10.2011 in the letter dated 11.11.2011, it ought to have reflected the most vital and significant aspect of refusal of notice by the petitioners and also of subsequent delivery of the notice to the Head Assistant. In such a scenario, assertion in the notice dated 11.11.2011 that notice dated 10.10.2011 was served upon the petitioners is quite misplaced and incongruous and cannot be reconciled.

30. I have perused the Peon Book, two in number one containing from page 1 to 122 and the other containing page 1 to 121. In the first one, there is no entry from 30.9.2011 to 20.10.2011 and in the second one, after 7.10.2011, the next entry is on 21.10.2011. The Receipt Register begins with the date 4.4.2000. SI. No. 871 reflects receipt of a letter from the Director, Municipal Administration on 26.9.2011. Next SI. No. 872 is receipt of a letter from the same authority on 9.11.2011. From the aforesaid, it is, at least, clear that the requisition was not made part of Town Committee records. It is another matter whether the same

was deliberately not done. The respondent Nos. 4 to 7 in their affidavit had enclosed copy of the letter dated 10.10.2011 received by the Head Assistant of Town Committee. This court will not hazard a guess as to which version is correct one given by the petitioners that even if the same was received by the Head Assistant, the same was not brought to the notice of the Chairman and Vice-Chairman or the version of the respondent Nos. 4 to 7 that there is a collusion between the petitioners and the Head Assistant. The requisitionists being Commissioners of the Town Committee, demanding a special meeting, in order to get the benefit of section 43(2) of the Act, it was incumbent on their part to have ensured that the requisition was made part of the Town Committee records so that there are contemporaneous record establishing delivery of requisition on that date. This court cannot also be oblivious of the efforts made by the respondent Nos. 4 to 7 to ensure service of notice for the special meeting to be held on 18.11.2011, which may not have been of that importance and significance to the petitioners, by ensuring service through Police Authority after taking assistance from the Deputy Commissioner.

31. In view of the aforesaid discussions, this court is of the opinion that the requisitionists have failed to discharge the imperative of establishing that the requisition was either served or was brought to the notice of the petitioners and that they had failed to hold a meeting within a period of 20 days thereafter. If that be so, the requisitionists could not have issued the notice dated 11.11.2011 for considering the No Confidence Motion against the petitioners. Accordingly, the notice dated 11.11.2011 is set aside and quashed and consequently, the resolutions taken in the meeting dated 14.11.2011 and 18.11.2011 are adjudged illegal and void. It is further directed that the writ petitioners shall function as the Chairman and the ViceChairman.

32. Since the writ petition has been answered in favour of the petitioners on the first ground argued by Mr. Mishra, this court considers it inappropriate to dilate upon the other grounds raised by Mr. Mishra. Such questions raised by Mr. Mishra are left to be decided in a more appropriate case. In view of the aforesaid adjudication, this court does not also consider it necessary to discuss other cases relied upon by Mr. Roy as they are, primarily, related to cases based on falsehood.

33. This court in WP(C) No. 4526 of 2011, by the judgement and order, dated. 19.6.2012, had sustained the plea of the petitioners that the earlier requisition dated 25.7.2011 was not valid, having been given by two Commissioners instead of three as required under section 43 (2) of the Act. In this petition, the plea of the petitioners has been sustained on the ground of requisition dated 10.10.2011 not being served or brought to the notice of the petitioners to enable them to call a special meeting to discuss the No Confidence Motion within the time framed as enjoined by section 43(2) of the Act. This court has noticed the allegations and counter allegations involving staff of the office of the Town Committee. In view of the aforesaid, if any fresh requisition is made in terms of section 43(2) of the Act, it will be open for the requisitionists to take the assistance of the Deputy

Commissioner for service of the requisition upon the petitioners. In case such assistance is sought, the concerned Deputy Commissioner will ensure that the notice is personally served upon the petitioners with acceptable evidence of such service.

34. With the aforesaid observations and directions, writ petition is allowed.

35. No costs.