
(2010) 01 GAU CK 0054

In the Gauhati High Court

Case No : Writ Petition (C) No's. 605 and 625 of 2009

Kh. Ruhini Devi and Md. Ningthem

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Manipur Municipalities (Election of Councillors) Rules, 1994 — Rule 111, 111(1), 111(4)
Manipur Municipalities Act, 1994 — Section 213, 221, 24(2), 24(3), 31(1)

Citation : (2010) 1 GLD 511 : (2011) 2 GLT 361

Hon'ble Judges : Asok Potsangbam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Asok Potsangbam, J.—As common question of facts and laws are involved in the above two writ petitions, they are taken up together for hearing and disposal by a common judgment and order.

2. Heard Mr. H.S. Paonam and Mr. M. Hemchandra, learned Counsels appearing for the petitioners in W.P. (C) No. 605 of 2009 and W.P.(C) No. 625 of 2009 respectively. Also heard Mr. H. Raghumani, learned Addl. G.A. appearing for all the official respondents and Mr. S. Jayanta, learned senior advocate appearing for the respondent No. 6 as well as Mr. N. Kumarjit, learned Counsel appearing for the respondent No. 7 in both the cases.

3. Brief facts which are relevant for disposal of the writ petitions may be noticed as hereunder. For convenience and easy reference, facts of writ petition No. 605 of 2009 shall be discussed hereinafter for the purpose of his judgment and order.

4. The controversy in this case relates to the procedures adopted by the authority in filling up the casual vacancy in the office of the Chairperson, Thoubal Municipal Council (hereinafter referred to as TMC) which remained vacant w.e.f. 18.9.2009 as the no confidence motion against the former Chairperson was carried. The casual vacancy occurring w.e.f. 18.9.2009 was required to be filled

up in accordance with the provision of the relevant Acts and Rules framed thereunder.

5. In order to fill up the aforesaid vacancy in the office of the Chairperson, TMC, Deputy Commissioner, Thoubal, the respondent No. 4 in the writ petition, sought approval of the Government, vide his letter No. 6/7/DC(TBL)/95/Vol-I/818 dated 18.9.2009, to hold a special meeting for election of a new Chairperson of the TMC, on or before 9.10.2009, in terms of the provision of Section 31(1) read with Section 24(2) of the Manipur Municipality Act (hereinafter referred to as M.M. Act), 1994. Though the casual vacancy in the office of the Chairperson is required to be filled up within 21 days from the date of vacancy, in terms of Section 24(2) of the M.M. Act, 1994, the Government, despite receipt of the proposal letter dated 18.9.2009 from the Deputy Commissioner as discussed above, conveyed its approval to hold the special meeting for election of new Chairperson of the TMC, only on 6.10.2009 vide communication dated 6.10.2009 under No. 2/16/99-MAHUD, Government of Manipur. The aforesaid communication dated 6.10.2009 is reproduced herein below:

No. 2/16/99-MAHUD GOVERNMENT OF MANIPUR SECRETARIAT: MAHUD DEPARTMENT

Imphal, the 6th October, 2009

To,

(1) The Deputy Commissioner, Thoubal District.

(2) The Executive Officer, Thoubal Municipal Council.

Subject: Fixing of date for election of a new Chairperson of Thoubal Municipal Council.

Sir,

In inviting a reference to your letter No. 6/7/DC(TBL)/95/Vol-I/818 dated 18.9.2009 on the subject mentioned above and to convey approval of the Government to the holding of Special Meeting for election of new Chairperson, Thoubal Municipal Council on or before 9.10.2009 as per Section 31(1) read with Section 24(2) of the Manipur Municipalities Act, 1994.

2. It is further ordered that Deputy Commissioner, Thoubal is appointed to preside over the meeting for election of new Chairperson, Thoubal Municipal Council as provided u/s 24(3) of Manipur Municipalities Act, 1994.

Yours faithfully, Sd/- (Neeta Arambam) Deputy Secretary, (MAHUD), Govt. of Manipur

It may be noticed from para No. 2 of the above extracted communication that the Deputy Commissioner, Thoubal, was appointed u/s 24(3) of M.M. Act, to preside over the special meeting for election of new Chairperson of TMC.

6. It is stated that pursuant to the aforesaid approval of the Government, Deputy Commissioner, Thoubal, issued a notice for meeting to elect the Chairperson of Thoubal Municipal Council, in form No. 29 as prescribed under Rule 111(1) of the Rules and the schedule appended to the notice was as follows:

SCHEDULE FOR ELECTION OF CHAIRPERSON OF THOUBAL MUNICIPAL COUNCIL

-----	1.	Date of
Notification :		6.10.2009
-----	2.	Date of time for
filling : 8.10.2009 (11 a.m. of nomination to 12 noon)		
-----	3.	Scrutiny :
8.10.2009 (12.5. to 12.30 p.m.)		
-----	4.	Last date of
withdrawal : 8.10.2009 (upto 1 P.m.)		
-----	5.	Date of poll :
8.10.2009 -----	6.	Hours
of poll : (2 p.m. to 2.30 1 p.m.)		

Sd/- (R.K. Dinesh Singh) Deputy Commissioner, Thoubal District.

7. In continuation of the Government letter dated 6.10.2009, as extracted above, the Additional Secretary, MAHUD, Government of Manipur, issued another communication dated 7.10.2009 wherein it was conveyed that the SDO, Thoubal, would conduct the election of new Chairperson, TMC, as provided in Rule 111 of the M.M. (Election of Councillors) Rule, 1994. In view of the aforesaid communication dated 7.10.2009, as referred to above, the Deputy Commissioner cancelled the earlier schedule for election of new Chairperson and thereafter, the SDO, Thoubal, issued another notice under form No. 29 for election of new Chairperson, TMC, with fresh schedule which is reproduced herein below:

SCHEDULE FOR ELECTION OF CHAIRPERSON OF THOUBAL MUNICIPAL COUNCIL

-----	1.	Date of
Notification :		7.10.2009
-----	2.	Date and time
for filling : 8.10.2009 (11 a.m. to of nomination to SDO 3 p.m.) Office, Thoubal		
-----	3.	Scrutiny at
SDO Office, : Immediately after 3 Thubal p.m. of 8.10.2009		
-----	4.	Preparation of
list of : Immediately after validly nominated candi- scrutiny date at SDO		
Office, Thoubal -----		
5. Last date and time of : 10. a.m. of 9.10.2009 withdrawal to be sub- mitted		
at Tbl. Municipal Council		
-----	6.	Preparation of
list of : Immediately after 10 contesting candidates a.m. of 9.10.2009		
-----	7.	Date of Poll :

910.2009 ----- 8.
Hours of Poll (in case of : 11.30 a.m. to 2.30 more than one contesting p.m. on
9.10.2009 candidates) at T.M.C.
----- 9. Counting of
Votes at : Immediately after T.M.C. close of Poll
----- 10. Declaration
of result at : Immediately after T.M.C. counting or votes.

Sd/- (L. Nandakumar Singh) Sub-Divisional Officer, Thoubal

8. The case of the petitioner is that four of the elected councillors of TMC, submitted a representation on 9.10.2009 requesting the Deputy Commissioner and the SDO, Thoubal, to cancel the proposed election notice and conduct a fresh election process strictly by following the relevant provision of law. It is contended in the representation that Bye Law No. 6(ii)(a) of the Model Bye Law, 1998, framed by the State Government in exercise of the power conferred u/s 213 of the M.M. Act, 1994, requires that notice for election is to be served to the councillors, at least, five days before the date of meeting whereas the notice issued by the SDO, Thoubal, on 7.10.2009, was received by some of the councillors only after 4 p.m. of 8.10.2009 i.e. one day before the election. Secondly, a lot of confusion was created by issuing two notices for meeting of election, one on 6.10.2009 and another on 7.10.2009 without giving any reason. The way two notices had been issued consecutively as discussed above and the time gap provided between the notice and the date of election, had created uncertainty and confusion in the mind of the councillors thereby depriving the petitioner and other councillors of reasonable opportunity to organise themselves and canvas for support of their candidature which is the basic requirement of Parliamentary Democracy.

9. The further case of the petitioner is that the SDO, Thoubal, the respondent No. 5, had no authority under law to preside over the meeting called by him in terms of the Rule 111 of the M.M. Rules, 1994, in absence of any order issued by the Government cancelling, modifying and superseding the earlier communication dated 6.10.2009, by which the Deputy Commissioner, Thoubal, was appointed to preside over the meeting for election of Chairperson, TMC. In other words, SDO was simply authorised to conduct the meeting in terms of the Rule 111 of M.M. Act, 1994, nothing more.

10. The further submission of the petitioner is that there was breach of Model Bye law while issuing notice for election and the SDO, Thoubal, acted without jurisdiction in presiding over the meeting for election of Chairperson, TMC, inasmuch as there was no cancellation/modification of the communication dated 6.10.2009 issued by the Deputy Secretary, MAHUD, appointing the Deputy Commissioner, Thoubal, as the authority to preside over the meeting for election of new Chairperson in terms of Section 24(3) of M.M. Act. Consequently, it is submitted that the entire proceeding of the election leading to the declaration of

respondent No. 7 as the elected Chairperson, TMC (Annexure A/9 to the writ petition), is liable to be quashed as illegal and not sustainable in law.

11. A joint affidavit-in-opposition on behalf of the respondent Nos. 1, 2, 3, 4, and 5 was filed, after having duly sworn of the same by the Deputy Secretary, MAHUD, Government of Manipur. In the aforesaid affidavit, it is stated by the official respondents that the election of new Chairperson was to be held on or before 9.10.2009 as mandated by Section 24(2) of MM Act, 1994 and accordingly, letter dated 6.10.2009 was issued by the Government directing the Deputy Commissioner, Thoubal, to hold the special meeting for election of new Chairperson of TMC on or before 9.10.2009. It is also categorically stated by the official respondents that Deputy Commissioner, Thoubal was appointed to preside over the meeting. In para 5 of the affidavit-in-opposition, Government took the stand that in addition to the appointment of the DC, Thoubal to preside over the meeting, SDO, Thoubal, was authorised to conduct the election. Relevant portion of para 5 is quoted below:

Accordingly in addition to the appointment of the Deputy Commissioner, Thoubal as the presiding officer of the special meeting it was decided that the SDO, Thoubal shall conduct the election of the new Chairperson of Thoubal Municipal Council and this decision was communicated to the DC, Thoubal and SDO, Thoubal by the Addl. Secretary, MAHUD, Government of Manipur vide letter No. 2/16/99-MAHUD dated 7.10.2009. Accordingly, the said special meeting was held on the schedule date and time.

12. Another contention of the respondents is that the Model Bye-law 1998 framed in exercise of the power conferred u/s 213 of M.M. Act, 1994, is advisory in nature and non-compliance of the same shall not vitiate and render invalid of the election notice and the election thereto, because there is no provision in the Bye-law to that effect. At the same time, respondents have maintained in their affidavit that holding of election within 21 days from the date of occurrence of the casual vacancy is mandated u/s 24(2), M.M. Act, 1994 and this provision is mandatory. No averment has been made in the affidavit-in-opposition explaining as to why the notice for meeting was not issued earlier i.e. 5 days before the date of election.

13. The respondent Nos. 6 and 7 have taken, more or less, the same stand of the official respondents and they have denied almost all the contentions of the petitioner in their joint affidavit. In any case, what is being questioned in this writ petition is the action of the official respondents, not of the respondent Nos. 6 and 7 and as such there is no need to dwell at length on the affidavit of the respondent Nos. 6 and 7.

14. From the above narration of facts and discussion on the pleading of the parties, the following issues emerged for consideration and decision of the Court:

(i) Whether the notice issued by the SDO on 7.10.2009 for election on 9.10.2009 was in breach of Model Bye-law No. 6(ii)(a) of the Bye-law, 1998 and what would

be its effect?

(ii) Whether the SDO, Thoubal, was authorised in law and/or competent to preside over the special meeting convened for election of new Chairperson of TMC, in absence of his appointment in terms of Section 24(3) of M.M. Act, 1994 or not?

(iii) In case, the issue Nos. (i) and (ii) are decided in the negative, what relief would be granted, considering the peculiar facts and circumstances of the case.

15. The Court will now examine and decide the issues formulated above in the light of the factual matrix and the pleading of the parties as discussed above. In order to appreciate the issue No. (i), it may be pertinent to refer to Section 24(2) of the M.M. Act, 1994, wherein it is provided that in case of vacancy in the office of the Chairperson on account of any reason other than the expiry of the term of the Chairperson, the same is to be filled up within 21 days from the date of the occurrence of the vacancy. However, there is no provision in the Act and Rules providing as to how such vacancy is to be filled up. In order to overcome the difficulty confronted by the Government due to non-availability of provision for filling up such vacancy, Government invoked its power as provided in Section 221 of the Act which empowers the Government to remove any difficulty in giving effect to the provisions of the Act by issuing appropriate order. Thus by invoking the provision of Section 221 of the M.M. Act, 1994, Government issued an order dated 27.9.2001, wherein, it was provided that vacancy in the office of the Chairperson by reason of removal, resignation or otherwise, shall be filled up by holding an election and in such election, the provision of Rule 111 of M.M. (Election of Councillors) Rule, 1994 would apply *mutatis mutandis*. Rule 111 provides that for election of Chairperson of the Municipal Council, the SDO of the district in which the Municipal Council is constituted, shall convene the meeting by issuing notice in form No. 29, fixing the time, date and place of the meeting and the first proviso to Rule 111(4) stipulates that the meeting for election of the Chairperson, Municipal Council, shall be presided over by a person to be appointed by the State Government u/s 24(3) of the M.M. Act, 1994.

16. There is no dispute at the bar that both the Act and the Rules are silent about the mode and the manner in which notice is to be issued, served and the time to be given to the councillors before the date of election. In order to overcome the aforesaid deficiency, as discussed above, the Governor of Manipur framed a bye law called as Model Bye Law for the conduct of business in the meeting of the Municipal Council/Nagar Panchayat, in exercise of the power conferred u/s 213 of the M.M. Act, 1994 and as such, the Bye Law is statutory and it has the force of law. Special meeting is prescribed in bye-law No. 4(a) but this prescription is only inclusionary and not exclusionary. No argument has been advanced by the Government respondents as to the status of the meeting to be called for election of new Chairperson, TMC. Perhaps, the reason for this is that letter dated 6.10.2009 (Annexure A/1) has already mentioned that the meeting to be convened is of special meeting. Bye Law 6 deals with the service of notice

and 6(ii)(a) lays down as to how a special meeting of the councillors is to be convened. Bye law 6(ii)(a) further makes it clear that if no time limit within which the notice should be served is provided under the Act and rules made thereunder, the notice for such meeting shall be sent to the registered address of each councillors at least five days before the date of meeting. Bye Law 6(ii)(a) is quoted below:

Every notice convening a special meeting of the Council/Panchayat shall be sent to the Registered address of each councillors in accordance with what is laid down under the Act and rule made thereunder. If no time limit within which the notice should be served is provided under the Act and rules made thereunder, the notice for such meeting shall be sent to the registered address of each councillor at least five days before the date of meeting.

17. Conjoined reading of Section 24(2) of the M.M. Act, 1994, Rule 111(1) and (4) of the M.M. Rules, 1994 and Bye Law 6(ii)(a) of the Bye Law of 1998, clearly demonstrate that the statutory requirement for issuing notice, of a special meeting is to give at least five days time before the date of meeting for election. The Additional Secretary, MAHUD who was present before the Court on 17.11.2009, as directed by the Court, was pointedly asked by the Court as to what would be actual time to be given in such notice. The Additional Secretary has fairly informed the Court that in the past, serving of notice with five days ahead of the meeting for election was followed without exception. The relevant file No. 2/16/99-MAHUD which has been requisitioned by the Court, is perused. On perusal of the file, it reveals that a similar kind of notice was issued on 1st October, 1999 by giving at least seven days time before the date of election and this notice is available at page 4, C.F. Therefore, the statement of the Additional Secretary, MAHUD that in the past, notice with five days ahead of the meeting had been issued before the date of election, is supported by the records of the Government.

18. Mr. H.S. Paonam, learned Counsel for the petitioner submits that the Model Bye Law, 1998, being a statutory bye law framed by the Governor u/s 213 of the M.M. Act, 1994, is a law for regulating and guiding the mode and manner of service of notice and as such, the same cannot be violated. In support of this proposition, he cited a case reported in (1994) 3 SCC 569 (Karta Singh v. State of Punjab) where the constitution bench of the Apex Court held in para 36 in the following words, "Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience." Mr. Paonam, learned Counsel for the petitioner also relied upon in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, wherein the Apex Court held in para No. 40 therein, in the following words, "It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The state and other authorities while acting under the said Act are only creature of statute. They must act within the

four corners thereof." In addition to the above proposition of law, Mr. H.S. Paonam submits that apart from interpretation and construction of the Rules and Bye law, as discussed above, admittedly, it is in the past practice of the Government to issue notice, at least, five days before the meeting and therefore, the impugned notice dated 7.10.2009 was issued for some inexplicable reasons. In support of the aforesaid proposition, he cited a case reported in N. Suresh Nathan and another Vs. Union of India and others, wherein the Apex Court held that "if the past practice is based on one of the possible constructions which can be made of the Rules, then upsetting such long standing practice would not be appropriate." Despite the above admitted position, no explanation has been given for making a departure from the established past practice and as such, this Court is of the considered opinion that the notice dated 7.10.2009 (Annexure A/10 to the writ petition) is not only in breach of the statutory Bye Law and but the same also suffers from infraction of law.

19. The argument of the respondents that there is no provision in the Model bye-law to the effect that non-compliance of the provision of the bye-law would vitiate a meeting called for election of Chairperson is not acceptable for the simple reason that there is also no provision in the M.M. Act, 1994 and rules framed thereunder that non-holding of the election within 21 days as provided u/s 24(2) would entail any penal consequence. Yet, the Government chose to brand Section 24(2) as mandatory and a different yardstick is sought to be applied to the Bye Law which is also statutory, having the force of law. This is not permissible. If at all the Government had any difficulty, the election could have been easily postponed by issuing an order in exercise of the power conferred u/s 221 of the M.M. Act, 1994 but the respondents did not choose to exercise the power available under law for reasons unexplained in their affidavit. At the same time, there is nothing on record, including the official file, to show that the Government had any difficulty in issuing the notice for election in time, and therefore, it had no valid excuse to issue the notice just two days before the election. The notings in the file No. 2/16/99-MAHUD disclose that the Government received a proposal from the Deputy Commissioner, Thoubal, on 18.9.2009, to hold special meeting for election of Chairperson of TMC and the Commissioner, MAHUD sent up the file on 28.9.2009 but the decision to issue notice was taken only on 5.10.2009. In between 28.9.2009 to 5.10.2009, there was no movement of the file and therefore, there can not be any valid reason to explain as to why and how the notice was not issued in time as done in the past. In view of the above discussion, issue No. 1 is answered in the manner indicated above and therefore, notice for election is liable to be quashed.

20. With regards to issue No. 2, the same can be determined from the plain meaning of the language employed in Section 24(3) and Rule 111(4), wherein it is provided that the meeting for election of the Chairperson of a Municipal Council, is to be presided by a person appointed by the Government in terms of the aforesaid provision. Admittedly, Deputy Commissioner, Thoubal, was appointed to preside over the meeting for election of new Chairperson of TMC u/s

24(3) of the M.M. Act, 1994 vide para 2 of the communication dated 6.11.2009 issued by the Deputy Secretary, MAHUD, Government of Manipur. The appointment of Deputy Commissioner as the authority to preside over the meeting has neither been modified nor cancelled nor superseded by any subsequent order, therefore, its validity remained all throughout. Communication dated 6.10.2009 (Annexure A/1) appointing the Deputy Commissioner as the presiding officer of the meeting was issued by the Government with the approval of the Minister, MAHUD, who happens to be the Hon''ble Chief Minister of the State and there is nothing, on file No. 2/16/99-MAHUD, to show that the aforesaid approval has been modified subsequently and all that can be seen from the file, in note No. 163, is that SDO was to be instructed to conduct the meeting for election of TMC in terms of the Rule 111 of the M.M. Rules, 1994 and this proposal was approved only at the level of the Commissioner, not with the approval of the Minister. The above discussion, on the relevant Government file, supports the stand taken by the Government respondents in para No. 5 of their affidavit which reads as follows; "in addition to the appointment of Deputy Commissioner, Thoubal as the presiding officer of the special meeting, it was decided by the Government that the SDO should conduct the election of the Chairperson of TMC". Perusal of the file referred to above and the affidavit of the respondents would clearly establish that it was only the Deputy Commissioner, Thoubal, who was statutorily appointed to preside over the meeting and none else. Therefore, the SDO usurping authority to preside over the meeting is contrary to law and such action is not sustainable.

21. It may be noted that the authorisation to the SDO to conduct the meeting vide communication dated 7.10.2009 (Annexure A/3 to the writ petition) shall be confined to publication of notification for election, receipt of nomination of papers, scrutiny of nomination papers, preparation of the list of validly nominated candidates, determination of withdrawal, if any, preparation of the list of contesting candidates and counting of votes etc. The Government has rightly used the word "conduct" in Annexure A/3 which would only mean that one has to organise and perform but, in no case, it can be construed to include the power and authority to preside the special meeting in question. Therefore, job of the SDO to conduct the meeting in terms of Annexure A/3 to the writ petition and job of the Deputy Commissioner to preside over the meeting in terms of the appointment u/s 24(3), are clearly demarcated functions and responsibility and there is no clash or overlapping in respect of the functions and the responsibility between the DC and SDO, Thoubal. In view of the above, the proceeding of the special meeting for election of new Chairperson of TMC presided by the SDO is without jurisdiction and against the statutory provision and as such, the entire proceedings of the election leading to the declaration of respondent No. 7 are liable to be quashed. Thus, the issue No. (ii) is answered in the manner indicated above.

22. For the reasons discussed hereinabove, notice dated 7.10.2009 (Annexure A/3 to the writ petition), election process thereto and the order dated 9.10.2009

issued by the SDO declaring the respondent No. 7 as the elected Chairperson of TMC, are quashed and set aside as illegal and unsustainable in law. The official respondents are directed to issue fresh notice for election of new Chairperson of TMC, keeping in view the observation and findings recorded above by this Court, within a period of one month from the date of receipt of a copy of this order.

23. In the result, both the writ petitions are allowed. Interim order, if any, stands merged with the judgment and order. No order as to costs.