

(2019) 09 MAN CK 0001
In the Manipur High Court
Case No : Writ Petition No. 586 Of 2019

Md. Maherruddin And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 03-09-2019

Acts Referred:

District Council Rules, 1972 — Rule 7, 72A(1)
Manipur Municipalities Act, 1994 — Section 31, 31(2)
District Council Act, 1971 — Section 23

Citation : (2019) 09 MAN CK 0001

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : Th. Babita, Lenin Hijam, N. Zequeson

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Ms. Th. Babita, learned Advocate appearing for the petitioners; Shri Lenin Hijam, learned Addl. Advocate General appearing for the State respondents as well as the Executive Officer and Shri N. Zequeson, learned Advocate appearing for the private respondents.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writs to quash and set-aside the letter dated 28.07.2018 issued by Government of Manipur and the notice dated 22.07.2019 issued by the Executive Officer, Kwakta Municipal Council, Kwakta.

[3.1] Facts and circumstances as narrated in the writ petition, are that the petitioners are the councillors of Kwakta Municipal Council duly elected vide Notification dated 15.01.2016 and thereafter, the petitioner Nos.1 and 2 were elected as the Chairperson and the Vice-Chairperson of the Kwakta Municipal Council on 05.02.2016 and 11.02.2016 respectively.

[3.2] Four persons namely, (a) Md. Abdul Hamid, (b) K. Ibochouba Singh, (c) A.

Basanta Singh and (d) Md. Hafijuddin, identified themselves as (i) the Councilor, Kwakta Municipal Ward No.8, Moirang Assembly Constituency, (ii) the Ex-Councillor, Moirang Municipal Council, Ward No. 10, Moirang A/C, (iii) the General Secretary, Bishnupur, Moirang Mandal and (iv) the Ex-Vice Chairperson, Moirang Municipal Council respectively, submitted a representation dated 20.04.2019, Jointly signed by themselves, to the Hon?ble Minister (MAHUD), Manipur and the Director, MAHUD, Manipur with a copy endorsed to the Deputy Commissioner, Bishnupur complaining that the Kwakta Municipal Council had failed to perform many obligated functions as mentioned therein. One of the petitioners namely the petitioner No.2, Md. Abdul Karim, Councillor Kwakta Ward No.8 came to know about the said representation and also that Md. Abdul Hamid impersonating himself as the Councillor, Kwakta Municipal Council Ward No.8 along with 3 others, submitted the said representation alleging many irregularities without any basis. The petitioner No.2, Md. Abdul Karim submitted a complaint dated 10.05.2019 to the Director, MAHUD to take action against the said Md. Abdul Hamid but no action was taken against him.

[3.3] The Advisor to the Chief Minister, Manipur who happens to be the member of the Manipur Legislative Assembly, Moirang Assembly Constituency, also wrote a D.O letter dated 06.05.2019 requesting the Director, MAHUD, Government of Manipur to issue show cause notice to the Kwakta Municipal Council in this regard. The Director, MAHUD, Government of Manipur, knowing fully well that Md. Abdul Hamid was not the Councillor of the Kwakta Municipal Council Ward No.8, sought for a report on the allegation made in the joint representation dated 20.04.2019 from the Executive Officer, Kwakta Municipal Council after about a month vide its letter dated 07.05.2019 and on the next day itself, the Executive Officer, Kwakta Municipal Council submitted a report to the Director, MAHUD, Government of Manipur vide its letter 08.05.2019 and in the said report, it has been stated that the allegations made in the complaint letter dated 20.04.2019 were found to be totally baseless and that the representation submitted by Md. Abdul Hamid in collusion with others, was to malign or to destabilize the functioning of the Kwakta Municipal Council for some political vendetta.

[3.4] While the petitioner No.1 and 2 were discharging their duties and functions to the satisfaction of the general public, the Private Respondents submitted a requisition dated 10.07.2019 to the Executive Officer, Kwakta Municipal Council for moving "No Confidence Motion" against the petitioner No.1 alleging that he had failed to perform his duties as the Chairperson in all fronts and always indulged in nepotism and corrupt practices etc. On receipt of said requisition dated 10.07.2019, the Executive Officer, Kwakta Municipal Council forwarded it to the Director, MAHUD, Government of Manipur vide its letter dated 11.07.2019 itself. On 19.07.2019, the petitioner Nos.1 and 2 submitted a representation to the Executive Officer requesting him to verify the signatures of those 6(six) applicants on the ground that the signatures of 3(three) councilors appeared to have been forged by someone. But the Executive Officer left the representation dated 19.07.2019 unattended. On 28.07.2019, the MAHUD Department vide its

letter conveyed the approval of the State Government for holding a special meeting for consideration of "No Confidence Motion" against the Chairperson and the Vice-Chairperson, for which the Deputy Commissioner, Bishnupur was appointed to preside over the meeting for consideration of "No Confidence Motion" against the Chairperson and the Vice-Chairperson of Kwakta Municipal Council as provided under Section 31(2) of the Manipur Municipalities Act, 1994 (hereinafter referred to as "the Act, 1994") and the rules made thereunder. In the meanwhile, the Executive Officer, Kwakta Municipal Council issued a notice dated 22.07.2019 informing that a special meeting of the Kwakta Municipal Council be held on 05.08.2019 at 11.00 p.m for consideration of "No Confidence Motion" against the Chairperson and the Vice-Chairperson.

Being aggrieved by said letter dated 28.07.2019 and the notice dated 22.07.2019, the instant writ petition has been filed by the petitioners on inter-alia grounds that the requisition dated 10.07.2019 was found to be faulty, fabricated and forged one; that the Executive Officer, without caring to verify the signatures, forwarded the said requisition to the State Government which had shown that the Executive Officer acted with undue haste without application of mind; that the Executive Officer knew that the charges were those which he himself had already investigated and submitted a report thereof; that the Government of Manipur conveyed an approval for holding a special meeting for consideration of " No Confidence Motion" against the Chairperson and the Vice-Chairperson, although the letter dated 28.07.2019 did not mention about the meeting to be held for consideration of "No Confidence Motion" against the Vice-Chairperson. In the application being MC(MP) No.208 of 2019 filed by the petitioners, some more grounds have been taken by them. On receipt of the letter dated 10-07-2019 for moving ?no-confidence motion? against the Chairman, the Executive Officer vide its letter dated 10-07-2019 forwarded it to the Director, MAHUD stating that the proceedings of the earlier special meeting held on 11-06-2019 against the Chairperson had been submitted to it but no decision was received by it. Similarly, in its letter dated 10-07-2019 addressed to the Director, MAHUD relating to moving ?no-confidence motion? against the Vice-Chairperson, it has been stated by the Executive Officer that a decision was pending in regard to the requisition dated 06-04-2018 for moving ?no-confidence motion? against the Vice-Chairperson.

Another ground taken by them is that a representation dated 19-07-2019 was addressed to the Executive Officer alleging that signatures of three out of six councilors were forged and that the same had not been considered by him. The Government of Manipur, MAHUD Department vide its letter dated 29-07-2019 instructed the Executive Officer to call for a meeting and submit a report in regard to the allegation of signatures being forged.

[4] In the affidavit-in-opposition filed by Private Respondents, it has been stated that present writ petition is ill conceived and devoid of any merit. There is nothing wrong in the letter dated 28-07-2019 issued by the MAHUD Department

granting approval for holding a special meeting for consideration of 'no-confidence motion' against the Chairman and the Vice-Chairman. The petitioners have knowingly and intentionally concealed material facts in the writ petition for obtaining a favourable order from this Court. The document filed along with the writ petition as annexure-A/7 is not the requisition submitted by them for moving "No Confidence Motion" against the respondent No.1, the Chairman but is the one submitted by them for moving 'no-confidence motion' against the Vice-Chairperson of the Kwakta Municipal Council. The said two requisitions-one, against the Chairperson and two, against the Vice-Chairperson, were moved on the ground of mismanagement, misuse of funds, etc. and they had signed in both the requisitions. It is the bounden duty imposed upon the Executive Officer, Kwakta Municipal Council under Section 31(2) of the Act, 1994 to convey a special meeting for consideration of 'No Confidence Motion' on a requisition signed by not less than 1/3 of the total number of councilors. Six out of nine councilors moved the requisitions against both the Chairperson and the Vice-Chairperson and therefore, the State Government vide its letter dated 28.07.2019 appointed the Deputy Commissioner, Bishnupur to preside over the special meeting in terms of the provisions of the Act. Since the petitioners are making wild allegations without any evidence whatsoever, the writ petition is liable to be dismissed with heavy cost. The petitioners have deliberately concealed material facts as regards the separate requisitions against the Chairperson and the Vice-Chairperson. In view of the decisions rendered by the Supreme Court in many cases, the instant writ petition is liable to be dismissed. Therefore, the private respondents filed an application being MC(WP) No.205 of 2019 praying for vacation of the interim order. An affidavit-in-opposition filed on behalf of respondent Nos.1, 2, 3 and 4 is similar to that of the private respondents wherein it has been stated that since the private respondents have specifically stated that they have voluntarily appended their signatures in the said two requisitions for 'No Confidence Motion' against the Chairperson and the Vice-Chairperson, the allegations made in the writ petition are false and denied. The D.O letter dated 06.05.2019 addressed to MAHUD Department by the local MLA is not related or relevant in the present case. The intention of filing the writ petition is motivated to defeat the spirit of democracy and the statutory provisions of the Act. The allegation that the petitioners have concealed material facts, has been denied by them in their additional affidavit stating that both the letters dated 11-07-2019 look like one and the same, while the letters dated 11-07-2019 appear to be the same and therefore, the petitioners have inadvertently committed certain mistakes but have no intention to mislead the Court to obtain interim order dated 29-07-2019.

[5] The subject matter in issue relates to the interpretation of the provisions of Section 31 of the Act and the same reads as under:

"31. No-confidence motion against Chairperson or Vice- Chairperson.- (1) Every Chairperson or the 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 Councillor 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 Government.

(v) No such meeting convened under sub-section (2) shall be adjourned for any reason except on the ground of natural calamities affecting the meeting.

2(a) Notwithstanding anything contained in this Act, where the Chairperson or the Vice-Chairperson or a Councillor is one of the signatories to the requisition for such meeting, the Chairperson or the Vice-Chairperson or the Councillor, 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.

31A. Restriction on motion of no-confidence:- If the motion of no-confidence against the Chairperson or the Vice-Chairperson, as the case may be, is defeated, no fresh motion of no-confidence against the Chairperson or the Vice-Chairperson or both, as the case may be, shall be brought before the Council or the Nagar Panchayat, as the case may be, within a period of one year from the date of such defeat of the motion.

Sub-section (1) provides that every Chairperson or Vice- Chairperson shall be deemed to have vacated his office, if a resolution expression want of confidence in him is passed by a majority of the total number of councilors at a meeting specially convened for the purpose. In other words, such a resolution cannot be passed at any meeting except at a meeting specially convened for that purpose.

The manner in which such a special meeting is to be convened is provided in sub-section (2). Sub-section (2) provides that such a meeting shall be convened by the Executive Officer on a requisition signed by not less than one-third of the total number of councilors and only a requisition is mentioned therein. What will happen if more than one requisitions are submitted for the same purpose, is not envisaged at all. On receipt of such a requisition, a notice of a meeting specifying the time and place thereof shall be dispatched by the Executive Officer to every councilor ten days before the meeting. The use of the word "dispatched" is significant and is different from the use of the word "served". The duty of the Executive Officer stands discharged, when the notice has been dispatched to every councilor ten days before the meeting. It is not clear as to whether the notice as contemplated under sub-section (2), shall be dispatched through the post or a courier and as to what will happen, when the notice is not received by a councilor. Sub-section (2) is silent on the said issues. No such meeting convened under sub-section (2) shall be adjourned for any reason except on the ground of natural calamities affecting the meeting. The expression "natural calamities" is important and is qualified by the expression "affecting the meeting". Both the expressions are to be read together and the conjoint reading thereof makes it clear that such a meeting can be adjourned, only when it is affected by the natural calamities. A mere natural calamity is not sufficient and it must affect the meeting. In other words, it can be said that such a meeting shall be adjourned, if its holding is not possible on account of the natural calamities. The corollary issue is as to whether such a meeting can be cancelled either on the request made by some of the councilors or on the withdrawal of the requisition. Sub-section (2) is silent on this issue too. In respect of the issue relating to withdrawal of a requisition, this Court had the occasion to examine and consider it in the case of *Shri M.L. Markson & ors. Vs. State of Manipur*, WP(C) No.555 of 2018 in relation to Section 23 of the District Council Act, 1971. The relevant para thereof reads as under:

"The contention of the learned counsel appearing for the petitioners is correct to the extent that it has been held by the Hon'ble Gauhati High Court that there is no provision in the Act for withdrawal of requisition and hence, the withdrawal thereof is impermissible but the contrary view has been taken by some of the High Courts in the country whose decisions have been heavily relied upon by *Shri Julius Riamei*. In *Ramachandra* case (supra), the Rajasthan High Court considered an issue as to when the notice of motion of non-confidence becomes effective, which arose out of the provisions of the Rajasthan Panchayat Act, 1953 wherein there is no any provision on the subject. It held that in the absence of any statutory provision, it would be reasonable to hold that it becomes effective only when the authority charged with final action has acted upon it. It has further been held that notice of motion of non-confidence could be withdrawn by its author before it actually came up for consideration before the meeting called for the purpose. The ratio of this judgment has been relied upon and followed in *Kedarnath Saini* case and *Jagdish Prasad* case (supra). In *Tarun Badar* case

(supra), the High Court of Punjab & Haryana has held that there is no provision in the statute or under the rules which provides for withdrawal of "no-confidence motion" after a meeting has been convened. Under proviso to sub-rule 1 of rule 72 A of the 1978 rules, a motion of no-confidence may be withdrawn at any time before the meeting is convened for that purpose. This decision has been relied upon by the same High Court in Ranbir Singh case (supra). Relying upon the decision of the Hon'ble Supreme Court in Bhavnagar University case (supra), Shri M. Hemchandra, Senior Advocate has submitted that a decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In Eera case (supra), it has been held that while interpreting social welfare or beneficent legislation, one has to be guided by colour, content and context of statutes. Judge has to release himself from chains of strict linguistic interpretation and pave path that serves soul of legislative intention and in that event, he becomes a real creative constructionist judge.

It is thus seen that no decision rendered by the Hon'ble Supreme Court directly on the issue has been brought to the notice of this Court and at the same time, the decisions rendered by the High Courts in the country are not binding on this Court except their persuasive value. Having examined and considered the decisions relied upon by the counsels appearing for the parties, this Court is of the view that the views expressed by the Rajasthan High Court and the High Court of Punjab and Haryana appear to be correct for the reason that a requisition/ notice, if not yet acted upon, is a mere intimation or a request for convening a meeting, the withdrawal thereof will not affect or prejudice the substantive right or interest of the other members including the Adhyaksha or the Chairman as the case may be and therefore, this Court endorses their views to the effect that a requisition/ notice can be withdrawn provided it has not been acted upon by the authority concerned. Section 23 of the District Councils Act provides for a mechanism for removal of the Chairman for which the procedure prescribed in Rule 7 of the District Council Rules, 1972 is to be followed and the first step prescribed therein is the notice to be delivered which should contain a brief statement of the reasons for moving the resolution. In fact, it is a part of the procedure which has nothing to do with the merit of the resolution. Rule 7 specifically provides for such a notice in writing to be delivered by the ADC members which intend to move a resolution for removal of the Chairman and there is no harm in allowing the withdrawal of the notice before it is acted upon nor is there any specific provision in the District Councils Act, 1971 or the rules made thereunder which prohibits the withdrawal of the notice."

[6] Relying upon some of the decisions rendered by the Hon'ble Supreme Court and in particular, in *Welcome Hotel Vs. State of A.P.*, (1983) 4 SCC 575; *K.D.Sharma Vs. SAIL*, (2008) 12 SCC 481; *Ramjas Foundation Vs. Union of India*, (2010) 14 SCC 38 and *Amar Singh Vs. Union of India*, (2011) 7 SCC 69, Shri N. Zequeson, learned counsel appearing for the private respondents has

vehemently submitted that since the petitioners have not come before this Court with clean hands, no indulgence shall be shown to them and consequently, the writ petition shall be dismissed with costs. There is no and can be no dispute about the law laid down by the Hon'ble Supreme Court in the said cases but they will have no relevance for the reason that the petitioners in their additional affidavit, have stated that it is due to inadvertence and they have no intention to mislead the Court. In the present case, there are two short issues which call for consideration by this Court-one, what is the effect/ impact of the special meeting held on 11-06-2018 for consideration of 'no-confidence motion' against the Chairperson and two, whether the Executive Officer is justified in issuing the notice dated 22-07-2019 for consideration of 'no-confidence motion' without considering the representation dated 19-07-2019 as regards the genuineness of the signature. As regards the first issue, it is not in dispute that a requisition dated 19-02-2018 was submitted for convening a special meeting for consideration of 'no-confidence motion' against the Chairperson, for which the Secretary, MAHUD was requested to nominate a Presiding Officer. The Secretariat: MAHUD Department vide its letter dated 06-03-2018 nominated the Deputy Commissioner, Bishnupur to preside the meeting. Although a special meeting was fixed on 20-03-2018, the Deputy Commissioner vide its letter dated 19-03-2018 postponed it until further notice. The details as to what had happened thereafter, are not known to this Court but from the letter dated 11-06-2018 of the Executive Officer addressed to the Director (KAHUD), it is seen that somebody approached this Court by way of a writ petition being WP(C) No.292 of 2018 which was disposed of on 10-05-2018 with the direction to convene a special meeting and in compliance with it, a Notification dated 23-05-2018 was issued to convene a special meeting for consideration of 'no-confidence motion' to be held on 11-06-2018 and the Deputy Commissioner, Bishnupur was requested to preside it. It is further seen from the said letter that on the day of the meeting at about 10 am, four out of five councillors withdrew the requisition. But the special meeting appears to have been continued to be held considering the pros and cons minutely but no conclusion could be arrived at. It is unfortunate that despite this Court's order being passed for convening the meeting, the requisition appears to have been withdrawn on the same day. But as has been observed hereinabove, since the withdrawal of requisition is permissible before it is acted upon, the subsequent events will have no value and effect at all. So far as the second issue is concerned, it is not in dispute that prior to the notice dated 22-07-2019 being issued by the Executive Officer, a request was made by the petitioners vide their representation dated 19-07-2019 to verify the genuineness of the signature. Being aggrieved by the inaction on the part of the official respondents and in particular, the Executive Officer, the instant writ petition had been filed by the petitioners in which an interim order dated 29-07-2019 was passed by this Court. On the same day, i.e., 29-07-2019, the Joint Secretary (MAHUD), Government of Manipur addressed a letter to Executive Officer stating that it was his responsibility for verification of the signatures and that he should call a meeting of the concerned councillors for verification of their

signatures, for which a letter dated 31-07-2019 was addressed to six councillors by the Executive Officers. After the signatures being verified, the Executive Officer vide its letter dated 03-08-2019 informed the Joint Secretary (MAHUD) that the councilors declared that the signatures appended to and recorded in the application were of theirs, by putting their signatures in his presence. When the councilors admitted their signatures as recorded in the application, this Court being not an expert, cannot go into the issue relating to their genuineness. The contention of the learned counsel appearing for the petitioners as regards the second issue is not tenable at all.

[7] In support of her contention, learned counsel appearing for the petitioners, Ms. Babita Th. has relied upon the decision rendered by the Hon^{ble} Supreme Court in *Arunima Baruah Vs. Union of India & ors.*, (2007) 6 SCC 120 wherein the Hon^{ble} Supreme Court held that the learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the Court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. Since the facts of that case are not similar to that of the present case, the same will have no application at all.

[8] In view of the above, this Court is of the view that there is no merit at all in the instant writ petition and accordingly, the same stands dismissed with no order as to costs. The interim order passed by this Court stands vacated and consequently, it is open to the Executive Officer to proceed further with the requisition dated 10-07-2019 for convening a special meeting for consideration of 'no-confidence motion' against the Chairperson and the Vice-Chairperson in terms of the provisions of Section 31 of the Act.