

(2010) 06 GAU CK 0005

In the Gauhati High Court

Case No : Writ Petition (Civil) No(s). 276 and 280 of 2010

Md.Abdul Latiff

APPELLANT

Vs

State of Manipur and Ors.(And another case)

RESPONDENT

Date of Decision : 11-06-2010

Acts Referred:

Manipur Panchayati Raj Act, 1994 — Section 57(4), 57(4)

Citation : (2010) 5 GLR 578 : (2010) 5 GLT 322

Hon'ble Judges : A.Potsangbam, J

Bench : Single Bench

Advocate : Y.Ashang, S.Jayantya, N.Kumarjit, Jalaluddin, Advocates appearing for Parties

Judgement

1. Heard Mr. N. Kumarjit, learned counsel appearing for the petitioner in WP(C) No. 276/2010 and Mr. S. Jayanta, learned senior counsel appearing for the petitioners in WP(C) No. 280/2010. Also heard Mr. Y. Ashang, learned Government Advocate appearing on behalf of the Government respondents and Md. Jalaluddin, learned counsel appearing for the private respondent Nos. 4 to 13 in WP(C) No. 276/2010 and private respondent No. 7 in WP(C) No. 280/2010.

2. As common question of facts and law are involved, the two writ petitions are taken up together for hearing and disposal by this common judgment and order.

3. Thoubal Zilla Parishad, Thoubal, ("the Zilla Parishad"), consisting of 16 elected members, was constituted on 28.9.2007 in accordance with the provisions of the Manipur Panchayati Raj Act, 1994 (the Act of 1994) and the terms of the Zilla Parishad so constituted would be for 5(five) years from the date of its first meeting. Adhyaksha and UpAdhyaksha are elected from amongst the elected members and they continue in office as long as they enjoy confidence of the majority of the members.

4. Section 57(1) and (2) of the Act of 1994 provide for resignation of Adhyaksha and UpAdhyaksha from their office. In the instant cases, we are concerned with

section 57(4)(a) of the Act of 1994 as the controversy involved in both the cases relates to noconfidence motion brought against the Adhyaksha in terms of section 57(4)(a) of the Act of 1994 and election of a new Adhyaksha. Section 57(4)(a) is quoted hereinbelow:

"57(4)(a) Every Adhyaksha or UpAdhyaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by the majority of the total number of elected members of territorial constituencies of the Zilla Parishad at a meeting specially convened for the purpose. The requisition for such a special meeting shall be signed by not less than onethird of the total membership of the Zilla Parishad and shall be delivered to the Adhyaksha. The Adhyaksha shall within seven days from the date of receipt of the requisition, convene a special meeting of the Zilla Parishad. The meeting shall be held on a day not later than fifteen days from the date of issue of the notice of the meeting. The meeting shall be presided over Adhyaksha if the motion is against the UpAdhyaksha and in the case of Adhyaksha, the UpAdhyaksha shall preside over the meeting, if it is against both, a member nominated from amongst themselves by the members present in such meeting shall preside over such meeting. In the initial two years of their terms as Adhyaksha or UpAdhyaksha, as the case may be, of Zilla Parishad, no motion of noconfidence shall be brought against them.

(b) If the motion of noconfidence against the Adhyaksha or UpAdhyaksha or both is once rejected, no fresh motion of noconfidence against the Adhyaksha or UpAdhyaksha or both, as the case may be, shall be brought before the Zilla Parishad within a period of one year from the date of rejection of the motion:

"Provided that if the Adhyaksha fails to convene the said meeting within the stipulated time, the members shall request the Deputy Commissioner for the purpose, who shall, within five days from the date on which he receives the request, direct the Chief Executive Officer of the Zilla Parishad to convene the meeting within seven days.

Provided that the withdrawal of no confidence motion against the Adhyaksha or UpAdhyaksha or both, as the case may be, shall not be allowed."

5. The above extracted provisions of section 57(4)(a) of the Act would clearly demonstrate that if a requisition signed by not less than onethird of the total memberships of the Zilla Parishad is submitted to the Adhyaksha for convening a special meeting for consideration of noconfidence motion either against the Adhyaksha or the UpAdhyaksha, the Adhyaksha is statutorily obligated to convene the special meeting within a period of 7(seven) days from the date of receipt of the requisition. If the Adhyaksha fails to convene the special meeting within the stipulated time, the requisitions of the special meeting may request the Deputy Commissioner for the purpose and the Deputy Commissioner, within 5 (five) days from the date of receipt of the request, shall direct the Chief Executive Officer to convene the special meeting within 7(seven) days. The

aforesaid provision has also put an embargo on the withdrawal of noconfidence motion against the Adhyaksha or the UpAdhyaksha. In other words, once a noconfidence motion is brought either against the Adhyaksha or the UpAdhyaksha, the second proviso to section 57(4)(b) prohibits withdrawal of the same. Thus, the plain language of section 57(4) leaves no doubt that there is no scope for any misinterpretation of the same nor is there any scope for any mischief.

6. Admittedly, ten(10) out of sixteen(16) elected members of Thoubal Zilla Parishad submitted a requisition on 17.4.2010 to the petitioner who was then the Adhyaksha of the Thoubal Zilla Parishad, to convene a special meeting for the purpose of consideration of noconfidence motion against the writ petitioner himself. Pursuant to the aforesaid requisition, a notice dated 22.4.2010 was issued by the Adhyaksha convening a special meeting on 3.5.2010 to discuss the noconfidence motion brought against the Adhyaksha and all the members of the Zilla Parishad were informed to make it convenient to attend the meeting in time. Notice dated 22.4,2010 is reproduced herein below

"NOTICE

Thoubal the 22nd April, 2010

No. 2/ZP(TBL)/NCM/99/Pt.: In pursuance of section 57(4) of the Manipur Panchayati Raj Act, 1994 Vide MPR(5th Amendment Act, 2008) a special meeting of the rememblers of Thoubal Zilla Parishad is hereby convened on the 3rd May, 2010 at 1 p.m. at the Conference Hall of DRDA, Thoubal to discuss no confidence motion against the Adhyaksha of Thoubal Zilla Parishad.

All the members of Thoubal Zilla Parishad are requested to make it convenient to attend the meeting in time.

Sd/Illegible

(Md. Abdul Latif)

Adhyaksha

Thoubal Zilla Parishad, Thoubal."

7. The case of the petitioners in both the cases is that on a representation filed by four(4) members of the Zilla Parishad, the Adhyaksha issued another notice dated 30.4.2010 (Annexure A/4) keeping in abeyance the earlier notice dated 22.4.2010 until further order. However, the special meeting as already scheduled on 3.5.2010 by the earlier notice dated 22.4.2010, was held with the UpAdhyaksha in the chair and the motion of noconfidence was passed being supported by nine (9) members present in the meeting. This is reflected in the report dated 3.5.2010 submitted by the Chief Executive Officer, Thoubal Zilla Parishad. From the minutes of the proceeding of the special meeting held on 3.5.2010, it transpires that all the ten(10) members who signed the requisition for noconfidence motion against the Adhyaksha, were present in the meeting and

the noconfidence being supported by nine(9) members was declared passed and carried.

8. It is seen from the minutes of the meeting held on 3.5.2010 that one" LDA of the Zilla Parishad placed the second notice dated 30.5.2010 in the meeting. However, the meeting ignored the second notice on the ground that the Adhyaksha had no authority and competency to issue such second notice inasmuch as the Adhyaksha had already become functous officio after issuing the notice dated 22.4.2010.

9. After the no confidence motion against Adhyaksha was declared passed/ carried as discussed above, the Deputy Commissioner, Thoubal, issued a notice dated 4.5.2010 in terms of rules 92 and 93 of the Manipur Panchayati Raj (Election) Rules 1995, fixing 12.5.2010 as the date for electing a new Adhyaksha of the Thoubal Zilla Parishad. At this stage only, the petitioner (Adhyaksha) filed WP(C) No. 276 of 2010 and an interim order was passed by this court on 10.5.2010 restraining the respondents from holding the meeting for election of Adhyaksha. Subsequently, by order dated 1.6.2010 passed by this court in M.C. Case No. 133 of 2010, ten(10) members who signed the requisition for convening a special meeting, were allowed to be impleaded as respondent Nos. 4 to 13. In the meantime, another writ petition being WP(C) No. 280 of 2010 was filed by four members, apparently, supporting the case of the Adhyaksha.

10. An affidavit has been filed by the respondent No. 7 in WP(C) No. 280 of 2010 and the affidavit has been treated as the affidavit of the respondent No. 7 in both the cases. It is stated in the affidavit that the special meeting as scheduled by the notice dated 22.4.2010, was held and the no confidence motion being supported by nine(9) out of sixteen(16) elected members of the Zilla Parishad, was declared as passed/carried. It is also stated that ten(10) members out of sixteen(16) members of the Zilla Parishad were present in the meeting held on 3.5.2010 and the UpAdhyaksha, among the ten(10) members, took the chair and presided over the meeting and the remaining nine(9) members voted in favour of the no confidence motion. Thus, the Adhyaksha who had the support of only six(6) members including himself lost the confidence of majority members of the Parishad.

11. In WP(C) No. 276/2010 filed by the Adhyaksha, a categorical statement has been made in paragraphs 10 and 17 of the writ petition to the effect that the special meeting notice dated 22.4.2010 was not issued by the petitioner in his capacity as Adhyaksha as required by section 57(4)(a) of the Act of 1994 and it is further stated therein that notice was issued by the Chief Executive Officer of the Zilla Parishad without any authority. The above contention was relied upon as one the main grounds in the writ petition filed by the Adhyaksha. Paragraphs 10 and 17 are reproduced hereinbelow:

"10. That on receipt of the representation, the Adhyaksha endorsed the same to the Chief Executive Officer, Thoubal Zilla Parishad for consideration and

necessary action.

17. That the humble petitioner submits that the Notice under section 57(4) of the MPR Act, 1994 is to be called or convened by the Adhyaksha and not by any other authority. The Chief Executive Officer has no authority to convene such a meeting. Further, even if the meeting notice is issued by the Adhyaksha, the same Adhyaksha has the power to amend/withdraw/alter the same in exercise of power under section 21 of the General Clauses Act, 1897."

12. In view of the allegations made in paragraphs 10 and 17 as extracted above, the relevant file being No. 2/ZP(TBL)/NCM/99(Pt) has been requisitioned by the court in order to ascertain the truth of the matter. On perusal of the records of the relevant file, it transpires that the notice dated 22.4.2010 convening the special meeting on 3.5.2010 was actually signed and issued by the Adhyaksha himself and the relevant file containing the aforesaid notice signed by the Adhyaksha was also shown to the learned counsel appearing for the petitioner. The above will clearly establish that the petitioner in WP(C) 276/2010 has deliberately made a false statement to mislead the court and as such, it can be safely concluded that the petitioner has not approached the court with clean hands and on this ground alone the aforesaid writ petition is liable to be dismissed.

13. In the background of the facts narrated above and the contentions raised by the respective parties, the court has to examine and decide whether the resolution adopted in the special meeting held on 3.5.2010 expressing no confidence against the Adhyaksha with the support of the majority of the members, can be faulted for any legally sustainable reason or not.

14. Mr. N. Kumarjit, learned counsel appearing for the petitioner in WP(C) No. 276 of 2010 after abandoning the contention that the notice dated 22.4.2010 was issued by the Chief Executive Officer without any authority, contends that it is within the power and authority of the Adhyaksha to issue the second notice dated 30.4.2010 keeping the earlier notice dated 22.4.2010 in abeyance. In support of his contention he cited the following cases

1. M. Ibeyaima Deui v. Smt. M.B., Devi, 2000 (2) GLT421.

2. Jayantbhai Manubhai Patel and Others v. Arun Subodhbhai Mehta and Others, AIR 1989 SC1289.

15. Similar nature of question came up for consideration before this court in M. Ibeyaima Devi's case (supra) wherein this court held that section 57(4)(a) of the Act provides for a notice convening a special meeting for consideration of no confidence motion either against the Adhyaksha or UpAdhyaksha but section 57(4) does not prescribe any provision for withdrawal of the requisition or the no confidence motion. The petitioner therein contended that in view of section 21 of the Bombay General Clauses Act which is, perhaps, *pari materia* with section 21 of the General Clauses Act, the Mayor under Bombay Provisional Corporation Act

was held to have the power to cancel and postpone a meeting called by the Mayor. However, this court in the case of M. Ibeyaima Devi (supra) held that the provision for no confidence motion provided in section 57(4)(a) can neither be supplemented nor can it be supplanted and the procedure provided in section 57(4)(a) has to be strictly complied with. In the instant case, the petitioner has relied upon the aforesaid judgment of the Apex Court referred herein above. It may be pertinent to examine the general power of Adhyaksha to call a meeting and also the power to call a special meeting for consideration of no confidence motion. Section 59 of the Act 1994 empowers the Adhyaksha to call a meeting for the conduct of business of the Zilla Parishad and the Adhyaksha may postpone or cancel such meeting by invoking section 21 of the General Clauses Act but such power is not available to the Adhyaksha while convening a special meeting for consideration of no confidence motion, within seven(7) days from the date of receipt of the requisition. If the Adhyaksha fails to call the special meeting within the stipulated time, such power shall be vested to the Deputy Commissioner and the Chief Executive Officer as provided in section 57(a)(ii). Second proviso to section 57(a)(ii) prohibits withdrawal of no confidence motion and therefore, the Adhyaksha against whom the no confidence motion has been brought has no authority to issue the second notice dated 30.4.2010 keeping the earlier notice dated 22.4.2010 in abeyance without any time limit. Thus, the petitioner cannot take shelter under section 21 of the General Clauses Act. In other words the purpose and intent of section 21 General Clauses Act are different and the same has no application while issuing a notice for a special meeting for consideration of no confidence motion.

16. We have perused section 57(4) with amendment thereto and it transpires that submission of a requisition for a special meeting is a condition precedent for issuing a notice under section 57(4)(a) and in case of failure to convene the meeting by the Adhyaksha within the stipulated time, the power to call the meeting is vested to the Deputy Commissioner and the Chief Executive Officer. It must be clearly understood that once the no confidence proceeding has been set in motion, the same cannot be withdrawn/cancelled thereby meaning that the special meeting is to be held on the date fixed by the notice issued under section 57(4)(a). We cannot read anything beyond this. In the facts of the case, the maxim "Expressum Facit cessare taciturn" (When there is express mention of certain things, then anything not mentioned is excluded) is squarely applicable in the present case. This maxim was adopted and applied by the Apex Court in the Union of India v. Tulsiram Patil, (1985) 3 SCC 398. Therefore, when no power is provided in section 57(4)(a) either to recall/cancel or modify or keep a notice in abeyance, it shall be deemed that the power to issue second notice keeping the earlier notice in abeyance is excluded from the scheme of the Act of 1994.

17. Mr. S. Jayanta Kumar Singh, learned senior counsel appearing for the petitioner in WP(C) No. 280 of 2010 submits that the requisition dated 17.4.2010 for convening a special meeting should not have been acted upon by the Adhyaksha by issuing the notice dated 22.4.2010 as there was wrong quotation

of law in the requisition. He further submits that instead of quoting section 57(4) (a) of the Act of 1994, the requisition quoted and invoked section 57(4)(ii). This argument is not acceptable for the simple reason that nonmentioning or wrong mentioning of provision of law, cannot invalidate an act or order in case such provision of law is available on statute book. In support of this proposition, Mr. Jalaluddin, learned counsel appearing for the respondent has cited a case reported in N.T. Khan v. Government of Andhra Pradesh, AIR 2004 SC 2934.

18. Mr. Jalaluddin, the learned counsel appearing for the respondents submits that from the facts pleaded and placed before the court, there cannot be any denial that the Adhyaksha had lost the support of the majority in the Zilla Parishad inasmuch as ten(10) out of sixteen(16) elected members have initiated and voted in favour of the no confidence against the Adhyaksha. In such circumstances, the case of the petitioner in WP(C) No. 276 of 2010 and other case filed by his supporter should be rejected outright as they do not merit any consideration of this court. All these cases have been filed only for the purpose of derailing the basic democratic process at the grass root level. The notice dated 22.4.2010 and the special meeting held on 3.5.2010 do not suffer from any legal infirmity and once the notice convening a special meeting is issued by the Adhyaksha, the office of the Adhyaksha has become functus officio and no authority is left with the Adhyaksha either to issue second or third notice modifying/cancelling or keeping the earlier notice in abeyance. Section 57(4) does not contemplate issuance of any notice by the Adhyaksha if the representation or the requisition is not signed by one third of the total membership of the Jilla Parishad. Viewed from this angle, the representation dated 30.4.2010 (Annexure A/3 to WP(C) No. 280 of 2010 being signed only by four(4) members, less than the requisite member as prescribed in section 57(4), the second notice is incompetent and without jurisdiction and as such, it cannot have any legal consequences. Further, the Adhyaksha have no power or authority to keep a special meeting in abeyance without any time limit.

19. For the reasons discussed hereinabove, I am of the opinion that the petitioners in both the cases have failed to establish that there was any infirmity in the meeting held on 3.5.2010 where the no confidence motion brought against the Adhyaksha was declared passed/carried. Further, in view of the aforesaid findings of this court, notice dated 4.5.2010 (Annexure A/7), issued by the Deputy Commissioner, Thoubal, convening a meeting on 12.5.2010 in terms of rules 92 and 93 of the Manipur Panchayati Raj (Election) Rules, 1995 for election of a new Adhyaksha for Thoubal Zilla Parishad, can not be faulted. Both the writ petitions fail and they are dismissed as devoid of merit. The Deputy Commissioner, Thoubal, is directed to issue a fresh notice rescheduling the date for election of Adhyaksha of Thoubal Zilla Parishad, within a period of 5(five) days from today and all the members of Thoubal Zilla Parishad may be notified about the date of election. Interim order, if any, stands vacated.

No costs.