
(2019) 01 MAN CK 0007
In the Manipur High Court
Case No : Writ Petition (c) No. 555 Of 2018

M.L. Markson And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 244(2), 275(1)
General Clauses Act, 1897 — Section 21
Manipur (Hill Areas) District Councils Act, 1971 — Section 3, 4, 4(3), 11, 23, 23(2), 23(3), 57(4)(b)
District Councils Act, 1841 — Section 23
Union Territories Act, 1963 — Sectionmdash; Section 52(2)
Manipur (Hill Areas) District Council Rules, 1972 — Rule 7, 122A

Citation : (2019) 01 MAN CK 0007

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : H.S Paonam, S. Rupachandra, Joan Kipgen, Julius Riamei

Final Decision : Dismissed

Judgement

Kh. Nobin Singh, J

[1] Heard Shri H.S Paonam, learned Senior Advocate appearing for the petitioners; Shri S. Rupachandra, learned Additional Advocate General assisted by Ms Joan Kipgen, learned Advocate for the respondent Nos. 1 and 2; Shri Julius Riamei, Advocate for the respondent Nos.3 & 4 and Shri M. Hemchandra, Senior Advocate for the caveators.

[2] By the instant writ petition, the petitioners have prayed for issuing a writ of certiorari or any other appropriate writ to quash and set-aside the office memorandum dated 12.06.2018 and the notice dated 18.06.2018 issued by the Deputy Commissioner, Senapati.

[3.1] Facts and circumstances as narrated in the writ petition, are that the Parliament of India enacted the Manipur (Hill Areas) District Councils Act, 1971

(hereinafter referred to as "the District Councils Act, 1971") for providing for consideration and organization of Autonomous District Councils (hereinafter referred to as "the ADC") in the hill areas in the then Union Territory of Manipur and for matter connected therewith and incidental thereto. In terms of Section 3 of the District Councils Act, 1971, the State of Manipur issued a Notification dated 14.02.1972 constituting 6(six) Autonomous District Councils- (i) Manipur North Autonomous District; (ii) Sadar Hills Autonomous District;

(iii) Manipur East Autonomous District; (iv) Tengnoupal Autonomous District; (v) Manipur South Autonomous District and (vi) Manipur West Autonomous District. The said 6 ADCs were later renamed as Chandel, Churachandpur, Tamenglong, Ukhrul, Sadar Hills/ Kangpokpi and Senapati Autonomous District Councils respectively.

[3.2] The District Councils Act, 1971 came to be amended from time to time and the last being the Manipur (Hill Areas) District Councils (Fifth Amendment) Act, 2018. Section 4 of the District Councils Act, 1971 provides for the constitution and the composition of the ADC while Section 11 of the Act 1971 provides for election of its members. Section 23 of the District Councils Act provides for the removal of the Chairman and the Vice-Chairman. The Senapati Autonomous District Council had its last general election in the year, 2015 and in terms of Section 4 of the District Councils Act, 1971, 24 persons including the present petitioners, were declared elected as members vide notification dated 17.06.2015 issued by the Principal Secretary (TA & Hills), Government of Manipur. Shri. L. M. Markson was elected as the Chairman while Shri John Hingba was elected as the Vice-Chairman of the Senapati ADC and accordingly, the Senapati ADC started its functioning to carry out the public duties as required and expected from such an institution. After the formation of the new Senapati ADC, the State Government issued a Notification dated 16.05.2016 inviting list of the members who would be nominated as the members of the particular ADC against their respective list.

[3.3] An information with respect to convening of a meeting for consideration of the removal of the Chairman and the Vice-chairman was uploaded in some WhatsApp Groups including "Herald Today" in Senapati District on 17.2.2018 and some of the elected members of the Senapati ADC managed to have submitted a requisitions/ notices dated 01-02-2018 and 02-02-2018 to the Deputy Commissioner, Senapati, Manipur for convening a meeting for consideration of removal of the Chairman and Vice-Chairman under the provisions of Section 23 (2) and (3) of the District Councils Act, 1971.

[3.4] In view of the confusion being created by such information, the petitioner No. 3 approached the Deputy Commissioner, Senapati by way of a representation dated 19.02.2018 for clarification about it stating that in the receipt and issue Register maintained in the office of Deputy Commissioner, Senapati, nothing was indicated about the submission of the requisition/ notice by any of the members of the Senapati ADC in this regard and also none of the petitioners was served

with a copy of such notice. To the utmost surprise and dismay and only in the morning of Tuesday i.e. 20-02-2018, the office of the Deputy Commissioner, Senapati served copies of the Notice dated 13.02.2018 upon the petitioners stating that the members of the Senapati ADC have submitted applications in writing dated 01.02.2018 and 02.02.2018 for moving a resolution under Sub-Section (2) of Section 23 of the District Councils Act, 1971 for removal of the Chairman and the Vice-Chairman. By the said notice, all the members of Senapati ADC were requested to attend the meeting scheduled to be held on 26.1.2018 at 11.00 A.M. at the office Hall of the ADC, Senapati. Thus, the petitioners came to know about the issuance of the said notice only on 20.02.2018. Being aggrieved by the notice dated 13.02.2018 issued by the Deputy Commissioner, Senapati, the petitioners therein approached this Court by way of a writ petition being WP(C) No.157 of 2018 questioning the validity and legality of it on the inter-alia grounds that the Deputy Commissioner, Senapati who is obligated to issue a notice giving a minimum 15 (fifteen) days time before convening a meeting for consideration of the resolution and that the requisition was not delivered in accordance with Rule 7 of the Manipur (Hill Areas) District Council Rules, 1972 (hereinafter referred to as "the District Council Rules, 1972") and on 23.02.2018, this Court passed an interim order to the effect that the notice dated 13.02.2018 should remain suspended till 28.02.2018 (inadvertently typed as 28-03-2018) which was later extended. Pursuant to the order passed by this Court, the Deputy Commissioner, Senapati issued a notice dated 24.02.2018 whereby the proposed meeting for consideration of removal of the Chairman and the Vice-Chairman was deferred, followed by a corrigendum dated 26.02.2018 to the effect that the word "deferred" appearing in the last para of the Notice dated 24.02.2018 be read as "cancelled". On 14.03.2018 when the said writ petition was listed for consideration, the aforesaid notice dated 24.02.2018 and corrigendum dated 26.2.2018 were produced before this Court by the learned Addl. Advocate General, because of which the writ petition was disposed of as infructuous.

[3.5] To the surprise of the petitioners that the Deputy Commissioner, Senapati issued a notice dated 15.03.2019 which was received by them on 16.3.2018 stating that some members have submitted an application dated 14-03-2018 for moving a resolution for consideration of removal of the Chairman and the Vice-Chairman and that a meeting thereof be held on 02-04-2018. Being aggrieved by the said notice dated 15.03.2018 which was purportedly issued in pursuance of a fresh requisition/ notice dated 14-03-2018, a writ petition being WP(C) No.250 of 2018 was filed wherein this Court passed an order dated 29.03.2018 directing that the meeting of the ADC, Senapati in terms of the notice dated 15.3.2018 be deferred till 04-04-2018 on which the matter was directed to be listed on the next day, ie., 05-04-2018 on the submission of the learned Addl. Advocate General that the matter could be disposed of without any counter being filed by the State Government. When the matter was listed before this Court on 05-04-2018, this Court allowed the writ petition and consequently, the notice

dated 15.03.2018 was quashed and set aside.

[3.6] It came to the notice of the petitioners that the office of the Deputy Commissioner, Senapati issued a notice dated 26.04.2018 which was served upon the petitioners on 28.04.2018 stating that 14 elected members of the Senapati ADC submitted an application dated 12.04.2018 which was received by the office of the Deputy Commissioner, Senapati on 16.04.2018 by way of a reminder to their application dated 01.02.2018 for convening a meeting for consideration of the resolution for removal of the Chairman, Senapati ADC and by the said notice, all the elected members of the Senapati ADC were requested to attend the meeting scheduled to be held on 14.05.2018 at 11.00 A.M. at the ADC Office Hall. Being aggrieved by the notice dated

26.04.2018, the petitioners therein approached this Court by way of a writ petition being WP(C) No. 393 of 2018 challenging it on the grounds that the requisition/ notice dated 12.04.2018 submitted by the aforesaid members of the Senapati ADC as a reminder to their application dated 01.02.2018, was not in accordance with the condition prescribed under Rule 7 of the District Councils Rules, 1972; that in the notice, it is nowhere mentioned about the withdrawal of the earlier application dated 01-02-2018 and that it is nowhere mandated under Section 23 of the District Councils Act, 1971 about the permissibility of submission of requisition/ notice, one after another, separately and independently and moreover, the Deputy Commissioner, Senapati is not vested with any power either to choose or accept the subsequent notice/ requisition. It may be mentioned that by then, some of the members of the Senapati ADC who were in support of the notice, had filed a writ petition being WP(C) No. 366 of 2018 praying for a writ of mandamus or any other appropriate writ to direct the respondents to convene a meeting for consideration of the resolution for removal of the Chairman and the Vice-Chairman.

[3.7] For the first time, a copy of the notice and resolution which had never been made available to the petitioners, was found to be enclosed as annexure. Both the said writ petitions were posted before this Court on 22.05.2018 which were disposed of by a common judgment and order dated 05.06.2018, the operative portion of which is that the writ petition being WP(C) No.399 of 2018 is allowed and consequently, the notice dated 26.04.2018 is quashed and set aside and the writ petition being WP(C) 366 of 2018 is dismissed.

[3.8] The Deputy Commissioner, Senapati served copies of the office memorandum dated 12.06.2018 upon the petitioners stating that 14 members of the Senapati ADC who had submitted earlier application/ requisition dated 01.02.2018, submitted an application dated 08.06.2018 seeking for withdrawal of the earlier application dated 01.02.2018, the prayer of which had been accepted. The Deputy Commissioner, Senapati issued a notice dated 18.06.2018 stating that 15 members of the Senapati ADC submitted an application dated 15.06.2018 for moving a resolution under Sub-section (2) of Section 23 of the District Councils Act, 1971 and all the elected members were requested to attend

the meeting scheduled to be held on 04.07.2018 at 11.00 A.M. On coming to know about the meeting to be held on 04.07.2018, the petitioner No. 1 approached the Deputy Commissioner, Senapati vide a letter dated 19.06.2018 praying for a copy of the withdrawal letter dated 08.06.2018 and since no response was received by him, he again approached the Deputy Commissioner, Senapati by way of a reminder letter dated 21.06.2018. Being aggrieved by the inaction on the part of the Deputy Commissioner, Senapati, the instant writ petition has been filed by the petitioners.

[4] An affidavit-in-opposition has been filed by the respondent No.2 denying the averments made in the writ petition except its replies being given therein. The stand of the respondent No.2 as indicated in his affidavit, is that the requisition/ notice was received by him and one copy thereof was marked to the SDC, Headquarter. This position had been explained by the then Deputy Commissioner, Senapati in the court. All the members of the Senapati ADC were not requested to attend the meeting which was scheduled to be held on 04-07-2018 and only the elected members of the Senapati ADC were served with the notice, the details of which have been explained in the Office Memorandum dated 12-06-2018 which is on record. The petitioners took the stand of accepting the second notice, as is evident from the expression "without withdrawal of the first Notification". The petitioners after having succeeded in the earlier cases, cannot take a u-turn. The stand of the Senapati ADC as indicated in the affidavit filed by the respondent No.3 is that a requisition/ application for convening a meeting for moving a no-confidence motion can be withdrawn until it is acted upon and that the decision rendered in M. Ibeyaima Devi (Dr.) case relied upon by the petitioners is not applicable to the facts of the present case. The writ petition being WP(C) No.259 of 2018 was allowed in view of the grounds taken by the petitioners and the submission made at the Bar.

[5] It has been contended by Shri H.S Paonam, Senior Advocate appearing for the petitioners that the issuance of the office memorandum dated 12.07.2018 being impermissible, the same stands vitiated and is liable to be quashed and set aside. There is no provision in the District Councils Act, 1971 to enable the ADC members for withdrawal of their requisition/ notice. The District Councils Act 1971 and the District Council Rules, 1972 being *pari materia* with the Principal Act of the Manipur Panchayati Raj Act, 1994 which came to be amended later, there is no procedure prescribed for withdrawal of the requisition. The impermissibility of making a notice/ requisition is well accepted by the respondents as indicated in the order dated 05.04.2018 passed by this Court in writ petition being WP(C) No. 250 of 2018. The Deputy Commissioner, Senapati is not vested with the power to choose/ accept the subsequent notice/ requisition submitted by the same party/ members without first withdrawing the earlier notice/ requisition particularly in view of the fact that this Court had interfered with the notification dated 13.02.2018. The ADC being a democratic institution at the grass root level, is expected to follow democratic norms and convention, particularly the issue of no-confidence motion against its Chairman and no

members would be at liberty to resort to such practice at their will and whims contrary to the accepted norms. In support of his contention, reliance has been placed in the decision rendered by the Hon'ble Gauhati High Court in *M.Ibeyaima Devi (Dr.) Vs. Union of India & ors*, 2000 (2) GLT 421 and in addition thereto, he has relied upon the decisions of the Hon'ble Supreme Court rendered in *Iridium India Telecom Vs. Motorola Inc*, (2005) 2 SCC 145; *Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat & anr*, (2004) 6 SCC 672 and *Sangeeta Singh Vs. Union of India & ors*, (2005) 7 SCC 484.

[6] On the other hand, Shri S. Rupachandra, learned Addl. Advocate General has submitted that in view of the stand taken by the petitioners in writ petitions being WP(C) No.250 of 2018 and WP(C) No.393 of 2018, they cannot go back to it and that the decision rendered by the Hon'ble Gauhati High Court in *M. Ibeyaima Devi* case is not applicable to the facts of the present case. In order to substantiate his contention, he has relied upon the decisions rendered by the Hon'ble Supreme Court in *Shyam Telelink Limited Vs. Union of India*, (2010) 10 SCC 165; *Mithailal Dalsangar Singh Vs. Annabai Devram Kini*, AIR 2003 SC 4244 and the judgment and order dated 10-10-2017 passed by this Court in WP(C) No.433 of 2017. Shri M. Hemchandra, learned Senior Advocate has submitted that the O.M dated 12-06-2018 was not challenged by the petitioners; that Section 21 of the General Clauses Act is applicable to the facts and circumstances of the present case; that the Panchayat Raj Act is enacted under a different provision of the Constitution; that all the necessary parties have not been arrayed in the writ petition. He has endorsed the submission of the learned Addl. Advocate General that the decision rendered by the Hon'ble Gauhati High Court in *M. Ibeyaima Devi* case is not applicable to the facts of the present case. In order to substantiate his contention, reliance has been placed in the decisions rendered by the Hon'ble Supreme Court in *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111; *Central Bureau of Investigation Vs. Ramesh Gelli & ors*, (2016) 3 SCC 788 and *Ms. Eera Vs. State of NCT of Delhi*, 2018 CrL. L.J 186. Shri Julius Riamei, Advocate has submitted that the requisition/ notice for removal of the Chairman, unless it is acted upon, can be withdrawn, for which he has relied upon the decisions rendered by some of the High Courts. The first one is the one rendered in *Jasmeen Kaur Vs. Union of India*, 2018 SCC Online Del 9778 and the other are *Ranbir Singh Vs. Haryana & ors*, 2010 SCC online P & H 6517; *Kedar Nath Saini Vs. State of Rajasthan & ors*, 2003 SCC Online Raj 113; *Tarun Bhandari Vs. State of Haryana & ors*, CWP No.2558 of 2006 dated 21-04-2006; *Jagdish Prasad Vs. State of Rajasthan & ors*, 2003 SCC Online Raj 336; *Ramchandra Vs. State of Rajasthan*, Civil Misc. WP No. 305 of 1973; *Ksh. Sorojini Devi & anr Vs. Oinam Jugeshwar Singh & ors*, (2009) 3 Gauhati Law Reports 279. It has also been submitted by him that in view of the stand taken by the petitioners in the earlier writ petitions, allowing the instant writ petition may be contrary to the decision rendered by this court.

[7] Considering the rival contentions, the short issue that arises for consideration by this court is as to whether the withdrawal of the resolution/ requisition/ notice

under Section 23 of the District Councils Act, 1971 is permissible or not. According to the learned counsel appearing for the petitioners, the answer is in the negative in view of the decision rendered by the Hon'ble Gauhati High Court in *M. Ibeyaima Dev (Dr.) case* (supra) while that of the respondents, the answer is in the affirmative for the reason that the said decision is not applicable to the facts of the present case and that the stand taken by the petitioners in their earlier writ petitions being WP(C) No.250 of 2018 and WP(C) No.393 of 2018 will come in their way to contend that the withdrawal of the resolution/ notice is impermissible.

[8] Before advertng to their rival contentions, it becomes necessary for this court to examine the relevant provisions of the District Councils Act, 1971 and in particular, the background as to how the District Councils Act, 1971 came to be enacted by the parliament, which is succinctly explained by this court in the judgment and order dated 10-10-2017 passed by this court in WP(C) No.433 of 2017. The relevant para 13 to 18 read as under:

"[13] The State of Manipur geographically consists of the hill (inhabited by the Scheduled Tribes) and valley (mainly consisting of non-tribal population) areas. In the valley area, the Panchayati Raj Institutions and Municipal bodies had been operating since the early sixties, but in the hill areas of the State of Manipur, neither of these institutions were in existence except for the village level bodies. However, in 1971, the Parliament enacted the Manipur (Hill Areas) District Councils Act, 1971 and was implemented in the hill areas of Manipur. At the outset, it may be clarified that the District Councils which came into existence in the hill areas of Manipur under District Councils Act are not to be confused with the District Councils created under the Sixth Schedule to the Constitution of India which is applicable only in certain tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram as provided under the Article 244(2) and Article 275(1) of the Constitution of India.

The District Councils Act enforced in the State of Manipur is also not related to the provisions of the Fifth Schedule to the Constitution of India which deals with the administration and control of the Scheduled areas and Scheduled Tribes. Thus, the Manipur (Hill Areas) District Councils Act, 1971 enacted by the Parliament is a standalone Act which is unique to the State of Manipur and applicable only in the hill areas of the State of Manipur. Hill areas, as per the aforesaid Act, are the hill areas as determined by the President of India by a notification issued under sub-section (2) of Section 52 of the Union Territories Act, 1963.

[14] A little bit of journey back in the history may be profitable to understand the issues raised in these writ petitions in proper perspective.

[15] Manipur was initially a princely State under the suzerainty of the British with certain assigned status. After India got independence in 1947, the princely kingdom of Manipur also gained independence, and in due course, was integrated

to this country with the signing of the Merger Agreement on the 21st of September, 1949. Thereafter, Manipur became a part of this country as a Part-C State.

After the Constitution of India came into force on 26th January, 1950, India became a sovereign democratic republic and the new republic was declared a Union of States. The Constitution of India as existing in 1950 categorised the constituent States as Part A, Part B, Part C and Part D States.

Part A States were the nine States which were the former Governors' provinces of British India, viz., Assam, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Orissa, Punjab (formerly East Punjab), Uttar Pradesh (formerly the United Provinces), and West Bengal.

Part B States were the former Princely States or groups of Princely States, governed by a Rajpramukh, which were, Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, and Travancore-Cochin.

Part C States consisted of some of the former Chief Commissioners' provinces and some Princely States, and each was governed by a Chief Commissioner appointed by the President of India, which were, Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Cutch, Manipur, Tripura and Vindhya Pradesh.

The Part D territory was the Andaman and Nicobar Islands, which were administered by a Lieutenant Governor appointed by the Central Government.

After Manipur merged with India, was categorised as a "Part-C" State and it was governed by the Chief Commissioner appointed by the President. Subsequently, after enactment of the States Re-organisation Act, 1956, the Part-A, B, C and D states were reorganised and were abolished. The distinction between Part-A and B was removed and these came to be known as "States" and a new type of entity called "Union Territory" was created.

[16] After the States Re-organisation Act, 1956, Manipur, which was earlier a Part-C State, became a Union Territory. Later, there was re-organisation of the States in the north eastern region with enactment of the North Eastern States Re-organisation Act, 1971, which led to the establishment of the States of Manipur, Tripura and formation of the State of Meghalaya and Union territories of Mizoram and Arunachal Pradesh.

Throughout these phases, the Panchayati Raj Institutions were in existence in Manipur. The United Provinces Panchayati Raj Act, 1947 was extended in Manipur in the year 1960 which was continued till it was replaced by the Manipur Panchayati Raj Act, 1975 enacted by the State Legislature after Manipur became a full-fledged State. It has now been replaced by the Manipur Panchayati Raj Act, 1994.

[17] As regards the hill areas, apart from the traditional local village bodies,

there were neither any Panchayati Raj Institution nor municipal body. The Manipur (Village Authorities) Act, 1956 provides for constitution of Village Authorities in the hill villages and some members of which were elected for administration of the village with limited power for administration of Justice in the village.

The landmark statute which introduced the modern form of local self-government at the district level in the hill areas of Manipur came into existence with the enactment of the Manipur (Hill Areas) District Councils Act, 1971 by the Parliament on 26th December, 1971. It provides for establishment of District Councils in the Hill areas of Manipur which continues to be enforced till date.

The Manipur (Hill Areas) District Councils Act, 1971 provides for division of hill areas into not more than six Autonomous Districts whose boundaries are to be notified under the official gazette. Under Section 4 of the District Councils Act for each autonomous district, there shall be a District Council as the State Government may notify in the Official Gazette. It has been provided under Section 4 of the Act that the total number of seats in the District Councils to be filled by persons chosen by direct election on the basis of adult suffrage from territorial constituencies shall be not more than 24.

Section 4(3) of the Act provides for nomination by the State Government of not more than two persons, not being persons in the service of Government, to be members of any District Council. It may be noted herein that neither under the aforesaid Section 4 nor any other provision under the District Council Act, 1971, there is any provision specifically dealing with the voting rights of the nominated persons either by way of specifically empowering to exercise right to vote or denying the right to vote. In other words, the Act is silent as regards the voting right of the nominated members. It may be also mentioned that nothing has been mentioned under the Act or the Rules framed thereunder as regards the criteria for making nomination by the State Government except that he should not be in the service of the Government.

[18] Section 23 of the District Councils Act, 1971 provides for choosing two members to be respectively Chairman and Vice Chairman with the proviso that the State Government may nominate the first Chairman who shall hold office for a period not less than one year. As regards removal of an elected Chairman, it has been provided that it can be done so if a resolution is passed by not less than two-thirds of the total membership of the Council. There is also a provision for removal of the elected Chairman even if passed by less than two-third majority but not less than one-half of the total members of the Council by the State Government by an order in writing for reasons to be recorded. For ready reference, Section 23 of the Manipur (Hill Areas) District Councils Act, 1971 is reproduced herein below.

"23. Chairman and Vice-Chairman.-(1) A District Council shall, as soon as may be, choose two members to be respectively Chairman and Vice-Chairman thereof

and so often as the office of Chairman or Vice-Chairman becomes vacant, the Council shall choose another member to be Chairman or Vice-Chairman, as the case may be:

Provided that the Administrator may nominate the first Chairman who shall hold office for a period not exceeding one year.

(2) If a resolution for the removal of an elected Chairman is passed by not less than two-thirds of the total membership of the Council at a meeting convened in accordance with the provisions of sub-section (3), such resolution shall have the effect of removing the Chairman from his office as from the date on which the resolution is so passed and if such resolution is passed by less than two-thirds but not less than one-half of the total membership of the Council, the Administrator may, by order in writing, remove, for reasons to be recorded, the Chairman from his office as from such date as may be specified in the order:

Provided that no such resolution shall be brought within one year from the date of election of the Chairman:

Provided further that if the resolution is not passed by not less than two-thirds of the total membership of the Council, no other resolution for the removal of the Chairman shall be allowed to be considered within one year from the date on which such resolution was considered.

(3) A notice in writing of the intention to move a resolution referred to in sub-section (2) signed by not less than one-third of the total membership of the Council together with a copy of the proposed resolution shall be delivered to the Deputy Commissioner in accordance with the rules made by the Deputy Commissioner in this behalf and the Deputy Commissioner shall, after giving not less than fifteen days' notice thereon, convene for consideration of the resolution a meeting of the Council to be held in the office of the Council on a date not later than thirty days from the date on which the notice was delivered to him and he shall preside over the meeting.

(4) The Chairman of the Council shall be a whole time functionary and shall be entitled to such salary or allowances as may be fixed by the Administrator."

[9] In addition to what has been observed by this court in WP(C) No.433 of 2017, the observations made by this court in WP(C) No.393 of 2018 are also relevant which read as under:

"[10] Our country is considered to be one of the largest democratic countries in the world having a representative form of Government. Truly speaking, in a democracy, a country is like a family whose decision is taken through active participation of all members sitting together. When it comes to the case of a country having a large number of population, at the time of taking any decision, it is impossible for all the citizens to come and sit at a particular place and therefore, the representative system has been introduced so that its decision can be taken through the elected representatives of the people. What does the

expression "democracy" mean and what is it about, has been considered and explained by the Hon'ble Supreme Court in Pratap Chandra Mehta case (supra) and the observations made therein need no repetition for the sake of brevity. However, the Hon'ble Supreme Court further observed that every democracy is based upon the freedom to elect and freedom to remove, in accordance with law. In the context of MP Rules, it has been observed that Rule 122-A contemplates moving of a non confidence motion and upon such motion being passed by the majority of the members, present and voting, the officer bearers against who such a motion is moved, shall be liable to be removed from such office. For successful application of Rule 122-A, the law requires the minimal conditions to be satisfied as mentioned therein. Once the conditions mentioned therein are satisfied, no confidence motion can be passed and upon passing of such motion, the person is liable to be removed from the office he held in the State Bar Council prior to holding of such meeting. The spirit behind this provision is that where a person is elected by following a due process of election to the post of an office in the State Bar Council, he could be removed by following the prescribed procedure in accordance with the rules. [emphasised]

[11] There is no dispute about the law laid down by the Hon'ble Supreme Court in the cases mentioned hereinabove. But so far as the present cases are concerned, the observations made in the preceding para are relevant and significant in order to decide the issue involved herein. Section 23 of the District Councils Act, 1971 provides the procedure for the appointment and the removal of the Chairman. A resolution is to be passed by not less than two-thirds of the total membership of the Council at a meeting convening in accordance with the provisions of sub-section (3) for which a notice in writing of the intention to move a resolution signed not less than one-third of the total membership together with a copy of the proposed resolution shall be delivered to the Deputy Commissioner in the manner prescribed in Rule 7 of the Rules which reads as under:

"7. Delivery of notice for moving a resolution for removal of Chairman:- A notice in writing of the intention to move a resolution for the removal of the Chairman from his office referred to in sub-section (2) of Section 23 of the Act shall be delivered in person to the Deputy Commissioner concerned by one of the signatories to the notice, and shall contain a brief statement of the reasons for moving the resolution. Provisions of Sections 23(3) of the Act shall be followed."

As has been observed by this Court in Tuntanbou Guanta case, the requirements of a valid notice for moving a resolution for removal of the Chairman under Rule 7 are as under:

- (a) The notice to move the resolution for removal of the Chairman from his office must be in writing;
- (b) Such notice shall be delivered in person to the Deputy Commissioner;
- (c) Such notice must be delivered by one of the signatories to such requisition/

notice;

(d) Such notice should contain a brief statement of the reasons for moving the resolution.

The contention of the learned counsel appearing for the petitioners in WP(C) No.393 of 2018 is that the requisition / notice dated 12-04-2018 submitted by the members as a reminder is not in accordance with the requirements as prescribed in Rule 7 for the reason that it was not submitted in person to the Deputy Commissioner, Senapati but to the SDC, Head Quarter. As has been contended by the petitioners in WP(C) No.157 of 2018, the requisition/ notice dated 01-02-2018 was in contravention of Rule 7 which was not controverted by the respondents. A notice convening the meeting was issued by the Deputy Commissioner, Senapati on the basis of a fresh requisition/ notice which was the subject matter in issue in WP(C) No. 250 of 2018. Since the second notice having been quashed by this court, the reminder notice dated 12-04-2018 of the first resolution dated 01-02-2018 being not satisfied with the requirements of the Act and the rules, the impugned letter dated 26-04-2018 is liable to be quashed and set aside. Combating it, the contention of the learned counsels appearing for the respondents is that since the requisition/notice dated 01-02-2018 is pending, there is nothing wrong in writing a reminder dated 12-04-2018 which requires no fulfilment of the requirements of Rule 7. It may be noted at this juncture that the requisition /notice dated 01-02-2018 is not the subject matter in issue in the present cases nor was it a subject matter in issue in any of the earlier writ petitions. In other words, the validity and correctness of the requisition/ notice dated 01-02-2018 has not been questioned and challenged by the petitioners nor have they made any prayer to quash it. All that the petitioners have challenged in these petitions, are the so called second requisition /notice dated 15-03-2018 and other notices issued by the Deputy Commissioner either on the basis of the requisition/ notice dated 01-02-2018 or the second requisition. If that be the case, this court cannot go into the validity and correctness of the requisition/ notice dated 01-02-2018. The letter dated 12-04-2018 is, admittedly, a reminder in view of the events that have taken place as aforesaid and it being a reminder, it does not require to fulfil the requirements of Rule 7. In view of the above, the short question that arises for consideration by this court is as to whether the said requisition/ notice dated 01-02-2018 has been delivered in person to the Deputy Commissioner, Senapati by any one of the signatories. If the answer is in the affirmative, the impugned notice dated 26-04-2018 will be rendered valid and if not, it will be rendered invalid. It may be noted that a copy of the requisition/ notice dated 01-02-2018 has not been placed on record by the petitioners for perusal by this court, in the absence of which it is not clear as to whether any endorsement has been given by the Deputy Commissioner, Senapati at the time of its receipt and it is the Deputy Commissioner, Senapati only who can furnish concrete information about it. But it has failed to do so. In WP(C) No.157 of 2018 it had been contended by the petitioners therein that when they learnt from the social media that the requisition/ notice dated 01-02-2018 had been submitted,

one of them visited the office of the Deputy Commissioner, Senapati to find out about the submission of the requisition/ notice but nothing was indicated in the receipt and issue Register about it. None of them was served with a copy of the notice issued by the Deputy Commissioner, Senapati and only on 20-02-2018, the notice dated 13-02-2018 was served upon them wherein it had been stated that the members of the Council had submitted applications in writing dated 01-02-2018 and 02-02-2018 for moving a resolution under Section 23(2) of the District Councils Act, 1971 for consideration of removal the Chairman and the Vice-Chairman. It had been further submitted that the requisition/ notice dated 01-02-2018, even if submitted, was not in accordance with Rule 7 for the reason that there was no details in the notice dated 13-02-2018 as to how it was submitted and by whom. Similar contentions have been made in the subsequent writ petitions including the present one. There is no denial of the said allegations, as no counter affidavit has been filed by any of the respondents including the Deputy Commissioner, Senapati. During the course of hearing, the learned Addl. Advocate General has submitted that since the requisition/ notice has been submitted in person to the Deputy Commissioner, Senapati, there is no need of making an entry about it in the Register. His contention appears to be not correct for the reason that the Deputy Commissioner, Senapati has to act upon it in his official capacity but not in his personal capacity and a proper record is to be maintained by it in order to prove factum of submission and to avoid any manipulation later. But the Deputy Commissioner, Senapati has kept mum, as if it were not concerned at all in the controversy. In order to decide the issue involved herein, the materials on record are not sufficient and in the absence of any counter, it is not appropriate for this court to make any observation on the said allegations. In terms of the law laid down by the Hon'ble Supreme Court in a catena of decisions, the averments made in the writ petition shall be deemed to have been admitted by the respondents, as no counter has been filed on their behalf. Since this Court is bound by the said law, this court has no option but to countenance the allegations, on the basis of which this court has to come to the conclusion that the requisition/ notice dated 01-02-2018 has not been submitted in terms of Rule 7 and consequently, the notice dated 26-04-2018 will be rendered invalid and contrary to Rule 7.

[10] On perusal of the various provisions of the District Councils Act, 1971, it is absolutely clear that there is no any specific provision under which a resolution/ notice which was submitted under Section 23 thereof, can be withdrawn because of which it has been submitted by the learned counsel appearing for the petitioners that the withdrawal of the resolution/ notice is impermissible and that too, in view of the decision rendered by the Hon'ble Gauhati High Court in M.Ibeyaima Devi case which has been denied by the counsels appearing for the respondents. In order to emphasize his contention, H.S Paonam has relied upon some of the decisions of the Hon'ble Supreme Court. The first is the one rendered in Maulavy Hussein Haji Abraham Umaji Vs. State of Gujarat, (2004) 6 SCC wherein it has been held that while interpreting a provision, the court can

only interpret the law and cannot legislate it. In *Sangeeta Singh Vs. Union of India & ors*, (2005) 7 SCC 484, the Hon'ble Supreme Court held that it is well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements.

In view of the rival contentions and in particular, the decision rendered in *M. Ibeyaima Devi* case, what has been held therein will have a bearing, which needs to be understood, while deciding the issue involved herein and the facts, in short, thereof are that there are 19 elected members in Imphal East Zilla Parishad constituted under the provisions of Manipur Panchayati Raj, Act, 1994. On 08-09-1999, a requisition letter signed by 10 members for no-confidence motion was addressed to the Adhyaksha, on the basis of which a notice dated 22-09-1999 was issued for a special meeting to be held on 01-10-1999. It so happened that on 27-09-1999, nine members out of 10 signatories made an application withdrawing their earlier requisition of no-confidence motion. Even on receipt of the said application, the meeting was not cancelled and it was held on 01-10-1999 wherein no-confidence motion was defeated. Thereafter, on 25-10-1999, 12 members including the 10 petitioners submitted another requisition for convening a special meeting to had been withdrawn vide application dated 27-09-1999, followed by a reminder dated 03-11-1999. Finally, the Adhyaksha issued a letter dated 02-11-1999 stating that no meeting could be held as it is prohibited by Section 57(4)(b) of the Act. A writ petition came to be filed questioning the legality and validity of the proceeding held on 01-10-1999 and the letter dated 02-11-1999 and while dismissing the same, the Hon'ble Gauhati High Court held that the provision for requisition is there in the Act but there is no provision enabling the requisitionists to withdraw the requisition. The prescribed procedure in this regard is to be followed. But there is no procedure prescribed for withdrawal of requisition. Section 21 of the General Clauses Act cannot be of any help in the present case.

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.

[11] Having held as above and answered the issue in the affirmative, other contentions need not be gone into by this Court but since the learned Addl. Advocate General, Manipur has emphatically submitted that the stand taken by

the petitioners in their earlier writ petitions will make them disentitled to contend that the withdrawal of requisition/ notice is impermissible, this Court deems it appropriate to deal with it. In order to substantiate his argument, the learned Addl. Advocate General has relied upon the decision in *Shyam Telelink Ltd. Vs. Union of India*, (2010) 10 SCC 165, wherein the Hon'ble Supreme

Court held:

"26. The decision of this Court in *R.N Gosain V. Yashpal Dhir* brings in the doctrine of election in support of the very same conclusion in the following words: (SCC pp.687-88, Para 10)

"10. Law does not permit a person to both approbate and reprobate.

This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that:

"...A person cannot say at one time that a transaction is valid and thereby obtainsome advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.'

(See *Verschures Creameries Ltd. V. Hull and Netherlands Steamship Co. Ltd.* KB at P. 612, Scrutton, L.J.) According to Halsbury's Laws of England, 4th Edn., Vol.16:

"1508. Examples of the common law principle of election.-After taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside."

In order to appreciate the stand of the petitioners, the following facts and circumstances are relevant and need to be considered:

(a) On the strength of the applications dated 01.02.2018 and 02.02.2018 submitted by some of the members of the Senapati ADC for moving a resolution under Section 23 of the District Councils Act, 1971 for removal of the Chairman and the Vice-Chairman, the Deputy Commissioner, Senapati issued a notice dated 13-02-2018 by which all the ADC members were requested to attend the meeting to be held on 26.02.2018. Copies of the said notice were admittedly received by the petitioners only on 20.02.2018. The said notice dated 13.02.2018 came to be challenged by way of a Writ Petition being WP(C) No.157 of 2018 on the ground that it was contrary to the condition prescribed in Section 23 wherein on 23.02.2018 this Court, while issuing notice to the respondents, suspended it which was cancelled by the Deputy Commissioner, Senapati on 26-02-2018 and consequently, the writ petition was disposed of as infructuous.

(b) On the basis of an application dated 14-03-2018 for moving a resolution for consideration of removal of the Chairman and the Vice-Chairman, the Deputy Commissioner, Senapati issued a notice dated 15.03.2019 informing that a meeting thereof be held on 02-04-2018. A writ petition being WP(C) No.250 of

2018 was filed questioning the notice dated 15-03-2018 on the grounds that the notice did not mention anything about the withdrawal of the earlier applications dated 01-02-2018 and 02-02-2018; that the permissibility of submission of requisition/ notice, one after another, separately and independently is not mandated in Section 23; that the Deputy Commissioner is not vested with any power to choose / accept the subsequent requisition/ notice without first withdrawing the earlier requisition/ notice and that the ADC being a democratic institution, is expected to follow the democratic norms. This Court passed an order dated 29.03.2018 directing that the meeting of the ADC, Senapati be deferred and on 05-04-2018, this Court allowed the writ petition with the result that the notice dated 15.03.2018 was quashed and set aside.

(c) The Deputy Commissioner, Senapati issued a notice dated 26.04.2018 stating that an application dated 12.04.2018 as a reminder to their application dated 01.02.2018 for convening a meeting for consideration of the resolution for removal of the Chairman, Senapati ADC was received and that a meeting of the elected members of the Senapati ADC be held on 14.05.2018. This notice dated 26.04.2018 was challenged in writ petition being WP(C) No. 393 of 2018 on the ground that since the requisition/ notice dated 01-02-2018 and 02-02-2018 are still pending, the Deputy Commissioner is bound to convene a meeting by giving not less than 15 days time notice and the stand taken by the petitioners in WP(C) No.250 of 2018 was reiterated. The said writ petition was allowed vide judgment and order dated 05.06.2018 passed by this court.

(d) An application dated 08.06.2018 seeking for withdrawal of the said earlier application dated 01.02.2018 was received by the Deputy Commissioner, Senapati and after accepting their prayer, he issued a notice dated 18.06.2018 stating that 15 members of the Senapati ADC submitted an application dated 15.06.2018 for moving a resolution under Sub-section (2) of Section 23 of the District Councils Act, 1971 and that all the elected members were requested to attend the meeting scheduled to be held on 04.07.2018 at 11.00 A.M. The instant writ petition was filed by the petitioners challenging it.

From the aforesaid facts and circumstances, it is evident that the applications dated 01-02-2018 and 02-02-2018 were moved for consideration for removal of the Chairman and the Vice-Chairman but the same could not be acted upon on account of the mistake committed by the Deputy Commissioner, Senapati while issuing the notice dated 13-02-2018 for that purpose. A similar requisition/ notice dated 14-03-2018 was submitted by some members of the Senapati ADC but the same was objected to by the petitioners on the ground that the earlier application was still pending and had not been withdrawn. This stand of the petitioners prompted the said members of the Senapati ADC to approach the Deputy Commissioner, Senapati by way of a reminder dated 12-04-2018 requesting him to convene a meeting in terms of the earlier application. This time too, an objection was raised by some of the petitioners. Having no alternative with them, the applicants in the earlier application dated 01-02-2018

submitted an application dated 08-06-2018 for withdrawal of the earlier application which was accepted by the Deputy Commissioner, Senapati. After the earlier application having been withdrawn, some of the ADC members submitted an application dated 15-06-2018, on the basis of which the Deputy Commissioner, Senapati issued a notice dated 18-06-2018 informing the elected members of the Senapati ADC to attend the meeting to be held on 04-07-2018. The stances taken by the petitioners as stated hereinabove, are contradictory-on the one hand, it has been stated by them that without withdrawing the earlier application, no other application can be submitted/ entertained for consideration of removal of the Chairman and on the other hand, it has been stated by them that the withdrawal of the earlier application is impermissible. The conduct of the petitioners is unfair and unfortunate and every attempt being made by the Deputy Commissioner, Senapati to convene a meeting, has been thwarted by them with the result that the implementation of the provisions of the District Councils Act, 1971 and the rules made thereunder, is made almost impossible. The idea of the petitioners appears to be to ensure that the meeting is not convened by the Deputy Commissioner, Senapati at any cost. This is not what is contemplated in a democracy and in other words, the democratic process as envisaged in the District Councils Act, 1971 is stalled for one reason or the other and therefore, only on this count itself, the instant writ petition is liable to be dismissed.

[12] In view of the above and for the reasons stated hereinabove, the instant writ petition is devoid of any merit and is accordingly dismissed.