
(2008) 03 GAU CK 0050
In the Gauhati High Court

Sorojini Devi and Another

APPELLANT

Vs

Oinam Jugeshwar Singh and Others

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

MANIPUR PANCHAYATI RAJ ACT, 1994 — Section 49, 57

Citation : (2009) 3 GLR 279 : (2008) 2 GLT 198

Hon'ble Judges : M.B.K. Singh, J;Asok Potsangbam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.B.K. Singh, J.

1 .These two writ appeals being W.A. No. 38 of 2008 and W.A. No. 39 of 2008 have been filed challenging the common judgment and order dated 12.03.2008 passed by a learned Single Judge of this Bench disposing of W.P.(C) No. 136 of 2008 and W.P.(C) No. 127 of 2008 jointly. Since a common question of law and facts are involved in these two appeals, they are proceeded jointly.

2. We have heard Mr. N. Kumarjit Singh, learned Counsel appearing on behalf of the appellants, Mr. H.S. Paonam, learned Counsel appearing on behalf of the principal respondents and Mr. Th. Ibohal Singh, learned Addl. GA appearing on behalf of the Govt, respondents.

3. The principal respondents in these two writ appeals are six of 11 elected members of Bishnupur Zilla Parishad and they filed the above said two writ petitions. The appellant No. 1 and the appellant No. 2 are the Adhyaksha and the Up-Adhyaksha of the said Zilla Parishad and they were the respondents 5 and 6 respectively in both the writ petitions.

4. In W.P.(C) No. 127 of 2008, the present principal respondents, who were the writ petitioners, were praying mainly for directing the Deputy Commissioner, Bishnupur District, Bishnupur and the Chief Executive Officer, Bishnupur Zilla

Parishad for holding election of new Adhyaksha and Up-Adhyaksha in place of the respondents 5 and 6 respectively alleging that motion of No-Confidence as against the two respondents had been carried through in a special meeting on 13.02.2008.

5. In the above said writ petition, according to the writ petitioners, on 29.01.2008, they submitted a requisition for consideration of No-Confidence Motion against the Adhyaksha and the Up-Adhyaksha, to the Adhyaksha herself in the Office Chamber of the Deputy Commissioner, Bishnupur in the presence of the Deputy Commissioner (D.C. for short), Bishnupur and the submission of the requisition was duly photographed. Further, according to the writ petitioners, the requisition was also published in a local daily for wide information and it was furnished to the D.C. Bishnupur as well as to the ChiefExecutive Officer (C.E.O. for short), Bishnupur Zilla Parishad for information.

6. On the other hand, the present appellants denied the alleged fact of the said requisition having been submitted to the Adhyaksha on 29.01.2008.

7. Moreover, according to the writ petitioners, on failure of the Adhyaksha to discharge her duties as provided u/s 57(4) of the Manipur Panchayati Raj Act, 1994, herein referred to as the "Act", in connection with convening of a special meeting of the Zilla Parishad for consideration of the No-Confidence Motion, they made an application dated 05.02.2008 to the D.C, Bishnupur for directing the C.E.O., Bishnupur for convening a special meeting for consideration of the Motion. Thereafter, according to the writ petitioners, the D.C, Bishnupur directed the C.E.O., Bishnupur Zilla Parishad to take appropriate action under the provisions of the Act of 1994 and the C.E.O. issued a notification dated 06.02.2008 notifying that a special meeting for consideration of the said No-Confidence Motion would be held on 13.02.2008 at 11.00 A.M. At the Conference Hall of the Mini Secretariat. As per the allegations of the writ petitioners, the notification was also published in the local daily, the Sangai Express on 07.02.2008. It was also alleged by the writ petitioners that as per the schedule, the special meeting was held on 13.02.2008 wherein only six members were present and that the said Motion of No-Confidence was carried through unanimously. Further, according to the writ petitioners, though on 13.02.2008 itself, copies of the proceedings of the said meeting were forwarded to the C.E.O., Bishnupur Zilla Parishad, the D.C., Bishnupur and RD & PR, Govt, of Manipur with a request for causing necessary action to be taken for the elections of new Adhyaksha and Up-Adhyaksha as per Rules, no action was taken and as per information received from the C.E.O., the request dated 29.01.2008 was rejected.

8. On the other hand, the present appellants denied the above said facts. According to them (respondents 5 and 6), since no requisition was submitted to the Adhyaksha, there was no question of issuing notice for convening any special meeting and the application dated 05.02.2008 submitted to the D.C., Bishnupur was rejected on 13.02.2008 and as such no special meeting was held on

13.02.2008. Further, according to the appellants, the respondents 5 and 6 in the writ petition, the C.E.O., Bishnupur Zilla Parishad never issued any notification on 06.02.2008 for holding any special meeting and she only drafted a notification for such a meeting and before issuing the same, on coming to know about the non-submission of the said requisition to the Adhyaksha and on obtaining advice from the State Govt., the representation made to the D.C., Bishnupur on 05.02.2008 was rejected on 13.02.2008.

9. In the second writ petition, i.e. W-P-(C) No. 136 of 2008, the present principal respondents, who were petitioners in the said case, were praying mainly for quashing the said orders dated 13.02.2008 issued by the C.E.O., Bishnupur Zilla Parishad rejecting the application made by the petitioners on 05.02.2008 for convening a special meeting of the Zilla Parishad for consideration of the said No-Confidence Motion. In the second writ petition, the petitioners alleged the same facts alleged in the first writ petition.

10. The present appellants, who were respondents 5 and 6 in the said second writ petition, contested the second case taking the same pleas taken in the first case.

After taking into consideration of the relevant provisions of Section 57 of the said Act, the disputed question of facts in between the parties and also the need for allowing Bishnupur Zilla Parishad to function democratically, the learned Single Judge passed the impugned judgment and order disposing of the two writ petitions. The operative portion of the impugned judgment and order is at para-10, which is as follows:

10. For the ends of justice and also in the interest of democracy and also for protecting the democratic institution at the grass root level, this Court direct the Chief Executive Officer, Bishnupur to issue the Notice for convening a special meeting of the Bishnupur Zilla Parishad in pursuance of the said requisition letter dated 29.01.2008 for consideration of no confidence motion against the sitting Adhyaksha and Up-Adhyaksha within a period of seven (7) days from the date of receipt of this order. The time framed mentioned in Section 57 of the Manipur Panchayati Raj Act, 1994 should be strictly followed in convening the special meeting of the Zilla Parishad for consideration of no confidence motion against the sitting Adhyaksha and Up-Adhyaksha. For carrying out of the above directions, the impugned order dated 13.02.2008 issued by the Chief Executive Officer, Bishnupur Zilla Parishad is quashed and set aside. The sitting Adhyaksha and Up-Adhyaksha are restrained from taking any major decision and financial transaction pending consideration of no confidence motion against them.

11. In our opinion, the learned Single Judge was aware of the disputes in between the parties. Apparently, appreciating the vital need for upholding democratic value of majority rule in the institution of Zilla Parishad and thereby for ensuring democratic functioning of the said Zilla Parishad without further delay, the learned Single Judge directed for convening the special meeting for

consideration of the No-confidence Motion against the sitting Adhyaksha and Up-Adhyaksha. By doing so, the learned Single Judge was giving more importance to the observance of democratic principle in the functioning of the Zilla Parishad than the technical points raised by the respondents 5 and 6 regarding the need for delivering the said requisition to the Adhyaksha herself as per provisions of Section 57(4) of the said Act.

12. Keeping aside, the disputed question regarding delivery of any requisition in original to the Adhyaksha on 29.01.2008 for consideration of the said motion, it is ascertained from the counter affidavits filed by the D.C., Bishnupur and the C.E.O., Bishnupur Zilla Parishad that a copy of the requisition for consideration of the said No-confidence Motion was furnished to the Office of the D.C., Bishnupur and another copy of it was furnished to the C.E.O., Bishnupur Zilla Parishad for information.

13. There is no denial from the side of the respondents about the fact alleged by the writ petitioners that a news item about the submission of the said requisition to the Adhyaksha for consideration of the said No-confidence Motion was published in the local daily Matamgi Yakairol on 30.01.2008. As per findings of the learned Single Judge, having regard to the provisions of Section 49 of the said Act and since the State Government had not taken any steps for selection of 1/3 (one-third) of the members under Clause (c) of Section 49, there were 18 members in Bishnupur Zilla Parishad, viz 11 (eleven) directly elected members, one elected M.P. and 6(six) elected M.L. As. in the district at the relevant time. Accordingly, the requisition signed by six members of the Zilla Parishad was one signed by one-third of the total members of the Zilla Parishad as required u/s 57(4) of the said Act. There is no sufficient basis for interfering with the above said findings of the learned Single Judge.

14. It is also hard to believe that when the six members of the Zilla Parishad submitted a copy of the said requisition addressed to the Adhyaksha to the D.C., Bishnupur and another copy of it to the C.E.O., Bishnupur Zilla Parishad and also caused a news item to be published regarding the said requisition, they would not have submitted the original of the requisition to the Adhyaksha. Merely on the basis of the pleadings of the writ petitioners at para-5 of their petition to the effect that when a copy of the requisition was received by the C.E.O., who was the head of the Office and Ex-Officio Secretary of the Zilla Parishad, it would be deemed that the same was received by the Adhyaksha, one cannot say that the writ petitioners admitted the fact of non-submission of the said requisition to the Adhyaksha in the said para.

15. On the basis of the pleadings of the parties and. materials before the Court, it is also ascertained that in pursuance of a request made by the said six members of the Zilla Parishad for directing the C.E.O., Bishnupur Zilla Parishad, vide letter dated 05.02.2008, a copy of which is at Annexure-A/5 of W.P.(C) No. 127 of 2008, for convening a special meeting of the Zilla Parishad by invoking the provision of Section 57(4) of the said Act for consideration of the said No-

confidence Motion, the D.C., Bishnupur directed the C.E.O., Bishnupur Zilla Parishad, vide letter dated 06.02.2008 a copy of which is at Annexure-A/6 of the said writ petition for taking appropriate necessary action within the stipulated time under the said Act and Rules. The C.E.O., Bishnupur Zilla Parishad admittedly drafted a notice dated 06.02.2008.

16. The said notice dated 06.02.2008, a copy of which is at Annexure-A/7 of the said writ petition, was for holding a special meeting of Bishnupur Zilla Parishad on 13.02.2008 at 11.00 A.M. for consideration of the said No confidence Motion against both the Adhyaksha and the Up-Adhyaksha. The said notice was published in the local daily Sangai Express on 07.02.2008, the copies of the said notice were purportedly to be furnished to all the concerned including the Adhyaksha and the Up-Adhyaksha of the Zilla Parishad and as such in the ordinary course copies were furnished to all the concerned. In this connection, the pleadings of the C.E.O., Bishnupur Zilla Parishad are to the effect that a copy of the said notice was snatched away before its finalization and that the said publication of the notice was made by the said six members without authority. The above said pleadings are not in our opinion acceptable.

17. There is nothing to show that the C.E.O., Bishnupur Zilla Parishad lodged any report either about the alleged snatching of the documents from his office or about the said unauthorized publication of the notice. It is hard to believe that the C.E.O., Bishnupur Zilla Parishad put his signature on a draft notice. There is a possibility that after the issuance of the said notice and its publication, the C.E.O., was subsequently influenced or compelled not to attend the special meeting at the behest of some interested persons or due to strong objection made by the concerned Adhyaksha or Up-Adhyaksha stating that no requisition had been delivered to the Adhyaksha as per requirement u/s 57(4) of the said Act.

18. The C.E.O., Bishnupur Zilla Parishad stated in his counter affidavit to the effect that complicity having arisen in the matter, he sought a comment from the Adhyaksha by writing a letter No. 2/ZP/NCM.05(Pt) dated 06.02.2008 regarding the instruction of the D.C., Bishnupur for convening the special meeting for consideration of the said No-confidence Motion. The C.E.O., Bishnupur Zilla Parishad, further stated that he sought comment on the same matter from the Commissioner (RD & PR), Govt. of Manipur vide letter No. 2/ZP/NCM. 05(Pt) dated 07.02.2008. In fact, there was no necessity of calling for the said comments under any provision of the said Act. At the time of calling for the said comments, the C.E.O., Bishnupur Zilla Parishad expressed his opinion to the effect that it was mandatory to deliver the requisition for the special meeting for consideration of the said No-confidence Motion to the Adhyaksha under the provision of Section 57(4) of the Act.

19. The concerned Adhyaksha commented vide her letter dated 07.02.2008 addressed to the C.E.O., Bishnupur Zilla Parishad to the effect that since no requisition was submitted to the Adhyaksha, there was no question of any

process being taken for convening any special meeting for consideration of the said No-confidence Motion. The Commissioner (RD & PR), Govt., of Manipur also gave his comment to the same effect vide his letter dated 12.02.2008. Thereafter, the C.E.O., Bishnupur Zilla Parishad, issued the said order dated 13.02.2008 purportedly on the advice of the State Government rejecting the application of the six members for convening the special meeting mainly on the ground that no requisition had been submitted to the Adhyaksha. The C.E.O., Bishnupur Zilla Parishad was not supposed to act on the advice of the State Government on the matter. The learned Single Judge quashed the said order dated 13.02.2008 on the ground that the Zilla Parishad should be made to function observing democratic principles.

20. The Appellant's case is that it was illegal on the part of the learned Single Judge to interfere with the said order dated 13.02.2008. According to the learned Counsel appearing on behalf of the appellants, since no requisition was submitted to the Adhyaksha under the provision of Section 57(4) of the Act, no action was required to be taken for convening any special meeting for consideration of the said No-confidence Motion, and in fact, there was no No-confidence Motion in law. The basis of the appellants' case is that the provisions in Section 57(4) of the Act for delivering of the requisition for such a special meeting to the Adhyaksha is mandatory in the sense that the requisition should be delivered personally to the Adhyaksha and so long as no such requisition is delivered to the Adhyaksha personally, no special meeting can be called at the instance or on direction of the D.C., Bishnupur.

21. Merely from the use of the word "shall", we cannot conclude that the said provision is to be interpreted in the manner submitted by the appellants. The Apex Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, approved and quoted the following passage from Crawford: "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other."

22. Keeping in view the above said principle of law, we have to consider if the said provision regarding the delivery of the requisition to the Adhyaksha is to be interpreted in the sense and manner submitted by the appellants. Section 57 of the Act deals with resignation or removal of the Adhyaksha and Up-Adhyaksha. The relevant Clause 4 of Section 57 of the Act is as follows:

57. (4) Every Adhyaksha or Up-Adhyaksha shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of the total number of elected members of the 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 one third 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 by the Adhyaksha, if the motion is against the Up-Adhyaksha and in the case of Adhyaksha, the Up-Adhyaksha 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.

Provided that if the Adhyaksha fails to convene the said meeting within the stipulated time, the members shall request the D.C. 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 further that withdrawal of no-confidence motion against the Adhyaksha or Up-Adhyaksha or both, as the case may be, shall not be allowed.

23. The above said provisions of Section 57(4) are procedures regarding removal of Adhyaksha and Up-Adhyaksha of a Zilla Parishad. Both the Adhyaksha and the Up-Adhyaksha are elected by a majority of the members of the Zilla Parishad. No Adhyaksha or Up-Adhyaksha, who has lost confidence of the majority of the members of the Zilla Parishad is to function as Adhyaksha or Up-Adhyaksha.

24. The provision for delivery of the said requisition to the Adhyaksha is obviously for giving notice to the Adhyaksha about the motion of no-confidence as against him/her or Up-Adhyaksha so that he/she may take proper steps for convening a special meeting without delay, and as far as possible within the time stipulated by Section 57(4). In our considered opinion, what is actually required is that the requisition must be brought to the notice of the Adhyaksha. Once the requisition made by the required number of members is brought to the notice of the Adhyaksha either directly by delivering it to him/her or indirectly through some reliable means, it has to be taken that there has been substantial compliance with the provisions of Section 57 of the Act.

25. On the other hand, if it is to be held that unless the requisition is delivered to the Adhyaksha directly or personally, the said requisition is to be treated as invalid, there would be many practical difficulties leading to jeopardy in democratic functioning of the Zilla Parishad.

In a given case, the concerned Adhyaksha despite having received a requisition signed by the required number of members for convening a special meeting for consideration of No-confidence Motion as against him/her, may flatly deny the fact of having received the requisition and he/she may insist that the requisition should be treated as invalid and non-existent in law. In that situation, democratic process for dislodging the concerned Adhyaksha, who has lost the confidence of the majority is not allowed to take place.

26. After all, democratic process includes not only choosing one's own representative but also dislodging such elected representatives from their office in accordance with law. When Section 57(4) of the Act states for making delivery of the requisition to the Adhyaksha, it only means that the requisition must be brought to the notice of the concerned Adhyaksha and on knowing about the said requisition he is bound to proceed for convening special meeting within the stipulated time as far as possible. In case the concerned Adhyaksha fails to convene the meeting, there are provisions of convening it on direction of the D.C. without delay. It is also provided in Section 57 of the Act that withdrawal of No-confidence Motion against the Adhyaksha or Up-Adhyaksha or both, as the case may be, shall not be allowed. In our opinion, the intention of the legislature is that whenever there is a requisition signed by the requisite number of members for consideration of No-confidence Motion as against the Adhyaksha or Up-Adhyaksha, the said motion should be considered without delay to preserve democratic value of majority rule in the functioning of the Zilla Parishad. The legislature would not have intended to give any room to the concerned Adhyaksha to manipulate and defeat the democratic process of dislodging him.

27. Having regard to all the relevant considerations, we are of the opinion that the said provisions in Section 57(4) of the Act requiring delivery of the requisition to the Adhyaksha is to be taken in the sense stated above and as such whenever it is ascertained that the requisition has been brought to the notice of the Adhyaksha not necessarily by actual delivery of it personally to him, it is to be taken that there has been substantial compliance of the provisions.

28. In our present case, as per finding already made, the said requisition was signed by the requisite number of members prescribed by Section 57(4) of the Act. Even though the Adhyaksha denies the fact of having received of the requisition on delivery, in the facts and circumstances of the case, we have no hesitation in holding that she has knowledge of the said requisition. In our opinion, there has been substantial compliance of the provisions of Section 57(4) of the Act. Further, in the fact and circumstances, there cannot also be any question of causing prejudice to the appellants in case of allowing to consider the said No-confidence Motion in a special meeting convening for the purpose.

We do not find any appreciable reason as to why the said Motion of No-confidence should not be allowed to be considered. We do not find any illegality having been committed by the learned Single Judge in passing the impugned direction for convening the special meeting for the said purpose.

30. The said direction was made for upholding the democratic value of majority rule in the functioning of the said Zilla Parishad in the public interest. No interference is called for in respect of the impugned order. Accordingly these two writ appeals, i.e. W.A. No. 38 of 2008 and W.A. No. 39 of 2008, are rejected. The C.E.O., Bishnupur Zilla Parishad shall issue the notice for convening special meeting of the Bishnupur Zilla Parishad as directed in the impugned order within a period of 7(seven) days from the date of receipt of this judgment and

order. The other portion of the impugned judgment and order are to be complied with. No order as to costs.