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HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH

CORAM: HON'BLE SHRI YATINDRA SINGH, C.J.
HON'BLE SHRI SUNIL KUMAR SINHA, J

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1. Writ Petition (C) No. 6286 of 2011

Petitioner : Smt. Vani Rao

VERSUS

Respondent : State of Chhattisgarh and Others

2. Writ Petition (C) No. 282 of 2012

Petitioner : Smt. Vani Rao

VERSUS

Respondent : State of Chhattisgarh and Others

3. Writ Petition (C) No. 866 of 2013

Petitioner : Smt. Vani Rao

VERSUS

Respondent : State of Chhattisgarh and Others

Writ Petitions under Article 226/227 of the Constitution of India

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Appearance: Shri BP Sharma, Shri Vivek Chopda, Shri ML Saket and Shri Sameer Uraon, counsel for the Petitioner. Shri Kishore Bhaduri, Additional Advocate General, Shri Arun Sao, Government Advocate and Shri AS Kachhawaha, counsel for the Respondents.

ORDER
(23rd September, 2013)

1. The main question involved in these writ petitions revolves around validity of section 19-B of the Chhattisgarh Municipal Corporation Act, 1956 (the Act). Among others, it empowers the State Government to remove, a mayor of a municipal corporation.

THE FACTS

2. Bilaspur Development Authority (the BDA) acquired some land of one Shri Manohar Lal Raj (Shri Lal). In this regard, an agreement dated 21.07.1987 (the Agreement) was executed between them. It is said that:

- Under the agreement some money as well as some developed land was to be given to him; and

- After merger of the BDA with the Bilaspur Municipal Corporation (the Corporation) on 09.09.2002, it is to be done by the Corporation.

3. There was difference of opinion between the Municipal Commissioner of the Corporation (the Commissioner) and the elected Mayor of the Corporation, Smt. Vani Rao (the Petitioner), as to how the Agreement should be implemented:

- The Commissioner was of the view that before resolving anything in the mayor-in-council of the Corporation (the MIC), the opinion of the State Government be taken and only some amount should be given;
- Whereas, the Petitioner wanted the matter to be taken up in the MIC.

4. The Commissioner wrote a letter on 14.09.2010 to the State Government seeking directions and guidelines. However, the Petitioner directed the matter to be placed before the MIC on the same date.

5. On 14.09.2010, the MIC is said to have unanimously passed resolution number-11 (the Resolution) by which 20,375 square feet land was resolved to be given to Shri Lal. We are using the words 'said to have been passed', as there is dispute between the parties whether, it was passed or not. A copy of the Resolution is Appendix-1 to this judgement.

WP 6286 of 2011—The First-WP

6. The State Government issued a notice dated 30.06.2011 (the first-Notice) under section 19-B of the Act requiring the Petitioner to show cause why action, under section 19-B of the Act, be not taken for the irregularities mentioned in the notice.

7. In the first-Notice, three irregularities are mentioned. Out of these three, the first two have some concern with the Commissioner and the third one is related to wrongly constituting the departments.

8. The Petitioner has filed Writ Petition (C)- 6286 of 2011 (the first-WP) challenging the same.

WP 282 of 2012—The Second-WP

9. During the pendency of the first-WP, another notice dated 31.12.2011 (the second-Notice) was issued requiring the Petitioner to show cause why action be not taken under section 19-B of the Act for using unparliamentary language on 02.12.2011; doing work (specified in the notice) against the rules of the government; and getting the work done on her whims by threatening the officers and employees of the Corporation.

10. The Petitioner has filed Writ Petition (C)- 282 of 2012 (the second-WP). In this writ petition validity of section 19-B of the Act is also challenged.

11. In the second-WP, an interim order was granted on 21.02.2012 that the proceedings may go on, but no final decision shall be taken till the next date of listing. This interim order was continued from time to time.

WP 886 of 2013—The Third-WP

12. During the pendency of the aforesaid writ petitions, the State Government by order dated 03.06.2013,

- Stayed the operation of the resolution dated 14.09.2010;
- Asked the Commissioner to obtain the opinion of the Corporation regarding the Resolution; and
- Issued another notice dated 4.06.2013 (the third-Notice) under section 19-B of the Act asking the Petitioner to show cause for getting the Resolution fraudulently recorded as passed when, it was not passed.

13. The Petitioner has filed Writ Petition (C)-866 of 2013 (the third-WP) challenging the third-Notice and the validity of section 19-B of the Act. Apart from this, a direction is sought restraining the respondents from exercising powers under section 417(2), 418, 421(3) of the Act and to abide by section 29 of the Act.

14. In the third-WP, an undertaking was given on behalf of the Corporation that the meeting of the general body would not take place till the next date of listing. This assurance was also extended from time to time.

15. In the second and third-WPs, apart from other reliefs, the validity of section 19-B of the Act is also challenged and they are division bench matters. However, in the first-WP, the challenge is only to the notice issued under section 19-B of the Act and it is single judge matter. However, the counsel for the parties had made statement that they may be heard together as the parties in the three WPs are the same and some points are also the same. On the request of the counsel for the parties, the three WPs were consolidated and are being decided together.

POINTS FOR DETERMINATION

16. We have heard the counsel for the parties. The following points[1] arise for determination in these cases:

(i) Whether section 19-B of the Act is *ultra vires* the Constitution;

(ii) Whether the impugned notices, signed by the Under Secretary, can be said to be notices by the State Government;

(iii) Whether the notices are illegal as they are not in the name of the Governor;

(iv) Whether the allegations in the notices are without any substance;

(v) Whether the State can be restrained from exercising powers under section 417(2) 418 and 421(3) of the Act;

(vi) Whether the order dated 03.06.2013 passed by the State Government is illegal;

(vii) Whether notice dated 07.06.2013 convening special meeting of the general house by the Commissioner is invalid;

(viii) Whether the letter of the State Government dated 10.10.2011 is invalid;

(ix) Whether any direction should be issued to the State Authorities to take any disciplinary action against the Commissioner;

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[1]We would like to state here that decision on all points except the second point was dictated in the open court however, for the second point judgement was reserved in order to see the original file.

(x) Whether any direction should be issued to enforce the resolution of the MIC dated 16.06.2011 and 02.07.2011.

1st POINT: SECTION 19-B IS VALID

17. The counsel for the Petitioner placed reliance on some decisions (see below)[2] and submitted that:

(i) No guidelines have been laid down for exercising power under section 19-B of the Act. It confers unfettered discretion on the State Government. It is violative of article 14 of the Constitution;

(ii) Section 19-B of the Act is contrary to article 243R, 243U and 243V of Chapter IXA of the Constitution.

18. An Act of the legislature can be declared *ultra vires,* if it is beyond the legislative competence of the legislature or is contrary to the fundamental rights or any mandatory provision of the Constitution. The cases cited by the counsel for the Petitioner also do not detract from this principle. Let us consider if section 19-B of the Act is beyond legislative competence of State legislature or not.

State Legislature—Competent

19. The State legislature is entitled to enact law regarding local government under Entry 5 of List-II of the seventh schedule of the Constitution. Under this entry, the State legislature can enact a provision for removal of a mayor. Section 19-B of the Act is within the legislative competence of the State; it has power to legislate such provision.

1st Submission: Not Violative of A-14

20. A reading of sub-section (1) of section 19-B {19-B(1)} of the Act (see below)[3] indicates that it permits removal of a mayor, only if,

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[2]The counsel for the Petitioner placed reliance on Bidhannagar (salt lake) Welfare Assn. vs. Central Valuation Board and Others (2007) 6 SCC 668; Ravi Yashwant Bhoir vs. District Collector, Raigad and Others (2012) 4 SCC 407; Delhi Transport Corporation vs. DTC Mazdoor Congress and Others AIR 1991 SC 101; Krishna Mohan (P) Ltd. vs. Municipal Corporation of Delhi and Others (2003) 7 SCC 151; and Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Others (2011) 9 SCC 286 in support of this point.

[3]Section 19-B of the Act is as follows:

19-B. Removal of Mayor or Speaker or Chairman of a Committee.—
(1) The State Government may, at any time, remove a Mayor or a Speaker or Chairman of any Committee, if his continuance as a Mayor or Speaker or Chairman of any Committee as the case may be, is not, in the opinion of the State Government, desirable in public interest or in the interest of the Corporation or if

(a) The State Government is of the opinion that:

- His continuance is not desirable in the public interest; or
- It is not in the interest of the Corporation; or

(b) It is found that:

- He is working against the provisions of the Act or the rules made thereunder; or
- He does not belong to the reserved category for which the seat was reserved.

21. The section lays down the grounds for removing a mayor. It specifies the circumstances under which an order of removal can be passed. A mayor cannot be removed by the State Government on a ground other than the reasons aforementioned: the guidelines have been laid down in the section.

22. The aforementioned guidelines are the condition precedent for exercise of power under section 19-B of the Act. In case, the order is passed for the reason other than the one aforementioned, then such an order would be illegal.

23. The proviso to sub-section (2) of section 19-B {19-B(2)} of the Act also provides that no order under section 19-B of the Act can be passed unless reasonable opportunity of being heard is given.

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it is found that he is incapable of performing his duties or is working against the provisions of this Act or the rules made thereunder or if it is found that the Mayor does not belong to the reserved category for which the seat was reserved.

(2) As a result of the order of removal of Speaker or Chairman of any Committee, as the case may be, under sub-section (1), it shall be deemed that such Speaker or the Chairman of any Committee, as the case may be, has been removed from the office of Councillor also. At the time of passing order under sub-section (1), the State Government may also pass such order that the Mayor or Speaker or Chairman of any Committee, as the case may be, shall be disqualified to hold the office of Mayor or Speaker or Councillor, as the case may be, for the next term:

Provided that no such order under this section shall be passed unless a reasonable opportunity of being heard is given.

24. The section mandates compliance with principles of natural justice. The order further cannot be a non-speaking order. It has to be, by a reasoned order regarding existence of the conditions that permit the State Government to remove a mayor.

25. The discretion of the State Government is not subjective but is objective; and can be tested in a court of law. It is satisfaction of a reasonable man. The State Government cannot remove a mayor on its whims.

26. The section provides conditions that empower the State Government to remove a mayor; the satisfaction is objective and not subjective; the order has to be reasoned order; and after opportunity to a mayor—in these circumstances it cannot be said that section 19-B confers unfetter, non-guided discretion. Section 19-B is not violative of article 14 of the Constitution.

2nd Submission: Not Violative of A-243R, 243U & 243V

27. Articles 243R, 243U and 243V are in Chapter IXA of the Constitution. This chapter is titled 'The Municipalities' and was inserted by the Constitution (Seventy-fourth Amendment) Act, 1992 with effect from 01.06.1993.

28. Section 19-B of the Act was inserted in the Act by Madhya Pradesh Act number 18 of 1997. This is subsequent to the amendment in the Constitution. The Act with the amendments has been adopted by our State.

29. Articles 243R, 243U and 243V are titled as 'Composition of Municipalities', 'Duration of Municipalities' *etc.*', and 'Disqualifications for Membership' and are for different purpose:

- Article 243R of the Constitution provides, what would be the composition of municipalities;
- Article 243U provides, what would be the duration of the municipalities; and

- Article 243V provides, when a person would be disqualified for being chosen and for being a member of the Municipalities.

30. The aforesaid articles do not provide for removal or non-removal of a mayor. These provisions are silent on this point. Section 19-B of the Act does not contravene these articles. No provision has been brought to our notice that provides that an elected mayor cannot be removed. The second submission also has no merit.

31. In our opinion, section 19-B of the Act is *intra vires* the Constitution.

2nd POINT: NOTICES ARE AUTHENTICATED

32. The counsel for the Petitioner submits that:

- A Notice under section 19-B of the Act can be issued only by the State Government;
- The impugned notices have been signed by an under secretary. He is not entitled to authenticate the orders on behalf of the State Government;
- The notices are invalid and liable to be struck down.

If Power Assigned—Under Secretary can Authenticate

33. The erstwhile State of Madhya Pradesh had framed Rules of Business (the business-Rules) under sub-article 3 of article 166 {166(3)} of the Constitution. These Rules have been adopted by our State. They govern the convenient transaction of the business of the Government.

34. Rule 13 (see below)[4] of the business-Rules provides that they may be supplemented by instructions to be issued from time to time.

35. In pursuance of rule 13 of the business-Rules, instructions have also been issued from time to time. Part-V of the Instructions contains supplementary instructions. Chapter-A of this part is titled as 'Procedure of Secretaries'.

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[4]Rule 13 is as follows:
13. These rules may, to such extent as may be necessary, be supplemented by instructions to be issued from time to time.

36. A reading of the second instruction (see below)[5] of this chapter-A indicates that the Secretary may dispose of the cases of routine nature and those in which either no question of policy is involved or the question of policy has been settled. In issuing notice under section 19-B of the Act, no question of policy is involved. It is covered by this instruction.

37. The explanation to the second instruction provides as to who are included in the word 'Secretary' in these instructions. The first part of the explanation provides that the Chief Secretary, Additional Chief Secretary, Principal Secretary, Secretary or Additional Secretary are included in the word 'Secretary'.

38. The second part of the explanation provides that it also includes a deputy secretary or an under secretary, who may be assigned these powers by any of the secretaries mentioned in the first part of the explanation.

39. In the present case, the notices have been issued by the under secretary. The question is whether he was assigned to sign the notices under section 19-B of the Act or not.

Power was Assigned to Under Secretary

40. The State has produced the original note sheets of the impugned notices. The noting for the third-Notice indicates that certain recommendations were made on 28.05.2013 including the one for issuing notice under section 19-B of the Act to the Petitioner. It further indicates

[5]The second instruction of this part is as follows:

'2. Subject to the Rules of Business, and the practice of the Department and any general or special order of the Chief Minister or the Minister-in-charge a Secretary may dispose of the cases of routine nature and those in which either no question of policy is involved or the question of policy has been settled.

Explanation.— For the purpose of this instruction 'Secretary' includes:

(i) The Chief Secretary, an Additional Chief Secretary, a Principal Secretary, a Secretary or an Additional Secretary, and;

(ii) Director Budget Co-ordination and Resources Analysis or a Deputy Secretary or an Under Secretary who may be assigned these powers by any Secretaries mentioned in (i) above.

that so far as the question of issuing notice was concerned, it was approved up to the minister level on 01.06.2013.

41. Subsequently, a draft of the notice was also produced for approval. It was also approved up to the minister level on 04.06.2013. This draft notice was also of the same type as the notice given, including the designation of the officer, who was to sign it namely an under secretary. Thereafter, the impugned third-Notice was issued; similar is the case in the first and second-Notices.

42. The first and second-Notices were prepared and were put up before the concerned minister for approval through the officers. They were also approved and then the impugned show cause notices were issued to the Petitioner.

43. The fact that in the draft notice, the designation of under secretary, was approved, proves that he was assigned to issue notice to the Petitioner.

44. In Kalyan Singh vs State of Uttar Pradesh and others; AIR 1962 SC 1183 (paragraph 11), it was held that *'the opinion must necessarily be formed by somebody to whom under the rules of business, the conduct of business entrusted and that opinion in law will be the opinion of the State Government.'*

45. In the present case, the decision to issue impugned notices and the draft notice that included the designation of under secretary have been approved up to Minister level. In view of the same, it cannot be said that the Under Secretary was not assigned the power; or the notice signed by him was without authority and it cannot be treated as notice issued under section 19-B of the Act.

46. In our opinion, in the circumstances of the case, the impugned notices have been properly authenticated by the Under Secretary.

3rd POINT: NOTICES—NOT IN THE NAME OF GOVERNOR—NOT ILLEGAL

47. The counsel for the Petitioner placed reliance on State of Uttaranchal and another vs Sunil Kumar Vaish and others, {(2011) 8 SCC 670} = 2011 AIR SCW 5486 (the Sunil-Kumar case) and submitted that:

- The State Government can only act in the name of the Governor;
- The impugned notices are not in the name of the Governor;
- The impugned notices are contrary to article 166 of the Constitution and are illegal.

A166— Directory and not Mandatory

48. Article 166 of the Constitution is titled 'Conduct of business of the Government of a State'. Sub-article (1) of article 166 {166(1)} provides that all executive action of the Government shall be expressed to be taken in the name of the Governor.

49. Sub-article (2) of article 166 {166(2)} of the Constitution provides that the orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

50. While deciding the second point, we have held that the Under Secretary was assigned the power to issue the impugned notices and they were authenticated. However, these notices are not expressed in the name of the Governor. The question is, are they invalid for this reason; can they be set aside on this point?

51. In Dattatraya Moreshwar vs The State of Bombay and others AIR 1952 SC- 181 (the Dattatraya case) (paragraph 7), it was held that the Provisions of articles 166(1) and (2) of the Constitution are not mandatory. The court observed:

'Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. ... Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. ... [In this case] such a decision has been in fact taken by the appropriate Government is amply proved on the record. Therefore, there has been, in the circumstances of this case, no breach of the procedure established by law.'

52. The aforesaid observations were approved in State of Bombay vs. Purshottam Jog Naik AIR 1952 SC 517 (the Purshottam case) and in R. Chitralekha vs. State of Mysore and others AIR 1964 SC 1823 (the Chitralekha case). In the Chitralekha case, the Supreme Court observed (paragraph 4):

' It is, therefore, settled law that provisions of Art. 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government or the Governor.'

53. In P Joseph John vs State of Travancore-Cochin AIR 1955 SC- 160 (the Joseph-John case) the order was not expressed in the name of Governor but was on behalf of the State and was signed by person competent to authenticate it. The court held (paragraph 8) that the orders signed by officer competent to sign under rules of business was substantial compliance of article 166 of the Constitution.

54. In Air India Cabin Crew Assn. Vs Yeshaswinee Merchant and others AIR 2004 SC 187 = (2003) 6 SCC 277 (71, 72) (the Cabin-Crew case), Supreme Court observed that an order under statutory provision did not become

invalid merely for the reason that it was not expressed to be issued in the name of President.

55. We would like to point out that the Cabin-Crew case is two judge decision but the other four namely, the Dattatraya, the Puroshattam, the Chitralekha and the Joseph-John cases, are the constitutional bench decisions.

Sunil-Kumar Case— Observation Confined to that Case

56. In the Sunil-Kumar case, the District Magistrate had sent an inter departmental communication to the Secretary of the State Government to pay an amount of Rs. 70,99,951.50 with interest to the Respondent. The Secretary—for the reasons mentioned therein—disagreed with the same and opined that the recommendation of the District Magistrate was improper.

57. Nevertheless, a division bench of the High Court of Uttarakhand had directed the Government to pay the amount with interest on the recommendation of the District Magistrate.

58. On an appeal by the State Government, the Supreme Court set aside the order of the High Court and dismissed the writ petition, expressing their disapproval (see paragraph 25 of the judgement).

59. Under rules of business of any State, the District Magistrate cannot authenticate the orders of the State Government. In Sunil-Kumar case, the District Magistrate's recommendations were already negated by the secretary of the concerned department of the State; he not only is entitled to authenticate the orders of the Government but is superior officer as well. There was no question of placing any reliance on the recommendation of the District Magistrate.

60. In any case, there was no question of directing payment on the basis of a noting of the District Magistrate: it is not an order of the State Government. This is also clear from the following observation of the Supreme Court:

> 'A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government.'

61. The Sunil-Kumar case is a two judge bench decision. In this case, the State Government was disputing the recommendation of the District Magistrate to be the order of the State Government. In fact, the State Government's view, expressed through Secretary, was contrary to the view of the District Magistrate.

62. It is in the aforesaid background that some casual observations (not necessary for deciding the case) about the order being expressed in the name of the Governor have been made in the Sunil-Kumar case. This decision also does not refer to the previously discussed constitutional bench decisions or the two judge bench decision about article 166 under the same sub-heading. In our opinion, these observations are confined to facts of that case and not applicable here, where the notice was approved up to the minister concerned.

63. In view of above, the notices cannot be struck down merely on the ground that they were not expressed in the name of the Governor as they have been authenticated by the officer entitled to authenticate them under the rules of business and approved up to the Minister concerned.

4th POINT:LEFT OPEN

64. The counsel for the parties have also advanced submissions on the allegations mentioned in the impugned show-cause notices. According to the counsel for the Petitioner, these allegations are baseless and without any substance; whereas, according to the counsel for the Respondents, they have substance.

65. It is not necessary for us to go into the question, whether the allegations are baseless or not as the impugned notices are merely the show-cause notices and this question is to be first gone into by the State Government.

5TH POINT: RESPONDENTS CANNOT BE RESTRAINED

66. Sections 417, 418 and 421 of the Act are in Chapter IX of the Act. It is titled as 'CONTROL'. Different sections of this chapter empower the State Government to exercise control over the corporations under the Act.

67. Apart from other things, sections 417, 418 and 421 of the Act empower the government to do the following:

- Section 417 is titled 'Power of Government to require returns etc.' Apart from others, it empowers the government to call for any return, statement statistic, report, document or any other matter from a municipal commissioner;
- Section 418 is titled 'Power of Government to require municipal authority to take action'. It empowers the Government to direct the corporation, mayor-in-council, municipal commissioner to do the thing as mentioned in that section in the circumstances mentioned therein;
- Section 421 is titled 'Power of Government to suspend any resolution or order'. It empowers the government to suspend any resolution or order if the conditions for exercising the power under this section is satisfied.

68. Sections 417, 418, and 421 confer statutory powers on the State Government: they are statutory duties to be performed by the State Government, if the circumstances so demand. No direction can be issued, restraining the government from performing statutory functions. However, in case the power is wrongly exercised, then it can always be challenged.

6th & 7th POINTS: ORDER AND NOTICE CONVENING MEETING—VALID

Order Staying Resolution—Cannot be Set Aside

69. Shri Lal had filed an application for receiving compensation of the land acquired as well as for allotment of the developed land. On this application, the Commissioner had written a note that the State Government be informed about the entire matter. However, the

Petitioner disagreed with the note of the Commissioner and required the matter to be placed before the MIC on 14.09.2010.

70. The matter was placed before the MIC on 14.09.2010 and the Resolution was said to have been passed. Nonetheless, the Commissioner had written a letter to the State Government before the meeting on 14.09.2010 about the disagreement and seeking directions and guidelines about the same.

71. Subsequently, the file of the minutes of the meeting was received by the Commissioner and he noted on 17.01.2011 that the Resolution was discussed, but no final resolution was passed. The Commissioner sent another letter to the State Government on 28.01.2011 seeking guidelines from the State Government as to what may be done.

72. One Ms. Sahzadi Quraishi filed complaint on 21.01.2011 alleging that:

- She along with some other corporators had objected to allotment of the land to Shri Lal;
- Their objection was not recorded; and
- The minutes are wrongly recorded that the resolution was passed unanimously.

The copy of this complaint was also sent to the State Government.

73. It appears that one Shri Amit Kaushal had also made some complaint before the Lok Ayog, which was registered as 15 of 2013. On this complaint, the Lok Ayog sought information from the State Government as to what was being done by the State Government on the report sent by the Commissioner.

74. The State Government sent a letter dated 24.05.2013 requiring the Corporation, to send summary of the entire incident. This was sent. After considering the same, the State Government, by order dated 03.06.2013, stayed the Resolution and required the Commissioner to send the opinion of the Corporation in this regard.

75. The State Government has stayed the Resolution as it is disputed. It has power to do so under section 421 of the Act. In case the Corporation does not agree with the same, it can always represent under sub-section 3 of section 421 {421(3)} of the Act before the State Government but the order dated 03.06.2013 cannot be set aside at this stage.

Meeting is Not u/s 29

76. The counsel for the Petitioner submitted that:

- Sub-section (2) of section 29 {29(2)} of the Act has been amended by State Act number 18 of 2012;
- Under the proviso to section 29(2) of the Act, now only a divisional commissioner can fix the meeting and not the municipal commissioner;
- Notice dated 07.06.2013 has been issued by the municipal commissioner; and
- It is illegal.

77. There is no dispute that:

- Section 29(2) of the Act has been amended and new section 29(2) has been substituted; and
- Under the amended section 29(2), a meeting can only be fixed by a divisional commissioner and not by the municipal commissioner.

But. the counsel for the Respondents state that the notice dated 07.06.2013 was not issued under section 29 of the Act; it was issued on the direction of the State Government under section 418 of the Act.

78. Section 418 (see Appendix-2) of the Act is in Chapter IX of the Act. It is titled 'Power of Government to require municipal authority to take action'. It empowers the State Government to take action under the circumstances detailed therein.

79. The relevant part of section 418 of the Act is as follows:

> '418. Power of Government to require municipal authority to take action—.... if on .... any complaint or information it appears to the Government that—
> (a) any of the duties imposed by or under this Act or by any other law for the time being in force has not been performed or has been performed in an imperfect, inefficient or unsuitable manner; ...
> the Government may, by written order, direct ... the Commissioner, ... within a period specified in the order—
> (i) to make arrangements to the satisfaction of the Government for the proper performance of the duties referred to in clause (a) ...'

80. A reading of relevant part of section 418 indicates that if on any compliant or information, it appears to the State Government that any of the duties imposed by or under the Act or by any other law for the time being in force has not been performed, or has been performed in an imperfect, inefficient or unsuitable manner—then the State Government may direct the municipal commissioner to make arrangements to the satisfaction of the Government for performance of the duties within the specified time.

81. The State Government by order dated 03.06.2013 has asked the Commissioner to inform the opinion of the Corporation in regard to the Resolution. The Commissioner had convened the special meeting on 12.06.2013 by letter dated 07.06.2013 in order to find out the opinion of the Corporation so that the Government may be informed.

82. The meeting is not called under section 29 of the Act, but is called in pursuance of the direction issued by the State Government under section 418 of the Act: the meeting cannot be invalidated on the ground that it was not called by the Divisional Commissioner.

83. Section 29 of the Act applies in different scenario. Its proviso clarifies as to when a meeting is to be called by a divisional commissioner. It

provides calling of meeting by a divisional commissioner if the date for meeting is not fixed either by the Speaker or by the Mayor.

84. By notice dated 07.06.2010, the meeting was not called for the reason that the date for special meeting was not fixed by the Speaker as well as by the Mayor, but was called on the direction issued by the State Government under section 418 of the Act for knowing the opinion of the Corporation.

85. In view of above, the notice dated 07.06.2013 cannot be invalidated.

8th POINT: REPRESENT AGAINST ORDER 10.10.2011

86. The order dated 10.10.2011 is addressed to the Commissioner. It provides as follows:

(a) It cancels,

- The order dated 22.11.2010 constituting the MIC on the ground that it is contrary to the orders of the State Government;
- Twenty five resolutions passed in the special meeting on 16.07.2011.

(b) It advises the Commissioner that:

- The MIC should be constituted in term of the State Government's order dated 03.01.2005 and thereafter resolutions be passed on merits;
- In case, on any special resolution, approval of the State Government is necessary then resolution be sent to the State Government with his comments.

87. In substance, this order is under section 421(1) of the Act. It is always open to the Corporation to file objection against the same before the State Government under section 421(3) of the Act.

88. Needless to add if any objection as mentioned in the preceding paragraph is filed, it may be considered by the State Government in accordance with law.

9th & 10th POINTS: NO DIRECTION IS NECESSARY

89. The Petitioner has written a letter to the State Government on 05.12.2011 for taking disciplinary proceedings against the Commissioner for not executing the resolution of the MIC, and for creating hindrance in the work of the Corporation. Thereafter, a reminder for the same was also sent on 30.01.2012.

90. The resolutions dated 16.06.2011 and 02.07.2011 have been passed by the MIC. According to the Petitioner, the Commissioner is not obeying the same. This is also one of the reason why the Petitioner has filed an application before the State Government to take disciplinary action against the Commissioner.

91. There is some difference of opinion between the Commissioner and the Petitioner regarding functioning of each other. The State Government has issued show cause notices to the Petitioner. She has not replied the same. It is only after considering her reply that it can be ascertained against whom, action if any, should be taken. In view of the same, there is no justification to issue any direction at this stage.

92. Nevertheless, the Petitioner while replying to the impugned show cause notices may also represent about the same. And in case it is so done, the State Government may consider the same despite the fact that we have chosen not to issue any direction at this stage.

93. The Petitioner has not replied the show-cause notices. She may do so within a month. Thereafter, the State Government may decide them in accordance with law.

CONCLUSIONS

94. Our conclusions are as follows:

(a) Section 19-B of the Chhattisgarh Municipal Corporation Act, 1956 is *intra vires* the Constitution;

(b) Article 166 of the Constitution is directory and if the notices are authenticated by the officer competent to authenticate them then

they cannot be held to be illegal merely because they were not expressed in the name of the Governor;

(c) In this case, the under secretary was assigned to issue the impugned notices and he could authenticate them on behalf of the State Government;

(d) The State Government cannot be restrained from exercising its statutory powers under section 417(2), 418 and 421(3) of the Chhattisgarh Municipal Corporation Act, 1956;

(e) The order dated 03.06.2013 passed by the State Government and the notice dated 07.06.2013 issued by the Commissioner, convening the special meeting of the general house are valid;

(f) There is no justification to go into the merit of the letter of the State Government dated 10.10.2011, however it is open to the Corporation to represent against the same before the State Government. In case any representation is filed then that may be decided in accordance with law;

(g) At this stage, there is neither any justification to issue direction to enforce the resolutions of the Mayor-in-council dated 16.06.2011 and 02.07.2011 nor to issue any direction to the State Authorities to take disciplinary action against the Commissioner as the question, as to who is wrong is before the State Government;

(h) The Petitioner may reply the show-cause notices under section 19-B of the Act within a month. Thereafter, the State Government may pass orders in accordance with law.

In view of our conclusions, there is no merit in the writ petitions. However, as some time is granted to the Petitioner, the writ petitions are disposed of with the aforesaid observations.

CHIEF JUSTICE JUDGE

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Appendix-1

Resolution Number 11 of the Meeting dated 14.09.2010 of the MIC is as follows:

प्रस्ताव क्र०–११ :– पूर्व प्राधिकरण द्वारा वर्ष १९८७ में श्री मनोहर लाल राज पिता दौलत सिंह के भूमि स्वामी हक की भूमि ग्राम जूना बिलासपुर पटवारी हल्का नम्बर–२२ पर स्थित खसरा क्र. ८२९ रकबा २.५१ एकड़ में से ०.९८ एकड़ अधिग्रहित की गई। प्रश्नाधीन अर्जित भूमि ०.९८ एकड़ का आपसी राजीनामा के तहत दिनाँक २१/०७/१९८७ को अनुबंध किया गया। अनुबंध के शर्त अनुसार ५१८८.८ वर्गफूट का ५/– की दर से मुआवजा एवं ३७५०० वर्गफूट के बदले २०% विकसित भूमि का ईकरारनामा निष्पादित किया गया।

आवेदक को ५१८८.८ वर्गफूट का ५/– की दर से कुल मुआवजा राशि २५९४४/– की ४०% राशि १०३७७.७० रू. का भुगतान दिनाँक ११/०८/१९८७ को किया गया। उसके पश्चात शेष मुआवजा राशि एवं २०% विकसित भूखण्ड ७५०० वर्गफूट के आबंटन की कार्यवाही लंबित रखी गई। नस्ती के अवलोकन से ज्ञात हुआ कि आवेदक को १४/१२/२००१ को चर्चा हेतु आमंत्रित किया गया, किन्तु इसके पश्चात किसी भी प्रकार की कार्यवाही नहीं की गई।

श्री अर्जुन सिंह आत्मज श्री पंचम गोड द्वारा उक्त भूमि अपनी स्वयं की बतायी जाकर आपत्ति दिनाँक २४/०४/१९८९ को प्रस्तुत की गई। नस्ती के अवलोकन से ज्ञात हुआ कि श्री अर्जुनसिंह को चर्चा हेतु आमंत्रित किया गया किन्तु उनके द्वारा मुख्तियारनामा दिनाँक २४/०२/१९८२ एवं बिक्रीपत्र दिनाँक ०८/०३/१९८२ की फोटोकापी प्रस्तुत की गई किन्तु आगामी कार्यवाही नहीं की गई। बिक्रीपत्र के अवलोकन से ज्ञात होता है कि अर्जुनसिंह द्वारा श्री मनोहर लाल राज को उक्त भूमि का विक्रय किया गया है।

चूँकि आवेदक का भूखण्ड जोन क्र.०२ में स्थित है जहाँ विकसित भूखण्ड की कीमत ५००/– प्रतिवर्गफूट है तथा जोन क्र.०१ में विकसित भूखण्ड २००/– रूपये प्रतिवर्गफूट दर निर्धारित है। पूर्व प्राधिकरण की बोर्ड द्वारा लिये गये निर्णय के अनुसार श्री मनोहर लाल राज को समतुल्य कीमत (मूल्यांकन) के आधार पर जोन क्र.०१ में प्लाट नं. ८६,८७,८८,८९ एवं ८१ (सभी प्लाट ५० x ८०) तथा एफ ०१–४२२ नं. में प्लाट ३५० वर्गफीट को मिलाकर २०३७५ वर्गफीट होता है, को दिया जा सकता है। जिसमें ६९ वर्गफीट जमीन अधिक होता है, जिसका वर्तमान बाजार मूल्य के कीमत राशि श्री मनोहर लाल राज द्वारा निगम कोष में जमा कराया जाना होगा। अतः प्रकरण विचारार्थ प्रस्तुत।

निर्णय :– सर्वसम्मति से प्रस्तावानुसार स्वीकृति प्रदान की जाती है।

Appendix- 2

Section 418 of the Chhattisgarh Municipal Corporation Act is as follows:

418. Power of Government to require municipal authority to take action—If the Commissioner fails within such period as may have been fixed by the Government to comply with a requisition under Section 417 or if on receipt of any report submitted under Section 417-A or any complaint or information it appears to the Government that—

(a) any of the duties imposed by or under this Act or by any other law for the time being in force has not been performed or has been performed in an imperfect, inefficient or unsuitable manner; or

(b) the Corporation, the Mayor-in-Council, the Commissioner or any other officer or servant of the Corporation has failed to take such measures in any matter as appear to the Government to be required by the circumstances of the case; or

(c) adequate financial provision has not yet been made for the performance of any such duty or the taking of any such measure,

the Government may, by written order, direct the Corporation, the Mayor-in-Council, the Commissioner, or any other officer or servant of the Corporation within a period specified in the order—

(i) to make arrangements to the satisfaction of the Government for the proper performance of the duties referred to in clause (a), or to take such measures as may be specified by the Government in connection with any matter referred to in clause (b), or to make financial provision to the satisfaction of the Government for the performance of any such duty or for the taking of any such measure, as the case may be; or

(ii) to show cause to the satisfaction of the Government against the making of such arrangements, the taking of such measures or the making of such provision, as the case may be.

HEADLINES

Section 19-B of the Chhattisgarh Municipal Corporation Act is constitutional