

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND
ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP(C) No. 228 (AP) of 2016

Mr. Denong Tamuk,
Son of T. Tamuk,
Resident of Banskata, Pasighat,
East Siang District,
Arunachal Pradesh.

..... Petitioner.

- Versus -

1. The State of Arunachal Pradesh,
Represented by the Secretary,
State Election Commission,
Government of Arunachal Pradesh,
Itanagar.
2. The Deputy Commissioner - cum -
District Magistrate,
East Siang District, Pasighat,
Arunachal Pradesh.
3. The Commissioner (TP & ULB)
Government of Arunachal Pradesh,
Itanagar.
4. The Director (TP & ULB)
Government of Arunachal Pradesh,
Itanagar.

5. Mrs. Oson Aje,
Councillor, Ward No. 1,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
6. Mrs. Omem Darang,
Councillor, Ward No. 2,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
7. Mr. Maglek Yomsa,
Councillor, Ward No. 3,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
8. Mr. Kaling Doruk,
Councillor, Ward No. 5,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
9. Mr. Sobø Pertin,
Councillor, Ward No. 11,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
10. Smti. Ponung Lego,
Councillor, Ward No. 10,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.
11. Shri Kaling Darang,
Councillor, Ward No. 4,
Resident of Pasighat,
P.O. & P.S. Pasighat,
East Siang District, Arunachal Pradesh.

..... Respondents.

- Advocates for the Petitioner : Mr. Kardak Ete, Sr. Advocate
Mr. Nalo Pada,
Mr. Kalihg Darang,
Mr. Yoa Pada,
Mr. Lham Tsering.
- Advocate for the Respondents : Mr. Ajin Apang, Sr. Advocate
Ms. N. Anju.
For respondent No. 1.
- Mr. Tadup Tana Tara,
Addl. Advocate General,
Arunachal Pradesh
Ms. Pubi Pangu,
Govt. Advocate, Arunachal Pradesh
For Respondents No. 2 to 4.
- Mr. Dilip Mazumdar, Sr. Advocate
Mr. Ninhong Ratan,
Mr. T. Norbu,
Mr. T. Taggu,
Mr. M. Ete,
Mr. K. Loya.
For respondents No. 5 to 11.

BEFORE**THE HON'BLE MR. JUSTICE M. R. PATHAK**

Date of Hearing : 12.05.2016.

Date of Judgment & Order : 31.05.2016

JUDGMENT & ORDER (CAV)

Heard Mr. Kardak Ete, learned Senior counsel assisted by Mr. Nalo Pada, learned counsel for the petitioner. Also heard Mr. Ajin Apang, learned Senior counsel & Standing Counsel for State Election Commission, assisted by Ms. N. Anju, learned counsel for the respondent No. 1, Mr. T.T. Tara, learned Addl. Advocate General, Arunachal Pradesh, assisted by Ms. Pubi Pangu, learned Govt.

Advocate, for the State Respondents No. 2 to 4 and Mr. Dilip Mazumdar, learned Senior counsel assisted by Mr. Nirnong Ratan, learned counsel for the private respondents No. 5 to 11.

2. This matter relates to no confidence motion against the petitioner by the majority of the Councillors of Pasihat Municipal Council in the special meeting held for the said purpose on 28.04.2016, for which the Deputy Commissioner, East Siang District, Pasihat issued Notice on 15.04.2016 on the basis of a requisition made by 7 (seven) Councillors of said Municipal Council on 13.04.2015. The petitioner has challenged the said Notice dated 15.04.2016 by which the Deputy Commissioner, East Siang District, Pasihat requisitioned the special meeting on 28.04.2016 for the motion of no confidence against him, stating that the Deputy Commissioner acted illegally in issuing the same.

3. On 05.05.2016, in the motion stage after hearing the parties the Court issued Notice of Motion, returnable by 10.05.2016 and in the Interim kept the resolution dated 28.04.2016 passed by the 7 Councillors of Pasihat Municipal Council in abeyance till the returnable date and observing that efforts shall be made to dispose of the matter on the next date fixed.

4. On 9th May 2016 the petitioner filed an Interlocutory Application IA (WP) 103 (AP) 2016 to implead, the present respondents No. 9, 10 & 11 in this writ petition, which was taken up for consideration on 10.04.2016 and was allowed. On 09.04.2016 itself, the private respondent Nos. 5 to 8 filed their affidavit in the matter and on 10.04.2016 when this petition was taken up for consideration, petitioner sought for time to file his reply to the said affidavit of private respondents, which was objected by all the respondents stating that in that case the interim order dated 05.05.2016 should not be extended, which was up to 10.5.2016, as the petitioner is already deemed to have vacated the office of Chief Councillor of Pasihat Municipal Council w.e.f. 28.04.2016 after the resolution was passed by majority Councillors of said Municipality. As agreed by all the parties to this petition, the matter was accordingly fixed on 12.04.2016 for its admission extending the interim stay till then. The private respondents

also submitted before the Court that they will not press their said affidavit filed on 09.05.2016 and shall make their submissions from the petition only. Accordingly, the entire matter was taken up for final consideration at the admission stage itself.

5. The Pasighat Municipal Council of Arunachal Pradesh consists of 12 Councillors. The last election of the said Council was held on 16.05.2013 and its result was declared on 21.05.2013, wherein the petitioner was elected as Councillor from the Ward No. 8 of said Council. On 30.05.2013, during the first sitting of the twelve elected Councillors of the said Council, the petitioner was elected as the Chief Councillor of said Pasighat Municipal Council.

6. On 22.03.2016, nine Councillors, i.e. the Councillors of Ward Nos. 1, 2, 3, 5, 6, 7, 10, 11 and 12 of said Pasighat Municipal Council submitted an application before the Deputy Commissioner-cum-District Magistrate, East Siang District, Pasighat seeking initiation of No-confidence motion against the petitioner and accordingly, the Deputy Commissioner, East Siang District on 29.03.2016 issued the Notice for holding the special meeting for conduct of the No-confidence motion on 13.04.2016. The said Deputy Commissioner on 04.04.2016, received an intimation regarding merger of four Councillors out of the six Councillors of Congress Party in the said Pasighat Municipal Council with the BJP and thereafter, on 08.04.2016 the remaining two Councillors of Congress Party sent their letter of merger into BJP and accordingly the Deputy Commissioner concerned accepted the merger of all the six Councillors of Congress Party of said Municipal Council to BJP.

7. However, on 12.04.2016, four Councillors of Ward Nos. 6, 7, 9 & 12 of Pasighat Municipal Council, including the three Councillors from Ward Nos. 6, 7 & 12, who were the joint signatories to the aforesaid application dated 22.03.2016, withdrew their said complaint against the petitioner stating that they signed the same under undue influence and seer pressure of the Congress Party. On such withdrawal by three joint applicants of the application dated 22.03.2016 as per Rule 10 (1) of "the Election to the Offices of the Chief

Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice President Rules, 2012" (*hereinafter referred to as said 2012 Rules*); the Deputy Commissioner, East Siang District, Pasighat came to a finding that the said application dated 22.03.2016 for initiation of the motion of no-confidence against the petitioner has become invalid and accordingly issued the order under No. PMC/ELEC-02/2015-16 dated 13.04.2016 cancelling the said meeting fixed on 13.04.2016 observing that if the Councillors desire; they may send a fresh application for No-confidence motion.

8. However, on 13.04.2016 itself, seven Councillors of Ward Nos. 1, 2, 3, 4, 5, 10 and 11 of the Pasighat Municipal Council submitted another application under Section 25 (3) of "the Arunachal Pradesh Municipal Act, 2007" (*hereinafter referred to as said 2007 Act*) read with Rule 10 (1) of said 2012 Rules stating their intention to move no-confidence motion against the petitioner, the Chief Councillor of Pasighat Municipal Council due to breach of trust, abuse of the official position and misappropriation of fund allotted to the Pasighat Municipal Council etc. On receipt of the said application from the 7 Councillors dated 13.04.2016, the Deputy Commissioner, East Siang District, Pasighat on 15.04.2016 issued Notice convening the special meeting on 28.04.2016 for conduct of no-confidence motion against the petitioner, the Chief Councillor of Pasighat Municipal Council, stating the reasons & allegations for the said motion, intimating all concerned, including the petitioner about the same.

9. Stating the ground of his ill health & diabetics, the petitioner, on 21.04.2016 submitted an application before the Deputy Commissioner-cum-District Magistrate, East Siang District, Pasighat for cancellation & postponement of the proposed special meeting of 28.04.2016 enabling him to defend his case properly with all requisite materials & evidences as provided under Rule 2 (IV) of the Standing Government Notification dated 06.03.2015. Subsequently, the petitioner on 27.04.2016 filed a Writ Petition before this Court being WP(C) No. 219 (AP) 2016 for setting aside the impugned notice dated 15.04.2016 issued by the Deputy Commissioner, East Siang District, Pasighat requisitioning the special meeting of the Pasighat Municipal Council on 28.04.2016 to conduct the motion

of no-confidence against him. However, on 27.04.2016 itself, when the matter was taken up for motion, at his prayer, the petitioner withdrew his said WP(C) No. 219 (AP) 2016 with a liberty to file a fresh, if adequate cause of action accrues in his favour and accordingly, said WP(C) No. 219 (AP) 2016 preferred by the petitioner was dismissed on withdrawal with the liberty as prayed for.

10. It is stated that the petitioner could not participate in the said special meeting on 28.04.2016 as he was undergoing treatment in a hospital at Dibrugarh. On the day of said special meeting dated 28.04.2016, four Councillors of the Ward Nos. 6, 7, 9 & 12 submitted an application before the Deputy Commissioner, East Siang District, Pasighat informing her that as their Chief Councillor, i.e. the petitioner herein, has been shifted to the Assam Medical College Hospital (Dibrugarh) due to his sudden illness, they are unable to attend the said special meeting on that day and requested the authority to postpone the said meeting.

11. According to the petitioner even after filing of such application before the Deputy Commissioner of Pasighat, the concerned Presiding Officer of the meeting unilaterally carried out the no-confidence motion against him on 28.04.2016 and after carrying out the said motion, by resolution dated 28.04.2016 itself declared the post of Chief Councillor of Pasighat Municipal Council as vacant.

12. The petitioner contended that the said proceeding of no-confidence motion on 28.04.2016 carried out against him by the respondents is in total contravention of the proviso to Section 25 of said 2007 Act and the provisions of said 2012 Rules as well as 2015 Rules, as it is not permissible to move another resolution for removal of the Chief Councillor before the expiry of 6 (six) months from the date of the last resolution. Being aggrieved with the said action of the respondents in carrying out the Motion of no-Confidence against him on 28.04.2016 in violation of said 2007 Act and the 2012 Rules, the petitioner has preferred this petition.

13. On behalf of the petitioner, Mr. Ete, learned Sr. Counsel submitted that the state respondents have committed illegality by calling for another special meeting on 28.04.2016 allowing the private respondents to move no-confidence motion against the petitioner again, as the majority of the total numbers of Councillors of Pasighat Municipal Council failed to carry out any resolution by holding the special meeting for moving the no-confidence motion against the petitioner for removing him from the post of Chief Councillor of said Municipal Council on 13.04.2016, the date fixed for the said purpose and as the 2nd proviso to sub-Section (3) of Section 25 of the said 2007 Act clearly provides that if such resolution (resolution of no-confidence motion against the Chief Councillor) is not carried by a majority of the total number of Councillors, no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved.

14. Mr. Ete also submitted that Rule 2 of the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015 (*hereinafter referred to as said 2015 Rules*) provides that while conducting the special meeting, during discussion opportunity should be given to the Chief Councillor against whom no-confidence motion is moved. Mr. Ete further submitted that as the petitioner was suffering from ill health and was undergoing treatment at Dibrugarh, he was not in a position to participate on the special meeting fixed on 28.04.2016 and therefore on 21.04.2016 he requested the Deputy Commissioner-cum-District Magistrate, East Siang District, Pasighat, to cancel or postpone the said meeting which was not considered.

15. During the deliberation of the matter, Mr. Ete, learned counsel for the petitioner also submitted that as per the provisions of the said 2015 Rules, the District Magistrate or the Magistrate in-Charge of the Sub-Division concerned, in which the Municipal area is situated, is only empowered to issue notice of such special meeting of no-confidence motion and not the Deputy Commissioner of the District concerned and in the present case the Deputy Commissioner, East Siang District, Pasighat without any jurisdiction and authority under law issued

the impugned Notice dated 15.04.2016 requisitioning the special meeting of no-confidence motion against the petitioner on 28.04.2016.

16. Mr. T.T. Tara, learned Additional Advocate General of the State appearing for the Official respondents No. 2 to 4 submitted that as per the provisions of Section 25 of the Arunachal Pradesh Municipal Act, 2007, the provisions of Rule 10 of the Arunachal Pradesh Municipal Election to the Office of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-President Rules 2012 as well as the provisions of the Rule 2 of the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015; out of the total number of twelve elected Councillors of Pasighat Municipal Council holding the office, a majority of seven such elected Councillors of the Council, i.e. the respondents No. 5 to 11, in the special meeting held on 28.04.2016, carried out a resolution of no confidence motion against the petitioner, the Chief Councillor of Pasighat Municipal Council and duly removed him from the said office. Mr. Tara also submitted that Rule 11 of said 2012 Rules provides for fresh election for the post of the Chief Councillor of the Municipal Council for its remaining period after the office of the Chief Councillor is vacated during his or her tenure on the account of no-confidence motion and such process of electing new Chief Councillor is required to be completed within 30 days of the post of Chief Councillor becoming vacant. Mr. Tara submitted that in such process of election, the petitioner if desirous to become Chief Councillor of the Pasighat Municipal Council for the remaining period again, he may participate in the said election process as provided in the aforesaid 2012 Rules by proving his majority. Mr. Tara further submitted that because of the interim order dated 05.05.2016 keeping the impugned resolution dated 28.04.2016 passed by the seven Councillors of Pasighat Municipal Council, in abeyance, the election for the said vacant post of Chief Councillor of the Pasighat Municipal Council could not be processed.

17. Mr. Dilip Mazumdar, learned Senior Counsel appearing for the private respondent Nos. 5 to 11, i.e. the 7 (seven) elected Councillors of Pasighat Municipal Council who removed the petitioner from the post of Chief Councillor

of said Municipal Council by majority vote in the resolution adopted on 28.04.2016, submitted that though on 22.03.2016 application was filed by 9 (nine) Councillors of said Pasighat Municipal Council for holding a special meeting to conduct no-confidence motion against the petitioner, the Chief Councillor of said Municipal Council, for which the Deputy Commissioner, East Siang District, Pasighat on 29.03.2016 issued the Notice convening the said special meeting for conduct of no-confidence motion against the petitioner on 13.04.2016; but 4 (four) Councillors including 3 (three) Councillors, amongst the nine signatories of the said application dated 22.03.2016, withdrew their said requisition on 12.04.2016; the Deputy Commissioner, Pasighat on 13.04.2016 cancelled the said special meeting of 13.04.2016 allowing the Councillors to submit a fresh application, if desirous to move no-confidence motion again and thereafter, on 13.04.2016 itself 7 (seven) elected Councillors of the said Council filed another application before the Deputy Commissioner-cum-District Magistrate, Pasighat to conduct the no-confidence motion against the petitioner, the Chief Councillor of said Municipal Council, pursuant to which said Deputy Commissioner on 15.04.2016 issued Notice fixing 28.04.2016 for the special meeting of no-confidence motion against the petitioner and in the said special meeting on 28.04.2016, said 7 (seven) Councillors, the private respondents No. 5 to 11 herein, by majority vote, removed the petitioner from the office of the Chief Councillor of Pasighat Municipal Council.

18. Mr. Mazumdar, learned Sr. Counsel also submitted that on 12.04.2016 only 4 (four) Councillors including 3 (three) Councillors & signatories, amongst 9 (nine) Councillors and signatories of said application dated 22.02.2016 withdrew their application of said no-confidence motion and even at that point of time, said application had signatures of 6 (six) Councillors for the no-confidence motion against the petitioner out of total 12 elected Councillors of said Municipal Council, including the petitioner, whereas the 2007 Act, the 2012 Rules and the 2015 Rules requires a requisition for such no-confidence motion in writing to be made by not less than one third of the total member of Councillors, i.e. only by 4 Councillors out of total 12 elected Councillors. Mr. Mazumdar, further

submitted that sub-Rule (1) of said 2012 Rules provides that the members who have made such a motion (no-confidence motion) may withdraw the same before the meeting is convened for the purpose and therefore, after such withdrawal of no-confidence motion by 3 (three) Councillors on 12.04.2016, who were signatories of the application dated 22.03.2016; the Deputy Commissioner, Pasighat by order dated 13.04.2016 came to a conclusion that said application dated 22.03.2016 has become invalid and therefore, cancelled the special meeting that was fixed on 13.04.2016 allowing the Councillors to submit fresh application, for no-confidence motion, if so, they desire .

19. Mr. Mazumdar also submitted that the petitioner on 27.04.2016 filed the Writ Petition being WP (C) 219 (AP) 2016, challenging the same Notice dated 15.04.2016 issued by the Deputy Commissioner, Pasighat fixing 28.04.2016 for the special meeting of the Council in question for the no-confidence motion against him, which he withdrew on 27.04.2016 itself at its motion stage, while moving the same, with a liberty to file afresh, if adequate cause of action accrues in his favour and accordingly the said writ petition was dismissed on 27.04.2016, on withdrawal, with a liberty as prayed for. Therefore, according to Mr. Mazumdar, the petitioner now cannot turn back and challenge the legality and validity of the said Notice dated 15.04.2016 as well as the resolution adopted by the majority Councillors of Pasighat Municipal Council in the special meeting held on 28.04.2016 removing the petitioner from the post of Chief Councillor of said Council in the no-confidence motion that was held against him on 28.04.2016.

20. Mr. Azin Apang, learned Senior Counsel appearing for the respondent No. 1, the State Election Commission submitted that the vacant post of Chief Councillor of Pasighat Municipal Council, which fell vacant on 28.04.2016 due to removal of the petitioner from the said post in a no-confidence motion in the special meeting of 28.04.2016 by majority Councillors of said Council, shall be filled up by them for its remaining period by conducting election in the manner as prescribed by the 2007 Act and the 2012 & 2015 Rules in force, as soon as

the interim order dated 05.05.2016 passed in the present proceeding for holding such election is removed and/or vacated and/or modified by the Court.

21. In support of the contention of the petitioner, learned Sr. counsel Mr. K. Ete have placed reliance on the following judgments of Hon'ble Supreme Court (i) AIR 1961 SC 751 (*State of U.P. -Vs- Babu Ram Upadhya*), (ii) (1992) 4 SCC 80 (*Mohan Lal Tripathi -Vs- District Magistrate, Rai Bareilly*), (iii) (1997) 9 SCC 337 (*Air India Statutory Corpn. -Vs- United Labour Union*), (iv) (2004) 5 SCC 409 (*Ramesh Mehta -Vs- Sanwal Chand Singhvi*), (v) (2006) 7 SCC 800 (*Suresh Chandra Nanhorya -Vs- Rajendra Rajak*) and (2016) 2 SCC 36 (*Prakash -Vs- Phulavati*). On the other hand Mr. D. Mazumdar learned Sr. counsel for the private respondent Nos. 5 to 11 have placed his reliance on the judgment of the Hon'ble Apex Court in the case reported in (2013) 10 SCC 114 (*A.S. Motors (P) Ltd. -Vs- Union of India*). Perused the judgments and considered the same.

22. It is seen that on 12.04.2016, the President-cum-Chief Whip of BJP of East Siang District issued Whip on all the BJP Councillors of Pasighat Municipal Council not to participate in the no-confidence motion against the petitioner, Chief Councillor of said Municipal Council, scheduled on 13.04.2016, which meeting was later cancelled by the Deputy Commissioner, Pasighat. Similarly on 25.04.2016, the President of Arunachal Pradesh State BJP issued Party Whip to all the BJP Councillors of Pasighat Municipal Council, including the present respondent Nos. 9, 10 & 11 to vote against the said no-confidence motion on 28.04.2016. But the State BJP Party on 27.04.2016 withdrew their said Party Whip dated 25.04.2016 for the interest of the party and to uphold the unity of party strength in the Pasighat Municipally, observing that the Deputy Commissioner of East Siang District, Pasighat and the Municipal Executive Officer of Pasighat Municipality may acknowledge the same to do the needful in accordance with law.

23. To introduce and consolidate the laws relating to the Municipal Government in the State of Arunachal Pradesh in conformity with the provisions of the Constitution of India, based on the principles of Government at various

levels and to introduce reforms in financial management and accounting systems, internal resource generation capacity and organizational design of Municipalities, to ensure professionalization of the municipal personnel and to provide for matters connected therewith or incidental thereto, the Government of Arunachal Pradesh enacted 'the Arunachal Pradesh Municipal Act, 2007' which was published in the State Gazette on 19.03.2008.

24. Sub-Section (16) of Section 2 defines "Chief Councillor" and it means,- (i) in relation to a Municipal Corporation, the Mayor, (ii) in relation to a Municipal Council, the Municipal Chairperson, and (iii) in relation to Nagar Panchayat, the Municipal president. Section 2(17) of said 2007 Act provides that "Chief Municipal Executive Officer" means, - (i) in relation to a Municipal Council in Capital Region and "Municipal Executive Officer" means, - (ii) in relation to a Municipal Council or Nagar Panchayat, in districts. Again Sub-Section (22) of Section 2 defines "Councillor" and in relation to a Municipality, it means a person chosen by direct election from a ward of that Municipality. Further, as per Section 2, sub-Section (68) "Prescribed" means prescribed by rules made under said 2007 Act.

25. With regard to constitution of Municipality as provided in the said 2007 Act, Section 12(1) of said 2007 Act provides that the Councillors elected in a general election or a by-election of a municipality in accordance with the provisions of any law relating to municipal elections in the State, shall constitute the Municipality and Section 12(2) of said 2007 Act provides that the Municipality shall, unless dissolved earlier, continue for a period of five years from the date of its first meeting after the general election.

26. Section 23 of the 2007 Act provides for Election of Chief Councillor and it reads as --

Section 23

- (1) The Councillors shall, in the first meeting under section 35, elect in accordance with such procedure as may be prescribed one of the Councillors to be the Chief Councillor, who shall assume office forthwith after taking the oath of secrecy under section 24,

- (2) If the Councillors fail to elect a Chief Councillor under sub-section (1), the State Government shall appoint by name one of the Councillors to be the Chief Councillor and
- (3) In the case of any casual vacancy in the office of the Chief Councillor caused by death, resignation, removal or otherwise, and to fill up the vacancy, the Councillors may elect one of the councillors to be chief councillor as may be prescribed.

27. Sub-Section (3) of Section 25 of the Arunachal Pradesh Municipal Act, 2007 provides for removal of the Chief Councillor and it reads as follows:

Section 25 (3)

The Chief Councillor may be removed from office by a resolution carried out by a majority of the total number of Councillors holding office for the time being at a special meeting to be called for this purpose in the manner as prescribed, upon a requisition made in writing by not less than one-third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed.

Provided that no such resolution shall be moved before the expiry of six months from the date of entering office by the Chief Councillor, and if such resolution is not carried by a majority of the total number of councillors, no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved.

28. To regulate the elections to the offices of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-President in the Municipalities of Arunachal Pradesh; the State Government in exercise of the powers conferred by Section 258 read with sections 23, 29 and 446 of the Arunachal Pradesh Municipal Act, 2007 formulated a Rule, namely, 'the Election to the Offices of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-President Rules, 2012' and it came into force in the State with effect from 08th March, 2013, the date when the same was published in the Arunachal Pradesh Gazette.

29. As per Rule 2(b) of said 2012 Rules, the "Chief Councillor" means any member of the Municipal Council elected as Chief Councillor by the Councillors or appointed by the State Government to hold office and to perform the functions of Chief Councillor.

30. Rule 7 of said 2012 Rules provides for election to the office of the Chief Councillor or Municipal Chairperson or Municipal President and Rule 10 of said 2012 Rules provides for No-confidence motion against the Chief Councillor, which reads as follows:

Rule 10

- (1) A motion of no-confidence against the Chief Councillor/Deputy Chief Councillor or Municipal President/Municipal Vice-President of a Municipal Committee/ Nagar Panchayat may be made through a requisition given in writing addressed to the District Magistrate or Magistrate incharge of the Sub-Division in which the Municipal area is situated or an officer of the State Government authorised in this behalf by the District Magistrate signed up not less than one-third of majority of its total elected members. Provided that the members who have made such a motion may withdraw the same before the meeting is convened for the purpose.
- (2) The Chief Councillor may be removed from office by a resolution carried out by a majority of the total number of councillors holding office for the time being at a special meeting to be called for this purpose in the manner as prescribed, upon a requisition made in writing by not less than one-third of the total number of Councillors, and the procedure for the conduct of business in the special meeting shall be such as may be prescribed.

Provided that no such resolution shall be moved before the expiry of six months from the date of entering office by the Chief Councillor, and if such resolution is not carried by a majority of the total number of Councillors, no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved.
- (3) If the no-confidence motion is carried out with the support of majority of elected members present and voting at such special meeting, the quorum of which is not less than one-half of its total elected members, Municipal Chief Councillor or the Deputy Chief Councillor/the Municipal President or Municipal Vice-President, as the case may be, shall be deemed to have vacated his/her office.

31. Rule 11 of said 2012 Rules provides for fresh election to the office of Chief Councillor if the same is vacated during his/her tenure on account of no-confidence motion and it reads as –

Rule 11

If the Office of the Chief Councillor/Deputy Chief Councillor or Municipal President/Municipal Vice-President is vacated during his/her tenure on account of no-confidence motion a fresh election for the remainder of the period shall be held in the manner prescribed in the rules for the election of Chief Councillor/Deputy Chief Councillor or Municipal President/Municipal Vice-President, as the case may be, within a period of one month from the date vacancy.

32. Further, Rule 12 of said 2012 Rules provides for filling up of casual vacancy of Chief Councillor which reads as follows:

Rule 12

When a vacancy occurs by death, resignation or removal of the Chief Councillor/Deputy Chief Councillor or Municipal President/Municipal Vice-President is to be elected in his/her place, such election shall be conducted in the manner prescribed in these rules for election of Chief Councillor/Deputy Chief Councillor or Municipal President/Municipal Vice-President within seven days.

33. As provided under the Section 25(3) regarding no-confidence motion against the Chief Councillor and for prescribing the methods of such no-confidence motion, the State Government in exercise of the powers conferred by section 446(1) of the Arunachal Pradesh Municipal Act, 2007 formulated a Rule, namely, 'the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015', which was published in the Arunachal Pradesh Gazette on 03rd June, 2015 and it came into force in the State with immediate effect.

34. Rule 2 of said 2015 Rules prescribes the methods and procedures of the conduct of No-confidence motion against the Chief Councillor which reads as follows:

Rule 2

2. A No-confidence motion brought under sub-section (3) of Section 25 against the Chief Councillors shall be considered and disposed of as per the following procedures.

- (i) On receipt of a requisition in writing received from not less than one third of the total number of elected Councillors for removal of the Chief Councillor, the Chief Municipal Executive officer shall forward the same to District Magistrate or Magistrate in-charge of the sub-division in which the Municipal Area is situated to conduct No Confidence Motion against Chief Councillor. The District officer of the State Government authorized in this behalf by the District Magistrate shall issue Notice for a special meeting within 7 days of the receipt of such notice and directing further that the special meeting shall be convened within 15 days of the issuance of the said notice.
- (ii) The notice issued for considering No Confidence Motion against the Chief Councillor shall clearly contain the reasons/allegations on which basis the No Confidence Motion is to be brought.

- (iii) On the day fixed for the special meeting, the session shall be presided by the District Magistrate or Executive Magistrate in-charge of the sub-division in which the Municipal area is situated or any Executive Magistrate duly authorized in this behalf by the District Magistrate.
- (iv) As soon as the special meeting commences, the presiding officer shall read out the motion on which the meeting has been called before the members present and declare it open for discussion. During discussion, opportunity shall be given to the Chief Councillor against whom No Confidence Motion is moved, to defend himself. The motion shall be put to vote by the presiding officer by secret ballot in FORM No. 1 on the same day after discussion and thereafter the result shall be declared in FORM No. 2.
- (v) Quorum for the said meeting shall be as per section 52 of the Act.
- (vi) If the motion is carried with the support of majority of the total numbers of the Councillors at a special meeting, the Chief Councillor shall be deemed to have vacated his/her office.
- (vii) In the event of the post of Chief Councillor falling vacant as a sequel to the passage of the No Confidence Motion and until a new Chief Councillor is elected under sub-section (3) of section 23 and enters office or until a new Chief Councillor resumes his duties are elected the Deputy Chief Councillor, read with section 26(2) shall exercise the powers performs the functions and discharges the duties of the Chief Councillor or such powers as may be delegated to him under the Act.
- (viii) Where the posts of Chief Councillor falls vacant as a consequence of No Confidence Motion, the process of electing new Chief Councillor shall be completed within 30 days of the post of Chief Councillor becoming vacant.
- (ix) On completion of the process, District Magistrate or Executive Magistrate in-charge of the sub-division in which the Municipal area is situated or any Executive Magistrate duly authorized in this behalf by the District Magistrate shall submit report to the Chief Municipal Executive Officer and thereafter the Chief Municipal Executive Officer or the Municipal Executive Officer shall submit a report to the State Election Commission and State Government as per FORM-3.
- (x) No such resolution shall be moved before the expiry of six months from the date of entering office by the new Chief Councillor, and if such resolution is not carried by a majority of the total number of councillors, no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved.

35. Though District Magistrate has not been defined in 'the Arunachal Pradesh Municipal Act, 2007' nor in the 'the Election to the Offices of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-

President Rules, 2012' of Arunachal Pradesh and 'the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015' but as provided by the Section 36 of the Arunachal Pradesh Municipal Act, 2007 and the Arunachal Pradesh Municipal (Amendment) Act, 2010 regarding statutory officer of Municipality, the Deputy Commissioner, Capital Complex functions as Chief Municipal Executive Officer of Municipal in Capital Region, whereas in all other Districts of Arunachal Pradesh, the Deputy Commissioner or his representative of respective towns where Municipalities are constituted is the Municipal Executive Officer of that Municipality. Learned Counsels appearing for the parties also submitted that there is no such District Magistrate in the State of Arunachal Pradesh and it is the Deputy Commissioners of the Districts of Arunachal Pradesh generally known as the District Magistrate of their respective district. Again Sub-Clause (i) of Rule 2 of 2015 Rules provides that *'on receipt of a requisition in writing received from not less than one third of the total number of elected Councillors for removal of the Chief Councillor, the Chief Municipal Executive officer shall forward the same to District Magistrate'* and from above it is seen that the Deputy Commissioner of East Siang District, Pasighat is the Chief Municipal Executive Officer of Pasighat Municipal Council as provided under Section 36 of said 2007 Act. Moreover, from the application submitted by the petitioner on 21.04.2016 as well as the applications of the respondents dated 22.03.2016 & 13.04.2016 it is seen that those were addressed to the Deputy Commissioner-cum-District Magistrate, East Siang District, Pasighat. Therefore, when the petitioner himself accepted the Deputy Commissioner of East Siang District, Pasighat as the District Magistrate of said district, his submission regarding the Deputy Commissioner of East Siang District, Pasighat of not having any jurisdiction under the Arunachal Pradesh Municipal Act, 2007 as well as the 2012 Rules and the 2015 Rules framed under said 2007 Act, is not tenable in law.

36. The next contention raised by the petitioner is that before the motion of no-confidence was moved against him in the special meeting held on 28.04.2016, he was not given the adequate opportunity to defend himself. It is

seen from the present petition that on 21.04.2016, the petitioner by an application informed the DC-cum-DM, Pasighat that he is not in a position to attend the said special meeting because of his ill health and diabetics and requested him to postpone or cancel the said special meeting fixed on 28.04.2016 to enable him to defend his case with all requisite materials and evidence. From the records of his earlier Writ Petition WP(C) 219 (AP) 2016, noted above, it can be seen that the petitioner sworn the affidavit of said writ petition before the Affidavit Commissioner of this Court at Naharlagun (Arunachal Pradesh) on 26.04.2016. The certificate and the prescription of annexed to the petition shows that they were issued by a doctor of Dibrugarh (Assam) on 27.04.2016 stating that the petitioner had been examined as an outpatient in that hospital and found him suffering from back pain and pain in both of his knee joints. It is not the case of the petitioner that Notice dated 15.04.2016 of the DC, Pasighat was not served upon him intimating about the special meeting for such no-confidence motion fixed on 28.04.2016 or that without his knowledge such special meeting was held. In the present case the petitioner in spite of his knowledge and intimation about the said special meeting of 28.04.2016 did not participate in it and on the other hand on 21.04.2016 he asked the DC-cum-DM, Pasighat to postpone or cancel the said meeting.

37. Sub Rule (iv) of Rule 2 of 2015 Rules provides that during the open discussion for the no-confidence motion against the Chief Councillor, he should be given the opportunity defend himself. Here, by giving him the Notice dated 15.04.2016 of the DC-cum-DM, Pasighat about the special meeting of no-confidence motion against him on 28.04.2016, the petitioner was given the opportunity to defend himself in the said meeting, but he did not participate in the said meeting on 28.04.2016, seeking postponement or cancellation of the same. Therefore, the submission of the petitioner of not giving him or affording him opportunity to defend his case in the said special meeting held on 28.04.2016 is not acceptable and accordingly rejected.

38. The last contention of the petitioner is that since the majority of the Councillors failed to pass any resolution in the meeting scheduled to be held on 13.04.2016, the next meeting of no-confidence motion against him could not have been called for within the next six months but the DC-cum-DM, Pasighat by his impugned notice dated 15.04.2016 illegally called for the meeting on 28.04.2016 before expiry of six months from 13.04.2016. It is seen that the nine Councillors of Ward Nos. 1, 2, 3, 5, 6, 7, 10, 11 and 12 of the Pasighat Municipal Council submitted their written application before the Deputy Commissioner-cum-District Magistrate, East Siang District, Pasighat for a no-confidence motion against the petitioner, for which the DC, Pasighat on 29.03.2016 issued the Notice for holding the special meeting for conduct of said motion on 13.04.2016 and subsequently, on 12.04.2016, three Councillors of Ward Nos. 6, 7 & 12, joint signatories to the said application dated 22.03.2016 and another Councillor of ward No. 9, together submitted an application before the said Deputy Commissioner stating withdrawal of their said complaint dated 22.03.2016 against the petitioner and on such withdrawal under the provisions of Rule 10(1) of said 2012 Rules, the Deputy Commissioner, East Siang District, Pasighat by his order dated 13.04.2016 cancelled the said special meeting of no-confidence motion against the petitioner as fixed on 13.04.2016, Holding that the withdrawal of the application dated 22.03.2016 by three of its signatories, the same has become invalid, observing that the Councillors, if desire to move motion of no-confidence, may submit fresh application. Proviso to sub-Rule (1) of Rule 10 of said 2012 Rules provides that *'the members who have made such a motion may withdraw the same before the meeting is convened for the purpose'* and therefore, the Councillors of the Municipality, who submitted a written application for a motion of no-confidence against the Chief Councillor or as the case may be, under the said 2007 Act, may withdraw the same under Rule 10(1) of said 2012 Rules, before such meeting is convened. In the present case, initially, on the basis of an application dated 22.03.2016 of nine Councillors, the Deputy Commissioner, Pasighat issued the Notice on 29.03.2016 convening the special meeting on 13.04.2016 for the no-confidence motion against the petitioner, which was withdrawn by only three Councillors on

12.04.2016, prior to the said meeting that was scheduled to be held on 13.04.2016 and the Deputy Commissioner, Pasighat by his order dated 13.04.2016 cancelled the said meeting of no-confidence motion against the petitioner as fixed on 13.04.2016, on such withdrawal by three Councillors without considering the fact that six of the Councillors from amongst the nine Councillors did not withdraw their said application dated 22.03.2016 and further by observing that the Councillors, if desire to move motion of no-confidence, may submit fresh application. But, the said order of the Deputy Commissioner, Pasighat dated 13.04.2016 has not been challenged by the petitioner nor by the respondents. Moreover, said order of cancellation of the special meeting dated 13.04.2016 by the Deputy Commissioner, Pasighat is not a subject matter in this petition.

39. As seen from the above that Deputy Commissioner of East District, Pasighat being the Municipal Executive Officer of the Pasighat Municipal Council, he on 13.04.2016 received the requisition in writing from seven of the Councillors (respondent Nos. 5 to 11) out of twelve elected Councillors of said Municipal Council for a no-confidence motion against the petitioner, the Chief Councillor of said Council containing the allegations on the basis of which such motion is to be brought and finding that seven councillors out of twelve numbers of elected councillors being more than one third of the total number of elected councillors and being requisite under the Act & Rules in force, the Deputy Commissioner, Pasighat in exercise of the powers conferred under Rule 2(i)(ii) of said 2015 Rules read with Rule 10 of said 2012 Rules issued the Notice dated 15.04.2016 convening the special meeting for conduct of no-confidence motion against the petitioner on 28.04.2016 pursuant to which the meeting was held on 28.04.2016.

40. From the perusal of the 2nd proviso to sub-Section (3) of Section 25 of 2007 Act, 2nd proviso to sub-Rule (2) of Rule 10 of 2012 Rules and provisions of sub-Rule (x) of Rule 2 of 2015 Rules it is clear that the Chief Councillor (of a Municipality under 2007 Act) may be removed from the said office, by a resolution carried out by a majority of the total number of Councillors holding

office for the time being at the special meeting to be called for the said purpose and if such resolution is not carried by a majority of the total number of councillors, then no further resolution for such purpose shall be moved before the expiry of a period of six months from the date on which the former resolution was moved. As per the Black's Law Dictionary (Tenth Edition) 'resolution' means a main motion that formally expresses the sense, will, or action of a deliberative assembly.

41. From the reading of provisions of sub-Rule (i), (ii), (iii), (iv) & (vi) of 'the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015' as well as sub-Rule (2) of Rule 10 of 'the Arunachal Pradesh Election to the Offices of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-President Rules, 2012' it is seen that the Chief Councillor of Municipality of the State can be removed from his office by a resolution carried out by a majority of the total number of Councillors holding the office for the time being in force in the special meeting called for the said purpose. Further, immediately on the commencement of the said special meeting convened for the said purpose, before the members (Councillors) present, the concerned presiding officer shall read out the motion on which the meeting has been called and shall declare it open for discussion and during such discussion, the Chief Councillor, against whom said no-confidence motion is moved, shall be given the opportunity to defend himself. After such discussion is over, on the same day, the motion shall be put to vote by the concerned presiding officer by secret ballot in the prescribe Form, after which the result shall be declared in the other prescribe Form. From the said Rules, it is also clear that if the motion is carried with the support of majority of the total numbers of the Councillors in the said special meeting, the Chief Councillor shall be deemed to have vacated his/her office. So for a resolution of no-confidence motion against the Chief Councillor, first there has to be a special meeting and in the said meeting such motion against the Chief Councillor has to be moved and in the said special meeting, after moving the motion of no-confidence against the Chief Councillor, if the resolution is

carried out by the majority of the total numbers of the Councillors holding the office for the time being in force by vote, then said Chief Councillor is deemed to have vacated his/her said post. But, in the said special meeting, after moving the motion of no-confidence against the Chief Councillor; if the majority of the total numbers of the Councillors holding the office for the time being in force does not carry out or fails to carry out the said resolution of motion of no-confidence, then further resolution of no-confidence motion against the Chief Councillor cannot be moved till the expiry of the period of next six months from the date of such failure of carrying out the said resolution.

42. From the above it is clear that, when the earlier special meeting for the motion of no-confidence against the petitioner that was scheduled to be held on 13.04.2016; the Deputy Commissioner, Pasighat by his order dated 13.04.2016 cancelled the said meeting on the ground that four of the Councillors on 12.03.2016 have withdrawn the application dated 22.03.2016 for requisitioning the said special meeting. It is already seen that said withdrawal order dated 13.04.2016 of the Deputy Commissioner, Pasighat cancelling the said special meeting of 13.04.2016 is not under challenge. Moreover, due to said cancellation, no special meeting was held on 13.04.2016 for moving a resolution of no confidence motion against the Chief Councillor, the petitioner herein and as such the question of not carrying out a resolution by majority of the total numbers of Councillors holding the office for the time being in force against the petitioner on 13.04.2016 does not arise. Accordingly, for cancellation of said special meeting and for non-holding of said special meeting on 13.04.2016 due to such cancellation order dated 13.04.2016, the petitioner cannot take the advantage/benefit of the relevant proviso that no further resolution for such purpose of no confidence motion shall be moved before the expiry of a period of six months from the date on which the former resolution was moved.

43. For the reasons aforesaid, this petition, being devoid of merit, stands dismissed. The interim order passed earlier on 05.05.2016 stands vacated.

44. However, before parting with the case it is clarified that as the Petitioner, the Chief Councillor of Pasighat Municipal Council has deemed to have vacated his office w.e.f. 28.04.2016 in terms of the resolution of the majority of the elected Councillors holding office of said Municipal Council; now the respondent No. 1 shall complete the process of electing the new Chief Councillor of Pasighat Municipal Council, Arunachal Pradesh, as per the provisions prescribed in 'the Election to the Offices of the Chief Councillor, Deputy Chief Councillor, Municipal President and Municipal Vice-President Rules, 2012' of Arunachal Pradesh and 'the Arunachal Pradesh Municipal Councils No Confidence Motion (Methods and Conduct of Procedures) Rules, 2015', within 30 (thirty) days from the aforementioned date of vacancy, excluding the period of interim order of stay dated 05.05.2016 remained in force.

45. No order as to cost.

JUDGE

Annette