

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

WP(C) No. 564 of 2017

1. **Mr. Naorem Amar Meitei**, aged about 34 years, S/o N. Shanti Meitei of Nambol Naorem Awang Leikai, P.O. & P.S. Nambol, Bishnupur District, Manipur, Secretary of the Bishnupur to Imphal Tata Magic and Van Owners' and Drivers' Association being Registration No. 41 of 2009 and
2. Mr. Thokchom Romen Singh, aged about 44 years, S/o Th. Iboyaima Singh of Thoubal Makha Leikai, P.O. & P.S. Bishnupur, Bishnupur District, Manipur, President of the Bishnupur to Imphal Tata Magic and Van Owners' and Drivers' Association being Registration No. 41 of 2009

... Petitioners

-Versus-

1. The State of Manipur, represented by the Commissioner/ Secretary (Co-operation), Government of Manipur, Imphal.
2. The Commissioner (Transport), Government of Manipur, Imphal.
3. The Registrar of Co-operative Societies, Manipur, Imphal.
4. The District Co-operative Officer, Bishnupur District, Bishnupur, Manipur.
5. The District Transport Officer, Bishnupur District, Bishnupur, Manipur.
6. The Chairperson, Bishnupur Municipal Council, Bishnupur, Bishnupur District, Manipur.
7. The Executive Officer, Bishnupur Municipal Council, Bishnupur District, Manipur and
8. The President of Changangei Un-employed Youths Transport Co-operative Society Limited being Registration No. 1 of 2006-07 of Changangei, P.O. Tuliha Airport, P.S. Lamphel, Imphal West District, Manipur.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the petitioners	::	Mr. Th. Babloo, Advocate
For the respondents	::	Mr. Th. Vashum, Govt. Advocate; Mr. L. Anand, Advocate & Mr. Kh. Santa, Advocate.
Date of hearing	::	07-03-2024
Date of judgment	::	18-07-2024

J U D G M E N T

[1] Heard Mr. Th. Babloo, learned counsel appearing for the petitioners; Mr. Th. Vashum, learned GA appearing for the State respondents No. 1 to 5, Mr. L. Anand, learned counsel appearing for the respondents No. 6 and 7 and Mr. Kh. Santa, learned counsel appearing for the respondent No. 8.

The present writ petition has been filed challenging the order dated 25-11-2015 issued by the Chairperson, Bishnupur Municipal Council, Manipur. By the said order, the earlier allotment of parking site near Kha-Santipur School (Block Lamkhair) in favour of the Association represented by the petitioners had been changed as free parking space within Bishnupur Municipal area.

[2] The case of the petitioners is that they are the President and Secretary of the Bishnupur to Imphal Tata Magic and Van Owners' and Drivers' Association (hereinafter referred to as the "**Petitioners' Association**", for short). The Petitioners' Association is registered under the Societies Registration Act and the area of operation for business of the members of the Petitioners' Association is Bishnupur to Imphal including the area of

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Bishnupur Municipal Council. The members of the Petitioners' Association maintained themselves and their family from the income earned by them by running their Tata Magic vehicles within the said area of operation.

[3] Pursuant to the decision of the Bishnupur Municipal Council under Resolution No. 4(b) of the Council's meeting held on 05-03-2013, the Executive Officer, Bishnupur Municipal Council, issued an order dated 06-03-2013 allotting the road side space lying near Kha-Santipur School (Block Lamkhai) as parking site for Tata Magic (passengers) in favour of the Petitioners' Association with immediate effect and until further order. About two years after issuance of the said order and pursuant to the decision of the Council under Resolution No. 7(A) of its meeting held on 05-09-2015, the Chairperson, Bishnupur Municipal Council, issued an order dated 25-11-2015 thereby converting the parking site previously allotted to the Petitioners' Association as free dropping point within Bishnupur Municipal area in public interest.

[4] By taking advantage of the order dated 25-11-2015, the members of the respondent No. 8 viz., Changangei Un-employed Youths Transport Co-operative Society Limited started parking their vehicles at the said parking site and also started picking up and dropping of passengers within the Bishnupur Municipal area which directly affect and gave a great disturbance to the business of the members of the Petitioners' Association. According to the petitioners, the area of operation and route permit given to the respondent No. 8 is totally different from the area of operation and route permit given to the Petitioners' Association and that the members of respondent No. 8 cannot

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operate or carry out their business of transportation within the Bishnupur Municipal area. However, by taking advantage of the order dated 25-11-2015 issued by the Chairperson, Bishnupur Municipal Council, the members of the respondent No. 8 started encroaching upon the area of operation of the Petitioners' Association and greatly affected their business. Accordingly, the petitioners submitted a representation dated 15-03-2016 to the Chairperson and Executive Officer, Bishnupur Municipal Council, requesting for reviewing or cancelling the said order dated 25-11-2015 and another representation dated 15-03-2017 to the District Co-operative Officer, Bishnupur District, requesting not to allow the members of the respondent No. 8 to operate their transport service in Bishnupur Municipal Council area, however, without any positive result. Having been aggrieved by the issuance of the subsequent order dated 25-11-2015, the petitioners challenged the same by filing the present writ petition.

[5] Mr. Th. Babloo, learned counsel appearing for the petitioners submitted that under section 42 of the Manipur Municipalities Act, 1994, the Executive Officer is entrusted to perform all the duties and exercise all the powers conferred upon him under the Act and rules and Bye-Laws made thereunder and he is entrusted to give effect to the decision taken by the Nagar Panchayat or Council. According to the learned counsel, the Executive Officer is the sole authority to give effect to the decision taken by the Bishnupur Municipal Council as provided under section 42(b) of the Manipur Municipalities Act, 1994. However, in the present case, the impugned order dated 25-11-2015 was issued by the Chairperson of the Bishnupur Municipal Council and not by the Executive Officer and as such, the impugned order is

liable to be quashed and set aside as being violative of the provision of section 42(b) of the Manipur Municipalities Act, 1994. In support of his contentions, the learned counsel cited the judgment rendered by the Hon'ble Apex Court in the case of “**Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & ors.**” reported in (2003) 2 SCC 111, wherein it has been held as under:-

“40. The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four corners thereof.”

[6] Mr L. Anand, learned counsel appearing for the respondent No. 6 and 7 submitted that the order dated 25-11-2015 impugned in the present writ petition had been issued in terms of the decision taken by the Bishnupur Municipal Council under Resolution No. 7(A) of its meeting No. 68 held on 05-09-2015 in public interest. The learned counsel also submitted that the petitioners cannot claim as a matter of right that the parking site in question should be allotted exclusively in favour of the Petitioners' Association and not as a free parking site. It has further been submitted that the allocation of parking site in question has nothing to do with the area of operation or allocation of route for plying Taxi service by the members of the Petitioners' Association and that the Bishnupur Municipal Council has the power and jurisdiction to convert the said parking site previously allotted to the Petitioners' Association as a free parking site in public interest and that the Bishnupur Municipal Council has not committed any illegality or irrationality in issuing the impugned order.

[7] Mr. L. Anand, learned counsel also vehemently submitted that if at all, the petitioners are aggrieved by the order dated 25-11-2015, they ought to have challenged the same by filing an appeal to the State Government or an officer authorized by the Government as provided under section 196 of the Manipur Municipalities Act, 1994. However, without availing the opportunity of filing such a statutory appeal, the petitioners challenged the impugned order by filing the present writ petition. According to the learned counsel, the present writ petition is not maintainable and liable to be rejected outright as there is an alternative and effective remedy of filing a statutory appeal. In support of his contentions, the learned counsel cited the judgment rendered by the Hon'ble Apex Court in the case of **"Nivedita Sharma Vs. Cellular Operators Association of India & ors."** reported in (2011) 14 SCC, wherein it has been held as under:-

"12. In Thansingh Nathmal v. Supdt. of Taxes this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)

"7. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

"13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa this Court observed: (SCC pp. 440-41, para 11)

"11 It is now well recognised that where a right or liability is created by a statute which gives a special remedy for

enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage: (ER p. 495)

"... There are three classes of cases in which a liability may be established founded upon a statute.... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspapers Ltd. and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. and Secy. of State v. Mask and Co. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

"14. In Mafatlal Industries Ltd. v. Union of India B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. ... So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 - is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment."

"15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishadis, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural

justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.”

“16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.”

[8] Mr. Th. Vashum, learned GA and Mr. Kh. Santa, learned counsel endorsed the submission made by Mr. L. Anand, learned counsel appearing for the respondents No. 6 and 7. The learned GA further submitted that area of operation is given by the registering authority as specified in the memorandum of Association and Transport Department has the sole authority to give route permit. It has also been submitted that area of operation and route permit given to an Association has nothing to do with allocation or earmarking of a parking site for use of the public by the Municipal Council.

[9] The grievances raised by the petitioners in the present writ petition are that subsequent to the issuance of the impugned order dated 25-11-2015 and by taking advantage of the same, the members of the respondent No. 8 Society started parking their vehicles in the parking site in question and also started picking up and dropping passengers within the Bishnupur Municipal Council by encroaching in the area of operation of the Petitioners' Association. Such action by the members of the respondent No. 8 Society not only disturb and affect the business of the members of the Petitioners' Association but also the same is illegal inasmuch as, they

should confine their business in the area of operation and route allocated to them and they cannot encroach upon the area of operation and route allocated to the members of the Petitioners' Association.

[10] On hearing the rival submissions advanced by the learned counsel appearing for the parties and on examination of the materials available on record, this court find sufficient force and merit in the submission advanced by the learned counsel appearing for the respondents that the allocation of the parking site in question under the impugned order dated 25-11-2015 has nothing to do with the area of operation and route permit allocated to both the Petitioners' Association and the respondent No. 8 Society and that the Bishnupur Municipal Council has the power and jurisdiction to allocate or earmark such parking site as provided under the Manipur Municipalities Act and that while issuing the impugned order, the Bishnupur Municipal Council has not committed any act of illegality. In the absence of any valid and reasonable ground, the impugned order cannot be quash only on the alleged ground that by taking advantage of the issuance of the impugned orders, the members of the respondent No. 8 started encroaching upon the area of operation of the Petitioners' Association and such action has caused disturbance and affected the business of the members of the Petitioners' Association.

This court also found force and merit in the submission advanced by Mr. L. Anand, learned counsel that if the petitioners are aggrieved by the impugned order dated 25-11-2015, they ought to have availed the

opportunity of filing a statutory appeal as provided under section 196 of the Manipur Municipalities Act, 1994 and that they ought not to have approach this court directly by filing the present writ petition.

[11] With regard to the contentions advanced by the learned counsel appearing for the petitioners that the Executive Officer is the sole authority to give effect to the decision taken by the Council as provided under section 42(b) of the Manipur Municipalities Act, 1994 and that the impugned order having been issued by the Chairperson of the Council is liable to be quash and set aside as being violative of the provision of Section 42(b) of the Act, this court is of the considered view that such contentions are misconceived and contrary to the provisions of Section 33 of the Manipur Municipalities Act, 1994 which deals with the powers and functions of the Chairperson. Under Section 33(d) of the said Act, it is provided, inter alia, that the Chairperson of a Municipal Council has the power and function to direct, in case of emergency, the execution or stoppage of any work or doing of any act which requires the sanction of the Council and the immediate execution or doing of which is, in his opinion necessary for the service or safety of the public. In view of such provision of the Act, this court is of the considered view that the Chairperson of the Bishnupur Municipal Council has the power to issue the impugned order in public interest and that there is no merit and force in the submission advanced by the learned counsel appearing for the petitioners.

[12] In view of the reasons and findings given hereinabove, this court is not inclined to interfere with the impugned order dated 25-11-2015 and

to grant the reliefs sought for by the petitioners in the present writ petition.
In the result, the writ petition is hereby dismissed as being devoid of merit,
however, without any order as to cost.

JUDGE

FR / NFR

Devananda