

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WA.NO. 837 OF 2015 () IN WP(C).3322/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 3322/2015
OF HIGH COURT OF KERALA DATED 16-02-2015

APPELLANT(S)/6TH RESPONDENT :

HOTEL INDRAPRASTHA
NEAR KSRTC BUS STAND, NEDUMANGAD P.O.
THIRUVANANTHAPURAM, PIN-695 541
REPRESENTED BY ITS MANAGING PARTNER DR.BIJU RAMESH.

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 TO 5:

1. K.SOMASEKHARAN NAIR, AGED 72 YEARS
S/O. KUNJAN PILLAI, RESIDING AT BHAVANI
CHERUPPOORKONAM, MELAMKODE, PAZHAKUTTY P.O.
NEDUMANGAD, THIRUVANANTHAPURAM DISTRICT-695 565.

2. NEDUMANGAD MUNICIPALITY
MUNICIPAL OFFICE, NEDUMANGAD
THIRUVANANTHAPURAM-695 541
REPRESENTED BY ITS SECRETARY.

3. THE SECRETARY
NEDUMANGAD MUNICIPALITY, MUNICIPAL OFFICE, NEDUMANGAD
THIRUVANANTHAPURAM-695 541.

4. THE CHAIRPERSON
NEDUMANGAD MUNICIPALITY, MUNICIPAL OFFICE, NEDUMANGAD
THIRUVANANTHAPURAM-695 541.

WA.NO. 837 OF 2015

5. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
EXCISE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695 001.

6. THE PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT (RC) DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 BY ADV. DR.S.GOPAKUMARAN NAIR (SR.)
R-R1 BY ADV. SRI.D.S.SREEKUMARAN
BY SENIOR GOVERNMENT PLEADER SHRI P.I. DAVIS
R BY SMT.T.S.MAYA (THIYADIL)
R BY SRI.P.RAMAKRISHNAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07.09.2015
ALONG WITH WA. 848/2015, THE COURT ON 16.09.2015 DELIVERED THE
FOLLOWING:

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.A. Nos.837 & 848 of 2015

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Dated this the 16th day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

These two Writ Appeals have been filed against the common judgment dated 16.02.2015 passed by the learned Single Judge in W.P(C) Nos.3321 and 3322 of 2015. For deciding these Writ Appeals it shall be sufficient to refer to the pleadings in W.P(C) No.3321 of 2015. By the impugned judgment, the learned Single Judge has allowed the Writ Petitions. Aggrieved by the said judgment, 3rd respondent in W.P(C) No.3321 of 2015 and 6th respondent in W.P(C) No.3322 of 2015 have come up in appeal.

2. Brief facts of the case as emerged from the pleadings of the parties and materials on record are: The 3rd respondent who is the Managing Partner of Hotel Indraprastha submitted an application to the Nedumanagad

Municipal Council for No Objection Certificate from the Municipal Council to start beer and wine parlour in the hotel. The proposal came to be considered in the meeting of the Municipal Council held on 18.12.2013. Out of total 39 members of the Council including the Chairman, 37 persons were present in the meeting. Two Councilors were absent. The Chairman asked the Councilors who are opposing grant of NOC to raise their hands. 18 Councilors raised their hands opposing the grant of NOC. The Councilors present demanded a poll asking the Chairman to take the votes of those Councillors who are in support of the NOC. The Chairman did not agree and opined that since only 18 Councillors are opposing, NOC is to be granted. Decision of the Chairman was protested by other Councillors and it is alleged that some Councillors tore off the attendance sheet of the Councillors of that meeting. 20 Councillors submitted a representation/complaint before the State Government alleging that in the meeting dated 18.12.2013 on item No.5 of the Agenda relating to beer parlour in Hotel Indraprastha 20 Councillors opined that NOC shall not be granted. It was

alleged that a few Councillors who attended the meeting destroyed the paper where the Councillors marked their attendance and the Councillors requested the Government that the NOC to be not granted on the basis of the above Agenda. The Government after receipt of the complaint made by the 20 Councillors by order dated 20.12.2013 stayed the resolution dated 18.12.2013. The 3rd respondent filed W.P(C) No.257 of 2014 challenging the said order granted by the State Government. Learned Single Judge noticing the complaint by the 20 Councillors disposed of the Writ Petition vide judgment dated 03.01.2014 directing the State Government to complete the proceedings initiated under Ext.P7 in accordance with law. One Somasekharan Nair also filed W.P(C) No.300 of 2014 complaining about the resolution dated 18.12.2013. Writ Petition No.300 of 2014 was also disposed of by order dated 03.01.2014 directing the State Government to consider the objection of the petitioner after affording opportunity of being heard to him also before passing final orders on the complaint made by the 20 Councillors against the resolution dated 18.12.2013.

After receipt of the representation by the 20 Councillors against the resolution dated 18.12.2013 of the Council, the State Government by its order dated 19.03.2014 made a reference under Section 57(2) of the Kerala Municipality Act, 1994 (hereinafter referred to as "the 1994 Act") to the Tribunal for Local Self Government Institutions (hereinafter referred to as "the Tribunal") for submitting a report. The Tribunal after hearing all concerned parties, submitted its report dated 25.06.2014. The Tribunal opined that the State Government has no jurisdiction to cancel the resolution in exercise of the powers under Section 57 since there is alternative remedy of appeal available under Section 509 of the 1994 Act. The Tribunal, however, after examining the proceedings dated 18.12.2013 on merits observed that resolution dated 18.12.2013 was arbitrary and illegal. After receipt of the report from the Tribunal, the State Government issued order dated 23.01.2015 observing that there being alternative remedy available to the petitioner to file appeal in terms of Section 57(3), the Government shall not consider for amending or cancelling the decision of the

Council. Challenging the order dated 23.01.2015, W.P(C) No.3321 of 2015 was filed by M.S. Binu, a Councillor of Nedumangad Municipal Council praying for the following reliefs:

(i) issue a writ of certiorari or other appropriate writ or order quashing Exts.P5 and P6.

(ii) Declare that the Municipal councillors are entitled to file a petition before the Government under Section 57 of the Kerala Municipalities Act to cancel or amend a resolution taken by the Municipal Council.

(iii) Issue a writ of certiorari or other appropriate writ or order quashing Ext.P4 reference order passed by the Tribunal for Local Self Government Institutions to the extent of declaring that Section 57 of the Kerala Municipalities Act does not enable the councillors to move the govt. for cancellation or amendment of a resolution passed or a decision taken by the Municipal council.

(iv) Declare that the Municipal Secretary has no right to issue NOC to start a beer and wine parlour in Hotel Indraprastha ignoring the definite finding of the Tribunal for Local Self Govt. institution in Ext.P4 reference order.

(v) Grant such other reliefs, as this Hon'ble Court shall deem fit and proper in the interest of justice, including costs.

Petitioners in both the Writ Petitions challenged Ext.P5, report of the Tribunal as well as the order of the Government, Ext.P6 refusing to cancel the resolution.

3. Another Writ Petition, W.P(C) No.3322 of 2015 was

filed by K. Somasekharan Nair, an Ex-Councillor praying for the following reliefs:

(i) to issue a writ of certiorari or any other direction or order, setting aside Exhibits P6, P7 and P8 as arbitrary and illegal.

(ii) to issue a declaration that in view of the categorical and unchallenged finding of the Tribunal for Local Self Government Institutions in Exhibit P6 reference that the decision of the 1st respondent Municipality on agenda item No.5 of the Council Meeting held on 18.12.2013 is illegal and arbitrary, Exhibits P6, P7 and P8 are null and void; and

(iii) to pass any other order or direction as this Honourable Court may deem fit and proper on the facts and circumstances of this case."

In pursuance of the order of the Tribunal dated 25.06.2014, Ext.P5 was also issued which was also challenged. Both the Writ Petitions were heard by the learned Single Judge together and by the common judgment dated 16.02.2015 the Writ Petitions were allowed. Aggrieved by the said judgment, these two Writ Appeals have been filed.

4. We have heard learned Senior Advocate Shri P.Raveendran and learned counsel Shri Elvin Peter for the appellants. Shri M.P.Ashok Kumar appeared for the petitioner in W.P(C) No.3321 of 2015. Dr S.Gopakumaran Nair, learned Senior Advocate appeared for the petitioner in

W.P(C) No.3322 of 2015. Shri M.Ramesh Chander, learned Senior Advocate appeared for the Councillors who got themselves impleaded in the Writ Petitions as additional respondents.

5. Shri P.Raveendran learned Senior Advocate for the appellant submitted that the representation submitted by 20 Councillors was not entertainable by the State Government in view of the alternative remedy available by way of appeal under Section 509 of the 1994 Act, as per Section 57(3) of the Act. It is further submitted that remedy available for the Councillors to get the resolution cancelled was to take recourse of Rule 13 of the Kerala Municipality (Procedure for Meeting of Council) Rules, 1995 (hereinafter referred to as "the 1995 Rules"). It is submitted that the Tribunal while submitting its report to the State Government having come to the conclusion that complaint submitted by the 20 Councillors was not entertainable by virtue of Section 57(3) of the 1994 Act there was no occasion for the Tribunal to record any findings regarding the validity or otherwise of the resolution dated 18.12.2013. It is submitted that no

error was committed by the Chairman in declaring the resolution granting NOC to the 3rd respondent to have passed since only 18 Councillors have opposed the resolution. It is submitted that the Chairman has discretion under Rule 27 (a) of the 1995 Rules. It is submitted that the learned Single Judge committed an error in holding that Section 57 (3) shall be applicable only against the decision taken by the Council and the said provision has no application with regard to the resolution passed by the Council. It is submitted that the said reasoning given by the learned Single Judge is fallacious since bar under Section 57(3) is applicable both against the decision as well as resolution. It is submitted that the learned Single Judge on the above fallacious reason has rejected the Writ Petitions. Learned Senior Advocate for the appellants relied on the decision in **Suresh v. State of Kerala** (2006 [1] KLT 669) for the proposition that the resolution relating to body corporate includes the decision taken at one of its meeting.

6. Shri Dr S.Gopakumaran Nair, learned Senior Advocate and learned counsel Shri M.P.Ashok Kumar,

appearing for the petitioners refuting the submissions of the learned counsel for the appellants contended that the Tribunal having found that the resolution dated 18.12.2013 being illegal the Government ought to have interfered and cancelled the resolution in exercise of the power under Section 57(3) of the 1994 Act. It is submitted that Section 57(3) is not attracted. Judgment of the learned Single Judge holding that Section 57(3) is not attracted in the present case since the said bar is applicable only against the decision of the Council and not against the resolution passed by the Council has been supported. It is submitted that resolution dated 18.12.2013 cannot be said to have been passed by majority since the Chairman did not call for votes of Councillors who supported the resolution. The Chairman only asked the members to raise their hands who are objecting to the grant of NOC and 18 persons have raised their hands. The Chairman committed error in assuming that all 18 persons who have not raised hands are supporting granting of NOC whereas without taking their votes it could not have been presumed. In view of 36

members and one Chairman being present and 18 members have opposed, the Chairman having not given her casting vote it cannot be said that the said resolution was passed by majority. Immediately complaint was filed by 20 Councillors before the State Government which represented the majority, the Government ought to have cancelled the resolution.

7. We have considered the submissions of the learned counsel for the parties and perused the records. From the submissions raised by the learned counsel for the parties in these appeals and the materials on record, following are the issues which arose for consideration in these appeals.

(i) Whether the State Government was not empowered to entertain the complaint submitted by the 20 Councillors against the resolution dated 18.12.2013 on account of there being alternative remedy available under Section 57(3) of the 1994 Act?

(ii) Whether the complaint submitted by 20 Councillors can be treated as a reference or a petition within the meaning of Section 57(1)?

(iii) Whether the remedy of the Councillors for challenging the resolution dated 18.12.2013 was to invoke

Rule 13 or 15 of the 1995 Rules.

(iv) Whether the appeal under Section 509(9) can only be filed before the Tribunal only against any decision of the Council and no appeal is contemplated against the resolution passed by the Council?

(v) Whether the Tribunal is right in its opinion that in view of Section 57(3) read with Section 509 complaint submitted by 20 Councillors could not have been entertained under Section 57 for cancelling the resolution.

(vi) Whether the resolution dated 18.12.2013 can be said to have been passed in accordance with the 1995 Rules?

8. All the Issues being interconnected are taken together.

9. Before we proceed to consider the issues, it is useful to note the relevant statutory provisions governing the field. Section 57(3) of the Act provides for power to suspend and cancel resolutions, etc., which for ready reference is quoted below:

“57. Power to suspend and cancel resolutions etc.— (1)

The Government may, suo-motu or on a reference by the Chairperson the Secretary, or a Councillor of the Municipality or on a petition received from a citizen, cancel or amend a resolution passed or a decision taken by the council, which in their opinion,-

(a) has not been legally passed or taken; or

(b) is in excess or abuse of the powers conferred by this Act

or any other law; or

(c) is likely to endanger human life, health safety, communal harmony or public peace, or is likely to lead to a riot or quarrel; or

(d) has violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes or the conditions of grants.

(2) Before cancelling or amending a resolution or decision under sub-section (1), the Government shall refer the matter for the consideration of the Ombudsman constituted under Section 271G of the "Kerala Panchayat Raj Act, 1994 (13 of 1994) or to the Tribunal for the Local Self Government Institutions constituted under Section 271S of the said Act and the Tribunal shall, after giving the Municipality an opportunity of being heard, furnish a report to the Government with its finding based on which the Government may cancel, amend or approve that resolution or decision.

(3) The Government shall not entertain any petition for cancellation or amendment of any resolution or decision of the council if an alternate redressal is available to the petitioner through the Tribunal under section 509.

(4) Where the Government are of opinion that a resolution or a decision of the Council shall be cancelled or amended under sub-section (1), they may temporarily stay the implementation of Such resolution or decision and may direct the council to keep its implementation in abeyance till it is finally disposed of by completing the procedure under sub-section (2)].

Section 36 provides for Rules and Regulations for proceedings of the Council, the Standing Committee and other Committees. Section 36(3) which is relevant for the present case is quoted below:

“36. Rules and Regulations for proceedings of the Council, the Standing Committees and other Committees.-

(3) Every matter coming before the council for decision shall be decided by the majority of votes of the elected Councillors present and in all cases of an equality of votes, the person presiding over the meeting shall have a casting vote, unless otherwise provided in this Act.

In exercise of powers under Sections 19 and 36, Rules have been framed, namely, the Rules 1995. Rules which arise for consideration in the present appeals are Rules 11, 13, 15 and 26 which are extracted below:

“11.Council decision.—The Council shall decided all subjects coming for consideration by majority votes of members present and the Chairman may in all cases of equality of votes exercise a casting vote.

13. Cancellation or modification of resolution.— No resolution of a Council shall be modified or cancelled except through a resolution passed in a meeting of the Council specially convened for the purpose within three months of passing such resolution, by a support of not less than one half of the sanctioned number of members.

15. Dissenting note on decision,— A member shall, if he has any dissent on the minutes of the meeting, inform the same in writing within forty-eight hours of receipt of the proceedings to the Secretary and the Chairman of the meeting.

26. Resolutions to be put to vote.—The Chairman shall, when the discussion is concluded or if there is no discussion, put the resolution to vote.

27. Manner of Polling.—Except in cases otherwise provided:

(a) the manner of taking votes in a meeting may be as per the discretion of the Chairman;

(b) if any Councillor demands a poll, it shall be done by raising hand;

(c) the Chairman shall declare the results of the poll and it shall not be challenged.”

As noted above, the State Government by its letter dated 19.03.2014 has referred the complaint submitted by the 20 Councillors in exercise of the powers conferred Section 57(2) of the 1994 Act to the Tribunal. The Tribunal has heard all the parties and after examining the written statement filed by all the parties filed its report. Before the Tribunal written statement was filed by the Secretary and Chairman of the Council and certain other persons who got themselves impleaded including the 3rd respondent who had submitted an application for grant of NOC.

10. Before we proceed to look into the order of the Tribunal it is relevant to note the complaint of the 20 Councillors on which the State Government has granted interim order staying the resolution. Copy of the complaint

is filed as Ext.P2 to the Writ Petition. English Translation of Ext.P2 reads as follows:

“Hon'ble Urban Department,
Govt. of Kerala,
Govt. Secretariat,
Thiruvananthapuram.

Sir,

In the council meeting dated 18.12.2013 of the Municipality by a Agenda No.5 relating to starting a beer parlour in Hotel Indraprastha PH 1/6843/13 was discussed. By 20 members out of the total members of 39 had opined that the NOC shall not be granted to the Hotel the Chairperson and few councillors boycotted the meeting and destroyed the paper wherein the councillors had marked their attendance. Therefore we request irrespective of politics that the NOC shall not be granted in the above agenda which came up for the 3rd time for the consideration of the council.

Faithfully,
Councillors

K.J. Binu : Sd/-”

The Tribunal in its order has referred to the Written Statement submitted by the Secretary of the Nedumangad Municipality. It is useful to look into the written statement submitted by the Secretary regarding the facts which transpired in the meeting held on 18.12.2013. Extracting the statement filed by the Secretary, the Tribunal has observed as follows:

“4. 1st party the Secretary of Nedumangad Municipality
filed written statement contending in short as follows:

An ordinary meeting of Nedumangad Municipal Council was convened on 18.12.2013. There were 5 agendas fixed on that day. The 5th agenda was with regard to grant of permission to start beer parlour on Hotel Indraprastha. There were discussions for and against in granting the permission. Apart from 2 council members all other were present. After discussion Chairperson requested the persons who are objecting in granting the permit to raise hands. Then 18 persons raised hands. When there was a demand to make request to raise the hands of the councillors who are in favour of granting licence the Chairperson stated that it is not necessary since the persons who have been objected had already raised the hands and the remaining persons are supporters. Thereafter there was a chaos in the council and the councillors rushed together and snatched the attendane book and torn it away. Since the majority had supported to grant permission the Chairperson informed that the decision is to grant permission and the meeting was disbursed.”

As observed above the Tribunal proceeded to examine the procedure in which the resolution dated 18.12.2013 was passed and the facts transpired. It is useful to extract the following observations and findings recorded by the Tribunal with regard to resolution dated 18.12.2013:

“So Rule 27(b) clearly provides that if any councilor demands a poll it shall be done by raising hand. Here the minutes of the meeting held on 18.12.2013 would clearly shows

that even though there was demand by some councilors to the Chairperson to direct the councillors who supports in granting the permit to beer parlour to raise the hands, the Chairperson did not consider that request and instead stated that the person who have objection in granting permit has already raised their hands. That is not actually the procedure. Whenever there is request by the councilor the Chairperson ought to have considered that request and ought to have directed the councillors who are supporting to grant permit to raise the hands. How can she know that all persons who have not raised hand would support the grant of permit. There would be persons remaining neutral also. Instead of that the Chairperson arbitrarily seems to have come to a conclusion that the persons who have not raised hands for protest are supporters and even without specifically stating that she has invoked her casting vote declared that the majority has supported in granting permit and declared the resolution is to grant permit as per the majority. So the procedure adopted by the Chairperson in declaring the resolution to grant NOC to beer parlour as rightly contended by the learned counsel for the additional 4th party is arbitrary and illegal.”

The Tribunal also observed that remedy of the Councillors was to proceed under Rule 13 of the 1995 Rules and instead of adopting such procedure they approached the Government. It was further held that Section 57 does not entitle the Councillors to move the Government for cancellation or amendment of the resolution. The Additional party, Somasekharan Nair had remedy to move

the Tribunal under Section 57(3). The Tribunal ultimately opined in paragraph 20 as follows:

“20. For the reasons stated above, I hereby report that the decision taken on agenda No.5 of Municipal Council, Nedumanagad in its meeting dated 18.12.2013 is illegal and arbitrary. But Government cannot cancel the decision taken on Agenda No.5 of the Municipal Council dated 18.12.2013 of the Nedumanagad Municipality upon the representation filed by the councillors of the Nedumanagad Municipality or on a petition filed by the 4th party by invoking the powers under Section 57(1) of the Kerala Municipality Act.”

The State Government after looking into the report of the Tribunal passed an order on 23.1.2015. The Government accepted the reasoning of the Tribunal that under Section 57 (3) there is alternative remedy available to the petitioners for seeking amendment or cancellation of the decision of the Council.

11. Question to be considered first is as to whether the complaint submitted by the 20 Councillors as extracted above could have been entertained by the State Government under Section 57(1) of the 1994 Act or the remedy was only to take recourse to Rule 13 of the Rules. Section 57(1) empowers the Government to cancel or suspend the

resolution. There are three mechanisms provided under Section 57(1) by which resolution can be suspended or cancelled. They are:

- (i) suo motu exercise by the Government
- (ii) on a reference by the Chairman, Secretary or a Councillor of the Municipality and
- (iii) on a petition received from a citizen.”

The present is not a case of suo motu exercise of power nor present is a case of a petition received from a citizen. Present is a case where complaint was submitted by 20 Councillors of the Municipality. Section 57(3) contains an injunction to the Government that it shall not entertain any petition for cancellation or amendment of the decision of the Council if an alternative remedy is available to the petitioner under Section 509. Sub-section (1) of Section 57 although uses two words, viz., reference and petition sub-section 3 of Section 57 uses only one word, i.e., 'petition'. Thus the bar under Section 57(3) shall apply only in the context of petition. Section 57(1) refers to a petition as a petition by a citizen. Section 509(7) grants a right of appeal against any decision passed by the Council as provided in sub-section (7). Section

509(7) is quoted as below:

“509(7) An appeal may be preferred to the Tribunal against any decision passed by the Council or any order of notice issued by the Chairperson or Secretary on the basis of such decision on any matter provided in Sections 310 to 508 other than Sections 390, 391, 385, 406 and 408 or the rules, bye-laws or regulations made thereunder, within thirty days from the date of passing of such decision, order or notice.”

12. Complaint submitted by 20 Councillors as extracted above indicates that the 20 Councillors have raised objection regarding the resolution dated 18.12.2013. Objection of the Councillors was that although majority was against the grant of NOC, the Chairman has treated the resolution passed. In the circumstances NOC be not granted.

13. P.Ramanatha Aiyar's Law Lexicon, 3rd Edition defines the word 'refer' as follows:

“To allude or direct attention to something (S.10(b) Metal Corporation of India (Acquisition of Undertaking) Act (44 of 1965) and Art.76(2), Const.]; to send or direct for treatment, aid, information or decision [S.28, Excet. 1, Indian Contract Act (9 of 1872).”

Black's Law Dictionary defines the word 'reference' in the following manner:

“reference, n. (16c)1. The act of sending or directing to another for information, service, consideration, or decision; specific, the act of sending a case to a master or referee for information or decision. (Case: Federal Civil Procedure 1871; Reference 1]

general reference. (18c) A court's reference of a case to a referee, usu., with all parties' consent, to decide all issues of fact and law. The referee's decision stands as the judgment of the court (Case: Reference 1.)

special reference.(1831) A court's reference of a case to a referee for decisions on specific questions of fact. The special referee makes findings and reports them to the trial judge, who treats them as advisory only and not as binding decisions (Cases: Reference 1).”

14. Reference is nothing but sending an information or bringing into notice of authority for taking a decision. Learned Senior Advocate for the appellants contended that the complaint cannot be treated as reference since what the Councillors prayed from the Government was not to issue NOC which was not the prayer for cancelling the resolution. For finding out the nature of the complaint submitted by the Councillors we have to go by the substance of the complaint. The complaint in substance objected to the passing of the resolution on 18.12.2013 and allegation was that majority

did not pass the resolution. The prayer made was that NOC be not issued. The Councillors approached the Government to exercise their power under Section 57(1) and exercising the power, the Government actually issued interim order staying the resolution. Power to make a reference to the Government by Secretary, Chairperson or Councillor is the power given for a purpose and object. Secretary, Chairperson or Councillor who are part of the decision making process having given special power to bring to the notice of the Government any resolution which needs modification or cancellation. Government is empowered under the Act to cancel or modify the resolution to keep the Council under check so that they may not pass illegal resolutions or take decision in excess of the power conferred by the Act and such decision may endanger to human life, health safety, communal harmony or public peace. Resolution can be cancelled if it violated the guidelines issued by the Government in the matter of implementation of plans, schemes or programmes. Purpose and object of Section 57 (1) is empowering the Government to cancel the resolution

is thus to effectuate the main purpose of the Act and those power has been given to Chairperson, Secretary and Councillors to bring to the notice of the Government of any resolution which can be termed to be vitiated by any of the grounds given in Section 57(1). Thus the right given to cancel or refer the resolution to Government has to be thus considered and the complaint submitted by the 20 Councillors to the Government objecting the resolution dated 18.12.2013 is fully covered within the fold of the reference as contemplated in Section 57(1).

15. As noted above bar under Section 57(3) is only with regard to a petition submitted by a citizen to cancel the resolution. Not entertaining any petition by a citizen to cancel the resolution is also for a purpose and object. There being statutory right of appeal against decision of the Council by all other persons they can avail the remedy of appeal and at their instance Government is not to cancel or modify the resolution. Hence the bar under Section 57(3) is purposely and designedly created.

16. The Tribunal in its report committed error in

holding that in view of the bar under Section 57(3), the State Government cannot cancel the resolution dated 18.12.2013. The Government have mechanically followed the said report without adverting to the true ambit and scope of Section 57 (1) and (3). We are thus of the clear opinion that Section 57 (3) was not attracted to the complaint submitted by the 20 Councillors and Government was fully empowered to exercise its power to cancel the resolution under Section 57(1) of the Act and no error has been committed by the learned Single Judge in interfering with the report of the Tribunal to the above extent and the consequent decision of the Government.

17. Shri P.Raveendran, learned Senior Advocate for the appellants submitted that the learned Single Judge committed error in observing that bar under Section 57(3) shall not apply since the challenge was to a resolution and not to the decision of the Council. He submitted that the learned Single Judge committed error in observing that right of appeal can be availed only with regard to the decision of the Council and not against the resolution.

18. Municipal Council is a collective body which has to take any decision in accordance with Sections 36 and the 1995 Rules. As per Section 36(3) every matter coming before the Council for decision shall be decided by majority of votes of the elected Councillors present and in all cases of an equality of votes, the person presiding over the meeting shall have a casting vote. Thus decision of the Council is to be taken on the basis of majority passing a resolution on the basis of majority of votes is the manner of expressing the decision by the Council. Rule 11 of the 1995 Rules also provided that Council shall decide all matters coming up for decision by majority of votes. Resolution is thus a manner of expressing decision of the Council. The word resolution thus also fully cover a decision of the Council also and there cannot be any dichotomy between decision and resolution as held by the learned Single Judge. We are thus in full agreement with the learned Senior Advocate for the appellants that the reasoning given by the learned Single Judge for holding that power under Section 57(3) shall not apply on the resolution cannot be supported. However, we

have already given the reason as above to hold that the bar under Section 57(3) will not apply since the complaint of the Councillor is to be treated as a reference within the meaning of Section 57(3). Coming to Rule 13 for holding that Councillor has to avail remedy under Rule 13 (2), it is to be noted that Rule 13 is a power given to the Councillors to get the resolution of the Council cancelled or modified in a meeting of the Council specifically convened for the purpose within three months of passing the resolution. Rule 13 has nothing to do with the power given under Section 57(3). Rule 13 is an additional mechanism provided to Councillors to seek cancellation or modification of resolution. It in no manner control the power of the Councillor to make reference to the Government under Section 57(3). Power of the Councillors to make reference is independent and cannot be controlled by Rule 13(3). Similarly Rule 15 which provides for note of dissent in the minutes of the meeting is with different purpose and object and that has nothing to do with the powers of the State Government under Section 57(1).

19. Now we come to the resolution dated 18.12.2013.

As observed the Tribunal has held that resolution was illegal and arbitrary. Reason given by the Tribunal has already been extracted above. Apart from the reasons given by the Tribunal in its report there is one more reason due to which the resolution dated 18.12.2013 cannot be said to have validly passed for the grant of NOC. Reason is as follows: Rule 27 provides for manner of polling. Rule 27(a) provides that the manner of taking votes in a meeting may be as per the discretion of the Chairman whereas Rule 27(b) provides that "if any Councillor demands a poll it shall be done by raising hands". Although Rule 27(a) gives discretion to the Chairman regarding the manner of taking votes, the votes had to be taken for finding out majority decision of the Council. In the present case, the Chairman asked the members to raise their hands to oppose the grant of NOC. After noticing that 18 persons objected, the Chairman opined that majority is in favour of granting NOC whereas he did not take the votes of those who were in favour of not granting NOC. It is also to be noted that in the meeting itself the Councillors demanded a poll by asking the Chairman to take

votes of those persons who are in favour of not granting NOC. The Chairman did not agree and declared the resolution passed. When the right of a Councillor to demand for poll has been specifically given under the Rules giving up such rights is for a purpose, although the Chairman has discretion to arrive at his own decision as resolution is passed or not but right of poll is given to the Councillors which is a statutory right, poll is to be conducted if demanded. In the present case in spite of demanding the poll was not conducted by taking votes of each persons. The word 'poll' has been defined in P.Ramanatha Aiyar's Law Lexicon in the following manner:

“Poll. “Poll” means the number of aggregate of heads, a list or register of heads or individuals who may vote in an election so that poll includes all who actually cast their votes at the election, those who stay, away not being counted.

As a noun, a number or aggregate of heads; a list or register of heads of individuals, the register of the names of electors who may vote at an election, a mode of ascertaining the sense of a meeting and whether the ;persons tendering their votes are qualified to vote therein. *As an adjective*, cut or shaved smooth or even; cut in a straight line without indentation. *As a verb*, to single out, one by one, of a number of persons.”

20. Thus poll is a concept where all heads have to be counted, i.e., votes of all the Councillors have to be taken. The Chairman did not hold the poll in spite of the demand made for poll, hence action of the Chairman cannot be said to be in accordance with Rule 27 and when request of the poll is denied, it cannot be said that resolution is validly passed.

21. Shackleton on (the Law and Practice of meeting) 6th Edn has examined the concept of poll in the following words:

“The strict meaning of the term “poll” is the head. The most familiar derivative uses are those connected with parliamentary or other elections; thus “to poll” is to vote or to secure a number of votes, and “the poll,” the voting, the number of votes cast, or the time during which voting takes place.”

Further Shackleton proceeded to opine that when poll is demanded, the election commences with it. Show of hands is a rude and imperfect declaration of sentiments of the elector. The following has been stated in page 55:

“When a poll is demanded the election commences with it, the show of hands being only a rude and imperfect declaration of sentiments of the electors. The poll is in effect an abandonment of

what was done before, and everything anterior to it is not of the substance of the election nor to be so received.”

As a general principle, the demand for a poll should be made immediately after the declaration by the chairman of the result of a show of hands. If it is not so made, the chairman's declaration will stand, and in some cases (e.g., extraordinary and special resolutions in company meetings may be conclusive.”

22. Thus when poll was demanded by Councillors the Chairman ought to have by virtue of the powers under Rule 27(b) had to proceed with the poll for ascertaining majority. The earlier assessment of the Chairman by asking show of the hands only by person to oppose the resolution had lost its importance and without the poll being held majority could not have been ascertained and resolution cannot be said to be passed without conducting poll. For the above reasons, we are of the view that the resolution dated 18.12.2013 could not be said to have been validly passed. Resolution having not legally passed, the State Government was required to exercise the powers under Section 57(1).

23. For the reason as given above, we are of the view that the learned Single Judge did not commit any error in

allowing the Writ Petitions, hence the judgment of the learned Single Judge is to be upheld.

In the result, both the appeals are dismissed.

Parties shall bear their costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**

VSV