**Complaint Case No. 1 of 2020**

**06.11.2020**

[1] The present complaint is under active inquiry by the Inquiry Wing, Manipur Lokayukta. At the present stage of inquiry, we are not going to pass any final order or making any final decision on the basis of the disputed facts for which inquiry is going on and also no order will be passed which will be in the way of fair and proper inquiry of the present complaint by the Inquiry Wing, Manipur Lokayukta. Within the parameters, we, at this stage, called for deciding the core issues :

1. **Whether Ward Development Committee (for short ‘WDC’) of the Thoubal Municipal Council are properly constituted in compliance with the provisions under the “Manipur Municipality Participation Act, 2010” or not?**
2. **Whether Ward Finance Committee of the WDC are properly constituted in compliance with the provisions under the “Manipur Municipality Participation Act, 2010” or not? and**
3. **Whether the Government can issue administrative instruction in infraction of the provisions of the Manipur Municipality Act Participation Act, 2010 for administrative exigency for operating the account and fund allotted to the WDC, Thoubal for executing different projects or not?**

[2] The above core questions asked for decision could be decided only on the basis of the fact admitted by Secretary, MAHUD and Director, MAHUD, Government of Manipur. At the present stage of the investigation, Director (Inquiry), Manipur Lokayukta had submitted an interim report dated 12.10.2020 that the 18 Ward Development Committee of the Thoubal Municipal Council were formed without 2 (two) representatives of the civil society for each of the ward who are to be nominated by the State Government and also that the administrative department vide letter being Nos. 2/14/2017-MAHUD dated 24.07.2018, No. 19/11/18-LSG & UD (Vol-III) dated 07.04.2018 and Notice No. 7/TBL/MUC/OO/2016/625 dated 25.07.2018 directed the WDCs that the account operator of the WDC shall only be Member Secretary (an official nominated under Section 3 (5) of the
Manipur Municipality Community Participation Act, 2010), as such the Ward Finance Committee of the WDCs are non-functional. Over and above, the account of the WDCs are opened in the name of the Ward Development Committees, the accounts is operated

by the Member Secretary (an official nominated by the Government) in violation of Section 10 (d) (1) (i) and (ii) and Section 10 (d) (2) (ii), (iii) and (iv) of the Manipur Municipality Community Participation Act, 2010 (for short ‘Community Participation Act, 2010’). Thus, WDC of Thoubal Municipal Council has been functionally unconstitutionally in clear violation of the Community Participation Act, 2010.

[3] On receipt of such interim report of the Director (Inquiry), Manipur Lokayukta, the Lokayukta for giving an opportunity of being heard of the allegation and findings mentioned in the interim report dated 12.10.2020 passed an order dated 14.10.2020 giving an opportunity to the Secretary, MAHUD sand Director, MAHUD to submit their comment and explanation to the said findings of the interim report of the Director (Inquiry), Manipur Lokayukta. Over and above, by an order dated 26.10.2020, the administrative department, MAHUD, Government of Manipur was directed to submit a show cause explanation to the various points contained in the said judicial order of the Lokayukta dated 14.10.2020 and also to appear in person along with Director, MAHUD, Government of Manipur for clarification and explanation. Further, on 04.11.2020, the administrative Secretary and Director, MAHUD, Government appeared in person and submitted their written explanation dated 04.11.2020 wherein the administrative department, MAHUD had clearly admitted that the Government have not yet nominated 2 (two) persons under Section 3 (2) of the Community Participation Act, 2010 for proper constitution of the Ward Development Committee of the Thoubal Municipal Council. In their written explanations, administrative Secretary and Director, MAHUD are not denying that the Ward Finance Committee of the WDC have not yet been constituted properly and also that the Bank Account of the WDC are not operated in the manner provided under Section 10 (d) of the Community Participation Act, 2010. Over and above, from the record of the present case, it is clearly admitted by the Director, MAHUD that under his letter being No. 5/28/2020-DIR(MAHUD) dated 7.10.2020 that no Government nominee in compliance with section 3(2)(c) of the Community Participation Act, 2010 had been nominated for proper constitution of the WDCs of Thoubal Municipal Council and also that the non-appointment of the Government nominee in the WDCs may be due to the fact that no proposal was received from the Urban Local Bodies (UBLs). From the record and also from the interim report of the Director (Inqiury), Manipur Lokayukta, it is clear that the administrative department, MAHUD has directed the executive officers of the Thoubal Municipal Council and other Municipal Councils that no

elected Member shall be a signatory or joint account holder in respect of official bank account of all ULBs. All the operators/signatories shall be regular/permanent officials.

[4] On the basis of the admitted fact mentioned above, we are deciding the core questions formulated above in the following paras.

**Question Nos. 1 and 2** –

1. **Whether Ward Development Committee (for short ‘WDC’) of the Thoubal Municipal Council are properly constituted in compliance with the provisions under the “Manipur Municipality Participation Act, 2010” or not?**
2. **Whether Ward Finance Committee of the WDC are properly constituted in compliance with the provisions under the “Manipur Municipality Participation Act, 2010” or not?**

[5] The rational for enacting the Manipur Municipality Community Participation Act, 2010 is for the active participation of the Councillors, Members, representatives of Civil Societies and public in executing projects for the Municipal Councils more particularly in executing the projects of the Ward Development Committee and also for restraining the execution of the projects by the officials of the Government and Municipal Councils and some Councillors. The Manipur Municipality Community Participation Act, 2010 came into force from 19th November, 2010 vide Notification being No. 7/106/2007-MAHUD, Imphal, the 16th November, 2010, published in the Manipur Extra-ordinary Gazette No. 352 Imphal, Thursday, November, 18, 2010. The composition and constitution of the WDCs are clearly provided under Section 3 of the Community Participation Act, 2010. For easy reference the relevant paras are quoted hereunder :

**“3. (1) There shall be a Ward Development Committee for each Ward in a Municipality t be constituted by the State Government immediately after the constitution of the Municipality.**

**(2) Each Ward Development Committee shall consist of –**

**a) the Councillor of the Ward, who shall be the Chairperson of the ward Development Committee;**

**b) two persons to be elected from the Ward;**

**c) two persons representing the civil society from the Ward, nominated by the State Government.**

**Explanation – For the purpose of this section ,”civil society” means any non-government organization or association persons established, constituted , or registered under any law for the time being in force and working for social welfare, and includes any community-based organization, professional institution and civic, health, educational, social or cultural body or any trade or industrial organization and such other association or body as the State Government may decide.**

**(3) A person shall be disqualified to continue as such member, if under the provision of this Act or any other law for the time being in force, he would be disqualified for being elected as a member of a Municipality.**

**(4) The Executive Officer shall be entitled to take part in the meeting s and deliberations of the Ward Development Committee. The Chairman of the Ward Development may request the representatives of concerned municipal departments as special invitees to participate in the meetings whenever problems respecting their departments are to be the Municipality.**

**(5) Any official of the Municipality nominated by the Executive Officer of the Municipality shall be Secretary of the Ward Development Committee. All minutes of the proceedings of the meeting of the Ward Development Committee shall be recorded by the Secretary and copy of minutes of the proceedings of each meeting shall be forwarded by him to the Municipality.**

**(6) The term of office of the Ward Development Committee shall be co-extensive with the duration of the Municipality.”**

[6] On bare perusal of Section 3 (2) of the Community Participation Act, 2010, it is crystal clear that each WDC shall consists of (a) Councillor of the Ward who shall be Chairperson of the WDC, (b) two persons to be elected from the ward and (c) two persons representing the civil society from the ward should be nominated by the State Government. Further, Section 3 (5) of the Community Participation Act, 2010 clearly provides that any official of the Municipality nominated by the Executive Officer of the Municipality shall be the Secretary of the Ward Development Committee. Over and above, the Governor of Manipur in exercise of the power conferred under Section 3 of the Community Participation Act, 2010 was pleased to constitute a Ward Development Committee in each of the Ward of all the Municipal Councils and Nagar Panchayat excluding Imphal Municipal Council consisting all the Councillor of the Ward as Chairperson, 2 (two) elected persons from the Ward as Members, 2 (two) persons representing the civil society from the Ward (to be nominated by

the State Government) as Members and An official of the Municipality/Nagar Panchayat nominated by the Executive Officer concerned as Member Secretary vide notification No. 2/26/2010-MAHUD dated Imphal 30th April, 2011. For easy reference, the said notification is quoted hereunder :

“Government of Manipur

Secretariat : Mahud Department

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**Notification**

**Imphal, the 30th April, 2011**

**No. 2/26/2010-MAHUD : In exercise of the powers conferred under section 3 of the Manipur Municipality Community Participation Act, 2010, the Governor of Manipur is pleased to constitute a Ward Development Committee in each ward of all the Municipal Councils and Nagar Panchayats excluding Imphal Municipal Council consisting of the following :**

|  |  |  |  |
| --- | --- | --- | --- |
| **1** | **Councillor of the Ward** | **as** | **Chairperson** |
| **2** | **2 (two) elected person from the Ward** | **as** | **Members** |
| **3** | **2 (two) persons representing the civil society from the Ward (to be nominated by the State Government)** | **as**  | **Members** |
| **4** | **An official of the Municipality/Nagar Panchayat nominated by the Executive Officer concerned** | **as**  | **Member Secretary** |

**2. The term of office of Ward Development Committee shall be co-extensive with the duration of the Municiplaity.**

**Sd/-**

**(M. Joy Singh)**

**Additional Secretary (MAHUD),**

**Government of Manipur.**

**Copy to :**

1. **Secretary, to the Chief Minister, Manipur.**
2. **P.S. to Minister (Law & L.A), Manipur.**
3. **Chief Secretary, Govt. of Manipur.**
4. **Secretary (Law), Govt. of Manipur.**
5. **Deputy Commissioner, Imphal East/Imphal West/Bishnupur/Thoubal.**
6. **Additional Deputy Commissioner, Jiribam.**
7. **Secretary, State Electioon Comission, Manipur.**
8. **Director (MAHUD), Manipur.**
9. **Sub-Divisional Officer, Lamsang/Patsoi/Wangoi/Keirao Bitra/Sawombung/Thoubal/Lilong/Kakching/Nambol/Bishnupur/Moirang.**
10. **Executive Officers concerned of all Municipal Councils/Nagar Panchayats.**
11. **Guard file.”**

[7] Section 10 of the Community Participation Act, 2010 clearly provides as to how the accounts of the WDCs are to be operated and maintained by whom. Under Section 10 (d) (1), there shall be a Ward Finance Committee of each WDC and Finance Committee shall consists of three persons and constitution of the WDC shall be through nomination held within one month of the constitution of the WDC. The Chairperson shall nominate the Ward Finance Committee members and also one person shall be appointed from amongst the Members as Chairperson who shall be the authorised signatory for maintenance and use of the account. The Ward Finance Committee shall maintain and receipts all expenditure activities of the ward and sub-section (iii) of Section 10 (d) (2) speaks that Ward Finance Committee shall ensure that all fund transfers shall be made out of this account to appropriate account heads of the Municipality. For easy reference relevant portion of Section 10 are quoted hereunder :

**“10. The activities of the Ward Development Committee are as follows :**

**………………………………………………**

**(d) Maintenance of Accounts”**

**(1) Constitution of the Ward Finance Committee – A committee of three persons shall be constituted in every Ward as the Ward Finance Committee.**

**(i) The constitution of the Ward Finance Committee shall be through nomination held within one month of the constitution of the Ward Development Committee. The Chairperson shall nominate the Ward Finance Committee members.**

**(ii) The Ward Finance Committee shall also appoint from amongst themselves, one person as the Chairperson, who shall be the authorised signatory for maintenance and use of accounts.**

**(2) Functions and Duties of the Ward Finance Committee –**

**(i) The Ward Finance Committee shall prepare the annual budget for the Ward and place it before the meeting of the Ward Development Committee which will deliberate upon, and approve the budget. The approved Budget shall be presented by the Ward Finance Committee to the Municipality within seven months from the closure of the previous financial year.**

**(ii) The Ward Finance Committee shall also maintain Ward-level bank accounts for all the receipts and expenditure activities of the Ward.**

**(iii) The Ward Finance Committee shall ensure that all fund transfers shall be made out of this account to appropriate account heads of the Municipality.**

**(iv) The Ward Finance Committee shall present accounts every three months at the meeting of the Ward Development Committee.**

**(v) The Ward Finance Committee shall prepare a quarterly report of the financial transactions of the Ward Development Committee, which shall include details of its receipts and expenditures and also its projections and suggestions for the next quarter. This report shall be made available to every member of the Ward Development Committee one week before the date fixed for meeting of the Ward Development Committee for discussion of the report.**

**(vi) The report of the Ward Finance Committee shall be made available for public scrutiny.”**

[8] It is clear from the above quoted para that there should be a Finance Committee consisting of all the Members for each of the Ward Finance Committee. Three members of the Ward Finance Committee are to be nominated by the Chairperson of the Ward Finance Committee and one person amongst the three Members shall be appointed as the Chairperson who shall be the authorised signatory for maintenance and use of the accounts of the WDC.

[9] From the facts discussed above, it is clearly admitted by the administrative Secretary, MAHUD as well as by the Director (MAHUD), Government of Manipur that the Ward Finance Committee of the WDC, Thoubal has not yet been constituted properly. Account of the WDC is operated by an unauthorised person inasmuch as the Chairperson of the Ward Finance Committee is not the authorised signatory for maintenance nd use of the account of the WDC.

[10] The Hon’ble Supreme Court in **Katar Singh –vs- State of Punjab (1994) 3 SCC 569** held that the law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. Para 36 of the SCC in Kartar Singh’s case (supra) reads as follows:

 **“36. Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. It goes without saying that the achievements of law in the past are considerable, its protection in the present is imperative and its potential for the future is**

**immense. It is very unfortunate that on account of lack of respect, lack of understanding, lack of effectiveness, lack of vision and lack of proper application in the present day affairs, law sometimes falls in crisis.”**

 From the ratio laid down in Kartar Singh’s case (supra), it is crystal clear that law is made not to be break but to be obeyed.

[11] The Apex Court in **Shri Mandir Sita Ramji –vs- Governor of Delhi AIR 1974 SC 1868** held that when a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. The ration laid down in Shri Mandir Sita Ramji’s case (supra) is that when the legislature prescribed a procedure, a Judge or executive authority cannot be wiser.

[12] For the foregoing discussions we have answered questions Nos. 1 and 2 in negative, in other words, Ward Development Committees (WDCs) of Thoubal Municipal Council are not properly constituted. The present existing WDC is not the Committee contemplated under the provisions of the Community Participation Act, 2010. As a result, the Government is to constitute the Ward Development Committee in strict compliance of the provisions of the Community Participation Act, 2010. Further, the Ward Finance Committee also is not a properly constituted Committee in compliance of the provisions of Community Participation Act, 2010 and also the signatory of the account of the Ward Finance Committee is not an authorised one. As stated above, all the mandates required for constitution of the WDC and Ward Finance Committee as provided under Community Participation Act, 2010 should be fulfilled and different project of the WDC and Ward Finance Committee should be carried out by the properly constituted WDC in the manner provided under the Community Participation Act, 2010.

**Question No. 3** –

1. **Whether the Government can issue administrative instruction in infraction of the provisions of the Manipur Municipality Act Participation Act, 2010 for administrative agency for operating the account and fund allotted to the WDC, Thoubal for executing different projects or not?**

[13] As discussed above, it is an admitted fact that the signatory of the account of the WDC is not an authorised person as provided under Section 10 (d) (1) (ii) and Section 10 (d) (2) (ii), (iii) and (iv) of the Community Participation Act, 2010.

[14] It is now no more *res integra* that when the executive instruction conflicts with the statutory provision, the latter will prevail. Regarding this settled position of law, it will be sufficed to refer to two decisions of the Apex Court i.e. (i) **DDA & Ors –vs- Joginder S. Monga & Ors. (2004) 2 SCC 297** and (ii) **Sk. Abdul Rashid & Ors. –vs- State of Jammu and Kashmir & Ors (2008 1 SCC 722**. Para 30 of the SCC in DDA’s case (supra) reads as follows :

**“30. It is not a case where a conflict has arisen between a statute or a statutory rule on one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it areawise or plotwise. Once it does it areawise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in particular case it will fix the market value on the basis of the price disclosed in the agreement of sale.”**

 Para 15 of the SCC in Sk. Abdul Rasid’s case (supra) reads as follows :

**“15. No executive order could be issued in derogation of the statutory rules far less a legislative Act. The rules being statutory in nature and having been framed under the Jammu and Kashmir Civil Servants (Removal of Doubts and Declaration of rights) ordinance, 1956 have statutory force, the executive order in question was required to be issued in consonance with the not a derogation thereof.”**

[15] For the foregoing reason discussed above, the State/Administrative Department cannot issue the executive order/orders that the elected Members should not be a signatory of the account of the Ward Development Committee in infraction of the provisions of the Community Participation Act, 2010.

[16] With the above findings, the State Government and officials of Thoubal Municipal Council are directed to use the fund/balanced fund for the WDC through properly or duly constituted WDC and Ward Finance Committee as provided under the provisions of the Community Participation Act, 2010.

[17] At the last, the Director (Inquiry), Manipur Lokayukta is to continue the inquiry and submit the report as early as possible.

[18] Deputy Registrar, Manipur Lokayukta is directed to furnish a copy of this order to Secretary (MAHUD), Manipur and Director (MAHUD), Manipur by Special Messenger, who has to obtain an acknowledgment for receiving the same. Also furnish a copy to the Director (Inquiry), Manipur Lokayukta.

[19] Await report of the Director (Inquiry), Manipur Lokayukta.

 Sd/- Sd/-

 **Member Chairperson**