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The Principal Secretary, Department of Law, Jharkhand

I have perused the file from which it appears that certain queries have been raised regarding the role and power ascribed to different authorities under the Jharkhand Municipal Act, 2011. I now consider the queries accordingly.

Query no. 1- Who can propose / call for meeting of the Councillor's of Municipal Corporation?

Opinion- As per the provisions of the Municipal Act, the meeting of the Municipality can be broadly classified into two categories.

- I. Mandatory Ordinary
- II. Need based meetings

Ordinary Meetings is thus classified into two kinds one being mandatory every month and the second being need based.

Ordinary monthly meeting is requirement of the statute as contained in Section 74 (1) of the Act.

Need based meeting may be convened as per S. 74 (2) by the Mayor/ Chairperson in case there is requisition in writing by 1/5th of the strength of the Councillors, as per the procedure laid down in Section 75.

As per provisions of S. 75 of the Act, the ordinary meeting is to be convened by the Municipal Secretary with a prior notice of 72 hours containing the list of business to all the Councillors/ Chairperson/ Mayor. It is incumbent upon the Municipal Secretary to send to all the Councillors/ Chairperson/ Mayor the list of business to be transacted at every meeting of the Council.

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As such the Municipal Secretary shall ensure calling for monthly meeting of the Councillor's of Municipal Corporation which is mandatory in nature.

Secondly, the need based meetings are also to be convened by the Municipal secretary as per the provisions of Section 75 of the Act.

Query no. 2- Who should prepare the list of business to be transacted for the meeting of the Councillor's of Municipal Corporation?

Opinion- Although there is no specific provisions in the Municipal Act this issue has to be answered after harmoniously construing all the provisions of the Act and giving it a purposive construction/interpretation.

Section 7 of the Act provides that Municipality, herein Municipal Corporation, shall be a body corporate with perpetual succession and a common seal.

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7. Incorporation of Municipality -

(1) The municipality constituted under section 6 shall, by its name, be a body corporate with perpetual succession and a common seal, and subject to any restriction or qualification imposed by this Act or any other law shall be vested with the capacity of suing or being sued in its corporate name, enter into contracts and do all things necessary for the purpose of this Act;

(2) All actions of the Municipal Corporation, Municipal Council and Nagar Panchayat shall expressly be taken in the name of such municipalities.

(3) Subject to the provisions of this Act, the municipality shall have the power to acquire, hold and dispose of properties.

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The Municipal Secretary has been given a pivotal role in the Municipal Act. He has been assigned several duties/ powers/ roles which elucidate its role in the functioning and administration of the Corporation.

It would be worthwhile to refer to such statutory provisions.

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S. 75. Notice of meeting and list of business.- A list of business to be transacted at every meeting of the municipality, except at an adjourned meeting, shall be sent to the registered address of each councillor at least seventy-two hours before the time fixed for such meeting, and no business shall be brought before, or transacted at, any meeting other than the business of which notice has been so given.

Explanation. - For the purposes of this section, "registered address" shall be the address for the time being entered in the register of addresses of councillors to be maintained by the *Municipal Secretary*.

S. 76. Emergent business - Any emergent business may be brought before, and transacted in the meeting with the permission of the Mayor or Chairperson: Provided that any councillor may send or deliver to the Municipal Secretary notice of any resolution so as to reach him at least forty-eight hours before the time fixed for the meeting, and the Municipal Secretary shall, with all possible means, take steps to circulate such resolution to every councillor in such manner as he may think fit: Provided further that no business, which has no relevance to the municipality, shall be brought before the municipality.

S.81. Disclosure of pecuniary interest. -

(1) A councillor may give to the Municipal Secretary a notice to the effect that he or his spouse is a member of a company or is a partner in a firm or is in the employment under a person, and if any contract is made or is proposed to be made with such company or firm or person, such notice shall, unless and until it is withdrawn, be deemed to be a sufficient disclosure of his interest in such contract or proposed contract which may be the subject of consideration at a meeting of the municipality after the date of the notice.

(2) The Municipal Secretary shall record in a book, to be kept for the purpose, particulars of any disclosure made under sub-section (1) of section 80 and of any notice given under sub-section (1) of this section, and the book shall be open during office hours for the inspection of any councillor.

S.83. Right of Councillors to ask questions.-

(1) A councillor may, subject to the provisions of sub-section (2), ask the Council or/and Standing Committee questions on any matter relating to the administration of the municipality or municipal governance, and all such questions shall be addressed to the Standing Committee and shall be answered either by the Mayor or Chairperson or by any other member of the Standing Committee.

(2) The right to ask a question shall be governed by the following conditions, namely:-

(a) not less than seven working days' notice, in writing, specifying the question shall be given to the Municipal Secretary;

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- (b) no question shall -
- (i) bring in any name or statement not strictly necessary to make the question intelligible,
 - (ii) contain arguments, ironical expressions, imputations, epithets or defamatory statements,
 - (iii) ask for an expression of opinion or the solution of a hypothetical proposition,
 - (iv) ask as to the character or conduct of any person except in his official or public capacity,
 - (v) relate to a matter which is not primarily the concern of the municipality,
 - (vi) make or imply a charge of a personal character,
 - (vii) raise questions of policy too large to be dealt with within the limits of an answer to a question,
 - (viii) repeat in substance questions already answered or to which an answer has been refused,
 - (ix) ask for information on trivial matters,
 - (x) ask for information on matters of past history,
 - (xi) ask for information set forth in accessible documents or in ordinary works of reference,
 - (xii) raise matters under the control of bodies or, persons not primarily responsible to the municipality, or
 - (xiii) ask for any information on any matter which is under adjudication by a court of law.
- (3) The presiding officer shall disallow any question, which is, in his opinion, in contravention of the provisions of sub-section (2).
- (4) If any doubt arises whether any question is or is not in contravention of the provisions of sub-section (2), the matter shall be decided by the presiding officer, whose decision shall be final.
- (5) The Mayor or Chairperson or any member of the Standing Committee shall not be bound to answer a question seeking information which has been communicated to him or to the Standing Committee in confidence or if, in his opinion, it cannot be answered in public interest.
- (6) Unless otherwise directed by the presiding officer of the meeting, every question shall be answered at a meeting of the municipality.

8.85. Asking for statement from Standing Committee.-

- (1) Any councillor may ask for a statement from the Standing Committee on an urgent matter relating to the administration of the municipality by giving notice to the Municipal Secretary at least one hour before the commencement of the meeting of the municipality on any day.
- (2) The Mayor or Chairperson or a member of the Standing Committee may either make a brief statement on the same day or fix a date for making such statement.
- (3) Not more than two such matters shall be raised at a meeting and, in the event of more than two matters being raised priority shall be given to the matters which are, in the opinion of the Mayor or Chairperson, more urgent and important.
- (4) There shall be no debate on such statement at the time it is made.

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Sections 75 & 76 of the Act deals with the role/ duties of Municipal Secretary in convening the meetings of the municipality. The same have been discussed while furnishing opinion on query no. 1.

Section 81 provides that the Municipal Secretary shall be the custodian of the details with regard to pecuniary interest of any of the councilor in any entity dealing with the municipality.

Section 83 of the Act mandates that the Councilors shall ask question pertaining to functioning of the municipality only by putting to 7 days prior notice to the Municipal Secretary.

Section 84 provides that any councilor may put to notice the Municipal Secretary for discussion on urgent public matter.

As per Section 85 any councilor may ask for statement from Standing Committee by putting the Municipal Secretary to notice.

As per Section 86 it is the duty of the Municipal Secretary to keep the minutes and proceedings of each meeting and send the same to the State Government as per provisions of Section 87.

The pivotal role and nature of the office of the Municipal Secretary can be gathered from Section 492 which provides that whenever under the Act or the rules or the regulations made thereunder the doing of, or the omission to do, anything or the validity of anything done depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of the Council, or the Standing Committee, a document, in writing, signed by the Municipal Secretary, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion, satisfaction, as the case may be, shall be sufficient evidence thereof.

It is elementary rule that the interpretation of an enactment is to be made of all parts together and not of one part by itself. Such a survey is always indispensable even when the words are plain, for the true meaning of any passage in statute is that which best harmonises with the subject and with the other part, so that inconsistencies might be avoided and operative effect might be given to every provision of the statute, if a

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reasonable construction permits. In Chandra Mohan v. State of U.P. ((1967) SCR 77 at 87), Supreme Court speaking through K. Subba Rao, C.J. held as follows:

"Before construing the said provisions, it should be remembered that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, "if, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

Thus, the entire Act should be read as per its scheme and the Municipal Secretary, as per the scheme of the Act has to discharge all the Secretarial work and work as a custodian of the records of the Municipality as well. Any other interpretation will defeat the entire scheme of the Act and will also make it unworkable.

From a co-joint reading of the Sections 75 and 76 of the Act and other provisions as discussed hereinabove, the legislative intent is very clear and makes it evident that the proceedings are to be prepared by the Municipal Secretary.

Query no. 3- *What is the role of the Chairperson/ Mayor in formulating the list of business to be transacted at a meeting of the Municipality?*

Opinion- So far the ordinary meeting is concerned, the Chairperson/ Mayor has no role in formulating the list of business to be transacted at the meeting. As evident from Section 75, such exercise is to be undertaken by the Municipal Secretary.

Query no. 4- *Whether the Chairperson/ Mayor is competent to annul or modify the list of business proposed to be transacted at a meeting of the Municipality?*

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Opinion- As per provisions of S. 75 of the Act, the ordinary meeting is to be convened by the Municipal Secretary with a prior notice of 72 hours containing the list of business to all the Councillors/ Chairperson/ Mayor. It is incumbent upon the Municipal Secretary to send to all the Councillors/ Chairperson/ Mayor the list of business to be transacted at every meeting of the Council.

The Mayor/ Chairperson in terms of Section 76 has the power to permit/ refuse emergent work to be transacted in a meeting, but no power to modify the proposal of any of the Councillor submitted through the Municipal Secretary as per the procedure laid down in Section 76.

Except in case of an emergent work, the Mayor/ Chairperson has no power to refuse/ deny the business to be transacted in a meeting. Further, they have no power to modify the list of business proposed to be transacted in a meeting.

Emergent Meetings

Query no. 5- Whether after conclusion of the meeting, the Mayor/ Chairperson can take any independent decision on the business transacted in a meeting?

Opinion- To answer this query it would be worthwhile to refer to Section 77 (4) of the Act which reads as under: -

S.77(4) All matters required to be decided at a meeting of the municipality shall, save as otherwise provided in this Act, be determined by a majority of votes of the councilor's present and voting.

From perusal of the above-mentioned statutory provision, it is evident that all business in a meeting of the municipality has to be decided by majority of votes. Any unilateral decision after meeting stands concluded would be against the very spirit of the Act.

Query no. 6- Whether the Chairperson/ Mayor is competent to issue show cause to employees of the Corporation?

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Opinion- The Municipal Act does not empower the Chairperson/ Mayor to issue show cause to its employees. In absence of such statutory power, the Authority (viz. Mayor/ Chairperson), who are creature of the Statute cannot exercise such power as it will amount to acting beyond the four corners of the Statute.

Secondly, it would be pertinent to refer to the Resolution no. 110/2014-16-165 dated 18.01.2016 issued by the Urban Development Department clause 10 of which vest the Municipal Commissioner with the disciplinary powers *qua* the employees of the Municipality.

As such the Chairperson/ Mayor cannot issue show cause notice to the employees.

Query No. 7- Whether the Mayor/ Chairman can call for meeting to review the work of any section/ branch of the Municipality?

Opinion- The Municipal Act does not empower the Chairperson/ Mayor to exercise such kind of power. In absence of such statutory power, the Authority (viz. Mayor/ Chairperson), who are creature of the Statute cannot exercise such power as it will amount to acting beyond the four corners of the Statute.

Query No. 8- Whether the signature of the Mayor or Chairperson is mandatory on the minutes of the meeting conducted with required quorum and in absence of the Mayor or the Chairperson?

Opinion- As per Section 78 of the Act, the meeting of the municipality is to be presided over by Mayor/ Chairperson. In their absence by the Deputy Mayor/ Deputy Chairperson. If both are absent then subject to fulfilment of quorum, the Councillors amongst them will choose the Presiding Officer who will preside over the meeting. Signature of the presiding officer may be taken over the minutes after the meeting is concluded. The provisions of section 86 and 87 has also to be adhered to.

The querist may visit the statutory provisions contained in these sections as well.

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The signature of the Presiding Officer (who may be Mayor or Chairperson or any councillor in appropriate case) is mandatory on the minutes of the meeting conducted.

Query No. 9- *Whether the approval of the Department can be sought in case the Mayor/ Chairperson refuses to put their signature over the minutes of the meeting.*

Opinion- Under the provisions of the Act, the State Government has the power to cancel or suspend resolution. However, till the minutes of the meeting are validly signed by the Presiding Officer the same does not get legal recognition.

Thus, in case the Presiding Officer refuses, without any valid and lawful reasons, to sign the minutes of the meeting which has been validly and legally convened, the proper course would be to report the matter to the State Government to take appropriate disciplinary action against the Mayor/ Chairperson under Section 95 for its removal on the following ground:-

“95 (1) ... willfully omits or refuses to perform their functions and duties under this Act, or is found to be guilty of misconduct in the discharge of their duties...”

At this juncture it would be pertinent to mention herein that the State Government has not formulated the *Rules governing the conduct of the business of the municipalities. Section 89 of the Municipal Act specifically empowers the State Government to frame Rules for conduct of business of the municipalities.*

The same reads as under: -

S.89. Rules relating to conduct of business of the municipality- The State Government may, by rules, provide for such matters, not provided in this Act, relating to the conduct of business of the municipality or of its committees, as it may deem necessary.

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It would thus be advisable to frame such Rules immediately for smooth functioning of the Municipalities.

Rajiv Ranjan - 28.8.2021
(Rajiv Ranjan)
Advocate General

UOI No- 291/31.8.21

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