
(1996) 07 GAU CK 0040

In the Gauhati High Court

Case No : Civil Rule No's. 71 (K) and 87 (K) of 1996

Animo Jemu

APPELLANT

Vs

State of Nagaland and Another

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Nagaland Village and Area Council Act, 1978 — Section 7, 9, 9(1)

Citation : (1997) 3 GLR 50

Hon'ble Judges : W.A. Shishak, J

Bench : Single Bench

Advocate : T. Koza, S. Risom and G.A. Shimray, for the Appellant; Sr. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

W.A. Shishak, J.—The above two writ petitions have been filed by the same Petitioner viz., Animo Jemu. The matter concerns election of Village Council Members and followed by election of Village Council Chairman. By notice dated 20th September, 1995, the A.D.C. Tseminyu vide No. AC-31/95 called upon the villagers to select members of the Village Council on or before 26.9.95 in accordance with the prevailing customary practices and usages. The notice further states:

the list of selected members shall be submitted to this office on or before 28.9.95.

The villagers elected members of Village Council and the names of those elected members were submitted to A.D.C. who acknowledged receipt on 30th October, 1995. The total membership of the Village Council stands at 48 (forty eight). The name of the Petitioner is at serial 31. It appears the names were duly forwarded to the Government for approval. The Jt. Secretary to the Government vide No. HOME/C1-1/96 dated 5th March, 1996 conveyed the approval to the Commissioner as follows:

Sir,

I am directed to your letter No. CMO-5/40/89 dated 21/12/95 on the above cited subject and to convey Government's approval to the list of elected VCCS and VCMS as proposed.

In the list furnished to the Commissioner concerning the Petitioner's village, the name of the Petitioner as stated earlier appears at serial 31. Annexure-D of the writ petition is an order passed by the learned A.D.C. to the following effect:

Whereas without any provocation from the authority Shri Animo Ex-Chairman has displayed disgraceful action by tearing paper and misbehaviour with the Magistrate in the Court on 5.02.96 at 2:30 P.M. in the presence of the following D.B.S.

G washeni D.B.

Tsonga D.B

Kepenlo D.B

Gwasinlo D.B

and the G.Bs of Tesophenyu Village which action has attracted a contempt of Court and obstruct to duly authorised officer like magistrate.

Therefore it is order a simply fine of Rs. 100/- (Rupees one Hundred) or Simple imprisonment of 6hrs.

Order to be executed today.

The Petitioner paid fine. He also apologised to the authority. It is stated at the bar that the Petitioner lost his temper at one stage as he and other village members had to wait several hours without any action from the authority regarding election of Village Council Chairman although they had already submitted representation requesting the A.D.C. to conduct election of Village Council Chairman. According to the Petitioner the apology was accepted and the entire matter was sorted out on the spot. By another order issued on 1st February, 1996, the A.D.C. directed the concerned villages to submit the names of Village Council Chairman to the office "through the Head G.B. of the village within 10-2-96", By a letter dated 21-3-96 the Sessional Chairman of the village in question submitted the name of new village Council Chairman. The election of the Village Council Chairman was held at 6 A.M. on 21-3-96. Among other things it is stated in that letter:

In case, the House unanimously elected Shri Animo Jemu as a New Village Council Chairman Tsephenyu.

This is for your information and approval please.

On the same date the A.D.C. had received that letter inasmuch as endorsement

10 this effect was made on the body of the petition itself. Thereafter, the learned ADC passed the following order on 26th March, 1996:

No. JUD-117/94-95/3076 : Shri Animo is hereby removed from the membership of Tesophenyu Village Council (Sl.No. 31 of the VCM list) as per the Nagaland Village and Area Council Act 1978 Section 9 and Sub-section 1(a) for conviction in the Court of Law on 05/02/96 at 2.30 P.M. ("for condemned (sic, contempt) of Court").

It is contended by the Petitioner that as soon as he was elected Chairman of the Village Council by the elected members of the Village Council, he began to function as Chairman with effect from 21-3-96.

2. Mr. T. Koza, learned Counsel for the Petitioner submits that the order of removal of the Petitioner from the membership of the Village Council is not sustainable in view of the clear provision laid down in this regard in Section 9 of Nagaland Village and Area Councils Act, 1978 inasmuch as learned A.D.C. has no jurisdiction whatsoever to pass any order of removal. It is further submitted that the competent authority to exercise power in this regard is the State Govt. under the relevant provisions of law. It will be helpful to quote the entire Section 9:

9. (1)The State Government may remove any member of a Village Council from his office:

- (a) Who is convicted of any offence involving moral turpitude by a Court of law, or
- (b) Who refuses to act, or become incapable of acting or
- (c) Who is declared to be insolvent, or
- (d) Who has been declared by notification in the Gazette to be disqualified for employment in the Public Service, or
- (e) Who without an excuse or sufficient ground in the opinion of the State Government absents himself from the majority of meeting in a year of Village Council, or
- (f) Who has been guilty of misconduct, in discharge of his duties or of any disgraceful conduct, and two third of the total members of the Village Council at a meeting recommend his removal.

(2) No Person who has been removed from his office under Clause (a) or Clause (d) of Sub-section (1) shall be eligible for re-election except with the previous permission of the State Government obtained by such person in the prescribed manner.

On perusal of the aforesaid provision of law, it is crystal clear that only the State is vested with the power of removal of members from the Village Council. In this view of the matter, the order issued by the learned A.D.C. on 29th March, 1996 has no sanction of law. Accordingly the said order of removal issued by the learned A.D.C. is quashed. In fact the Petitioner immediately on receipt of the

order of removal had made representation to the Deputy Commissioner, Kohima. On 1st April, 1996 Deputy Commissioner, Kohima had written to the A.D.C. Tseminyu asking him to review decision to take corrective measures.

3. While issuing notice of motion on 8-5-96 this Court had passed an interim order by which the order issued by the A.D.C. on 29-3-90 was stayed. During the pendency of Civil Rule 71(K) 96, the learned A.D.C. passed another order on 7th June, 1996 directing the Petitioner among other things to submit the "Chairman Seal to Head G.B. of the village within 10-6-96." Notice of motion was issued in Civil Rule 87(K) 96 on 11-6-96 and interim order was also passed suspending the impugned order dated 7th June, 1996. It was stated further that the Petitioner shall continue to function as Village Council Chairman. As such it is submitted that the Petitioner is continuing as Village Council Chairman till today.

4. Further it is submitted that during the pendency of the above two writ petitions, the learned A.D.C, Tseminyu has increased the total membership of Village Council members by 3 (three). According to Mr. T. Koza such action is taken in order to defeat the claim of the Petitioner as Chairman of the Village. In regard to the increase of three additional VCMs over the already approved list of 48 members issued by the Government, a letter dated 27 June, 1996 issued by the Secretary (Home) was addressed to the A.D.C. questioning his competence in taking such action. Obviously the action of the learned A.D.C. to increase the members of Village Council is unauthorised.

5. Government has filed counter. I have heard Mr. I. Jamir, learned Sr. Govt. Advocate. It is contended on behalf of the Government that although the Petitioner was elected Chairman by 29 members of the total membership of the Village Council, till today no approval as such has been conveyed as regards the Chairmanship of the Petitioner, According to Mr. Jamir, there have been many complaints against the election of the Petitioner as Chairman. It is, however, fairly conceded that the duty of the learned A.D.C. is simply to forward and he has no duty to perform as regards acceptance or non-acceptance of the Chairmanship of the Petitioner by his independent action. Although it has been submitted that approval by the Govt. as regards the election of Village Chairman is necessary, according to Mr. T. Koza once a village Chairman is elected, he begins to function as such unless he or she is removed in accordance with the provisions laid down in this regard, whether or not Govt. approval is conveyed. Section 7 of Nagaland Village and Area Councils Act, 1978 prescribes the manner in which Chairman of a village Council is chosen Section 7 reads:

7.(1) The Village Council will choose a member as Chairman of the Council.

(2) During the absence of the Chairman from any sitting of the Village Council a member of the Council nominated by the Chairman shall act as Chairman.

6. On close scrutiny of Section 7, it appears although approval as such is conveyed by the State Government, such action does not appear to be mandatory in as much as once Village Chairman is elected by the elected

members of the village council unless such Chairman is removed under the relevant provision of law, in my view a person who is elected Chairman shall hold the post of Chairman in whether or not approval is conveyed. At the same time the impugned order dated 7th June, 1996 was issued not because approval has not come from the Government but because the Petitioner has been removed by A.D.C. as VCM. It may also be stated that none has really challenged before a competent authority the validity of the election/selection of the Petitioner as Chairman of the Village Council.

7. In the light of the submissions made on behalf of the parties and on perusal of the various documents and in the light of my findings above, these two petitions are allowed. The impugned order dated 7-6-1996 issued by the learned A.D.C. Tseminyu is also quashed.

I pass no order as to costs.