
(2008) 08 GAU CK 0031
In the Gauhati High Court

B.T. Murry

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Citation : (2008) 4 GLT 288

Hon'ble Judges : Ketulhou Meruno, J

Bench : Single Bench

Judgement

K. Meruno, J.—Heard Mr. E.Y. Renthungo, learned Counsel for the petitioner, Mr. N. M. Jamir, learned Government Advocate for the State respondents and Mr. L. Wabang, learned Counsel for respondent No. 4.

2. The petitioner was appointed as Chairman of Sanis Village vide Notification No. COUN-1/88-89, dated 24.3.06, pursuant to a meeting held by the entire citizens of Sanis Village, wherein the petitioner was unanimously elected/selected as the Chairman of Sanis Village and the same was approved by the competent authority. The trouble arose when respondent No. 3 forwarded an application submitted by 12 Village Council Member (VCM) of Sanis Village Council for removal of the present petitioner. Pursuant to the said complaint, the petitioner was removed from the office of the Chairman of the Village Council vide order dated 22.4.08 and on the same day by notification dated 22.4.08, the respondent No. 4 namely K. Nchumbemo Murry was declared selected/elected as Chairman of Sanis Village. The writ petitioner has challenged the said removal order and appointment of respondent No. 4 as Chairman of Sanis Village. Counter on behalf of State respondents has been filed as well as the Misc. Application No. 150(K)/08 filed by the respondent No. 4, which has been treated as counter of respondent No. 4 in this present writ petition.

3. I have heard the learned Counsel appearing for the parties at length and also perused the case cited by the learned Government Advocate of a Division Bench of this Court as reported in *Vesopa v. State of Nagaland* 1995 (1) GLT 455. In this reported case relied upon by the learned Government Advocate, it has been

rightly held by their Lordships, that a meeting of the Village Council has to be summoned and it is in that meeting that members of the Village Council have to choose among themselves a Chairman of the Village Council.

4. In para 4 of the counter of the respondents, the respondents have given a detail justification and in Clause (iv) of the said para, the respondents have stated that in pursuant to the approval as initiated by a letter dated 10.4.08, the SDO(C), Sanis (respondent No. 3) by letter dated 01.5.08, directed the Head GB of Sanis Village to select/elect a new Chairman. Accordingly, the Village Council in its meeting held on 9.5.08, selected/elected respondent No. 4 as new Chairman who was supported by 13 VCMs out of 24 VCMs (1VCM expired in the midst of controversy). In Sub-clause (vii) it is stated that the Court may give direction to the respondent authority to summon a meeting of VCM.

5. In para 10 of the counter of the respondent No. 4, the only substantial grounds raised by the respondent No. 4 is that, the petitioner has already handed over charge to the applicant (respondent No. 4) on 21.6.08, therefore the instant writ petition does not survive. The petitioner has filed affidavit in reply to the said of the said respondent No. 4 and in para 10 has out rightly denied the averments that he handed over charge to the respondent No. 4 on the date so mentioned.

6. After hearing the learned Counsel for the parties and considering the entire matter, this Court is constraint to see that the impugned removal order dated 22.4.08 has been signed on 25.4.08. Similarly, the notification dated 22.4.08, appointing respondent No. 4 as Chairman of Sanis Village though issued on 22.4.08 has been signed on 29.5.08. Also the letter dated 1.5.08 written by respondent No. 3 to the Head GB of Sanis Village informing him that Shri B. T. Murry has been removed from the post of Chairman of Sanis Village and therefore, directed the Head GB to select/elect new Village Council Chairman of Sanis Village and to submit on or before 10.5.08 for further necessary action. Curiously enough when the respondent No. 3 had directed the Head GB of Sanis Village to convene a meeting to select/elect new Chairman vide his letter dated 1.5.08, the impugned order dated 22.4.08 and notification dated 22.4.08 could not have been issued before the said meeting was convened as per the order dated 1.5.08. It is also observed that before a meeting is convened to choose a Chairman, the impugned notification dated 22.4.08 appointing the respondent No. 4 as Chairman has been issued purportedly on 29.5.2008, to show that the Notification dated 22.4.08 has been issued only after the Village Council held the meeting to choose the Chairman on 09.5.2008 pursuant to the Letter of the Respondent No. 3 dated 01.5.2008. This action of the respondents is highly illegal and cannot be allowed to stand.

7. Mr. N. M. Jamir, learned Government Advocate appearing for the State respondents at the very outset fairly concedes that the said order dated 22.4.08 issued on 25.4.08 and impugned notification dated 22.4.08 issued on 29.5.08 are not sustainable in law. Mr. Jamir, learned Government Advocate, in support of

the Government action further submits that in view of Section 22 of the said Act, 1978, the control of the Village Council is vested in the various officers as specified in the said section and therefore, the action of respondent Government is justified. With regard to this stand of the Government, the attention of this Court has been drawn to paras 10,11 and 12 of the Judgment of the Division Bench dated 03.12.2007 in the Writ Appeal No. 34(K)/07, wherein the Division Bench held as follows:

10. However, the learned Counsel for the State Ms. Y. Longkumer pointed out that u/s 22 of the Act, the control of the Village Council is vested in the various officers as specified in the said section. Therefore, the expression control takes with it the power to approve or disapprove the election of the Chairman conducted by the Village Council. We are unable to accept the submissions of the learned Government Counsel for the following reasons.

11. Chapter-II of the Act deals with the area council which obviously consists of a member of village. The said area council also consists of elected members and elected Chairman u/s 42 it is stipulated once again that the control over the area council is vested with the various offices referred to u/s 42, a provision similar to Section 22 which is already noticed earlier. However, Section 40 specifically stipulates that election disputes regarding the election of any of area council is to be referred to the State Government Section 40 reads as follows:

40. If a dispute arises as to the election of any member of an Area Council, the matter shall be referred to the State Government whose decision thereon shall be final.

12. Having regard to the scheme of the Act, we have to construe the expression control appearing in Sections 22 and 42 does not take within its sweep the resolution of an election dispute. This is obvious from the fact that in so far as the election dispute to the area council are concerned they are treated differently u/s 40 and are not treated to be the part of the control contemplated u/s 42. In which case we do not have any reason to assign any other meaning to expression control occurring u/s 22 of the Act.

Since the same submissions made by the learned Counsel for the State was not accepted by the Division Bench in Writ Appeal No. 34(K)/07, the same submission made by Mr. Jamir, the learned Counsel for the State, in this Writ Petition is also not accepted in view of the Judgment in dated 03.12.2007 Writ Appeal No. 34(K)/07.

8. With regard to the other reported case of this Court as relied by the learned Government Advocate, it has been held that a meeting of a Village Council has to be summoned and it is in that meeting that members of the Village Council have to choose among themselves a Chairman of the Village Council. Therefore, in any view of the matter, a Chairman of the Village Council has to be chosen as contemplated u/s 7(1) of the said Act of 1978. As per the Act, there is no dispute with regard to the manner in which a Chairman of the Village Council has to be

chosen. However, the only dispute that arises is the removal or termination of a Chairman once chosen, elected or selected. The whole Act is completely silent with regards to the removal/termination of a duly chosen, elected/selected Chairman. Though u/s 9(1), (a), (b), (c), (d), (e), (f) and (2), it has elaborately enacted the "Power to remove member", the power to remove a Chairman, has been completely and conveniently left out for reasons best known to the authorities who framed the said Act. This is the grey area of the Act, which has been left open to the authorities to expound and mould the Office the Chairman in accordance to their whims and fancies taking shelter under the cover of Section 22 of the said Act, which the Division Bench, in its Judgment dated 03.12.2007, did not accept the stand of the State Government. In the absence of any specific provision in the Act with regard to the removal/termination of a Chairman, lots of controversies have arisen and many cases have come up before this Court. However, in absence of such provision the Court have not been able to give any comprehensive decision with regard to the termination/removal of the Chairman. I consider it is high time that this controversy should be settled once and for all by the State Government by enacting a comprehensive policy with regard to the removal/termination of a Chairman, once he is duly chosen elected/selected as a Chairman as per the provision of Section 7(1) of the said Act.

9. Coming back to the writ petition and the issues raised in the writ petition, in my considered opinion and as conceded by the learned Government Advocate that both the impugned order and notification dated 22.4.08 are not sustainable in the eyes of law, the same are hereby quashed and set aside. Since the order dated 1.5.08 directing the Head GB to convene a meeting to elect/select a new Village Council Chairman also flows from the impugned order and notification dated 22.4.08, the said impugned letter dated 1.5.08 is also accordingly quashed and set aside.

10. In the result and in view of what has been discussed above, the respondent authorities are directed to issue fresh notice to the village authorities to convene a meeting to select/elect or choose anew Chairman of the Village Council as contemplated u/s 7(1) of the said Act. Also as discussed above, since the whole Act is silent about the removal/termination of a once duly chosen, elected/selected Chairman of a Village Council, the respondents are directed to amend the Act and bring in a comprehensive policy to deal with the manner in which a Chairman is to be terminated or removed in the same manner as power to remove a member has been provided u/s 9 of the said Act.

11. In view of the interim order dated 02.7.2008, staying the impugned order and notification dated 22.4.2008, if the petitioner is still continuing as the Chairman of the said Village Council, keeping in view of the day to day administration of the affairs of the Village and the welfare of the Villagers in all development projects by the Villagers and the Village, till a new Chairman is selected/elected, the petitioner shall continue as Chairman and shall vacate

forthwith upon the appointment of the New Chairman.

12. With the above observations and directions, this writ petition stands disposed.

13. No costs.

14. Registry is directed to furnish a copy of this Judgment and Order to the Chief Secretary to the Government of Nagaland and Commissioner & Secretary, Law for information and necessary action.