
(1982) 02 GAU CK 0021

In the Gauhati High Court

Case No : Civil Rule No. 627 of 1980

Chang Kong and Another

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Naga Hills District (Constitution of Town Committee) Rules, 1954 — Rule 4, 4(1), 5, 8(1)

Citation : (1982) 1 GLR 703

Hon'ble Judges : N. Ibotombi Singh, J; B.L. Hansaria, J

Bench : Division Bench

Advocate : S.K. Sen and A.R. Paul Mazumder, for the Appellant; A.G. and Government Advocate, Nagaland, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—The two Petitioners have challenged the order of the Deputy Commissioner, Tuensang, dated 7.10.80 by which he notified the appointment of four persons as nominated members of the Tuensang Town Committee. This had been done in supersession of an earlier order dated 16.9.80 by which the Petitioner No. 2 had been appointed as one of the nominated members. It may be stated that Petitioner No. 1 is an elected member of the Town Committee. Subsequent to the aforesaid order of 7.10.80, a meeting of the Town Committee was held on 6.11.80, which elected Respondent No. 7 as the Vice-Chairman of the Town a Committee. The prayer in this petition under Article 226 of the Constitution is to quash the order of 7.10.80 as well as to declare the election of Respondent No. 7 as Vice-Chairman to be illegal.

2. The infirmity to the order of 7.10.80 alleged by the Petitioners relates to violation of Rule 5 of the Naga Hills District (Constitution of Town Committees) Rules, 1954 (hereinafter called the Rules). To appreciate the challenge, we have to read rules 4 and 5.

4. (1) Each Town Committee shall consist of six members of whom four shall be

elected and two nominated:

Provided that if the Governor in any case so directs, all the members of a particular Committee may be appointed by the Governor for such period as may be specified.

(2) The nominated members shall be appointed by the Deputy Commissioner subject to the approval of the Governor and a member so appointed shall hold office during the pleasure of the Governor.

5. Notwithstanding anything contained in the preceding rule, the Governor may, by notification in the Gazette, increase the number of both the elected and nominated members of a particular Town Committee.

3. A reading of Rule 5 leaves no manner of doubt that increase in the number of members of a particular Town Committee has to be done by the Governor, and the same has to be notified in the Gazette. Admittedly no such notification increasing the number of nominated members from two to four, or for that matter to three, had been issued. The submission of the learned Advocate General, Nagaland, to sustain the impugned order despite lack of the aforesaid notification is that as the order itself was published in the Nagaland Gazette and as the order of nomination had the approval of the Governor, we should impliedly read the approval of the Governor to the increase in number also. We have found it difficult to, accept this submission for two reasons: (1) the notification about the increase in number has to be by the Governor or any functionary on his behalf as permitted by the Rules of Executive Business, The impugned order as at Annexure-B was however passed by the Deputy Commissioner and the notification in the Nagaland Gazette dated January 15, 1982, is also in the name of the Deputy Commissioner, As such, the notification cannot be held to be by the Governor. (2) As Rule 5 speaks of the Increase in number not only of the nominated members but also of the elected members, we entertain no doubt that the Rules visualise that increase in number over and above that mentioned in Rule 4(1) has to precede the actual appointment of persons. We have taken this view because it cannot be comprehended that Increase even in the number of elected members should be simultaneous with the election of, such members. As the rule-making authority could have visualised one procedure for increase of the number of nominated members and another for elected members so it has to be held that increase in the number has to proceed the actual appointment.

4. As In this case the increase in number was admittedly not gazetted either before or even simultaneously of the appointment of the four persons in question, the nomination cannot be upheld and the same is therefore set aside. The meeting of 6.11.80 which elected Respondent No. 7 was held with the persons nominated vide order dated 7.10.80. But that is not valid in the eye of law. The result is that there was no valid Constitution of the Town Committee by 6.11.80. As such no meeting could have been held on that day to elect a Vice-Chairman as contemplated by Rule 8(1) of the Rules. The election of Respondent

No. 7 as Vice-Chairman is the meeting of 6.11.80 bad thus no force of law and the same has therefore to be set aside.

5. The result is that the impugned order at Annexure-B of the petition is quashed and the election of Respondent No. 7 as Vice-Chairman is declared illegal. It may be stated that the nomination of Petitioner No. 2 as well as to meet its grave as he had been so appointed along with two others which could not have been done without increasing the number of nominated members to three, as against two fixed by Rule 4(1). As that increase was without any notification in the Gazette as required by Rule 5, the nomination of the Petitioner No. 2 cannot also be sustained.

6. The Petition stands allowed as aforesaid.