
(2016) 08 MEG CK 0001
In the Meghalaya High Court
Case No : Appeal from PIL No. 6 of 2016

Cherubin Thongni	Vs	APPELLANT
State of Meghalaya		RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Assam and Meghalaya Autonomous Districts (Constitution of District Council) Rules, 1951 — Rule 126

Citation : (2017) AIR(Meghalaya) 12 : (2017) 2 NEJ 24

Hon'ble Judges : Shri Dinesh Maheshwari, CJ. and Shri S.R. Sen, J.

Bench : Division Bench

Advocate : H.L. Shangreiso, R. Majaw and M. Prasad, Advocates, for the Petitioners; N.D. Chullai, Sr. G.A. Meghalaya and Ms. P. Nangbri, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. In this petition, filed as Public Interest Litigation (PIL), the petitioner has pointed out that 6 (six) constituencies of the Khasi Hills Autonomous District Council ("KHADC") had gone unrepresented for the last ten months after the earlier elected members had resigned; and the respondents were not taking steps for holding fresh elections for such constituencies.

2. After the learned counsel appearing for the Government and KHADC were given time on 27.07.2016 to take instructions and it was found that the concerned officers had not extended them requisite instructions, this Court on 19.08.2016, imposed costs and posted the matter today. The order dated 19.08.2016 reads as under:-

"19.08.2016

In this petition, filed as Public Interest Litigation (PIL), the petitioner has pointed out that 6 (six) of the constituencies to the Khasi Hills Autonomous District Council ("KHADC") are unrepresented for the last about ten (10) months due to

resignations tendered by the Members earlier elected; and that the respondents have not taken requisite steps for holding fresh elections for such constituencies.

The petitioner has indicated the grievance that such 6 (six) unrepresented constituencies are being deprived of developmental schemes and projects since after the resignations of elected Members, causing prejudice to the citizens apart from violation of their democratic right of representation in KHADC.

Taking note of the subject-matter of this petition, on 27.07.2016, we granted time to Mr. N.D. Chullai, learned Sr. GA appearing for the respondents No.1 to 3 as also to Ms. P Nongbri, learned counsel appearing for the respondents No.5 and 6, to complete all their instructions and in the meantime, the notices were ordered to be issued to the respondent No.4, returnable in three weeks.

As per the office report and AD card placed on record, it is found that the respondent No.4-the Chief Electoral Officer, Government of Meghalaya, Shillong was served with the notice on 04.08.2016. However, nobody has chosen to appear for the said respondent. On being queried about the instructions, the learned Sr. G.A. appearing for the respondents No.1 to 3 as also learned counsel appearing for the respondents No.5 and 6, made a prayer for adjournment with the submissions that they have not received the requisite instructions.

On being queried further, the learned Sr. G.A. points out that the instructions were sought from the Commissioner and Secretary to the Government of Meghalaya, District Council Affairs Department, Shillong (respondent No.2) by way of a communication dated 27.07.2016, but he has not received any response thereto. Learned counsel appearing for the respondents No.5 and 6 on the other hand submits that she sought the requisite instructions from the KHADC in the first week of August, 2016, but no response has been received by her either.

It could hardly be appreciated that the concerned officers of the Government and the District Council would choose not to extend the instructions to the respective counsel in relation to the matters pending in this Court; and it is entirely an unacceptable state of affairs that the matters be adjourned repeatedly, only for the purpose of counsel completing their instructions from the concerned departments/offices.

The present one is a PIL directly concerning the very basic democratic right of representation in the District Council and nothing is forthcoming from the respondents as to why the election have not been proposed within a reasonable time; as to why the constituencies are going unrepresented as yet?

Though at the request of the learned Sr. G.A. appearing for the respondents No.1 to 3 and learned counsel appearing for the respondents No.5 and 6 we grant another opportunity to them to complete their instructions but only after imposing costs in the sum of Rs.5000/- (five thousand) on the respondents No.1 to 3 as also another Rs.5000/- (five thousand) on the respondents No.5 and 6 for

today's adjournment. The amount of costs shall be deposited in the account of the Meghalaya State Legal Services Authority.

It is made clear that if all the instructions of the learned counsel are not found complete on the next date, the officers concerned may be summoned to appear in person at their costs and consequences. The amount of costs today imposed may be recovered by the Government as also by the KHADC from the respective officers, for whose faults and defaults the instructions of the respective counsel are not complete today.

List this matter on 29.08.2016."

3. Today, upon taking up of this matter in the first session sitting of the Court, it was pointed out on behalf of the Government that the amount of costs has been deposited and it was submitted that the reason for not holding elections had been that the Government received a letter dated 05.02.2016 from the Secretary to the Executive Committee, KHADC, purportedly raising objection against holding of fresh elections at the cost of the District Council. It was, on the other hand, found that the respondents No. 5 and 6 had not even deposited the amount of costs. Taking note of the overall circumstances, we granted time to the learned counsel for the parties, if the parties would consider taking all corrective measures today itself; and looking to the fact that the matter concerned deprivation of 6 (six) constituencies of KHADC of representation for over 10 (ten) months and thereby defeating the very basics of democracy, we posted the matter in the second session sitting of the Court itself while noticing and observing as under:-

"Today, on being queried, learned Government Advocate submitted in the first place that the amount of costs of Rs.5000/- (Rupees five thousand) payable by the respondents No. 1 and 3 was deposited in the Meghalaya State Legal Services Authority on 26.08.2016 and receipt to that effect has been placed before us for perusal. However, surprisingly, it was stated by the learned counsel representing KHADC that they are "in the process of depositing the amount of costs today".

It is rather surprising and an entirely unacceptable state of affairs that respondents No. 5 and 6 have chosen to ignore the Court's order to the extent that even the amount of costs has not been found deposited at the time the matter is taken up for consideration today.

On being queried about the instructions, the Government Advocate submitted that "for holding elections of the District Council, the expenditure is to be borne by the District Council by way of deduction from the Council's share on Royalty; but then, the Department of the District Council Affairs received a communication from the Secretary to the Executive Committee of KHADC dated 05.02.2016, purportedly raising objection against holding of Bye-Election of the vacant seats at the cost of the District Council?.

The learned counsel, Mr. N. Mozika appearing for respondent No. 4, on the other hand, submitted that the elections in question for District council are being conducted by the State Government; and the Chief Electoral Officer of Meghalaya had no role in such elections.

Although the respondents No. 5 and 6 related with KHADC, by their conduct of not instructing the counsel until the earlier occasion and then, not depositing the amount of costs until the matter has been taken up today, have effectively shown their total disregard to the rule of law; and, in the given circumstances, we would have considered denying them any further hearing in the matter but then, the learned counsel for respondents No. 5 and 6, while apologising on their behalf has also submitted that they are ready to take steps immediately for holding elections. We have enquired if they are ready to take up the matter and send the appropriate notification/communication today itself? The learned counsel for respondents No. 5 and 6 responded with the submission that they shall be advised appropriately.

Though we find the approach of the respondents No. 5 and 6 seriously questionable which prima facie raise question if they have respect for the rule of law and respect towards the democratic system of due representation of all the constituencies but and still, on the submissions made by the learned counsel, we are inclined to give them yet another opportunity, if the corrective measures are taken today itself and the costs are also deposited before the matter is taken up next.

Having said so, we defer the consideration of this matter until second session sitting of the Court today. The matter be listed again in the supplementary cause list, to taken up in the second session sitting today."

4. Now it has been given out on behalf of the respondents No. 5 and 6 that the amount of costs has been deposited today by them with the Meghalaya State Legal Services Authority and the receipt to that effect has been placed before us for perusal. Further, it is submitted that the letter dated 05.02.2016 was sent by the Secretary to the Executive Committee, KHADC in the circumstances where the KHADC was facing financial crunch; but now, with comparative stability on finances, KHADC is willing to cooperate in holding of the elections, for which, appropriate decision is to be taken by the Government. It is submitted that today, the Secretary to the Executive Committee, KHADC has sent another communication to the Commissioner and Secretary, District Council Affairs Department, Government of Meghalaya in this regard.

5. To put the record straight, we deem it proper to take note of the contents of the letter dated 05.02.2016 which was referred by the Government Advocate in the first session sitting of the Court and copy whereof has been placed before us for perusal that reads as under:

"Office of The Executive Committee Khasi Hills Autonomous District Council
Shillong

No. DC.XXV/Genl/PF/81/98-2016/13 Dated Shillong the 5th February, 2016.

To,

The Commissioner and Secretary,
District Council Affairs Department,
Government of Meghalaya,
Shillong.

Sub:- Proposal for holding elections to the 6 (six) vacant seats in the Khasi Hills Autonomous District Council.

Sir,

With reference to the above cited subject, the Executive Committee, Khasi Hills Autonomous District Council having understood that the Bye Election to the 6 (six) vacant seats in Khasi Hills Autonomous District Council will be conducted very shortly and that the expenditure involving thereof will be about Rs.2.00 Crores (Rupees two crores) only (approx) for which it is likely to be borne by the Council by way of deduction from the Council's share on Royalty which is not appropriate without consultation and consent of the Khasi Hills Autonomous District Council.

Since the financial position of the Council is in dire strait, there will be another financial setback in the event such deduction is made from the Council's Shares on Royalty.

Under the aforesaid circumstances, it is requested that the expenditure to be incurred for conducting the said election may not be at the cost of the Khasi Hills Autonomous District Council.

Thanking you.

Yours faithfully,

Sd/-

Secretary to the Executive Committee, Khasi Hills Autonomous District Council
Shillong"

6. The communication sent today by the same Secretary to the Commissioner and Secretary, District Council Affairs Department, Government of Meghalaya reads as under:

""Office of The Executive Committee Khasi Hills Autonomous District Council
Shillong

No. DC.XXV/Genl/PF/81/98-2016/14 Dated Shillong the 29th August, 2016.

To,

The Commissioner and Secretary,
District Council Affairs Department,
Government of Meghalaya,
Shillong.

Sub:- Proposal for holding elections to the vacant seats in the Khasi Hills Autonomous District Council.

Ref:- Letter No. DC.XXV/Genl/PF/81/98-2016/13 dated 5.2.2016.

Sir,

In inviting a reference to the letter indicated above, I am directed to inform you that the Executive Committee, Khasi Hills Autonomous District Council was not consulted for conducting the Bye Election to the vacant seats of the Member within the Khasi Hills Autonomous District Council, Shillong.

Therefore, the Executive Committee has practically no role to take the decision and it is up to the Government to decide on the matter at the earliest. However, the Executive Committee willingly accepts any decision of the Government for filling up the vacant seats for the interest of the general public.

Yours faithfully,

Sd/-

Secretary to the Executive Committee, Khasi Hills Autonomous District Council
Shillong"

7. Having gone through the contents of the letter so issued today, we have expressed our reservations that unnecessary issue has been indicated therein and the Secretary concerned has chosen not to specifically withdraw his letter dated 05.02.2016 to which, learned counsel for the KHADC prayed for some time to advise the concerned respondents appropriately. Now, the learned counsel has reverted with the submissions the respondents of KHADC are withdrawing the letter dated 05.02.2016 and a communication to that effect is in the process of being sent to the Government.

8. During the course of hearing, we have also taken note of the fact that one of the seats of Jaiñtia Hills Autonomous District Council ["JHADC"] is also lying vacant. Though JHADC is not as such a party in this petition, but we have enquired from the learned counsel Mr. N. Mozika, who is the standing counsel of JHADC in this Court about his instructions in that regard. Mr. N. Mozika, after taking instructions would submit that according to JHADC, they are waiting for the Government's Notification for election; and they had never addressed any communication raising any dispute or suggesting any obstacle in holding of the elections.

9. Upon the aforesaid submissions by Mr. P.S. Nongbri for KHADC and Mr. N. Mozika for JHADC; and having taken note of all the facts and circumstances of the case, we have posed query to the learned senior Government Advocate, Mr. N.D. Chullai appearing for respondents No. 1 to 3 that now, when nothing of the alleged impediment in holding of elections exists, as to what steps immediately the Government is willing to take because seats are lying vacant for more than 10 (ten) months and each days? delay is in contradiction to the fundamental rules of democracy, and to the requirements of Constitution of India as also the Assam and Meghalaya Autonomous Districts (Constitution of District Council Rules) Rules, 1951. At request, the senior Government Advocate was given time to take instructions as also to advise his clients appropriately.

10. The submissions with which the learned senior Government Advocate has reverted to this Court, *prima facie*, indicate that in the District Council Affairs Department of the Government of Meghalaya, the matter is not being taken up with the requisite seriousness. The Government Advocate has submitted that his only instructions are that the matter will have to be placed before the Cabinet and that it is now being processed. We had again asked the Government Advocate that looking to the seriousness and urgency of the matter, immediate decision on this aspect appears requisite and if is not taken, it may lead to inference that the Government of Meghalaya is found failing in the system of constitutional governance. Mr. N.D. Chullai, even after taking further instructions, have nothing concrete to offer except the repeat of submissions that the matter has to be taken up for cabinet decision.

11. The learned senior Government Advocate, of course, would also submit that the Governor is to act on the advice of the Council of Ministers.

12. Looking to the position that on behalf of the Government, only the proposition of avoidance were coming up and nothing of urgency or expedition was shown on their part, we have also posed the query that as to how, only on the basis of the said letter dated 05.02.2016, the legal requirements of holding elections of the District Council were ignored? In this context, we have also enquired to as to what had been the decision of the Government on the said letter dated 05.02.2016? The Government Advocate is not in a position to answer these queries and has only made the submission that the matter may be deferred for 2 (two) days.

13. We find in the first place seriously questionable the position that the requisite elections to the KHADC were not held within a reasonable time; and as to how, merely on the basis of a letter of KHADC dated 05.02.2016, raising objections about expenditure, the requirement of holding elections could have been ignored by the Government altogether? Moreover, it remains further questionable as to why the elections at least as regards one vacancy in JHADC were not taken up when no any impediment was even suggested by the said District Council.

14. While we may appreciate that today, upon our raising serious questions and

concern that the very fundamental of democracy were being defeated when elections were not held within reasonable time, at least on behalf of the Khasi Hills Autonomous District Council, reasonable propositions have come forward and they have categorically shown willingness to cooperate in holding of elections but at the same time, we are unable to appreciate that despite the seriousness of issue, as to why this matter could not have been immediately taken up today itself and until the time of dictation of this order i.e., 3.35 p.m. by all the concerned in the State Government?

15. Rule 126 of the Rules of 1951 authorise the Governor to call upon the constituency to elect a person to fill the vacancy by way of election and reads as under:

"126. Casual Vacancies

(1) When the seat of a member of the District Council become vacant or the election of a member is declared void, the Governor shall, by notification in Gazette, call upon the constituency to elect a person to fill the vacancy within such time as may be specified in the notification, and these Rules shall apply, as far as may be, to the procedure for the election of a member to fill such a vacancy.

(2) If a vacancy occurs in the case of a nominated member, the Governor shall nominate to the vacancy a person having the necessary qualification under these Rules."

16. True, it is that the Hon"ble Governor is ordinarily required to act on the advice of the Council of Ministers but, on the specific and distinct role assigned to the Governor in the State of Meghalaya in the unique and singular provisions contained in the Sixth Schedule to the Constitution and in the Rules framed thereunder, including the Rules of 1951, we are prima facie of the view that if the Governor is not given appropriate advice by the Council of Ministers for holding of elections to the District Council within reasonable time, the basics of democracy cannot be allowed to fail. In the given circumstances, this Court, in order to ensure that only and only the rule of law prevails, may consider requesting the Hon"ble Governor to notify elections to the vacancies in KHADC and JHADC at the risk and cost of the State Government.

17. Upon our having said so, Mr. N.D. Chullai prays for yet further time to confer with the officers concerned and to advice them appropriately. Mr. N.D. Chullai submits that his latest instructions are that the Department concerned is in the process of preparing a note while proposing a date of election; and it is tentatively suggested that the election may be held on 15th November, 2016, as revision of electoral roll is likely to take some time.

18. In the totality of circumstances, while expressing our reservations that the matter is not being proceeded with reasonable expedition by the State Government; and it has not been clarified as to why the elections were at all put

on hold merely for the letter dated 05.02.2016 for Khasi Hills Autonomous District Council; and as to why elections were not at all considered for Jaiñtia Hills Autonomous District Council, we still defer consideration of the matter today at the request of the senior Government Advocate.

19. List the matter tomorrow i.e., 30.08.2016.