

(2003) 09 GAU CK 0004
In the Gauhati High Court
Case No : WP (C) No. 232 of 2003

Debabrata Kaloy

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985 — Rule 159(1)

Citation : (2004) 3 GLR 408 : (2005) GLT 274 Supp

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : A.K. Bhowmik, S. Ghosh, A. Deb, Debbarma and S.R. Dey, for the Appellant; T.K.R. Roy, B.R. Bhattacharjee, B. Das, A. Ghosh and S. Chakraborty, for the Respondent

Judgement

T. Vaiphei, J.—Heard Mr. A.K. Bhowmik, learned senior counsel, assisted by Mr. S. Ghosh, learned counsel appearing for the petitioner. Also heard Mr. T.K. Roy, learned Advocate General, Tripura, assisted by Mr. S. Chakraborty, learned counsel, for the respondent No. 1 and Mr. B. R. Bhattacharjee, learned senior counsel, assisted by Mr. A. Ghosh, learned counsel for the respondent No. 3 as well as Mr. B. Das, learned senior counsel, assisted by Mr. A. Ghosh, learned counsel for the respondent Nos. 2, 4 and 5.

2. This is an application under Article 226 of the Constitution of India filed by the petitioner for quashing the impugned notice dated 24.07.2003, the impugned list of business dated 29.07.2003, the impugned bulletin dated 29.07.2003 and the impugned proceedings and resolution of the meeting of Tripura Tribal Areas Autonomous District Council (hereinafter called "TTAADC") held on 31.07.2003 and all subsequent and consequential actions of the respondents and also for directing the respondents to allow the Executive Committee headed by him to continue in the Office.

3. The brief facts of the case are that the TTAADC is an Autonomous District

Council formed under 6th Schedule of the Constitution of India and that the law governing TTAADC is regulated by the Tripura Tribal Areas Autonomous District Council (Constitution, Election and Conduct of Business) Rules, 1985 (hereinafter referred to as "1985 Rules"). It is stated by the petitioner that the District Council is a body corporate having perpetual succession and a common seal and that the District Council consists of 28 members, who are elected on the basis of adult suffrage from Territorial Constituencies, out of which 25 membership of the Territorial Constituencies are reserved for Scheduled Tribes. The Governor of Tripura is vested with the power to nominate not more than two as members of the District Council. The writ petitioner further states that the elected members of the District Council hold office for a term of five years from the date of appointment for the first meeting of the Council after the general election to the District Council. It is also stated that the last election of the TTAADC was held in the month of May 2000, wherein 28 members were elected, out of which one member vacated his office. With two members nominated by the Governor, the total membership strength at present is 29. The writ petition further states that out of 29 members presently constituting the TTAADC, 18 members belong to I.N.P.T. party, whereas 9 members belong to C.P.I.(M) party. It is also stated that in the said District Council the I.N.P.T. party is having 18 members and having commanded a majority in the District Council, the I.N.P.T. party is governing the District Council and that the respondent No. 3 is the Chairman of the TTAADC since 2000 and that the respondent No. 3 also belongs to the I.N.P.T. party. The petitioner further states that he has learnt from reliable sources that a group of 7 members of the District Council, including the respondent No. 3 and one executive member, all of whom belonging to I.N.P.T. party, have joined hands with the elected members of the C.P.I.(M) party and hatched a conspiracy to remove the present Executive Committee in a most unconstitutional manner and that in furtherance of the common object, the respondent No. 2 issued the notice dated 24.07.2003 for convening a meeting of District Council on 31.07.2003 at 11.00 a.m. in Council Bhawan at Khumulwng by giving 7 days notice to all members purportedly on the basis of requisition made in writing 19 members of the Council to convene such a meeting in terms of the proviso to Rule 165(2) read with Rule 199(1) and Rule 175, of the 1985 Rules. The petitioner also states that he came to learn that the aforesaid group of 7 members of the Council called! on the Governor of Tripura and made a written submission on 22.07.2003 intimating him the fact of deserting the I.N.P.T. party by the said group and also their intention to form a new political party. The writ petition further states that on 24.07.2003 a notice under Rule 192 of the 1985 Rules was submitted by the 9 members of the TTAADC to the respondent No. 4 intimating their intention to move a resolution for removal of the respondent No. 3 from the Office of the Chairman of TTAADC under Clause (c) of Rule 155 of the 1985 Rules and the same was also brought to the notice of the Governor of Tripura by the letter dated 26.07.2003 and also about the illegal notice dated 24.07.2003 and requested His Excellency for cancellation, of the summons issued on 24.07.2003 and also for directing the Secretary of TTAADC to first convene a meeting of the

council for consideration of the notice for removal of respondent No. 3. The writ petition also states that the respondent No. 4 by the letter dated 29.07.2003 forwarded the list of business to be transacted, wherein, surprisingly the subject of No Confidence Motion and also against whom the No Confidence Motion would be moved were not mentioned and that on 31.07.2003 at the beginning of the meeting of the TTAADC the bulletin dated 29.07.2003 was furnished to the members including the petitioner in the house and the said bulletin contained a motion (discussion on matters of urgent public importance for short duration) to be moved by Shri Radha Charan Deb Barma, leader of the opposition with the following subject :-

"Recently a new party named N.S.P.T. has been formed by way of defection from I.N.P.T. and 7 elected members of Distt. Council belonging to I.N.P.T. have joined this new party. They have withdrawn support from the executive committee under the leadership of Shri Debabrata Koloy. In the circumstances regarding the confidence motion against the present Executive Committee."

It is further stated that because of this unfair and unjustified conduct of the respondents, the members of the I.N.P.T. party raised protest against the discussion on the No Confidence Motion against the Executive Committee headed by the petitioner and ultimately walked out of the house in protest against the decision of the respondent No. 3 in allowing the discussion on the said No Confidence Motion. The petitioner states that in the evening of 31.07.2003 he came to know from a press release issued by the TTAADC on 31.07.2003 that the No Confidence Motion against the Executive Committee headed by the petitioner was accepted in that meeting on a motion moved by the leader of the opposition, Shri Radha Charan Deb Barma. It is submitted by the petitioner that the proceedings and the resolution of the meeting dated 31.07.2003 of TTAADC are illegal being in contravention of the Rule 159(1) of the 1985 Rules and also against the principle of natural justice and is mala fide. It is also submitted by the petitioner that the Secretary to the TTAADC is to be appointed by the Governor with the concurrence of the District Council in terms of Rule 161(1) of the 1985 Rules and inasmuch as he was appointed by the Deputy Chief Executive Officer by a Notification dated 25.03.2003 and not by the Governor of Tripura, his appointment was illegal and consequently the notice dated 24.07.2003 issued by him to convene a meeting of the District Council on 31.07.2003 is null and void. It is also submitted by the petitioner that by not acting upon the notice issued by the members of the I.N.P.T. under Rule 192 of the 1985 Rules intimating their intention to move a resolution for removal of the respondent No. 3 from the Office of the TTAADC, the respondents committed illegality. In view of the fact that the entire proceeding starting from the notice dated 24.07.2003 to the meeting and resolution passed on 31.07.2003 being ultra virus the provisions of the 1985 Rules, the petitioner prays that the writ petition be allowed and the respondents be directed to allow him to continue to run the administration of the TTAADC and to prohibit the replacement of the Executive Committee headed by him on the basis of the aforesaid resolution.

4. The respondent Nos. 2, 4 and 5 contested the writ petition by filing their counter affidavit. In their counter affidavit, the said respondents submit that in view of the status and position of the Chairman of the TTAADC which is akin to the position and status of the State or Union Legislatures, this Court would be slow and loath to interfere with the proceedings of the Council. The State-respondent also claim that the admitted position being the petitioner having lost the confidence of majority of the members of the District Council, he ought to have resigned gracefully in order to show respect to the will of the majority and his approaching this Court demonstrates that he has no regard for the democratic process or norms. The respondent further state that it was within the knowledge of the petitioner that he was removed from the said post on 31.07.2003 and that he should not have described himself as Chief Executive Member of the Council. The respondents, deny that the petitioner was unaware of the move to remove him from his post for several weeks prior to 24.07.2003. In view of this, according, to the State-respondents, non-mentioning of the purpose of the emergent meeting on 31.07.2003 does not prejudice him in any manner whatsoever and as such there was substantial compliance with the provision of Rule 159(1) of the 1985 Rules. The counter affidavit also, denies that the petitioner and other members of his party received the bulletin dated 29.07.2003 only on 31.07.2003. It is asserted by the State-respondents that a photocopy of the Peon Book of the Council dated 29.07.2003 which is Annexure-R/1 of the counter affidavit would show that the bulletin was actually received by the Private Secretary of the petitioner on 29.07.2003.

In so far as the authority of the respondent No. 4 to issue the impugned notice is concerned, the respondent point out that one Shri N. Darlong, who was in temporary charge of the Secretary of the Council during the absence of the respondent No. 4, also convened a meeting of the Council on 23.05.2003 for electing the Executive Committee including Chief Executive Member in which the petitioner was elected as Chief Executive Member. Therefore, the respondents submit that if the respondent No. 4 is not the Secretary and is not competent to issue notice dated 24.07.2003 or any other notice, the election of the petitioner as Chief Executive Member would also be nullity in the eye of law by applying the same logic employed by him. In any case the respondents argue, the meeting was convened by the Chairman himself and the Secretary, i.e. respondent No. 4 only conveyed the said decision of the Chairman and the invalidity of his appointment on the facts and circumstances of the case cannot vitiate the notice issued by him.

5. In so far as the factual matrix, according to the respondents are concerned, it is stated that on 23.07.2003, 8 members of the District Council belong to C.P.I. (M) party, one Independent Member and one Nominated member submitted a requisition to the respondent No. 4 for convening a meeting of the Council on the ground that 7 A.D.C. members of I.N.P.T. party got split and have launched a new party in the name of National Socialist Party of Tripura (N.S.P.T.) and that though 7 A.D.C. members belonging to the newly formed N.S.P.T. party

submitted a representation to the Governor of Tripura on 22.07.2003 withdrawing their support from the Executive Committee headed by the petitioner, thereby reducing him to a minority. Accordingly, notice was given by them under Rule 191(1) and 191(2) of the 1985 Rules to convene session of the District Council for floor test. They also demanded that No Confidence Motion be listed in the agenda for discussion. It is also stated by the State-respondents that on 23.07.2003 these members of the I.N.P.T. party have submitted a letter to the respondent No. 4 stating that they had withdrawn support in writing from, the present Executive Committee headed by the petitioner on 22.07.2003 and requested that a special meeting of the Council be arranged on 25.07.2003 and that as soon as the requisition was received by the respondent No. 4 from 10 members of the District Council, the same was placed before the respondent No. 3. When the said notice fulfilled all the criteria, the respondent No. 3 having satisfied that an emergent situation has arisen, ordered for convening an emergent meeting of the District Council by giving 7 days notice to the members by scheduling the meeting on 31.07.2003 at 11.00 a.m. The respondents admit that the notice did not indicate that No Confidence Motion would be moved, but it is stated that in the Business Advisory Committee meeting the same was discussed and decided that No Confidence Motion would be moved on 31.07.2003 against the present Executive Committee headed by the petitioner. It is also stated that on 29.07.2003 the impugned bulletin was issued on the said motion and was duly received by the petitioner on the day itself. It is also averred that the time allocated by the Business Advisory Committee for various classes of business to be transacted in the special session of the District Council on 31.07.2003 and 01.08.2003 were also forwarded and received by all the members on 29.07.2003. According to the respondents, the petitioner had clear notice of the subject matter of the meeting convened on 31.07.2003. In so far as the notice dated 24.07.2003 submitted by the members of the I.N.P.T. party intimating their intention for removal of the respondent No. 3 from the Office of the Chairman is concerned, the answering respondents claim that since the resolution could not be move before 06.08.2003 as per Rule 192 of the 1985 Rules, he would decide about the exact date of moving the resolution after the business of the special session was over. He accordingly directed the respondent No. 4 to put up the file on 05.08.2003. However, in the afternoon of 31.07.2003 the answering respondent No. 3 having tendered his resignation from the Office of the Chairman with immediate effect, the said notice stood infructuous. It would appear that after his resignation, one Sri Mangasajai Mog was appointed by the Governor to perform the duties of Chairman with immediate effect and until a new Chairman is elected. The answering respondents also point but that when the No Confidence Motion was put to vote, 17 votes were registered in favour of the motion and "Nil" vote was registered against the motion (apparently due to walk out staged by the petitioner and his party) and thereafter, the respondent No. 3 issued a certificate declaring that No Confidence Motion has been passed against the Executive Committee headed by the petitioner. The answering respondents submit that there was no infirmity in the

actions taken by the respondent No. 3 and the writ petition has no merit. The answering respondents also submit that in any view of the matter the writ petition does no longer survive in view of the fact that the petitioner having lost majority in the house has now been replaced by any Executive. Committee headed by a new Chief Executive Member.

13. On going through the pleadings of both the parties and also after hearing the submissions of the learned counsel appearing for the rival parties, I find that the principal question to be determined to this case is whether the No Confidence Motion notice dated 24.07.2003 issued by the respondent No. 4 complies with Rule 159(1) of the 1985 Rules. To appreciate the position, it will be appropriate to make a brief survey of the relevant provisions of Sixth Schedule of the Constitution and of the 1985 Rules.

14. Para 2(6) of the Sixth Schedule empowers the Governor of Tripura to make rules for the first constitution of District Councils and provides for rule making power in respect of the composition of the District Councils and Regional Councils and the allocation of seats therein, the procedure and the conduct of business (including the power to act notwithstanding any vacancy) in the District and Regional Councils and also the appointment of officers and staff to the District and Regional Councils.

Rule 6 of the 1985 Rules provides that the District Council shall consist of 28 members who shall be elected on the basis of adult suffrage from territorial constituencies all of which shall be single member constituency. The first proviso to Rule 6 says that three fourth of the membership of territorial constituencies shall be reserved for Schedule Tribes and the second proviso thereof provides that the Governor may, in addition, if he considers it expedient, so to do nominate not more than two persons as members of the District Council.

Rule 154 of the 1985 Rules provides that the District Council shall in accordance with Rules 168 to 171, elect one of its members to be the Chairman thereof and so often as the office of the Chairman becomes vacant, the District Council shall elect another member to be the Chairman. Then Sub-clause (2) provides that the Chairman shall exercise such powers, perform such functions and discharge such duties as are required or as may be specified by or under the sixth schedule to the Constitution of the rules and orders made thereunder.

Rule 155 of the 1985 Rules provides that a member holding office as Chairman of the District Council shall vacate his office if he ceases to be a member of the District Council; or may resign his Office, at any time, by writing under his hand, addressed to the Chief Executive Member and he may be removed from his office by a resolution of the District Council as provided in Rule 192.

Rule 163A of the 1985 Rules provides the powers and functions of the Chairman. Rule 163A (1) says that the Chairman shall preside over all the meeting of the District Council. Rule 163A(7) provides that the Chairman shall, from time to time, give direction regarding the procedure to be adopted for conduct of

business of the Committee constituted by him.

Rule 165(1) of the 1985 Rules provides that after the conclusion of the first meeting of the Council, the Council shall be summoned from time to time by the Chairman at such place and time as the Chairman may appoint. Rule 165(2) again provides that summons to the members for the meeting shall ordinarily be issued by the Secretary of the District Council at least fourteen days in advance of the date so appointed for the meeting and the proviso thereof states that if the Chairman thinks that a situation has arisen for which any emergent meeting of the Council shall be convened he may convene the meeting after giving seven days" notice to the members.

Rule 191(1) of the 1985 Rules provides that upon a requisition made in writing by not less than nine members of the Council, the Chairman shall convene a meeting of the Council, as soon as may be, but not later than 30 days from the date of requisition. The proviso to the above Rule however, says that not more than two such meetings shall be requisitioned within any one Calendar year. Rule 191(2) also provides that such requisition should be delivered to the Secretary of the Council and should contain the matter or matters proposed to be discussed at the meetings.

Then most crucial provision for the purpose of this case, i.e., Rule 159 of the 1985 Rules which may be reproduced as under : -

"159(1) : The Executive Committee shall be collectively responsible to the District Council and may be removed on a vote of no confidence passed by a majority of the members of the District Council at a meeting specially convened for the purpose.

(2) In case of removal of the Executive Committee, a Chief Executive Member for the new Executive Committee shall be elected within forty-eight hours by the District Council.

(3) If the District Council fails to elect the Chief Executive Member within the time specified under Sub-Rule (2), the Governor shall appoint any member of the Council to be Chief Executive Member and two other members of the Council as the Members of the Executive Committee. The Executive Committee so constitute shall function until it is replaced by an Executive Committee in accordance with the provisions of Sub-rule (2) of Rule 157."

15. A bare reading of Rule 159(1) will show that the Executive Committee has a collective responsibility to the District Council and it can be removed on a vote of no confidence passed by a majority of the members of the District Council at a meeting specially convened for the purpose. At this stage it may be appropriate to dispose of the submission of Mr. B.R. Bhattacharjee, learned senior counsel for the respondent No. 3 that Rule 159(1) does not contemplate the removal of Chief Executive Member which is different from Executive Committee, for which no specially convened meeting is called for. In other words the submission of Mr.

Bhattacharjee is that only when the Executive Committee as a whole is sought to be removed by means of no confidence motion that a meeting should be specially convened for that purpose and not otherwise. In reply, Mr. A.K. Bhowmik, learned senior counsel for the petitioner takes me to Rule 158(2) of the 1985 Rules which says that when the Chief Executive Member vacates or resigns his office under Sub-rule (1) of Rule 158, the other members of the Executive Committee shall also ceased their office as such, and a new Executive Committee shall be constituted in execution of Sub-rule (2) of Rule 157. The aforesaid provisions clearly show that the Executive Committee cannot be differentiated from a Chief Executive Member in so far as removal, vacation or resignation from the office is concerned. What the Rule provides is that if no confidence motion is moved against the Chief Executive Member, then the motion is equally directed against the entire members comprising of the Executive Committee. Therefore, I am not impressed by this submission of the learned counsel for the respondent No. 3 and the same is rejected.

16. Coming now to the question of validity of the notice dated 24.07.2003 issued by the respondent No. 4, the provisions of Rule 159(1) of the 1985 Rules, in no uncertain term laid down that the Executive Committee may be removed on a vote of no confidence passed by a majority of the members of the District Council at a meeting specially convened for the purpose. The learned counsel for the petitioner submits that the notice dated 24.07.2003 clearly shows that the meeting was not convened for no confidence motion in as much as nowhere in the notice was such purpose mentioned. He further submits the expression "a meeting specially convened for the purpose" will go to show that if the special meeting being contemplated was for the purpose of a vote of no confidence, the same should be unambiguously reflected in such a notice. On the other hand, Mr. B.R. Bhattacharjee, learned senior counsel for the respondent No. 3 strenuously argues that the notice dated 24.07.2003 cannot be read in isolation and must be read in the context of the political developments taking place in those days. It is his contention that since the petitioner was already aware of the fact that such a move against him was in the offing for several weeks earlier, no prejudice could have been caused to him by the non-mentioning of the purpose of the meeting in the said notice. Accordingly, he submits that the notice dated 24.07.2003 substantially complies with Rule 159(1) of the 1985 Rules, and the same is not liable to be interfered with by this Court.

17. The procedure for convening a meeting of the members is prescribed in Rule 165, which has been reproduced earlier. According to Rule 165(2), summons to the members for the meeting shall ordinarily be issued by the Secretary of the District Council at least 14 days in advance of the date so appointed for the meeting. Though in terms of this provision, the minimum period for notice is 14 days, by reason of the use of the word "ordinarily" therein, even if less than 14 days notice is given, such notice will not be vitiated since the same will satisfy the doctrine of substantial compliance. However, if it is a case of emergent meeting, the proviso empowers the Chairman to convene such a meeting after

giving 7 days notice to the members. A combined reading of the said proviso and the second limb of Rule 159(1) will show that for the purpose of convening a meeting for a vote of no confidence against the Executive Committee, such a meeting should be convened not only after giving 7 days notice to the members but also after disclosing that the meeting is convened for the purpose of no confidence vote against the Executive Committee. To my mind, the said procedure is mandatory in nature and any violation thereof will vitiate the entire proceeding of the meeting conducted in pursuance of such notice. I reach this conclusion regard being had of the object of the rules and the requirement to observe the principles of natural justice before removing an elected member like the Executive Committee of the District. However, if the purpose of the meeting is not for the removal of the Executive Committee but for some purpose not affecting the right of members, then the said provisions can be said to have been substantially complied with even if the purpose of the meeting is not disclosed in such a meeting and if less than 7 days notice is given to the members.

18. In the instant case, it is an undisputed fact that the meeting notice dated 24.7.2003 did not mention the purpose of the meeting. The petitioner was thus kept in the dark about the purpose of the meeting. He could not have been left to imagine the purpose of the meeting or to find out by himself the purpose thereof when his right to continue as the Chief Executive Member was being threatened. I have also examined whether the bulletin dated 29.07.03 in respect of the no confidence motion of the leader of the opposition will substantially comply with Rule 159(1). It is a settled law that when a statute prescribes the manner of doing things in a particular manner, such things must be done in that particular manner or not at all.

19. The Id. counsel for the petitioner states that the bulletin dated 29.7.2003 was furnished to the petitioner only on 31.7.03, i.e., on the day of the meeting itself. However, the answering respondent deny this statement of the petitioner and relied on a photocopy of the extract of the Peon Book dated 29.7.03 to demonstrate that the bulletin was actually received by the petitioner on 29.7.03 through his Private Secretary. Be that as it may, it is no longer in dispute that the purpose of the meeting was not mentioned in the Notice dated 24.7.03 nor was 7 days notice given for convening the special meeting. In that view of the matter. It is difficult to accept the contention of the answering respondents that the impugned notice dated 24.7.03 substantially complied with Rule 159(1) of the 1985 Rules. Therefore, the entire proceeding of the vote of no confidence against the petitioner commencing from the impugned notice dated 24.7.03 culminating in the removal of the Executive Committee headed by the petitioner smack of arbitrariness, unfairness, mala fide and disrespect for democratic process.

20. In so far as the authority of the respondent No. 4 to issue the impugned notice on the ground that he was not appointed by the Governor is concerned, in terms of the proviso to Rule 166(2), it is the Chairman and not the Secretary, who is empowered to convene an emergent meeting. Once the Chairman has

taken a decision to convene such meeting, it is immaterial whether such meeting notice has been issued by the Secretary or officiating Secretary or in-charge Secretary, after all, such official only acts as the channel of communication or the conveying authority. See Union of India (UOI) and Others Vs. Sumitra Devi (Smt) and Others, and also AIR 1952 Gau 40. In the instant case, also, there is no dispute at the bar that the decision to convene the emergent meeting was taken by the Chairman of the District Council. Moreover, as contended by the respondents, the petitioner himself Was elected Chief Executive Member in a meeting notice issued by one N. Darlong, who was then in temporary charges of the Secretary Of the District Council. It may also be noticed that the said S.M. Lodh, i.e., the respondent No. 4, was directed to hold the charge of Secretary to the District Council when the petitioner was the Chief Executive Member of the Council. That being the position, the petitioner is now barred by estoppel/acquiescence from challenging the authority of the respondent No. 4 to issue the impugned notice.

21. However, in view of the subsequent developments, the question is whether any relief can be granted to the petitioner. It is unmistakable from the submissions of the counsel appearing on both sides in the course of hearing that the petitioner has lost the support of the majority in the House since 31.7.2003, if not on 24.7.2003 and that a new Executive Committee headed by a new Chief Executive Member has now been formed in the District Council. Under the circumstances, I am of the opinion that quashing the impugned notice and the proceedings emanating there from will not serve any purpose. On the contrary, to grant the relief claimed by the petitioner for allowing the Executive Committee headed by him to continue its functioning will amount to restoring an Executive Committee without the support of the majority in the Council. This is against the principle of parliamentary form of Government contemplated in the 1985. In the view that I have taken, I do not think it necessary to decide on the validity of the action or inaction of the respondent No. 3 in the matter of convening a meeting for his removal as the Chairman of the District Council.

22. For what has been stated above, no effective relief can be granted to the petitioner. Accordingly, the writ petition stands disposed of with the aforesaid observation. No order as to costs.