

(1964) 02 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 177 of 1963

Edwingson Barah and Others

APPELLANT

Vs

Henry Cotton and Others

RESPONDENT

Date of Decision : 05-02-1964

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 22(1), 25
Constitution of India, 1950 — Article 226

Citation : AIR 1965 Guw 49

Hon'ble Judges : G. Mehrotra, C.J.; C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : S.M. Lahiri and N.M. Lahiri, for the Appellant; J.C. Medhi, B.S. Guha, R.K. Goswami, D.N. Medhi, Sallen Medhi, S.K. Ghose, B.K. Das, H. Goswami and B.M. Goswami, for the Respondent

Judgement

G. Mehrotra, C.J.—This is a petition under Article 226 of the Constitution by which the Petitioners have asked for an appropriate writ quashing a notice purported to be issued by Respondent No. 1 and communicated to the Petitioners by the Secretary, District Council, United Khasi-Jaintia Hills, Autonomous District Shillong, fixing a date for the election of the Chief Executive Member of the Executive Committee of the said District Council. The notice says that as a no-confidence motion has been passed against the Executive Committee, the Chief Executive Member of the Executive Committee has to be elected and the notice has fixed up the date on which the election is to be held. The Petitioners who are members of the Executive Committee of the District Council of the United Khasi-Jaintia Hills contend that the notice is invalid.

2. Mainly two points have been urged by the counsel for the Petitioners. Firstly it is contended that the Secretary had no jurisdiction to issue the notice purporting to sign it on behalf of the Chair-man of the Executive Committee. Secondly it is urged that the no confidence resolution which is alleged to have been passed on the 14th September 1963, was not validly passed on the facts alleged by the

opposite parties in their own affidavit.

3. As we are Inclined to accept the second contention of the Petitioners, it is not necessary to deal with the first point raised by them. Rule 22(1) of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 (hereinafter called the Rules) provides as follows:

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." it is not disputed that the council consists of 24 members. The opposite parties themselves have filed a supplementary affidavit which shows that on the date when the no-confidence resolution is said to have been passed, only 11 members were present. It cannot, therefore, be said that the resolution was passed by the majority of the members of the District Council even if it is accepted that all the members who were present, voted in favour of the no-confidence resolution.

4. The contention of Dr. Medhi for the opposite parties is that the no-confidence motion could be passed by the majority of the members present at the meeting. The question centers round the interpretation of Rule 22 (1) of the Rules. The interpretation put by the counsel for the opposite parties is accepted, then the words "a majority of the members present" will have to be inserted in place of the words "a majority of the members of the District Council" in the rule. The language in our opinion, is clear and unless the resolution passed by a majority of the members, of the District Council, it cannot be said that it has been validly passed. Dr. Medhi contends that if the framers of the rule intended that it has to be passed by a majority of the members of the District Council, then the language would have been as "the majority of the total number of members of the District Council". As we have already indicated, the use of the words "a majority of the members of the District Council" clearly implies that it is not to be passed by a simple majority of the members present at the meeting, in the rules, it would appear that wherever the framers of the rules have intended that a resolution should be passed by the majority or certain percentage of the members present, they have used that expression clearly such as in Rule No. 71 (2), which provides that if the Chairman is of opinion that the motion is in order, he shall "read the motion to the Council and shall request those members who are in favour of leave being granted to rise to their places and, if not less than one-fourth of the members present rise accordingly, the Chairman shall intimate that leave is granted and that the motion will be taken on such day, not being more than two days and not less than twenty-four hours from the time at which leave is asked for as he may appoint. Reliance is then placed on Rule 25 which reads as follows:

Save as otherwise provided in the Constitution and in these rules, all questions at any sitting of the District Council shall be determined by a majority of the votes of the members present and voting, other than the Chairman, or person acting

as such.

This clause only says that a simple majority of the members present can pass a resolution only if it is not otherwise provided in the Constitution and In these rules. In our opinion Rule 22(1) deals with passing of a no confidence resolution against the¹ Executive Committee and Rule 25 is subject to the provision of the Rule 22(1). In Rule 25 also the framers of the rules have used the words "a majority of the votes of the members present and voting." Those words are absent in Rule 22 (1).

5. In our opinion the resolution of no-confidence alleged to have been passed by the members on the 14th September, 1903 is invalid and thus the Petitioners are entitled to the relief claimed. We accordingly allow this petition, quash the notice and the memo issued on the 14th September, 1963 and the Rule is made absolute. In the circumstances the parties will bear their own costs.