
(2016) 09 GAU CK 0063
In the Gauhati High Court
Case No : WP (C) No. 421 (AP) of 2016

Gemar Padu

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 08-09-2016

Acts Referred:

Arunachal Pradesh Panchayat Raj Act, 1997 — Section 63(1), Section 63(2)

Citation : (2016) 5 GauLT 52

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : Mr. K. Ete, Sr. Additional A.G. and Mr. R. Saikia, Advocate, for the Respondent; Mr. M.K. Jini, Mr. T. Gadi, Mr. D. Loyi, Ms. S. Ketan, Mr. G. Bam, Mr. M. Rime and Mr. J. Jini, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

A.K. Goswami, J. (Oral) - Heard Mr. K. Jini, learned counsel for the petitioners. Also heard Mr. K. Ete, learned senior Additional Advocate General, Arunachal Pradesh, appearing for respondent Nos. 1 and 2 and Mr. R. Saikia, learned counsel appearing for respondent No.3.

2. The respondent No.3 was elected as Anchal Samiti Chairman (ASC) of 01-Aalo East Lower Anchal Samiti (hereinafter referred to as "Samiti"). The Samiti is consisting of 9(nine) Anchal Samiti Members (ASMs). 6(six) ASMs out of 9(nine) submitted a representation dated 30.05.2016 to the respondent No.2 expressing intention to move "no confidence motion" against the respondent No.3 under Section 63(1) and (2) of the Arunachal Pradesh Panchayati Raj Act, 1997, as amended, (for short, "1997 Act").

3. By the aforesaid requisition dated 30.05.2016, request was made to the Member Secretary, the respondent No.2, to issue notice and initiate the process of no confidence motion. On 01.06.2016, the respondent No.2 issued an order, which runs as follows:-

"Whereas representation has been received from 6(six) anchal samiti member of 1 Aalo East lower anchal samiti. They stating that, they want to move no confidence motion against Shri Karsen Lollen ASC 1 Aalo East Lower Anchal Samiti.

Therefore hearing has been scheduled and fixed on 16th June 2016 in my chamber at 11:00 hrs."

4. It appears from the said order that the hearing was fixed on 16.06.2016 at his office chamber. It also appears from the copies given that notice was given only to 7 (seven) ASMs.

5. It is pleaded in the writ petition that statements of the writ petitioners were recorded by the respondent No.2 on 16.06.2016 and as the requisite members of ASMs had expressed no confidence, the petitioners were expecting removal of respondent No.3 from the post of Chairman. As no action was taken, a representation dated 11 06.2016 was filed but no action was taken on the said representation also.

6. Aggrieved, the petitioners approached this Court by filing WP(C) No. 359(AP)/2016 and the said writ petition was disposed of by an order dated 20.07.2016 directing the Member Secretary to dispose of the representation submitted by the petitioners within a period of 7 (seven) days from the date of receipt of a certified copy of the order. Liberty was also given to file a fresh representation on or before 25.07.2016 before the Member Secretary along with a certified copy of the order.

7. The respondent No.2, thereafter, passed an order dated 29.07.2016, which reads as follows:-

"Government of Arunchal Pradesh Office of the Member Secretary 01 -Aalo East Lower

Anchal Samity

Dated Aalo the 29th July 2016.

Seen the representation filed by one Shri Limi Loyi ASM Pakam-II dated 22.07.2016 received in this office on 26.07.2016 for removal of Shri Karsen Lollen. Chairperson of 01-Aalo East Lower Anchal Samiti. Also seen the enclosed copy of Hon''ble High Court order dated 20.07.2016 passed in vide WP(C) No.359 (AP) 2016, Shri Limi Loyi & Ors. v. State of A.P. & Ors. wherein the Hon''ble High Court has directed this office to dispose of the application of the petitioner dated 11.07.2016.

Perused the Representation dated 11.7.2016. From the perusal of the said representation filed by Shri Gemar Pedu, ASM, Yeggo Yoji-Yore, it reveals that he requested this office to remove Shri Karsen Lollen, Anchal Chairperson of 01-Aalo East Lower Anchal Samiti on the basis of vote of no confidence been conducted on 16.06.2016 where 6 (six) ASM out of nine ASM have voted against Shri

Karsen Lollen.

In this regards it is to clarify that, no notice was issued for No-confidence motion to be conducted on 16.06.2016 nor was the same conducted by this office. The notice as referred by the applicant was an order for preliminary hearing to record the statement on their intention to move no confidence dated 30.05.2016 of the 6(six) ASM in order to ascertain the authenticity of their intention of application and the reasons thereof of their move. And also, no notice to the incumbent Chairperson Shri Karsen Lollen was issued to in order to give an opportunity of being heard or directed to present on the said date.

It is also to clarify that before conducting said hearing, several complaints were received from many persons of different villages of 01-Aalo East Lower Anchal Samiti on 10.06.2016, 14.06.2016 complaining against 5 (five) ASM who unfortunately are the signatory of intention application, for serious monetary irregularities and misappropriation of fund meant for the needy people with sufficient documentary proof.

Apart from that a legal notice was also received from the counsel of Shri Karsen Lollen stating that a writ petition vide WP(C) No. 334 (AP)/2016 (Lige Nochi & Ors. v. State of A.P. & Ors.) have been move for direction from Hon"ble High Court for removal of 4(four) ASM who filed intention to move no confidence for their removal thus required this office not to proceed for no-confidence motion until final disposal of the said writ petition. Hence this office kept the further proceeding of no-confidence awaiting the outcome of the said writ petition.

Now, it is also informed to this office by incumbent Chairperson Shri Karsen Lollen that the Deputy Commissioner Aalo vide letter no. W.01-Aalo East Lower Anchal Samiti dated 12th July 2016 has forwarded the complaints against 4 (four) ASM to the Secretary, Panchayat Raj Department, Govt. of Arunachal Pradesh for further disposal of the complaints, which is pending for disposal.

Since Vote of No-confidence has not yet conducted and under above grounds this office cannot remove the incumbent Anchal Chairperson Shri Karsen Lollen as claimed in the representation dated 11.07.2016. Hence, till final disposal of all the matters pending before different forum, further proceeding for No-confidence is hereby decided to keep in abeyance.

With above observation the representation dated 11.07.2016 and 22.07.2016 filed by Shri Gemar Pedu, ASM Yeggo Yoji-Yora and Shri Limi Loyi, ASM Pakam-II respectively are disposed of accordingly in compliance of Hon"ble High Court direction.

Sd/- (Mumya Kakki)

Member Secretary;

01-Aalo East Lower Anchal Samiti"

8. An affidavit was filed by the respondent No.3. However, no affidavit is filed by

the respondents No.1 and 2.

9. Mr. Jini has submitted that so long as the petitioners are ASMs, they are entitled to exercise their right to express no confidence against the Chairman and that apart, the allegations were levelled against the petitioners No. 1, 2, 3 and 5 only after the requisition notice dated 30.05.2016 expressing their intention to move no confidence was submitted. He has submitted that such complaints have no basis and the same are concocted to frustrate the move undertaken by the petitioners. It is submitted by him that the stand taken by the respondent No.2 that the order dated 01.06.2016 fixing the date of hearing on 16.06.2016 was an order of preliminary hearing to record statement to ascertain the authenticity of the intention to move no confidence motion, is not tenable in law as no hearing is required to ascertain the intention of the ASMs and respondent No.2 is required to act on the requisition submitted. The plea taken by the respondent No.2 that the complaints against 4(four) ASMs had been forwarded cannot be a ground not to hold a meeting and a duty is cast on the respondent No.2 to take the requisition of no confidence to its logical conclusion. In the attending facts and circumstances, Mr. Jini has submitted that the respondent No.2 may be directed to convene a meeting to discuss the no confidence motion and to enable the Members of the ASMs to exercise their right of vote to ascertain whether the motion is carried or lost.

10. Mr. Ete, learned Additional Advocate General, Arunachal Pradesh has submitted that pendency of a complaint against some of the petitioners cannot stall the requisition given by the petitioners and it will be another matter if and when the petitioners are disqualified as in that event they will not remain ASMs. He has also endorsed the submission of Mr. Jini that preliminary hearing under 1997 Act is not contemplated as the petitioners had expressed intention to move a no confidence motion and not for removal under Section 64 of the 1997 Act. He has further submitted that the statements recorded did not amount to expression of vote of no confidence against the respondent No.3 and in any view of the matter, the notice dated 01.06.2016 was not issued to all the ASMs. He has submitted that in case there is a direction by this Court to the respondent No.2 to hold the meeting to discuss the no confidence motion based on the requisition dated 30.05.2016, appropriate action will be taken by the respondents.

11. Mr. Saikia has submitted that in view of the fact that the Secretary of the Panchayat Department is not arrayed as a party respondent, the writ petition is liable to be dismissed for non-joinder of necessary party, as according to him, Secretary of the Panchayat Department is a necessary party. He also submits that the writ petition involves disputed questions of fact and, therefore, on both these two counts, the writ petition is liable to be dismissed. He has also submitted that as the complaints in respect of the petitioner Nos. 1, 2, 3 and 5 are not yet disposed of, it will be wholly inequitable to allow the no confidence motion to be proceeded with before any decision is taken by the authority.

12. I have considered the submissions of the learned counsel appearing for the

parties and have considered the materials on record.

13. It will be appropriate to quote Section 63 of the 1997 Act for better appreciation: -

"63. (1) A motion of no confidence may be moved by one-third of the total number of directly elected members of a Gram Panchayat or an Anchal Samiti or a Zilla Parishad against its Chairperson after giving at least seven days notice in writing to the Member Secretary or any other prescribed authority of Gram Panchayat or Anchal Samiti or Zilla Parishad of their intention to move such a motion.

(2) If the motion is carried by a majority of not less than two-thirds of the total number of directly elected members of the Gram Panchayat or an Anchal Samiti or a Zilla Parishad present and voting, the Chairperson shall cease to hold office.

(3) Notwithstanding anything contained in this Act, the Chairperson of a Gram Panchayat or an Anchal Samiti or Zilla Parishad shall not preside at a meeting in which a motion of no-confidence against him is under discussion, but he shall have the right to speak or otherwise take part in the proceedings of such meeting."

14. With regard to the plea of non-joinder taken by Mr. Saikia it does not appear to the Court that the Secretary of the Panchayat Department is a necessary party. Necessary party is a party in whose absence no effective adjudication can take place. The grievance of the writ petitioners is already noticed and there is no role to be played by the Secretary of the Panchayat Department in resolving the issues and, therefore, the plea raised regarding non-maintainability of the writ petition for non-joinder of necessary party has no merit. The plea taken that the writ petition raises disputed question of facts is mentioned only to be rejected. There is no disputed question of fact involved. In the affidavit that was filed, it has not been contended that the present writ petitioners had not submitted the requisition notice dated 30.05.2016 and, therefore, if a requisition notice is given by the requisite numbers of Members in accordance with law, the same has to be taken to its logical conclusion.

15. While Mr. Jini had urged that the order dated 01.06.2016 was in fact a notice for consideration of no confidence motion, the Member Secretary in his order had indicated that the same was only to ascertain as to whether there was an intention to go for a no confidence motion. The provisions of the 1997 Act do not contemplate ascertainment of intention of the ASMs to express no confidence motion in a hearing to be conducted by the Member Secretary and such a stand taken by the Member Secretary is wholly not tenable in law. But the issue pales into insignificance in view of the submission of Mr. Jini that the writ petitioners will be satisfied if the process is commenced by the respondent No.2 by issuing a fresh notice to consider the no confidence motion.

16. Perusal of the order dated 01.06.2016 indicates that notice was not given to

all the 9(nine) Members. In a meeting for no confidence motion, it is obligatory to issue notice to all the ASMs.

17. There is no denying of the fact that the petitioners are still ASMs. So long as the petitioner are ASMs, they cannot be divested of their obligations, duties and powers and, therefore, the contention advanced by Mr. Saikia that till such time a decision is taken by the competent authority with regard to the allegations against the petitioner Nos. 1, 2, 3 and 5, convening of meeting for consideration of no confidence motion should be kept in abeyance does not find favour of the Court. The complaints, it is noticed, were filed after requisition notice dated 30.05.2016 was given.

18. This Court in Hage Kobing v. State of Arunachal Pradesh & Ors. reported in 2015 (4) GLT 232, while interpreting Section 63 of the 1997 Act had held that the Member Secretary is empowered to convene the meeting of no confidence motion.

19. Considering the matter in its entirety and upon hearing the submissions of the learned counsel appearing for the parties, the order of the respondent No.2 dated 29.07.16 is set aside. The respondent No.2 is directed to issue notice to the ASMs and the respondent No.3 fixing a date for a meeting to discuss and consider the no confidence motion on the basis of the requisition dated 30.5.16 within a period of 15 (fifteen) days from the date of receipt of the certified copy of this order. The respondent No.3 will not preside over the said meeting and any ASM shall preside over the said meeting. However, the Chairman (respondent No.3) will have right to speak and otherwise take part in the proceedings.

20. Needless to say that in such meeting to be convened by the Member Secretary, the ASMs will exercise their right of voting and if the motion is carried by majority of not less than two-thirds of the total number of directly elected Members of the Samiti, present and voting, the Chairman shall cease to hold Office.

21. The petitioner is permitted to obtain a certified copy of this order and produce the same before the respondent No.2, for his doing the needful in terms of this order.

22. With the above observations and directions, the writ petition is disposed of.