
(1990) 08 GAU CK 0024
In the Gauhati High Court
Case No : Civil Rule Nos. 698 & 770

J.Kapathianga

APPELLANT

Vs

State of Mizoram and Another

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1991) 1 GLR 226

Hon'ble Judges : J.M.Srivastava, J and S.K.Homchaudhuri, J

Bench : Division Bench

Advocate : A.K.Bhattacharjee, A.M.Mazumdar, K.Agarwalla, M.Nath, S.S.Dey,
Advocates appearing for Parties

Judgement

J.M. Srivastava, J.—The petitioner assails dissolution of 124 village councils in Civil Rule No.698/1990 and 41 village councils in Civil Rule 150. 770/1990 by respective corresponding notifications issued in the year 1989 except two issued in the year 1990 by the respondents.

2. It appears from the statement Annexure1 with the affidavitin opposition, that the village councils of "College Veng" at sl. No. 2, Mualthuam "N" at si. No. 7 and Puankhai at sl. No. 11 had been dissolved due (sic, to) resignation of members and Shri A.K. Bhattacharyya, learned counsel for the petitioner has therefore not challenged the notifications impugned in regard to the said village councils which have therefore been excluded from consideration.

3. It further appears from Annexure1 with the affidavitinopposition that the village council of Thlengang at sl. No. 42 and village council of Date at sl. No. 76 had been dissolved after notice to the village council, to show cause against the proposed action and therefore the learned counsel for the petitioner has not pressed the petition in respect of the concerned notifications which have therefore been excluded from consideration.

Hereinafter impugned notifications would not include the above notifications.

4. The petitioner was member of the Legislative Assembly of the State of Mizoram and a nominated member of Chandmary West village council. The petitioner claims to have interest in the welfare of the public in general and Mizo people in particular, in the State of Mizoram. The petitioner has filed the petitions as public interest litigation to prevent subversion of democracy at the grass root level by the respondent Govt. of Mizoram by illegal dissolution of village councils before the expiry of three year term, because the members of the dissolved village councils were illiterate person in remote, farflung villages of Mizoram. Each village council was constituted for a term of three years from the date appointed for its first meeting. The village councils were functioning efficiently, but were illegally dissolved on political consideration, without any regard to the interest of the village councils by different notifications impugned in these petitions. In Civil Rule No.698 of 1990 the impugned notifications are Annexure A 1 to A124 and in Civil Rules No. 770 of 1990 the impugned notifications are Annexure A 1 to A41. The petitioner's contention in short is that the dissolution of the village councils was illegal in that the grass root level democratic institution of the village councils duly constituted by elected and nominated members had been subverted by the impugned action which was mala fide and was violative of principles of natural justice.

5. The petitioner and some others had earlier filed 4 similar petitions to challenge the dissolution of 12 village councils. C. R. 1.537,1538,1920 and 1921 of 1989, which had been allowed by this court by judgment and order dated 9.3.90 and the dissolution of the aforesaid 12 village councils had been set aside.

6. The respondents have resisted the petitions and have contended that the petitioner has no right to challenge the dissolution of the village councils with which he has no concern more so when the affected village councils have not questioned the action taken ; that the impugned dissolution except two had taken place in the year 1989, the petitions were delayed and this court should for reasons of delay not allow the petitioner relief under Article 226 of the Constitution of India. It was also stated at the Bar by Shri A. M. Mazundar, learned counsel appearing on behalf of the respondents that the respondent Govt. was taking all action to hold fresh elections for the constitution of the village councils that electoral rolls were under preparation and it was expected that the new village councils shall be constituted within a few months and accordingly there was no need for setting aside the impugned notifications, also because the process of restoration of the village councils which had been dissolved would also take some time to resume their activity which may not therefore be necessary and also that the term of aforesaid village councils was to end by November, 1990.

7. We have heard¹ Shri A. K. Bhattacharyya, learned counsel for the petitioner and Shri A. M. Mazumdar, learned counsel for the respondents, considered the respective submissions and the materials placed before us.

8. The village councils in the state of Mizoram are constituted in pursuance of the

provisions of Lushai Hills Village Councils Act, 1953, herein after referred as the "Act". Section 3 of the Act for constitution of village council provides that "there shall be a village council in each village", its subsection (2) provides for the strength of village council, dependant on the number of houses in each village minimum being five and maximum eleven and is subsection (3" provides that 1/3rd of the membership of village council shall be nominated by the Executive committee and the rest elected by the adults of the village in accordance with the Rules made by the District council under the Act ; Section 5 provides for duration of village council, that unless sooner dissolved under the provision of Section 25 of the Act, shall continue for three year; from the date appointed for its first meeting provided that life of a village council could be extended or cut short by the District council for a period not exceeding six months. Section 6 provides that member nominated to a village council shall hold office during the pleasure of the Exertive committee and its subsection 2 lay down, that subject to the proviso of subsection (1) all members both elected and nominated shall hold office during the life of the council ; Section 7 provides there shall be a President, Vicepresident and a Secretary in each village council and the Executive functions of the council shall be vested in these three ; Section 8 provides the functions ; Section 10 for collection of taxes ; Section 11 for Sanitation committee and Section 12 to 22 for conduct of business.

9. Section 25 is relevant, it provides the power to dissolve village council.

It reads as under;

"25(1) The Executive Committee may, by public notification, order the dissolution of a village council if, in its opinion, the Village Council is too inefficient or is not able to carry on the village administration or is acting in the manner prejudicial to the interest of the State or for any other reasons considered sufficient for such dissolution and issue orders for holding fresh election of the Village Council. Copies of all such orders shall also be sent to the Deputy Commissioner of the District."

"(2) The Executive Committee may, for such dissolution, issue order appointing any person or persons to assume charges of the Village Administration and also to Act as a Village Court for the remaining period of the term." Provided that if the Executive Committee considers it necessary so to do for the interest of general public, it may issue order for holding a fresh election of the Village Council at any time before the expiry of the remaining period.

"(3) If any Village Council has been dissolved under provisions of subsection 1, the Executive Committee shall lay before the District council at its first meeting after such dissolution, all the papers relating to the dissolution of the Village Council concerned ; and the matters shall be opened for discussion by the Members of the District Council."

"(41 So long as the Village Council acts as the Village Court under the law, the Village Council so dissolved shall cease forthwith to perform the functions of the

Village Court.

10. It may be noted that power to dissolve village council vests in the Executive Committee and it could be exercised if the Executive committee was of opinion that the village council was inefficient or was not able to carry on the village administration or was acting in a manner prejudicial to the interest of the state or for any other reason considered sufficient for such dissolution.

11. The Executive Committee under Clause 3 of Section 2 of the Act means the Executive Committee of the Lushai Hills District Council constituted under the Assam Autonomous District (Constitution of District Council Rules, 1951). There has been modification by the Mizo District Council (Miscellaneous Provisions) Order, 1972. Where by the earlier District Council were replaced by District Council for Chakmas, the Lakhers and the Pawis. It is not quite necessary to go into the changes but Executive Committee in Section 25 means the Executive Committee of the relevant District Council. How the Governor issued the impugned notification was not clear but since no dispute was raised on that score we have not considered it necessary or proper to inquire into it.

12. In so far as the first objection raised by the respondents that the petitioner has no right to move the petition was concerned, Shri A. M. Mazumdar their learned counsel has contended that the petitioner has nothing to do with the village councils which have been dissolved. The petitioner had first filed the earlier petitions and having succeeded had embarked upon the present adventure to question the dissolution of the other village councils for ulterior reasons that the concerned village councils not having questioned the dissolution, not having come to court, the petitioner could not have any right to challenge dissolution on their behalf.

13. Shri A. K. Bhattacharrya, learned counsel for the petitioner has submitted that the village councils were grass foot level democratic institutions with which all persons in the villages in the state were vitally concerned. The persons affected were ignorant of the law and the remedies available. The people lived in farflung mountainous region is in remote part of the State of Mizoram and hence the petitioner's right to challenge in public interest, the subversion of the grass root level democratic institutions by the Government itself, in malafide exercise of power of dissolution much before the expiry of term of three years for extraneous political consideration, without giving any opportunity to the village councils in such large number, should not even be doubted much less questioned. The learned counsel for the petitioner has vehemently urged that such illegal action on the part of the respondent Govt. could not be allowed to go unquestioned and that the petitioner had every right to question in public interest such illegal action of the respondent which was in clear violation, of the democratic values, which we all cherish and swear to uphold.

14. It may be that the petitioner directly has nothing to do with the village councils dissolved and it is true that the concerned village councils have not

questioned the dissolution; but we are not inclined to accept, that the petitioner cannot maintain the petitions for the reasons that the action impugned in these petitions is of considerable public importance, which affects almost the entire people in large number of concerned villages, where the grass root level democratic institution, the duly constituted village councils in large numbers were dissolved, thereby depriving the people affected of participation through their representatives in the administration of their own village. The people affected in remote inaccessible areas may well not be even aware of the law and the remedies available or may not have the resources or even the "will" or may be were just too apathetic towards the wrong which did not personally individually affect them but which undoubtedly was important and of vital public interest. The petitions do raise question of grave public importance which touch the very root of basic democratic institution by which we all do not tire to swear and accordingly, where such vital issue are raised or are involved, public interest is deeply concerned and we therefore think that the petitioner who belongs to state of Mizoram and has been associated with village council elsewhere and has been in public life and has taken upon himself the task and responsibility of raising the question, has the right or "locus standi" to maintain the petitions.

15. The next objection was that the petitions are delayed. We think that even though after the dissolution some time had passed, just for that reason, the petitions should not be thrown out because the questions raised being of vital public interest the petitions should be considered on merits. The principle of delay or laches is invoked in the context of exercise of discretionary writ jurisdiction under Article 226 of the Constitution of India, because it is thought that the court should not exercise its discretionary jurisdiction in a matter which has been delayed where the party seeking relief has itself not shown, concern about wrong done, has neglected or slept over the injury. While therefore in a matter of individual personal injury delay may be a valid reason, to refuse exercise of discretionary jurisdiction, where the question raised is of vital public importance and where the action challenged affected the grass root level democratic institutions as in the present case, we are clearly of the opinion that it shall not be just and proper to invoke the principle of delay, to throw out the petition. We accordingly reject this preliminary objection as well.

16. Demerits, the respondent's contention was that action was taken after inquiry, during which concerned persons had been heard. It was however not disputed that no notice to show cause against proposed action of dissolution of village council had been served (on the village council). The petitioner's contention that no opportunity to show cause against action of dissolution of village councils had been given, therefore was established. The inquiry made earlier during which even if persons concerned were heard could not be substitute for the opportunity to show cause against the proposed action of dissolution, for the reason that the earlier inquiry, on the allegations made or received was for the satisfaction of the competent authority where after alone opinion to take action could be formed. The question of hearing or opportunity to

show cause could arise only after the competent authority had formed the opinion to take some action, such as dissolution of village council. The fact that some inquiry had been made earlier therefore did not materially alter or effect the basic flaw in the impugned action which was in clear infringement of the principles of "audi alteram partem."

17. We think the aforesaid principle of natural justice was clearly attracted, when a duly constituted village level institution comprising of elected members for a term provided by law was sought to be dissolved much before the expiry of its term. In the judgment dated 9.3.90 in C. R. 1537 of 1939 and three others it has been held that in similar matter the said principles of natural justice had come in to play and no opportunity having been given, the said principle was violated and the impugned action of dissolution could not be sustained.

18. A consideration of the provisions of Section 25 of the Act shows that the Executive committee i.e. the Executive Committee of the concerned District Council has the power to dissolve a village council for reasons of inefficiency or inability to carry out the village administration and the like. It is also true that there is no provision for any notice to show cause against proposed" action i.e. dissolution of village council. There is no provision in the Act which may indicate that action taken could be considered beyond challenge in law. We think that in the absence of anything to the contrary in the provisions of Section 25 of any where in the Act, a duly constituted grass root level detrain institution was entitled to notice to show cause why proposed action should not be taken for the reason, that the drastic power conferred by the provision of Section 25, when exercised cuts short the life of a (July constituted democratic institution and hence before such power was actually exercised it was only the minimum requirement of principle of natural justice in keeping with democratic propriety, that notice should have been served and the village council heard. The aforesaid principles of natural justice were bound to come into play and the impugned action taken in the absence of anything to the contrary bad to be in conformity with the said principles. For the aforesaid reasons, we hold that the impugned action of dissolution of village councils, except those mentioned earlier, were bad in law, illegal and cannot be sustained.

19. Shri A. M. Mazumdar, learned counsel for the respondents has submitted at the bar that action was being taken for holding fresh election, that restoration of the village councils may take sometime and the process to do so, may upset the arrangements being made for holding fresh election and hence the impugned notifications be not quashed.

20. Shri A.K. Bhattacharyya, learned counsel for the petitioner has contended that the impugned notifications being illegal must be quashed and necessary consequences should follow.

21. We have given anxious consideration to submissions on both the sides and in view of the as durance given by Shri A. M. Mazumdar, learned counsel for the

respondents, think that the impugned notifications, though clearly bad in law, in order not to upset action being taken for holding fresh election to con torture village councils, may not be quashed and the existing arrangements made may continue until the village councils are duly constituted. The respondent Government for the purpose shall had fresh elections constitute concerned village councils and complete all action necessary by 31.10.1990. We order and dispose of these petitions accordingly.

22. We leave the parties to bear their own costs.