
(2016) 08 GAU CK 0087
In the Gauhati High Court
Case No : W.P.(C) No. 109 of 2015

Joytir Moy Chakma

APPELLANT

Vs

Chakma Autonomous District Council

RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

Chakma Autonomous District Council (Village Council), Act, 2003 — Section 3(4),
Section 8
Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLR 664 : (2016) 5 GauLT 521

Hon'ble Judges : Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Lalremtluanga and Mr. R. Lalbiakzama, Advocates, for the
Petitioners; Mr. A.K. Rokhum, Standing Counsel, CADC, for the Respondents

Final Decision : Dismissed

Judgement

Michael Zothankhuma, J.(Oral) - Heard Mr. Lalremtluanga, learned counsel for the petitioners. Also heard Mr. A.K. Rokhum, learned Standing counsel for the respondent Nos. 1 & 2.

2. The petitioners counsel submits that election to 78 Village Councils were held in the Chakma Autonomous District Council area on 25.2.2015. In respect of the Election for the 7 (seven) Village Councils seats at Bagan-para, the INC had won 3 (three) seats while the BJP had won 4 (four) seats. The petitioners counsel submits that as the BJP had secured the majority of seats in the Village Council, the State respondents should have called upon the petitioners, who are the 4 (four) elected BJP Village Council Members, and the 3 (three) INC members to elect the President of the Village Council of Bagan-para, Village Council.

3. The petitioners counsel submits that prior to the election of the President of the Village Council, the Chief Executive Member of the Chakma Autonomous District Council (CADC) issued a Notification dated 4.3.2015. wherein the respondent Nos. 6 & 7 were appointed as Nominated Members of the Baganpara

Village Council under Section 3 (4) of the Chakma Autonomous District Council (Village Councils) Act, 2003, herein after referred to as 2003, Act. The respondent Nos. 5 & 6 were nominated to hold Office at the pleasure of the Executive Committee for a period of 5 years from the date of the first meeting of the Village Council.

4. Thereafter, the 2 (two) INC elected members, i.e. respondent Nos. 3 & 4 were appointed as President and Vice President of Baganpara Village Council vide Notification dated 9.3.2015 issued by the Chief Executive Member, CADC, in view of the fact that the 2 nominated members had voted for the elected INC Village Council members.

5. The petitioners counsel submits that nominated members do not have the right to vote for election/selection of the President, Village Council, inasmuch as, they have not been elected through adult suffrage. The petitioners counsel submits that the selection of the President of the Village Council and Vice President of the Village Council can be made only from amongst the elected members of the Village Council and thus, only elected Village Council Members can vote for selection of the President/Vice President. The petitioners counsel also submits that generally the elected members of a Village Council select their President and thereafter the nominated members are appointed by the Executive Committee. The petitioners counsel thus prays for setting aside the Notification dated 9.3.15 and for a direction that only the elected members of the Village Council should be allowed to vote to select the President and Vice President of the Village Council.

6. Mr. A.K. Rokhum. learned Standing counsel for the respondent Nos. 1 & 2 submits that there is no bar for the nominated Village Council members to cast their vote for selection of the President of the Village Council. Mr. A.K. Rokhum also submits that as per Section 16(4) of the 2003 Act, a nominated Village Council Member has got the right to vote. He thus submits that the present writ petition should be dismissed as nominate members have the right to cast their vote for election of the President/Vice President of its Village Council.

7. I have heard the learned counsels for the parties. Section 8 (1) of the 2003 Act states as follows:

"8. Executive

(1) There shall be a President in each Village Council who shall be elected by the members of the Village Council from amongst themselves, by majority of votes. They shall, with the assistance of the Secretary of the Village Council discharge all the functions of the Village Council."

The above Section 8(1) does not seem to bar the nominated Village Council Members from casting their vote for election of the President of the Village Council.

Section 3 of the 2003 Act, states as follows:

"3. Constitution of Village Councils.

(1) There shall be a Village Council in each Village within the jurisdiction of the Chakma Autonomous District Council;

Provided that a village having not less than 50 (fifty) houses shall not be entitled to have a separate Village Council.

(2) A Village Council shall be composed of members according to the number of ta that it contains as specified:- (a) For a Village having not more than 50 houses there shall be 3 members; (b) for Villages having 51 houses or more but less than 150 houses, there shall be 5 members; and (c) for Villages having 151 houses and above shall be six members.

(3) Members of the Village Council, subject to sub-section (3), shall be elected by the residents of the Village who are entitled as voter in the latest Electoral Roll for the elections to the District Council.

(4) of the total number of members determined under sub-section (2), one third or nearest shall be nominated by the Executive Committee and the rest be elected by the adult members of the Village in accordance with the rules made by the District Council under this Act."

Mr. A.K. Rokhum and Mr. Lalremtlunga submit that there has been typographical error in Section 3(3) of the 2003 Act, and the words "Subject to Sub-Section (3)" should be read as "Subject to Sub-Section (4)". Section 8 (1) of the 2003 Act, states that the President, in each Village Council shall be elected by the Members of the Village Council from amongst themselves. The question is, who are the Members of the Village Council? There is no definition of Member of the Village Council given in the 2003 Act. A perusal of Section 3(2), 3(3) and Section 3 (4) shows that the elected and nominated Village Council Members are all members of the Village Council.

8. There is nothing to show in Section 8(1) read with Section 3 of the 2003 Act, that nominated Village Council Members cannot cast their vote for election to the post of President of a Village Council.

9. Section 16 of the 2003 Act, states as follows:

"16. Quorum

(1) The quorum to constitute a meeting of the Village Council shall be two-third of the members.

(2) All proposals and questions shall be decided in the meeting by a majority of votes.

(3) The President of the Village Council or any person acting in this behalf shall not vote at the first instance but shall exercise a casting vote in case of equality of votes.

(4) No person other than a member of the Village Council shall vote nor shall speak or take part in its deliberation and any person contravening this provision shall be punishable with a fine not exceeding Rs. 50/- by the Village Council."

10. A reading of 2003 Act, goes to show that Section 16 is relatable to duties and functions of the Village Council subsequent to the selection of the President of the Village Council is made. This is clear from Section 15, which states as follows:

"15. President and Meeting of the Village Council. The President of the Village Council shall preside over the meetings of the said Village Council. He shall summon the meetings of the Village Council whenever necessity arises and if when two thirds of the members in writing request him to do so."

Section 16 does not relate to Section 8 or Section 3 of the 2003 Act, in respect of election to the President of the Village Council.

11. Section 3 (4) of the 2003 Act, requires that the nominated Village Council Members be nominated by the Executive Committee. Section 2(6) of the 2003 Act, states that Executive Committee means the Executive Committee of the Chakma Autonomous District Council and the nominated Members are to hold Office as per Section 7 of the 2003 Act, at the pleasure of the Executive Committee.

12. There are two other Autonomous District Councils, i.e. the Lai & Mara Autonomous District Councils, besides the present Chakma Autonomous District Council. Section 3(3) of the Lai Autonomous District Council (Village Councils) Act, 2007, states as follows:

"The elected members as provided above shall be elected on the basis of adult suffrage and in accordance with the Rules made by the Lai Autonomous District Council under this Act. The other nominated members shall be appointed by the Executive Committee of the Lai Autonomous District Council on the recommendation of the President of the Village Council immediately."

13. The above provision implies that a President of a Village Council in the Lai Autonomous District Council areas can be elected only by the elected Village Council members, as the Lai Autonomous District Council Act, 2007 states that a nominated member will be appointed only after the President of the Village Council is elected. However, no such provision exists in the 2003 Act.

14. The Lakher Autonomous District (Village Councils) Act, 1974, the Mara Autonomous District Council (Village Councils) (Amendment) Act, 2012 and the Lakher Autonomous District (Village Councils) (Amendment) Act, 2013, which relates to the Mara Autonomous District Council, is silent on whether a nominated member of a Village Council can cast his vote for election selection of a President/Vice-President of the Village Council.

15. The relevant provisions of the Lakher Autonomous District (Village Council) Act, 1974 is at Section 8(1) and it states as follows:

"8(1) There shall be a President [and a Vice President] in each Village Council who shall be elected by the members of the Village Council from amongst themselves, by a majority of votes. [The President] shall with the assistance of the Secretary of the Village Council discharge all the functions of the Village Council."

A reading of the above clause implies that a nominated member can cast his vote for election of the President/Vice President of the Village Council.

From a reading of the provisions of the Chakma Autonomous District Council (Village Councils) Act, 2003, the Chakma Autonomous District Council (Village Councils) (Amendment) Act, 2011, the Chakma Autonomous District Council (Village Councils) (Amendment) Act, 2014, the Chakma Autonomous District Council (Election to Village Council) Rules, 2007 and the Chakma Autonomous District Council (Election to Village Council) (Amendment) Rules, 2013, this Court finds that there is no bar for the nominated members of the Village Council to cast their votes for election of the President of the Village Council in the Chakma Autonomous District Council areas.

16. Having said the above, this Court finds that the very purpose of having a Village Council, where a majority of the members of the Village Council are elected through an adult suffrage, is defeated due to the nominated members having voting rights for election of the President/Vice-President of the Village Council.

17. A perusal of the Chakma Autonomous District Council (Constitution, Conduct of Business etc.) Rules, 2002, 2003, 2007, 2008, 2011 and 2012, the Lai Autonomous District Council (Conduct of Business etc Rules, 2002, 2003, 2010, 2011 and 2014 and the Mara Autonomous District Council (Constitution and Conduct of Business etc.) Rules, 2002, 2003, 2007 and 2011 show that nominated members do not have the right to vote for election of the Executive Committee and the Chief Executive Member of the various Autonomous District Councils.

18. Article 243C of the Constitution states that all the seats in a Panchayat shall be filled by persons chosen by direct election territorial constituencies in the Panchayat area.

Article 243C (4) also states that the Chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in Panchayat area shall have the right to vote in the meetings of the Panchayats.

A reading of the above provisions shows that the Constitution has made special provisions for non-elected members to have voting rights.

19. Article 243R also states that all seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area. Article 243R (2)(a)(i) provides as follows:

"(2) The Legislature of a State may, by law, provide

(a) for the representation in a Municipality of

(i) persons having special knowledge or experience in Municipal administration.

(ii)

(iii)

(iv)

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;"

A reading of the above shows that nonelected members of the Municipality do not have the right to vote in the meetings of the Municipality.

20. In the case of *Miehlo Manasia v. State of Mizoram & Ors.* reported in 2007 (I) GLT 1007 of the Division Bench of this Court has observed that:

"it appears that wherever the Legislature intended for conferment of voting rights to non-elected members, such rights have been specifically provided for by incorporating provisions in the Constitution".

21. Democracy has to start from the grassroots and if nominated members are in a position to deny the representatives of the majority of voters, the right to hold the top post of the Village Council, the effect could amount to trampling of democracy. In view of the above reasons, this Court is of the opinion that the respondents" concerned should have a re-took into the provisions of the Chakma Autonomous District Council (Village Council) Act, 2003 and the subsequent amendments and take a decision, as to whether it would be appropriate to deny voting rights to the nominated members, for election/selection of the President/Vice-President of the Village Councils.

22. In view of the fact that Section 8(1) of the 2003 Act states that the President in each Village Council shall be elected by the members of the Village Council from amongst themselves, which includes nominated Village Council members, and as there is no challenge to the 2003 Rules, the writ petition is dismissed. No cost.