
(1990) 06 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 1725 of 1989

L. Chinzah

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 11-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Mizoram Autonomous District Council Constitution and Conduct of Business of the District Councils) Rules, 1974 — Rule 17(5), 35, 37(3)

Citation : (1992) 1 GLR 115

Hon'ble Judges : R.K. Manisana Singh, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Medhi and A.C. Dutta, for the Appellant; B. Choudhury, Government Advocate, A.M. Mazumdar, S.S. Dey and M. Nath, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—In this application under Article 226 of the Constitution of India, the Petitioner has challenged the resolution of 2.8.89 of the Lai District Council of Mizoram, "the Council" for short, adopting a motion of no confidence in the Executive Committee of the Council the election of the Respondent 4 Pu B. Thanchunga to be the Chief Executive Member of the Council in the meeting of the Council held on 4.8.89, and the notification made on 5.9.89 by the Government of Mizoram notifying the election of the Chief Executive member.

2. Facts giving rise to this petition, in brief, are thus. In the election held on 27.1.88 to elect members of the Council, nineteen (19) persons were declared to have been elected and their names were notified in the Mizoram Gazette dated 12.2.88. Six election petitions were filed against six (six) returned candidates. The Commissioner, who was appointed for hearing and disposal of the election petitions, declared the election of those six (6) returned candidates void. Being rived by the order of the Commissioner, five writ applications (Civil Rule Nos. 1322, 1335, 1336, 1337 and 1338 of 1988) were filed in this Court. In those writ

applications, this Court passed interim orders to the effect that the writ Petitioners may participate in the deliberation of the Council except voting, and that the election of the Chairman shall not be held for two weeks.

The Petitioner was elected as the Chief Executive member of the Council. However, the Chairman of the Council has not been elected for one reason or another. The council was summoned to meet on 5.8.88 and Pu LB Zathang was appointed as pro tempore Chairman. But the meeting was adjourned after a motion of no confidence in the Executive Committee was admitted. Pu Zatharg again called the Council to meet on 10.8.88. On 10.8.88 the motion of no confidence which was admitted on 5.8.88, was adopted and on 12.8.88 Pu Thanghluna was elected as the Chief Executive Member of the Council. Against the resolution adopting the motion of no-confidence and election of the Chief Executive Member, Civil Rule No. 1503 was filed in this Court by Pu Nguniapa and four (4) others. However, the Government of Mizoram set the proceedings of 10.8.88 and 12.8.88 of the Council aside by order dated 19.10.88. Thereafter, Pu Thanghluna and Pu Zathang filed Civil Rule Nos. 1971 of 1988 challenging the order of the Government setting aside the proceedings of 10.8.88 and 12.8.88.

Four (4) members were nominated as members of the Council by the Government of Mizoram. Pu Thanghiuna and Pu Zathang again filed Civil Rule No. 2031 of 1988 in this Court calling the nomination in question. In that application, this Court passed an interint order to the effect that no motion of no confidence may be passed the session of the Council commencing from December 5. A perusal of the interim order indicates that the writ Petitioners apprehended that as a result of the nomination of four (4) persons a motion no-confidence may be passed in that session and, therefore, the interim order was passed.

Eleven (11) requisitionists deposited requisition at the office of the Secretary of the Council. A notice dated 25.7.89 was issued by the Deputy Secretary to the Government of Mizoram, District Council Affairs Department, stating that the Governor of Mizoram was pleased to appoint Pu VL. Hmuaka (Respondent-3) to preside and perform the duties of the Chairman/Deputy Chairman without having right to vote, in the session of the Council summoned to meet from 2.8.89, that session, on 2.8.89 a motion of no confidence in the Executive Committe was passed and on 4.8.89 the Respondent 4 Pu B Thanchunga was elected as the Chief Executive Member of the Council. Notice dated 2.8.89 was issued by the Respondent 3 Pu Hmuaka as the Deputy Chairman of the council and the Secretary to the Government of Mizoram, District Council Affairs Department, also issued a notice dated 5.9.89 notifying that Pu Thanohunga (Respondent-4) had been elected as the Chief Executive Member of the Council in the meeting of the Council held on 4.8.89. It may be noted here that the writ application bearing Civil Rule Nos. 1503, 1971 and 2031 of 1988 have been withdrawn on 29.8.89.

3. The Petitioner has challenged the resolution dated 2.8.89 adopting motion of no confidence in the Executive Committee and the election of Respondent-4 Pu

Thanchunga as the Chief Executive Member of the Council on 4.8.89 on the ground that the Respondent-3 Pu VL Hmuaka was not competent to preside over the meeting and perform the duties of the Chairmen of the Council.

4. The contention of Mr. S. Medhi, the learned Counsel for the Petitioner is that the person who presides over the meeting of the Council should be a member of the Council, but the Respondent-3 (sic) Hmuaka ceased to be a member of the Council as his election has been set aside by the Commissioner. Although in the writ petition (Civil Rule No. 1335 of 1989) filed by the Respondent-3 Pu VL Hmuaka, an interim order was passed by this Court to the effect that the Respondent can participate in the proceedings of the Council without having right to vote, the order will not make him qualified to preside over the meeting.

5. Rule 17(5) of the Mizoram Autonomous District Council Constitution and Conduct of Business of the District Councils) Rules, 1974, "the Rules" for short, provides that, if for a period of 30 days a member of a District council is without permission of the Council absent from all meetings thereof, the Council may declare his seat vacant. The interim order was necessary in order to avoid the disqualification under Rule 17(5). That apart, there is a link between the membership of the Council and the participation in the proceedings of the Council. A member of the Council has right and privileges of the participation in the proceedings and casting of vote. But in the present case, restriction has been imposed on the Respondent-3 by the order of the Court, viz, the Respondent-3 cannot cast his vote although he can participate in the proceedings. This being the position, the Respondent-3 does not cease to be a member of the Council although there is a limitation regarding participation of Respondent-3 in the proceedings of the Council in his capacity as a member thereof. Therefore, in view of the interim order of the Court, the order of the Commissioner is in suspended animation and does not operate except for the limitation indicated above. There is also some link between the membership of the Council and the Deputy Chairman of the Council. The Chairman or the Deputy Chairman should be one of the members of the Council. It has already been concluded that the Respondent-3 Hmuaka, who presided over the meeting, has not ceased to be a member of the Council. Where the Council is presided over by a person, who is not a voting member of the Council, he cannot cast his own vote as a member and he also cannot, as Chairman assume the right to a casting vote in the event of equality of votes. From the perusal of the proceedings produced before us, we find that the Respondent-3 did not cast his vote. The notification issued by the Government of Mizoram also indicates that he would not have the right to vote. For these reasons, the contention of Mr. Medhi cannot be accepted.

6. The next contention of Mr. Medhi is that the Chairman should be from the panel prepared under Rule 35 of the Rules. Rule 35 provides that at the commencement of every session the Chairman shall nominate from amongst the members of the District Council a panel of not more than two Chairmen, any one of whom may in the order in which he had been nominated preside over the

Council in the absence of the Chairman and the Deputy Chairman. In the writ petition, who are the persons nominated by the Chairman are not stated. That apart, there has been no Chairman such of the Council, and, as already stated VL Hmuaka was the Deputy Chairman. The learned Counsel for the Petitioner has not submitted about the existence of any panel. In such a situation, the contention, of Mr. Medhi cannot be accepted.

7. Mr. Medhi has further contended that this Court by an interim order dated 1.12.88 passed in Civil Rule No 2031 of 1988 directed that any motion of no confidence shall not be passed but the Council has passed a motion of no confidence in the Executive Committee in violation of the order of this Court. The order of this Court passed on 1.12.88 in Civil Rule No. 2031 of 1988 is in the following terms. "There may not be any motion of no confidence passed in the meeting commencing from December 5". This Court intended not to adopt any motion of no confidence in the session (sic) from 5.12.88. As already stated, the writ petition has been withdrawn. Under Rule 37(3), the District Council shall he (sic) to meet three times a year and four (4) months shall not (sic) between its last sifting in the next session of the "no confidence motion was adopted and the election of the Chief Executive Member and the election was held in the Sessions commencing from 2.8.89. Therefore, we are of the view that the order of this Court passed on 1.12.88 directing not to pass any resolution adopting the motion of no confidence relates to that particular session communizing from 5 December 1988, For the reasons stated, the contention of Mr. Medhi cannot be sustained.

8. The learned Counsel for the Petitioner Mr. Medhi has further contended that the notification dated 5.9.89 of the Government of Mizoram is against para 20-BB of the sixth Schedule of the Constitution of India. Under para 20-BB, the Governor, in discharge of his motion under paragraphs and sub-paragraphs mentioned therein shall after consultation with the Council of Minister and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as it considers necessary in his discretion. But, in the (sic) case, the Government approved the election of Pu Thanchunga (Respondent-4) without the consultation of any of the authorities mentioned in para 20-BB. In the affidavit-in-opposition filed by the (sic) it is stated that the Government is not required to approve the election of the Chief Executive Officer except notification. On pursal of the Rules, we do not find that the Government requires of the election of the Chief Executive Member. That apart, paragraphs and sub-paragraphs mentioned in paragraphs 20-BB do (sic) concern with the election of Chief Executive Members.

9. For the foregoing reasons, the petition is dismissed. No costs.