
(2018) 10 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (c) No. 832 Of 2018

Langkhanpau Guite	Vs	APPELLANT
State Of Manipur And Others		RESPONDENT

Date of Decision : 25-10-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Manipur (Hill Areas) District Councils Act, 1971 — Section 11

Citation : (2018) 10 MAN CK 0005

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : N. Ibotombi, H.S. Paonam, S. Rupachandra

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J

[1] Heard Shri N. Ibotombi, learned Senior Advocate appearing for the petitioner; Shri H.S. Paonam, learned Senior Advocate appearing for the private respondent and Shri S. Rupachandra, learned Addl. Advocate General appearing for the State respondents.

[2] By the instant writ petition, the petitioner has prayed for issuing a writ of certiorari to quash the order dated 01-09-2018 and the Notification dated 01-09-2018 issued by the respondent Nos.1 and 4 respectively for want of competency and jurisdiction and to issue a writ of mandamus or any other appropriate writ to direct the respondents to fix the date for holding the election of the Chairman of the Autonomous District Council, Churachandpur within a stipulated period and alternatively, to direct the respondents to hold the election of the Chairman of the Autonomous District Council, Churachandpur on the date fixed by the Hon'ble High Court.

[3] The subject matter in issue relates to holding of an election of the Chairman of the Autonomous District Council, Churachandpur (hereinafter referred to as

"the Council"). Before the issue involved herein is decided by this Court and in order to enable this Court to decide the same effectively, this Court deems it appropriate to refer to the backgrounds and events which have led to the rise of the present controversy.

[4.1] According to the petitioner, he is an elected member of the Council. The Manipur (Hill Areas) District Councils Act, 1971 (hereinafter referred to as "the Act, 1971") came to be enacted by the Parliament which was amended from time to time. The last election in respect of the Council under the provisions of the Section 11 of the Act, 1971 was held in the year 2015 and 24 (twenty four) persons including the petitioner, were declared elected as the members of the Council vide Notification dated 17-06-2015 issued by the Principal Secretary (Hills), Government of Manipur. Shri Langkhanpau Guite was elected as the Chairman of the Council and he continued to be so till 22-04-2017 when Shri Khaipao Haokip was elected as the Chairman of the Council.

[4.2] The petitioner along with 11 (eleven) other members submitted a notice of intention dated 15-12-2017 to move a resolution to the respondent No.2 for removal of Shri Khaipao Haokip from the post of Chairman and since no action was taken by the respondent No. 2 for about a month, on 16-01-2018 three members of the Council approached this Court by way of a writ petition being WP(C) No. 36 of 2018. In the meantime, the Act, 1971 was amended vide Notification dated 12-01-2018 and taking advantage thereof, the respondent No. 2 rejected the notice of motion vide its order dated 15-01-2018. Being aggrieved by the order dated 15-01-2018, three members of the Council filed a writ petition being WP(C) No.91 of 2018 questioning it. Both the said writ petitions were disposed of by this Court vide a common judgment and order dated 26-04-2018 quashing the order dated 15-01-2018 on the ground that the amendment of the Act, 1971 would be prospective in its operation.

[4.4] Being aggrieved by the said judgment and order dated 26-04-2018, petitions for Special Leave to Appeal being SLP No.1839-12840/ 2018 were filed before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court, while issuing notice to the respondents therein vide its order dated 21-05-2018, stayed the operation of the judgment and order dated 26-04-2018 with the observation that it would be open to the members of the Council to take recourse to the remedy for removal of Chairman in accordance with the amended law. In view of this order dated 21-05-2018 of the Hon'ble Supreme Court, some of the members of the Council submitted a notice dated 25-05-2018 under the amended law and in view thereof, the respondent No.2 issued a notice dated 25-07-2018 thereby fixing the date as 28-07-2018 for holding the meeting for removal of Shri Khaipao Haokip from the post of Chairman, probably, because the said SLPs were withdrawn on 23-07-2018. Before the meeting was held as fixed by the respondent No. 2, Shri Khaipao Haokip submitted his resignation dated 27-07-2018 which was accepted by the Governor under the provisions of the said Act, 1971.

[4.5] Thereafter, the respondent No.1 issued an order dated 18-08-2018 thereby fixing 24-08-2018 as the date for election of the Chairman for which three persons submitted their nomination papers. This order dated 18-08-2018 came to be challenged by Shri Genneikhup Vaiphei by way of a writ petition being WP(C) No.774 of 2018 but since the respondent No.1 issued an order dated 23-08-2018 postponing the date of election of the Chairman, the said writ petition was withdrawn with a liberty to file a fresh writ petition. Being aggrieved by the said order dated 23-08-2018, twelve members of the Council submitted a representation dated 29-08-2018 to the Hon'ble Chief Minister, Manipur to ventilate their grievances and since no response was received by them, two persons filed a writ petition being WP(C) No.807 of 2018 praying inter-alia that in view of the prevailing law and order situation, the election of the Chairman of the Council be held at Imphal which was disposed of by this court with a request to the Hon'ble Chief Minister of Manipur to dispose of the representation dated 29-08-2018 by the next date.

[4.6] After the order dated 31-08-2018 being passed by this Court, the matter appears to have been placed before the State Cabinet which took a decision on 31-08-2018 itself for postponement of the proposed election of the Chairman till further order for which an order dated 01-09-2018 was issued by the respondent No.1 followed by a notification dated 01-09-2018. Being aggrieved by the order dated 01-09-2018 issued by the respondent No.1 and the Notification dated 01-09-2018 issued by the Executive Officer, the instant writ petition has been filed by the petitioner on the inter-alia grounds that the postponement of the election until further order is against the mandate of the provisions of the Act, 1971 and rules made thereunder.

[5] An affidavit-in-opposition on behalf of the respondent No.1 has been filed wherein it has been stated that the maintenance of law and order and protection of life and property of the people being the prerogative of the State Government, the State Cabinet took a policy decision to postpone the election of the Chairman of the Council and therefore, the petitioner will have no grievance in postponement of the election until further order.

[6] Our country, India is considered to be the largest democratic country in the world. The election of the representatives of the people to man the Government and in particular, the election of the Chairman of the Council is one of the facets of democracy and to hold election in time is indispensable. Therefore, the election of the Chairman of the Council cannot be postponed indefinitely. It is true that the maintenance of law and order is the State subject and that it can be one of the grounds to postpone the election on one occasion but it can never be the sole ground for postponing the election indefinitely. To postpone the election of the Chairman of the Council indefinitely will ultimately defeat the mandate of the provisions of the Act, 1971. Shri S. Rupachandra, the learned Addl. Advocate General, supporting the stand of the State Government as indicated in its affidavit, has relied upon the decision rendered by the Hon'ble Supreme Court in

Government of Orissa though Secretary, Commerce & Transport Department, Bhubaneswar vs. Haraprasad Das & ors., (1998) 1 SCC 487 wherein the subject matter in issue relates to the appointment of Copyholders, the Hon'ble Supreme Court held that whether to fill up the post or not is a policy decision and unless it is shown to be arbitrary, it is not open to the Tribunal to interfere with such decision of the Government and direct it to make further appointments. It is also well settled that the High Court under Article 226 of the Constitution of India shall be slow in interfering with the policy decision of the Government except on grounds of arbitrariness affecting the rights accrued to a person. But the facts of that case are not identical with that of the present case and therefore, the said decision will have no application at all. In the present case, the Act, 1971 provides for appointment of the Chairman of the Council after the election of the members of the Council having been done and as and when the post of the Chairman is vacant. As is evident from the affidavit, the policy decision alleged to have been taken by the State Government appears to be based on a report of the Chief Executive Officer of the Council stating that the underground outfits-KRA and UKRA threatened to shoot some of the members of the Council for which an FIR had been lodged on 29-08-2018. But what happened to the FIR is not disclosed to this court. The difficulties being faced by the State Government towards holding the election of the Chairman of the Council, are not placed before this court for perusal and consideration. The impossibility of holding the election of the Chairman of the Council despite security being provided by the State Government by taking the help of the Army or paramilitary forces, is not disclosed to this court. What actions have been taken by the State Government so far to create conducive atmosphere for holding the election of the Chairman, are not known by this court. No materials in this regard have been placed on record by the State Government before this court nor has the State Government produced any file, if confidential, for perusal by this court. Mere saying that there is a law and order problem, is not enough because the expression "law and order" is wide concept and has no definite meaning.

[7] It may be noted that the issue involved herein does not, in any case, relate to the election of the members of the Council where a large number of citizens are involved but to electing one of the members as the Chairman of the Council from amongst the 24 (twenty four) members. It is hard to believe the stand of the State Government that on account of the law and order problem, the election of the Chairman of the Council cannot be held indefinitely. The post of the Chairman is lying vacant since 27-07-2018 and therefore, in any case, the election of the Chairman is to be held in terms of the provisions of the Act, 1971. Keeping in mind the fact that the democratic process cannot be stopped for a long time, the election of the Chairman at any cost is to be held for which the State Government is duty bound to take all precautionary measures, if necessary, by taking the aid of the Army or the paramilitary forces. From the facts as narrated hereinabove, the problem of law and order does not seem to be the only ground for not holding the election but there appear to be some other

reason for it which the State Government has failed to disclose and share with this court and it is also evident therefrom that even after the receipt of notices of intention to move the resolution for removal of the Chairman, the respondent No.2 did never take appropriate action in time for the reasons best known to it. It is the prime concern of the State Government to hold the election in time and in other words, it is the bounden duty of the State Government to enforce the provisions of the Act, 1971 but the State Government appears to be lacking sincerity in its approach towards holding the election. If timely action is not taken by the State Government, the provisions of the Act, 1971 will become and will be rendered redundant and will be of no use. The State Government appears to have failed to discharge its statutory obligations, for extraneous reasons, towards holding the election of the Chairman in the name of law and order problem. As is seen from the local newspapers, the people of the district of Churachandpur has raised hue and cry against the inaction on the part of the State Government to hold the election. Moreover, in response to a representation dated nil submitted by the President, All Tribal Rights' Protection Forum, Manipur, the Secretary to the Governor had addressed a letter dated 01-10-2018 to the Secretary (TA & Hills), Government of Manipur expressing the desire of the Governor that the election of the Chairman of the Council be held at an early date as per rules. All requests from all concerned appear to have fallen on deaf ears of the State Government.

[8] When the matter was listed for consideration and during the course of hearing, the learned counsels appearing for the petitioner and the private respondent fairly agreed that the election of the Chairman of the Council be held at Imphal and the only thing to be done by the State Government was to fix the date on which the election can be held for which the learned Addl. Advocate General was granted a days' time to seek instruction in view of the urgency involved herein and since the State Government has failed to indicate or suggest any date on which the election of the Chairman can be held, this Court has no option but to fix the date of election.

[9] In view of the above and for the reasons stated hereinabove, the instant writ petition is disposed of with the following directions:

(a) The election of the Chairman of the Council shall be held on 05-11-2018, without fail, for which adequate security shall be provided by the State Government to all the members of the Council;

(b) The election of the Chairman of the Council shall be held at Imphal and the exact venue and time of the election shall be fixed by the State Government, well in advance, keeping in mind the prevailing circumstances including the law and order problems.