
(1992) 11 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 41 (K) of 1992

Longtsuman Ngully

APPELLANT

Vs

State of Nagaland & Others

RESPONDENT

Date of Decision : 25-11-1992

Acts Referred:

Village Development Board Model Rules, 1980 — Rule 5, 5

Citation : (1993) GLR 134 Supp

Hon'ble Judges : H.K.Sema, J

Bench : Single Bench

Advocate : R.S.Bedi, E.Y.Renthungo, Advocates appearing for Parties

Judgement

1. This writ petition is preferred by the Secretary of the Village Development Board of N. Longidang Village. This petition is sequence to Civil Rule 42 (K) 92. This Court in Civil Rule 42 (K) 92 has held the selection of Village Council Members held on 941990 as valid except those five members who were subsequently disqualified. The facts of the case narrated in Civil Rule 42(K) 92 is almost familiar to this writ petition. The only difference between Civil Rule 42 (K) 92 and Civil Rule 41 (K) 92 is that, in Civil Rule 42 (K) 92 the election of the Chairman of the Village Council was in question and in this Civil Rule 41 (K) 92 the election of VDB Secretary is in question.

2. The petitioner is a member of the Village Council of N. Longidang Village. He was elected as such in the election held on 9490. The Village Development Board was constituted by the village Council in terms of Section 12 of the Nagaland Village and Area Council Act, 1978 (Nagaland Act No. 1 of 1979) hereinafter the Act. Thereafter, the petitioner was selected as Secretary by the members of the Village Development Board on 131090. The Selection of the petitioner as Secretary of the VDB was approved by the 2nd respondent in its order dated 161090 (Annexure 1). Further, the 2nd respondent approved the list of the members of the VDBs with the petitioner as Secretary by its order dated 2891 (Annexure3).

3. The petitioner in this case is aggrieved by order dated 15/1/92 passed by the 2nd respondent whereby the petitioner was directed to hand over the charge of Secretary of VDB to the 5th respondent within 21/9/92 and the order dated 10/2/92 passed by the 3rd respondent whereby the petitioner was directed to submit all the VDBs documents of N. Longidang village before 3rd respondent on or before 15/2/92. Respondent entered appearance and filed a lengthy counter through Mr. E.Y. Renthungo, learned Junior Govt. Advocate. Most of the facts stated in writ petition are controverted. As already said in Civil Rule 42 (K) 92 this Court sitting in writ jurisdiction can not go into the disputed question of facts raised by the parties. However, the respondents annexed an order dated 20/9/91 passed by the 2nd respondent as Annexure "C" to the affidavit in opposition. The Annexure "C" order has an important bearing and the same will be extracted and discussed in detail at appropriate time.

4. I have heard Mr. R.S. Bedi, learned counsel for the petitioner and Mr. E.Y. Renthungo, learned Junior Govt. Advocate.

5. Mr. Bedi, submits that VDBs being constituted by the Village Council under Section 12 of the Act and the list of members of VDBs with the petitioner as Secretary having approved by the competent authority on 28/1/91 (Annexure 3), it was not open to the respondent to change the Secretary or the VDBs members save and except in accordance with the provision contained in Rule 5 of the Village Development Board Model Rules, 1980 (hereinafter the rules). The Model Rules dealing with the composition and replacement of members and the Section of Secretary are provided in Rule 4, 5 and 7. Rule 4 deals with the composition of the members of the Village Development Board. Besides others it states that the members shall be chosen by the Village Council and the tenure of members shall be 3 years unless decided otherwise by the Village Council by a resolution. Persons who are not eligible to be chosen as or for being a member of the Village Council may also include as members of VDBs. At least one woman shall be a member of the Board representing all the women in the village.

Government servants can be chosen as a member with the permission of the Government. Further Rule 5 of the model of Rules provides the procedure for replacement of a member. Rule 5 has an important bearing in the instant case and is extracted :

"5" A member of the village Development Board may be replaced by a resolution of the Village Council, for reasons to be recorded in the resolution."

6: At this stage it will be appropriate to extract one of the impugned orders dated 20/9/91 at Annexure "C" of affidavit in opposition :

ORDER

?Appointment of Shri Longtsuman Ngullie as Secretary V.D.B. N. Longidang Village vide this office letter No. Dev64/9091/105863 dated 6th Oct '90 is hereby cancelled with immediate effect.

Shri Thunglamo Murry is hereby appointed as VDB Secretary of N. Longidang Village."

Sd/ L.R. KIKON

Deputy Commissioner,

Wokha, Nagaland.

7. On bare perusal of the order, the order appears to be not only arbitrary but also without jurisdiction and in violation of Rule 5 of the Rules. The method prescribed by Rule 5 for replacement of a member of Village Development Board is only by a resolution of the village council, for reasons to be recorded in the resolution (emphasize supplied). The order dated 20991 does not speak any resolution passed by the Village Council for replacement of the petitioner. Since there was no resolution passed by the village council for replacement of member of Village Development Board there is no question of recording its reasons for passing the said resolution. Once a person is elected/selected following due process of democracy, he can be removed or replaced in accordance with the procedure prescribed in that behalf. In the instant case the prescribed procedure having not been followed in passing the order at Annexure "C" in affidavit in opposition the same can not stand the taste of the law.

In the result the order dated 20991 (Annexure C of affidavit in opposition, the order dated 15192 (Annexure 4) the order dated 10292 (Annexure 6) are hereby quashed and set aside. The petitioner and other members of the Village Development Board whose names appeared in Annexure 3 list of the writ petition are valid and they shall function as such till they are replaced by the Village Council by resolution after recording its reasons in terms of Rule 5 of the Rules.

With this direction and observation this petition is allowed. No order as to costs.