
(1991) 12 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 2886 of 1991

L.Vikato Sema

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 07-12-1991

Acts Referred:

Assam Tribal Areas (Administration of Town Committees) Regulations, 1950 — Section 3, 3
Naga Hills District (Constitution of Town Committee) Rules, 1954 — Rule 104, 104, 4(2), 4(2), 8(2), 8(2)

Citation : (1992) 1 GLJ 75 : (1993) GLR 285 Supp

Hon'ble Judges : S.N.Phukan, J and S.K.Homchaudhuri, J

Bench : Division Bench

Advocate : N.Choudhary, N.M.Lahiri, K.P.Pathak, G.N.Sahewalla, A.K.Goswami, N.N.Saikia, Advocates appearing for Parties

Judgement

S.N. Phukan, J.—This writ petition is directed against the order of the Govt. of Nagaland in Home Department dated 15th May, 1991 purporting to dismiss the petitioner from the office of the Chairman of Dimapur Town Committee and to appoint the Additional Deputy Commissioner, Dimapur as Chairman in his place until further order. The said order is available at Annexure IV to the present writ petition.

2. The Dimapur Town Committee consists of 23 members out of which 15 are elected from 15 wards and 8 are to be nominated by the Deputy Commissioner subject to the approval of the Governor. According to petitioner, after the election in the year 1987, out of 23 members 17 members including the petitioner, submitted an application to the Governor for appointing the petitioner as Chairman of the said Town Committee which was duly accepted and the petitioner was appointed as Chairman vide order dated 15.1.88. Subsequently, by order dated 28.8.90 vide Annexure 1 to the writ petition, the petitioner was placed under suspension pending inquiry against him, with immediate effect. This suspension order was challenged before a Single Judge in a writ petition. Prayer

for stay not having been granted, Writ Appeal No. 1 of 1990 was preferred before a Division Bench and in the said writ appeal, this Court by order dated 12.9.90 stayed the above suspension order. Copy of the order of this Court is at Annexure II to this petition. Thereafter, the Governor of Nagaland vide order dated 14th May, 1991 (Annexure III) revoked the said suspension order with immediate effect and on the following day the impugned order of dismissal was passed. Being aggrieved, the petitioner has approached this Court in the present writ petition.

3. We have heard Mr. N.M.Lahiri, learned Senior Advocate for the petitioner and Mr.N.N.Saikia, learned Advocate General for the respondents.

4. For establishment and administration of Town Committee in Tribal Area of Assam, the Legislature of the Composite State of Assam enacted the Assam Tribal Areas (Administration of Town Committee) Regulation, 1950 (hereinafter mentioned as 'the Regulation'). As the law was in force when the State of Nagaland was created, this law continued to be in force in the State of Nagaland and this legal position is not disputed. Subsection (3) of section 3 of the Regulation, which is relevant for the purpose, is as follows :

"3. (3) The Governor may appoint any person, whether a member of the Town Committee or not, to be its Chairman or ViceChairman or both and fix the term of office of the Chairman and ViceChairman of the Town Committee".

The Governor of Assam in exercise of powers conferred under subsection (1) of section 3 and subsection (2) of section 4 of the Regulation, framed The Naga Hills District (Constitution of Town Committee) Rules, 1954. The relevant provisions of the Rules and subrule (2) of Rule 4, subrule (2) of Rule 6, subrules (1) and (2) of Rule 8 and subrule (1) of Rule 104 having bearing on the facts of the case at hand are quoted below:

"4. (2) The nominated members shall be appointed by the Deputy Commissioner subject to the approval of the Governor and a member so appointed shall hold office during the pleasure of the Governor.

"6. (2) Subject to the provisions of sub rule (2) of rule 4, all members, both elected and nominated, shall hold office during the life of the Committee.

Provided that the member elected or nominated to fill a casual vacancy shall hold office for the remainder of the term of the office of the member whom he replaced.

8. (1) At the first meeting of the Town Committee held after the general election and thereafter at the first meeting of the Committee held after the occurrence of the vacancy in the ViceChairmanship or Chairmanship, as the case may be, the members shall elect a ViceChairman from among their number, and if authorised by the Governor to elect a Chairman as well, shall proceed to elect one their member to be Chairman.

In the event of the Committee being unable to elect a Chairman it shall report the matter to the Governor for such action he may deem fit.

(2) A Chairman or ViceChairman shall hold office for three years, or if the residue of his term of office as a member be less than three years for such residue.

Provided that the term of office fixed under this Rule shall be held to include any period which may clapes between the expiration of the said period and the date of the first meeting of the Town Committee newly appointed or elected at which a quorum shall be present.

104. (1) If in the opinion of the Governor the Town Committee is not competent to perform or persistently makes default in the performance the duties imposed on it by or under these Rules, or otherwise by law, or exceeds or abuses its powers, the Governor may, by notification stating the reasons for so doing, declare such Committee to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersede it for a period to be specified in the notification or dissolve the Committee and order fresh election."

By subsequent amendment of the Rules, the term of the Committee has been extended from 3 years to 5 years. This fact is not disputed. As such, the present term of the Chairman and of the Committee would expire sometime in 1993. In the course of hearing the relevant file has been produced before us on behalf of the Govt. of Nagaland.

5. Mr. N.M.Lahiri, learned counsel for the petitioner submits that the impugned order is arbitrary, malafide and bad in law. The learned counsel has submitted that the impugned order has been passed only to circumvent the order of this Court by which the suspension order was stayed. According to, Mr. Lahiri once the Chairman is appointed, there is no provision of suspension or removal and he has to be allowed to function for the full term of 5 years and only power available to the Governor is to supersede or dissolve the Committee by invoking Hie power under Rule 104 of the Rules. There is no dispute at the bar that the present order was not passed under the aforesaid rule and further that the Committee is still functioning. Mr. Lahiri further submits that the impugned order has been passed arbitrarily in violation of the principle of natural justice.

6. Mr. Saikia, learned Advocate General, Nagaland submits that as the Governor has got power to appoint the Chairman, he has also the power to remove in view of the section 16 of the Assam General Clauses Act. According to learned Advocate General, the Chairman holds office during Governors pleasure and power to remove him is inherent. In this connection learned, Advocate General has placed reliance in the decision of this Court in the case of Satyeswar Daolagupu & others vs. The Secretary to the Gort. of Assam & others, AIR 1974 Gauhati 20 as well as the decision of the Delhi High Court in Ghanashyam Singh vs. Union of India, AIR 1991 Delhi 65

7. We have considered the submissions made oh behalf of the petitioner as well

as on behalf of the respondents and have perused the materials placed before us. At the time of argument it has been made clear that we are not going to enter into the allegations of mala fide advanced in the writ petition and, as such, the argument has been confined only to legality of the impugned order. In the case of Satyeswer Daolagupu (supra) we find that matter pertained to VIth Schedule to the Constitution and the ratio of the said decision is not applicable to the facts of the case in hand. This petition has to be decided within the purview of the provisions of the Act and the Rules framed thereunder. We find that this decision was also placed before the Division Bench of this Court in the Writ Appeal No. 1 of 1990 when order passed by which suspension order was stayed and the Division Bench of this Court was of the view that the above decision was not applicable to the facts of the present case. We do not see any reason to take a different view.

Regarding the decision in Ghanashyam Singh (supra) we find from the facts of the case that the decision was rendered in respect of a company, function of which was governed by the Article and Memorandum of Association of the Company. That was not a elected body under any statute. Mr. Saikia has laid stress in paragraph 23 and 35 of the said judgment and on perusal thereof we are of the opinion that the law laid down is not applicable to facts of the present case.

8. Subrule (2) of Rule 4, provides, inter alia, that nominated members shall hold office during the pleasure of the Governor, but under subrule (2) of Rule 8 there is no such provision and therefore, we are of the opinion that once the Chairman is appointed by the Governor in exercising powers under section 3 of the Regulation he has got a legal right to continue for the full term of 5 years unless the Board is superseded or dissolved by exercising powers under Rule 104 of the Rules. We say so as there is no rule in Rule 8 similar to subrule (2) of Rule 4 of the Rules. There is also no provision in the Act in question empowering Governor to remove the Chairman.

In this connection our attention has been drawn to the observation of learned author Maxwell on the Interpretation of Statutes, 12th Edition at page 33, where in it was observed:

"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said It is a strong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity it is a wrong thing to do".

Our attention has also been drawn to the following portion at page 282. "From the general presumption that the same expression is presumed to be used in the sense throughout an Act or a series of cognate Acts, there follows the further presumption that a change of wording denotes a change in meaning. "Where the

legislature", said Lord Tenderden C.J. "in the same sentence uses different words, we must presume that they were used in order to express different ideas."

9. Under subrule (2) of Rule 8 of the Rules after amendment, the law makers has fixed the term of office of a Chairman or ViceChairman of a Town Committee for a period of 5 years. As stated earlier, there is no provision in the subrule(2)of Rule 8 similar to subrule (2) of Rule 4. So as a corollary to the general rule of literal construction to the rule it follows that once the Chairman is nominated he shall hold office for the full term and in absence of any power similar to subrule (2) of Rule 4, the principle of the pleasure of the Governor in case of Chairman appointed by him would not arise. We are of the opinion that contrary view would amount to putting words in the mouth of the rule makers and in other words, will be infringement on the provisions of the said subrule (2) of Rule 8.

We however, make it dear that we are not expressing any opinion as to what would be the consequence, if the confidence of the majority of the members of the Town Committee is lost by the Chairman and we keep the question open to be decided in future, if such occasion arises.

10. From the suspension order dated 20th August, 1990 (Annexure 1 to the writ petition) which was stayed by this Court, it appears that the petitioner was placed under suspension pending enquiry against him. After the stay Order was granted, the order of suspension was revoked by order dated 14th May, 1991 and on the next date i.e. 15th May, 1991, the impugned order was passed dismissing the petitioner from the office of the Chairman of the Dimapur Town Committee. Admittedly, the impugned order dated 15th May, 1991, which visited the petitioner with civil consequences, has been passed without giving any reasonable opportunity to the petitioner to show cause. As such, the impugned order has been passed in violation of the fundamental principles of natural justice.

11. For the reasons above, we have no hesitation to hold that the impugned order cannot be sustained and is liable to be set aside. The petition is, therefore, allowed and the impugned order dated 15.5.91 under Memo NO. HOME/TCL 48/90 issued by the Chief Secretary to the Govt. of Nagaland (Annexure IV to the writ petition) is set aside and quashed. The impugned order having been quashed, the petitioner deemed to be holding the post of Chairman, Dimapur Town Committee. We make on order as to cost.