
(2007) 02 GAU CK 0012
In the Gauhati High Court

Miehlo Manasia

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Constitution of India, 1950 — Article 163, 243, 243C, 243R

Citation : AIR 2007 Guw 98 : (2007) 1 GLT 1007

Hon'ble Judges : P.G. Agarwal, J;Hrishikesh Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. B.C. Das, learned senior counsel appearing for the appellant/writ petitioner. Also heard Mr. P. Pathak, learned Advocate General representing the respondents Nos. 1 and 2. Mr. AK Phookan, learned senior counsel has appeared and argued on behalf of the respondent No. 3.

2. The present writ appeal is directed against the judgment and order dated 8-1-2007 passed in WP (C) No. 6165/2006. The challenge in the writ petition was to the notification dated 28-11-2006 whereby the Chief Executive Member of Mara Autonomous District Council (hereinafter referred to as "the MADC") was directed to secure a vote of confidence in a special session on 8-1 -2007. By the said order it was further directed that only the elected Members of the District Council shall be permitted to vote in the vote of confidence. The writ petitioner who is a nominated Member of the District Council has challenged the said direction dated 28-11-2006 whereby the nominated Members have been kept out of the vote of confidence by not permitting them to vote in the proceeding.

3. In order to appreciate the issues raised, it would be necessary to take note of a few relevant developments pertaining to election of the Chief Executive Member of the MADC.

By notification dated 27-4-2005 Pu N Vaikhu was appointed as the Chief Executive Member of MADC w.e.f. 26-4-2005. The said order of appointment was

issued after compliance of the requisite formalities of election of the Chief Executive Member contemplated by Rule 22 of the MADC (Constitution, Conduct of Business etc.) Rules, 2002 (hereinafter referred to as "the Rules").

In the process of election N Vaikhu was elected as the leader of the United Legislature Party consisting of the twelve elected Members of the MADC on 25-4-2005 and thereafter as the Chief Executive Members of the said Council.

Following the election of the Chief Executive Members as aforesaid, the Governor of Mizoram by notification dated 11-11-2005 issued in exercise of powers conferred by Paragraph 2(1) read with paragraph 20-BB of the Sixth Schedule to the Constitution of India read with Sub-rule (4) of Rule 7 of the Rules, appointed four persons by nomination as Members of the MADC. The writ petitioner Miehlo Manasia was one of the four Members nominated by the Governor to be a Member of the MADC.

Thereafter the United Legislature Party constituted by seven MDF and 4 INC Members withdrew support to the Chief Executive Member Pu N Vaikhu by making a declaration to the said effect. Soon thereafter ten Members of MNF extended support to Pu N Vaikhu and a joint legislature party was formed.

On the recommendation of the Chief Executive Members, the Government by notification dated 21-11 -2005 appointed seven new Executive members and directed the Chief Executive Member to secure vote of confidence in the MADC by 15-12-2005.

One Mr. K. Hrahmo, an elected Member of the district council challenged the notification dated 21-11 -2005 by filing WP (C) No. 139/2005 and sought a direction from this Court for dissolution of the district council. A further prayer was made to restrain the Government from going ahead with the vote of confidence scheduled to be held on 15-12-2005 whereby the nominated Members were also permitted to participate in the vote of confidence. The writ petitioner contended that the four nominated members were not entitled to vote. But this Court by order dated 9-12-2005 in WP (C) No. 139/2005 rejected the prayer made for keeping the nominated Members out from voting in the vote of confidence. Subsequently on 10-8-2006 the writ petition came to be withdrawn because of subsequent developments.

It appears that fresh direction requesting the Chief Executive Member to seek vote of confidence was issued and during the vote of confidence, which reportedly took place on 29-3-2006, confidence in favour of the Chief Executive Member was expressed. During the said vote of confidence the nominated Members were allowed to cast their votes and the group represented by the respondent No. 3 contended that the said vote of confidence taken on 29-3-2006 was contrary to the Rules and sought intervention of the Governor in the matter.

Subsequently the impugned notification dated 28-11 -2006 was issued directing the Chief Executive Member to secure vote of confidence of the House with

participation of only the elected Members and debarring the nominated Members from casting their votes in the motion of vote of confidence.

Being aggrieved, the writ petitioner, who is one of the nominated Members, filed WP (C) No. 6165/06 challenging the legality of the notification dated 28-11-2006 whereby the nominated Members have been kept out from voting in the vote of confidence to be secured by the Chief Executive Member.

4. It is contended by the appellant /writ petitioner that in terms of the definition of "members" given under Rule 2(o) of the Rules there is no distinction between the nominated Members and elected Members and the nominated Members have the full rights as an elected Member to participate and vote in the proceedings of the House and accordingly the decision to keep the nominated Members out from the proceedings of vote of confidence, is contrary to the provisions of the Rules and also the provisions of Paragraph 2 to the Sixth Schedule of the Constitution of India.

It is also contended that as this Court by order dated 9-12-2005 in WP (C) No. 139/ 2005 held that there is nothing in the Rules to debar the nominated Members from voting in a proceeding of vote of confidence and accordingly the nominated Members should be allowed to vote in the proceeding.

By referring to the provisions of Paragraph 2(1) of the Sixth Schedule, which indicates the composition of a District Council, it was contended by the appellant that the impugned notification dated 28-11-2006 discriminates between a nominated and an elected Member which is impermissible in law.

The rights of all Members to participate in making of Regulation by the District Council in exercise of powers under proviso to paragraph 10 of the Sixth Schedule of the Constitution has been pointed out to submit that nominated Members have the right to vote even in a proceeding of vote of confidence.

It is also argued that by issuing the impugned notification, the governor has taken away a valuable right of the nominated Members to vote in a proceeding of vote of confidence and the said right in the nominated Members has not been abridged by any of the provisions of the Rules.

5. On the other hand it was contended on behalf of the respondent No. 3, i.e. the United Legislature Party (ULP), which is an alliance of MDF and INC consisting of eleven Members that the four nominated Members have close nexus with the ruling political party. It was further contended by respondent No. 3 that as per the provisions of Rule 22(2) of the Rules it is only the elected Members who can vote in a proceeding of vote of confidence.

As regards the purported vote of confidence secured on 29-3-2006, it has been contended by respondent No. 3 that the said vote of confidence was taken surreptitiously where the Members of ULP, not having received notices were not present. It was further contended that the said vote of confidence was in violation of Rule 85 of the Rules, in terms of which there can be no motion

pertaining to any matter in the House when such matter is subjudice before a Court, since at that point of time WP (C) No. 139/05 filed by K. Hrahmo was pending for consideration before this Court.

The respondent No. 3 contended that the ULP group withdrew support to N. Vaikhu on 14-11-2005 and elected S. Khipo as the leader of the group. The said withdrawal of support to Chief Executive Member N. Vaikhu was on account of N. Vaikhu's recommendation of names of persons for being nominated as Members of the council against the wishes of the ULP and it is contended that the democratic system envisaged in election of Chief Executive Member would be substantially corrupted if the ruling party can scuttle the majority voice of the elected Members with the help of votes of nominated Members.

It is also contended by the respondent No. 3 that the exercise of powers by the Governor, whether as a constitutional head under Article 163 or in terms of powers under Para 20 BB of the Sixth Schedule is not a relevant issue in the instant case since the Government of Mizoram has not come forward with any case regarding exercise of powers by the Governor in issuing the impugned notification.

The respondent No. 3 contends that neither the Constitution nor the Rules prohibit the taking of a decision by the Governor to deny voting rights to nominated Members in a proceeding of vote of confidence and to advance the cause of democracy, which is a fundamental feature of the Indian Constitution, the governor was within his rights to fake the impugned decision particularly in view of the provisions of Rule 4 of the Rules.

It was also submitted that a nominated Member cannot offer himself as a candidate for the position of Chief Executive Member, the right of such nominated Members to participate in election of a Chief Executive Member is not envisaged by the Rules and, therefore, although such nominated Members may participate and vote in all other proceedings of the council, they cannot claim any right to vote in a proceeding of vote of confidence.

On the basis of the said contentions, the respondent No. 3 supported the notification dated 28-11-2006 by stating that the said notification has been rightly issued by the Governor after due consultation with the Chief Minister of Mizoram and the same has been issued in exercise of powers under Paragraph 20 BB of the Sixth Schedule to the Constitution of India read with Rule 4 of the Rules.

In terms of Paragraph 20 BB of the Sixth Schedule the Governor is entitled to take action in his "discretion" after consulting the Council of Ministers. But, unlike the Governor functioning as a constitutional Head, the Governor while exercising powers under Paragraph 20 BB is not required to act as per the aid and advice of the Council of Ministers.

6. The Govt. of Mizoram did not file any counter affidavit in the case but

produced the government records for perusal of the Court. It is seen after examination of the records, that the matter relating to the District Council following withdrawal of support of the Chief Executive Member as well as filing of WP(C) No. 139/05 was discussed at various levels of the government. The records reveal that the concerned file was routed through the Chief Secretary and also the Minister of District Council Affairs (DCA) and the Chief Minister where after the matter was placed before the Governor. On certain query raised by the Governor, the matter was again processed at the level of the Chief Minister and the Minister of the concerned department and only after such elaborate consultation the impugned order by the Governor came to be issued directing the Chief Executive Member to secure a vote of confidence where only the elected Members were permitted to cast their votes. Thus the requirement of consultation in the functioning of the Governor in exercise of "discretionary" power under Paragraph 20BB appears to be satisfied as is seen from the records produced by Mr. P. Pathak, the learned Advocate General of Mizoram.

7. Mr. B.C. Das, learned senior counsel for the appellant has cited the following decisions in support of his contentions:

- i) Supreme Court Advocates-on-Record Association and another Vs. Union of India,
- ii) S.R. Chaudhuri Vs. State of Punjab and Others,
- iii) A.N. Sehgal and others Vs. Raje Ram Sheoram and others,
- iv) Dwarka Prasad Vs. Dwarka Das Saraf,
- v) S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others,

The aforesaid decisions cited by the learned Counsel for the appellant primarily relate to interpretation of the constitutional provisions.

Mr. Phookan, the learned senior counsel representing the respondent No. 3 has drawn the attention of this Court to the provisions incorporated in respect of BTC by the Constitution (Amendment) Act, 2003 to insert a proviso to Sub-Paragraph (1) of Paragraph 2 of the Sixth Schedule to the Constitution. The amendment is extracted below:

Provided that the Bodoland Territorial Council shall consist of not more than forty-six members of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, including voting rights, from amongst the unrepresented communities of the Bodoland Territorial Areas District, of which at least two shall be women.

With reference to the above insertion of the above proviso, it is argued that so far as the six nominated members of the BTC, the Sixth Schedule specifically provides the voting right for such nominated members.

The attention is also drawn to provisions under Article 243(R) of the Constitution with respect to composition of municipalities. The relevant portion of Article 243(R) is extracted as below:

243R. Composition of Municipalities.--

(1) * * *

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

(a) for representation in a Municipality of--

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

(ii) to (iv) * * *

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

From the above provision relating to non-elected members of Municipality it is provided that such non-elected members shall not have the right to vote in the meeting of the Municipality.

Attention of this Court is also drawn to the provisions of Article 243(c) of the Constitution which relates to composition of Panchayats. The relevant portion of Article 243(C) is extracted here in below for ready reference:

243C, Composition of Panchayats.- (1)

* * *

(2) and (3) * * *

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

From the aforesaid provision pertaining to non-elected members of Panchayats, the Constitution makes special provision for right to vote by such non-elected members.

From the above provisions of the Constitution we find that specific provisions have been made in respect of BTC, Municipalities and Panchayats, to either provide for or to deny voting rights to non-elected members of the aforesaid democratic institutions. Therefore, in the context of the decisions cited on behalf of the writ appellant, we are of the view that issue of interpretation of the constitutional provisions with reference to the decisions cited need not be answered in the present proceeding.

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.

In the instant case we do not find that the constitutional provisions relating to the nominated members of MADC, provide for voting rights by such nominated members. Accordingly the said issue has to be answered with reference to the provisions of the Rules.

8. On behalf of the writ appellant, the Supreme Court decision in *Kuldip Nayar Vs. Union of India (UOI) and Others*, has also been cited to indicate that there is no difference in status between an elected and a nominated member.

Mr. Phookan, learned senior counsel, in turn has submitted that in the instant case also, so far as status is concerned, there is no difference between a nominated and an elected Member of the Council. However, what is seen is that a nominated Member cannot be a candidate for the post of Chief Executive Member nor a role is envisaged for a nominated member in the election of a Chief Executive Member. Accordingly it is submitted that although a nominated Member is entitled to enjoy same status as an elected Member, in respect of election as well as in a proceeding of a vote of no confidence of a Chief Executive Member, the nominated Member does not have a right to participate either as a candidate or as a Member casting vote in such vote of confidence proceedings.

9. We have given our anxious considerations to the submissions made by the rival parties. It is seen from the provisions of the Rules that a nominated Member does not have a right to vote at the time of election of a Chief Executive Member nor he has a right to be a candidate to the post of Chief Executive Member.

We have further noted that unlike the provisions made in case of nominated Members of the BTC. the provisions of the Constitution or the Rules applicable, do not specifically provide for a voting right to the nominated Members of MADC during the vote of confidence for the Chief Executive Member. We also find from perusal of the government records produced by the learned Advocate General for Mizoram that the impugned decision dated 28-11-2006 have been issued after elaborate exercise of consultation and discussion at various levels of the government. We also feel that democratic institutions like District Councils where majority of the Members are elected and only few are nominated would be better served by upholding the embargo placed on voting by nominated Members since any one can be nominated as a Member to the District Council and the power of nomination is capable of being misused to interfere with the process of democracy which is expected to prevail in the election of a Chief Executive Member or in a vote of confidence to be secured by such Chief Executive Member,

10. We have examined the reasoning given by the learned Single Judge in passing the impugned order dated 8-1-2007 while dismissing the writ petition filed by the writ appellant. The learned single Judge examined the provisions of the Rule 22(2) of the Rules which provides for formation of an Executive Committee to the District Council by the largest legislature party having a majority of elected members in the District Council and the leader elected by the said legislature party is to be appointed as the Chief Executive Member. When

the Chief Executive Member elected by the largest legislature party lose the confidence of the legislature party, the decision on continuance of such Chief Executive Member on the basis of a proceeding of vote of confidence with participation of the nominated members, where the nominated members can play a decisive role, was held to be antithesis to the express provision of Rule 22(2) of the Rules. in that context the learned Single Judge took the view that the definition of "member" given under Rule 2(o) has to be understood in the context of the Rules and held that in the context of election of a Chief Executive Member, only the elected members have a role to play.

The learned Single Judge also referred to the refusal of interim order to debar the nominated members from voting, passed by this Court in WP (C) No. 139/05 and found that the said order was passed as the counsels failed to show any provision justifying such embargo against nominated members, But while adjudicating on the present dispute, the learned Single Judge on the basis of the provisions contained under Rule 22(2) of the Rules rejected the contention advanced on behalf of the writ petitioner.

The learned Single Judge also referred to the provisions in respect of the BTC whereby the nominated members have been specifically provided with the voting right in the House unlike in the present case where neither the provisions of the Sixth Schedule nor the Rules have provided any such rights in respect of the nominated members of MADC.

On the (sic) of the aforesaid findings given by the learned Single Judge, the contentions made by the writ petitioner seeking right for the nominated members to participate in the proceeding of vote of confidence, was rejected by the learned Single Judge.

It is our considered view that the said decision of the learned Single Judge and the reasoning given in support of the said decision are justified and valid, We do not find any justification to interfere with the said findings of the learned Single Judge. Accordingly we uphold the impugned order of dismissal of the writ petition.

11. The writ appeal stands dismissed without any order as to costs.