

(1988) 02 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 198 of 1988

Pabitra Kemprai

APPELLANT

Vs

North Cachar Hills District Council

RESPONDENT

Date of Decision : 24-02-1988

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 10, 10, 20, 20, 25, 25

Citation : (1988) 1 GLJ 419 : (1988) 2 GLR 371

Hon'ble Judges : K.N.Saikia, C.J. and R.K.Manisana Singh, J

Bench : Division Bench

Advocate : M.M.Lahiri, P.Prasad, G.N.Sahewalla, B.M.Mahanta, A.K.Goswami,
Advocates appearing for Parties

Judgement

Saikia, C.J.—MThe petitioner, a member of the District Council of North Cachar Hills, in this application under Article 226 of the Constitution of India seeks a Writ in the nature of Quo Warranto against the Respondent No. 3 Sri G. C, Langthasa, who has been declared elected as Chief Executive Member of the District Council, North Cachar Hills, hereinafter referred to as "the District Council."

2. The District of North Cachar Hills has been constituted as an autonomous district in Assam under Paragraph I of the Sixth Schedule to the Constitution of India whereunder the administration of autonomous districts vests in the District Council. The election to the District Council was held in November, 198/ and the petitioner as well as Respondent No. 3 were duly elected. The District Council also elected its Chairman Shri P. K. Garlosa. The Chairman summoned the District Council on 9.1.88 for election of the Chief Executive Member and the Council met at its Assembly Hall on 9.1.88 at 11 A.M. Admittedly, besides the Chairman 25 members of the District Council were present. Only two candidates were validly proposed, namely, the petitioner himself and the Respondent No. 3 Shri G. C. Langthasa. The Chairman presided over the meeting. One Shri I. Jeme, Member of the District Council asked the Chairman whether he would cast

his vote saying that he was not entitled to do so. However, it is the petitioner's case that the Chairman cast his vote at the first instance. Respondent No. 3 was declared elected securing 14 votes while the petitioner secured only 12 votes. Hence this petition.

3. Mr. N. M. Lahiri the learned counsel for the petitioner submits that the Chairman casting his vote at the first instance is contrary to Rule 25 of the Assam Autonomous Districts (Constitutions of District Councils) Rules, 1951. hereinafter referred to as the Rules", and that has invalidated the entire proceeding and consequently the assumption of office by the Chief Executive Member amounts to usurpation of that office. ,

4. Mr. P. Prasad, the learned Senior Government Advocate, Assam submits that as Rule 25 of the Rules read with Rules 10, 13 (2) and 32 stands, the contention of the petitioner appears to be well founded. Mr. Prasad further submits that as this question has arisen on several occasions a decision from the court would be necessary.

5. The precise question to be decided in this petition, therefore is whether when electing the Chief Executive Member of the District Council the Chairman of the meeting can vote at the first instance and if he so votes, whether the proceedings could be vitiated. To answer this question the relevant Rules may conveniently be referred to. Rule 20 of the Rules included in Chapter IV of Part II provides for the election of the Chief Executive Member and says:

"20 (1) The Chief Executive Member shall be elected by the District Council and the other Members shall be appointed by the Governor on the advice of the Chief Executive Member from amongst the members of the District Council :

Provided that the Chairman and the Deputy Chairman of a District Council shall not be eligible to hold office either as Chief Executive Member or as a Member of the Executive Committee of the District Council.

"20 (2) The Election of the Chief Executive Member shall be conducted according to the procedure provided for the election of the Deputy Chairman in rule 10."

Rule 10 of the Rules provides that there shall be a Chairman and a Deputy Chairman of the District Council, who shall be elected by the District Council in the manner provided in rules 32 and 33. Rule 32 provides for election of Chairman and is not directly relevant for our purpose except subrule (6) where two or more candidates obtain an equal number of votes, the person presiding shall select the Chairman by drawing lots. Obviously this provision is necessary because subrule (4) provides that the Deputy Commissioner or any officer authorised by him in this behalf shall preside over the first meeting of the District Council where the Chairman is elected, Rule 33 provides for election of Deputy Chairman. It says:

"33 (1) When either at the beginning of new District Council or owing to the existence of any vacancy in the office of the Deputy Chairman at any time during

the life of the District Council the election of a Deputy Chairman is necessary, the Chairman shall fix a date for the holding of the election and the Secretary of the Council shall send to every member notice of the date so fixed.

(2) The procedure for the election of the Deputy Chairman shall be the same as that for the election of the Chairman as provided for in rule 32, except that the meeting for the election of the Deputy Chairman shall be presided over by the Chairman."

Thus the meeting for the election of the Deputy Chairman shall be presided over by the Chairman. This is a significant difference between Rule 32 and Rule 33 because under Rule 32 the Deputy Commissioner or any other officer authorised to preside over the first meeting has no vote, he being not a member of the District Council, but the Chairman who presides over the meeting for election of the Deputy Chairman is a member of the District Council.

As the election of the Chief Executive Member was to be in conformity with Rule procedure whereunder is the same as that provided in Rule 32 it has to be seen whether the Chairman can have a vote at the first instance. The petitioner's contention is based on the provision of Rule 25, which is included in part III Chapter I dealing with conduct and procedure of business General. It says :

"25. Save as otherwise provided in the Constitution and in this rule, all questions at any sitting of a District Council shall be determined by a majority of votes of the members present and voting, other than the Chairman, or person acting as such.

The Chairman or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."

There can,, therefore, be no doubt that all questions at any sitting of the District Council shall be decided by a majority of votes and the Chairman shall not vote at the first instance, but shall have and exercise a casting vote in the case of an equality of votes. Can this Rule be applied to proceeding of a meeting for the purpose of electing the Chief Executive Member? These Rules speak of all questions. Can election be said to be question? It is common parliamentary procedure that debates may take place on motions, questions and amendments. Election cannot prima facie be regarded as a question for debate. We accordingly hold that Section 25 dealing with voting in District Council is included under Part III conduct and procedure of business, while the formation of the Executive Committee including the election of the Chief Executive Member has been included in Chapter IV of Part II. No doubt the election takes place in the District Council itself, but the question is whether the proceedings of the District Council under Chapter III will be the same as the proceedings of the District Council for constitution of the District Council itself including the election of the Chief Executive Member. There is no doubt that the members including the Chairman in this case remain the same except of course whether the Chairman has to be elected the Deputy Commissioner or a person authorised has to preside. The

very fact that the Deputy Commissioner or a person authorised is to preside over the meeting for election of the Chairman indicates that the members of the District Council shall have the right to exercise their votes. When the District Council is to elect the Deputy Chairman, then the Chairman presides and so is the provision in case of election of the Chief Executive Member. The question, therefore, is whether the Chairman could cast his vote at the election of the Deputy Chairman and for that matter at the election of the Chief Executive Member. If the Chairman is not to vote then the party to which the Chairman belongs shall lose one vote. If the Chairman is given only a casting vote occasions may or may not arise for giving his casting vote and an election cannot be made on the basis of a casting vote. The provision for a casting vote in case of a tie and the purpose thereof is entirely different from that of concluding a debate or deciding a question. The Chief Executive Member corresponds to the Chief Minister in an Assembly. Then how to reconcile his election with the provision of Rule 25? It is common knowledge that the House itself may be converted to a Committee of the whole House for specific purposes. Can that notion of the House being converted to a Committee of the whole House for a specific purpose of election of the Chief Executive Member of the District Council? In the case of election of the Chief Executive Member the majority party members are required to cast their votes. This conforms to parliamentary practice as well as the Constitutional provisions whereunder once a speaker is elected he cannot vote at the first instance, but has only a casting vote. However the Speaker of a State Assembly corresponds to the Chairman of the District Council, while the Chief Minister in the Assembly corresponds to the Chief Executive Member of the District Council.

6. The convention that the impartiality of the Speaker be not only maintained but also enhanced by the House relates to the proceedings of the Parliament. In the House of Commons the member who occupies the chair, in the House itself "does not take part in a division, but in the event of any division resulting in a tie, the Speaker or the Chairman, as the case may be, is required to give his vote. The deliberations of the House of Commons, except when the House is in Committee, are presided over by the Speaker who is chosen by the House at the beginning of every new parliament. He is the guardian of the privileges of the House and is spokesman and representative upon all occasions. The House will allow the conduct of the Speaker to be questioned only by means of substantive motion, and will not tolerate a reflection on his conduct to be made in any other way by one of its members either inside or outside the precincts of the House of Commons. Nor may any notice of a question to the Speaker be given by any member in the House. If, however, an appeal is made to him by a member with regard to a question of order, the Speaker will state his opinion upon the point in question. As Ivor Jennings explained "Care for the rights of the minorities is evidenced by the deliberate exaltation of the office of Speaker". His function is to preside impartially over the debates of the House otherwise than in a Committee. It therefore appears that while in Parliament debates the Speaker has to act

impartially the position is otherwise while he is in a Committee. C. Harmann Pritchett in his American Constitution points out that British convention is not followed in America. While there also the Presiding Officer of the House is its Speaker, the majority party selects its candidate in caucus and then supports him unanimously when the vote is taken. Unlike the Speaker in the English House of Commons, who must preserve strict impartiality, the American Speaker continues to be a partisan and is in fact the most powerful member of his party in the House. He has a vote and may on rare occasion take the floor to participate in debate.

7. It may, therefore, be observed that where the Chairman does not lose his party status he has the right to exercise his vote if occasion arises. When the House meets in a Committee of the whole House for the purpose of electing the Chief Executive Member of the Council it does not amount to a debate of the House raised by means of a question but here the purpose is to elect one of the principal office bearer of the Council. While the Chairman himself is to be elected and the meeting is presided over by an outsider the candidate for Chairmanship could cast his vote and after his being elected as Chairman while presiding over the meeting wherein the Chief Executive Member is to be elected and there is no question of a debate taking place being raised either by motion, question or amendment, the question of the Speaker being deprived of his right to vote may not arise. It is perhaps for this reason we find that the subject of election of the Chief Executive Member has been dealt with in a different Part, namely, Part II, Chapter IV, while the conduct and procedure of business is included in Part III Chapter II. Mr. Prasad points out that the elections of Chairman and Deputy Chairman have also been dealt with in Chapter II of Part III and Rule 25 is made applicable and, therefore, it cannot be said that there is no question involved in an election. We are holding that the election of the Chief Executive Member has been treated differently in Chapter IV because there is a question of election of an important functionary of the District Council where the members of the District Council are to exercise their votes. Similarly while electing the Chairman under Rule 32 we do not find any provision which disables a member of the District Council from voting. So also under Rule 33 we do not find any provision expressly debarring the Chairman from voting. Obviously under Rule 32 the question of casting vote would not arise because the President had no vote and subrule (6) provides that where two or more candidates obtain an equal number of votes, the person presiding shall select the Chairman by drawing lots. Though there is no corresponding provision in Rule 33, subrule (2) thereof clearly provides that the procedure for the election of the Deputy Chairman shall be the same as that for the election of the Chairman as provided in Rule 32, except that the meeting for the election of the Deputy Chairman shall be presided over by the Chairman.

8. Even assuming that the Chairman had no right to vote at the first instance and could only exercise a casting vote in case of a tie, as the number of votes secured by the Respondent No. 3 was 14 while that of the petitioner only 12

there was a clear majority in favour of the respondent No. 3 In Rule 41 of the Rules it is provided that the proceedings shall not be invalid for failure to comply with the Rules. It says :

"41. No proceeding of the District Council shall be deemed to be, or over to have been, invalid by reason of any rule not being, or not having been, complied with, but in case of any such noncompliance, any member may raise a point of order."

In the instant case in fact a member raised the question whether the Chairman could vote at the first instance and the Chairman overruled the objection and cast his vote. There is nothing to show that in such case the proceedings are to be invalidated.

9. Rule 13 provides that the Chairman and Deputy Chairman are not to preside over meeting in certain cases. Under subrule (1) at any sitting of the District Council, while any resolution for the removal of the Chairman, from his office is under consideration, the Chairman, or while any. resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman shall not, though he is present, preside, and the provisions of subrule (2; of rule 12 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent. In such a meeting the Chairman or the Deputy Chairman, as the case may be shall have the right to speak in. and otherwise to take part in the proceedings of, the District Council and will also be entitled to vote only in the first instance on such resolution on any other matter during such proceedings but not in the case of an equality of Votes. This leaves no doubt that the Chairman's vote remains and in appropriate case he can cast his vote at the first instance. Mr. Lahiri pointed out that while easting his vote the Chairman may be said to have vacated his seat so that there was no House at the time Nothing however has been shown to indicate that the Chairman in first had to leave his seat to cast his vote and the proceeding does not show that he had to leave his seat. It is also not clear whether somebody else occupied the seat until the speaker returned and reoccupied his seat. In the absence of any concrete material we are unable to hold that the seat was vacated by the Chairman while casting his vote.

10. In view of the above position we do not consider it necessary to keep this petition pending for deciding the question which may await an appropriate petition. In the result, this petition is found to be without merit and hence it is rejected at the threshold.