

(2011) 01 GAU CK 0054
In the Gauhati High Court

Case No : Writ Petition (PIL.) No. 9 of 2010 and PIL 37 of 2010 (Ghy)

Ramvao Shimray and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Manipur (Hill Areas) District Councils (Election of Members) Rules, 2009 — Rule 15(2)

Citation : (2011) 4 GLT 755

Hon'ble Judges : B.D. Agarwal, J; Amitava Roy, J

Bench : Division Bench

Advocate : U. Das, for the Appellant; N. Kotiswar Singh, A.G., Mr. L.S. Singh, Mr. R. Sarma, C.G.C., Mr. S. Sarma, S.C. Manipur and Mr. K. Jagat, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—Four leading citizens of the State of Manipur have filed this Public Interest Litigation, entertained under Article 226 of the Constitution of India, praying for quashing the Notification No. 1/20/2009-CHA (i) dated 26.04.2010 issued by the Chief Secretary to the Government of Manipur setting in motion election of one member each from Autonomous District Councils. The said Notification was purportedly issued under sub-rule (2) of Rule 15 of the Manipur (Hill Areas) District Councils (Election of Members) Rules, 2009. The petitioners are also praying for quashing the follow up Notifications issued by Sub-Divisional Officer/Returning Officer and fixing the schedule of Election.

2. We have heard Ms. U. Das, learned counsel for the petitioner as well as Sri N. Kotiswar, learned Advocate General for the State of Manipur. The respondent No. 3 was represented by the Standing Counsel Mr. L. S. Singh, Sr. Advocate; whereas the Union of India (Respondent No.4) was represented by Sri R. Sarma, Assistant Solicitor General. We have also perused the affidavit filed on behalf of the respondent No.3. As per order of this Court the Government also produced

the relevant files and that was also perused by us.

3. The aforesaid Notifications have been assailed from two angles. Firstly it has been contended that the Chief Secretary of Manipur was away from Manipur since 23.04.2010 to attend an official training abroad and as such he could not have signed the Notification on 26.04.2010. It has also been stated in the Writ Petition and contended by the learned counsel for the petitioners that the aforesaid Notification was published in a local daily on 26.04.2010 and for publication of any document or news the newspaper have to get the document/information beforehand. To put it differently the learned counsel submitted that since the Notification of the Chief Secretary was published in a local newspaper: "Sangai Express" on 26.04.2010 it has to be inferred and presumed that the Notification was signed and circulated from the office of the Chief Secretary on 25.04.2010, which was a Government holiday being Sunday. It was submitted that ordinarily no Government business is transacted on a holiday and on this ground also the impugned Notification (Annexure-2) be declared as a fabricated document and subsequent Notification issued by Returning Officers as null and void.

4. The second limb of attack to the impugned Notifications is that the process of District Councils Election was supposed to have been declared on 15th and 22nd April, 2010. However, the election schedule was withheld for about 10 days since the Government could not declare the result of DPC for appointment of Primary Teachers under Churandpur Autonomous District Council. It has been averred in the Writ Petition that the said DPC result was declared on 21.04.2010 but for obscure reasons the result was first published in a vernacular newspaper "The Gosem" on 26.04.2010 only i.e. after lapse of 5 days from the purported date of declaration of the DPC result. The learned counsel for the petitioners contended that declaration of DPC result for Primary Teachers simultaneously with the election schedule was actuated with malafide intention. The learned counsel also submitted that withholding of election Notification till the declaration of DPC result was politically motivated and as such, the declaration of DPC result for Primary Teachers had direct nexus on the impartiality and fair play in the Election of District Council Members and on this ground also the Notifications are liable to be set aside.

5. The respondents have also challenged the maintainability of the PIL on the ground that neither the declaration of the Autonomous District Councils Election has violated any fundamental rights of the petitioner nor the same is in contravention of principles of natural justice. It has also been contended in the affidavit of respondent No.3, that although the petitioners are from Tamenglong, Ukhrul and Senapati Districts, they have no locus standi to challenge the election of the other Autonomous District Councils.

6. In our considered opinion since the Writ Petition can be decided on merit it is not advisable to dismiss the same on the ground of locus standi.

7. The respondents' further case is that election of members of Autonomous District Councils was long over due and, in fact, one Mr. Ngachonmi Chamroy, a social worker from Hill Areas of Manipur had also filed a PIL (3/2009) before the Gauhati High Court seeking a direction to the Government to hold election of the 6 (six) Autonomous District Councils as per provisions of Manipur (Hills Areas) District Councils Act, 1971 (as amended) and corresponding Rules. The said PIL was ultimately withdrawn on 18.3.2010, since Government had taken a decision to hold the election as early as possible. In other words, it is the case of the respondents that the election of Autonomous District Councils had no nexus with DPC result inasmuch as, the decision to hold the said election was taken long back.

8. The aforesaid stand of the respondents is rather fortified from the averments made in the writ petition. The writ petitioners themselves have stated in paragraph-9 that the Government had already assured to the public that the first phase of election will be declared by 15.04.2010 and second by 22.04.2010. The relevant files also indicate that the elections were not declared in haste but the said decision was taken after due deliberation over a period of time and that too in consultation with the Government of India

9. At this, it may be mentioned here that elections were held in two phases. The first phase of election was held on 26.5.2010 and 2nd phase was held on 2.6.2010, since this Court did not stay the process of election while admitting the PIL.

10. There is no whisper in the Writ Petition about any anomaly in the selection of Primary Teachers to take a view that DPC results were intentionally published just before announcement of election to take a view that the said DPC result had influenced the elections. Even otherwise, we are of the view that declaration of schedule of an election is a political decision of the Govt. and the Courts ordinarily do not interfere in such policy matter of the Government. Had the DPC result for Primary Teachers would have announced after the commencement of the election it would certainly have a bearing in the election for violation of the code of conduct. However, admittedly the DPC result was declared on 21.04.2010. The DPC result has been annexed under Annexure A/9 and it appears to be a voluminous one and this may be one of the reasons for publishing the same after five days. Unless there is any allegation about malafide in the publication of the DPC result, we are not inclined to drag our feet to find fault in the publication of the result after five days, intervened by two holidays.

11. It appears to us that the impugned Notifications have been basically assailed on the ground that atleast the Notification dated 26.4.2010 was antedated inasmuch the Chief Secretary was away from Manipur and he could not have signed the same either on 25.4.2010 or 26.4.2010. In this regard, the respondents' version is that the Chief Secretary was in India till 26.4.2010 and as such no other officer could have signed the said Notification. It is the further case of the respondents that the election schedule was approved by the State

Cabinet on 22.4.2010 and as such the Government was bound to issue the Notification by 26.4.2010. Since the Chief Secretary was in Delhi on 26.4.2010 the draft Notification was sent to him by Fax and obtained his approval and signature by Fax.

12. After hearing of the PIL was over and during the pendency of pronouncement of the judgment the respondent No.3 filed an affidavit to clarify that the Chief Secretary had in fact signed the Notification on 24.10.2010 and returned the same on the same day after signature and not on 25.4.2010, as stated in the original affidavit of respondent No.3. In other words, the additional affidavit registered as (Misc. Case No. 3683/2010) was filed to correct the date of Fax Message to and from the Chief Secretary and upon hearing both the parties, the affidavit of respondents was directed to be considered with the final judgment in the PIL. It may be mentioned here that the petitioners have filed written objection stating that the original version is correct and the averments made in the affidavit of Misc. Case No. 3683/2010 are false, incorrect and that the application has been filed only to mislead the Court.

13. Since the averments about signing the Notification on 24.4.2010 is based on documentary evidence, we have also consulted the relevant files and notice that draft Notification was sent to the Chief Secretary for his approval and signature by Fax on 24.4.2010 by the Principal Secretary (Hills), Government of Manipur. The Notification was sent by Fax and the Chief Secretary also returned the same duly signed on the same day, albeit, the Notification is dated 26.4.2010. In this way the averments made in Misc. Case No. 3683/2010 appears to be based on record and the averments made in the original affidavit of Respondent No.3 that the notification was received back on 25.04.2010 appears to be bonafide mistake.

14. We have already mentioned earlier that the election schedule was to be declared as per cabinet decision and since the Chief Secretary was going abroad, his signature was obtained in advance. It may be mentioned here that it is not the case of the petitioners that the election Notification was issued in the name of the Chief Secretary by some other officer, putting a forged signature of the Chief Secretary. In our considered opinion, urgent Government business through Fax and using other scientific and electronic methods can be permitted. To say it differently, the action of the respondents in obtaining the signature of the Chief Secretary using electronic device perse cannot be said to be illegal.

15. For the reasons alluded herein above, we are constrained to hold that the Writ Petition (PIL) is devoid of any merit and the same is hereby dismissed. In the facts and circumstances of the case, we do not propose to impose any cost.