
(2010) 12 GAU CK 0003
In the Gauhati High Court
Case No : WP (C) No. 28 of 2010

Sh. V. Malsawma and Another	Vs	APPELLANT
Lai Autonomous District Council and Others		RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Lai Autonomous District (Village Councils) Act, 2007 — Section 8, 8(3)
Lai Autonomous District (Village Councils) Act, 2010 — Section 27

Citation : (2011) 5 GLR 682

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : C. Lalramzauva, Mr. A.R. Malhotra, Mr. J. Lalfakawma, Mr. T.J. Lalnuntluanga, Mr. K. Laldinliana and Mr. J. Thanghmingmawia, for the Appellant; N. Sailo and Mrs. Dinari T. Azyu, for the Respondent

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Mr. C. Lalramzauva, the learned senior counsel assisted by Mr. J. Thanghmingmawia, for the petitioners. Also heard Mr. N. Sailo, the learned senior counsel assisted by Mrs. Dinari T. Azyu, for the respondents 1 and 2. The remaining respondents although served, have chosen not to appear in the proceeding.

2.1 The petitioners were nominated members, of Lawngtlai-III Village Council ("the village council") and the constitution of the said village council along with 5 elected and 2 nominated members was approved by the Lai Autonomous District Council ("the District Council") through Notification dated 12.12.2007 (Annexure 1). After the village council assumed charge, on being dissatisfied with the functioning of Shri Chhuanawma, the President of the village council (respondent No.3), an application seeking to move a no confidence motion against the President, was filed on 3.3.2010 (Annexure 3) before the Executive Member In-Charge, Local Administration of the Lai Autonomous District Council.

2.2 The application of the 5 members of the village council was acted upon and

by a Notification dated 3.3.2010, a meeting to be presided over by the Vice-President to discuss the No Confidence Motion was scheduled on 8.3.2010. However, the scheduled meeting was deferred for one reason or the other and eventually the 5 requisitionists moved WP(C) No.13/2010 seeking intervention of the court on the partisan conduct of the competent authority of the District Council.

2.3 The Executive Member In-Charge, Local Administration and the Lai Autonomous District Council who were arrayed as respondents despite notice being served, did not appear in the court. Eventually by the order dated 19.4.2010, this court disposed of the writ petition by directing the respondent authorities to allow the petitioners to move the No Confidence Motion within 10 days from the date of receipt of the copy of this court's order.

2.4 Pursuant to the court's direction, the respondent No. 2 by Notification dated 26.4.2010 (Annexure 11) scheduled a meeting on 28.4.2010 for allowing the requisitionists to move the No Confidence Motion. However in the mean time by an order purportedly issued on 5.4.2010 (Annexure 10), the petitioners were removed and were replaced by the private respondents 4 and 5, as nominated village council members of Lawngtlai-III Village Council.

2.5 Since 2 of the requisitionists were replaced from the membership of the village council, they were disabled from participating in the meeting scheduled on 28.4.2010 and accordingly all the requisitionists protested in writing (Annexure 12) against the action of the Executive Member, in frustrating the attempt of the requisitionists, to express their want of confidence on the president of the village council.

3.1 Mr. C. Lalramzauva, the learned senior counsel submits that this court in its order dated 19.4.2010 had specifically permitted the writ petitioners (including the 2 replaced members) to participate in the meeting to discuss the No Confidence Motion. But the direction of the court was frustrated by the respondents by issuing a backdated order of replacement of the 2 nominated requisitionist members.

3.2 The learned counsel also submits that in a 7 member village council where requisition for a No Confidence was sought by 5 of the members, apprehending an adverse result, the president of the village council engineered the replacement of the 2 of the requisitionists by another 2 persons from whom he could have expected support during the voting on the No Confidence Motion.

4.1 Mr. N. Sailo, the learned senior counsel representing the Executive Member and the Lai Autonomous District Council, however, submits that the Notification replacing the writ petitioners was issued on 5.4.2010, even before the court's order was passed on 19.4.2010 and accordingly he submits that the removal of the petitioners had no connection with the No Confidence requisition made against the president of the village council.

4.2 The learned counsel refers to the averments made in paragraph 6 of the counter affidavit to contend that the copy of the replacement Notification dated 5.4.2010 was given to the replaced members but they deliberately withheld the said information when the court considered the WHO No. 13/2010 on 19.4.2010.

5. For a proper adjudication of the rival contentions, it became necessary to find out whether the removal Notification of 5.4.2010 was back dated and whether it was actually served on the affected members before this court's order of 19.4.2010. Accordingly, an opportunity was given to Mr. Sailo to produce necessary records to show service of the Notification dated 5.4.2010 on the writ petitioners. However instead of proof of service, a faxed communication addressed by Secretary of the Langtlai-III village council to the learned counsel has been produced in the court. This letter written in Mizo language shows that the copy of the replacement order was not served on the 2 writ petitioners and a bald claim is made by the Secretary without any proof, that he handed over the Notification of 5.4.2010 to the 2 nominated members.

6. Since the writ petitioners had made specific averments that they learnt of the removal Notification dated 5.4.2010 only when they went to serve a copy of this court's order passed on 19.4.2010, it was pivotal for the respondents to establish that the copy of the removal Notification dated 5.4.2010 was actually served on the nominated members on any date prior to 19.4.2010, when the court passed orders permitting the nominated members to participate in the No Confidence Motion. But the official respondents have failed to produce such proof of service and accordingly I am inclined to accept the contention of the petitioners that the removal Notification of 5.4.2010 was back dated and was never served on the nominated members prior to 19.4.2010.

7. Having concluded, thus, the said Notification of 5.4.2010 could not in my view have been made the basis to derail the No Confidence Motion against the president of the village council, as absence of the 2 nominated members would have tilted the balance away from the 5 requisitionists. This would surely defeat a democratic process.

8. u/s 8 of the Lai Autonomous District (Village Councils) Act, 2007 ("the 2007 Act"), a No Confidence Motion against the president of the village council is required to be considered by the Executive Committee of the District Council and a date for moving the motion is required to be fixed within 10 days of requisition. If the Motion of No Confidence is passed by the majority of the members, an appropriate declaration is required to be made in that meeting itself announcing the result of the voting.

9. In the instant case, although the requisition was made as far back as on 3.3.2010, the authorities of the District Council under one pretext or another did not convene a meeting. Finally when this court directed on 19.4.2010 for convening the meeting within 10 days, obstructive steps were taken to replace 2 of the 5 requisitionists, interestingly on the advice of the president of the village

council (respondent No.3), against whom the No Confidence Motion was sought to be moved by the requisitionists.

10. Considering the strength of the 7 member village council and the likely impact on the No Confidence Motion by removal of 2 of the requisitionists on the eve of the scheduled meeting and having regard to the past reluctance of the respondent No. 1 and 2 to convene a meeting, I am of the view that the respondents did not act bona fide in issuing the removal Notification of 5.4.2010 and it was issued with an ulterior object to ensure the defeat of the No Confidence Motion. That apart this mala fide act also short circuited this court's order of 19.4.2010.

11. For the foregoing discussion, I find good merit in the case projected by the petitioners. Consequently the Notification dated 5.4.2010 is quashed. The respondents 1 and 2 are therefore ordered to schedule a fresh meeting in terms of this court's order dated 19.4.2010 in WP(C) No. 13/2010. Since the court is informed that the earlier "2007 Act" has been repealed and substituted by the new Lai Autonomous District (Village Councils) Act, 2010 [hereinafter referred to as the 2010 Act], in view of the section 27 saving clause in 2010 Act, the procedure prescribed in the, 2007, Act shall be followed in the instant case as the requisition was made during the subsistence of the 2007 Act.

12. At this stage, Mr. Sailo informs that after the recent election to the District Council, new Executive Body is yet to take over the functions and accordingly he submits that it might be difficult to convene a meeting in terms of the court's order and the provisions of the section 8(3) of the 2007 Act within 10 days. However, Mr. Sailo assures that the meeting can be convened within 7 days of assumption of office by the new Executive Committee of the District Council.

13. In view of above, the meeting on the No Confidence Motion be scheduled within 7 days from assumption of office by the new Executive Committee of the Lai Autonomous District Council. The case is allowed with this direction. No cost.