
(1993) 09 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 44 (K) of 1993

Shri Luvezo Venuh

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Assam Tribal Areas (Administration of Town Committees) Regulations, 1950 —
Regulation 3(1), 3(3), 4(2)
Naga Hills District (Constitution of Town Committee) Rules, 1954 — Rule 2, 47, 53

Citation : AIR 1994 Guw 81

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : B.N. Sarma, for the Appellant; D.K. Mishra, A.A.G. and R.S. Bedi, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Sema, J.—By this writ petition, the petitioner has assailed the Annexure-G order dated 21st May, 1993 passed by the 3rd respondent convening a meeting of the Phek Town Committee on 27-5-1993 for considering a no-confidence motion filed by eight (8) members of Phek Town Committee against the Chairman, the petitioner herein.

2. This case has a long chequered history and in order to recapitulate the history, the facts leading to the filing of the present petition may be recited in a nutshell.

3. Phek Town Committee was constituted under Regn. 3 of Assam Tribal Areas (Administration of Town Committees) Regulations, 1950 (hereinafter the Regulation) some time in April, 1989. The Town Committee consists of fourteen (14) members of whom nine (9) members were elected and five (5) members were nominated. One Nusucho, elected member was elected as Chairman.

4. Sometime in 1991, an allegation of misappropriation of Town Committee's money was leveled against the Chairman and other two (2) members of the

Town Committee. A no-confidence motion thereafter was drawn against the Chairman, Shri Nusucho by members of the Town Committee. The Deputy Commissioner, Phek issued a notice dated 21-2-1992 convening a meeting of Phek Town Committee on 27-2-1992 to consider the no-confidence motion against the Chairman and in the event majority of the members voted in favour of the no-confidence motion, the election of new Chairman.

5. Before the no-confidence motion could be taken up, Shri Nusucho submitted his resignation from the post of Chairmanship of Phek Town Committee. Following the resignation of Shri Nusucho, the present petitioner Shri Luvezo Venuh was appointed by the Governor of Nagaland as Chairman of Phek Town Committee by an order dated 26-3-1992. The petitioner, thereafter took the oath of office and assumed charge as Chairman of Phek Town Committee on 3-4-1992. By another order dated 13-7-1992, the Governor of Nagaland rescinded the appointment of the petitioner as Chairman of Phek Town Committee and directed the Deputy Commissioner, Phek to convene a meeting for election of a new Chairman. The order dated 13-7-1992 has been assailed before this Court and was the subject matter in Civil Rule No. 100(K) 1992 and Civil Rule No. 108(K) 1992. This Court disposed of both the writ petitions by a common judgment and order dated 12-4-1993, allowing the petitions. However, in paragraph 25 of its judgment, it has been observed as under:--

"25. This order would, however, not preclude the members of the Phek Town Committee to move an application of no-confidence motion against the petitioner if so decided. It is true that the rules does not provide any provision for no-confidence motion against the Chairman. However, this does not take away the democratic right of the members to resort to the democratic process - by moving no-confidence motion against the Chairman if so decided by the majority of the members. With the above direction, this petition is disposed of."

Being aggrieved by the aforesaid observation, the present petitioner preferred writ appeals registered as Writ Appeal No. 55/ 1993 and Writ Appeal No. 57/1993. The Division Bench of this Court by judgment and order dated 26-4-93 disposed of two (2) writ appeals with an observation:

"Whether the members of the Committee have a right to move or approve a motion of no-confidence against the Chairman did not arise in these cases and did not call for any observation, finding or direction. The question may have to be decided in appropriate proceeding if an occasion arises and is left open for such decision. We make it clear that nothing in the judgment shall be deemed to contain any observation for and against any such right a member may claim. Subject to this, observations in paragraphs 23 and 25 and the direction in the last paragraph of judgment and order are set aside."

6. It would appear that on the basis of the aforesaid observation in the judgment and order dated 26-4-93, eight (8) members of Phek Town Committee submitted a no-confidence motion against the present petitioner as Chairman of Phek Town

Committee, culminating in passing the impugned order dated 21st May, 1993 (Annexure-G).

7. I have heard Mr. B. N. Sarma, learned counsel for the petitioner, Mr. D. K. Mishra, learned Addl. Advocate General and Mr. R. S. Bedi, learned counsel for the private respondents Nos. 4 to 11 (mover of the motion) allowed to be impleaded as party respondents by an order dated 11 -6-93 by this Court.

8. The sole question that arises for determination in this writ petition is whether in absence of the provisions of Rules and Regulations, the Chairman of the Town Committee either elected or appointed is removeable from the Chairmanship by a no-confidence motion by members of the Town Committee.

9. Following points have been urged by Mr. B. N. Sarma, learned counsel for the petitioner:

(a) There is no provision in the Regulation either for removal of the Chairman or for a no-confidence motion by the members and the impugned notice dated 21-5-93 is without authority of law and without jurisdiction.

(b) The Town Committee being the creation of the Statute, all its functioning, is governed by the Statute and in the absence of a specific provision of law members have no right to move a no-confidence motion against the Chairman.

(c) The petitioner having been appointed by the Governor to be the Chairman in exercise of the powers conferred upon him by a Regulation, the appointment of the petitioner as Chairman cannot be revoked nor nullified by the members of the committee by no-confidence motion.

(d) The members of the Town Committee under the Regulation are not democratic bodies and as such they are not allowed to resort to democratic rights by mode of no-confidence motion,

(e) Even assuming that such right of no-confidence motion is available to the members, the same can be exercised only in respect of Chairman elected by the members and not in a case where the Chairman is appointed by the Governor.

(f) The Deputy Commissioner does not have any power to convene a meeting of the Town Committee under the provisions of Regulation and also a Sub-Divisional Officer(C) is a person unknown to the Regulation and he has no power to conduct such meeting.

10. Before I advert further to the arguments advanced by counsel for the petitioner, at this stage I may dispose of one argument of the counsel. At the time of hearing of this petition, the learned counsel heavily relied upon the decision of the Division Bench of this Court passed on 7-12-1991 in Civil Rule No. 2886/1991, Shri L. Vikato Sema v. The State of Nagaland. On perusal of the judgment, the ratio of decision in Vikato (supra) has no application to the facts of the present case in hand. On the other hand the Bench had observed in paragraph 9 of its judgment as under:--

"We, however, make it clear 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."

11. The Regulation was made by the Governor of Assam in exercise of power under Clause (b) sub-paragraph 1 of paragraph 19 of the Sixth Schedule to the Constitution of India. The Regulation as assented to by the President of India was published in the Assam Gazette dated 15th August, 1950. The preamble of the Regulation reads as under:--

"Whereas, it is expedient to provide for the establishment of Town Committees in the Tribal Areas of Assam;

And whereas under Clause (b) of sub-paragraph (1) of paragraph 19 of the Sixth Schedule to the Constitution of India, hereinafter referred to as "the Constitution", the Governor is empowered to make regulations for the peace and good government of any area in his State which is for the time being a Tribal Area;

Now, therefore, in exercise of the said powers and of all other powers enabling him in that behalf, the Governor of Assam is pleased to make the following regulation for the said areas which have been declared to be Tribal Areas under the Constitution." (See Nagaland Code, Vol. 1, page 227)

From the preamble of the Regulation, it appears that the sole purpose of enacting the Regulation was to provide the peace and good Government of any area declared as "Tribal Area". This tiny Regulation consists of only 6 Sections and one Schedule for the purpose for which the Regulation has been made. I may refer to few Sections which are relevant for the purpose of determination of present controversy. Section 1(a) made the Act extended to the Districts of Kohima and Mokokchung in the State of Nagaland (now comprises of 7 districts). Section 2(1) deals with the constitution of notified areas, enabling the Governor by Notification to constitute a Town Committee for any specified area. Sub-section (2) of Section 2 provides that Notification shall be published in such places as the Governor may direct. Sub-sections (3) and (4) of Section 2 deals with the objection from an inhabitant of area and says that if any inhabitant of specified area desires to object the Notification, he may within 6 weeks from the date of publication submit his objection in writing to the Governor through District Officer and on expiry of 6 weeks the Governor may by Notification declare the specified area to be notified area.

12. Sections which has an important bearing for resolution of the present controversy deals with the constitution of Town Committee. Sub-section (1) of Section 3 states that there shall be a Town Committee for each notified area consisting of such number of members to be appointed or elected on the basis of adult suffrage or partly so appointed and partly so elected as the Governor may by Notification direct. This Section also enables the Governor to make Rules for

the appointment and election of members and the conduct of such elections. Sub-section (2) of Section 3 states that every Town Committee shall have a Chairman and a Vice-Chairman, Sub-section (3) of Section 3 to which we are concerned for the present controversy reads as under:--

"The Governor may appoint any person, whether a member of the Town Committee or not, to be its Chairman or Vice-Chairman or may authorise any Town Committee to elect its Chairman or Vice-Chairman or both, and fix the term of office of the Chairman and Vice-Chairman of the Town Committee."

13. Further, the Governor of Assam in exercise of the powers conferred by Subsection (1) of Section 3 and Sub-section (2) of Section 4 of the Regulation, framed the Rules, called the Naga Hills District (Constitution of Town Committees). Rules, 1954 (in short the Rules).

14. Admittedly, there is no provision under the Regulation or under the Rules for removal of Chairman either appointed or elected by a vote of no-confidence motion by the members. I shall, now examine this important aspect of the matter whether an institution like Town Committee is a body constituted through democratic process and it is a democratic body. This aspect can be considered in the back-drop of provisions of Regulations and Rules framed thereunder. As referred earlier, Sub-section (1) of Section 3 of the Regulation mandate that member of Town Committee shall consist of such number of members to be appointed or elected on the basis of adult suffrage or partly so appointed and partly so elected as the Governor may by Notification direct. Further, Rule 53 of the Rules under Chapter-IV deals with the conduct of business of the Town Committee and states that all the proposals and questions submitted to the meeting of a Town Committee shall be decided by a majority of the votes of the committee including the vote of the Chairman and if the votes are equally divided, the Chairman shall have a casting vote in addition to his ordinary vote.

15. Rule 30 to Rule 41 of the Rules deals with the voting at elections and says inter alia, that voting at election to a Town Committee shall be conducted by a symbol system. The method of voting shall be given by ballot. No person shall vote at an election in more than one ward. No person which is not for the time being included in the electoral roll of any ward shall be entitled to vote in the ward. A person shall not vote in an election in more than one ward. His vote in all such wards shall be void. Rule 36 of the Rules provides that Returning Officer shall provide at each polling station one ballot box for each candidate. The symbol assigned to a candidate shall be fixed to the ballot box for the candidate. The ballot box of each candidate shall also be clearly marked with his name. Rule 42 of the Rules deals with the declaration of election result. Rule 45 deals with the election petition. This goes to show that Chapter-III of the Rules was drafted as nearly as possible in the language used in the Representation of People Act, 1951 with regard to the election. Therefore, it clearly appears that the Town Committee so constituted and members so elected is undoubtedly a democratic body.

16. Reading from the above provision of Regulations and Rules, it clearly appears that the members of the Town Committee, so elected, are through democratic process and the conduct of the business of the members of the Town Committee are democratic in nature and therefore, it cannot be said that the Town Committee is not a democratic institution. If this point is settled, there can be no distinction whether the Chairman is elected or nominated, he is amenable to democratic process. Once it is held that the constitution of Town Committee is a democratic institution, and the Chairman and members are democratic bodies, the removal of the Chairman whether elected or appointed by a no-confidence motion is inherent. There can be no distinction between Chairman elected or Chairman appointed as because once he is appointed or elected, he acts as a Chairman. The fact that the Chairman shall have a casting vote in addition to his ordinary vote in case if a tie as visualised under Rule 53 of the Rules, would clearly goes to show that once he is elected or appointed as Chairman, he is amenable to democratic process. Once a Chairman is always a Chairman. In a democratic country like ours, it is unthinkable to suggest that members so democratically elected through adult suffrage have no right to remove the Chairman by a no-confidence motion. It would be incongruous to suggest that the members have no right to remove the Chairman by a vote of no-confidence merely because there is no provision for it. Once it has been held that the composition of members of the institution is through election or nominated by following a democratic process, the inherent rights of the members to remove the Chairman by resorting to democratic right is its necessary concomitant.

17. It is true that under Sub-section (3) of Section 3 of the Regulation, a discretionary power has been given to the Governor to appoint a person as a Chairman or Vice-Chairman whether he is a member of Town Committee or not. This provision has been made intentionally by law makers so as to enable the Governor to mould his decision according to the exigency of the circumstances. Keeping in view of the entire background for the purpose of which the Regulation has been made, the law makers purposely left it loosely so that the Governor may mould his decision to suit the exigency of circumstances and for the peace and good administration in the interest of the tribal area. Merely because the discretionary power has been given to Governor to mould his decision according to the exigency of circumstances, the democratic institution like Town Committee does not cease to be a democratic body. Therefore, no distinction is permissible between the Chairman appointed or elected. It would be unthinkable to suggest that the members elected through democratic process shall have no right to remove the Chairman with whom they have no confidence. The argument of Mr. B. N. Sarma that there is no provision to remove the Chairman by a vote of no-confidence motion under the Regulations or Rules and that even assuming that there is such a right, the petitioner was appointed as Chairman by the Governor and not elected by the members and therefore, the members have no right to remove the petitioner by a vote of no-confidence motion has no substance and must fail.

18. I now advert to second contention of the learned counsel for the petitioner. Rule 2(f) of the Rules defines "Deputy Commissioner" means the Deputy Commissioner, Naga Hills District and includes the Sub-Divisional Officer, Mokokchung (now the State of Nagaland is comprised of 7 Districts with 7 Deputy Commissioners). Further R. 2(k) defines Magistrate and includes the Deputy Commissioner or the Sub-Divisional Officer or Assistant to Deputy Commissioner specially authorised by Deputy Commissioner to discharge the function of a Magistrate under the Rules. Chapter-III of the Rules deals with the elections of the Town Committee. Rules 11, 12 and 13 empowers the Deputy Commissioner to conduct the election by a notification. Further under Rule 16(a) of the Rules, the Deputy Commissioner has been empowered to adjourn the poll in emergencies like natural calamities or any other sufficient cause and also fix a date for re-poll. Rule 18 deals with the disqualification for being elected as a member and for being member of a Town Committee and set out the circumstances under which the person shall be disqualified for being elected as a member or for being a member of a Town Committee. Rule 18(1)(h) provides that a person who is a salaried servant of the State or the Central or any employee of a Town Committee, shall be disqualified for being elected as a member or for being a member of Town Committee. However, Sub-rule (2) of Rule 18 provides special power to the Deputy Commissioner to nominate a person who is salaried servant to be a member of the Town Committee. Rules 21, 22, 23, 24 and 25 of the Rules deals with the preparation of Electoral Rolls. Proviso to Rule 25 provides that the functions of the Chairman under Rules 21, 22 and 23 may be performed by an officer appointed in this behalf by the Deputy Commissioner. Rule 26 of the Rules empowers the Deputy Commissioner to appoint an officer for the purpose of election of members to a Town Committee who shall be called the Returning Officer for the Town Committee.

19. Chapter-IX of the Rules deals with miscellaneous matters. Rule 102 of the Rules provides that the Deputy Commissioner or any officer authorised may enter upon into and inspect (a) any moveable property in the occupation, (b) any work in progress under the orders, (c) any institution under the control and administration of Town Committee and call for, inspect any book or document which may be in the possession of or under the control of the Committee. Rule 103 of the Rules empowers the Deputy Commissioner to act either on a direction by the Governor or on his own motion to suspend the execution of any resolution of the Town Committee or prohibit the doing of any act which is about to be done or is being done or if in the opinion of Deputy Commissioner, the resolution, order or act in excess of the powers conferred by law which is likely to lead to serious breach of the peace or to cause serious injury or annoyance to the public or to any class or body of the persons.

20. In the back-drop of the aforesaid provisions of regulations and the Rules, I now dvert to the order Which is impugned in this writ petition and reads as under:--

"Government of Nagaland Officer of the Deputy Commissioner, Phek

NOTICE

NOODEV/TC-69/88/379 Dated; Phek, the 21st May, 1993

With reference, to the Government of Nagaland Letter No. TC/HOME/71-77 (Part) dated 14-5-1993 in connection with Gauhati High Court order of Writ Appeal No. 55 of 1993 and 57 of 1993 in Civil Rule No. 100(k) and 108(k) of 1992 a representation signed by 8 (eight) members of the Phek Town Committee on no-confidence motion against Shri S.L. Venuh, Chairman, Phek Town Committee was submitted to the office of the undersigned. In this connection a meeting of the Phek Town Committee shall be held on 27-5-1993 at 11.00 hours in the Office of the Sub-Divisional (Civil) Sadar, Phek. All the members of the Phek Town Committee are directed to attend the meeting without fail. The SDO (Civil), Phek shall conduct the said meeting. . .

Agenda for the said meeting:--

1. No-confidence motion as filed by 8 (eight) members of Phek Town Committee against Shri S. L. Venuh.

Sd/-21-5-93 ., (Chiouses Sangtam)

Deputy Commissioner, Phek, Memo No. Dt. Phek the DEV/TC-69/88/379: 21st May, 1993. Copy to :--

1. All the members of the Phek Town Committee for necessary action.
2. The SDO(C) Phek, (Sadar) for information and necessary action.
3. The Home Commissioner, Nagaland, Kohima for information. This refers Govt. Letter No. TC/HOME/71-77 (Part) dated 14-5-1993.
4. The Commissioner, Nagaland, Kohima.

Sd/- (Chious Sangtam) Deputy Commissioner, Phek."

21. It is contended by Mr: B. N. Sarma that under the Rule 47 of the Rules, the conduct of business is to be called by the Chairman and presided over by the Chairman and the Deputy Commissioner has no power to call such a meeting. It is further contended by counsel that SDO(C) is unknown to the provision of Regulation/Rules and entrusting the SDO(C) to conduct the meeting is without jurisdiction.

22. Proviso to Rule 49 of the Rules provides that no candidate for election to the Office of the Chairman or Vice-Chairman shall preside at the meeting convened for such election. From the Impugned order extracted above, it clearly appears that no confidence motion was moved against the petitioner by eight (8) members, challenging the Chairman-ship of the petitioner and in such event the Chairman is not entitled to preside over the meeting. It would be against all

canons, norms and procedure and cardinal principles of judicial jurisprudence to allow, the Chairman to preside over the meeting while a no-confidence motion is moved against him. This would otherwise be amounting to allow Chairman to act as a Judge of his own cause. The second contention of Mr. B. N. Sarma, that the SDO(C) is unknown to the provision of Regulation/Rules is belied by the provision of Rule 2(f) and (k) which defines the Deputy Commissioner and includes Sub-Divisional Officer or an Assistant to Deputy Commissioner authorised by the Deputy Commissioner. From the impugned order, it clearly appears that the Sub-Divisional Officer (C) was authorised by the Deputy Commissioner to conduct the meeting in this view of the matter, there is no substance in the submission of the learned counsel.

23. A fascicule reading of the Regulations and the Rules as discussed above, it clearly posits that the intention of the law makers was to confer more discretionary power to the Governor and the Deputy Commissioner so that they may modulate their own action to suit the exigency of circumstances for the peace and good Government of the tribal area. The present Nagaland State was one of the tribal areas in the State of Assam. The intention of the law maker was clearly manifested in the preamble of the Regulation itself. Keeping in view of the background of the tribal people, simple, unsophisticated and unaware of the technicalities of the Rules and law, this type of simple laws were made to suit the tribal people so that they may understand and present their case without obstruction by the technicalities of the law.

24. From the reading of the Regulations and the Rules, the intention of the law makers are quite clear that it is intended for simple people and instead of more written law more discretionary power has been granted to Governor and the Deputy Commissioner. This type of law are made with an eye to simplicity. People in tribal area are less sophisticated and are not expected to make themselves aware of technicalities of complex law. It is with this background the simple law are made so that justice may not fail because of some technicalities. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In the tribale area it is considered necessary that discretion should have greater play than the technical rules. It is, therefore, necessary to leave the judge free so that he may mould his proceeding to suit the situation and may be able to apply the essential rules on which our administration of justice is based untrammelled by any technical Rule unless that Rule is essential to further the cause of justice. (See State of Nagaland Vs. Ratan Singh, etc.,

In the result there is no merit in this writ petition and is accordingly dismissed, however, without costs. Stay order, if any, stands vacated.