
(2010) 02 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 642 of 2009

Smt. Devimaya Thapa and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Constitution of India, 1950 — Article 243B, 243E, 243E(3)
Manipur Panchayati Raj Act, 1994 — Section 20(1), 22, 22(2)

Citation : (2010) 2 GLD 162

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : H. NK. Singh and Babulindra, for the Appellant; Th. Ibohal, Sr. Govt. Advocate and Y. Ashang, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T. NK. Singh, J.—Heard Mr. H. NK. Singh, learned senior counsel assisted by Mr. Babulindra, learned Counsel appearing for the petitioners as well as Mr. Th. Ibohal, learned senior Government Advocate assisted by Mr. Y. Ashang, learned Addl. Government Advocate appearing for the State-respondents.

2. The only prayer sought for in the present writ petition is for a direction to the respondents to hold election of the members of 10/28-Santolabari Gram Panchayat.

3. The concise facts, sans unnecessary details, leading to the filing of the present writ petition, are recapitulated. Admittedly, the petitioners are the voters of the Assembly Constituency as well as Panchayat Raj area, namely, 10/28-Santolabari Gram Panchayat. On 6.8.2007, there was a notification for election for constitution of Gram Sabha and also for constitution of Gram Panchayat including the present Panchayat, i.e., 10/28-Santolabari Gram Panchayat. As per the said notification, the elections were held for the other Gram Panchayats but for the present Gram Panchayat, i.e., 10/28-Santolabari Gram Panchayat, election for all the members could not be held. In 10/28-Santolabari Gram

Panchayat there are seven members, out of which only one member, i.e., Pradhan, could be elected in the said election and for the other members, i.e., six members, election could not be held because of the withdrawal of their nominators in the consequence of life threats so made by the armed militants. The Deputy Commissioner in exercise of his power u/s 22(2) of the Manipur Panchayati Raj Act, 1994 constituted an Administrative Committee of the 30 Panchayats including the present Panchayat, i.e., 10/28-Santolabari Gram Panchayat for a term of six months vide Notification No. DC/DED/IW/ZP-GP-Elect(Pt), Imphal, the 15th March, 2008. Admittedly, the term of the Administrative Committee of the present Panchayat had expired on 14.9.2008 but till today the concerned authority has not held the election for constitution of the present Panchayat, i.e., 10/28- Santolabari Gram Panchayat.

4. The Part IX of the Constitution of India had been inserted by the Constitution (Seventy-third Amendment) Act, 1953 w.e.f. 1.6.1993. The Manipur Panchayati Raj Act, 1994 was enacted w.e.f. 23.4.1994 to provide for the constitution and organization of the Panchayats as units of local self-Government in the rural areas of Manipur and for matters connected therewith and incidental thereto.

5. Before entering into the merit of the case, it would be convenient to look into the Articles 243B and 243E of the Constitution of India and for convenience the Article 243B and 243E are reproduced hereunder:

243-B. Constitution of Panchayats.- (1) There shall be constituted in every State, Panchayats at the village,

intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in Clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

243-E. Duration of Panchayats, etc.- (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of the duration specified in Clause (1).

(3) An election to constitute a Panchayat shall be completed,-

(a) before the expiry of its duration specified in Clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Clause (1) had it not been so dissolved.

6. On bare perusal of the Article 243E of the Constitution of India, it is clear that it is the mandate under Article 243E of the Constitution of India that an election to constitute a Panchayat shall be completed before the expiry of its duration specified therein and duration of the Panchayat will be five years from the date appointed for its first meeting and no longer. u/s 20(1) of the Manipur Panchayat Raj Act, 1994, duration of every Gram Panchayat would be five years from the date appointed for its first meeting and no longer. In the instant case, it is the admitted case of both the parties that the duration of the present Panchayat, i.e., 10/28- Santolabari Gram Panchayat had already been expired on 14.9.2008.

7. Mr. Y. Ashang, learned Additional Government Advocate appearing for the State-respondents submitted that the State Government has already considered for amendment of the existing provisions of Section 22 of the Manipur Panchayat Raj Act, 1994 to extend the term of the Administrative Committee beyond six months so that the Administrative Committee functions smoothly and also a bill is being introduced to amend the said provisions in the next assembly meeting.

8. It is quite settled law that the authority concerned, i.e., the State respondents are duty bound to comply with the mandate of the Constitution provided under Article 243E of the Constitution of India, wherein the election to constitute a Panchayat shall be completed within the expiry of its duration. In order to dilute mandatory requirement of compliance of the mandate of the Constitution of India provided under Article 243E(3) of the Constitution, the State Government cannot make an endeavour to amend the provisions of Section 22 of the Manipur Panchayat Raj Act, 1994 so as to extend the term of the Administrative Committee beyond six months after the expiry of the duration of the Panchayat. In other words, the State respondents cannot amend the provisions of Section 22 of the Manipur Panchayat Raj Act, 1994 so as not to hold the election in derogation of the mandate under Article 243E of the Constitution of India, wherein the election to constitute a Panchayat shall be completed before the expiry of its duration, i.e. five years.

9. Such being the settled position of law, this Court is of the considered view that the submission of Mr. Y. Ashang, learned Additional Government Advocate appearing for the State respondents that the step has been taken for amendment of the provisions of Section 22 of the Manipur Panchayat Raj Act, 1994 for extending the term of the Administrative Committee of the present Panchayat is not acceptable in the eye of law.

10. For the reasons discussed above, this Court has no alternative except to direct the State respondents to comply with the mandate provided under Article 243E of the Constitution of India, in other words, the State respondents shall

have to hold election for constitution of Gram Panchayat, i.e. 10/28- Santolabari Gram Panchayat as early as possible but not later than 4 (four) months from today.

11. With the above observation and directions, this writ petition is disposed of. No costs.

The Registry is directed to furnish a copy of this judgment and order to the Chief Secretary, Government of Manipur and also to Mr. Y. Ashang, learned Addl. Government Advocate appearing for the State-respondents. Petition disposed of.