
(2011) 12 GAU CK 0022
In the Gauhati High Court
Case No : Cont. Case (C) No. 408 of 2010

Sri Paban Manta

APPELLANT

Vs

Mr. L. Phangcho

RESPONDENT

Date of Decision : 17-12-2011

Acts Referred:

Constitution of India, 1950 — Article 215, 226
Contempt of Courts Act, 1971 — Section 12

Citation : (2012) 2 GLD 228

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : R.C. Saikia, for the Appellant; B.J. Ghosh, GA, for the Respondent

Judgement

A.K. Goswami, J.—This is an application u/s 12 of the Contempt of Court Act, 1971 read with Article 215 of the Constitution of India, alleging wilful and deliberate violation of the order dated 15.11.2010 passed in WP(C) 3776/2010. Pursuant to a notification dated 12.5.2010 issued by the of members to the Tiwa Autonomous Council u/s 52 of the Tiwa Autonomous Council Act, 1995, for short, the Act, the petitioner, being interested, submitted his nomination for election from No. 9 Damal Constituency and three other persons had also submitted their nominations for being elected from the said constituency.

2. The date of election was fixed on 7.6.2010 and it was the contention of the petitioner that only a few days prior to the date of election, a voters list was published with full of defects and anomalies, resulting verbal protest from the petitioner to the authority concerned, which declined to take cognizance of such complaints. Election was held on 7.6.2010 as notified and the result was declared on 10.6.2010. One Niraj Bordoloi, who had secured 2379 votes, as against 2097 votes secured by the petitioner, was declared elected from No. 9 Damal Constituency. The petitioner, thereafter, approached this Court by filing an application under Article 226 of the Constitution of India, praying for setting aside and quashing of the election of No. 9 Damal Constituency held on 7.6.2010

with a defective voters list and also for a direction to direct the respondent to hold election afresh correcting the voters list of the constituency in question.

3. This Court, on 01.11.2010, while fixing the matter on 8.11.2010, passed the following interim order :

Considering the matter in its entirety and in the interest of justice, it hereby directed that, until 8th of November, 2010, no approval of the result of the election the respondent No. 4 shall be accorded by the respondent No. 1 if the approval has not in the meanwhile already been accorded.

4. On 15.11.2010, on the prayer of the learned State counsel to adjourn the matter, while fixing the case on 24.11.2010, interim order passed earlier was directed to be continued till then.

5. This contempt application has been filed with the allegation that although the petitioner had served the copies of the aforesaid orders, the respondent had flouted the order of the Court by issuing a notification dated 18.11.2010, constituting the Executive Council of Tiwa Autonomous Council. For better appreciation, a relevant extract of the said notification dated 18.11.2010 is reproduced herein below :

Order By The Governor

Notification

Dated Dispur the 18th Nov, 2010 No. TAD/BC/MISC/ELEC/210/2010 : In pursuance of provisions laid down u/s 6(4) of Tiwa Autonomous Council Act 2005(Amended) and Rule 118(3) of Tiwa Autonomous Council(Election) Rule 2005 and the report received from Principal Secretary, Tiwa Autonomous Council, Morigaon, vide No. TAC/P.Secy/06/08-09/169 dt. 15-9-2010, the Governor of Assam is pleased to notify the constitution of the Executive Council of Tiwa Autonomous Council with the following members.

(1)

Smti Rina Patar

Chairperson

(2)

Sri Haren Dewri

Vice-Chairman

(3)

Sri Ramakanta Dewri

Chief Executive Member

(4)

Sri Bipin Ch. Bordoloi

Dy. Executive Member

(5)

Sri Niraj Bordoloi

Executive Member

(6)

Saruj Konwar

Executive Member

(7)

Smti Bijumoni Bordoloi

Executive Member

(8)

Smti Sukleswari Bordoloi

Executive Member

(9)

Sri Madan Bordoloi

Executive Member

(10)

Smti Dipali Boro

Executive Member

(11)

Sri Biju Patar

Executive Member

(12)

Sri Dhamendra Nath Bordoloi

Executive Member

Sd/- (L. Phangcho) Commissioner & Secy, to the Govt. of Assam, WPT & BC Department, Dispur.

6. I have heard Mr. R.C. Saikia, learned counsel for the petitioner and Mr. B.J. Ghosh, learned State Counsel, appearing for the sole respondent.

7. Mr. Saikia submits that in the teeth of the interim order of this Court directing the respondent not to approve the result of the election of the respondent No. 4 in the writ petition i.e. Niraj Bordoloi, the notification dated 18.11.2010 demonstrates that the contemnor had wilfully and deliberately flouted the order of the Court by according the approval of the election of Niraj Bordoloi, by issuing the notification constituting the Executive Council of Tiwa Autonomous Council with Sri Niraj Bordoloi also as an executive member. According to him, a clear case of contempt is made out and the respondent is required to be proceeded against in accordance with law for violating the Court's order.

8. The respondent had filed a show cause reply. In the reply, it has been stated that he is not an authority to accord approval and/or disapproval of the result of any election of any member to Tiwa Autonomous Council and there is no provision under the Statute or under the Rules framed thereunder to approve/disapprove the election of any elected candidate. Declaration of a member as an elected candidate is made by appropriate authority under Rule 83 and Rule 85 of the Tiwa Autonomous Council (Election) Rules, 2005, for short, the Rules and the elected members including Niraj Bordoloi was administered oath by the Deputy Commissioner, Morigaon, on 24.8.2010. The meeting of the General Council of Tiwa Autonomous Council was held on 13.9.2010 and 14.9.2010 and in such meeting Niraj Bordoloi was declared elected as an executive member and this was communicated by the council in its letter dated 15.9.2010. The notification 18.11.2010 was only a follow up action.

9. Mr. B.J. Ghosh, learned counsel for the sole respondent, has submitted with reference to the stand taken in the show cause reply that the issuance of the notification dated 18.11.2010, by the respondent cannot be construed to be an approval, which was directed to be not accorded, if not already accorded. The General Council of Tiwa Autonomous Council had elected Niraj Bordoloi as an executive member of the Executive Council and the notification 18.11.2010 was only to notify the constitution of Executive Council of Tiwa Autonomous Council and the same cannot be construed to be an act of approval by the respondent.

10. Before I proceed further and examine the contentions advanced by the learned counsel for the parties, it will be appropriate to quote below certain provisions of the Rules-

Rule 83 : The Returning Officer shall immediately after completion of counting and signing of the result sheet in Form-19 declare in Form-20 of Appendix-II, the candidate securing the largest number of valid votes to be elected under provisions of Section 6(1), read with Section 52 of the Act, and hung up the same in his office and shall send signed copies thereof to the Commission along with a report to that effect. The Commission shall cause the names of the elected candidates published in the Official Gazette by a notification and upon issue of such notification the General Council shall be deemed to be duly constituted under provisions of Section 57 of the Act.

Rule 84 : For the purposes of the Act and these rules, the date on which a candidate is declared by the Returning Officer under the provisions of Rule 30 or Rule 83, to be elected to the General Council shall be the date of election of that candidate.

Rule 85 : (1) As soon as may be after a candidate has been declared to be elected, the Returning Officer shall grant to such candidate a certificate of election in Form 21 of Appendix-II and obtain from him an acknowledgment of its receipt signed by him and immediately send the acknowledgement by registered post to the Commission.

(2) Every elected candidate, shall before taking his seat make and subscribe before such person as may be appointed by the Government in this behalf, an oath or affirmation in Form 22 of Appendix-II.

Rule 118 : (1) The first meeting of the General Council shall be held within fifteen days from the date of publication of the result of elections of members under Rule 83 :

Provided that the Government may extend the period of fifteen days by such period as it may think fit.

(2) Under the provisions of Section 6(4) of the Act the first meeting shall be convened by an Officer authorized by the Government for the purpose of Constitution of the Executive Council after the election. Such authorized officer shall convene the first meeting of the General Council by sending notice to the elected members specifying therein the date, time and place of the meeting in their registered addresses, at least seventy-two hours before the time fixed for such meeting.

(3) At the meeting referred to in sub-rule (1) the elected members shall elect from amongst themselves by a secret ballot, adopting the same procedure as provided in Rule 119, one of the members to be the pro tempore Chairman of the meeting to conduct the proceeding where he shall also cast his vote and elect from amongst themselves-

(a) one member to be the Chairman;

(b) one member to be the Deputy Chairman;

(c) one Chief Executive Councilor of the Executive Council;

(d) one Deputy Chief Executive Councilor of tile Executive Council;

(e) As many Executive Councilors as may be decided by the General Council, but not exceeding one-third of the total numbers of members of the General Council.

11. Section 6(4) of the Act is also relevant and the same is also extracted hereinbelow :-

6(4) the elected members of the General Council shall, at the first meeting to be

convened by an officer authorized by the Government after the election for the purpose of constitution of the Executive Council, elect from amongst themselves by a secret ballot one of the members to be the Chairman of the meeting to conduct the proceeding where he shall also cast his vote and elect from amongst themselves in the manner prescribed :-

(i) one member to be the Chairman;

(ii) one member to be the Deputy Chairman;

(iii) one Chief Executive Councilor of the Executive Council;

(iv) one Deputy Chief Executive Councilor of the Executive Council;

(v) As many Executive Councilors as may be decided by the General Council, but not exceeding one third of the total numbers of members of the General Council.

12. A perusal of the aforesaid provisions would go to show that every elected candidate, before taking his seat, shall make and subscribe before a prescribed authority oath or affirmation in Form 22 of Appendix-II.

13. The first meeting of the General Council is required to be held within 15 days from the date of publication of the result of elections of members under Rule 83. The period aforesaid, however, can be extended for such period as the Government considers necessary. The elected members of the General Council, at the first meeting, to be convened by an officer authorized by the Government for the purpose of constitution of the Executive Council, are required to elect from amongst themselves, executive members of the Executive Council.

14. Material on record clearly establishes that the oath was administered to Niraj Bordoloi alongwith other elected members on 24.08.2010. The first meeting of the General Council was held on 13.9.2010 and 14.09.2010 and in such meeting Niraj Bordoloi was declared elected as an executive member. The constitution of the Executive Council was communicated by the Council in its letter dated 15.09.2010 to the respondent, pursuant to which, he had issued the notification dated 18.11.2010.

15. From the aforesaid, it is clear that much before the interim order dated 15.11.2010 was passed by this Court, Niraj Bordoloi was already a member of the General Council. The learned counsel for the petitioner has not been able to place any provision which required the respondent to accord approval to the election of Niraj Bordoloi. There is no doubt, whatsoever, that with participation of Niraj Bordoloi in the General Council meeting held on 13.09.2010 and 14.09.2010, there remains anything further to be done by any authority.

16. A contempt proceeding is not sustainable on speculation, assumption and inference. Contempt of a civil nature is made out only if there has been a wilful disobedience of the order and, even though, there may be disobedience, if the same does not reflect that it is a case of conscious and wilful disobedience, a case for contempt cannot be made out. If an order is capable of more than one

interpretation giving rise to variety of consequences, non compliance with the same, cannot be held to be wilful disobedience of the order. Accidental or unintentional disobedience is also not sufficient to justify holding one guilty of contempt.

17. In *Dinesh Kumar Gupta v. United India Insurance Company Ltd. and Others*, reported in 2010 (12) SCC 779, the Apex Court stated thus :

In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the Courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasizes that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.

18. The analysis of the facts of the instant case would demonstrate that there was no provision for grant of approval by the respondent. The election of Niraj Bordoloi was also a concluded event much before the interim order, as noted above, was passed. In view of the aforesaid discussions, this Court is of the firm opinion that this contempt proceeding need not be pursued any further and accordingly, the same shall stand closed.