
(1995) 01 GAU CK 0026
In the Gauhati High Court
Case No : Writ Appeal No. 385 of 1994

State of Assam

APPELLANT

Vs

North Cachar Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 12, 2(3), 34, 36, 36(1)
Constitution of India, 1950 — Article 154

Citation : (1995) 1 GLR 364

Hon'ble Judges : J. Sangma, J; D.N. Baruah, J

Bench : Division Bench

Advocate : S.N. Bhuyan, General and B. Banerjee, for the Appellant; N.M. Lahiri, G.N. Sahewalla, A.K. Goswami, B. Sarma and B.D. Das, for the Respondent

Final Decision : Allowed

Judgement

D.N. Baruah, J.—This appeal is directed against the judgment and order dated 5th September, 1994 passed by the learned Single Judge in Civil Rule No. 2914 of 1994. The learned Single Judge quashed the Annexure-IV notification dated 25.7.94 and also the subsequent orders, viz; Annexure-VI, VII and VIII to [he writ petition.

2. The facts of the case for the purpose of this appeal may be stated as follows:

Last election of North Cachar Hills Autonomous District Council was held in November 1987. 4th Respondent in this appeal (Petitioner in Civil Rule No. 2914/94) was elected member of the Council. There were 23 elected members and 4 members were nominated by the Governor. Sri G.C. Langthasa was elected Chief Executive Member of the Council but immediately thereafter he was elected as a member of the Assam Legislative Assembly, Sri Pabitra Kemprai was then elected as Chief Executive Member. Sri J.C. Renga Biate was elected as Chairman and Sri E. Teron was elected as Deputy Chairman. Attempt was made to remove Sri Kemprai by vote of No Confidence Motion. This attempt was challenged before

this Court by filing a writ petition (Civil Rule No. 1233 of 1994). The Civil Rule was allowed by this Court and a writ appeal was pending at the time of filing the present petition (Civil Rule No. 2914/94).

3. Secretary to the District Council issued Annexure-I notice dated 16.6.94, where by the Deputy Chairman summoned the Council to meet for 21st (169th) Session of the Seventh District Council on 26.7.94. On 1.7.94 a corrigendum (Annexure-2 to the writ petition) was issued in respect of the earlier notice dated 16.6.94 fixing the meeting on 26.7.94. 4th Respondent as well as 4 other members submitted No Confidence Motion against the Executive Committee headed by Sri kemprai. The Deputy Chairman after summoning the Session appointed Sri P.K. Gorlossa, a member of the Council, as the Panal Chairman under the provisions of Rule 34 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, (for short "the Rules"). After the nomination, the Deputy Chairman vacated the chair in favour of the Panel Chairman for conducting the business of the Session. Thereafter, the Panel Chairman conducted business of the House including the No Confidence Motion. A meeting was convened on the, next day i.e. 27.7.94, for the purpose of considering the No Confidence Motion. There was pandemonium in the Rouse. Meanwhile, Sri T. Chengsen produced Annexure-IV notification dated 25.7.94 issued by the 3rd Respondent (2nd in writ petition), whereby the Governor appointed him to conduct the business of the Session commencing from 26.7.94 of the Council. Some of the members of the Council" intercepted and there was scuffle and confusion. Thereafter, he left the House According to the 4th Respondent, majority of the members were with him and if the Session were held it would have been possible to vote out the Executive Committer headed by Sri Kemprai. However, during the course of the day, a WT message was received from the 3rd Respondent (2nd in writ petition) wherein it was mentioned that as per Rule 36(1) of the Rules, the Deputy Chairman of the Council was not empowered to summon the Council Session and the power had been entrusted to the Chairman or such other person as authorised by the Governor.

4. On 27.7.94, the Deputy Chairman of the Council again presided over the Session and asked the Secretary to carry out the duties as per Rules. The No Confidence Motion against the said Executive Committee was taken up for consideration and after discussion the motion was put to vote and 14 members voted in favour of the motion. Thus, the motion was passed and a lime table was fixed for electing a new Chief Executive Member, for which the Session was adjourned till 29.7.94. Thereafter two more W.T. messages were received from the 2nd Respondent and a telephonic message was also received by the Deputy Commissioner, N.C. Hills from the 2nd Respondent. By the first message it was informed that the Deputy Chairman was planning to hold the Session of the Council on that day although he was not legally empowered to do so under Rule 36(1) of the Rules and the Governor had appointee Sri. T. Chengsen as the Chairman to conduct the business of the Session, and, therefore, it was directed to ensure that the Deputy Chairman would not conduct the Session. In the

second message (Annexure-VII) it was stated that the Council Session held by the Deputy Chairman and the resolution of No Confidence Motion passed against the Executive Committee headed by Sri Pabitra Kemprai was illegal, null and void, inasmuch as, the Deputy Chairman was not empowered to summon the Session under Rule 36(1) of the Rules. In the telephonic message (Annexure-VIII) this was reiterated.

5. By Annexure-IX letter dated 27.7.94 the Secretary to the District Council informed that the proceedings of the Session held on 26.7.94 and 27.7.94 could not be finalised because it was contrary to the Government directions. The Secretary to the Council refused to act and the session of the Council was kept under animated suspension till it was prorogued under Rule 36(1) of the Rules.

6. According to the 4th Respondent (writ Petitioner) Annexure-IV notification dated 25.7.94 was issued by the 2nd Respondent at the holiest of some interested persons without the knowledge of the Governor in gross violation of the provisions of the Constitution and the Rules and the same was also issued with malafide intention. According to the 4th Respondent, the notification dated 25.7.94 was illegal and without jurisdiction and not sustainable in law.

7. The Appellants filed affidavit-in-opposition in the writ petition justifying its action. It was brought, to the notice of the Governor that the Deputy Chairman had already taken side of one group of the District Council and the Government reasonably came to the conclusion that the appointment of Chairman by the Governor under Rule was essential to remove the difficulties and to conduct the business of the House smoothly on 26.7.94.

8. Sri Kemprai (the 4th Respondent in the writ petition) in his affidavit-in-opposition stated, inter alia, that the one appointment of member Panel Chairman by the Vice Chairman was contrary to the provisions of law, therefore, it was not tenable, inasmuch as, a Panel cannot consist of only one man. Besides, he also stated that the State Government had to appoint a member of the District Council to conduct the business of the Council Session. The Dy. Chairman if not authorised to conduct the business of the Council Session had no authority and jurisdiction to conduct the business of the Session or to preside over the same or to appoint any Panel Member. Besides, he had also no authority to summon the District Council Session. The position of law is made clear under Rule 36(1) of the Rules. 4th Respondent further stated that even summoning of the District Council meeting by the Deputy Chairman to meet the 21st Session of 7th District Council from 26th (July, 1994) was not legally valid, inasmuch as, under Rule 36(1) unless the Deputy Chairman was authorised by the Government, he had no authority to summon the District Council. The State Government by WT message dated 27.7.94 declared the meeting held on 26.7.94 as well as on the next day as void and all actions and business transacted during the said Session were thereby nullified.

9. The learned Single Judge allowed the writ petition holding that -" the

circumstance necessitating for invoking the power under Rule 4 of the Rules was absent at the time of passing the impugned notification dated 25.7.94 under Rule 4 of the Rules, Therefore, the Respondent No. 2 has passed the impugned notification Without any jurisdiction and is hereby quashed." Accordingly, the writ petition was allowed quashing Annexure-IV notification dated 25.7.94. Hence the writ appeal. 10. We heard Sri S.N. Bhuyan, learned Advocate General appearing on behalf of the Appellant and Sri N.M. Lahiri, learned Senior Advocate appearing on behalf of Respondent No. 4 and Sri B.D. Das, learned Counsel on behalf of Respondent No. 1 and 3.

11. Learned Advocate General urged before us that the impugned notification dated 25.7.94 was issued in accordance with the provisions of Constitution and the Rules. The orders passed by the Annexures-VI, was within the ambit of the power of the Governor. The learned Advocate General further submitted that the Deputy Chairman was not competent to hold and preside over the session and transact any business without any authority. It was only the Chairman or any other person appointed or authorised by the Governor could preside over a Session. The Deputy Chairman if not authorised by the Governor, had no authority and jurisdiction to preside over the Session. In that view of the matter, the summoning of Session by the Deputy Chairman was without jurisdiction.

12. Mr. Lahiri learned Counsel appearing on behalf of Respondent No. 4 (writ Petitioner), on the other hand, submitted that the Annexure-IV notification dated 25.7.94 was illegal and without jurisdiction, inasmuch as, the Rule did not empower the Respondent No. 2 to issue such notification. According to him this notification was issued at the behest of some interested persons without the knowledge of the Governor.

13. Mr. Lahiri had drawn our attention to Rule 41 of the Rules. Under the said Rule, no proceeding of the District Council should be deemed to be invalid by reasons of any rule not having been, complied with, but in case of any such non-compliance, any member may raise a point of order. The Secretary to the Government of Assam, Hill Areas Department had also no business to interfere with the proceedings of the District Council. But in the instant case to give favour to some persons, the Secretary to the Government of Assam, Hill Areas Department issued the message one after another just to nullify the actions of the Deputy-Chairman.

14. On the rival contentions of the parties now the question fall for determination are as follows:

(I) Whether the Deputy Chairman had the authority and jurisdiction to summon a Session;

(II) Whether it was within the competence of the "Governor" to issue Annexure-IV notification dated 25.7.94, and whether the Governor while issuing the said notification exercised his jurisdiction in his own discretion or with the aid and advice of the Council of Ministers.

15. Before we decide the question involved in this writ appeal it will be apposite to refer to some of the provisions of the Rules. The Rules were framed by the Governor of Assam in exercise of powers conferred by sub-paragraph (6) of Paragraph 2 of the Sixth Schedule to the Constitution of India.

Rule 4 of the Rules contains provisions for removal of difficulties. We quote the rules hereunder:

4. If any difficulty arises as to the functioning of any District Council or the holding of any election to a District Council under these rules, or any other matter connected therewith, the Governor may by order, do anything not inconsistent with these rules or any provisions of the Constitution or any order made thereunder or an Act of Parliament or of the Legislature of the State of Assam, which appears to him to be necessary for the proper functioning of, or holding of elections to the District Council, as the case may be.

Rule 12 of the Rules contains various provisions regarding performance of duties of Chairman when his office is vacant. We quote the Rule 12 hereunder:

12(1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of the Deputy Chairman is also vacant, by such member of the District Council as the Governor may appoint for the purpose,

(2) During the absence of the Chairman from any sitting of the District Council the Deputy Chairman or, if he is also absent, a member of the Council nominated for the purpose in accordance with Rule 34 shall act as Chairman.

Rule 36 of the Rules contains provisions regarding summoning of District Council. The rule runs thus:

36. (1) Subject to the provisions of sub-rule (3), the Chairman or such other person authorised by the Governor in his behalf shall summon the District Council to meet at such time and place as he thinks fit. He shall inform the Deputy Commissioner of the date, hour and place for such meeting of the Council.

(2) The Chairman shall cause a notice appointing the date, hour and place for such meeting signed by the Secretary of the District Council to be served on each member of the Council at least thirty days before the date fixed for the meeting.

(3) The District Council shall be summoned to meet four times in a year, and three months shall not elapse between its last sitting in one session and the date appointed for its first sitting in the next session:

Provided that in the event of an emergency the Chairman of the Council, with the previous approval of the Governor, may summon the District Council oftener and at shorter notice than what has been provided in Sub-rule (2):

Provided further that on receipt of a requisition signed by not less than two thirds

of the members of a District Council, the Chairman shall summon a special meeting of the Council.

(4) The Chairman or such other person who summons the District Council under Sub-rule (1) of (3) may also prorogue the Council.

(5) Notwithstanding anything contained in this rule, nothing shall restrict the power of the Governor to summon a meeting of the District Council at any time he deems fit." 16, POINT No. 1

Under Rule 2(3) of the Rules, the expression "Chairman" has been defined, As per the said definition "Chairman " means the Chairman of the District Council and includes any person for the time being performing the duties of the Chairman. From the reading of this definition, it is clear that expression "Chairman" also includes other person. It is common for a statute to contain a provision that certain words and phrases shall, when used in the statute, bear particular meaning. Sometimes, it is provided that a word shall "mean" what the definition section says. It shall mean: in this case, the word is restricted to the scope indicated in the definition section. Sometimes, however, the word "include" is used "in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include." In other words, the word in respect of which "includes" is used bears both its extended statutory meaning and "its ordinary, popular, and natural sense whenever that would be properly applicable, (see Maxwell on The Interpretation of Statutes, Twelfth Edition, Page 270).

17. In *Krishi Utpadan Mandi Samiti v. Shankar Industries* (1993) Supp (3) SCC 361-364, the Supreme Court held that when the legislature uses the words "mean" and "includes" such definition is to be given a wider meaning and is not exhaustive or restricted.

Therefore, the expression "Chairman" also includes other persons as mentioned in the definition.

18. Under Rule 36(1) of the Rules, a Chairman or such other person authorised by the Governor in this behalf shall summon the District Council to meet at such time and place as he thinks fit. As per the definition, "Chairman" means the Chairman of the District Council and includes, any person for the time being performing the duties of the Chairman. Under Rule 12 of the Rules while the office of the Chairman is vacant, the duties of the Chairman shall be performed by the Deputy Chairman. As the Deputy Chairman is required to perform the duties of the Chairman, he has the power and jurisdiction to summon the House. In view of the above, the action of the Deputy Chairman in summoning the House cannot be said to be illegal and without jurisdiction.

19. POINT NO. II

Under Article 154 of the Constitution, the executive power of the state is vested in the Governor and shall be exercised by him either directly or through officer subordinate to him in accordance with the Constitution. However, this power has to be exercised by the Governor only with the aid and advice of the Council of Ministers. Therefore, in substance, the executive power of the State vests in the Council of Ministers.

20. In *Edwingson Bareh Vs. State of Assam and Others*, the majority view expressed by the Supreme Court is that Schedule VI of the Constitution clearly indicates that the Constitution has delegated to the Governor a part of the power conferred on Parliament, Parliament has undoubtedly the power to make any change in any of the provisions contained in the Sixth Schedule. This part of the power has, however, been conferred on the Governor, because the Constitution makers apparently thought Parliament need not be called upon to exercise its own power for bringing about comparatively smaller and minor changes in Part-A of the Table. If the Governor has been clothed with the relevant power, the exercise of the power must, by itself, be effective to bring about the results intended by Clauses (c), (d), (e) and (f) of Para 1(3). This power must be exercised subject to the conditions prescribed by proviso to Para 1(3). But once it is properly exercised as required by the relevant provisions of the Sixth Schedule, it becomes effective and there is no need for Parliamentary legislation in that behalf.

The minority view, however, speaks in a different way. Justice Hidayatullah (as he then was) observed that- "...bearing upon the special responsibility of the Governor as envisaged by the sense and letter of the Sixth Schedule considered in the light of the long and uniform history of these backward tracts which have always been specially administered, it is perhaps right to think that the Governor was very much in the background and the initiative and the formation of opinion was by the State Government. The Governor was apparently only informed after everything was over as to what was being done. No doubt the Governor's remarks 'Seen, thanks' did not express a dissent when he saw the file and it may be presumed that he accepted the proposals of Government. But that was hardly what Sixth Schedule expected of the Governor.

21. In *Samsher Singh Vs. State of Punjab and Another*, the Supreme Court held thus:

For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the

Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor.

In the said decision the Supreme Court held that the Governor exercises his jurisdiction in harmony with his Council of Ministers. It is further held that the executive action of the Governor to be exercised in aid and advice of Council of Ministers in accordance with the provisions of the Constitution. Therefore; whatever order is passed by the Governor it must be with the aid and advice of the Council of Ministers.

22. As per Rule 4 of the Rules quoted above, the Governor may, by order, do anything not inconsistent with these Rules or any provisions of the Constitution or any order made thereunder or an Act of Parliament or of the Legislature of the State of Assam, when some difficulty arises as to the functioning of any District Council or holding of election. In the instant case, as per the Affidavit-in-opposition filed by the Appellant, the state of affairs prevailing at that time in the District Council was not very happy. It was brought to the notice of the Governor that the Deputy Chairman had already taken the side of one group of the Council and the Governor reasonably came to the conclusion that the appointment of a Chairman by the Governor under Rule was essential to remove the difficulties to conduct the business of the House smoothly on 26.7.94. Accordingly, the Governor appointed a new Chairman just to defuse the tension prevailed at that time and for smooth functioning of the District Council. The Governor had exercised his jurisdiction by issuing Annexure-IV notification dated 25.7.94 with the aid and advice of the Council of Ministers.

23. The learned Single Judge, however, observed that "the circumstances necessitating for invoking the power under Rule 4 of the Rules was absent at the time of passing the impugned notification dated 25.7.94 under Rule 4 of the Rules. Therefore, according to the learned Single Judge the impugned notification was issued without jurisdiction. But as we have already mentioned above, the situation in the District Council was very grave at the time of issuing the impugned notification. The Business of the District Council could not be conducted smoothly as the Deputy Chairman had already taken the side of one group hence, it was necessary for the Governor to exercise power under Rule 4 of the Rules. In view of the above, we are not in agreement with the view expressed by the learned Single fudge, and therefore, we cannot affirm the view expressed by him. We hold that at the time of passing the impugned notification the situation in the District Council was not conducive to conduct the business of the House properly and smoothly, Accordingly, we hold that the notification dated 25.7.94 was in accordance with the provisions of the Rules and this was issued within the jurisdiction of the Governor.

24. For the foregoing reasons, we allow the appeal and set aside the judgment

and order passed by the learned Single Judge. In the facts and circumstances of the case, we make no order as to cost.