
(2013) 11 GAU CK 0029
In the Gauhati High Court
Case No : W.A. No. 351 of 2013

Tuliram Ranghang and Others

APPELLANT

Vs

Joyram England and Others

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2014) 1 GLD 601 : (2013) 5 GLT 494

Hon'ble Judges : M.R. Pathak, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : B.D. Das, Mr. H.K. Sarma and Mr. D. Nath, for the Appellant; V. Hansaria, D.K. Misra, Mr. P. Bhowmik, Advocate and Mr. J. Chutia, SC, KAAC, for the Respondent

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J.—The challenge in this writ appeal is the interim order dated 29.10.2013 passed by the learned Single Judge in the writ petition being WP (C) No. 6239/2013 filed by the writ petitioner, who is the O.P. No. 1 in this appeal. The matter pertains to a no confidence motion brought against the writ petitioner by 20 members of the Karbi Anglong Autonomous Council (KAAC) vide no confidence motion dated 9.10.2013 addressed to the Chairman, KAAC. Be it stated here that the council. KAAC i.e. consists of 29 members inducing 4 nominated members and thus 20 members constitutes 2/3rd of the members of the council. The O.P. No. 1 i.e. the writ petitioner was elected as the Member of KAAC and thereafter he was elected as the Chief Executive Member of the executive committee of the council on 20.1.2012. The executive committee of the council constituted by elected and 4 nominated members was headed by the writ petitioner. As contended in the appeal, on 15.9.2013, the Joint Parliamentary meeting of the Indian National Congress of which the writ petitioner is a member held a meeting and opined that the writ petitioner should resign as Chief Executive Member. However, when no resignation was tendered, on 30.9.2013, 17 members of the council including 14 Executive Members and 3 nominated

members submitted representation before the Chairman of the council bringing a no confidence motion against him. On receipt of the representation, the Chairman moved the Governor of Assam for required approval as per the provision of Assam Autonomous District (Constitution of District Councils) Rules, 1951. The required approval was accorded for summoning of an emergent session of the KAAC as per the provisions of the aforesaid rules.

2. The aforesaid proceeding initiated against the writ petitioner was put to challenge by filing a writ petition being WP(C) No. 5873/2013 and by an interim order, it was provided that the Chairman, KAAC shall not act on the motion of no confidence dated 30.9.2013.

3. After the aforesaid development, another no confidence motion dated 9.10.2013 addressed to the Chairman, KAAC by 20 members of the council was brought against the writ petitioner. By the said requisition dated 9.10.2013, the Chairman was requested to convene a special session of the council within 48 hours seeking removal of the writ petitioner as Chief Executive Member. By a notification dated 10.10.2013, the Chairman summoned a special meeting of the council to discuss the no confidence motion against writ petitioner on 15.10.2013. In the said special session, the no confidence motion was passed against the writ petitioner and he was removed as Chief Executive Member. Thereafter, vide another notification dated 15.10.2013, nominations were invited for election of new Chief Executive Member and on 17.10.2013, the present appellant No. 1 was elected as the new Chief Executive Member of the council, which was notified on the same date i.e. 17.10.2013.

4. Aggrieved by the aforesaid development, the O.P. No. 1 as the petitioner filed the writ petition being WP(C) No. 6239/2013 and the learned Single Judge having passed the interim order quoted below, the appellants numbering 20 have filed this appeal.

In view of the discussions made above, this Court prima-facie is of the view that the notification dated 10.10.2013 (Annexure-9 to the writ petition) is not in conformity with the procedure prescribed. Consequently, summoning of the Council on 15.10.2013 appears to be contrary to law.

Accordingly, as an interim measure, all decisions taken pursuant to the impugned notification dated 10.10.2013 shall remain suspended.

Mr. V. Hansaria, learned senior counsel has placed before the Court a notification dated 1.10.2013 issued by the Chairman of the Council summoning the 217th Session of the Council to meet at 10 A.M. on Friday, the 15th November, 2013. Since petitioner also cannot function as Chief Executive Member if he does not command the confidence of the majority, it is hereby directed that on 15.11.2013, the petitioner shall move a motion of confidence in the Council which shall be the only item to be taken up on that day. Depending on the outcome of the proceedings on that day, legal consequences will follow.

List on 6.12.2013 alongwith WP(C) No. 5873/2013.

5. Learned counsel for the parties have exclusively referred to the provisions of the Assam Autonomous District (Constitution of District Councils) Rules, 1951 as the provisions of the said rules require interpretation towards recording a finding as to whether the actions on the part of the 2/3rd members of the council towards removal of the writ petitioner as Chief Executive Member are within the provisions of the said rules. The provisions of the said rules will be referred to at the appropriate stage in reference to the facts involved in this case. It will be pertinent to mention here that by virtue of the interim order, challenged in this appeal, the new elected Chief Executive Member cannot function, although he has been elected as such in the meeting of the council held on 17.10.2013. On the other hand, the earlier Chief Executive Member, i.e. the writ petitioner, who as per the findings recorded by the learned Single Judge, does not command the confidence of the majority is entitled to move a motion of confidence in the council on the date fixed, which is 15.11.2013.

6. During the course of hearing of this appeal, it was submitted by the learned counsel for the appellants that inspite of the clear finding recorded in the impugned order that the petitioner cannot function as Chief Executive Member, he has entered into the office of the Chief Executive Member on the strength of the said interim order. However, learned counsel representing the writ petitioners submitted that such functioning of the writ petitioner as the approval of the Governor, although no order in this regard could be produced. If in terms of the said interim order, the writ petitioner cannot function as the Chief Executive Member, it is not understood as to how he could function as such and also as to how the Governor could have approved such functioning. However, there is nothing on record to show that any such approval has been accorded by the Governor.

7. We have heard Mr. B.D. Das, learned Sr. Counsel assisted by Mr. H.K. Sarma, learned counsel for the appellants. We have also heard Mr. V. Hansaria, learned Sr. Counsel, representing the writ petitioner/O.P. No. 1 and Mr. D.K. Mishra, learned Sr. Counsel, assisted by Mr. P. Bhowmik, learned counsel for the respondent No. 6 i.e. the Chairman, KAAC. We have also heard Mr. R.K. Bora, learned State Counsel and so also Mr. J. Chutia, learned Standing Counsel, KAAC. During the course of hearing, learned counsel for the parties exclusively referring to the sequence of events and the provisions of the aforesaid rules of 1951 submitted for and against the impugned order passed by the learned Single Judge.

8. While Mr. B.D. Das, learned Sr. Counsel for the appellants has placed reliance on the decisions reported in Debabrata Kaloy Vs. State of Tripura and Others, ; Moti Ram Vs. Param Dev and another, ; Raees Ahmad Vs. State of U.P. and Others, and Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, Mr. V. Hansaria, learned Sr. Counsel for the writ petitioner placed reliance on the decisions reported in 2007 (1) GLT 1007 (Miehlo Manasia Vs. State of

Mizoram) and Raees Ahmad Vs. State of U.P. and Others,

9. We have given our anxious considerations to the submissions made by the learned counsel for the parties and have also perused the entire materials on record. Our findings and conclusions are as follows:

10. At the first instance, it will be appropriate to deal with the interim order passed on 3.10.2013 in the earlier writ petition being WP(C) No. 5873/2013. In the writ petition, the challenge is to the no confidence motion dated 30.9.2013 addressed to the Chairman, KAAC by 17 members of the council seeking removal of the Chief Executive Member i.e. the writ petitioner/O.P. No. 1. In the given facts and circumstances, the learned Single Judge while entertaining the writ petition by way of issuance of notice of motion was inclined to issue an interim direction not to act on the no confidence motion dated 30.9.2013. The present proceeding is not concerned with the said no confidence motion. It is a subsequent no confidence motion requisitioned by 2/3rd members of the council. It was on 9.10.2013, 20 members including the earlier requisitionist made a fresh requisition to the Chairman requesting for summoning of special session of the council within 48 hours to move a no confidence motion against the writ petitioner. On receipt of the no confidence motion requisition, the Chairman of the council by notification dated 10.10.2013 summoned a special meeting of the council to discuss the no confidence motion against the writ petitioner on 15.10.2013. In the meeting held on 15.10.2013, the no confidence motion was passed and the O.P. No. 1 was removed as the Chief Executive Member.

11. After the aforesaid development, another notification dated 15.10.2013 was issued inviting nominations for election of a new Chief executive Member. On 17.10.2013, the appellant No. 1 was elected as the new Chief Executive Member without contest, which was notified vide notification dated 17.10.2013. Being aggrieved, the writ petition was filed by the earlier Chief Executive Member and as to what is the nature of the interim order, we have already noted above.

12. The case projected in the writ petition are basically on the following grounds:

(i) Since resignation tendered by 13 Executive Members is yet to be accepted by the Governor, they could not have been party to the no confidence motion.

(ii) For convening a special session of the council, prior approval of the Governor was necessary as was done in case of the earlier no confidence motion dated 30.9.2013. However, no such approval having been obtained, the proceedings towards passing of the no confidence motion and electing the new Chief Executive Member are not sustainable in law.

(iii) The subsequent motion and the action thereof on the part of the Chairman of the council amounts to circumventing the earlier interim order of this Court referred to above.

(iv) The nominated members could not have participated and vote in the no confidence motion.

(v) There has been violation of the provisions of the aforesaid rules in summoning the special session of the council.

13. While Mr. Hansaria, learned Sr. Counsel representing the writ petitioner submitted that if the aforesaid grounds urged in the writ petition are read in the context of the relevant provisions of the rules, are very much valid grounds and as such the impugned order of the learned Single Judge is not liable to be interfered with. He also submitted that since the writ petitioner is required to move a motion of confidence in the council on 15.11.2013 in terms of the impugned interim order, everything would be clear on that day and as such no interference is called for in respect of the order passed by the learned Single Judge. He also submitted that 4 nominated members having had no voting right could not have been party to the no confidence motion.

14. On the other hand, both Mr. B.D. Das and Mr. D.K. Mishra, learned Sr. Counsel representing the appellants and the Chairman of the council submitted that when the provisions of the rules are unambiguous, the same cannot be allowed to be twisted to suit the case of the writ petitioner. They also submitted that the learned Single Judge having held in the impugned order that the question as to whether a person holding an elected office enjoys the confidence of the house, must be tested and decided on the floor of the house itself could not have held otherwise in reference to the untenable pleas of the writ petitioner falling back on the purported interpretation of the rules.

15. Since the relevant facts will have to be tested in reference to the rules, there is no escape from making a reference to the relevant rules. As noted above, it is the Assam Autonomous District (Constitution of District Councils) Rules, 1951 (hereinafter referred to as "the rules") is the rules holding the field. As per Rule 2(15) "Member" means a member of the District Council. This definition of member will have to be read in reference to Rule 25 inasmuch as a question has been raised as to whether nominated members have any voting right. Rule 25 provides that save as otherwise provided in the Constitution and in the rules, all questions at any sitting of a District Council shall be determined by a majority of votes of the members present and voting, other than the Chairman, or person acting as such. The Chairman or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

16. If we refer to the aforesaid provisions, there is no distinction between elected members and nominated members of the council. On the other hand, prescribing the quorum under Rule 27 of the rules, it has been provided that the quorum to constitute a meeting of the District Council shall be six members or one-third of the total number of members of such council, whichever is greater. Dealing with disqualification for membership under Rule 17 of the rules, it has been provided that a salaried servant of the Government of India or Government of any State specified in the First Schedule to the Constitution or an employee of District Council or of a Regional Council shall be disqualified for being elected as, and for

being, a member of the District Council of an autonomous council. Rule 17(3) makes an exception to the same by providing that the Governor is empowered to nominate a person as member of the council, although, he is a salaried servant. However, he is not entitled to vote on any matter during the proceedings of the council.

17. From the above, it is absolutely clear that it is only the salaried nominated members, who alone are excluded from voting right, but not the other nominated members. It is not the case of the writ petitioner that the 4 nominated members are the salaried servants of any authority. In any case, while counting the total strength of the council all the members will have to be accounted for. Nominated members are part of the composition of the council. In the instant case, 2/3rd of the members (20 out of 29) brought the no confidence motion against the writ petitioner and requested the Chairman to convene a special session of the council.

18. As regards the incompetency to bring the no confidence motion without being ceased to be members of the executive committee, it was argued that since resignation tendered by some of the members of the executive committee are yet to be accepted by the Governor, they could not have been brought the no confidence motion and/or could not have signatories to the same. Rule 20 provides for election of the Chief Executive Member by the members of the District Council. Election of the Chief Executive Member is required to be conducted according to the procedure provided for the election of Deputy Chairman in Rule 10. Rule 10 provides for election of Deputy Chairman as per provision of Rule 33. As regards the vacation of office of the members of the executive committee, Rule 21 provides that a member holding office as Chief Executive Member or member of the executive committee, may resign from their respective offices. While Rule 21(1)(b), the resignation of Chief Executive Member requires acceptance of the Governor, no such acceptance is required in respect of the members of the executive committee. In the instant case, some of the members of the executive committee have already tendered resignation and irrespective of any acceptance thereof by the Governor, they ceased to be members of the executive committee and more so when the no confidence motion has already been passed against the Chief Executive Member.

19. Much has been emphasized on the procedure adopted towards passing the no confidence motion against the writ petitioner. In this connection, Rule 36 of the rules has been referred to. Relevant portion of Rule 36 reads as follows:

CHAPTER III

MEETINGS OF THE DISTRICT COUNCIL

36. (1) Subject to the provisions of sub-rule (3), the 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. 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 forty-five 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.

(Emphasis supplied)

20. While Mr. Hansaria, learned Sr. Counsel representing the writ petitioner argued that although the provisions referred to above, will have to be read together, learned counsel, representing the appellants submitted that the second proviso to Rule 36(3) having provided an exception, the writ petitioner cannot fall back on the other provision so as to avoid the kind of situation contemplated under the second proviso to Rule 36(3).

21. On a total reading of the aforesaid provision of Rule 36, there is absolutely no manner of doubt that the Chairman of the Council is empowered to summon a special meeting of the council, on receipt of a requisition signed by not less than 2/3rd of the members of the council. The no confidence motion brought out by 2/3rd members of the council on 9.10.2013 has got nothing to do with the earlier no confidence motion dated 30.9.2013 forming subject matter of the earlier writ petition being WP(C) No. 5873/2013. The interim order passed therein was in respect of the said no confidence motion only, which did not debar bringing a subsequent no confidence motion, which in fact was brought by 2/3rd members of the council (20 out of 29) vide its no confidence motion dated 9.10.2013. The said no confidence motion was discussed and passed in the meeting held on 15.10.2013 and thereafter a new Chief Executive Member was elected on 17.10.2013.

22. Rule 71 of the rules dealing with the motion of no confidence in the executive committee provides that a motion expressing want of confidence in the executive committee or a motion disapproving the policy of the executive committee in regard to any particular matter may be made with the consent of the Chairman and subject to the restriction recorded therein. Thus, a no confidence motion can be moved in the executive committee also. It is in this context, Mr. B.D. Das, learned Sr. Counsel for the appellants submitted that irrespective of whether the

executive members who had submitted the resignations ceased to be so or not, their basic foundation being as members of the council were entitled to move the no confidence motion.

23. Debabrata Kaloi (supra) case has been referred to, to bring home the argument that when the writ petitioner has lost support of the majority of the house and the new Chief Executive Member has assumed office, High Court exercising writ jurisdiction should not sit on appeal over the same.

24. Moti Ram (supra) case has been referred to so as to advance the argument that apart from the fact that the resignation tendered by some of the executive members did not require acceptance of the Governor, same being an unilateral act, irrespective of any acceptance thereof, the resignation tendered by the said members came into effect upon tendering resignation as executive member.

25. In Raees Ahmed (supra), it was held that while computing 2/3rd of the total number of members, nominated members have to be taken into account. This aspect of the matter has been discussed above. The rules having provided for 2/3rd of the members in the particular context without any distinction, it will have to be construed that the same is inclusive of the include the nominated members as well, more so when they have voting right. Om Narain Agarwal (supra) has also been referred to in the same context.

26. The decision, on which Mr. Hansaria, learned Sr. Counsel, representing the writ petitioner has been placed reliance i.e. Miehlo Manasia (supra) is to emphasise that unless it is specifically provided for in the rule, nominated members do not have voting right. This decision is of no help to the case of the writ petitioner. As discussed above, it is only the salaried nominated members, who are specifically excluded from the voting right and not other nominated members. This aspect of the matter has been discussed above in reference to Rule 2(15).

27. Finally, there is no escape from the conclusion that the writ petitioner has lost the confidence of the majority members (2/3rd). As noted above out of 29 members, 20 members placed the no confidence motion requisition and the same was passed on 15.10.2013. Thereafter a new Chief Executive Member i.e. the appellant No. 1 has been elected unopposed. Even, the learned Single Judge has recorded this aspect of the matter in the impugned order while holding that the question as to whether a person holding an elected office enjoys the confidence of the house, must be tested and decided on the floor of the house itself. However, while recognizing the said aspect of the matter, passed the impugned interim order on the purported faulty procedure governing the summoning and holding of the special session of the council, about which discussions have been made above. For all the aforesaid reasons, we are inclined to allow the appeal. Consequently, the impugned order dated 29.10.2013 passed in WP(C) No. 6239/2013 stands set aside and quashed. Further, because of the findings recorded in this judgment and order in affect the writ petition itself

having been decided, the same stands answered in terms of this judgment and order. Consequently, the writ petition also stands dismissed. There shall be no order as to costs.