
(1955) 03 GAU CK 0001
In the Gauhati High Court

U Well Lyngdoh and Others

APPELLANT

Vs

B.M. Roy and Others

RESPONDENT

Date of Decision : 14-03-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1955 Guw 238

Hon'ble Judges : Sarjoo Prosad, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sarjoo Prosad, C.J.—These are applications under Article 226 of the Constitution. Far the sake of convenience, they were heard together because they involve identical questions for determination except for some difference on facts.

CIVIL RULE 49 OF 1954.

2. Civil Rule No. 49 is on behalf of one U well Lyngdoh who claims to be the acting Daloi of Jowai Elaka and had been functioning as such since 11-12-1954. He has prayed for a writ of mandamus against the opposite party including the Chief Executive Member of the District Council, United Khasi and Jaintia Hills, Shillong, restraining him from terminating, the service of the petitioner and reinstating the opposite party No. 2 as the Daloi, who previous to the acting appointment of the petitioner had been functioning as such.

3. U Ram Lato, opposite party No. 2, was the Daloi of the Jowai Elaka prior to the appointment of the petitioner. This elaka is an administrative unit falling within the administrative jurisdiction of the District Council of the United Khasi and Jaintia Hills as constituted under the Sixth Schedule of the Constitution of India. The District Council functions through the Executive Committee in whom is vest the executive functions of the District Council.

On 11-12-1953, U Ram Lato was placed under suspension by the then Executive

Committee for alleged neglect of duties, disobedience of orders and malpractices. The explanations submitted by Ram Lato was to be placed before the District Council at its sitting on 24-2-1954 and was included as one of the items in the agenda but the petitioner states that the matter could not be considered at that section.

The allegation against the Daloi was that he had collected a certain sum of money in connection with the auction sale of lands in execution of a decree and he had also obtained some amount as execution fee, but he had failed to divide these amounts between the Durbaris according to normal practice. It was on this account that the then Executive Committee of the District Council passed the order of suspension against him and authorised the petitioner to act as the Daloi of Jowai.

On 22-3-1954, the respondent Mr. B.M. Roy, the present Chief Executive Member of the District Council reinstated U Ram Lato in the office of Daloi thereby terminating the temporary appointment of the petitioner. The petitioner challenges the order in question as without jurisdiction. It is contended that the Executive Committee had lost seisin of the matter in view of the fact that it had been placed before the District Council.

The respondent B.M. Roy or the Executive Committee had therefore no power to cancel the order of suspension and reinstate the respondent U Ram Lato.

4. The relevant rules bearing on the point are Rules 28 and 29 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951. Rule 28 runs as follows:

(1) The executive functions of the District Council shall be vested in the Executive Committee.

(2) All order or instruments made or executed by the Executive Committee shall be expressed to be made by or by order of the District Council. Even such order or instrument shall be signed by the Chief Executive Member or any other Member of the Executive Committee authorised in writing by the Chief Executive Member in this behalf and such signature shall be deemed to be the proper authentication of such order or instrument.

Rule 29 says:

(1) The Executive Committee shall dispose of all matters falling within its purview, except certain matters hereafter specified, which shall be referred to the District Council for final approval." It is not necessary mention all those matters specified except those contained in Clause (c) and (f) of Sub-rule (2) of Rule 29 on which much stress has been laid by the learned Counsel for the petitioner. Clause (c) mentions cases which seriously affect, or are likely to affect seriously, the peace or good government of any autonomous district or affect or are likely to affect relations with my such area; and Clause (f) refers to all important appointments.

It is contended that so far as matters covered by these clauses are concerned, the final approval of the District Council is necessary, and therefore the order complained of does not fulfil the requirements of the law and is according to the contention of the petitioner is of the jurisdiction of the Executive Committee.

5. There are two main difficulties in entertaining this application on behalf of the petitioner. In the first place, it is difficult to see what right the petitioner has to move this Court for setting aside the order of the Chief Executive Member which in effect as Rule 28 shows is the order of the Executive Committee or that of the District Council.

His appointment on his own showing was of a temporary character. He had been appointed to hold office of Daloi during the period of suspension of the permanent incumbent in that post. The effect of the order is to recall the order of suspension and to reinstate the permanent incumbent. The petitioner cannot complain against any such action taken by the Executive Committee which passed the order of suspension on the earlier occasion, although it was a different Executive Committee at that time.

We are therefore not satisfied that the petitioner has any locus standi to move this Court for a writ under Article 226 of the Constitution. Secondly, it appears that the order passed by the Executive Committee which is impugned in this application cannot be said to be in excess of the jurisdiction of the Executive Committee. The order runs as follows:

You are hereby informed that the Executive Committee of the District Council, United Khasi and Jaintia Hills after carefully examining the matter of your suspension from the office of Daloi of Jowai have come to the finding that there are no sufficient grounds for the said suspension. You are therefore reinstated as Daloi of Jowai.

You are therefore required to take charge of the Administration of Jowai Elaka from the Assistant Revenue Officer, Jowai, together with all cash such as Land Revenue, house tax etc. Revenue Registers, Khanasamari List, Office papers and other assets belonging to Jowai Elaka and to run the Administration of the Elaka as usual.

Now, under Rule 28, the Executive functions of the District Council are vested in the Executive Committee and from Rule 29 also, it is clear that the Executive Committee has the right to dispose of all matters falling within its purview except those which are enumerated in the various clauses of Sub-rule (2) of that Rule where also the jurisdiction of the Executive Committee to dispose of these matters is not taken away but all that is provided is that it shall be with the final approval of the District Council.

It is doubtful whether the present case, which is merely a matter of reinstatement of the permanent Daloi in that post after cancellation of the order of suspension against him falls within either of the clauses of Sub-rule (2) of Rule

29 referred to by the petitioner.

It is not a question of any such important appointment, but it is only confirmation of the appointment which was already there; nor can it be said that the present case would fall under Clause (e) of Sub-rule (2) of Rule 29.

The post of Daloi in an administrative unit is no doubt an important post but we find nothing to justify the presumption that in this case, the cancellation of the order of suspension tended seriously to affect or was likely to affect the peace and good government of any autonomous district or districts or their inter-relations. The discussion, however, is to some extent academic in view of the affidavit of the Chief Executive Member which shows that the District Council in its February session of 1954 disapproved of the action of the then Executive Committee resulting in a vote of no confidence being passed against that Committee.

It further appears from the affidavit that the Executive Committee in cancelling the order of suspension and reinstating the permanent Daloi acted according to the wishes of the District Council as expressed in that session. It has to be remembered that the previous order was passed by the then Executive Committee only and that the matter had not received the approval of the District Council.

Subsequently, the District Council passed a vote of no confidence in the then Executive Committee and appointed a new Executive Committee which is functioning at present; and one of the charges levelled against the previous Executive Committee was that the order of suspension passed against the Daloi in question was an illegal and arbitrary order.

It is argued that there was only a general resolution of no-confidence passed by the Executive Committee and there was nothing to show that there was any specific resolution formulated by the District Council disapproving any policy of the Executive Committee, in regard to any particular matter. In this connection, our attention has been drawn to the distinction which exists between Rules 22 and 71 of the Rules.

This may be so; but the fact remains that a vote of no confidence was passed against the last Executive Committee, the order of suspension being one of the grounds of indictment; and that as the affidavit of Mr. B.M. Roy shows, the District Council did approve of the present order of the Executive Committee reinstating the respondent U Ram Lato in the office of Daloi and set aside the order of suspension passed against him.

6. The petitioner therefore has not been able to make out any case for issue of a writ in his favour. The application must therefore fail and is dismissed with costs. Hearing fee Rs. 50/-.

CIVIL RULES 50 AND 60 OF 1954.-

7. The other two applications arise out of the same order of the Executive Committee. Civil Rule No. 50 is on behalf of two persons, James Kharlor Clan and U Phrodishon Rumnong whereas Civil Rule No. 00 is on behalf of U Sinwell Kharbuki. They are both directed against Mr. B.M. Roy, Chief Executive Member, District Council, United Khasi and Jaintia Hills and the Siem of Myllem who are respondents to the applications.

These petitioners have applied for a writ against the respondent claiming that they are entitled to function as voters of Myllem Durbar and that the respondents should be restrained from interfering with this right of theirs. It is pointed out that the right of these petitioners as electors in Myllem Durbar involves certain emoluments and perquisites to which also the petitioners are entitled and of which they have been deprived by the conduct of the opposite party.

They allege that these petitioners along with several others were electors of Myllem Durbar re-presenting the clans shown against their names and ad been functioning as such since October 1953 and that their names were also included in the roll of electors of the Durbar of the Siem of Myllem.

The fact was also recognised by order dated 9-2-1954 wherein it was held that the petitioners and the other persons in all 23 in number who constituted the electors from the Raid Sanshnong had the same status and function as the rest of the electors in Myllem Siemship. This Siemship according to the petitioners is composed of five Raids (1) Myllem (2) Nongbet (3) Sanshnong (4) Nongumlong (5) Nongkseh and they claim that Sanshnong Raid comprises about three-fourth area of the entire Siemship.

Previous to the inclusion of these 23 persons, the Raid in question was represented in the electoral college only by three individuals but subsequently this anomaly was removed and the rights of these petitioners were duly recognised and thereafter the petitioners enjoyed the customary right of representation of their various clans.

The then Executive Committee of the District Council by an order dated 27-10-53 upheld the claim of the petitioners as electors in the Siemship but subsequently this order was recalled by the present Executive Committee. The petitioners have therefore moved this Court for a writ in their favour.

8. The applications in our opinion should fall through solely on the ground that the order passed by the Executive Committee of the District Council is not a final order and is still subject to approval by the District Council itself. The order in question runs as follows:

The Executive Committee have carefully gone through all the papers on the matter of appointment of the 23 new electors of the Myllem Siemship from Raj Sanshnong and thoroughly discussed it. The Committee is of opinion that this is a matter clearly for the District Council to decide as it falls under Rule 29 (2) (a)

of the Assam Autonomous Districts (Constitution of District Councils) Rules 1951 and not a matter that the Executive Committee alone can decide.

It was not an urgent matter as it has been pending since 1948 and so does not fall under Rule 30 (a) of the aforesaid Rules. Besides, it contravenes para 3 of the terms of appointment of U Jormanick Siem of Myllem wherein it is specifically mentioned that there are only 26 electors. Those terms can be altered, amended or modified only by the District Council alone according to para 12 of the terms of appointment of the Siem.

The Executive Committee will therefore place its findings and recommendations before the Council for final approval in accordance with Rule 29 (2) (a) of the Assam Autonomous Districts (Constitution of District Councils) Rules 1951, and that in the meantime, this office orders No. DC/PC/18(S)50/48/10539-64, dated 27-10-53 and No. DC/XXIII/2(1) (53)/33/2088-90, dated 1-3-54 are hereby cancelled from today the 22-3-1954 until further orders. The 23 new Electors therefore should forthwith cease attending the Siems Durbar in that capacity.

The second paragraph of the order very clearly shows that the Executive Committee was to place its findings and recommendations before the District Council for its approval in accordance with Rule 29(2)(a) of the Rules. It is true that the order is effective on its terms because Rule 29 vests the Executive Committee with jurisdiction in these matters, in some cases subject to the approval of the District Council; but as the order indicates the Committee has not assumed the responsibility of setting the matter at rest, but has directed on the contrary that the matter should be placed before the District Council.

The petitioner's case, if any, has to be considered by that Council before the Council lends its approval to the order of the Executive Committee. It is urged that there is no special procedure for guaranteeing a hearing to the petitioners by way of a petition of rights in the District Council. There is, in our opinion, nothing to prevent the petitioners from making a representation to the District Council of their legitimate claim, if they have any, and we have no doubt that the District Council, which is an autonomous body, will give due consideration to their claim. But at this stage, it seems to us that it is altogether premature to ask this Court for issue of a prerogative writ in favour of the petitioners.

The claim of the petitioners is not accepted by the Executive Committee and their rights, if any, have got to be properly investigated and determined before they can move this Court for protection of such rights as they may be found to possess. In the circumstances, we think that these applications also must fail and are accordingly dismissed with costs. Hearing fee Rs. 50/- in each case.

In view of what we have stated above, it is not necessary for us to examine whether the authorities concerned are guilty of any disobedience of the order of this Court when it directed the status quo ante to be maintained during the pendency of the rules. It should be enough to observe that the orders of this Court have to be strictly obeyed and meticulously followed and that in case of

breach or violation of our orders, the arms of this Court are long enough to reach and chastise any delinquents in the State.

9. Leave to appeal is asked for but is refused.

Ram Labhaya, J.

I agree.