

(1995) 01 GAU CK 0012
In the Gauhati High Court
Case No : Writ Appeal No. 172 of 1993

Vesopa

APPELLANT

Vs

The State of Nagaland and Others

RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:

Nagaland Village and Area Council Act, 1978 — Section 22, 7

Citation : (1995) 1 GLR 418

Hon'ble Judges : V.K. Khanna, C.J.;D.N. Baruah, J

Bench : Division Bench

Advocate : N.N. Saikia, J. Chutia and G. Deka, for the Appellant; C.T. Jamir, Jr. G.A., A. Roy and S.R. Sen, for the Respondent

Final Decision : Allowed

Judgement

V.K. Khanna, C.J.—This appeal has been filed against the judgment of the learned Single Judge dated 13th August, 1993 in Civil Rule No. 56(K) of 1993.

2. We have heard Mr. N.N. Saikia, learned Counsel appearing for the Appellant, Mr. C.T. Jamir, learned Junior Government Advocate, Nagaland appearing on behalf of Respondent Nos. 1 to 4 and Mr. A. Roy, learned Counsel appearing on behalf of Respondent No. 5.

3. The facts for the purpose of adjudicating the present appeal are that there is a Village Council constituted under the Nagaland Village and Area Councils Act, 1978 (Hereinafter referred to as "the Act") for the village Phusacheduma. Admittedly Shri Hushetso Ratuo was the Village Council Chairman who on 3rd January, 1993 in the meeting of the Village Council which was attended by 26 G.Bs and V.C. Ms. tendered his resignation which was duly accepted. The members of the council (Sic, council) present in the meeting held on 3rd January, 1993 also decided to allow Shri Veyiri, Head G. B. to function as Village Council Chairman till the new election was held. The Extra Assistant Commissioner, Chetheba by calling the G.Bs and V.C. Ms of Village Council,

Phusacheduma, recommended the name of Respondent No. 5 to function as Village Council Chairman and the aforesaid proposal was approved by the State of Nagaland also. It is this action of the Respondents in appointing Respondent No. 5 as the Village Council Chairman of Phusacheduma village which was challenged by the Petitioner-Appellant by filing Civil Rule 56(K) of 1993.

4. The learned Single Judge negated the contentions raised by the Petitioner-Appellant and held that the action of the Extra Assistant Commissioner in recommending the name of Respondent No. 5 as Chairman of the Village Council was in accordance with the provisions of the Act and required no interference and thus the petition filed by the Petitioner-Appellant was dismissed. It is this order passed by the learned Single Judge which is under challenge in the present appeal.

5. Mr. Saikia, learned Counsel appearing for the Petitioner Appellant has urged before us that the Chairman of the Village Council can only be appointed by following the procedure set out in Section 7 of the Act. Section 7 of the Act reads as follows:

7.(1) The Village Council will choose a member as chairman of the Council.

(2) During the absence of the Chairman from any sitting of the Village Council a member of the Council nominated by the Chairman shall act as Chairman.

Mr. Roy, learned Counsel appearing for the Respondent No. 5 has relied on the provisions of Section 22 of the Act which runs as follows:

22. Subject to the general superintendence of the State Government/the Deputy Commissioner/the Additional Deputy Commissioner or Sub Divisional Officer (Civil) in-charge of the Sub-Division, Extra Assistant Commissioner or Circle Officer shall have control over all the Village Councils within his jurisdiction.

6. On the basis of the provisions of Section 22 of the Act, it has been contended by Mr. Roy that the Extra Assistant Commissioner was entitled to call the meeting of the village council and also recommend the name of Respondent No. 5 as Village Council Chairman to the State Government for approval. It is on that basis that the order passed in favour of Respondent No. 5 by the State Government has been justified and also on the ground that out of 29 members of the Village Council, in the meeting held in the office of the Extra Assistant Commissioner, the majority i.e. 15 G.Bs. and V.C. Ms had demonstrated their willingness to appoint Respondent No. 5 as Village Council Chairman.

7. After carefully considering the arguments raised by the learned Counsel for the parties and perusing the materials filed in the Civil Rule we are of the opinion that after the resignation tendered by the earlier Chairman of the Village Council on 3rd January, 1993, no meeting of the Village Council was ever held. Provisions of Section 7 of the Act are mandatory and the only manner in which the Chairman can be chosen is that the members of the Village Council in a meeting have to select the person who will be the Chairman of the Village Council. As far

as the action of the Extra Assistant Commissioner in initialing the process for choosing the member as Chairman of the Village Council is concerned, we can find no fault in the same as that power can be exercised by the Extra Assistant Commissioner u/s 22 of the Act, in case meeting of the Village Council is not intentionally called so as to avoid holding of a meeting for the purpose of choosing a member as Chairman of the Village Council. However, from the materials which have been filed in the Civil Rule and the Appeal it appears that the Extra Assistant Commissioner had not called the meeting of the Village Council and had only adopted a procedure by which he was trying to test the strength of certain groups, of Village Council. In our opinion, this is not contemplated u/s 7 of the Act. A meeting of the Village Council has to be summoned and it is in that meeting that the members of the Village Council have to choose amongst themselves a member as Chairman of the Village Council.

8. For the reasons stated above, we are of the opinion that the decision taken by the State Government in approving the election of the 5th Respondent as Chairman of the Village Council of Phesacheduma village cannot be said to be in accordance with the provisions of the Act and is, therefore, liable to be quashed.

9. From the materials which have been filed in the writ petition and the appeal it is clear that there are 29 members of the Village Council. In pursuance of the notice issued by the Extra Assistant Commissioner 15 members out of the 29 members of the Village Council had extended support in favour of Respondent No. 5. It is thus clear from the materials which are available in the present moment that Respondent No. 5 has the majority support in his favour and, therefore, we are of the opinion that till the meeting of the Village Council is held, the Respondent No. 5 will perform the function of the Chairman of the Village Council.

10. After hearing the learned Counsel for the parties, we are of the opinion that the Village Council meeting will now be called by the Extra Assistant Commissioner, Chetheba on the 15th February, 1995. As far as the Appellant and Respondent No. 5 are concerned their counsel have taken note of the date and order has been pronounced in their presence. The Extra Assistant Commissioner will, however, send and serve notices to all the members of the Village Council so as to reach them at least 15 days before the meeting, The Extra Assistant Commissioner will remain present in the meeting as an Observer and the meeting of the Village Council will be presided by Respondent No. 5 and it is in this meeting that the Village Council will choose one of its members as Chairman of the Council. Learned Junior Government Advocate will see that the certified copy of this order is sent to the Extra Assistant Commissioner, Chetheba, so that he complies with the direction given by this Court and gets the meeting of the Village Council held as observed above.

11. For the reasons stated above the present appeal is allowed to the extent indicated above. A certified copy of the judgment will be given to the counsel for the parties on payment of usual charges by 9.1.1995.