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**(1996) 05 GAU CK 0022**

**Gauhati High Court**

**Case No:** C.R. No. 15 (K) /96

Ramshumo Humtsoe

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

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**Date of Decision:** May 16, 1996

**Acts Referred:**

- Nagaland Village and Area Council Act, 1978 - Section 22, 7(1)

**Citation:** AIR 1996 Guw 95

**Hon'ble Judges:** W.A. Shishak, J

**Bench:** Single Bench

**Advocate:** B.N. Sarma and Imti Longchar, for the Appellant; K. Meruno, Sr. Govt.  
Advocate, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

W.A. Shishak, J.

This matter concerns selection/election of Village Council Chairman of Pongitong village of Wokha district. Altogether there are twenty four members of village Council of the said village. After village Council members are elected, one of the members shall to be chosen to be the Chairman of the village Council as contemplated u/s 7(1) which states "the village council may choose a member as Chairman of the Council". Annexure-2 to this writ petition is a notice regarding submission of members of Village Council of the villages of Wokha district. The notice states;

"All the villagers in Wokha District are hereby directed to elect/select Village Council Chairman on or before 15th Jan., 1996 for onward submission to Government".

Letter addressed to the Deputy Commissioner dated 13-1-1996 is signed by eleven members of the Village Council. This concerns select ion/election of "Shri Ramshumo

Humtsoe Pongidong Village Council Chairman for a period of 5 (five) years term from 1996-2000 years". It is further stated that "we therefore request you to kindly accept and issue appointment order as early as possible". This letter has a reference to the earlier notice dated 3rd January, 1996 issued by the SDO (Civil) directing all the villagers to select/elect Village Council Chairman. It is further stated that as per the decision of the Gaonburas of the village dated 11-1-1996 the Pongidong Village Council Chairman election was held on 13-1-1996 in the Village Court at 7-8 a.m. under the Chairmanship of Pongidong Village Head GB Mr, Yiponsao and Mr. Ratsuo VCM seasonal Secretary. Out of the total twenty four VCMs, it is further stated that 11 Village Council members voted in favour of Shri Ramashumo Humtsoe, the petitioner. Three members abstained from voting and the rest walked out from the Court. The names of eleven members of Village Council who were present at the time of election of Chairman are also given. SDO (Civil) Wokha issued a direction to the Head G.B. of Village Pongidong on 16 January, 1996. It states :

"You are hereby directed to inform all the selection VCMs & GB to appear before the undersigned on 18-1-1996 for election of Village Council Chairman at 10.30 a.m. without fail".

Against the said direction a protest was made by the petitioner on 18 January, 1996. It is contended in this representation that election was duly held on 13-1-1996, but the respondent and his group did not participate at the election because they sensed defeat. The petitioner claims in this letter that he secured eleven votes, The main grievance taken in this representation is that re-election of Village Chairman of this village is unwarranted and uncalled for and it would only amount to "condemning the whole Nagaland Village Council Act."

On 18-1-1996 the S.D.O. (Civil, Wokha issued the following order:--

"As per Rule 7(i) of Nagaland Village and Area Council Act, 1970. Election of Pongitong Village Council Chairman has been conducted on 18-1-1996 at 11.30 a.m., in my office Chamber. The following VCM"s present and voted in favour of Shri Zalpomo as the Chairman. The opponent candidate Shri Ranhumo did not appear on the appointment time and date. Hence, Shri Zalpomo has been unanimously elected as Chairman Pongitong Village Council".

The election held as stated above in the office chamber of SDO has been impugned on the ground that such procedure is not warranted under the relevant provisions of law. It is submitted by Mr. B. N. Sarma, learned counsel for the petitioner that the proceedings concerning selection/election of Village Council Chairman sent to the office of SDO ought to have been forwarded to the State Government for approval. It is for the State Government to approve or to pass appropriate orders if there be anything lacking in the conduct of selection/election of Village Council Chairman. It is also submitted that the election of Village Chairman is to be left to the members of Village Council Members. As mentioned above, there are as many as twenty four

members of Village Council at Pongitong Village. It may also be stated that no reason has been assigned as to why another election had to be conducted by the learned S.D.O. Wokha. It appears, some reason ought to have also been given inasmuch as notice dated 3rd January, 1996 was duly issued by him calling upon the villagers to elect village Chairman. Mr. I. Jamir, learned Sr. Government Advocate appearing on behalf of the Government submit that in the present case since the proceedings had not been forwarded to the Government, no approval as such had been given to the election held on 13th January, 1996. Also no approval as such has been given in respect of the election held on 18-1-1996 in the office of the learned SDO, Wokha. According to the learned Sr. Govt. Advocate, it may be best if the impugned election held on 18-1-1996 and also the election held on 13-1-1996 should both be set aside and a fresh election may be allowed to be held, Mr. B. N. Sarma submits that this kind of approach is nowhere contemplated under the provisions of the Act. In other words Mr. B. N. Sarma's submission is that since election was held OP 13-11-1996 in terms of the instruction issued in this regard by the learned SDO, it is incumbent on the part of the SDO to have sent the proceedings of the election to the State Government for necessary action. It is also submitted that in fact no party has really taken grievance against the election held on. 13-1-1996. Mr. K. Meruno, learned counsel for the respondent No. 4 states that in fact elections were held on 13-1-1996 by two grounds separately. This factual position is however, controverted on behalf of the petitioner. According to Mr. Meruno, respondent No. 4 was elected as Chairman by his supporters, whereas the petitioner was also elected village Chairman by his own supporters. I wish learned SDO had given some background as to why he had to conduct election of Village Chairman of this particular village on 18-1-1996, whereas he had already directed the villagers to have the election taken on or before 15th January, 1996. To say the least, it seems something is wrong in the administration in that area. It also appears to me that there is lack of unity among the villagers of this village.

2. Democratic process at grass-roots level should be handled with great care, especially by the administrative officers who are called upon the exercise superintendence in terms of Section 22 of the Act in the Village Administration.

3. After hearing counsel of the parties and on perusal of the impugned order as well as the relevant provisions of law applicable in the present case, I am of the view that the action of the learned SDO in the conduct of election of Village Council Chairman on 18-1-1996 appears to be uncalled for. In my view proceedings of the election of Village Chairman made on 13th January, 1996 in response to the notice issued by the learned SDO on 3rd January, 1996 ought to have been forwarded to the State Government for necessary action. It appears, not to do so is failure of duty on the part of the learned SDO.

4. In the result, the impugned order of election held on 18-1-1996 is set aside. The proceedings of election of the petitioner held on 13-1-1996 shall be forwarded to the

State Government for approval. This shall be done within 1 (one) week from the date of receipt of this order.

No costs.