(2010) 2 GLR 662 : (2010) 1 GLT 280

Gauhati High Court (Aizawl Bench)

Case No: None

Sh. Devison and Others		APPELLANT
	Vs	
Lai Autonomous District Council and Others		RESPONDENT

Date of Decision: Dec. 7, 2009

Acts Referred:

- Lai Autonomous District (Village Councils) Act, 2007 - Section 10, 6(1), 9

Citation: (2010) 2 GLR 662 : (2010) 1 GLT 280

Hon'ble Judges: P.K. Musahary, J

Bench: Single Bench

Final Decision: Allowed

Judgement

P.K. Musahary, J.
Heard Mr. C. Lalramzauva, learned Counsel for the petitioners and also heard Mr. H. Lalrinthanga, learned Standing Counsel appearing for the respondents-District Council.

2. Challenge in these writ petitions is to the notifications issued by the respondent No. 2, Executive Member i/c AD, Lai Autonomous District Council, Lawngtiai under Memo No. V.12011/4/2007-LADC/LAD dated 4.5.2009, 26.5.2009, 28.5.2009 and 29.5.2009, dissolving the Village Councils in violation of the provisions under the Lai Autonomous District Council (Village Councils) Act, 2007, hereinafter referred to as "the Act" only in short.

8. The petitioners claim that they belong to Mizo scheduled tribe community and permanent residents of Lawngtiai District in the State of Mizoram. By a Notification No. V.12011/2/2007-LADC/LAD dated 7.9.2007, the respondent No. 2 declared the number of elected and nominated members of each of the Village Council in Lai Autonomous District Area. The numbers of members fixed for each village council concerned in respect of writ petitions are as under-

Writ Petition	Sl. No. and name of Village Council	No. of elected Members	No. of nominated Members	Total o Members
WP(C)59/09	80. Chawngtelui	3	1	4
WP(C)56/09	29. Sangau-III	3	1	4
WP(C)55/09	28. Sangau-II	5	2	7
WP(C)54/09	31. Cheural	5	1	6
WP(C)50/09	14. Paithar	3	1	4
WP(C)49/09	16. Sihtlangpui	3	1	4
WP(C)48/09	18. Rulkual	3	1	4
WP(C)46/09	17. Kawlchaw ''W''	3	1	4
WP(C)60/09	72. Pandawnglui	3	1	4
WP(C)61/09	40. Diltlang	5	1	6
WP(C)63/09	44. Hmunnuam	3	1	4

4. The respondent No. 2 vide respective notifications dated 30.10.2007, 1.11.2007,2.11.2007,5.11.2007,6.11.2007and 21.10.2008 declared the petitioners elected as Presidents/Members of the respective village council as shown below:

Sl. No.	Name of the Village	Name of the elected Members	Name of V.C.P	Against Wr Petition No.
4.	Chawngtelui	1. Devison 2. Biakkima 3. Duhmanga	Devision	WP(C) 59/09
19.	Sangau-III	1. B. Sangliana 2. Chhawnkima 3. L. Hrangchunga	B. Sangliana	WP(C) 56/09

14.	Sangau-II	1. V. Lalthuanga 2. H. Iianhmunga 3. H. Lalduhenga 4. B. Lalramthanga 5. Ngunliana	V. Lalthanga	WP(C) 55/0
11.	Cheural	1. H. Zohmingthanga 2. Laldinpuia 3. Vanrammawia 4. Kapvunga 5. Zosangliana	Laldinpuia	WP(C) 54/09
10.	Paithar	1. Sh. S. Laldinpuia 2. Sh. H.C. Lungmuana 2. Sh. F. Vanmawia	S. Laldinpuia	WP(C) 50/09
22.	Sihtlangpui	1. B. Zapianga 2. C. Biaklawma 3. B. Lalnunthara	B. Zapianga	WP(C) 49/09
2.	Rulkual	1. C. Lalthuama 2. Lalzova 3. Lallianmawia	C. Lalthuama	WP(C) 48/09
20.	Kawlehaw ''W''	1. Chokhara 2. Lalhriatpuia 3. Lallianzova	Lallianzova	WP(C) 46/0
21.	Pandawnglui	1. Prite Raj 2. Debengao 3. Shanti Kumar	Priti Raj	WP(C) 60/09
7.	Diltlang	1. C. Lalzuiliana 2. C. Kapchungnunga 3. K. Rinkhuma 4. A. Hrangchhuana 5. C. Lalbela	A. Hrangchhuana	WP(C) 61/09
2.	Hmunnuam	1. Khupthanga 2. Hmingmawia 3. Sapthanga	Himingmawia	WP(C) 63/09

5. While the petitioners were discharging their duties, the local administrative Officer, Lai Autonomous District Council, Lawngtiai (respondent No. 3) issued show-cause notices vide memo No. V.12011/4/2007-LADC/LAD dated 19th May, 2009 informing the petitioners that action was going to be taken against the Village Councils as per the Commission report and requiring them to submit reply to the E.M. i/c Local Administration Department before 25.5.2009. On receipt of the said show-cause notices, the petitioners approached the respondents for furnishing a copy of the report of the commission as referred to in the show-cause notices but the same were not furnished to them and as a result, the petitioners could not submit any effective explanation as they were kept in darkness about the allegations made against them. Thereafter, by the impugned notifications dated 4.5.2009, 26.5.2009, 28.5.2009 and 29.5.2009, the respondent No. 2 dissolved the above mentioned Village Councils by invoking power u/s 10 of the Act.

6. Mr. Lalramzuva, learned Counsel for the petitioners submits that the petitioners were elected for a period of 3(three) years from the date of the first meeting appointed by the Executive Committee. The Village Councils are invested with the executive, legislative and judicial functions. The Village Councils have been dissolved by the impugned notifications in violation of the provision u/s 10 of the Act. The Principle of Natural Justice was also violated inasmuch as the petitioners were not furnished with the copy of the complaints made against them and the reports prepared by the Commission on the basis of the aforesaid complaints for which the petitioners could not make effective representation and/or reply to the show-cause notices. The impugned notifications being violative of the principle of natural justice, according to Mr. Lalramzuva, learned Counsel for the petitioners, is liable to be quashed and set aside. In support of his submissions, he relies on the law laid down by the Apex Court in Canara Bank and Others Vs. Shri Debasis Das and Others, ; Canara Bank Vs. V.K. Awasthy, and Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. and Others, .

7. In the counter affidavits filed by the respondent Nos. 1, 2 and 3 it is stated, inter alia, that complaints of commission of certain irregularities were received from some villagers against the members of the Village Councils. The respondents constituted commission/committee consisting of three members and the said inquiry commission conducted enquiry into the allegations by putting questions to the complainants and the Village Council members. The inquiry commission/committee was of the opinion that the village councils committed a number of irregularities in the management of NREGS fund and they are not fit to continue as Village Councils.

8. On the basis of the aforesaid finding of the inquiry commission/committee show-cause notices were issued to the petitioners but they failed to rebut the allegations in spite of giving them adequate chances. Mr. Lalrinthanga, learned Counsel for the respondents submits that there is no need of furnishing the petitioners with the copy of the report of the inquiry commission/committee as they participated in the inquiry proceedings and they were aware about the allegations made against them. Further he submits that at no point of time, the petitioners requested the respondents to furnish them with the copy of the

reports of the inquiry commission/committee. There is no irregularity on the part of the respondents and as such, according to Mr. Lalrinthanga, the impugned notifications dissolving the Village Councils warrant no interference.

9. From the pleadings of the parties, it is discernible that there is no dispute that the petitioners were elected as Village Council members and they have been functioning as members of the said Village Councils. The respondents have disclosed in the counter affidavit that complaints were received from some villagers against the petitioners to the effect that they have committed certain irregularities and they appointed a commission/committee consisting of three persons to enquire into the irregularities alleged against the petitioners. The fact of appointing a commission/committee to enquire into the alleged irregularities has not been disputed by the petitioners. The petitioners have not also disputed the fact of their participation in the proceedings of the inquiry conducted by the said Commission. What is disputed by the petitioners is that the copy of the reports submitted by the said inquiry commission/committee have not been furnished to them. It has been fairly submitted by the learned Counsel for the respondents that the copy of the complaints received from the villagers against the petitioners and the report of the inquiry commission/committee were not furnished to them.

10. A question has arisen as to whether the complaints made by some villagers as well as the reports of the commission/committee were required to be furnished to the petitioners although they participated in the inquiry proceedings and non-furnishing of the copy of the complaints and inquiry reports of the commission/committee, would amount to violation of the principle of natural justice and the impugned notifications dissolving the Village Councils would be liable to be set aside and quashed.

11. It is found that the show-cause notices were not accompanied by the statement of allegations based on the complaints received from some villagers. Naturally the petitioners were not in the know regarding the contents and nature of the allegations made against them, which has caused prejudice to the petitioners. Secondly, the report of the inquiry commission/committee having admittedly not been furnished, the petitioners were denied opportunity of knowing the findings of the said commission/committee recorded against them. Moreover, the petitioners were not informed regarding the findings of the inquiry commission/committee that have gone against them. Without doing so, the impugned dissolution notifications were issued without giving them any opportunity to rebut the findings of the inquiry commission/committee by filing an effective representation. This was also to the prejudice of the petitioners. The petitioners, no doubt, were present during the proceedings of the inquiry commission/committee but they were never made aware about the adverse findings. They came to know about the adverse findings only on receipt of the impugned notifications. In my considered view, the principle of natural justice, demands, even though the petitioners were present before the inquiry proceedings, the respondent authorities should have furnished the petitioners with the copy of the inquiry reports so as to enable them to make effective representation before the authorities concerned.

12. The petitioners as elected representatives of the Village Councils are holding important offices in the grass root of the democratic setup. The office of the Village Council assumes important status entrusted with executive, legislative and judicial functions u/s 9 of the Act. It is to observe that such important elected village councils have been dissolved unceremoniously by the respondents making the petitioners to suffer in public esteem. This would certainly visit the petitioners individually and collectively as village council with civil consequences inasmuch as they have been debarred from serving the full term of the office of the village councils. The provision u/s 6(1) of the Act provides that an elected village council should be allowed to function for a period of three years and by virtue of this provision, the petitioners have accrued vested right and interest and curtailment of the same by the impugned notifications, would entail civil consequences so as to justify and insistence upon the legitimate demand for due observance of the principle of natural justice before an order of dissolution is passed. There is no escape for the respondent authorities from strict observance of the principle of natural justice although no such provision has been provided in the Act. In this regard, let me refer to the case of S.L. Kapoor Vs. Jagmohan and Others, . It was a case where the New Delhi Municipal Committee was superseded and wherein the question relating to entailing of civil consequence in the contingency of supersession was discussed and held as under:

9. ...A committee as soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the Committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the Committee to serve its full term of the office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed.

13. It would be apposite to refer to the decision rendered in V.K. Awasthy (supra) wherein, it has been observed that the first and foremost principle is what is commonly known as audi alteram partem. Notice is the first limb of this principle. It must be precise and unambiguous to apprise the parties of the case he has to meet with providing adequate time to enable him to make his representation. In absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. As observed earlier that no such opportunity has been given to the petitioners it can easily be held that the impugned notification dissolving the Village Councils are undoubtedly voilative of the principle of natural justice and the same cannot survive the judicial scrutiny. This would result into declaring the impugned notifications as illegal and voilative of the principle of natural justice. Accordingly, the aforesaid impugned notifications are set

aside and quashed.

14. The petitions stand allowed.

15. The petitioners shall be allowed to function as members of the, respective Village Councils and complete their terms of three years as provided under the Act. The respondent authorities shall release the arrear as well as the current remuneration to the petitioners as per their entitlement. However, the respondent authorities would not be precluded from taking action afresh against the petitioners, if so advised, as per the provision of the Act and principle of natural justice as discussed above.