

(2009) 09 GAU CK 0040

Gauhati High Court (Aizawl Bench)

Case No: Writ Petition (C) No. 79 of 2009

R. Rohmingliana

APPELLANT

Vs

State of Mizoram and
Others

RESPONDENT

Date of Decision: Sept. 2, 2009

Acts Referred:

- Mizoram Co-operative Societies Act, 2006 - Section 51, 51(c)

Citation: (2010) 3 GLR 673 : (2010) 1 GLT 616

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

Bench: Single Bench

Advocate: C. Lalramzauva, A.R. Malhotra and K. Laldinliana, for the Appellant; N. Sailo, for the Respondent

Judgement

P.K. Musahary, J.

Heard Mr. A.R. Malhotra, learned Counsel for the petitioner and also heard Mr. N. Sailo, learned Additional Advocate General, Mizoram. Mr. N. Sailo has received instructions from the respondent-authorities. Out of the 15 nomination papers received, 13 nomination have been found valid. Out of 13 valid nominations, 2 candidates have withdrawn their nominations. There remains now 11 valid nominations. From amongst the 11 candidates whose nominations have been found valid, 3 are graduates, 3 are HSLC passed, 1 Class-IX passed and 1 HSLC passed woman. There is one female candidate who has passed Class VIII. There are again 2 candidates one Class VI and the other Class V passed.

2. The present petition has been filed challenging the Government circular No. A.43105/1/94-RCOOP dated 13.8.2009 whereby the Government has relaxed the educational qualification so as to provide facilities to contest in the State Level Co-operative Election by even persons who have passed Class-V standard. Mr. A.R. Malhotra, learned Counsel for the petitioner submits that as per the provisions u/s

51(c) of the Mizoram Co-operative Societies Act, 2006, such relaxation would be made only when there is no sufficient number of Bachelor Degree holders in specified fields. According to him, as per instructions of the learned Additional Advocate General, at least 3 graduates and 3 HSLC passed, 1 Class IX passed, 1 HSLC woman candidates are available and as such, enough qualified candidates have come forward. No necessity has arisen for relaxation of educational qualification down to Class-V. According to him, the relaxation can be made down to HSLC only.

3. Mr. N. Sailo, learned Additional Advocate General submits that for the sake of proper participation in the democratic process by the people, the impugned Government Circular was made relaxing the educational qualification down to Class V and no interference is necessary in this regard. Even if all the candidates whose nomination papers have been found valid and accepted are allowed to contest, they may not get enough qualified person returned for better administration of the Co-operative Institution.

4. Mr. N. Sailo has produced a list of candidates issued by the Election Officer dated 27th. August, 2009 giving therein the details, particularly the educational qualification. I have perused the same. A copy of the same shall be kept on records. I have considered the submissions made by the learned Counsel for the parties. The election is due on 3.9.2009 and as such, I propose to dispose of this petition at the motion stage. Section 51 of the Mizoram Co-operative Societies Act, 2006 provides for qualification for becoming Members of the Management Committee. Section 51(c) provides for relaxation of education qualification, which reads as follows:

(C) preferably a bachelor degree holder in co-operative, economics, finance, agriculture, or other disciplines having direct relation to the type of activities undertaken or to be undertake by the co-operative and if the required number of members of management committee with bachelors degree are not available, the qualification may be relaxed to the level of senior or higher secondary education or X standard or VIII standard respectively but in any case not below V standard.

As per provision of Section 51(c) the educational qualification can be relaxed up to Class X standard provided there is lack of sufficient number of Bachelor Degree holders in the specified fields. The respondent-Registrar has issued the impugned circular under the aforesaid provision. Para 2 of the impugned circular is relevant which is quoted below:

(2) The qualification of bachelor degree for the Management Committee Member of Board of Director as per Section 51(c) of MCS Act, 2006 is only a preference. Further, it is possible that these degree holders will not be found in primary co-operative society not to State Level Cooperative Society, therefore, regarding educational qualification those members who have passed Class-V will be allowed to contest the election to the Board of director.

5. Apprehension has been expressed by the respondent-Registrar that sufficient number of degree holders would not be found in Primary Cooperative Society as well as in the State Co-operative Society. With this apprehension, the educational qualification has been relaxed and the members who have passed Class-V have been allowed to contest the election to the Board of Directors. The respondent Registrar has taken this view and passed the impugned order without taking into account the valid nomination papers received from the candidates and without looking at the educational qualification of the said candidates. As per the instructions furnished by the learned Additional Advocate General, there are 3 graduates, 3 male HSLC passed, 1 women HSLC candidates including 1(one) male Class-IX passed and 1(one) female Class-VIII passed candidates, which comes in total to 9(nine) candidates leaving aside other 2 candidates who have passed Class-VI and Class-V. The State Level Co-operative Society is having an Executive Committee of 6 Members plus one reserved for women. The electors can elect 7 members from amongst the contesting candidates. Excluding 2 candidates who have passed Class VI and Class V, there would be 9 candidates in the field whose nominations have already been found valid and accepted. The electors can return 7 members out of the aforesaid 9 candidates. In such circumstances, in my considered view, there is no need for relaxing the educational qualification down to Class V. The relaxation may be confined to Class VIII in as much as we have already found 9 candidates amongst whom there are graduates and Class VIII passed candidates.

6. What is contemplated in Section 51(c) of the Societies Act is that relaxation in educational qualification can be made when sufficient number of qualified candidates are not available. The relaxation is subject to the non-availability of the qualified candidates. In the present case we have found that there are at least some graduate persons including woman who have passed Class VIII standard. The interest of the Democratic Institution would be served if we confine the relaxation educational down to Class VIII.

7. Accordingly the impugned circular dated 13.8.2009 is set aside to the extent that the relaxation shall be made only up to Class VIII standard. The authorities concerned shall proceed and complete the election process with the aforesaid candidates who have passed up to Class VIII standard.

8. This petition stands disposed of with the aforesaid directions. Copy of this order may be furnished to the learned Counsel for the parties during the course of the day.