

**(2018) 07 GAU CK 0032**

**Gauhati High Court**

**Case No:** Public Interest Litigation No.9 Of 2017

Ratan Terang And 17 Ors.

APPELLANT

Vs

State Of Assam And 8 Ors.

RESPONDENT

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**Date of Decision:** July 13, 2018

**Acts Referred:**

- Assam Autonomous District (Constitution of District Council) Rules 1951 - Rule 128(4)(b)

**Hon'ble Judges:** AJIT SINGH, CJ; ACHINTYA MALLA BUJOR BARUA, J

**Bench:** Division Bench

**Advocate:** M. Sarania, B. Goswami, R. Dhar

**Final Decision:** Disposed Off

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### **Judgement**

AM Bujor Barua, J.)

1.Â Heard Mr. M. Sarania, learned counsel for the petitioner. Also heard Mr. B. Goswami, learned Addl. Advocate General, Mr. R. Dhar, learned

Addl. Senior Govt. Advocate for the respondent No.1 as well as Mr. H. Mazumder, learned standing counsel for the State Election Commission,

Assam and Mr. J. Chutia, learned standing counsel for the Karbi Anglong Autonomous Council (KAAC).

2.Â The petitioners who are indigenous scheduled tribe people permanently residing in the district of Karbi Anglong, Assam is aggrieved inasmuch as,

no Rules have been framed by the Karbi Anglong Autonomous Council (KAAC) for conducting the elections to the Council and other authorities

under the Council.

3. According to the petitioners, the KAAC is governed by the provisions of the 6th Schedule to the Constitution of India and under paragraph-12 of

the said Schedule, no Acts of the State of Assam in respect of the subjects provided under paragraph-3, 3-A and 3-B would be applicable in respect

of the Council areas unless the District Council so directs by a public notification. Paragraph-2(6) of the 6th Schedule inter alia provides that the

Governor shall make Rules for the first constitution of District Council and Regional Council in consultation with the existing tribal councils or other

representatives of the tribal organizations, amongst others, providing for the qualification for voting for the purpose of election to the Councils and for

preparation of electoral roles therefor and also for prescribing the qualification for being elected in such election.

4. In exercise of the powers under paragraph 2(6), the Assam Autonomous District (Constitution of District Council) Rules 1951 was framed by the

Govt. of Assam under paragraph 2(6) of the 6th Schedule.

5. According to the petitioners, the said Rules being framed under paragraph 2(6) was only for the purpose of the first constitution of the District

and Regional Councils and the same cannot be the guiding factor thereafter, which is more so in view of the provisions of paragraph 2(7) which

provides for the District or the Regional Councils to frame its own Rules after its constitution.

6. Further case of the petitioners that the elections in the Election District Council are conducted under the Rules of 1951 and under Rule 128 (4)(b)

of the said Rules even the non tribal people are included in the electoral roles of the District Council. In the circumstance, the PIL has been preferred

for a declaration that the rules of 1951 had lapsed after the first constitution of the District Council and any further action taken pursuant to the said

Rules is illegal, null and void.

7. It is further prayed that the respondent Nos. 4, 5 and 6 being the authorities in the Karbi Anglong Autonomous District Council be directed to

frame a new set of Rules under paragraph 2(7) of the 6th Schedule before conducting any election to the Council. It is also prayed that the authorities

in the KAAC be directed to supervise and control the election to the KAAC by constituting an independent authority under the 6th Schedule. The said

prayer is made in the context that of the present, the State Election Commission, Assam is undertaking the responsibility of conducting the election in

the KAAC. According to the petitioners, the State Election Commission, Assam is an authority created under the Assam Panchayat Act, 1994 ( in

short Act of 1994). As the Act of 1994 itself is not applicable in the areas under the KAAC in view of the provision of paragraph 12(1)(a) of the 6th

Schedule, the State Election Commission, Assam has no jurisdiction to conduct any election to the council.

8.Â In course of the hearing, the learned standing counsel for the KAAC has made a statement that the appropriate Rules for conducting the election

shall be framed by the Council under paragraph 2(7) within a period of 12 months from today. The said submission of the learned standing counsel is

accepted to the extent that the Council is willing to frame its own Rules under paragraph 2(7) for the purpose of conducting the election to the

Council. But the further contention that the Council requires 12Â months for framing the Rules is found to be excessive and unreasonable. This Court

is of the view that a period of 6 months would be more appropriate to be granted to the Council to frame the required Rules.

9.Â In view of the statement by the learned standing counsel that the Rules for conducting the election to the Council would be framed within 12

months, the PIL petition is disposed of by directing the Council to frame the Rules for conducting the election in exercise of its power under paragraph

2(7) of the 6th Schedule within a period of 6 months from the date of this order. The other respondents in the PIL petition are agreeing to such

proposal of the KAAC and accordingly do not oppose the direction given.

In terms of the above, PIL stands disposed of.