

GAHC030000042023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3/2023

Sh. Rasik Mohan Chakma and 10 Ors.

S/o Sukra Moi Chakma

R/o Borapansury-I, Lawngtlai District, Mizoram. 4: Sh. Buddha Lila Chakma

5: Sh. H. Amaresh Chakma

6: Sh. Lakkhan Chakma

7: Sh. Amit Kumar Chakma

8: Sh. Lakhi Dhan Chakma

9: Sh. Ajay Kumar chakma

10: Smt. Kusum Lota Chakma

11: Sh. Shanti Jiban Chakma

12: Sh. Onish Moy Chakma

13: Sh. Mohan Chakm

VERSUS

The State of Mizoram and 3 Ors.

r/b the Chief Secretary, Govt. of Mizoram, Aizawl. 2:The Secretary to the Governor of Mizoram

3:The Secretary to the Govt. of Mizoram
District Council and Minority Affairs

4:The Deputy Commissioner
Lawngtlai Distric

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Addl. AG/GA, Mizoram

**B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R**

27.03.2023

(Monday)

Heard Mr. B. Lalramenga, learned counsel for the petitioners along with Mrs. Linda L. Fambawl, learned Govt. Advocate for the State respondents.

2. This Writ Petition is filed under Article 227 of the Constitution of India against the actions of the Respondents, particularly the Respondent No.3 who issued the impugned A.43016/3/2018- Notification Memo No. DC&MA(C)/232 dated 16.12.2022, by which Para 16(2) and Para 20BB of the Sixth Schedule to the Constitution of India had been invoked by the Governor of Mizoram to assume all function or powers vested in or exercisable by the Chakma Autonomous District Council, and appointing the Respondent No.4 as Caretaker on his behalf.

3. Facts leading to this writ petition is that the Petitioners were elected Members of the 10th Chakma Autonomous District Council/CADC in the last election of the CADC held on 20.04.2018. The term of the MDC's of the CADC is 5 (five) years from the date appointed for its first meeting after the general election to the CADC, unless sooner dissolved.

4. After the Election of the 10th CADC, the Executive Committee of the CADC was formed as per Rule 22 of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002 which had been amended from time to time. At the time of formation of the Executive Committee right after the 10th Election of the CADC, Shri Shanti Jiban Chakma (i.e., the Petitioner No. 11 herein) was appointed as the Chief Executive Member of the CADC as provided under Rule 22 (2) of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002. Thereafter, there were changes in the post of the Chief Executive Member and the said post was held by the Petitioner No.1, the Petitioner No.3 and the Petitioner No. 4 consecutively. The Petitioner No.4 then tendered his resignation from the said post of the Chief Executive Member by submitting a resignation letter dated 10.11.2022 to the Governor of Mizoram through the Chairman, CADC. Thereafter, the Chairman of the CADC had forwarded the resignation letter of the Petitioner No.4 to the Governor.

5. Consequent upon the resignation of the Petitioner No.4 from the post of the Chief Executive Member, CADC; the Mizo National Front Party of the CADC being the

largest Legislature Party in the CADC had a meeting on 11.11.2022 and elected the Petitioner No.1 as the new leader of the Mizo National Front Legislature Party in CADC. An intimation was given by the Petitioner No.1 to the Respondent No.3 wherein it was stated that the Mizo National Front Legislature Party was ready to form a new Executive Committee as per Rule 22 (1) of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002 and he may also be appointed as the new Chief Executive Member of the CADC as per Rule 22 (2) of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002. However, the Respondent No.3 issued the impugned Notification Memo No. A.43016/3/2018- DC&MA(C)/232 dated 16.12.2022, wherein it was mentioned that Para 16(2) and Para 20BB of the Sixth Schedule to the Constitution of India was invoked by the Governor of Mizoram to assume all function or powers vested in or exercisable by the CADC, thereby appointing the Respondent No.4 as Caretaker on his behalf. It was further directed that the impugned Notification dated 16.12.2022 shall be valid for a period of 6 (six) months w.e.f. 16.12.2022 until further orders.

6. That in the said impugned Notification dated 16.12.2022, it is further mentioned that the resignation of the Petitioner No.4 was accepted by the Governor on 17.11.2022. It is also mentioned that the Governor had a firm opinion to the effect that the constant change of administration in the CADC due to political maneuvering is extremely damaging for the welfare of the CADC and its people and is certainly not

what is intended by the Sixth Schedule to the Constitution of India, which envisions the effective administration of the tribal areas. It was further mentioned that the Commission constituted under Para 14 of the Sixth Schedule to the Constitution of India submitted its report stating therein that in the absence of Recruitment Rules, a number of irregular activities have occurred in the CADC without following proper procedures, which is in violation of Para 2(6)(h) of the Sixth Schedule to the Constitution of India whereas there should be Rules for appointment of staff of the CADC. Accordingly, the Governor was satisfied that the administration of the CADC cannot be carried out with the provisions of the Sixth Schedule. Hence, Para 16(2) read with Para 20BB of the Sixth Schedule to the Constitution of India were invoked by issuing the impugned Notification dated 16.12.2022.

7. Mr. B.Lalramenga, learned counsel for the petitioners submits that in a democratic form of government, it is the well settled practice that the largest Legislature Party usually forms the government. Even with regard to the CADC and as provided under Rule 22 of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002, the largest Legislature Party having a majority of elected Members in the District Council shall form the Executive Committee and the leader elected by such Legislature Party shall be appointed as the Chief Executive Member as per Rule 22(1) & (2).

8. The learned counsel submits that there is no mentioning or justification in the

impugned Notification dated 16.12.2022, as to how the change of the Executive Committee and the administration in the CADC had caused damage to the welfare of the CADC and its people. Therefore, assuming the functions and powers of the CADC by the Governor in exercise of the power vested under Para 16(2) of the Sixth Schedule to the Constitution of India and appointing the Respondent No.4 as the Caretaker on his behalf, while the Petitioner No.1 is having the majority of support to form a new Executive Committee in the CADC, is quite illegal and untenable. Hence, the impugned Notification dated 16.12.2022 is liable to be set aside and quashed.

9. The learned counsel for the petitioner further submits that while the Governor had taken into consideration the report of the Commission to the effect that there were appointments of the staff of CADC without following proper procedures and in the absence of the Recruitment Rule, however there exists the *Lai, Mara and Chakma District Council (Group A, B, C & D Posts) Recruitment Rules, 1992* which is still holding the field for recruitment of staff of the CADC till date. This Hon'ble Court had also decided in its Judgment & Order dated 17.01.2019 passed in WP(C) No.23 of 2018 (Shri Surje Pun & 104 Ors. -vs- State of Mizoram & 4 Ors.) that appointment of the staff not being gazetted officers in CADC by the Executive Committee is justified in the light of Rule 26 of the CADC (Constitution, Conduct of Business Etc.) Rules, 2002. That there is no specification on what appointments were made by the CADC in violation of the said Recruitment Rules to say that such appointments are

irregular/illegal.

10. The learned counsel for the petitioners also submits that the impugned notification dated 16.12.2022 is illegal because the District Council was not consulted as laid down in the Sixth Schedule para 16(2) of the Constitution of India. He has cited the Judgment & Order passed by this Court in **D. Uphing Maslai & Anr. Vs. State of Assam & Anr** reported in 2001(2) GLT 299 in support of his submission.

11. Mrs. Linda L. Fambawl, learned Govt. Advocate on the other hand submits that impugned notification dated 16.12.2022 was rightly passed since the Governor was satisfied that Administration of CADC cannot be carried on in accordance with the provisions contained in the Sixth Schedule. She submits that various complaints against the failure in Administration of the 10th CADC was received by the Governor some of the complaints being with regards to the appointments of various Gazetted Officers & Staffs including on illegal appointment of Judicial Officer-II and Section Officer, wherein the views/opinion of the Law & Judicial Department was sought. The Law & Judicial Department had observed that the appointment of both the officers were illegal and arbitrary. Because of the many complaints received an One Man Enquiry Commission was even constituted and on perusal of the report of the One Man Enquiry Commission, it reveals that there was male administration and disregard to the subscribe rules and procedures in the appointment of officers and staff by the

10th CADC. The details of appointments of irregular and illegal appointments with the appointments are annexed to the affidavit-in-opposition.

12. The learned Government Advocate further submits that the prior consultation with the District Council under para 16(2) of the Sixth Schedule of the Constitution of India is not required since para 20BB of the Sixth Schedule of the Constitution of India has specifically provided that 'the Governor may exercised his discretionary powers in the discharge of his functions under "sub-paragraph 1 of paragraph 14" and "sub-paragraphs 1 & 2 of paragraph 16" of this schedule, after the consulting the Council of Ministers, and if he thinks it necessary, the District Council of the Regional Council concerned, take such actions as he considers necessary in his discretion.' That since the impugned notification 16.12.2022 was issued in exercise of the discretionary powers conferred by para 16(2) read with para 20BB of the Sixth Schedule to the Constitution of India. The Governor is not required to consult the District Council but has the discretion to pass the said Order as he deemed fit.

13. Having heard the submissions made by both the parties, this Court has perused the complaints which were received by the Governor with regards to the alleged illegal appointments which were made. It appears from the complaints that these appointments were made without strictly following the Lai, Mara & Chakma District Council (Group A, B, C & D) Recruitment Rules, 1992 which is said to be followed till

date by the learned counsel for the petitioners. The Law and Judicial Department in its observation dated 31.01.2022 had also noted that the appointment of a Judicial Officer dated 21.08.2013 and his subsequent orders regarding extension of service and elevation as illegal.

14. On perusal of para 16(2) of the Sixth Schedule of the Constitution of India which is reproduced herein:

"16.(2) If at any time the Governor is satisfied that a situation has arisen in which the administration of an autonomous district or region cannot be carried on in accordance with the provisions of this Schedule, he may, by public notification, assume to himself all or any of the functions or powers vested in or exercisable by the District Council or, as the case may be, the Regional Council and declare that such functions or powers shall be exercisable by such person or authority as he may specify in this behalf, for a period not exceeding six months:

Provided that the Governor may by a further order or orders extend the operation of the initial order by a period not exceeding six months on each occasion.

(3) Every order made under sub-paragraph (2) of this paragraph with the reasons therefore shall be laid before the Legislature of the State and shall cease to operate at the expiration of thirty days from the date on which the State Legislature first sits after the issue of the order, unless, before the expiry of that period it has been approved by the State Legislature."

15. "20BB. Exercise of discretionary powers by the Governor in the discharge of his functions.- The Governor, in the discharge of his functions under sub-paragraphs (2) and (3) of paragraph 1, sub paragraphs (1) and (7) of paragraph 2, sub-paragraph (3) of paragraph 3, sub-paragraph (4) of paragraph 4, paragraph 5, sub-paragraph (1) of paragraph 6, sub-paragraph (2) of paragraph 7, sub paragraph (3) of paragraph 9, sub-paragraph (1) of paragraph 14, sub-paragraph (1) of paragraph 15 and sub-paragraphs (1) and (2) of paragraph 16 of this Schedule, shall, after consulting the Council of Ministers, and if he thinks it necessary, the District Council or the Regional Council concerned, take such action as he considers necessary in his discretion."

15. It is seen from the above that para 20BB of the Sixth Schedule was inserted in its application to the State of Tripura & Mizoram, by the Sixth Schedule to the Constitution (Amendment Act,) 1988 (67 of 1988).

16. For the above reasons, this Court is of the consider view that the District Council may be consulted only if the Governor thinks it necessary and may take any such action as he considered necessary in his discretion under para 20BB of the Sixth Schedule.

17. This Court also observes that during the term of the 10th CADC which was elected on 20.04.2018 as many as 4 (four) difference Chief Executive Member of CADC were appointed. It is seen also observed that during the term of the 10th CADC various representations were submitted to the Governor with regards to the irregular appointments of Staff & Officers where it appears that the mentioned Lai, Mara & Chakma District Council (Group A, B, C & D posts) Recruitment Rules, 1992 were not fully adhered to in the recruitment of the Officers & Staff of the CADC. It was also pointed out that the Lai and Mara District Council already have a separate Recruitment Rules.

18. In view of the above observations, this court finds that no sufficient grounds have been made out to interfere with the impugned notification dated.16.12.2022

which was notified as per the discretionary powers of the Governor of Mizoram as provided under para 16(2) and para 20BB of the Sixth Schedule of the Constitution of India

19. Accordingly, W.P.(C)/3/2023 stand dismissed and disposed.

JUDGE

Comparing Assistant