

GAHC030001342023



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

Case No. : WP(C)/27/2023

Sh. Talukdar Chakma and Anr.
S/o Punnyo Mon Chakma
R/o Kamalanagar III Village Council
Lawngtlai District, Mizoram 2: Smt. Lokhi Lata Chakm

VERSUS

The Secretary to the Govt. of Mizoram and 2 Ors.
District Council and Minority Affairs Department 2:The Deputy Commissioner

3:Sh. Rammini Chakm

Advocate for the Petitioner : Mr Ashok Kumar Rokhum

Advocate for the Respondent : Mr Lalchhanliana Khiangte for R3

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER

7.08.2023

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Heard Mr. Ashok Kumar Rokhum, learned counsel for the petitioners. Also heard Ms. Mary L. Khiangte, learned counsel for the respondent Nos. 1 and 2 and Mr. Lalchhanliana Khiangte, learned counsel appearing for the respondent No. 3.

2. The present case pertains to the removal of petitioners as nominated Village Council Members of Kamalanagar-III, vide Notification dated 13.03.2023 issued by the Local Administration Officer, Chakma Autonomous District Council (CADC in short).

3. The petitioners' case is that they had been nominated as Village Council Members of Kamalanagar-III, vide Notification dated 19.08.2022, issued by the Executive Member i/c LAD etc, Chakma Autonomous District Council, Kamalanagar. However, they have been removed from their office without issuing any notice to them and without being giving an opportunity of being heard.

4. Ms. Mary L. Khiangte, learned Government Advocate submits that the removal of the two petitioners has been done as per the provisions laid down under the Chakma Autonomous District Council (Village Councils) Act, 2003 (hereinafter referred to as the 2003 Act) and as there is no challenge to the provisions of the 2003 Act, there is no ground for setting aside the impugned Notification dated 13.03.2023.

5. Mr. Lalchhanliana Khiangte, learned counsel for the respondent No. 3 submits that the term of office of a nominated Village Council Member is at the pleasure of the Executive Committee and as the petitioners were found to be involved in malpractices in the administration of the Village Council, it was not felt necessary to serve show cause notice to them, as they had declared and agreed upon to be bound by all the terms and conditions under Section 7 of the Village Councils Act, 2003.

6. The learned counsel for the respondent No. 3 submits that an Inquiry Report dated 07.03.2023, which had been made by the respondent No. 3 revealed that the petitioners created problems in the normal functioning of the village administration by

resigning from the MNF Party and joining the BJP. They were also involved in an attempt to terminate the Village Council Secretary and to remove the Vice President, causing instability to the Executive Body of the Village Council. As nominated members could be removed from their posts, as they were holding their office at the pleasure of the Executive Committee, they were formally removed vide the impugned Notification dated 13.03.2023. He accordingly submits that the writ petition should be dismissed, as no notice is required to be given to the petitioners prior to their removal from their posts.

7. I have heard the learned counsels for the parties.

8. The Notification dated 19.08.2022 issued by the Executive Member i/c LAD etc., CADC shows that the petitioners have been appointed as nominated Village Council Members, in pursuance to Section 6(1) of the Chakma Autonomous District Council (Election to Village Council) Rules, 2007 (herein after referred to as the 2007 Rules), read with Section 3(4) of the Chakma Autonomous District Council (Village Councils) Act, 2003 (herein after referred to as the 2003 Act).

9. Section 6(1) of the 2007 Rules states as follows:-

“Nominated member in each Village Council as prescribed shall be appointed by the Executive Committee from amongst the persons qualified to become a Member of a Village Council according to these Rules. Provided, such person shall apply in the prescribed form informing his willingness to serve as Nominated Member of the Village Council to the Executive Committee or any other Officer appointed for such purpose by the Executive Committee. And such appointed Nominated Member shall hold office at the pleasure of the Executive Committee”.

10. Section 3 of the 2003 Act states as follows:-

“CONSTITUTION OF VILLAGE COUNCILS.

(1) There shall be a Village Council in each Village within the jurisdiction of the Chakma Autonomous District Council;

Provided that a village having not less than 50 (fifty) houses shall not be entitled to have a separate Village Council.

(2) A Village Council shall be composed of members according to the number of houses that it contains as specified:-(a) For a Village having not more than 50 houses there shall be 3 members; (b) for Villages having 51 houses or more but less than 150 houses, there shall be 5 members; and (c) for Villages having 151 houses and above there shall be six members.

(3) Members of the Village Council, subject to sub-section (3), shall be elected by the residents of the Village who are entitled as voter in the latest Electoral Roll for the elections to the District Council.

(4). Of the total number of members determined under sub-section (2), one third or nearest shall be nominated by the Executive Committee and the rest be elected by the adult members of the Village in accordance with the rules made by the District Council under this Act.”

11. Section 5 of the 2003 Act provides the manner in which a member of the Village Council can be removed and the same shows that any member of a Village Council, who due to serious illness fails to attend the 3 (three) consecutive meetings of the Village Council, shall be declared disqualified and his seat shall on receipt of such report from the President of the Village Council shall be declared vacant by the Executive Committee.

12. The impugned Notification dated 13.03.2023, by which the petitioners have been removed from their office as nominated members by the Village Council Member, shows that they have been removed under Section 7 of the 2003 Act. The impugned notification does not indicate whether any notice was issued to them, nor any opportunity of being heard had been given to them, prior to their removal from office. This fact has been made clear from the affidavit of PW-3, which states that no notice was required to be given to the petitioners, as they had already agreed to abide by all the terms and conditions under Section 7 of the Village Councils Act, 2003.

13. The declaration made by the petitioners, which the respondent No. 3 claim does not require the respondent No. 3 to issue any notice to them, prior to their removal from their post, is reproduced below as follows:-

“DECLARATION BY THE APPLICANT

I Sri/Smt S/o, D/o, W/o declare that I shall abide by all term and conditions laid under Section 7 of the Chakma Autonomous District Council (Village Councils) Act, 2003 if and when I am appointed as Member of the above said Village Council or discharged or terminated from Service by the Executive Committee.”

14. Section 7 of the Chakma Autonomous District Council (Village Council) Act, 2002 states as follows:-

“7. TENURE OF MEMBERSHIP. A member nominated to a Village Council in accordance with the provision of sub-section (4) of section 3 hold office at the pleasure of the Executive Committee.”

15. A reading of the declaration made by the writ petitioners, alongwith the provisions under Section 7 of the Village Council Act, 2003, does not do away with the

requirement of the principles of natural justice, especially when an action is to be taken, which is prejudicial to the interest of the petitioners, who are nominated Village Council Members.

16. In the case of *Maneka Gandhi Vs. Union of India*, reported in (1978) 1 SCC 248 and in the case of *Kihoto Hollohan Vs. Zachillhu*, reported in 1992 Supp (2) SCC 651, the Supreme Court has held that natural justice is not merely a matter of procedure but of substance and any action taken in contravention of natural justice is violative of the fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution.

17. In the present case, the affidavit of the respondent No. 3 shows that an inquiry had been initiated against the petitioners on the ground that they were involved in malpractices and it was found in the Inquiry Report that they were guilty of malpractices by the concerned Inquiry Officer. It has also stated in the affidavit filed by the respondent No. 3 that the removal of the petitioners was necessary for the sake of stability of the Village Council Executive Body. It also states that the 2003 Act was silent with regard to the serving of show cause notice, prior to removal of nominated members.

On considering the above averments made in the affidavit of the respondent No. 3, it is quite apparent that the petitioners have been condemned unheard, as they were neither heard at the time of making of the Inquiry Report or even after the making of the Inquiry Report, i.e. prior to the issuance of the impugned Notification. This action is to the prejudice of the petitioners. As such, this Court finds that the impugned Notification is arbitrary and violative of the Article 14 of the Constitution. As the impugned Notification dated 13.03.2023 is unsustainable in law, the impugned Notification is accordingly set aside.

18. The petitioners would have to be considered to be nominated Village Council Members and necessary orders, if required, should be passed immediately.

The writ petition is accordingly allowed.

JUDGE

Comparing Assistant