

GAHC030003572023



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

Case No. : WP(C)/82/2023

Sh. Lalthangmawia and Anr.
S/o Sh. Kilkama
R/o Thaltlang, Lawngtlai District, Mizoram

2: Smt. Ngunthalential

VERSUS

The Lai Autonomous District Council and 9 Ors.
R/b The Chief Executive Member, LADC, Lawngtlai, Mizoram

2:The Executive Member
i/c LAD
Lai Autonomous District Council (LADC)

3:The Local Administrative Officer
Lai Autonomous District Council

4:The Commissioner
State Election Commission
Govt. of Mizoram

5:The District Election Officer
Office of the District Election Officer

6:The Information and Public Relation Officer
Lai Autonomous District Council

7:Sh. Thanghrina

8:Sh. B. Thanghreliansang

9:Sh. H. Thangre

10:Sh. C. Zachung

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Mr. Lalpianfela Chawngthu for R1 to R3 and R5

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

15.11.2023

Heard Mr. Joseph L Renthlei, learned counsel for the petitioners and Mr. Lalpianfela Chawngthu, learned Standing Counsel, LADC appearing for the respondent Nos. 1, 2, 3 & 6. Also heard Mr. C Zoramchhana, learned counsel appearing for respondent No. 4.

[2.] By filing this writ petition, the petitioners have challenged the Notification dated 27.09.2022 by which, Three-men Member Commission including a Chairman was appointed by the Lai Autonomous District Commission (LADC) to make an enquiry on the complaint submitted against the petitioners. The petitioners have also challenged the Enquiry Report dated 26.10.2022, Notification dated 11.01.2023 and also Notification dated 02.06.2023, by which fresh election was directed to be held in respect of the dissolved Village Council.

[3.] Facts of the case in brief is that the petitioners were elected as members of

the Thaltlang Village Council under the LADC in the election held on 08.05.2019. Soon after their election, the petitioner No. 1 was elected as the Village Council President and the Petitioner No. 2 as Member and Treasurer of the said Village Council. However, on account of certain complaint submitted against them, the Village Council was suspended and aggrieved with suspension, the petitioners approached this Court by filing WP(C) No. 98/2021. The said writ petition was taken up for consideration along with two other writ petitions namely, WP(C) No. 81/2021 & WP(C) No. 82/2021 and vide common Order dated 15.12.2021, the impugned order of suspension was set aside.

[4.] However a written complaint was submitted against the petitioners by the respondent Nos. 7 & 8 and acting upon the complaint, the Local Administrative Officer of the LADC issued the impugned Notification dated 27.09.2022 by which, a Three-men Enquiry Commission including Chairman, was appointed to enquire into the matter. The Enquiry Commission then submitted its report on 23.10.2022 and recommended either dissolution or suspension of the Village Council. The Enquiry Report was placed before the Budget Session of the LADC wherein a decision was taken to dissolve the Village Council. Accordingly, vide Notification dated 11.04.2022, the Village Council was dissolved and vide the impugned Notification dated 02.06.2023, fresh election to the Village Council mentioned in the notification including the Thaltlang Village Council was notified. Aggrieved, the petitioners are again before this Court.

[5.] Mr. Joseph L Renthlei, learned counsel submits that the grievances projected by the writ petitioners, in fact, is squarely covered by the earlier decision of this Court in its common Order dated 15.12.2021 passed in WP(C) No. 81, 98 & 82/2021. The learned counsel submits that the manner in which the impugned Notification dated 27.09.2022 has been issued, the same cannot be considered to be a public notification. He submits that merely marking a copy of the notification for wide

publication and newspaper and to the Village Council President/Secretary/Member cannot be construed to be a wide publicity so as to construe the same as a public notification. The learned counsel submits against such averments made by the writ petitioners, the respondent authorities concerned have offered no comments. Therefore, it is clear that they themselves admit the fact that the impugned notification was not widely published so as to construe the same as a public notification.

[6.] The learned counsel further submits that despite the fact that the Village Council has been dissolved which comprises of not only the President but the other members as well, a show-cause notice was only issued to the Village Council President and not to other members. The learned counsel submits that this is also appointed which has already covered and decided by this Court in the common Order dated 15.12.2021. In this connection, the learned counsel refers to paragraph No. 8 of the said order. The learned counsel thus submits that under the given facts and circumstances, the impugned orders dissolving the Village Council and re-notifying fresh election is not suspend-able and the same should be set aside.

[7.] Mr. Lalpianfela, learned counsel for the respondent LADC, on the other hand, submits that the decision relied upon by the learned counsel for the petitioners is distinguishable in view of the fact that those matters relates to suspension of Village Council while the present case pertains to dissolution of the Village Council. Therefore, the decision referred to by the learned counsel for the petitioners cannot be applied to the present case. The learned counsel further submits that the allegation raised by the complainants was against the President. According to them, the President had misused the Village Council fund, the Village Council seal and also misappropriated certain amount of Village Council fund. He submits that as per Section 18 of the LAD (Village Councils) Act, 2010 (Village Council Act), the Village Council fund of the village is created for every Village Council and any collection made is used for the good of the

people. The Secretary is required to keep all accounts of the Village Council fund and the same is operated by the President and account of deposits and drawal from the fund is to be kept open for inspection by any member of the Village Council at any time in its meeting. He submits that since the President of the Village Council is the custodian of the Village Council fund and since there was allegation about the misuse of the fund, the notice was directed to the President of the Village Council. As such, there is nothing wrong with the issuance of notice to the President of the Village Council. The learned counsel further submits that the Enquiry Commission, while making enquiry found all the Members including the Secretary to be involved in the corruption of Local Body fund and NREGS fund. Therefore, the Enquiry Commission came to the conclusion that action should be taken against the Members of the Village Council and recommended dissolution or suspension of the Village Council. He submits that the Enquiry Report was placed before the Budget Session of the LADC which was held on 30.03.2023 and accordingly, it was resolved that the Village Council should be dissolved. As such, the impugned Notification dated 11.04.2022 dissolving the Village Council was issued. The learned counsel, therefore, submits that in view of the finding of the Enquiry Commission, the respondent authorities concerned decided to dissolve the Village Council and therefore, there is nothing wrong with the dissolution of the Village Council and the same may not be interfered by this Court.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[9.] As can be seen, the two main grounds taken by the petitioners is that the impugned Notification dated 27.09.2022 cannot be construed to be a Public Notification. According to them, though the said notification indicates that copies of the notification was sent to the Information & Public Relation Office, LADC for wide publication but to their knowledge, no such publication was done by the Information & Public Relation Office, LADC either through newspaper publication or even by simply

putting the same in a notice board. They contend that the petitioners were not aware about such notification until the Village Council was dissolved by the impugned Notification dated 11.04.2023. Against such contention and specific averments made by the petitioners in paragraph No. 13 of the writ petition, the respondent LADC has not made any denial in their counter affidavit. All that has been said in paragraph No. 10 of their counter affidavit is that they have no comments. It is a settled principle of law that uncontroverted averments are generally deemed to be admitted since the general rule followed in pleadings is that averments are to be either admitted or denied specifically. Here is a case where there is no denial on the part of the respondents about the wide publicity of the impugned notification so as to construe the same, as a public notification.

[10.] The second ground taken by the petitioners is that show-cause notice was not issued to all the Members of the Village Council. Annexure-1 of the reply affidavit filed by the respondent LADC goes to show that the show-cause notice was solely addressed to the President of the Village Council. This Court in its Order dated 15.12.2021 passed in WP(C) No. 81, 98 & 82/2021 at paragraph No. 8 had observed as follows:-

“Likewise, it is not in dispute that the Show Cause Notice was issued only to the President of Village Council concerned whereas, the allegation was against the entire Village Council members. By issuing the Show Cause Notice only to the Village Council President, the other members of the Village Council have been deprived of the opportunity to give a reply to the allegation much less, give an effective reply. As held by this Court in WP(C) No. 79/2020, non-issuance of the Show Cause Notice to the other members of the Village Council resulted in deprivation of opportunity to make a difference and violation of the principles of the natural justice.”

[11.] Besides what has been abstracted herein above and what can be seen is that the Three-men Enquiry Commission in their Report dated 25.10.2022 had come to the conclusion that it is not only the Village Council President but also all the members including the Secretary who were involved in the corruption of Local Body fund and NREGS fund as they themselves had agreed they were not free from corruption. Such being the position, this Court is of the considered view that there is no escape from the conclusion that the notification appointing the Three-men Enquiry Commission is not a public notification and that the show-cause notice despite dissolving the Village Council comprising of the President and all the other Members has not been given to each of the Members of the Village Council. In the result, the impugned Notifications dated 27.09.2022, 11.04.2023 and the Notification dated 02.06.2023, insofar as, Thaltlang Village Council is concerned are hereby set aside. The respondents shall issue consequential orders including an order on the arrear salaries/remuneration entitled by the Village Council Members as per law.

[12.] With the above observation and direction, writ petition stands disposed of.

JUDGE

Comparing Assistant