

GAHC030004612024



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

Case No. : WP(C)/74/2024

L.R. Dingliana Chinzah and Anr.
S/o C. Thanghluna
R/o Lawngtlai Bazar Veng

VERSUS

The Secretary to the Govt. of Mizoram, District Council and Minority Affairs Dept.
and 2 Ors.

Aizawl, Mizoram 2:The Chief Executive Member
Lai Autonomous District Council through the Executive Secretary
LADC

3:The Chairman
Lai Autonomous District Council

Advocate for the Petitioner : Mr Ashok Kumar Rokhum

Advocate for the Respondent : Addl. AG/GA, Mizoram for R1

B E F O R E
HON'BLE MR.JUSTICE NELSON SAILO
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

03.10.2024

(Nelson Sailo, J)

Mr. Lalsangkima Ralte, learned counsel submits that his senior Mr. AK Rokhum is out of station and therefore, prays that the matter may be posted again after the ensuing Puja vacation.

2. Ms. Lalnunhlui, learned Government Advocate appearing for the State respondents submits that as per the instructions she has received, the present case is covered by the decision of this Court rendered in WP(C) No. 150/2023 (*Shri K. Hre Kung Vs. State of Mizoram and 4 Ors.*).

3. Upon hearing the learned counsels appearing today and upon perusing the material available on record, we are inclined to take up the matter for disposal today itself, since the matter apparently is a covered case.

4. Challenge made in the instant writ petition is to the 2 (two) show cause notice issued to the 2 (two) petitioners, both dated 12.07.2024 (Annexure 5 & 6) issued by the Chairman, Lai Autonomous District Council, Lawngtlai (LADC). It is the case of the petitioners that they were

elected as Members to the LADC in the General Election which was held in the month of December, 2020. The petitioner No.1 contested as an independent candidate from 16 Lawngtlai, AOC MDC Constituency and was successfully elected as member of the District Council. Similarly, the petitioner No. 2 also contested as an independent candidate from 21-M.Kawnpui MDC Constituency and he was successfully elected as member of the District Council.

5. After having successfully contested as independent candidate from their respective Constituency the petitioners opted to join Zoram People's Movement (ZPM) on 24.06.2024 and for this reason, show cause notice was issued to both the petitioners on the ground that they have violated Rule 11 (6)(b)(c) of the LADC (Constitution & Conduct of Business) Rules, 2010 (Rules of 2010) asking them as to why they should not be disqualified from their membership to the LADC. The petitioners were given 6 (six) days time to reply to the show cause notice. Aggrieved, they are before this Court. This Court, while issuing notice of motion had directed that status quo be maintained as on that date. Admittedly, the status quo remains as on today.

6. It is the case of the petitioners that as per paragraph 3 of the 6th

Schedule of the Constitution of India, the District Councils are conferred with certain powers to make Laws within the District Council but with certain limitation and that the District Council cannot make any laws beyond what has been prescribed under the said paragraph which includes the law regarding anti-defection. Such being the position, the impugned show cause notice issued to the petitioners, accordingly to the petitioners, cannot be sustained and should be set aside.

7. This Court in *Shri K. Hre Kung (Supra)* had the occasion to deal with a similar issue which also was in respect of the LADC. This Court, while allowing the said writ petition had placed reliance upon the case of ***District Council of United Khasi & Jaintia Hills District & Ors. Vrs. Sitimon Sawain & Ors.,*** reported in ***(1971) 3 SCC 708*** and also the case of ***Sh. Onish Moy Chakma & 6 Ors Vs. state of Mizoram & 5 Ors.,*** which was decided vide Judgment & Order dated 26.03.2021 in WP(C) No. 65/2020. From a perusal of the above two decisions, there can be no dispute to the fact that the instant case is squarely covered. No materials have been placed before us to show that the decision as referred to hereinabove have been interfered with by a higher forum or re-called by way of a review.

8. Accordingly, we hold that Rule 11 (6)(b)(c) of the Rules of 2010 have been framed beyond the powers conferred to the District Council and accordingly, they are declared ultra vires the Constitution and are struck down. Resultantly the 2 (two) impugned show cause notice dated 12.07.2024 are also set aside.

9. The Writ Petition accordingly stands disposed of as allowed. No cost.

JUDGE

JUDGE

Comparing Assistant