

GAHC020002662024



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

Case No. : WP(C)/87/2024

SHRI N HETO YEPTHOMI
R/O SOUTH POINT EAST COLONY
WARD- 11, HOUSE NO. 120
ZUNHEBOTO NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE STATE ELECTION COMMISSIONER
STATE ELECTION COMMISSION
NAGALAND KOHIMA

2:THE SECRETARY
GOVT. OF NAGALAND
DEPT. OF MUNICIPAL AFFAIRS
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

3:THE DEPUTY COMMISSIONER CUM DISTRICT ELECTION
OFFICER
ZUNHEBOTO NAGALAND

4:THE RETURNING OFFICER
ZUNHEBOTO TOWN COUNCIL
ULB ELECTIONS
ZUNHEBOTO NAGALAND

5:SHRI VIKHESHE MURU
GB
SOUTH POINT EAST COLONY
WARD NO. 11
ZUNHEBOTO NAGALAN

Linked Case : WP(C)/90/2024

SMTI. MERICA G
R/O D.C. HILL WEST
WARD NO. 10
H.NO. 63
ZUNHEBOTO
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE STATE ELECTION COMMISSIONER
STATE ELECTION COMMISSION
NAGALAND KOHIMA

2:THE SECRETARY
GOVT. OF NAGALAND
DEPT. OF MUNICIPAL AFFAIRS
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

3:THE DEPUTY COMMISSIONER CUM DISTRICT ELECTION OFFICER
ZUNHEBOTO NAGALAND

4:THE RETURNING OFFICER
ZUNHEBOTO TOWN COUNCIL
ULB ELECTIONS
ZUNHEBOTO NAGALAND

5:SHRI NIHOTO I ACHUMI
GB
DC HILL WEST
WARD NO.10
ZUNHEBOTO NAGALAND

Linked Case : WP(C)/88/2024

SMTI. VILIKA Y SWU
R/O DC HILL WEST
WARD NO.10
HOUSE NO. 88
ZUNHEBOTO NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE STATE ELECTION COMMISSIONER
STATE ELECTION COMMISSION
NAGALAND KOHIMA

2:THE SECRETARY
GOVT. OF NAGALAND
DEPT. OF MUNICIPAL AFFAIRS
NAGALAND CIVIL SECRETARIAT
NAGALAND KOHIMA

3:THE DEPUTY COMMISSIONER CUM DISTRICT ELECTION OFFICER
ZUNHEBOTO NAGALAND

4:THE RETURNING OFFICER
ZUNHEBOTO TOWN COUNCIL
ULB ELECTIONS
ZUNHEBOTO NAGALAND

5:SHRI NOHOTO I ACHUMI
GB
DC HILL WEST
WARD NO. 10
ZUNHEBOTO NAGALAND

Advocate for the Petitioners : Mr. Joshua Sheqi, Advocate
Ms. Kima H Aye, Advocate

Advocate for the respondents : Mr. Imti Imsong, AAG, Nagaland
Ms. S. Chang, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 03.06.2024

Date of Judgment : 03.06.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. Joshua Sheqi, the learned counsel for the petitioners in the three writ petitions and Mr. Imti Imsong, the learned Additional Advocate General appearing on behalf of the respondents.

2. In the three writ petitions, the petitioners have assailed the actions on the part of

the respondent Authorities for non-inclusion of their names in the Electoral Roll of Wards Zunheboto Town Council and seeking directions from this Court upon the Respondent Authorities to include/insert their names in the Electoral Rolls.

3. The writ petitioner in WP(C) No.87/2024 admittedly is a citizen of Indian and his name is reflected at Sl. No.83 of the Electoral Roll of the Legislative Assembly Constituency No.35, Zunheboto, Section Number and Name 1-South Point, South Wing. The petitioner in WP(C) No.88/2024 is also a citizen of India and her name appears at Sl. No.672 of Legislative Assembly Constituency No.35, Zunheboto, Section Number and Name 1-Natha Old. The petitioner in WP(C) No.90/2024 is also a citizen of India and her name appears at Sl. No.104 of the Legislative Assembly Constituency No.35, Zunheboto, Section Number and Name 1-Natha Old.

4. The petitioner in WP(C) No.87/2024 claims that he is a resident of Ward No.11 whereas the other two petitioners claim that they are residents of Ward No.10 of Zunheboto Town Council. In terms with the Nagaland Municipal Act, 2001, certain steps for revision of the Electoral Rolls were conducted and in that regard, the petitioners herein claim that they had duly submitted their applications to the Gaon Burahs as per the requirement. However, on 13.05.2024, all the petitioners came to learn that their names were not included in the Electoral Rolls of Zunheboto Town Council. Under such circumstances, the petitioners in WP(C) No.87/2024 and WP(C) No.88/2024 submitted representation on 20.05.2024 for including their names in the Electoral Rolls. The petitioner in WP(C) No.90/2024 had submitted her representation on 25.05.2024.

5. It is the case of the petitioners that as no steps were taken by the concerned Respondent Authorities and taking into consideration the impending election to the Town Council which was duly notified vide the notification dated 26.04.2024, the writ petitioners filed separate writ petition seeking direction for including their names in the Electoral Rolls forthwith. In addition to that, the petitioners have also challenged the notification dated 04.03.2024 issued by the State Election Commission, Nagaland on the ground that the same was in conflict with Section 37 of the Nagaland Municipal

Act, 2023 (for short, 'the Act of 2023').

6. The instant batch of writ petitions were filed on 27.05.2024. This Court vide an order dated 28.05.2024 directed the learned Additional Advocate General, Nagaland to obtain instructions as regards invoking the powers under Section 37 of the Act of 2023 and considering the representations of the petitioners. It is under such circumstances, the three writ petitions have been listed today before this Court for motion.

7. This Court duly takes note of the notification dated 26.04.2024 whereby the election schedule have been published and taking into account the said and the urgency expressed by the counsel for the petitioners, this Court takes up the three writ petitions for final disposal at the motion stage on the basis of the instructions and documents so placed by the learned Additional Advocate General.

8. Mr. Joshua Sheqi, the learned counsel for the petitioners submitted that the respondents have not complied in terms with Rule 6 of the Nagaland Municipal Rules, 2023 (for short, 'the Rules of 2023') in as much as there was no adequate publication of the Draft Rolls. The learned counsel for the petitioners submitted that as per his instructions there were no Draft Rolls published at all. He further submitted that unless and until the Draft Rolls have been published and widely circulated, the electors like the petitioners would not be in a position to avail the remedies in terms with Rule 7 of the Rules of 2023. Further to that, the learned counsel for the petitioners submitted that a reading of Section 37 of the Act of 2023 would show that inclusion of names in the Electoral Rolls is permissible till the last date for making nomination for any election in as much as Section 37 (3) of the Act of 2023 categorically stipulates that there shall be no direction for inclusion of a name in the Electoral Rolls after the last date for making nomination for an election in that Ward and before completion of that election. In addition to that, the learned counsel referred to the judgment of the Supreme Court in the case of ***Naresh Chandra Agarwal vs. Institute of Chartered Accountants of India & Others***, reported in ***2024 SCC OnLine SC 114*** submitted that if the Rules of 2023 are in conflict with the parent Act of 2023, the provisions of the Act of 2023 has to prevail and not the Rules.

9. Per contra, the learned Additional Advocate General, Nagaland submitted that the representations so submitted by the petitioners have been duly rejected taking into account that they did not take steps for seeking correction or insertion of their names within the time stipulated in terms with the notification dated 04.03.2024. The learned Additional Advocate General further submitted that the petitioners were not diligent, and as such, the petitioners are not entitled to the relief so sought for.

10. At this stage, this Court finds it relevant to observe that taking into consideration the specific contention of the counsel for the petitioners that there were no Draft Rolls published, this Court sought instructions from the State Respondents as to whether there were Draft Rolls published and accordingly deferred the instant proceedings to the second half. In the second half after recess, the learned Additional Advocate General placed before this Court three documents which are kept on record and marked as Annexure-X, Y and Z.

11. In addition to that, the Electoral Rolls of 2022 and 2024 were placed. The said are also kept on record by marking them with the letters A & B respectively. The document marked with the letter 'X' is a circular issued by the Administrator and the ERO, Zunheboto Town Council wherein it was mentioned that the special summery revision of the Electoral Rolls for Zunheboto Town Council will commence from 08.03.2024, and as such, all concerned members were informed to attend the meeting scheduled on 07.03.2024 at 1:00 PM at Zunheboto Town Council Office. This document also shows that the said circular was marked to the Office of the Deputy Commissioner, Zunheboto, Nagaland for information; the EAC and AERO, ZTC, Nagaland; all Wards chairmen/GBs for information and attendance, all Presidents, political parties for information and attendance; MIS JPC for information and attendance and one for the Office Copy.

12. The document marked with the letter 'Y' is a notification of publication of the Electoral Rolls in draft wherein it has been mentioned that any claim for inclusion of the names in the Electoral Roll or any objection to the inclusion of a name or any objection particularly to an entry should be lodged on or before 20.03.2024 in Form-

III, IV and V as may be appropriate. It was also mentioned that every such claim or objection should either be presented in the Office of the Electoral Registration Officer or to the EAC or to the Assistant Electoral Registration Officer, Zunheboto or sent by post to the address given below so as to reach not later than the aforesaid date.

13. It also mentions that the Electoral Rolls are available for inspection at the Office of the ERO as well as at Zunheboto Town Council Office for inspection during office hours. The document marked with the letter 'Z' is a document which shows that there was a joint meeting in terms with the letter No.ACC/MTC/SR-I/2024 for summery revision of Zunheboto Town Council on 08.03.2024 wherein 24 persons participated which included various officials including Gaon Burahs.

14. The documents marked with the letter 'A' are the Electoral Roll, 2022 of the Zunheboto Town Council. The documents marked with the letter 'B' are the Electoral Roll, 2024 of Zunheboto Town Council. It is however relevant to observe that the Electoral Roll of 2024 was published on 12.04.2024. In addition to that, it is seen from the said compilation that the original Electoral Rolls were supplemented by Additional List. Just for example, in the same Ward of the writ petitioner in WP(C) No.87/2024, initially there were 629 electors. Subsequently to the addition of one elector, the total voters is 630. This assumes importance as the same shows that steps were taken for addition prior to the final publication of the Electoral Rolls.

15. The learned Additional Advocate General further submitted that the instant writ petitions are not maintainable in view of the fact that there is an alternative remedy available in terms with Section 38 of the Act of 2023. The learned Additional Advocate General further submitted that the Rules of 2023 are made in terms with Section 137 of the Act of 2023 and Part II of the Rules of 2023 is in consonance with Section 32 of the Act of 2023. He submitted that in the instant case, the petitioners may have their names in the Legislative Assembly Electoral Rolls but when the revision was carried out, they must not have been found, and as such, the Electoral Rolls cannot be said to be bad. He further submitted that the petitioners had not applied as per the mandate of the Rules of 2023, and as such, seek the relief as sought for to include their names

now at such belated stage.

16. In the backdrop of the above contentions which have been submitted by the learned counsels for the parties, let this Court decide as to whether the petitioners herein are entitled to the reliefs as regards inclusion of their names in the Electoral Rolls of Zunheboto Town Council. In the previous segments of the instant judgment, this Court has duly noted that the petitioners names are included in the Electoral Rolls prepared under the Representation of People's Act, 1950 in respect to 35 No. Zunheboto Legislative Assembly Constituency. It is seen that the three petitioners have claimed that only on 13.05.2024, they have come to learn about the exclusion of their names in the Electoral Rolls. There is however no mention as to how the petitioners came to learn about their exclusion on 13.05.2024.

17. Before further proceeding this Court finds it very pertinent to take note of Part II of the Rules of 2023 which is in relation to Registration of Electors.

18. The said appears to be in terms with Section 32 of the Act of 2023 which mandates that the Electoral Roll shall be prepared in accordance with the provisions of the Act of 2023 and the Rules of 2023. Rule 4 stipulates the disqualification for registration in a Roll. It is seen from a reading of the said Rule that a person shall be disqualified for registration if (a) he/she is not a citizen of India; or (b) he/she is of unsound mind and stands so declared by a competent court; or (c) he/she is for the time being disqualified for voting under the laws relating to corrupt practices and other offences in connection with elections including Parliamentary and State Elections; and (d) he/she is less than eighteen years of age on the qualifying date. Qualifying date has been explained in the said Rule to be the 1st day of January of the year in which it is so prepared or revised.

19. Rule 5 stipulates as regards preparation of the Electoral Rolls. Rule 5 (1) stipulates that the Electoral Registration Officer shall under the superintendence, direction and control of the State Election Commission, Nagaland cause to be prepared/revised rolls for each ward of the Municipality in accordance with the Rules

of 2023. Rule 5 (3) has a very vital significance in as much as the Notification dated 04.03.2024 was issued in terms with Rule 5 (3) of the Rules of 2023. This Notification shall be issued by the State Election Commission wherein the details as enumerated in Clause (a) to (f) of Sub-Rule (3) would mention. These details amongst others shall include the date of publication of the final Electoral Rolls. At this stage, if this Court reverts back to the Notification dated 04.03.2024, it would be seen that it mentions that entire schedule right from the date of publication of the Draft Rolls to final publication of the Electoral Rolls. It is also seen that the said Notification was marked to various authorizes as well as to recognized political parties and copy thereof were sent. Rule 5 (4) stipulates that the notification in terms with Rule 5(3) apart from being published in the Official Gazette shall also be affixed in a conspicuous place of the office of the Deputy Commissioner of the District and such other place(s) as the Government may specify. Rule 5 (5) stipulates that for the of preparation of the roll, the Electoral Registration Officer may send letters of request in Form I to the occupants of dwelling houses in the constituency or any part thereof and every person receiving any such letter shall furnish the information called for therein to the best of his/her ability.

20. Rule 6 of the Rules of 2023 deals with the publication of the Draft Roll. Rule 6 being of paramount importance in view of the contentions raised is reproduced herein under:-

“6. Publication of Draft Roll:

(1) As soon as the roll for a constituency is ready but not later than the date given in the program notified by the Commission, the Electoral Registration Officer shall publish it as a draft together with a notice in Form II, intimating the date by which claims or objections with regard to the roll may be presented to the Electoral Registration Officer or such other officer as may be authorised by him/her and specified therein.

(2) A copy of roll of each constituency shall be affixed by the Electoral

Registration Officer at the following places:

(i) At the office of the Electoral Registration Officer;

(ii) At the concerned municipal office(s);

(iii) At such other areas in the concerned Municipal area as he/she thinks fit. He/she may further take steps in any other manner as he/she may think fit in order to give it wide publicity.”

21. A perusal of Rule 6 (1) stipulates that the Electoral Registration Officer shall publish the Draft Roll on such date which is not later than the date given in the programme notified by the State Election Commissioner with a notice in Form-II intimating the date by which claims or objections with regard to the Roll may be presented to the Electoral Registration Officer or such other officer as may be authorised by him/her as specified therein. Rule 6 (2) stipulates that a copy of roll of each constituency shall be affixed by the Electoral Registration Officer at the following places, i.e. (i) at the office of the Electoral Registration Officer; (ii) at the concerned municipal office(s); (iii) at such other areas in the concerned Municipal area as he/she thinks fit. In addition to that, the Electoral Registration Officer may further take steps in any other manner as he or she may think fit in order to give it wide publicity.

22. In the backdrop of the above Rules, let this Court take into consideration the document marked with the letter 'Y'. A perusal of the said document shows that the copy of the said Draft Rolls is available in the Office of the Electrical Registration Officer, Zunheboto Town Council and at Zunheboto Town Council Office. It is also seen that a meeting was called on 08.03.2024 wherein various officials, Gaon Burahs etc. were duly present as is evident from the document kept on record with the letter 'Z'.

23. This Court now finds it very pertinent to take note of Rule 7 of the Rules of 2023 which stipulates that manner of making and lodging claims and objection. No doubt, if the Draft Rolls are not published in the manner stipulated in Rule 6 of the Rules of 2023, a qualified voter would not be able to exercise the rights under Rule 7 of the

Rules of 2023. This aspect of the matter assumes importance taking into account that it is the specific stand of the petitioners that they had no notice of the Draft Rolls being published. In fact, the stand is that no Draft Rolls were at all published. Therefore, what is required to be adjudicated as to whether the Draft Rolls were published in the manner stipulated in Rule 6 of the Rules of 2023.

24. Before further proceeding on the analysis, this Court finds it relevant to observe that the petitioners in the three writ petitions have taken a specific stand that they intend to contest the impending elections. In addition to that, the learned counsel for the petitioners urged that there was urgency in as much as if there is delay in the disposal of the writ petitions, the petitioners would not be able to get the tickets for some political party. Under such circumstances, this Court on numerous occasions has asked the learned counsel as to whether the petitioners belonged to a political party taking into account that the Notification dated 04.03.2024 was also sent to all political parties. However, the learned counsel for the petitioners refrained from answering the said query.

25. This Court also takes note of the notification dated 04.03.2024 wherein as stated above, the entire schedule was mentioned. The said notification is in terms with Rule 5 (3) of the Rules of 2023. The petitioners stated in their petitions that they had no knowledge about the notification dated 04.03.2024 But the question arises as to whether it was the fault of the respondents that the petitioners had no notice when the said Notification dated 04.03.2024 was widely circulated to every office concerned with the Electoral Rolls including the political parties. The answer has to be in the negative.

26. The next aspect which requires consideration is whether the Draft Rolls were published in terms with Rule 6 of the Rules of 2023. The documents kept on record and marked with the letters 'A' and 'B' provide due insight to the said question. The Electoral Roll of 2022 shows that there were various additions being carried out pursuant to the publication of the Draft Rolls, E.g.- in respect to Ward No.10-DC Hills (West), three male electors were added and 5 female electors were added by way of

supplementary Electoral Rolls. The 2024 Electoral Rolls also shows that there is also supplementary addition to the Electoral Roll. The supplementary addition to the Electoral Rolls also shows that steps were taken by various voters for purpose of inclusion of their names pursuant to the Draft Electoral Rolls of 2024 which therefore negates the submission made by the learned counsel for the petitioners that no Draft Rolls were published. In addition to that, it is also seen from the documents kept on record with the letters 'Y' and 'Z' that the Draft Rolls were duly published in accordance with Rule 6 of the Rules of 2023.

27. The question therefore arises that should this Court issue a writ upon the respondent authorities to include the names of the petitioners taking into account that in terms with Section 37 of the Act of 2023, names can be included in the Electoral Rolls of a Ward till the last date for making nomination is over.

28. In the foregoing paragraphs of the instant judgment, this Court had duly observed the case set up by the petitioners. The notification dated 04.03.2024 categorically mentioned as to when the draft publication of the Electoral Rolls shall be carried out; the period for lodging claims and objections; the period for disposal of claims and objections; the period for appeals to respective Appellate Authority; disposal of claims and objection by the Appellate Authority and preparation of list the amendment after the decision of the Appellate Authority and the final publication of the Electoral Rolls. The said notification is not only a notification to be published in the Official Gazette, but the same had also been endorsed to various authorities including the recognized political parties in Nagaland. From the said notification, it appears that the various dates had been mentioned along with the date on which the Draft Electoral Rolls were to be published and in fact, the document marked with the letter 'Y' also shows that the same was done in terms with the said notification. The period stipulated in Form II (Document No.'Y') for lodging the claim is upto 20th of March, 2024 was also in terms with the said notification dated 04.03.2024. This Court also takes note of that the final publication of the Electoral Rolls were made on 12th of April, 2024 which is also as per the Notification dated 04.03.2024.

29. The petitioners if, were diligent enough, they would have known about the said final publication on and around 12.04.2024. However, it was only on 13.05.2024, the petitioners have claimed that they were aware about the final publication of the Electoral Rolls wherein they did not find their names. In fact there is no mention as to how the petitioners came to learn on 13.05.2024 in the writ petitions. It is further seen that two petitioners approached on 20.05.2024 and the third petitioner approached on 25.05.2024, and thereupon immediately approached this Court on 27.05.2024.

30. The Rules of 2023 have been framed in order to give effect to the provisions of the Act of 2023. Part II of the Rules of 2023 deals with the procedure for preparation and revision of the Electoral Rolls. The said procedure and the manner so stipulated for preparation and revision of the Electoral Rolls in Part II of the Rules of 2023 are neither challenged before this Court nor are found to be contrary to the Act of 2023. Rules 5 to 15 of the Rules of 2023 have to be given effect to, else it would result in chaos. In fact, a perusal of the writ petitions as well as the submission so made by the counsel for the petitioners no case has been made out as regards interference taking into account that in the instant case the petitioners have not shown due diligence in taking appropriate steps as per the mandate of law.

31. Under such circumstances, this Court is of the opinion that the three writ petitions are not fit cases for issuance of any writ under Article 226 of the Constitution.

32. Accordingly, the instant three petitions stand dismissed.

JUDGE

Comparing Assistant