

GAHC020002982023



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

Case No. : WP(C)/336/2022

MR. NIETSEIZO VENUH AND 7 ORS
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

2: MR. SENUVEKHA VENUH
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

3: MR. ZHAKULIE
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

4: MR. KUKUNEZO VENUH
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

5: MR. KEWELHIZU TSUHAH
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

6: MR. NEIPEVE
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

7: MR ZHESAHU
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND

8: MR. THEPFULHOU LASUH
GAON BURA OF TOULA VILLAGE AND PERMANENT RESIDENT OF
TOULAZOUMA VILLAGE
DIMAPUR NAGALAND
VERSUS

THE STATE OF NAGALAND AND 10 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF NAGALAND

2:THE HOME COMMISSIONER
GOVT. OF NAGALAND

3:THE COMMISSIONER
NAGALAND KOHIMA

4:THE DEPUTY COMMISSIONER
CHUMUKEDIMA

NAGALAND

5:THE EAC
CHUMUKEDIMA

NAGALAND

6:THE DIRECTOR
FOOD AND CIVIL SUPPLIES
NAGALAND

7:MR. TSOLEMONG PERI
CONVENOR
TENYIEMIA WELFARE UNION
TOULAZOUMA VILLAGE
CHUMUKEDIMA
NAGALAND

8:MRS. ARELE NUH
PRESIDENT
TOULAZOUMA WOMEN ORGANISATION
TOULAZOUMA VILLAGE

9:MR. CHIKUZO SHIJOH
PRESIDENT
TOULAZOUMA YOUTH ORGANISATION

10:MR. ZHOTO SHUNYU
TOULAZOUMA WELFARE GROUP

11:MR. ZHALHOU SHUNYU
PRESIDENT
TOULAZOUMA STUDENT UNION

Advocate for : N. MOZHUI

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND AND 10
ORS

Page No.# 3/8
BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

Date : 22-02-2024

Heard Mr. N. Mozhui, learned counsel for the petitioners, Mr. Veto V. Zhimomi, learned Government Advocate appearing on behalf of the State respondents and Mr. Bendangwabang, learned counsel appearing on behalf of the respondent Nos. 7 to 11.

8 (eight) writ petitioners, who claim to be functioning as *Gaonburas* have joined together to file the instant writ petition challenging the Order dated 31.05.2022 in so far as it relates to temporarily suspending the Village Council of Toulazouma Village; the Order dated 26.07.2022, whereby various authorities including the petitioners have been directed to hand over the records of the Village; the summon dated 06.10.2022 directing the petitioners to appear before the Extra Assistant Commissioner (EAC), Seithekema, Nagaland; Letter dated 07.10.2022, whereby the nomination of the distribution of PHH and PMJKAY ration of Toulazouma Village as well as seeking a direction upon the State respondents to allow the petitioners to function as *Gaonburas* of Toulazouma Village in view of their appointment Orders.

2. The facts apparent from the records is that the writ petitioners were appointed as *Gaonburas* of Toulazouma Village on the basis of Orders issued by the Deputy Commissioner, Dimapur. It is also mentioned in the writ petition that the petitioner No. 1 was promoted to the post of Head GB but, however, on 21.04.2022 he had resigned from the post of Head GB of Toulazouma Village on moral grounds. From the materials on record, it further transpires that on 31.05.2022, the Deputy Commissioner, Chumukedima, on account of various allegations being made against the Village Council of Toulazouma as well as the *Gaonburas* had suspended the Toulazouma Village Council and its subsidiary bodies such as the Village Development Board Management Committee until further Orders in terms with Section 22 of the Nagaland Village Council

Act, 1978. This Order has been impugned in the instant proceedings by the petitioners on an assumption that the petitioners, who are the *Gaonburas* have also been suspended.

3. The record further reveals that on 26.07.2022 the EAC had passed an Order on the basis of the Order of Suspension of the Village Council of Toulazouma dated 31.05.2022 directing all concerned including the Head *Gaonbura* that all registers, records, cashbooks relating to VDBMC, Communitized bodies such as SMC, WATSAN, VEMB, VHC etc. should be submitted to his Office on or before 28.07.2022 failing which necessary action would be taken against the defaulting individuals. This Order has also been assailed in the instant writ petition on the ground that the said Order has been marked to the Head *Gaonbura* although the petitioners are not in possession of any registers, records, cashbooks relating to VDBMC, Communitized bodies such as SMC, WATSAN, VEMB, VHC etc.

4. It is also seen that the EAC, Seithekema, Nagaland, had issued summons on 06.10.2022 to 7 (seven) of the writ petitioners to be present in person for clarification on 13.10.2022 in respect to the complaint filed by the Toulazouma villagers. This summon has been assailed in the instant proceedings on the ground that the allegations made against the 7 (seven) of the writ petitioners are absolutely baseless.

5. The petitioners have also challenged the Communication dated 07.10.2022 issued by the Director, Food & Civil Supplies to the EAC, Seithekema, whereby the EAC was requested to make necessary arrangements in nominating someone for lifting and distribution of PDS items meant for Toulazouma Village at an early date in order to avoid lapses in the distribution in view of the fact that the Deputy Commissioner had suspended the Toulazouma Village Council vide Order dated 31.05.2022. The said Communication have been put to challenge in as much as it is the case of the petitioners that the *Gaonburas* are responsible for the purpose of lifting and distribution of the PDS items and as such, making any other nomination amounts to taking away the rights of the petitioners.

6. Pursuant to the filing of the instant writ petition, on 15.12.2022,

this Court issued notice on 27.01.2023. The record reveals that the respondent Nos. 1 to 6 have filed a joint affidavit-in-opposition raising preliminary objections and also supporting the stand/actions of the District Administration in passing the impugned orders. It has also been mentioned that an Inquiry Committee has also been set up to investigate and review the matters on several issues in regard to mismanagement of village funds and if the village authorities have adhered to the Village Development Board Model Rules, 1980. Further to that, it has also been mentioned that the petitioner No. 1 voluntarily submitted his resignation letter to the authorities which was also accepted by the State respondents. On the basis of the said averments made in the affidavit-in-opposition, it was categorically contended that no legal rights of the petitioners have been infringed.

7. The record further reveals that there is an affidavit-in-opposition filed by the respondent Nos. 7 to 11, wherein it has been mentioned that the petitioner Nos. 1, 4 and 7 were appointed as *Gaonburas* on 10.03.2015 after the Toulazouma Village was officially recognized by the State Government. The petitioner No. 1 had submitted his resignation on 21.04.2022 on moral grounds. The petitioner No. 7 had also submitted his resignation on 02.11.2022 on account of his old age. Under such circumstances, the petitioner Nos. 1 & 7 had no *locus standi* to pursue the present proceedings. It has also been mentioned in the said affidavit-in-opposition that the petitioner Nos. 6 & 7 were appointed as *Gaonburas* in the year 2017 and 2015 respectively and during their tenure the said petitioners have failed to discharge their duties. It was also mentioned that the said petitioners are no more residing in the village. It was also mentioned that apart from the petitioner Nos. 1, 6, 7 & 8, who had no *locus standi* to file the instant writ petition, the petitioner Nos. 2, 3, 4 & 5 no longer enjoys the confidence of the villagers in as much as they have utterly failed in discharging their duties to the satisfaction of the populace of the village. Further to that, in the said affidavit-in-opposition it has been categorically mentioned that it is at the behest of respondent Nos. 7 to 11 and the villagers of the various villages that the respondent

authorities are taking action and as such, no interference is required from this Court.

8. The records further reveals that petitioners have filed replies to the affidavit-in-opposition filed by the respondent Nos. 7 to 11.

9. In the backdrop of the above pleadings and the materials on record, this Court have also heard the learned counsels appearing on behalf of the parties and have given anxious consideration to the submission so made. It is relevant herein to mention that it is submitted at the Bar that the petitioner No. 3 had expired.

10. It is seen from Annexure-A, which is a Notification dated 09.04.2010, whereby the Governor of Nagaland was pleased to notify the Rules for appointment of the *Gaonburas* and operation of Nagaland *Gaonburas* Welfare Scheme in the State of Nagaland with effect from the date of the said Notification. The said Notification mandates the qualifications required as well as the disqualifications. The entitlement of the *Gaonburas* is also spelled out in Clause (2) of the said Notification. Clause (4) of the Notification stipulates as to how the corpus fund is to be operated and in terms with Clause (5) a Board is required to be constituted to supervise the operation of the welfare fund. Amongst the various persons to be members of the said Board, it shall include 2 (two) *Gaonburas*, of which, one should be a President of the *Gaonbura* Union.

11. In the backdrop of the above, this Court, therefore, takes note of the impugned Orders as well as the Communications. Vide the Order dated 31.05.2022, the Deputy Commissioner, Chumukedima, on the basis of the complaints made against the Village Council of Toulazouma as well as the *Gaonburas* had suspended the Toulazouma Village Council and its subsidiary bodies such as the VDB Management Committee until further Orders in accordance with Section 22 of the Nagaland Village Council Act, 1978. The petitioners herein are admittedly only the *Gaonburas*. The Village Council had not approached this Court challenging the Order dated 31.05.2022. In this backdrop, let this Court take note of what is the role of a *Gaonbura* in the Village Council. Section 4 of the Nagaland Village and Area Council Act, 1978 stipulates that the Hereditary Village Chief

Gaonbura and *Anghs* shall be ex-officio members of such council and shall have voting right. The said Order dated 31.05.2022, under no circumstances suspends the *Gaonburas*, however, their rights to be exercised in the Village Council in question having been continued for the time being. Taking into account the allegations on which the Order dated 31.05.2022 has been passed, this Court is not inclined to interfere with the said Order, that too, at the behest of the petitioners who are only *Gaonburas*.

12. Now, coming to the Order dated 26.07.2022, the said Order is an order which is consequential to the Order of Suspension dated 31.05.2022, in as much as by the Order dated 31.05.2022, the EAC, Seithekema, was directed to take charge and control of the Village Council of Toulazouma Village. Under such circumstances, the EAC, Seithekema, had directed all concerned to submit the registers, records, cashbooks relating to the VDB Management Committee, Communitized bodies such as SMC, WATSAN, VEMB, VHC etc. It is the specific submission of the learned counsel for the petitioners that the petitioners are not in possession of any of these documents. Therefore, in the opinion of this Court, the said Order dated 26.07.2022 does not require any interference, more so, in view of the fact that the said EAC, Seithekema, has been directed to take over the charge.

13. In the backdrop of the above, let this Court, therefore, take into account as to whether the issuance of the summons by the EAC, Seithekema, Nagaland, requires any interference. The petitioners herein were admittedly appointed as *Gaonburas*. There are serious allegations which have been made by the people as regards their functioning in the post of the *Gaonburas* by the petitioners. Under such circumstances, in the opinion of this Court, the issuance of the summons by the said EAC, Seithekema, to the various petitioners does not call for any interference. However, this Court observes that if any orders have been passed prejudicial to the interest of the petitioners, upon completion of the inquiry, the same shall be subject to such proceedings as is available under law.

14. This Court also finds it pertinent to take note of that in terms with the National Food Security Act, 2013 as well as the Rules framed therein under the distribution of PDS is being made at the behest of the Central Government through the State Government and its functionaries. The petitioners herein, though challenges the said Communication on the ground that their rights have been affected in as much as the Director, Food & Civil Supplies, Nagaland, had requested the EAC to provide nomination of some person for lifting and distribution of the PDS items but the petitioners herein have not been able to show before this Court that they have been entrusted by any order or notification for the purpose of lifting and distributing of the PDS items. Under such circumstances, the question of interference with the said Notification dated 07.10.2022 does not arise.

15. Consequently, this Court finds no reason for interference with the impugned Orders as well as the Communications. Be that as it may, this Court, however, observes that the petitioners except the petitioner Nos. 1, 3 & 7 continues to be *Gaonburas* of the villages wherein they have been duly appointed till they are discharged/terminated in accordance with law.

16. With the above observations and directions, the instant writ petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant