Serial No. 01
Supp.List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 15 of 2022

Date of Decision :28.01.2022

Benedic R. Marak Vs. State of Meghalaya & 19 Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Paul, Sr. Adv. with
Mr. C.Garg, Adv.

For the Respondent(s) : Mr. A.Kumar, AG with
Mr. N.D. Chullai, AAG
Mr. A.Kharwanlang, GA.

JUDGMENT AND ORDER (ORAL)

1. This instant application under Article 226 of the Constitution of India has been filed assailing the notice dated 27-01-2022 issued by the Hon'ble Governor of Meghalaya under Rule 36(5) of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules,1951 whereby the District Council has been summoned to take up a no-confidence motion against the Executive Committee of the Garo Hills Autonomous District Council in Tura on 29-01-2022.

2. Heard learned counsels for the parties.

3. Mr. K.Paul, learned Sr. Advocate submits that the petitioner who is the current Chief Executive Member of the Garo Hills Autonomous District Council (GHADC) has been compelled to approach this Court seeking its

interference in view of the fact that the entire process which culminated in the impugned notice, is fraught with procedural irregularities which necessarily need to be corrected in order for any session of the District Council to be summoned. He submits that by an application dated 25th January, 2022, fifteen members of the District Council (MDCs) had sought leave from the Chairman to move a motion of no-confidence against the Chief Executive Member in accordance with Rule 71 of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules,1951 (hereinafter referred to as the Rules). He further submits that the said request was then transmitted by the Chairman to the District Council Affairs Department and thereafter the Governor in exercise of powers under Rule 36(5) of the Rules called for a special meeting to be convened on 29th January, 2022.

4. Mr. K.Paul, learned Sr. counsel submits that as per the scheme of the Rules at Rule 71, the procedure for calling of a no-confidence motion is laid out and he submits that a no-confidence motion can be set in motion after presentation of a written notice of the motion before the commencement of the sitting of the day, and if the Chairman is of the opinion that the motion is in order shall proceed accordingly. Learned Sr. counsel then takes this Court to Rule 36 of the Rules which provides for the summoning of the District Council and submits that though Rule 36(5) vests vast discretionary power upon the Governor to summon a meeting of the District Council at any time he deems fit, this will not mean that the same can be done mechanically without any subjective satisfaction being arrived at before the decision. He further submits that the impugned order is categorical in its intent, by specifically indicating therein, that the house is being specially convened to take up the no-confidence motion. Mr. K.Paul, learned Sr. counsel submits that there is no inherent power

vested in the Governor, to direct for taking up of a no-confidence motion in the manner as has been done and further, the bypassing of the provisos of Rule 36, which provide a procedure for the convening of the house by the Chairman, on the event of an emergency on short notice, and the necessity of receipt of a requisition signed by not less than two thirds of the members of the District Council is highly irregular. Learned Sr. counsel submits that the entire procedure being highly irregular, the impugned notice is therefore, liable to be set aside and quashed. Learned Sr. counsel has also relied upon the judgment rendered in the case of ***S.R.Bommai vrs. Union of India (1994) 3 SCC 1*** in support of his submissions.

5. Mr. A.Kumar, learned AG in reply to the submissions of the petitioner has contended that the present case has been brought before this Court by the petitioner to defeat a legitimate democratic process which has been initiated by the members of the District Council themselves. He has drawn the attention of this Court to the letter dated 25th January, 2022 which is the requisition for summoning of the House by fifteen members of the Council and submits that a bare perusal of the letter itself, reflects the necessity of summoning the house, which is therefore the basis on which the subjective satisfaction has been arrived at by the Governor. The learned AG also submits that, a plain reading of Rule 36(5) shows that the Governor is vested with the power, that notwithstanding anything contained in the Rules he can summon a meeting of the District Council at any time he deems fit. The session that has been summoned he submits, is all part and parcel of a fair and transparent process that has been necessitated by the situation on the ground and a delay in the said process might have adverse effects. He further submits that the no-confidence motion which will be a floor test is in the best interest of a democratic institution

and possibly the most effective mechanism to settle the respective claims of the parties. In support of his arguments, learned AG has relied upon the following judgments:

(i) ***Shiv Sena & Ors. vrs. Union of India & Ors. (2019) 10 SCC 809.***

(ii) ***Shivraj Singh Chouhan & Ors. vrs. Speaker, Madhya Pradesh Legislative Assembly & Ors. (2020) SCC Online SC 363.***

(iii) ***Dharmesh Prabhudas Saglani & Ors. vrs. State of Goa, through the Chief Secretary & Ors. (2021) SCC Online Bom 565: (2021) 4 Bom CR 176.***

He finally submits that there being absolutely no merit in the case of the petitioner and the same having been filed only to stall a democratic process, the same deserves no consideration and should be dismissed.

6. Having heard learned counsels for the parties, as the matter involves urgency, without calling for affidavits or any further instructions from the parties, by consent of the counsels, this matter is being finally disposed of today itself. From the contentions of the petitioner, the main grievance centres around the alleged non adherence to prescribed procedure as provided by the Rules and the irregular exercise of power of the Governor under Rule 36(5) in summoning the house to take up the no-confidence motion. Before embarking on deciding the questions raised, the relevant provisions of the Rules are quoted hereinbelow:

> ***"71. Motion of No-Confidence in the Executive Committee***
>
> *(1) A motion expressing want of confidence in the Executive committee or a motion disapproving the policy of the Executive Committee in regard to any particular matter may be made with the consent of the Chairman and subject to the restriction that the member making the motion shall present to the Secretary a written notice of the motion before the commencement of the sitting of the day*

(2) If the Chairman is of the opinion that the motion is in order, he shall read the motion to the Council and shall request those members who are in favour of leave being granted, to rise in their places and, if not less than one fourth of the members present rise accordingly, the Chairman shall intimate that leave is granted and that the motion will be taken on such day, not being more than two days and not less than twenty four hours from the time at which leave is asked for, as he may appoint: Provided that if exigencies of business required, the Chairman shall have power to relax the rule and take up the motion earlier than twenty fourth hours.

(3) If less than one fourth of the members rise, the Chairman shall inform the member that he has not the leave of the Council.

36. Summoning of District Council:

(1) Subject to the provisions of sub rule (3), the Chairman or such other person authorized by the governor on this behalf shall summon the District Council to meet at such time and place as he thinks fit. He shall inform the Deputy Commissioner of the date, hour and place for such meeting of the Council.

(2) The Chairman shall cause a notice appointing the date, hour and place for such meeting signed by the Secretary of the District Council to be served on each member of the Council at least thirty days before the date fixed for the meeting.

(3) The District Council shall be summoned to meet three times in a year, and four months shall not elapse between its last sitting in one session and the date appointed for its first sitting in the next session:

Provided that in the event of an emergency the Chairman of the Council, with previous approval of the Governor may summon the District Council, oftener and at shorter notice than what has been provided in sub rule (2);

Provided further that on receipt of a requisition signed by not less than two thirds of the members of a District Council, the Chairman shall summon a special meeting of the Council.

(4) The Chairman or such other person who summons the District Council under sub rules (1) or (3) may also prorogue the Council.

(5) Notwithstanding anything contained in this rule, nothing shall restrict the power of the Governor to summon a meeting of the District Council at any time he deems fit."

7. A perusal of Rule 71 no doubt has prescribed the manner in which a motion of no-confidence is to be initiated and it is also noted that the same applies and is conducted when the house is in session. In the present case, the situation as it pertains, is that the house is not in session and as such it cannot be said that the Chairman has abused his powers in calling or requesting for an emergency session. Rule 71 therefore, cannot be said to have been breached. The contention of the petitioner therefore, that the Chairman could not have acted on the notice of no-confidence dated 25-01-2022, since the house was not in session and the requisition is by less than two thirds of the members of the District Council is untenable. Coming to the other aspect, that is Rule 36, it is noted that Rule 36(5) has vested the Governor with vast discretionary power in summoning a meeting of the District Council. This provision has been resorted to by way of impugned notice it appears, due to the written notice of the fifteen MDCs and the request of the Chairman dated 25th January, 2022 (Annexure-2). Though it has been strongly contended that the powers under 36 (5) of the Rules cannot be resorted to for the purpose of summoning the house to vote on a no-confidence motion, this point though having a certain amount of relevance in the interpretation of the Rules, however, in the context of the present case will not be a deciding factor.

8. It has to be kept in mind that the District Council as constituted under the Sixth Schedule is a democratic legislative institution apart from other functions, wherein members are elected, and to prove majority or strength in the house in such institutions, the Hon'ble Supreme Court, in a number of

decisions has consistently held that in the event of conflicting alliances or claims, a floor test can be directed to avoid uncertainty and to ensure smooth running of a democratic institution which would in turn ensure stability. In the present case, a requisition has been made by fifteen members and the request has been acceded to by the Governor in exercise of powers under Rule 36(5). To interrupt this process may result in delaying the floor test which may further result in other consequences and circumstances. This will therefore be against the democratic principles enshrined in the Constitution. In this context, the Hon'ble Supreme Court in the case of ***Shiv Sena & Ors vrs. Union of India & Ors.*** (supra) as placed by learned AG, in para 17 and 20 which is quoted hereinbelow has held as follows:

> *"**17**. Having heard the submissions of the learned counsel on the issues of maintainability, extent of judicial review and validity of the Governor's satisfaction, we are of the opinion that they can be adjudicated at an appropriate time. There is no doubt that the contentions have to be answered, as the petitioners have raised questions concerning important constitutional issues touching upon the democratic bulwark of our nation. However, at this interim stage, we may note that it is imperative for this Court to be cognizant of the need to take into consideration the competing claims of the parties, uphold the democratic values and foster constitutional morality.*

> ***20**. In a situation wherein, if the floor test is delayed, there is a possibility of horse trading, it becomes incumbent upon the Court to act to protect democratic values. An immediate floor test, in such a case, might be the most effective mechanism to do so. A similar view was expounded by B. P. Jeevan Reddy, J., in the celebrated nine-Judge Bench decision of this Court in S. R. Bommai v. Union of India, wherein he held as follows (SCC pp. 277-78, para 395)*

> *"**395**. The High Court, in our opinion, erred in holding that the floor test is not obligatory. If only one keeps in mind the democratic principle underlying the Constitution and the fact that it is the Legislative Assembly that represents the will of the people – and not the Governor – the position would be clear beyond any doubt… There could be no question of the Governor making an assessment*

*of his own. The loss of confidence of the House was an objective fact, which could have been demonstrated, one way or the other, on the floor of the House. In our opinion, wherever a doubt arises whether the Council of Ministers has lost the confidence of the House, the *only* way of testing it is on the floor of the House except in an extraordinary situation where because of all-pervasive violence, the Governor comes to the conclusion – and records the same in his report – that for the reasons mentioned by him, a free vote is not possible in the House."*

9. Similarly, in the case of ***Shivraj Singh Chouhan & Ors.*** (supra), the Hon'ble Supreme Court in paras 69 and 70 has also held as follows:

*"**69.** In analysing the observations made by the nine-judge Bench in SR Bommai, it is pertinent to remember that the Governor in that case did not call for a floor test. Rather, the Governor of Karnataka sent a report to the President, based on which a proclamation was issued under Article 356. The observations in SR Bommai can be relied on in determining whether the Governor possessed the power to call for a floor test. Discerning the subsequent of which the exercise of such power is appropriate is a distinct issue. On a perusal of the above observations in SR Bommai, it is evident that:*

(i) Whether or not the Council of Ministers has lost the confidence of the House must be determined only on the floor of the house and not by the Governor conducting an independent verification;

(ii) Where the Governor has reasons to believe that the incumbent government does not possess the support of the majority in the legislative assembly, the correct course of action would be for the Governor to call upon the Chief Minister to face the assembly and to establish the majority of the incumbent government within the shortest possible time; and

(iii) An exception to the invariable rule of testing whether the government has the assembly's confidence on the floor of the house is envisaged only in extraordinary situations where because of the existence of "all pervasive violence", a free vote is not possible in the House.

> ***70***. *As a matter of constitutional law, it would not be correct to proceed on the basis that the constitutional authority entrusted to the Governor to require the Council of Ministers to prove their majority on the floor of the House can only be exercised at the very inception after general elections are held and not when the Governor has objective reasons to believe that the incumbent government does not command the confidence of the house. The Governor is not denuded of the power to order a floor test where on the basis of the material available to the Governor it becomes evident that the issue as to whether the government commands the confidence of the house requires to be assessed on the basis of a floor test. Undoubtedly, the purpose of entrusting such a function to the Governor is not to destabilise an existing government. When the satisfaction on the basis of which the Governor has ordered a floor test is called into question, the decision of the Governor is not immune from judicial review. The court would be justified in scrutinizing whether the Governor prima facie had relevant and germane material to order a floor test to be conducted. It must be noted that the Governor does not decide whether the incumbent government commands the confidence of the house. The purpose of holding a floor test in the legislative assembly is precisely to enable the elected representatives to determine whether the Council of Ministers commands the confidence of the House; that verification is not conducted by the Governor. The decision in SR Bommai in fact held that recourse to the power under Article 356 was not warranted in a situation where the issue of confidence could yet be tested on the floor of the house by calling for a trust vote. Undoubtedly, in that case, it was the Chief Minister who had suggested, following a meeting of the Cabinet, that the House should be convened for the purposes of testing the majority of the Council of Ministers. The significance of the decision lies in the fact that the decision of the Governor to submit a report under Article 356 was faulted on the ground that the floor test would have been an appropriate course of action."*

10. As such, this Court is satisfied that there are no reasons to interfere or cause any delay in holding the no-confidence motion, inasmuch as, the entire process notwithstanding any other consideration is part and parcel of a democratic process which strengthens democratic values.

11. For the foregoing reasons, the instant application is held to be without any merit and is accordingly dismissed.

12. No orders as to cost.

Judge

Meghalaya
28.01.2022
"Samantha PS"