

(1993) 1 GLR (NOC) 4

(KOHIMA BENCH)

(BEFORE H. K. SEMA, J.)

RHANYIMO EZUNG

Petitioner

Versus

STATE OF NAGALAND & ORS.

Respondents

Civil Rule No. 42(K) of 1992 decided on 25.11.1992

Nagaland Village and Areas Council Act, 1978, S. 9—Removal of Village Council from office—Provision contained in Section 9 for the removal of member from his office would also apply to the case of removal of Chairman of Village Council from his office—Once a man is elected to a particular post in a democratic process, he cannot be removed from the said office except in accordance with the procedure prescribed in that behalf.

Once a man is elected to a particular post in a democratic process he cannot be removed from the said office except in accordance with the procedure prescribed in that behalf. In the instant case the ground mentioned in the representation filed by the 16 VCM that the petitioner had become incapable of acting. This fact was controverted by the petitioner that many meetings were held under his chairmanship. This apart, that there must be a clear finding after an enquiry conducted by the competent authority and after giving a reasonable opportunity to the Chairman that he has become incapable of acting before he is removed on the ground of becoming incapable of acting. Merely because some of the members of VCMs submit the petition that the Chairman has become incapable of acting would not be a sufficient ground for removal of the Chairman and it is not permissible to the competent authority to act on the basis of the complain without making further enquiry and finding. Further Sub-section (f) of Section 9 prescribed two-third of the total members of Village Council at the meeting recommended for the removal of the Village Council member on the ground of guilty of mis-conduct in discharge of his duties or any disgraceful conduct. It is an admitted fact that the Village Council Members of T.N. Longidang Village consisted of 28 members including GBs. If this position is accepted, 16 members, assuming they are elected members, do not constitute two-third of the total member of the Village Council. Therefore, no action is permissible for removal of the Chairman from his office on the basis of complain submitted by the 16

VCMs in the instant case. The legislature in their wisdom prescribed two-third of the total members of the Village Council members so that petty and vexatious complain are thwarted. The petitioner also challenged in this writ petition the order dated 22.1.1992 passed by the Government approving the list of Village Council Member at (Annexure-5) on the ground that the original list at Annexure-1 of this writ petition was tempered with by the 3rd respondent. Once a Council Election is held in accordance with the provision of section 4 of the Act the only mode for removing the members is mentioned in Section 9. No other method is prescribed under the Act. Therefore the authority is not permitted to act contrary to Section 9 of the Act.

Advocates who appeared in this case :

Mr. R. S. Bedi for the petitioner,

Mr. E. Y. Renthungo, Jr. Govt. Advocate for the respondents.