

WP(C) No. 325 of 2018

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE MR. N. KOTISWAR SINGH  
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

25.4.2018

***(Acting CJ)***

Heard Mr. H.S Paonam, learned senior counsel assisted by Mr. S. Gunabanta, learned counsel for the petitioner.

Issue notice returnable within three weeks.

Ms. Joan Kipgen, learned counsel assisting Mr. S. Rupachandra, learned Addl. AG accepts notice on behalf of the respondent Nos. 1, 2 & 3 and Mr. Julius Riamei, learned counsel on behalf of the respondent No. 4.

Petitioner is to take steps for service of notice upon the remaining respondent Nos. 5 & 6 by speed post.

Mr. H. S Paonam, learned senior counsel for the petitioner has prayed for passing an interim order suspending the Manipur (Hill Areas) District Councils (Fifth Amendment) Act, 2018 contending that this amendment is contrary to the judgment rendered by this Court in WP(C) No. 433 of 2017 and WP(C) No. 455 of 2017 on 10-10-2017.

In the aforesaid judgment, this Court had passed an order holding that giving voting rights to the nominated members would be illegal and accordingly directed as follows:

**“ [81] Accordingly, for the reasons discussed above, this Court holds that even if the nominated members are allowed to take part in the proceedings of the Council, they cannot be allowed to cast their votes in any proceeding including any election or removal of the Chairman or the Vice Chairman.**

**The provisions of Section 23 of the Manipur (Hill Areas) Autonomous District Councils Act, 1971 and related corresponding Rules under the Manipur (Hill Areas) District Councils Rules, 1972 are accordingly, to be read to exclude participation of the nominated members in the proceedings of the Council including in the election of the Chairman or Vice Chairman or in the No Confidence vote against the Chairman and Vice Chairman.**

**It is also clarified that since the nominated members do not have the right to cast their votes, they also would not have may right to take part in any connected process of election or removal, viz., in the process of giving notice for moving a resolution for no-confidence under Section 23 of the Act ad Rule 7 of the Manipur (Hill Areas) District Councils Rules, 1972, etc.”**

It has been submitted by Mr. H.S Paonam, learned senior counsel that being aggrieved by the aforesaid decision of this Court, the respondents have preferred an SLP before the Hon’ble Supreme Court registered as SLP(C) No. 30466 of 2017 which however, was dismissed by the Hon’ble Supreme Court on 20-11-2017 by passing the following order:

**“ We see no reason to interfere with the impugned judgment and order passed by the High Court. The special leave petition is, accordingly, dismissed.”**

According to Mr. H.S Paonam, learned senior counsel, after dismissal of the said SLP, the State authorities introduced the Amendment Act as the Manipur (Hill Areas) District Councils (Fourth Amendment) Act, 2017 by which Section 4 of Manipur (Hill Areas) District Councils (Fourth Amendment) Act, 2017 was amended by inserting sub-section 4, which reads as follows:

**“(4) The members so nominated under sub-section (3) shall have voting rights in all meetings of the District Council to which they are nominated.”**

The aforesaid amendment act came to be challenged before this Court by two persons by filing a writ petition being WP(C) No. 31 of 2018. The Court after hearing the parties suspended the aforesaid amendment act by passing an interim order on 15-1-2018.

It has been submitted by Mr. H. S Paonam, learned senior counsel that while the aforesaid petition was pending, the authorities again passed an amendment act being the Manipur (Hill Areas) District Councils (Fifth Amendment) Act, 2018 and notified on 24-3-2018 by which section 4 of the Manipur (Hill Areas) District Councils Act, 1971 was amended by making changes in the sub-section 2 of the Act by deleting sub-sections 3 and 4. The aforesaid amendment brought by the aforesaid act of 2018 reads as follows:

**“(2) Each District Council shall consist of not more than twenty- six members of whom twenty four shall be elected on the basis of adult suffrage and the remaining two shall be nominated by the Governor of Manipur having the same rights, and privileges as other members, including voting rights, from amongst the un-represented communities of the Autonomous District concerned.”**

It has been submitted by Mr. H.S Paonam, learned senior counsel that, even this latest amendment which was notified under Notification dated 24<sup>th</sup> March, 2018, challenged in this petition also suffers from the same vice, in the sense that, it is contrary to the judgment of this Court rendered in WP(C) No. 433 of 2017, which was not interfered by the Hon’ble Superme Court as the SLP filed against it was dismissed by the Hon’ble Supreme Court. He submits

that it was clearly mentioned in para No. 80 of the aforesaid judgment of this Court that giving voting rights to nominated members will also violate the mandate of Article 14. Further, it has been submitted that this Court had also observed in para No. 76 that “if such voting right is given to nominated members, they could in certain critical situations play the decisive role about the functioning of the elected representatives by undermining the majority view of the elected members. If the elected members of District Council are equally divided over their votes on the election or removal of the Chairman, or on any other issue, the votes of the nominated members may have the deciding factor and neutralize the majority votes of the elected members. In other words, the nominated members can play a very crucial and deciding role in the decision making process of the elected representatives by negating or nullifying the majority opinion of the elected members, which is not contemplated under the democratic norms. Nominated members who are not accountable and responsible to the electorates and to the people cannot be assigned such a critical and decisive role as to decide the fate of the elected members to hold the office or not. Similarly, policies and programs of the District Council which have to be decided by the elected members cannot be allowed to be scuttled by or influenced by votes of non-elected nominated members who do not directly represent the electorates and reflect the will of the electorate.”

Accordingly, it has been submitted by Mr. H. S Paonam, learned senior counsel for the petitioners that the

impugned amendment act not only violates the mandate of Article 14 but also is clearly un-democratic and against the spirit of democracy as observed by this Court in Para No. 76 referred to above, and accordingly submits that the impugned amendment act be suspended during the pendency of this petition.

Mr. S. Rupachandra, learned Addl. AG however, submits that the petitioners are not aggrieved by this impugned amendment act as the Government has not taken any decision on the basis of the aforesaid amendment and when any such voting takes place, the aggrieved persons can approach the Court. Further, it has been submitted by Mr. S. Rupachandra, learned Addl. AG that the Government had issued the order of nomination of the members of all the District Councils as far back on 16-5-2016 which also has not been challenged by anybody and accordingly has submitted that there may not be any need to pass any such interim order.

Heard learned counsel for both the parties.

Prayer for passing interim order will be considered on the next returnable date. Till then, the Notification dated 24<sup>th</sup> March, 2018 notifying the Manipur (Hill Areas) District Councils (Fifth Amendment) Act, 2018 shall remain suspended.

List the matter on 16<sup>th</sup> May, 2018.

**JUDGE**

**ACTING CHIEF JUSTICE**

*Kim*