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LACK OF CONSISTENCY IN APPLICATION OF ELECTION LAWS RAISES QUESTIONS

THE ROYAL AUDIT AUTHORITY (RAA) HAD REVOKED AUDIT CLEARANCES FOR SOME ASPIRING LOCAL GOVERNMENT (LG) CANDIDATES, BUT ALSO ISSUED THEM TO OTHERS WHO HAVE PENDING ALLEGATIONS AGAINST THEM, RAISING MANY QUESTIONS.

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The Royal Audit Authority (RAA) had revoked audit clearances for some aspiring local government (LG) candidates, but also issued them to others who have pending allegations against them, raising many questions.

The authority revoked audit clearances for nine aspirants: seven gups, a mangmi, and a tshogpa candidate recently after the ACC said that there are complaints filed against them.

However, many people are questioning how the former Shelngana gup received his audit clearance, despite having a corruption allegation against him during the time of nominations filing.

The Anti-Corruption Commission (ACC) implicated the former Shelngana Gup of allegedly misusing his authority to encroach on 80 decimals of state land and registering it in his wife's name. The case was forwarded to the Office of the Attorney General (OAG) for prosecution on June 30 this year and the OAG issued a letter stating the case was dropped on November 23.

RAA officials said the audit clearance to Shengana gup was issued after the OAG said that they had dropped the case. "The OAG dropping a case leads to a logical conclusion that there is no case against him," the official said.

He added that when the OAG decided not to prosecute the case, the case was closed. "If the ACC pursues the case, and if they decide to prosecute on their own, then we will take it into consideration."

A voter from Shelngana questioned the rationale of the OAG issuing the letter directly to the gup candidate without informing the ACC. “Going by how the OAG issued the letter directly to the candidate raises a lot of questions.”

However, Shelngana former gup Samten Phuntsho said that he didn’t receive any letter prior to the formal dismissal from the OAG as claimed.

“I don’t have issues with audit memos or budget misuse.”

He added that the case was related to land inherited by his wife, which had been removed from the map.

It is unknown if the ACC will prosecute the case. In an earlier interview, ACC officials said that they were still reviewing the grounds on which the case was dropped.

Many observers are questioning how authorities can revoke clearances for gups whose cases are not even registered when they issue them to some with pending cases.

“I am told that the ACC had written to the RAA to look into revoking the clearance again, but the RAA refused to do so. Are some candidates more influential than others?” a corporate employee questioned.

A lawyer who has been following the case said that the revocation of audit clearances for whatever reasons is not in line with the intent and purpose of issuing such clearances under the RAA Act. “The fact that the clearances were initially provided by the RAA is suggestive of the fact that the auditee complied with the audit observations, entitling them to be issued an audit clearance certificate.”

He said that Chapter 9 of the Audit Act 2018 states that the authority could not issue clearances if a person fails to provide written replies to audit observations within the time frame stipulated by the authority, or fails to furnish action taken report on the audit report within the time frame stipulated by the authority.

According to the lawyer, disqualifying a candidate at the last moment simply basing it on the existence of a complaint with the ACC may prove counterproductive, especially in cases where the cases might have been lodged with the ACC for a long time. “Inadequacies and inefficiencies of an institution should not be the basis to deprive anyone of their rights.”

He also said that having issued the clearances after a determination of the compliances, it would be legally deficient to revoke the clearance simply on the grounds that the auditee is subject to an investigation with the ACC.

In an earlier interview, an RAA official said that the RAA and the Anti-Corruption Commission (ACC) have signed a memorandum of understanding (MoU) that states that audit clearance may not be issued or may be revoked if there is a case against the person who qualifies for investigation as per the MoU.

The voter from Shelngana questioned what had happened to the MoU when it concerned the candidate from his gewog. “RAA and ACC officials cannot close their eyes. If they are serious about their MoU, it should be applied uniformly to all candidates.”

Election Commission of Bhutan’s (ECB) spokesperson Phub Dorji said that ECB depends on agencies for verification and issuance as the ECB cannot cross-check every document. “So as long as any aspiring candidate produces all the required documents and participates in the electoral processes, we cannot bar anybody from participating.”

Meanwhile, the seven of the nine local leaders whose audit clearances were revoked after the dhamngoi zomdu appealed to the High Court requesting authorisation for them to contest in the local government election, since they have not been convicted. However, the court dismissed the petition the next day.

The lawyer also said courts have jurisdiction to question the legality of the action taken in the present case. “The jurisdiction of the courts arises if the issue pertains to an election dispute during the elections. The present issue has nothing to do with an election dispute, but rather it is an issue of breach of a fundamental right, which is very much within the domain of the High Court.”

Edited by Tashi Dema