S. Swett Vs State of Meghalaya and Others

Court: Gauhati High Court (Shillong Bench)

Date of Decision: Feb. 2, 2007

Acts Referred: Constitution of India, 1950 â€" Article 14, 226

Citation: (2007) 2 GLT 847

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.B. Misra, J.
Heard Mr. A.M. Mazumdar, learned senior counsel for the petitioner alongwith Ms. F.Z.M. Nongbri. Also heard Mr. H.S.

Thangkhiew, learned Counsel for respondent Nos. 6 and 7 and Mr. V.G.K. Kynta, learned Counsel for the respondent No. 3.

2. The present writ petition under Article 226 of the Constitution of India has been filed for issuance of Writ of Certiorari questioning the validity of

the order dated 22.08.2006 (Annexure-9) with prayer to set aside the same passed by the Syiem of Hima Mylliem, whereby, the petitioner was

declined "sanad" after having been allegedly declared reelected as Headman of Bishnupur, Kenchs" Trace, thereby the petitioner"s functioning has

been ceased as Rangbah Shnong, and, another order dated 22.08.2006 (Annexure-10) has also been challenged, whereby, certain persons have

been appointed by the Acting Syiem to manage the affairs of the locality and to convene the election of Headman.

3. As argued for and on behalf of the petitioner, he is legally elected Rangbah Shnong (Headman) of Bishnupur, Kenchs" Trace, Shillong, who had

a received letters dated 18.11.2003 and 25.11.2005 from the Acting Syiem to convene Durbar failing which he was directed to authorize three

persons to convene the village Durbar. Being aggrieved with the above two letters, the petitioner preferred Writ Petition No. 423 of 2005 (Dorbar

Shnong, Bishnupur, Kenchs" Trace and Anr. v. Acting Syiem and Ors.) which was adjudicated by this Court which this Court was also impressed

upon by the respondents that serious complaints were persisting against the petitioner as he had not been convening Durbar for about seven years

and had not been acting in the welfare of public and for development of the area. In these circumstances, this Court while disposing of the said writ

petition was pleased to give directions as below:

1) The petitioner shall convene a meeting of the Durbar within three weeks from today;

2) Before convening the meeting, it shall be lawful for the petitioner to chalk out the agenda for the meeting in consultation with the executive

member of the Durbar and one representative of the respondent No. 1.

4. It appears the said direction indicated by this Court vide its order dated 29.06.2006 could not be carried on within the stipulated time,

therefore, in those circumstances, a Misc. Case No. 192 of 2006 preferred by the petitioner was disposed of on 18.07.2000 with a direction to

comply the earlier order dated 29.06.2006 passed in W.P.(C) No. 423 of 2005 within 15 days.

5. In the light of above directions, it appears Durbar was convened on 01.08.2006 at 08.30 A.M., wherein, the Executive Members and residents

of the locality were present to discuss the agenda and the meeting was presided by the petitioner. Two observers for and on behalf of the Syiem

were present and eventually the petitioner was allegedly re-elected unanimously as the ''Headman''. The petitioner submitted letter dated

02.08.2006 (Annexure-8) to the Syiem for giving approval of newly elected/selected office bearers with a request to grant ''sanad'' confirming him

as the newly elected/selected ''Headman''. It appears, after examining the issue of approval of election/selection of the petitioner and his entire team

and granting of ''sanad'', both the above two letters dated 22.08.2006 Annexure-9 and Annexure-10 respectively were issued by the Syiem. Being

aggrieved against these two letters, the petitioner has preferred the preset writ petition.

6. After hearing the writ petition, this Court was by its order dated 21.09.2006 pleased to stay ex-parte the operation of the impugned order dated

22.08.2006 (Annexure-9) as well as order dated 22.08.2006 (Annexure-10) however, with liberty to apply for modification and cancellation

thereof. In reference thereto, a Misc. Case No. 364/2006 has been preferred on behalf of respondent Nos. 1 and 2 for vacation of the above

interim order.

7. For and on behalf of the petitioner, it has been argued by Mr. A.M. Mazumdar, learned senior Advocate that, in compliance to the directions

dated 29.06.2006 passed in W.P.(C) No. 423(SH)2005 by this Court, the petitioner was to prepare the agenda including several items where

representative of Chief'' Syiem and Executive Members of Durbar had also participated. In presence of the residents of the village and area the

meeting of Durbar was conducted and agenda was deliberated, wherein, the petitioner and his team members were unanimously elected office

bearers and after having been re-elected the petitioner has acquired the status of ''Headman''. As such, only the question of giving approval or

issuance of "sanad" was pending before the Syiem who, however, on irrelevant grounds has declined to give approval and has also directed to

cease functioning of the petitioner as "Rangbah Shnong". The order dated 22.08.2006 (Annexure-9) has been passed without affording the

petitioner an opportunity of hearing behind his back and in derogation to the provisions of Section 9 of The United Khasi-Jaintia Hills Autonomous

District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (in short called ""Act 1959"" hereinafter).

8. Mr. A.M. Mazumdar, learned senior Advocate has tried to impress that Durbar was convened on 01.08.2006 after giving printed notice to the

public to that effect. However, consultation or prior approval of Syiem for conducting Durbar was not necessary once this High Court has already

given a specific direction on 29.06.2006 to convene meeting and to chalk out agenda for meeting in consultation with Executive Members of

Durbar and there was no point of flouting the conditions of the above directions dated 29.06.2006 of High Court as erroneously observed by the

Syiem in the impugned order dated 22.08.2006. After getting the directions dated 29.06.2006 of the High Court, number of agenda to be included

in the meeting was not to be limited and the petitioner was not confronted or afforded opportunity of hearing to deal the complaints of 157 persons

of the locality consisting of two Rangbah Dongs of New Kench''s Trace and Upper Kench''s Trace and Secretaries of the said Dongs presented to

Syiem. Since the outcome dated 01.08.2006 of Durbar has been confirmed by General Durbar and the same was submitted to the Syiem with the

support of 130 signatories, then it was to be given due weightage and was to be recognized treating as the majority view of the members present in

Durbar. Since Myntris for and on behalf of the Syiem have attended Durbar as observers and had not raised any objection during the proceedings

in the meeting and Durbar, then Durbar and its outcome cannot be said to have been handled improperly and the outcome of the meeting and

Durbar held on 01.08.2006 cannot be alleged to have been vitiated. According to learned senior Counsel Mr. Mazumdar, direction to cease

functioning of petitioner as Rangbah Shnong is illegal, having been passed in derogation to the principles of natural justice and despite existence of

any alternative remedy under the Act 1959, this Court in the interest of justice should graciously interfere and quash the order dated 22.08.2006

(Annexure-9) as well as another order dated 22.08.2006 (Annexure-10) which have been passed, without any rhyme or reason and without any

basis thereby appointing four persons temporarily out of whom one has been asked to function as Headman. The committee of such four persons

have illegally been directed to prepare electoral roll of all male adults who have attained age of 18 years and to collect information from every

household of the persons who have right to elect the Headman.

9. On the other hand, Mr. H.S. Thangkhiew, learned Counsel for respondent Nos. 1 and 2 has submitted that petitioner has been failing in

discharge of his duties properly and devotedly and has, during seven long years has for reasons best known to him has not convened any meeting

and as such the welfare and development of the area has completely been overlooked. Learned Counsel has invited the attention of this Court to

the contents of Annexure-C (enclosed with Misc. Case No. 364 of 2006) whereby, Syiem was informed on behalf of the two representatives of

Syiem namely; Myntri H.S. Sohlang and Myntri K.D. Nongneng Pator pointing out that the election proceeding of ''Headman'' on 01.08.2006 was

not done properly and as many as 19 long agendas were incorporated and the relevant agenda No. 2 was intended to be deliberately taken at the

end. For that, the participants in the Durbar have completely been divided and have formed groups/parties and in order to place agenda No. 2 at

subsequent stage, for reasons best known to the petitioner voting was also made and large number of persons in majority have even boycotted the

Durbar and only the favourable party members present in Durbar including the petitioner himself got themselves declared as office bearers and

petitioner got himself elected as ''Headman'', therefore, a prayer was made that the local residents were to be provided opportunity to participate

and exercise their right fairly to elect their own Headman a per customs and traditions of the village. Mr. H.S. Thangkhiew has also invited the

attention of this Court to another letter dated 01.08.2006 which is enclosed as Annexure-D to the Misc. Case No. 364 of 2006 which was written

by 157 persons who were present in Durbar and as a protest had come out of the Durbar and had not participated in the meeting and Durbar

proceedings. Letter dated 01.08.2006 (Annexure-D) also reveals that after agenda No. 1 the agenda No. 2 was to be taken and discussed,

however, confusion was created as the petitioner being the Headman wanted to prolong the agenda even though Durbar had approved to discuss

over agenda No. 2 then and there only. However, the petitioner had misled Durbar and had also resorted to voting from the members present for

keeping the agenda No. 2 pending and to be considered the same in last and about 157 signatories had walked out of Durbar house as a protest

showing they are unable to tolerate the autocratic attitude of the petitioner. Despite opposition by permanent residents of the locality, the present

petitioner proceeded with Durbar proceedings alongwith his supporters and even the present petitioner/headman had brought some people from

outside of the locality where many were non-tribals and they were present against the prevalent customs and traditions and by their presence,

confusion and chaos had also been created. Therefore, 157 persons as the residents of area present in Durbar being signatories have approached

the Syiem for resorting to a new election for electing/selecting a new village head by secret ballot, so that, local residents might have right to elect a

headman to restore peace and prosperity in the locality.

10. According to learned Counsel for the respondents, Section 5A of ''Act 1959'' deals with disputes regarding election, Section 7 deals with

confirmation of Headmen, Section 8 deals with qualification for the office of the Headmen, Section 9 deals with Removal and suspension of

Headmen. According to Mr. Thangkhiew, Section 7(i) has been amended by an extra-ordinary Gazette dated 26.05.2006 which provides as

below:

All nomination and/or elections of Headmen shall be reported to or as the case may be, be conducted by the Chief and his Durbar who shall

forthwith declare the nomination and/or result of the election and issue appointment letter to the person concerned with information to the Executive

Committee.

11. The other relevant provisions of ''Act 1959'' have also been referred by Mr. Thangkhiew as below:

2(a) ''Chief'' means a Syiem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadadar as the case may be, of any Elaka.

2(f) ""The Chief and his Durbar"" means an Executive Durbar presided over by the Chief of the Elaka with certain Headmen as members, the

number of which shall be determined, and the names of which shall be approved, by the Executive Committee on the recommendation of the

Durbar of the Chief and all the Headmen of the Elaka. The function of this Durbar is to run the day-to day administration of the Elaka.

2(j) Ã¯Â¿Â½Executive Committee"" means the Executive of the United Khasi-Jaintia Hills District Council.

3. Election or Nomination and Appointment of Chief and Headmen. -- Subject to the provisions of this Act and the Rules made thereunder, all

elections or nominations and appointment of Chiefs and Headmen shall be in accordance with the existing custom or prevailing in the Elaka

concerned and or in accordance with the orders as the Executive Committee may issue from time to time. The Secretary of the Executive

Committee or any Officer appointed by the Executive Committee in this behalf shall be the Returning Officer for all nominations or elections under

this section.

4. Procedure in the Nomination or Election of Chief--(a) when a vacancy occurs the Returning Officer shall cause a meeting of the Electoral

College of the Elaka concerned to be held and presided over by the officer deputed by the Returning Officer. The Presiding Officer shall submit

the proceedings of the nomination meeting to the Returning Officer who shall declared the result of the nomination. The Returning Officer may, in

cases of doubt or uncertainty, refer the proceeding to the Executive Committee who shall decide and direct the Returning Officer accordingly.

(b) When vacancy occur in an Elaka where there is no Electoral College the Returning Officer shall cause the Electoral Roll to be prepared of all

eligible voters, call for the nomination of candidates, hold election declare the result thereof and or do things necessary for the purpose of the

Election. The Returning Officer may refer cases of doubt or uncertainty to the Executive Committee shall who decide and direct the Returning

Officer accordingly.

7(ii) If any dispute arises regarding any matter relating to or connected with the nomination of Headmen, the dispute shall be referred by the party

or parties concerned to the Chief and his Durbar on payment of Durbar fee of Rs. 10 (Rupees ten) for decision. An appeal against such decision

shall lie to the Executive Committee whose decision is final.

The appeal to the Executive Committee shall be filed within 30 days from the date the order of the Chief and his Durbar is communicated to the

party or parties concerned accompanied by :

(a) The certified copy of the order appealed against;

(b) a petition fee of Rs. 25 (Rupees twenty five) only.

8. Qualification for the office of the Headmen--

(1) Pending making of Rules as provided u/s 3, the Chief and his Durbar shall determine--

(a) The clan or clans that can set up a candidate for the office of a Headman;

(b) the qualifications of a person eligible for the office of a Headmen;

(c) the manner in which a Headman shall be nominated.

9(3) Notwithstanding anything contained in Sub-section (1) above, the Executive Committee may remove or suspend a Headman if in its opinion

he is liable for taking action under any of the clauses or Sub-section (1) above; and the order passed by the Executive Committee in such case

shall be final.

Provided that no Headman shall be removed or punished with suspension u/s 9 above unless he is given an opportunity of being heard;

Provided further that the requirements of the first proviso above shall not apply--

(i) in the case where the order of removal or punishment of suspension is awarded on account of his being convicted of an offence involving moral

turpitude;

(ii) in the case of order of suspension pending inquiry.

12. According to Mr. Thangkhiew, all nominations and elections to the post of Headman is to be reported to the Chief and his Durbar and the

elections are to be conducted by the Chief and his Durbar only and, it is the Chief and his Durbar who is to declare the nomination and the result of

election and he is only authorized to issue appointment letter in favour of such persons who have been duly elected. It is only the Chief and his

Durbar who is authorized to give information to the Executive Committee about the elections and its outcome in view of the newly amended

provisions of Section 7(i) of ''Act 1959''. According to Mr. Thangkhiew, in reference to Section 7(ii) any dispute arising in the matter relating to or

in the matter connected to the nomination of Headmen or in respect of any dispute regarding election or other outcome shall have to be referred to

by the party or parties concerned to the Chief and his Durbar. A mandatory condition has been provided in Section 7(ii) of Act 1959 to

specifically deal with the disputes about the election. As a mandatory condition as indicated in Section 7(i) that the Chief and his Durbar shall only

be authorized to conduct elections of Headmen and shall only be authorized to declare the result of the election and shall only issue letter of

appointment to the concerned duly elected persons. Such power cannot be delegated to others and nobody could declare himself to be elected

and compel any other authorities to acknowledge him to be declared by any process which are not in consonance of ''Act of 1959''. According to

learned Counsel for the respondents, in no circumstance, a Headman could declare himself to be elected or could insist to be acknowledged as

elected without the due declaration of result of a duly conducted election by the Chief and his Durbar.

13. According to learned Counsel for the respondents, the High Court vide its order dated 29.06.2006 has given very clear directions which was

with specific purpose and in the background of the complaints when petitioner had not been able to convene meetings and in those circumstances,

a stipulated time was allocated to the petitioner to convene a meeting and to lawfully chalk out the agenda for the meeting in consultation with the

Executive Members of the Durbar. The Hon''ble High Court in its directions has never given unlimited scope of considering unlimited agenda that

too on the petitioner''s choice including such aspects which are under the scope and jurisdiction of Chief and his Durbar namely conducting election

and declaring himself to be elected on the basis of the assembly of persons of his choice ignoring the democratic process, ignoring the protest of

the majority and ignoring the provisions of ''Act 1959''. According to Mr. Thangkhiew, petitioner was undisputedly the ''Headman'' against whom

large complaints were persisting and who could have been removed under the provisions of Section 9 of ''Act 1959''. However, the Chief/Syiem

has not ousted him in exercise of his power on the grounds indicated in Section 9 and once the petitioner has resorted to a meeting/Durbar in the

garb of the directions dated 29.06.2006 of Hon''ble High Court and has got himself declared elected as headman, then it is the outcome of that

Durbar/meeting dated 01.08.2006 which is not in consonance to the spirit and provisions of ''Act 1959.'' The petitioner could not be declared

elected by adopting the means not acknowledged and not approved under the provisions of ''Act 1959.'' Such outcome of Durbar/meeting dated

01.08.2006 shall not accrue any legal right to the petitioner and his associates. The petitioner shall have no right to the post of ''Headman'' while

undergoing the proceeding of Durbar dated 01.08.2006 unless the petitioner and his associates were duly declared elected by Chief/Syiem and

''sanad'' is issued to them in accordance to the provisions of ''Act 1959''. Thereafter, after examining the complaints against the petitioner in

conducting the alleged election and declaring himself of elected as Headman in such circumstances, petitioner''s functioning was necessary to be

ceased and further required steps were to be taken for fair proceedings. According to Mr. Thangkhiew, in the peculiar facts and circumstances of

the case, affording of an opportunity of hearing to the petitioner by Chief/Syiem while invoking its inherent power u/s 7(i) or regarding issuance of

''sanad'' was not necessary as the petitioner had not been ceased or removed or suspended as Headman in exercise of power u/s 9 of ''Act 1959'',

however, if the petitioner was aggrieved in the context of non-issuance of sanad and for getting appropriate direction on the context of ceasing or

functioning of petitioner as Rangbah Shnong in reference to the impugned orders dated 22.08.2006, then for that purpose, there is an efficacious

and alternative remedy available u/s 7(ii) where the writ petitioner could have presented his case by urging for availing opportunity of hearing or the

petitioner could avail better platform for presenting his grievances exhaustively.

14. The Executive Committee in exercise of its power u/s 9(3) has an exclusive inherent power notwithstanding in any other power provided in

Section 9(1) for removal and suspension of Headmen. However, before exercising that power, it is the Executive Committee which is under

statutory obligation to provide opportunity of being head to such ''Headman'' being removed or suspended.

15. (i) Natural justice is a great humanizing principle intended to inquest law with fairness to secure ends of justice. The sole of natural justice is fair

play in action in view of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , where the passport of the petitioner was impounded by the

Government of India in ''public interest'', without affording an opportunity of hearing to the petitioner before taking the impugned action, therefore,

the order was found to be violative of the principles of natural justice.

(ii) The principle of natural justice has to be considered in the context of the facts situation and in view of the scheme and the rules applicable in a

particular case. If an employee remains absent for more than a stipulated period and stature rules or standing order provide for automatic

termination of his services in such an eventuality, without holding inquiry or giving opportunity of being heard, observance of principles of natural

justice is mandatory proposition. The Supreme Court has categorically held in a catena of decisions that a statutory rule is void if it stipulates for

automatic termination of services of an absenting employee after expiry of a stipulated period [in the light of the decision in Punjab Land

Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, ; Scooters India and

Others Vs. Vijai E.V. Eldred, ; Uptron India Limited Vs. Shammi Bhan and Another, and Scooters India Ltd. v. Mohammad Yaqub and Anr.

(2001) 1 SCC 61]

(iii) It is well settled legal proposition that every action complained of is to be tested and analysed on the touchstone of doctrine of prejudice Major

G.S. Sodhi Vs. Union of India (UOI), ; State Bank of Patiala and others Vs. S.K. Sharma, ; S.K. Singh Vs. Central Bank of India and Others, ;

Rajendra Singh v. State of MP AIR 1966 SC 2736.

(iv) However, in K.L. Tripathi Vs. State Bank of India and Others, , the Supreme Court has observed as under:

It is not possible to lay down rigid rules, as to when the principles of natural justice are to apply, nor as to their scope and extent...there must also

have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirement of

natural justice must depend on the facts and circumstance of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the

subject matter to be dealt with, and so on so forth.

(v) Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair

action where the function is administrative Assistant Excise Commissioner and Others Vs. Issac Peter and Others,

(vi) The principles of natural justice as integral part of the guarantee of equality assured by Article 14 of the Constitution. D.K. Yadav Vs. J.M.A.

Industries Ltd., . In State of West Bengal v. Anwar Ali Sarkar, 1952 SCR 284, per majority, a seven Judge bench of the Supreme Court held that

the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In

Maneka Gandhi (supra) another bench of seven Judges held that the substantive and procedural laws and action taken under them will have to

pass the test under Article 14 (D.K. Yadav (supra)].

(vii) Strict adherence to rules of Natural Justice is essential while taking decision affecting rights of a person so observed in Ram Chander Vs.

Union of India (UOI) and Others,

It is a fundamental rule of law that no decision is to be taken which will affect the rights of any person without first giving him an opportunity of

putting forward his case. Both the Privy Council as well as the Hon''ble Supreme Court have in a series of cases required the strict adherence to

the rules of natural justice where a public authority or body has to deal with rights.

(viii) The observance of the rules of natural justice is not referable to the fatness of the stake but is essentially related to the demands in a given

situation. It does not supplant but supplement the law, Jain Exports (P) Ltd. and Another Vs. Union of India (UOI) and Others,

(ix) A fair hearing must be given before taking decision affecting rights of any person as observed in O.P. Gupta Vs. Union of India (UOI) and

Others,

It is a fundamental rule of law that no decision should be taken which will affect the rights of any person without first giving him an opportunity of

putting forward his case. There is always ''the duty to act judicially'' wherever the rules of natural justice are applicable. There is, therefore, the

insistence upon the requirement of a ''fair hearing''.

(x) In Mangilal Vs. State of Madhya Pradesh, the Supreme Court while dealing a situation where the statute was silent about the observance of the

principles of natural justice has held that such statutory silence implies requirement of compliance of principles of natural justice moreso, where

substantial rights of parties are considerably affected. In view of Mangilal (supra) the application of natural justice becomes presumption unless

found excluded by express words of statute or necessary intendment.

(xi) The requirement of ''fairness'' implies that even an administrative authority must not act arbitrarily or capriciously and must not come to a

conclusion which is perverse or is such that no reasonable body of persons properly informed could arrive at; Management of M.S. Nally Bharat

Engineering Co. Ltd. Vs. State of Bihar and Others,

Once the test of ''fairness'' is substituted for a ''hearing'' in this area of administrative decisions, it would follow that it cannot require that much of

hearing when a person is charged with some offence or misconduct. Notice of the penalty sought to be imposed with an opportunity for making a

representation and consideration of that representation in a fair and just manner, would suffice.

(xii) Where the administrative function is statutory the Court must read into the statute the requirement of fairness, which means the minimum

principles of natural justice, Union of India v. Nambudri AIR 1991SC1261, paragraph 9.

16. The rules of natural justice were originally only two viz:

(a) Audi alteram partem i.e., the person(s) to be affected by an order of the authority should be heard before the order passed, and

(b) The rule against bias.

Subsequently, some more rules of natural justice are in the process of development e.g. that the administrative authority should give reasons for its

decisions, particularly when the decisions affect the rights and liabilities of the citizens.

It must, however, be made clear that the rules of natural justice are flexible, and are not a straitjacket formula. In exceptional cases not only can

they be modified but even excluded altogether. Natural justice is not an unruly horse. If fairness is shown, there can be no complaint of breach of

natural justice The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee,

As regard the rule audi alteram partem, up to 1964 the legal position in England was that injudicial and quasi-judicial proceedings opportunity of

hearing had to be given, but it was not necessary to do so in administrative proceeding. This legal position changed in Ridge v. Baldwin (1963) 2

All ER 66 (HL) in which the House of Lords held that opportunity of hearing had to be given even in administrative proceedings if the

administrative order would affect the rights and liabilities of the citizens. This view of the House of Lords was followed by the Supreme Court in

State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and State of Maharashtra v. Jalgaon Municipal Council (2003) 9 SCC 73 wherein it was

held that administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The expression

civil consequences"" means where rights and liabilities are affected. Thus, before blacklisting a person he must be given a hearing, (1989) SCC 229

Raghunath Thakur v. State of Bihar.

It may be mentioned that a hearing need not always be an oral hearing. In certain circumstances, the Administrator can only issue a show cause

notice to the party likely to be affected and on his/her reply can pass the decision without giving a personal hearing to the parties. However, in

certain circumstances where the party may be very seriously affected the Courts have insisted that an oral hearing with opportunity of presenting

witnesses and cross-examining the witnesses on the other side must be given.

Similarly, the principle that ""no man should be a judge in his own cause"" disqualifies an Administrator from giving a decision which affects the right

and liabilities, if he is biased.

It may, however, be pointed out that in H.C. Narayanappa and Others Vs. The State of Mysore and Others, the Supreme Court observed that the

Minister or officer invested with the power to hear objections to a scheme is acting in his official capacity and unless there is reliable evidence to

show that he is actually biased, his decision will not be liable to called in question merely because the objects to the government scheme are heard

by the Government itself or by its officers.

The requirement to give reasons in administrative decisions which affect rights and liabilities has been held to be mandatory by the Supreme Court

in S.N. Mukherjee Vs. Union of India, . This reduces the chances of arbitrariness on the part of the authority, as the reasons recorded by him are

subject to judicial scrutiny by the higher Courts or authorities.

17. Mr. A.M. Mazumdar, learned Counsel for the petitioner has placed reliance on the decision of the Supreme Court in U.P. State Spinning Co.

Ltd. Vs. R.S. Pandey and Another, , where it has been observed that High Court should not entertain a writ petition under Article 226 of the

Constitution when statutory remedy is available unless exceptional circumstances are made out. Hon''ble Supreme Court has very exhaustively

dealt with, in its landmark historical judgment about the principles of entertaining writ petition when alternative remedy is available and after

considering large number of cases in its paragraphs 12 and 14 has observed as indicated below:

12. Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission, Sangram Singh v. Election Tribunal,

Kotah, Union of India v. T.R. Varma, State of U.P. v. Mohd. Nooh and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras held that

Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an

absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can

have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that

there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

14. In Harbanslal Sahnia v. Indian Oil Corporation Ltd., this Court held that the rule of exclusion of writ jurisdiction by availability of alternative

remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it

comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice

or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

18. I have heard learned Counsel for the parties and have perused the documents. Undisputedly, petitioner had not been able to convene a

meeting of the Durbar for seven years and the large number of complaints was proceeding against him. It appears the Syiem/Chief and his Durbar

of concerned area was expecting the petitioner to function in a manner for which even certain letters were issued on 18.11.2003 and 25.11.2005

which, however, were challenged by the petitioner by way of writ petition No. 423 of 2005. While disposing of the writ petition on 29.06.2006,

this Court was pleased to give directions allocating the petitioner to convene a meeting in three weeks and subsequently, by a subsequent order

dated 18.07.2006 passed in Misc. Case No. 192 of 2006 this Court was pleased further to direct the petitioner to conduct the meeting in

extended time of 15 days. By the impugned order dated 29.06.2006 this Court was pleased to direct the writ petitioner to convene a meeting and

specifically mentioned that it shall be lawful for the petitioner to chalk out the agenda for the meeting in consultation with Executive Members of the

Durbar and one representative of Acting Syiem. The impugned order dated 22.08.2006 (Annexure-9) was passed, whereby, sanad was not

issued in favour of the petitioner and the petitioner was ceased to function as Rangbah Shnong. By an another impugned letter dated 22.08.2006

(Annexure-10) another Committee was appointed to prepare electoral roll to collect information and to incorporate the male adults above 18

years for having wide participation of every household and village people so that they may exercise their right to elect Headman and to restore

democratic process. However, if petitioner was aggrieved of by the orders indicated in those letters dated 22.08.2006 (Annexure-9) and dated

22.08.2006 (Annexure-10), then he may prefer appeal to the Executive Committee which could have been tested on the merit. After analyzing the

facts and circumstances and relying on the guidelines indicated by Hon''ble Supreme Court in the case of RS Pandey (supra) and in the interest of

justice, I am of considered view that since an alternative remedy is available where the petitioner could exhaustively put his grievances, this Court in

exercise of power under Article 226 of the Constitution is not inclined to invoke its discretionary jurisdiction to entertain this writ petition.

Therefore, without expressing anything on merits, this writ petition is dismissed. In view of the dismissal of the writ petition, the interim order dated

21.09.2006 is also vacated and Misc. Case No. 364 (SH) 2006 is also disposed of accordingly.