

(2014) 10 MEG CK 0009

Meghalaya High Court

Case No: WP(C) No. 22 of 2011

Brimsingh Mawphniang

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision: Oct. 15, 2014

Acts Referred:

- Constitution of India, 1950 - Article 141, 226, 244(2), 275(1), 276(1)

Hon'ble Judges: Uma Nath Singh, Acting C.J.; Sudip Ranjan Sen, J

Bench: Division Bench

Judgement

Uma Nath Singh, Actg. C.J.

1. This writ petition has been filed with a prayer to call for records, to quash the letters dated 13.05.2010, 15.06.2010, and 29.11.2010, and to direct respondent Nos. 2 & 3 for allowing the petitioner to discharge his duties as Sordar of Nongladew village.

2. Brief facts of the case leading to filing of this petition are that in the meeting of Dorbar Pyllun of Nongladew village held on 06.12.2008, the petitioner claimed to have been unanimously elected as the Sordar of the village. He took the responsibility of his new assignment as Sordar of Nongladew village, and by the letter dated 20.2.2009 addressed a communication to Syiem of Nongkhlaw (respondent No. 3) which was also signed by villagers with a request to him to grant him (petitioner) Sanad for Sordarship. The petitioner continued to discharge his responsibility and duty of Sordar of Nongkhlaw village since 06.12.2008 when he was unanimously elected by villagers. The fact of his election was not disputed by any member of his village. It was a simple formality according to the petitioner, and there is no chance, even remote, that the petitioner could be deprived of his right to receive Sanad. The act of conferment of Sanad is rather obligatory consequent upon petitioner's election to the office of Sordar of the village. The petitioner submits that he patiently waited for more than seven months but there was no communication from the side of Respondent No. 3 in regard to grant of Sanad of Sordar to him. Thereafter, the petitioner vide his letter dated 02.09.2009 again requested Syiem

of Nongladew to kindly grant him Sanad of Sordar. However, having waited for long and having received no response from Respondent No. 3 in regard to representations dated 20.2.2009 and 02.09.2009, the petitioner vide the letter dated 19.01.2010 addressed a communication to the Executive Member, Incharge of Elaka Khasi Hills Autonomous District Council, Shillong, explaining him the circumstances as to how his appointment and grant of Sanad have been kept in abeyance by Respondent No. 3. The Executive member (though elected) works under the Chief Executive Member of the District Council who has been impleaded as Respondent No. 2 (head of the District Council). The District Council and the institution of Syiemship are the instrumentalities of State under the 6th Schedule of the Constitution of India (in re Article 244(2) & 276(1)) and thus a writ petition would lie under Article 226 of the Constitution of India. The Deputy Secretary to the Executive Committee of the Khasi Hills Autonomous District Council vide his letter bearing Memo. No. DC XXVII/Genl/163/2004/10/17 dated 12.2.2010 addressed to the Syiem of Nongladew sought his view in respect of grant of Sanad of Sordar of the Nongladew village. The petitioner addressed another letter to the Executive Member Incharge of Elaka concerned again after waiting for long with a prayer to expedite the process of granting of Sanad to the petitioner. The Deputy Secretary to the Executive Committee Khasi Hills Autonomous District Council addressed another letter to Respondent No. 3 vide Memo. No. DC XXVII/GENL/163/2004-10/19 Dated 19th March 2010, with a copy thereof endorsed to the petitioner, whereby the Deputy Secretary has once again reminded the Syiem Nongkhlaw about his earlier letter dated 12.02.2010, and sought for an early view, over the matter relating to Sordar of Nongladew. It is also an averment that the District Council is the creation of the Constitution of India under Article 244(2) and 275(1) and exercises the powers conferred by sub para 6 of paragraph 2 of the 6th Schedule. The rule which has also been framed in this regard is called "the Assam & Meghalaya Autonomous District Council Rule 1951" for the regulation of the functions of District Council. Moreover, in the recent past, the Act called "the Khasi Hills Autonomous District (Appointment & Succession of Syiem, Deputy Syiem, Elector and Rangbah Shnong of Mylliem Syiemship) Act 2007" has been enacted which contains the provisions relating to the functions of the Syiem and that of the District Council and thus they are now well defined. Even the appointments of Sordar and Headman of villages are covered under the new Act. The petitioner is a Khasi by birth and his mother and father were also Khasi by birth and that since the Khasi society is matrilineal by nature, the descent is reckoned only from the mother. Accordingly, the petitioner is an original Khasi of Nongladew village and a permanent resident of Hima Nongkhlaw and therefore he was elected Sordar unanimously in the meeting held on 6/12/2008 by participation of the entire villagers. This apart, the petitioner had received a number of communications from respondent No. 3 and his status of Sordar has already been recognized by the said Respondent. Thus, according to the petitioner by virtue of his defacto position as duly elected, conferment of Sanad is simply a formality, which cannot be denied under the aforesaid circumstances. Since he has also prayed before the Executive member Khasi Hills Autonomous District Council to cause grant of Sanad to him, a prayer is made for issuance of some appropriate directions. Respondent No. 3 in his communication dated

13.05.2010 to the Deputy Secretary has mentioned that village Nongladew is a village where all the residents are Garo and they do not originally belong to Hima Nongkhlaw. Syiem has also referred to Customs of Hima while saying that a non-Khasi man can only become the Rangbah Dong (Locality Headman) and not Sordar of Nongladew village and that is why for Nongladew village, the authorization has been given to the Sordar of the neighboring Khasi village Umsong. It is also alleged that for denying appointment and grant of Sanad of Sordar to the petitioner, Respondent No. 3 had cited the reason that the petitioner is married to a Garo woman and there is an apprehension that he might be influenced by the Garo people. This statement according to the petitioner is highly defamatory and objectionable when he is by birth a Khasi and he is duly entitled to be Sordar. The petitioner has taken serious exception to statement of concluding paragraph in the letter dated 13th May 2010 to the effect that he is not acquainted with customs of the Hima which is rather far from truth for the petitioner is born and brought up under those customs. An explanation in regard to the marriage of the petitioner with a Garo woman has already been offered. Marrying a Garo woman does not anyway deprive him of his Khasi status by any means and the rejection of Sanad on that ground would not be accepted. Respondent No. 3 has addressed the impugned letter dated 29.11.2010 to the effect that the petitioner can be appointed as headman of the locality and not a Sordar, and the petitioner was also warned by the impugned letter that a penal action may be taken against him if he ever used the word "Sordar". It is also a submission on behalf of the petitioner that the principle of natural justice and fair has not been allowed to play its part in the case of the petitioner.

3. Moreover, the act of respondent No. 3 denying Sanad to the petitioner is arbitrary, illegal and unreasonable one, particularly when the petitioner has already remained an active member of the Consultative Dorbar of Hima Nongkhlaw, and he was duly invited by the Syiem in all the meetings of the said Consultative Dorbar as and when they were held. The petitioner had also attended the said meetings. He had received letters from the Syiem inviting him to attend the meetings of 9th May 2008, 17th September 2009, and 25th September 2009.

4. Respondent No. 2 and No. 3 have acted in collusion to deny the petitioner grant of Sanad and his marriage with a Garo woman does not forfeit or circumvent his inherent capacity to be the Sordar upon being elected by the villagers. In fact, Respondent No. 3 has recognized him as Sordar all along by associating him in the meetings of Syiem on different occasions, and the recognition so granted to him cannot be withheld for any consideration.

5. Mr. SD Upadhaya, learned counsel for petitioner made his submissions in terms of the provisions of Section- 3 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959. The said provisions on reproduction would read as :

"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."

6. According to him, the local existing customs should get precedence over a codified law. Therefore, once the petitioner was elected in meeting of Dorbar by the Nongladew villagers, it should be treated as final even though procedural formalities as required under provisions of the aforesaid Act have not been complied with. It is also a submission of the learned counsel that the petitioner was denied Sanad particularly for the reason, that he got married to a Garo girl as it is obvious from the reading of letter dated 13.05.2010. It is the submission of learned counsel that earlier the headmen of the village in question used to be elected from the Garo community. The learned counsel also referred to Para-4 & 5, in particular, of the additional affidavit filed to explain the position. The said paragraphs on reproduction would read as :

"4. That I state that during the year 1983 one Shri Pretikson M Sangma who belongs to the Garo tribe was the Sordar of village Nongladew, this is clear from the letter being No. DC.XIV(M) 702/82-83/8(a) dated 15th Jan 1983 written by Shri W. Lyngdoh, Chief Forest Officer, Khasi Hills District Council, Shillong.

5. That I state that since 1958 till 2006, Nongladew village had Sordar who belongs to Garo tribe. In 1982-83, Shri Pretikson M. Sangma was the Sordar of Nongladew village which fact is apparently clear from the Letter No. DC. XIV(M) 702/82-83/8(a) dated 15th Jan 1983 above mentioned. And in the year 2001, the Respondent No. 3 the Syiem of Nongkhlaw had granted Sanad Sordar to one Shri Sylvester A. Sangma vide Memo. No. NK/SS/477/2001/2111, Dated Mairang the 17th September 2001, to look after the village Nongladew and Shri. Sylvester A Sangma also belongs to the Garo tribe. It is only in the year 2006 that when one Shri Jonesh Sangma (who also belongs to the Garo tribe) had applied for the Sanad Sordar of village Nongladew, the Syiem of Nongkhlaw, Nongkhlaw Syiemship, Mairang had rejected his claim citing reason that only Khasi male is entitled to be the Sordar under Hima Nongkhlaw which stand of the Respondent No. 3 is very illegal and arbitrary. The humble villagers of Nongkhlaw village do not want to be in confrontation with the Syiem, more so, when within the village they had a Khasi male (i.e., the petitioner) who is also willing to look after the welfare of the village, hence, the villagers had elected me on 06/12/2008 to be the Sordar of the village and I am required to approach the Syiem of Nongkhlaw Syiemship, Mairang for getting the Sanad Sordar. Since, I belong to the Khasi tribe therefore, there is no reason for denying the Sanad Sordar to me by the Respondent No. 3. However, my request for the Sanad Sordar was rejected by the Respondent No. 3 on the fictitious ground that I would be influenced by the Garo people which was challenged by me in the writ petition."

7. On the other hand Mr. PN Nongbri, learned counsel for the respondent submits that once the procedure has been prescribed by codifying the law, in the absence of evidence and compliance of requirements of the procedure, holding of any election as per customs cannot be held to be valid and sustainable in law.

8. Ms. PS Nongbri, learned counsel for Khasi Hills Autonomous District Council also submits that there is nothing on record to support and substantiate the claim of the petitioner that he was elected as per the procedure.

9. During the course of hearing, we were also informed about an earlier judgment passed in this writ petition itself on 29.11.2013, whereby the issue as raised herein had already been decided. The relevant paragraphs of the said Judgment are reproduced as :

"5. From the affidavit and counter affidavit mentioned above, two issues arise in this petition:-

(i) Whether the petitioner being married to Garo woman ceases to be a member belonging to Khasi tribe?

(ii) Whether Nongladew is locality of village Umsong?

6. As far as question No. 1 is concerned, it is settled principle that a person belonging to a particular tribe does not cease to be member of such tribe merely for the reason that he got married to a woman of different tribe provided that, after marriage such person continues to live with his family in the traditions of his original tribe and follows the customs of such tribe. Since none of the respondents have denied that the writ petitioner was a member of Khasi tribe and there is nothing on record to show that he is following any other customs except the customs and traditions of a Khasi, therefore, this Court is not hesitant in holding that the petitioner continues to be a member of the Khasi tribe.

7. In this connection it is relevant to mention here that a member of Scheduled Caste, born to Scheduled Caste parents never loses his caste throughout his life. He does not lose it by marriage with non Scheduled Caste woman nor such woman by reason of marriage becomes member of Scheduled Caste. Offspring to inter-caste couple gets the caste of either of his parents in whose family he was brought up.

8. As to the question No. 2, it is relevant to mentioned here that it has been pleaded in the counter affidavit of respondent No. 3 that Nongladew is locality of village Umsong. Petitioner could not show that Nongladew is separate village of Khasi community. As such unless such village is declared separate village for the purpose of electing Sordar, the petitioner can not claim the post. Learned counsel for the petitioner failed to show us if there had been any independent Sordar of Nongladew, vis-a-vis Sordar of village Umsong. Learned counsel for the respondent No. 2 and 3 stated before this Court that they have no objection to recognize the petitioner as Rongbah Dong (locality Headman) of Nongladew.

9. Attention of this Court is also drawn to Section 3 and 7 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959 which reads as under:-

3. "Election or Nomination and Appointment of Chief and Headman:-

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".

7. Confirmation of Headmen:-(i) 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 concern with information to the Executive Committee.

(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. 40 (Rupees Forty) 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 appeal against;

(b) A petition fees of Rs. 100 (Rupees one hundred) only.

(iii) Notwithstanding anything contained in sub-section (i) above, the Executive Committee may, either on application or of its own initiative conduct the nomination and election of headman and issue appointment letter if the Chief and his Durbar fails to do so.

10. Expression "Headmen" is defined in clause (k) of Section 2 of the above mentioned Act which provides that "Headmen" means a Myntri, a Basan, a Matabor, an Elector, a Pator, a Sirdar Shnong, and Rangbah Shnong. We are told by learned counsel for the parties that "Sirdar Shnong" means Sirdar of the village and expression "Rangbah Shnong" means Headman of the village. It is also pointed out by learned counsel for the respondents that election of the petitioner was not held as provided in Section 3 quoted above. Undoubtedly, there is no document produced before this Court showing that any nominations were invited by any Returning Officer appointed by the Secretary of the Executive Committee for elections of village Nongladew. In the circumstances, merely on the basis of communication sent by villagers (Annexure-I to the writ petition) does not

confer the title of village Headman (Sordar Shnong) to the petitioner. As to the Annexure-XIII filed with the writ petition which shows that in the year 2008-2009, the petitioner was invited to attend meeting by the Syiem of Nongkhlaw Syiemship, Mairang, it is sufficient to say that while inviting the petitioner to a meeting it is nowhere mentioned that he is Sordar of Nongladew. As such, the document is of little help to the petitioner.

11. For the reasons as discussed above, we do not find force in this petition which is liable to be dismissed with the observation that the petitioner infact is no more than a locality Headman.

12. Accordingly, the writ petition is dismissed with the observation as above. No order as to costs."

10. On an anxious consideration given to the submissions of learned counsel for the parties, we do not find any merit in the writ petition for the reason that a coordinate Division Bench headed by the then Hon"ble Chief Justice has already addressed and decided the issues raised herein. Thus filing of repeated petitions on the same cause of action would amount to abuse of the process of Court. The position is more than settled in a number of pronouncements in several cases made by Hon"ble the Apex Court. In the case of Orissa Power Transmission Corporation Ltd. & Ors. vrs. Asian School of Business Management Trust & Ors. (2013) SCC 738, the Hon"ble Supreme Court has held that, after dismissal of the first writ petition, filing of the second petition, would be a clear abuse of the process of the Court. Hon"ble Apex Court in the case of Ravinder Singh vrs. Sukhbir Singh & Ors. has held that, once the High Court has dealt with the issues involved therein, the matter stood closed at the instance of respondent No. 1 himself. There can be no justification to launch criminal prosecution on that basis afresh. Though in paragraph-28, there is discussion about the binding nature of Supreme Court"s decisions under Article- 141 but the observation made therein may also cover this case. It has been held that even if a particular issue has not been agitated earlier or a particular argument was advanced, but not considered, the said judgment does not lose its binding effect, provided that the point, with reference to which an argument is subsequently advanced, has actually been decided. The decision would not lose its authority merely because it was badly argued, inadequately considered or fallaciously reasoned.

11. Thus this Writ Petition is dismissed with a note of caution for future.