

(2016) 01 MEG CK 0009
MEGHALAYA HIGH COURT
Case No: WA No. 2 of 2015

Khasi Hills Autonomous District
Council

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision: Jan. 13, 2016

Citation: (2016) 3 NEJ 145

Hon'ble Judges: Uma Nath Singh, CJ. and T.N.K. Singh, J.

Bench: Division Bench

Advocate: B.B. Narzary, Senior Advocate and P. Nongbri, Advocate, for the Petitioner; K.S. Kynjing, Advocate General, N.D. Chullai, Senior Govt. Advocate and H. Kharmih, Govt. Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Uma Nath Singh, C.J. - The brief facts leading to filing of this writ appeal are that, the writ petitioners who claim to be bona fide citizens of India belong to Pnar Community, a recognised Scheduled Tribe in East Jaintia Hills of the State of Meghalaya. They are all permanent residents of Pamrakmai village, East Jaintia Hills District. They are born, brought up and are also permanent residents of that village. They are also registered as voters of 2-Rymbai Assembly Constituency of Pamrakmai village. However, writ petitioner No. 3, Smti Dakahi Dkhar could not get herself registered in voter list. Writ petitioners No. 1 to 4, namely, (1) Shri Archi Siangshai, (2) Smti Lucky Dkhar, (3) Smti Dakahi Dkhar and (4) Smti Wanlang Dkhar, are Christian by faith belonging to Presbyterian denomination and writ petitioners No. 5 to 8, namely, Smti Rita Dkhar, (6) Smti Bailang Siangshai, (7) Smti Ripaya Siangshai and (8) Smti Sida Siangshai, are by faith belong to indigenous religion (Niam chnong). It appears that having come to marriageable age, they entered into marital tie with non-tribal (dkhar) and settle in their families. They live and stay as such along with their children. It is their grievance that ever since they are married to non-tribal husbands/wives they have been deprived of their rights to live and stay

peacefully with their parental families and they are subjected to all kinds of harassments by the Village Dorbar and have to live constantly under the threat of forceful eviction from the village along with their families. Finally, the Village Dorbar forcefully evicted and excommunicated writ petitioners from their respective homes. They were compelled to move out of that place and they were made to stay in outskirts of the village which is a forest, in a temporary shed. It appears that they were working as small labourers in coal mines in the nearby villages. With the closure of the coal mine, they had no option but to find out alternative place of residence in search of petty jobs in order to earn their livelihood. The writ petitioner No. 1 along with his wife and children, took shelter in a house at Wapungskul and writ petitioners No. 2, 3, 5 and 8 at Mukhep village, whereas, writ petitioner No. 4 and 6 took resort in a house at Lumshohksih near Sohkhumphor at the mercies of some friends as they could not take any house for want of certificate or other authorisation from the village of Pamrakmai village. As per practise in Jaiñtia Hills District, if a person moves from one village to another for the purpose of taking a house at rent or to get employment, he is required to produce certificate of residence from the village of permanent residence. The Village Dorbar Pamrakmai declined to issue residential certificate to the respondents and, as a result, they were not able to get their accommodation or a regular employment at the place where they were staying having shifted after closure of the coal mines. The writ petitioners claimed that they are poor and fall in the BPL category. However, in the absence of requisite residential certificates, they were deprived of the entitlement of facilities made available by the Government for the BPL category, nor were they allowed to stay at the permanent residence or at the place of temporary stay.

2. The writ petitioners are not only deprived of their fundamental rights to live and stay at the place of their birth where they were brought up but were prohibited from entering into the village insomuch so that their rights to visit their families even at the time of sickness and death were also denied. They were not issued any show cause notices by the Village Dorbar as to on what ground and for what reason they were forcefully driven away from their homes and village and deprived of their rights to live as well as personal liberty. They were only verbally told by Dorbar Chnong Pamrakmai village and the member of Village Defence Party that since they have entered into marriage with non-tribals, they have no right to live and stay in the village. It is alleged by the respondents that the acts of Village Dorbar are illegal, arbitrary and in gross violation of their fundamental rights to live and settle at the place within the territory of India.

3. Shri Archi Siangshai-writ petitioner No. 1 was duly elected as Headman on 20.08.2012 and confirmed by the Dolloi and recognised by the JHADC for a period of three years from the day of his election vide letter No. JHADC/POL/34/1994/17 dated 25.09.2012. However, within a short span of time from the election, he was put to trouble by the VDP and the Dorbar on one pretext or the other, particularly, on the ground that he has entered into a marital tie with a non-tribal woman. The VDP even

its meeting held on 21.12.2013 directed writ petitioner No. 1 to vacate the office of Headman. Accordingly, he was forced to resign. The VDP have satisfied with the resignation and also prohibited writ petitioner No. 1 from staying or entering the jurisdiction of the village.

4. Writ petitioner No. 1 lodged a complaint to the Deputy Commissioner, East Jaintia Hills District, with a copy thereof to the Superintendent of Police, but no action was taken by the authority concerned. The Officer, Incharge of Ladrymbai Police Station, instead of taking the matter seriously registered the complaint as non-FIR case and forwarded a report on 22.7.2014 to the Court of Additional District Magistrate, Khliehriat, praying to draw up a proceeding under Section 107 Cr.P.C. Thereafter, the Additional District Magistrate also registered a non-FIR case No. 5 of 2014 and forwarded the matter to the file of First Class Magistrate. Having found no relief from the Police and executive authorities against the excesses committed by the Village Durbar and the Village Defence Party, the writ petitioners filed WP(C) No.363 of 2014.

5. It appears from the impugned judgment, that as per the direction of this Court, the writ petitioners were allowed to return to their respective villages and the matter was also compromised. It was submitted by Dr. ODV Ladia, learned senior counsel appearing for the writ petitioners, that they were not interested to proceed with the case any further. However, it also appears, that the Headman and Secretary of Village Defence Party namely, Shri Lukas Shylla and U. Daikiwbha Rymbai were produced by the Officer Incharge in compliance of the order of the learned single Judge dated 10.12.2014. They were warned against repetition of any such commission or omission whereby the respondents would become aggrieved in the manner as impugned herein. They were also warned not to interfere with the law and order enforcement. However, before finally parting with the judgment, the learned single Judge also made the following observation :

"4. Before I part with this case record, I observe that the original concept of headman of a locality is totally different from what it is at present. As far as my knowledge goes, headman should be elderly person of a locality with good background, having humane feeling, sense of integrity and who is against all kinds of violence and elected by the people of the locality and to obtain sanat from syiem. The duty of headman is to look after the welfare only of the locality concerned and at best can place the grievances of the people to the Government, District Administration or to the Police. Headman of a locality did not derive any right from law, and rule or from the Constitution of India to issue NOC for the purpose of birth/death or for registration of any document as well as for building permission and obtaining loan. We often notice that, whenever any person approached for birth/death certificate, building permission, registration of sale deed or any other document or electric connection, loan, they have been asked to bring NOC from local headman which is highly illegal on the part of the District Administration and

the Government. We also notice that, very often local headmen interfere with the police work as well as with the District Administration. Now the question comes, where from those headmen derive the power to issue NOC or to interfere with administration or indulge in removing people from villages. The answer is that, no rule of law has empowered them to do so; they are doing of these kinds of activities as per their whim and will and they try to run a parallel Government. As a result, common citizens are the worse sufferers which should not be allowed at any cost."

6. In the instant appeal questioning the aforesaid impugned order, it is contended that the learned single Judge ought to have taken into consideration the age old custom and tradition prevailing in the Khasi society. Moreover, once the matter was compromised and under the interim order dated 10.12.2014, the private respondents/writ petitioners were allowed to return to their village and further, that they were not interested to proceed with the case any further, the Court should not have passed the impugned order adversely affecting the power and authority of the grass root level office of District Council. The office of Chiefs, Headmen and their appointment, etc, are recognised and mentioned in para 3(e) of the Sixth Schedule to the Constitution of India. In fact, the Headmen/Rangbah Shnong being nominated /elected institution existed as per the provisions of Section 7 of the United Khasi Jaintia Hills Autonomous District Council (Appointment and Succession of Chiefs and Headmen) Act, 1959. Therefore, they derive the authority to act from the Statute. The institutions are, according to appellant, perfectly structured and are continuing since time immemorial. The institution of Headmen existed at the grass root level of governance in the absence of Municipalities or Town Councils. They are also the implementing agency for various programmes for Central and State Governments. The impugned order has also created confusion as to who is the authority to issue certificates to residents of a remote village at the grass root level. In fact, the certificates are issued by the Rangbah Shnong only to facilitate its inhabitants in enjoying their rights. In fact, issuance of certificate by Headmen has become an unwritten procedure adopted by the society, the Government and the Autonomous District Council. As such, the appellants have tried to justify the powers of headmen to issue No Objection Certificate, etc.

7. In the affidavit filed on behalf of respondent No. 8-JHADC, Jowai vide para 8, 9 and 10, while questioning the judgment of learned single Judge, the following averments have been made:

"8. That the functions of the Headmen and Sordar facilitates and assists the day to day life of the people of the village and the administration of the village. That if any person from a particular village is aggrieved by any administrative action or function of the Headman or Sordar of the said village, the said person has the remedy to appeal before the Chief or Dolloi within whose jurisdiction the particular village falls. Further, if still aggrieved by any decision of the Chief or Dolloi, they still have the remedy to appeal before the Executive Committee of the District Council which is

the Constitutional supervisory Authority as provided under the Sixth Schedule to the constitution of India.

9. That in the writ petition, neither the Autonomous District Council(s), nor the Chief(s) or Dolloi(s) were impleaded as necessary party(s), as such, they were never given an opportunity to be heard with regard to this very important matter which touches the very core of village and locality administration as customarily practised and as such the same involves vital question of law and custom the Autonomous District Council(s).

10. That the answering respondent No. 8 states that it is also deeply aggrieved by the directions passed by the learned single Judge in the Impugned order dated 10.12.2014 and as such the answering respondent No. 8 supports the grounds raised by the appellant in the writ appeal. However, the answering respondent No. 8 craves leave of this Hon"ble court to raise additional grounds in support of the writ appeal, which are specifically set out hereinafter :

A. For paragraph 3 of the 6th Schedule to the Constitution of India, District Council has the power to make laws inter alia with respect to the "appointment or succession of chiefs or headmen", "marriage and divorce" and "social customs". In exercise of powers under paragraph 3, the United Khasi Jaintia Hills Autonomous District Council (Appointment and Succession of Chiefs and Headmen) Act 1959 has been framed.

B. For the learned single Judge has, while passing such extreme directions/observations, completely ignored the fact that the Village Headmen and his durbar have been customarily discharging duties for the well being, welfare and good administration of the village concerned. By passage of time this customary role has been given importance and prominence and legal sanction by the Government and other authorities with regard to certification, recommendations and also in implementation of Government schemes for the village, such as, NREGS, Village Defence Parties, agricultural schemes etc. That none has questioned these practices followed in the entire State since time immemorial. The practise was not codified and was accepted by all concerned on the basis of customs and traditions in the area.

C. For the learned single Judge has such strong observations without even considering the relevant provisions under various Act, Rules and Regulations which govern the entire administrative set up in the Khasi Hills Autonomous District Council, and from where inter alia, the Village Headman derives their powers to facilitate the administration of their area.

D. For Section 4 read with Section 7 of the United Khasi-Jaintia Hills Autonomous District Council (Appointment and Succession of Chiefs and Headmen) Act 1959, provides for nomination, election, appointment and confirmation of the "Headmen", which shows that "Headmen" is a legal person who has sanctity of law and draws its

powers to run day-to-day administration of the unit as such, in as much as Rule 5 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, provides that one of the member would be a Headman in village Court. Further Rule 11 and Rule 12 of the said rules entrust upon them the power to try and decide suits and cases, and also to impose fine and award costs. Furthermore, similar power has been given to the "Headmen" under Rule 4A of the United Khasi-Jaintia Hills District Fishery Act, 1954. Moreover, Rule 3A of the Khasi Hills District (Trading by non Tribals) Regulation 1954 provides that, before granting or refusing the license under the said Regulation, the licensing officer or any officer authorised by the Executive Committee of the Khasi Hills Autonomous District Council, would consider that whether the application moved for such license has been recommended by the Village Headman, which inter alia shows that the application for obtaining a license under this Regulation must have a sanction of the village Headman. The aforesaid provisions would thus clearly show that the powers of the Village Headmen have legal sanctity, by virtue of which they are able to run the administration of their area.

E. For the learned single Judge has passed the impugned directions, regarding powers and functioning of the Village Headmen even without there being any issue related to the said aspect in the writ petition. Thus, the observations/findings made by the Hon"ble Single Judge are beyond the pleadings and the relief sought in the writ petition filed by the writ petitioners.

F. For the learned single Judge has, while passing such stringent directions, not giving an opportunity of into the Jaintia Hills Autonomous District Council, which regulate the functioning of the Village Headmen, and thus a proper party to be heard before making such observations/findings which would create chaos in the administration of the units falling under the said District Council. The impugned order dated 10.12.2014 has therefore been passed without complying with the rules of natural justice.

G. For under the Meghalaya Rural Employment Guarantee Scheme, notified on 28.07.2006, the State of Meghalaya has itself entrusted significant duties upon the Village Headmen for proper functioning of the said scheme, which shows that village headmen plays a significant part in the administration of the Council.

H. For Notification dated 07.10.2013 the Village Headmen has been given to perform various functions as supervisory Coordinating Officers for assisting the local Registrars in the discharge of their functions as laid down in instructions.

I. For that the learned single Judge has erred in law inasmuch as, in deciding a case against a particular Ranbah Shnong, of pamrakmai Village, East Jaintia Hills District, all the Rangbah Shnongs of Khasi Hills and Jaintia Hills have been clubbed together and adverse orders passed, that too without giving them an opportunity to be heard.

J. For that grass root governance is of the essence in every sphere of life. This has been reflected in the all Government Program and Policies. The existence of the Traditional Institutions such as Dorbar Shnong and Ranbah Shnong has efficiently helped and assisted the Government all its economic, social and developmental initiatives.

K. For that the order dated 10.12.2014 passed the learned single Judge has created chaos and confusion as to who is the authority to issue certificates to residents of a remote village at grass root level. The Government has always sought the assistance of the Dorbar Shnong and Rangbah Shnong in every aspect of grass root governance. From law and order to social justice and development, the Rangbah Shnong is at the helm of grass root governance and carried by convention in issuing No Objection Certificate to facilitate its inhabitants in every aspect of life. This process has become an unwritten procedures accepted by the Society, the Government and the Autonomous District Council.

L. For that the learned single Judge is absolutely wrong to hold that the Headmen of the locality did not derive any right from law and rule or from the Constitution of India to issue NOC.

M. For that the profession or the Rangbah Shnong is a generalisation and caustic in nature. A person may be uneducated but he may have more foresight and wisdom."

An affidavit has also been filed by the Headman of Village Nonglang. Para 3 to 10 of the affidavit also being relevant are reproduced hereunder:

"3. That the headman has got vital role in the day to day administration of the District Council. Paragraph No. 10 of the Sixth Schedule to the Constitution of India empowers the District Council to make Regulations for control of money lending and trading by non-tribals. Such Regulation if so enacted shall be submitted forthwith to the Governor and until accented by him shall have no effect. The Khasi Hills Autonomous District Council has already enacted the said Act namely the United Khasi and Jaintia Hills Autonomous District (Trading by non-tribals) Regulation, 1954. Under the said Regulation the United Khasi and Jaintia Hills Autonomous District (Trading by Non-Tribals) Rules, 1959 has been framed which are accented by the Governor. Under the aforesaid Regulation no trade licence shall be issued by the District Council until and unless recommended by the Headman as required under the provision of the Section 3 and 3A of the said Regulation.

4. That under the United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 the Headman plays vital role. No trees shall be fallen or removed from Law-Adong except for genuine purpose of the village as may be sanctioned by the Sirdar or Headman in accordance with Section 4(c) of the said Act. The Headman are duty bound to help the forest Officials of the Council in the management and control of the forest and forest produces.

5. There are village forests hitherto reserved by the villagers themselves for conserving water etc. for the use of villagers and managed by the Sirdar or Headman with the help of Village Durbar.

6. That there are as many as 3(three) Courts namely:

(i) Village Courts

(ii) Subordinate District Council Courts and Additional Subordinate District Council Courts and

(iii) District Council Courts and Additional District Council Courts.

Subject to the approval of the Executive committee of the Khasi Hills Autonomous District Council there shall be a village Court for each village which is composed of the Sirdar, Syiem Raid, Basan, Lyngdoh, Lyngskor or Headman of the village. The Headman decides all the matters with the help of his Executive Durbar.

7. That under the United Khasi and Jaintia Hills District Fishery Act, 1954 the Headman constitutes a village court whoever commits an offence under Section 3 or 4 of the said Act shall be tried before the Village Court in whose territorial jurisdiction, the offence is committed in accordance with the customary law of village provided that the Village Courts shall have no power under this Act to impose a fine exceeding Rs. 100/- only and shall not be competent to pass a sentence for imprisonment. Where a Village Court is of the opinion that the sentence it is competent to pass is insufficient in the circumstances of the case, it shall without delay refer the case to the competent Court and that court shall dispose of the case in accordance with these Rules (Rule 15 of the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953).

8. That in Meghalaya there are two classes of lands namely, Ri Kynti land (private land) and the Raid land (community land). The Raid lands are under the control of the Headman of the village who does for the benefit of the people of the village. No one will be allowed to sell or possess the Raid land without the permission of the Syiem, Basan, Sirdar, Lyngdoh, Lyngskor or Headman of the village. The Headman use to keep number of villagers including their names under his jurisdiction. The district Administration without the help of the local Headman cannot go and apprehend any criminals and/or can do any justice to the villagers.

9. That under the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Meghalaya Rural Employment Guarantee Scheme (MREGS), the Headman is the Chairman of the Village Employment Council (VEC). The meeting of the VEC will be chaired by the village Headman/traditional village Headman and a Secretary of VEC may be elected by the members of the VEC amongst themselves. These three office bearers of the VEC to represent the Area Employment Council (AEC), shall be elected in a General Body Meeting of VEC. It cannot be said that the Headman/Rangbah Shnong has nothing to do with the day

to day administration of the District Council as well as the State Government.

10. That under the Khasi Hill District (Establishment, Management and Control of Markets) Regulation, 1979 the Executive Committee on receipt of the application for establishment of market call for the report or recommendation from ♦

(a) the Chief of the Elaka or the Headman of the locality concerned in the case of Ri-Raid and Community land.

(b) the Chief of the Elaka or the Headman/Headman concerned and of the land owner concerned in the case of Ri Kynti or Ri-Sumar land.

Provided that the Executive committee or the officer duly authorised by it in his behalf may as a result of an enquiry or inspection veto such remarks or recommendation and pass such order as may be deemed fit and proper."

Similar affidavits have also been filed by the Headmen of Raitong and Pingwait Village.

8. We have also heard learned counsel for parties in the light of the aforesaid submissions. However, we express our disappointment over the lack of knowledge of their own culture, customs and traditions and proper assistance on the part of the Members of the Bar on the niceties of these subjects.

9. There is no doubt that the Khasi religion and tradition have developed through long process of customary practices and like the traditions of other tribes and various sections of people all over, the Khasi, Jaintia and Garo tribes of Meghalaya also have the rich heritage of traditions and customs of their own which seem to be basically designed to serve the fellowmen and humanity with full dedication and pledge to develop, inter alia, this country in the name of "Mother India". Such traditions are widely visible in the pledge of a Khasi Chieftain namely, Dr Balajied Singh Syiem on 26.08.1978, on the occasion of his assumption of Office of Syiem of Hima Khyrim, a semi independent native state in pre-independent India :

"In this Congregation of Multitudes

Pledge :

That, I will hold this office by upholding the principle of-the knowledge of Man and God-which is the basic belief of the whole Khasi race.

That I will hold this office by upholding the principles of truth and justice.

That, as Hima Khyrim is the repository of Khasi customs, I also pledge to retain our customs so that our Hima will always stand as an example for other Khasi Himas.

That, as Hima Khyrim is the home and custodian of Khasi Culture, I pledge that we will retain, protect, develop our Khasi Culture and to spread it far and wide.

I also pledge that I will have no attachment with any political party, because, as per custom and practices in vogue in Hima Khyrim, the Syiem is the head of the Hima.

I further pledge that I will pay special attention for the interest of the poor and to take special interest for the development of the less fortunate ones and of the more backward areas within the Hima.

I pledge that I will work in complete understanding with the Elders of all administrative units within the Hima and with all the people of the Hima.

I pledge to co-operate with all higher authorities, whether local or State Governments.

To you my kith and kin, I assure you that I will perform the duties of an elder uncle in the same manner as my predecessors had done.

I pledge to co-operate with every one for the development of our Hima, our Khasi community, our State, and for our mother India.

I pray to God Almighty to guide and to protect us that we will be able to walk in the way of truth and that we will be free from sin. Oh! God Almighty, I pray thee that thou will bestow thy blessings upon us.

Many many thanks to you. I wish you safe return to your respective places."

10. The spiritual bent of thinking of a Khasi can very well be seen in their staunch belief in God as the final judge of the conduct of human being. In the book authored by David Roy called "A Khasi Remembered" First Edition 2012, at page 140, it is mentioned as :

"Again we find the Khasi says, "Ap jutang me Blei, ieng Rangbah Me u briew" (Hold up the covenant thou, O God, arise and support, oh man). When he is baffled by the evil devices of his fellow man, he leaves everything to God, and last of all to the day when both he and the other man will take their stand before and be judged by Him."

A firm belief in the ultimate judgment of the God which a member of Khasi society is expected to practise and imbibe in day to day life, perhaps would never permit a customarily elected representative of the tribe to misconduct and practise intolerance etc. so much so as to prevent the natives of his village to enter that village merely on the ground of inter religion marriage. A person who does not practise the way of life the Khasi culture ordains cannot legitimately claim to be a Khasi. The liberal attitude of Khasi culture can also be seen in the article "PRINCIPLES OF KHASI CULTURE" (Folklore, Vol.47 No. 4, December 1936, pp.375-393) at page 78 of the book, "A KHASI REMEMBERED" by David Roy. On reproduction, the relevant part of the article would read as :

"..... A Khasi marries men and women of all races; to his Khasi parent the issues are all one and the same without any distinction of caste or creed, of colour or

possessions. The children are the "Khun kha" (khun means child, kha means born, i.e. children who are born through the union of a descendant of the parent with one of another parent), and these children are unified into families and are assimilated in the Khasi idea of life while these groups of families are traced to their mother and are made to revolve on this ancestress as the pivot of their existence....."

Thus, it is unimaginable that the Khasi, a tribe, which practised such a novel, unconventional and liberal ideology could allow its tool of governance at the lowest rung, namely the village head, to betray and hold its rich cultural heritage to ransom by preventing his own kinsmen from practicing his lawful avocation while denying their right in the native village only on the ground of inter-religion marriages. Need we say that, for opening a bank account, obtaining proof of residence and for other small, small matters certificates of a neighbour or any respectable person of the village, instead of headman, should be sufficient and equally acceptable. Need we also say that the voter's card or the bank account-pass book or ration card or telephone bill or similar other utility bills and documents should be treated as sufficient proof of residence. We have single citizenship but it appears that still there are some unfortunate few who are treated as second class or third class citizens in their country even though we claim to be a socialist, secular, democratic republic. Thus, we direct the Union of India through the Cabinet Secretary and the Chief Secretary, Meghalaya, to issue necessary directions to all the authorities concerned that any of such documents as mentioned herein above shall be accepted as proof of residence without further queries and they shall also prescribe punishments for commission or omission, if any, for violation of such directives. There is no dispute that the institution of headman has existed since long, and its role was well accepted for the purpose of supervising and controlling "Raid" lands, etc and performing certain other functions connected therewith including the welfare of the tribal people of the village. The incumbent of the institution also had some amount of executive and judicial authority at village level to maintain peace and comity in the clan which used to elect them.

11. In the book, Customary Laws of the Khasis of Meghalaya, published by Law Research Institute, Eastern Region, and sponsored by North Eastern Council, Shillong, at page 83, there is a reference to "headman" :

"The overall superintendence of the village court and Raid court was vested in the Syiem. He exercised these powers either personally or through his heir apparent. Thus the Lyngdoh, Basan, Lyngskor, Matabor, Sirdar, etc, acting as local and head of villages or Raids wielded executive and judicial powers. They were magistrates and police heads and submitted judicial reports to the Syiem. In addition, they supervised the administration and looked after the affairs of the whole Raid. They also arranged ceremonies and cultural functions of the Raid and sent their offerings to the Syiem at the time of state ceremonies."

12. Thus, the institution of Headman has existed since long even before the Acts, Rules and Regulations were made. However, the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 is the only statute passed by the Autonomous Council which deals with the "Headman" specifically. Vide Section 2(k) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, the Headman has been defined as :

"(k) "Headmen" means a Myntri, a Basan, a Matabor, an Elector, a Pator, a Sirdar Shnong and Rangbah Shnong."

The election or nomination and appointment of Chief and Headmen have been provided in Section 3 of the said Act as under :

"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."

However, the provisions do not specify any uniform eligibility qualification for a person to hold the office of Headman which has been left to the Chief and his Durbar to determine. The Act also does not prescribe the exact duties they are supposed to do and also about the remuneration, they should be paid by the Autonomous District Council or the State Government for performing the duties, but that nevertheless, we cannot gainsay that the Headman has been traditionally performing certain executive and judicial functions. But, whatever the nature of powers they are vested under the customary or codified law, those powers have to be exercised dispassionately and with circumspection and nondiscrimination. So long as the headmen exercise such powers in a disciplined manner, there would be no occasion for any dispute nor a reason for the Court to interfere, but in the instant case, since the Headman and the members of the Village Defence Party were found to exceed the limit, the Court had no option but to pass the impugned directions as also certain observations. It only gives the impression that all the philanthropic and humanitarian objectives, being the cardinal principles of Khasi culture, which used to be practised religiously by their ancestors have now remained only in the page of their history.

13. In the case of **Smti Matilda Lyngdoh v. State of Meghalaya and Ors. (WP(C) No.7(SH) of 2008), reported in 2009 (1) GLD 499**, the Shillong Bench of Gauhati High Court has held that, an statutory authority appointed under the Indian Registration Act, 1908 is required to exercise his power of registration within four

corners of the law. The Court observed that, nowhere in the Registration Act, there is an obligation on the part of authority to insist upon a person to obtain the consent of an unauthorised person like the local headman for registration of sale deed or for that matter in a deed of transfer which is otherwise duly executable in accordance with the law. This was held to be a case of abdication of authority on the part of registration authority in refusing to register the sale deed. Thus, the registering authority was found to act illegally in not registering the sale deed presented to him for registration by the petitioner.

In the case of **Dr. W. Kharshiing v. Commissioner and Secretary to the Government of Meghalaya and others, (WP(C) No.148 (SH) of 2000), vide the order dated 23.9.2003**, it was held that the views of the local Durbar representing residents of a particular locality undoubtedly will carry the highest weight and it must be respected, but a statutory authority exercising powers conferred on it by the Statute must arrive at its own decision in the matter without in any way surrendering its wisdom to any other authority not recognised by the Statute.

Thus, when the matter was reported to the Local Police and the Additional District Magistrate or any other executive or judicial authority, they should have, without caring for the orders of the Local Headman or the Members of the Village Defence Party, under legal obligation, protected the fundamental and legal rights of the writ petitioners (the respondents herein). As such, they deserve to be visited with some punishments by way of imposing costs which should be paid as compensation to the respondents writ petitioners. Thus, we impose the costs of Rupees Two lakhs on the Police officer; the Additional District Magistrate, the Headmen and Members of the Village Defence Party concerned which shall be paid by them in equal proportion for payment by way of compensation to the victims/the writ petitioners.

14. In the instant case, without issuing a show cause notice, and without having an statutory sanction, the private respondents were prevented from returning to their native places by the village Headman and the Members of the Village Defence Party which was in blatant violation of their fundamental rights. Even in the case of decisions taken by an statutory authority, it is a fundamental right of a citizen to know the basis or reasons behind the decisions. A Full Bench of Hon"ble the Apex Court, long before the Right to Information Act came into being, in **Dinesh Trivedi, MP and others v. Union of India and others, reported in (1997) 4 SCC 306**, has held that the basis of right of a citizen to know about the Government decisions and actions is derived from freedom of speech. It is a fundamental right which is only subject to overriding interest of public security and secrecy.

15. Thus, the acts of the Headmen and members of the Village Defence Party, who had no legal authority, were not justified in conducting themselves in the manner which had forced the parties to seek the intervention of the Court. Thus, learned single Judge was well within his rights to make the observations in question. However, it is not clear that the parties who belonged to two different religions,

namely, Christian and Niam Chnong, had got their marriage registered or not. In **Seema (Smt) v. Ashwani Kumar, reported in (2006) 2 SCC 578**, Hon"ble the Supreme Court has held, that the marriages of all persons who are citizens of India belonging to various religions should be compulsorily registered in their respective States where the marriages are solemnised. For the State of Meghalaya, where the inter-caste and inter-community marriages are not very uncommon, the observations (in para 6 of the judgment) made as under may be relevant :

"6.....Under the Special Marriage Act, 1954 which applies to Indian citizens irrespective of religion, each marriage is registered by the Marriage Officer specially appointed for the purpose. The registration of marriage is compulsory under the Christian Marriage Act, 1872. Under the said Act, entries are made in the marriage register of the church concerned soon after the marriage ceremony along with the signatures of bride and bridegroom, the officiating priest and the witnesses...."

Therefore, for avoiding the kind of dispute that has arisen in this case on account of inter religion or inter tribe marriages, it is worth directing the State Government to ensure that all the marriages are compulsorily registered so that there would be nothing for any outside agency to interfere with inter religion nuptial relationships.

16. Besides, yet another point that also needs to be answered with settled position in law as raised at the Bar is, that the learned single Judge has passed the impugned directions and observations out of context and even after the parties had compromised the matter and did not want to further pursue it. In the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, reported in (1998) 8 SCC 1**, vide paras 14,15,20 and 21, it has been held as under :

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose."

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of

the constitutional law as they still hold the field.

20. Much water has since flown under the bridge, but there has been no corrosive effect these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal.""

17. A similar view has been taken in the case of **Committee of Management and Another v. Vice-Chancellor and others reported in (2009)2 SCC 630** wherein, it is provided that the availability of alternative remedy by itself cannot be a ground for the High Court to refuse exercise of its jurisdiction. It can exercise its writ jurisdiction notwithstanding the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior courts cannot refuse to exercise their jurisdiction although there exists an alternative remedy.

18. Further, in **Commissioner of Endowments and Others v. Vittal Rao and Others reported in (2005)4 SCC 120**, it has been held that the High Court while exercising jurisdiction under Article 226 of the Constitution can pass appropriate orders and such powers can neither be controlled nor affected by the provisions of Order 23, Rule 3 CPC. It would not be correct to say that the provisions of Order 23, Rule 3 should be mandatorily applicable even in the case of exercising jurisdiction under Article 226 of the Constitution or else it may lead to an anomalous situation that before disposing of the writ petition, the Court would be required to frame issues and take evidence, even during the proceedings under Article 226. In fact proceedings under Article 226 of the Constitution stand on a different footing when compared to the ones in suits or appeals arising therefrom.

19. Again in the case of **Godrej Sara Lee Limited v. Assistant Commissioner(AA) and Another reported in (2009)14 SCC 338**, it is provided that even if there is no specific ground or prayer for quashment of a Notification still the High Court in exercise of powers under Article 226 can pass appropriate order. Thus, the learned single Judge was well within the pale of his competence and the jurisdiction in exercise of powers under Article 226 of the Constitution of India in passing the directions and observations.

20. Since every citizen of the country has got statutory Right to Vote as well as not to Vote under Section 79(d) of the Representation of Peoples Act 1951 and Rules 41(2) and (3) and 49 O of the Conduct of Election Rules 1961, therefore, in the election of Headman across all sections of the society, all eligible voters whether tribal or non-tribal, Christian or non-Christian, irrespective of their caste, creed, culture and religion should be encouraged and henceforth shall be allowed to cast their vote. The statutory sanction behind the Right to Vote has already been discussed in great detail by Hon''ble the Apex Court in **People's Union for Civil Liberties and Another v. Union of India and Another, reported in (2013) 10 SCC 1**. Moreover, universal franchise by way of participation of people across all sections of society in the election of Headman, an useful tool of governance at the grass root level of democracy, can also make the institution more respectable and acceptable, and it can legitimately command the cooperation of all the residents of the village and tribe in the performance of duties by the incumbent of the office.

21. Thus, in view of the aforesaid discussion, we dispose of the appeal while holding that the traditional institution of Headman being an important tool of governance at the grass root level in the tribal system of democracy has existed since long. But since it appears that there is no uniformity in respect of customary laws, practices and usages as well as the provisions of law enacted by Autonomous District Councils, apart from local legislation made by the concerned Autonomous District Council, which may cover customary laws, practices and usages prevailing in the Elaka or villages, there should be some common qualifications and eligibility criteria for contesting election to the office of Headman, and also regarding the term of office, the remuneration to be paid for performing the duties, and the nature of duties connected with the office etc. Thus, we recommend to the State to bring a suitable and comprehensive legislation to settle the controversies connected with this office once and for all. The very fact that this institution acts as a tool of governance at the grass root level and is also being assigned an important role in implementing various programmes and schemes of the Central Government as well as the State, the office of the Headman also needs to be brought within the purview of the provisions of the Right to Information Act and thus we direct the authorities to frame necessary Rules in this regard for furnishing required information connected with the activities of the Headman and his office and also about the Schemes, he is assigned to implement, besides other duties which the headmen are obligated to perform under the customary laws, practices and usages prevalent in their area as well as under various provisions of the Central and State enacted Statutes. The State should also include the Headman in the definition of "Public Servant" for the purpose of prosecution under the provisions of Criminal Law, particularly, the Prevention of Corruption Act in the case of allegations of committing any financial irregularity or any other economic offences. It may also not be out of context, particularly looking at the amount of responsibilities, a Headman is said to be discharging under the Customary Laws as well as various Statutory

provisions (in the absence of any other elected body at the grass root level), apart from being assigned with the additional responsibility of implementing various Social and Government Schemes and programmes, to impress upon the State, in the public interest, to make some Statutory provision for fixing a remuneration commensurate with the responsibilities being discharged by the person holding that office so that he is able to perform his functions and duties honestly and with full dedication and devotion. Moreover, the State Government should also ensure that no person with anti-national and criminal background is allowed to contest the election, and as far as possible, the qualifications and eligibility criteria as provided under the Representation of Peoples Act 1951 and other Statutes for a candidate to contest the election to the State Assembly should also be made applicable to the case of candidates contesting the election for the post of Headman. Besides, we also provide that till the suitable legislation or an ordinance during the pendency of the Bill is brought by the State Government, the directions passed in the impugned judgment which we affirm with modifications as the aforesaid shall remain in force.

22. With these directions and observations, the writ appeal is disposed of.