
(2014) 12 MEG CK 0019
In the Meghalaya High Court
Case No : WA No. 9 of 2014

Edibor Chyne

APPELLANT

Vs

The Khasi Hills Autonomous

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

United Khasi Jaintia Autonomous District (Election of Wahadadar) Act, 1955 — Section 22, 22(i)

Citation : (2014) 12 MEG CK 0019

Hon'ble Judges : Uma Nath Singh, Acting C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Judgement

Uma Nath Singh Actg. C.J.

1. We have heard learned counsel for the parties and perused the pleadings of the writ appeal. Learned counsel for appellants submitted that learned Single Judge vide order dated 11-02-2014, in WP(C) No. 365 of 2012 and MC [WP(C)] No. 511 of 2012, closed the case of the appellants by committing error as the Acting Wahadadar of Shella Confederacy, East Khasi Hills, had no power to temporarily suspend the Secretary of Shella Village Durbar and his Durbar. The said order of Wahadadar of the Shella Confederacy was challenged by elected Members of Shella Village Durbar. Petitioner No. 1 was democratically elected as Assistant Secretary of the Durbar where as petitioner No. 2 was elected as a Member thereof. The order dated 11-02-2014, passed by learned Single Judge on reproduction would read as:

"BEFORE HON"BLE MR. JUSTICE S.R. SEN WP(C) No. 365 of 2012 WITH MC(WP(C)) No. 511 of 2012

11.02.2014

Mr. B.M. Roy Dolloi, learned counsel for the petitioner is not present before the court. The matter came up for hearing.

Mr. V.G.K. Kynta, learned Sr. counsel for respondents No. 1 and 2 submitted before the court that the matter became infructuous as fresh election has already been conducted and new office bearer has already been appointed so far as the Office of the Secretary, Shella village Durbar as well as other Durbars also produce one letter dated 04.02.2014 addressed to the Secretary, Durbar Shnong, Shella issued by the Acting Wahadadar, Shella Confederacy.

Mr. H.S. Thangkhiew, learned Sr. counsel for respondent No. 3 supported the submission advanced by the learned Sr. counsel, Mr. V.G.K. Kynta.

Considering the submissions advanced by the learned counsel referred above, and taking into consideration that since the petitioner's counsel is not present, the matter is closed on being infructuous.

The learned counsel for the intervener, Mr. S. Wahlang is present.

The matter stands disposed of.

JUDGE"

2. Learned counsel also referred to the order of the office of Wahadadar of the aforesaid Confederacy dated 28-09-2012, whereby the Secretary of Village Durbar and the appellants as elected Assistant Secretary and Member were suspended and restrained from functioning in any manner or call for any gatherings/meetings in the name of the Shella Village Durbar. They were also asked to appear before the Court of the office of Acting Wahadadar for trial on the Complaint/Objection Petition dated 30-07-2012. The office of Acting Wahadadar was directed to call for public meeting for selection of Acting Secretary and Members in the interim period in order to run the affairs of Shella Village Durbar in Shella Village. The order dated 28-09-2012, reads as:

"Office of the ACTING WHAHDADAR, SHELLA CONFEDERACY, SHELLA, EAST KHASI HILLS.

ORDER

1. This Office received the Complaint/Objection Petition of Shri B. Ora and Two Hundred Forty Five Villagers who are the residents of Shella Village Dt. 30th July, 2012 against Shri Tobias Tiewdop, Secretary, Shella Village Durbar and his Durbar, which indicates and shows his high-handedness and sets aside (sic) the Customs, Usages (Riti Dusturs) of the Village and other acts of high-handedness, exploitation as indicated in the above Complaint/Objection Petition.

2. This Office on receipt of the Complaint/Objection Petition, through the Executive Durbar, Shella Confederacy, Vide Dt. 7th August, 2012 decided to call upon the Complainant and others to prove and clarify their Complaint/Objection Petition on Dt. 14th August, 2012 and the Secretary, Shella Village Durbar alongwith the Headman, Sandi Shella, on 16.8.2012 to enquire on the above Complaint/Objection.

3. The Complainant and two of his associates personally appeared before the Executive Durbar of the Elaka on 14.8.2012 in the office of the Elaka at Shella Bazar, enquired and recorded Statement on their Complaints/Objection Petition of the Complainants.

4. The Opposite Party did not appear before the Executive Durbar of the Hima (Elaka) held on 16.8.2012 in the office of the Hima (Elaka) at Shella Bazar (Hat) insite (sic) of having received the Notice dt. 7.8.2012 calling upon him to appear before the Executive Durbar at 12.00 Noon, he instead sent information in writing dt. 13.8.2012 in writing dt. 13.8.2012 stating that he is unable to attend. The Headman himself attended on 15.8.2012 at 1.00 PM on enquiry on the above Complaint/Objection Petition, he gave his replies (Statement) on the said date, the Executive Durbar decided to call again the Opposite Party for the second time on 28.8.2012 Vide Notice dt. 18.8.2012.

5. The Opposite Party did not attend/come before the Executive Durbar of the Hima(Elaka) who was called upon Vide Notice dt. 18.8.2012 to answer on the Complaint/Objection of Shri B.Ora and Others before the Executive Durbar held on 28.8.2012 but instead he informed Vide his letter dt. 27.8.2012 which was against and affect the prestige of this Office. So the Executive Durbar after considering the matter in details on the above information of the Opposite Party took the decision to call upon him again for the third time and last time too.

6. This Office Vide Notice dt. 31.8.2012 called upon the Opposite Party that he should come before the Executive Durbar to be held on 13.9.2012 in the office of the Shella Confederacy at Shella Bazar, the Opposite Party personally received the Notice but he did not come on the said day but just sent his written information dt. 13.9.2012, such information of the Opposite Party was downgrading the prestige and jurisdiction of this office.

So after detailed perusal of the Complaint Petition of the Complainants, it was found that it affected the peace and tranquility in the Society of Shella Village and found also the writings of the Opposite Party had affected the decorum and the administration. Due to the above facts, I Shri Wallamphrang Lyngdoh Mawphlang, Acting Wahadadar, Shella Confederacy, as Chief of the Elaka, Shella Confederacy, conferred by the Khasi Hills Autonomous District Council. I pronounced this order today dated 28th September, 2012.

(a) That Shri Tobias Tiewdop, Secretary, Shella Village Durbar and his Durbar have been suspended and restrained from functioning in any manner or call for any gatherings/meetings in the name of the Shella Village Durbar.

(b) That he should appear before the Court of this Office at any time to be called for trial on the Complaint/Objection Petition dt. 30.7.2012.

(c) This Office will call for public meeting for selection of the Acting Secretary and members for (the interim period) running the affairs of the Shella Village Durbar in Shella Village.

This Order will continue until further order.

(Shri Wallamphrang Lyngdoh Mawphlang) Acting Wahadadar, Shella Confederacy, Shella."

3. Learned counsel also took us through a correspondence from the office of Acting Wahadadar Shella Confederacy, East Khasi Hills, dated 06-06-2014, to the Elders of the Shella Village Durbar informing them that upon examination of the case of the appellants, no ground was found to continue with earlier order dated 28-9-2012, or issue any order on the Complaint Petition of the complaints. Thus, Shella Village Durbar was instructed to consider and take all action necessary in accordance with the customs, usage, traditions and practices (Riti Dustur) of Shella Village for bringing back peace and tranquility, welfare and well being in that village as a whole.

4. Learned counsel also referred to an order in Misc. Pol. Case No. 43 of 1938 Porwana No. 2359 passed by Deputy Commissioner, Khasi & Jaintia Hills, dated 24-06-1938, regarding the appointment and powers and functions of the Headmen and Members of the Shella Durbar Committee. In the said order the resolution of 10th December 1920 was reiterated except that the Wahadadars ceased to belong to the Committee or Durbar Committee because now in their place other members were elected. As per this order, the Headmen of the Committee were not required to do anything with the supervision of Shella Durbar. They were declared to be only judicial officers, having no standing unless someone brought a case before them. They could of-course take up a case in which there were allegations against the Durbar or Committee for non performance of their functions as they should. The said correspondence is also reproduced herein below:

"Office of the Deputy Commissioner Khasi and Jaintia Hills, Shillong

Misc Pol. Case- No. 43 of 1938

Porwana No. 2359 Dated Shillong the 24th June 1938

To

U. Jogordhon, Head man, Jogidhon Ex Wadar and others of Shella.

Subject -- Appointment of Member of the Shella Durbar Committee.

The election of members of the Shella Durbar Committee by the Durbar in presence of Mr. Jormanik, Sub-Deputy Collector on the 15th June 1938 is approved.

With regards to the position of the Headman of Shella it does not appear that the Headman have anything to do with the supervision of the Shella Durbar.

The Resolution of 10th December 1920 (Except now the Wahadadars do not belong to the Committee or Durbar Committee that others are elected in their place) stands. The Headmen are only judicial officers and have no standing

unless some one brings a case before them. They can of course take up case in which some one alleges that the Durbar or Committee are not performing their functions as they should.

Sd/- C.A. Humphery Deputy Commissioner Khasi & Jaintia Hills"

5. Thus, learned counsel submitted that the appellants being elected representatives of the people of the Village Committee were functioning in the Village Durbar as Assistant Secretary and Member. They were not in any manner subordinate to Acting Wahadadar of the Confederacy administratively for the purpose of disciplinary proceedings. The said Wahadadar thus had no power to pass the order. Learned counsel submits that though the case stood closed upon expiry of term of one year of the office of appellants and a fresh election was conducted, but the question as to whether the Wahadadar was competent to pass the order of suspension still remains open to be answered. There is no abdication of autonomy and independence of Village Durbar simply for the reason that Shella Village is a member of the Shella Confederacy. The power of Headman is well defined, so are the powers and functions of the Executive Committee of the Village. Learned counsel for respondent-Wahadadar, on the other hand referred to the affidavit filed-in-opposition to the writ petition. In particular, he read out paragraph 24 thereof which is reproduced as:

"24. That the answering deponent further states that the petitioners has challenged the authority of the respondent for suspending them from the post of the Assistant Secretary, and Member of the Shella village Dorbar, as stated above the respondent is the head of the Elaka who manages the administration of the Elaka of Shella Confederacy as provided under Section 22(i) and (ii) of the United Khasi-Jaintia Autonomous District (Election of Wahadadar) Act, 1955 which provides as follows:--

(i) Carry out all orders issued on him from time to time by the Executive Committee or its officers acting for and on behalf of the Executive Committee.

(ii) Run the administration of the Confederacy in accordance with the customary rules and practice as may be approved by the Executive Committee and in accordance with such laws, rules and regulation as may be passed from time to time by the District Council.

A simple reading of the aforesaid provision of the Act of 1955 clearly shows that the respondent has the power to run the administration of the Confederacy as the Head of the Confederacy and in the instant case it is after receiving complaint from the villagers of Shella village of the high handedness and misadministration of the petitioner and after the petitioner has failed to show cause inspite of numerous opportunity given to him to do so the respondent and his Durbar was left with no alternative but to suspend the petitioner as per customary rules and practice prevalent in Shella Confederacy".

6. Thus, on the basis of the aforesaid averments, learned counsel tried to explain

the position that as per provisions of Section 22 of the United Khasi Jaintia Autonomous District (Election of Wahadadar) Act, 1955, (For short "the Act of 1955), the order of suspension passed by respondent No. 3 Wahadadar was justified.

7. On due consideration of the rival submissions and reading of the provisions of Section 22 of the Act of 1955 and the averments made in writ appeal, we are of the view that the Acting Wahadadar of Confederacy had no power to pass the impugned order. The appellants were the elected representatives of the people, whereas respondent No. 3, Acting Wahadadar, though also an elected representative for five years, was only the Chief Executive of the Confederacy of nine villages. A village on acquisition of membership of a confederation does not lose its independent identity in tribal system of democracy. It would remain an independent and autonomous unit for running the village administration. Though learned counsel for respondent No. 3, submits that even after election as Assistant Secretary, the appellant was appointed as such by respondent No. 3 (Wahadadar), but in support of his submission, he could not produce any document from the record of this case. His only argument is that it is based on some established practice. But that nevertheless, in terms of Section 22(i) & (ii) of the United Khasi-Jaintia Autonomous District (Election of Wahadadar) Act 1955, the Customs, Rules or Practice whereunder the Wahadadar can supposedly exercise his powers and perform functions have to be approved by the Executive Committee of the District Council. Had there been any approval to any Customary Rules or Practices to the effect, then there must have been a notification from the District Council which is conspicuous by absence in the records. Besides, there is no law, rules or regulations said to be framed by the Executive Council to that effect. In that case, we have no option but to hold that the Acting Wahadadar though may be Head of the Shella Confederacy had no power to suspend the elected representatives of the Shella Village Durbar, and restrain them from performing their official duties like calling or organising any gathering/meeting in the name of the Shella Village Durbar, and also to direct them to face the trial before the confederacy. The writ appeal is thus disposed of with the aforesaid findings and now no relief can be granted for the reason that the term of office of the appellants said to be for one year had already expired and in their place, the village had elected some other representatives to act as Secretary/Assistant Secretary and Executive Members of the Village Durbar, and probably that was the reason, why the learned Single Judge closed the proceedings.

8. Mr. S. Wahlang, learned counsel, appears for the intervener Headman. He also submitted that the Wahadadar of Shella Confederacy by placing the Secretary and his Durbar under suspension has interfered with the jurisdiction of the Headman of Shella Village and the autonomy of Shella Village Durbar. However, since that question has not been raised in the writ petition or writ appeal, we leave it open to be considered and decided in some other appropriate proceedings.