

(2005) 09 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (C) No. 303 (SH) of 2005

Euridith Sutnga

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 11, 4, 4(1), 5

Citation : (2006) GLT 71 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : D. Das, for the Appellant; K.S. Kynjing and S. Kynjing, Jr. Advocate, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. D. Das, learned Counsel for the Petitioner and also heard Mr. K.S. Kynjing, learned senior Counsel assisted by Mr. K. Sunar, learned Counsel for the Respondents-District Council Court Jowai.

2. The facts leading to the filing of this writ petition is that the Respondents-District Council had issued a notification on 29.04.2003 for holding of an election of Doloi of Sutnga Doloiship fixing 26.5.2005 as the date of election and the date for counting was fixed on 27.5.2005. The election was accordingly held on 26.05.2005, however, the result was not declared on 27.5.2005 as fixed in the notification. The Petitioner, therefore, approached this Court in WP 165 (SH) 2005 seeking for a direction to the Respondents-District Council to count the votes. This Court disposed of that writ petition by the order dated 01.06.2005 directing the Respondents to declare the result of the election at the earliest preferably within three days from the date of the order. Accordingly, the result was declared on 06.06.2005 and the result of the election was issued by the Returning Officer on 6.6.2005.

3. According to the result of the election the Petitioner who has secured the highest votes was declared elected for appointment as the Doloi of Sutnga Elaka.

After the result was declared, the appointment of the Petitioner as Doloi of Sutnga Elaka was not approved by the District Council for which the Petitioner submitted representations dated 27.06.2005 and 11.07.2005, but no response was received by the Petitioner from the Respondents-District Council. The Petitioner having no alternative has approached this Court by this petition for a direction to the Respondents-District Council to allow him to take over the charge of the office of the Doloi of Sutnga Elaka and to function as the Doloi of Sutnga Doloiship on the basis of this election.

4. The Respondents-District Council, resisting the averments/statement made by the Petitioner in the writ petition, has filed an affidavit-in-opposition and made a statement in paragraph 9 of the affidavit that one Shri Patrick Pala who was one of the candidates in the election has filed an election petition u/s 5 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (for short the Act) on 20.06.2005 before the Executive Committee of the District Council challenging the election of the writ Petitioner.

5. The aforesaid election petition of the said Patrick Pala was registered as Political Case No. 1 of 2005 and the same is pending disposal by the tribunal constituted by the District Council under the Act. The Respondents-District Council have also filed an additional affidavit and stated that as per Section 5 of the Act, any dispute regarding the election of the Chief the same shall be referred by the party or parties concerned to the Executive Committee for decision. An appeal against the decision of the Executive Committee shall lie before the tribunal constituted for the purpose by the District Council and the decision of the tribunal shall be final.

6. In order to appreciate the contentions of the parties, we may refer to the provision of the United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959. Section 4 of the Act provides for confirmation of the appointment of the Chief by the District Council, on such conditions as provided u/s 4 of the Act.

7. Section 5 of the Act relates to dispute regarding the election of Chiefs. Section 5 which reads as follows:

Dispute regarding election of Chiefs--If any dispute arises regarding any matter relating to, or connected with, the election of a Chief, the dispute shall within 30 days after the publication of the result of the election be referred by the party or parties concerned to the Executive Committee for decision. An appeal against the decision of the Executive Committee shall lie to a tribunal constituted for the purpose by the District Council and the decision of the tribunal shall be final. Any appeal before the tribunal shall be filed within 30 days after the order of the Executive Committee is communicated to the party or parties concerned.

A close perusal of Section 5 of the Act shows that it confines only to the dispute regarding the election of Chief. There is no condition u/s 5 of the Act to enable the District Council to withhold the election of a declared candidate who was duly

elected and the election declared by the Returning Officer. Section 5 of the Act does not contemplate that the appointment: of an elected candidate can be withheld during pendency of the election petition filed by the defeated candidate. In absence of such provision in the Act the appointment of the elected candidate has to be approved by the District Council as provided u/s 4 of the Act.

8. Sections 4 and 5 of the Act have been dealt with in detailed by a decision of the Full Bench of this Court in the case of U.G. Koring Singh Lyngdoh, Petitioner v. Executive Committee, District Council, UKJ Hills District, Shillong and Ors., Respondents reported in AIR 1971 Gau 129. In the said decision, the Apex Court has dealt with Section 5 of the Act in paragraph 13 of the judgment which reads as follows:

We may next refer to the third submission of the learned Counsel for the Petitioner. The ground given in the impugned order is that there is a pending election dispute with regard to the Petitioner's nomination. Such a dispute is contemplated u/s 5 of the Act and there is no express provision in the Act or under any rules empowering the Executive Committee or even the Tribunal later in appeal to stay the election or the appointment. Even under the Representation of the People Act, there is no provision for staying an election pending an election dispute. In the absence of such a provision in the law, the lacuna cannot be filled up by an executive or administrative order. The Executive Committee far less the Chief Executive Member individually, has no jurisdiction to revoke, stay or suspend the appointment of a Chief following his election, pending approval of the District Council, who alone can pass appropriate orders at that stage in relation to the appointment that had been already made by the Executive Committee u/s 4 of the Act. Such an appointment by the Executive Committee will take effect and be effective for all purposes of administration, subject to the approval of the District Council.

9. Section 4(1) of the Act has also been dealt with by the Full Bench of this Court in Paragraph 14 of the same judgment which reads as follows:

The expression "subject to the approval" in the case of an appointment in a case of this kind will mean that the appointment is valid and effective until disapproved by the District Council. The words "subject to the approval" are not the same thing as "subject to permission", nor are they same as the words "with the approval". In case of an appointment subject to approval of a higher authority, in absence of any express provision to the contrary, the appointment in law will be effective until it is disapproved by the higher authority. When the appointment is disapproved the same will cease to have effect, but to the approval will be valid in absence of any express provisions to the contrary. If an appointment is required to be made with the approval of a higher authority, the appointment is not valid nor effectual in absence of the approval. This is not so when the appointment is subject to the approval of a higher authority. Hence, in the absence of disapproval of the appointment by the District council, the appointment of the Petitioner u/s 4(1) of the Act made by the Executive

Committee following his election is valid in law and the Petitioner is entitled to function as the Lyngdoh of Mawphlang Elaka. We are happy to arrive at this decision which is also in accord with democratic notions which are embedded in the grassroots of the Hills.

10. From the above decisions of the Full Bench of this Court, it is clear that the Respondents-District Council has no jurisdiction to revoke or stay or suspend the appointment of the Chief following his election after he was duly declared elected. Section 4(1) of the Act however, provides for approval of the election and nomination of Chief by the District Council.

11. In the instant case, the Respondents in their affidavit-in-opposition has taken the plea that there is an election petition pending trial and that there is an Acting Chief who is still functioning as a Dolloi. No plea whatsoever was taken that the election of the Petitioner was disapproved. Since there is nothing to show that the Respondents-District Council has disapproved the election of the Petitioner and in absence of such disapproval of the election of the Petitioner the Respondents-District Council is bound to comply with the provision of Section 4(1) of the Act and to grant the Petitioner appointment as provided under the Act.

12. In view of the law as laid down by the Full Bench of this Court, I am of the opinion that the grounds taken by the Respondents-District Council in their affidavit-in-opposition that the election of the Petitioner could not be approved because the pendency of this writ petition is not legally tenable in law. As such the pendency of election petition shall not be a bar for approving the election of the Petitioner.

13. With regard to the second contention of the Respondents-District Council in their affidavit-in-opposition that, there is an Acting Chief appointed by the Respondents-District Council and he is still functioning and the Petitioner shall not suffer any loss as the administration of the Elaka is running smoothly because of existence of an Acting Chief. In this regard, we may look into the provision of Section 11 of the Act which reads as follows:

Appointment of an Acting Chief--If at any time the post of a Chief is vacant, the Executive Committee may by an order in writing appoint any person to act as an Acting Chief who will exercise all the power and functions of the Chief. An Acting Chief will remain in office until the appointment of a new Chief or until he is removed by the Executive Committee.

14. On perusal of Section 11, it clearly shows that Acting Chief will hold office and function as a Chief until the appointment of a new Chief or until he is removed by the Executive Committee. By this provision of Section 11, the Acting Chief ceases to function as soon as a new Chief is appointed. In the instant case, a new Chief has already been elected and he is entitled to assume the office on the approval of his election u/s 4 of the Act. In other words Section 11 also provides that the Acting Chief will hold the office according to the direction of the Executive Committee and he may be removed by the Executive Committee at

any time. Therefore, there is no question that in existence of an Acting Chief, the Petitioner cannot be appointed. The clear mandate is put by Section 11 that the Acting Chief will hold the office until the appointment of the elected candidate.

15. Considering all the above facts as narrated above, I am of the opinion that the Petitioner is entitled for approval as provided u/s 4 of the Act.

16. Accordingly, it is directed that the Respondents-District Council shall accord approval to the election of the Petitioner as provided u/s 4 of the Act and this shall be done as early as possible preferably within a period of two months or in a next session of the District Council which ever is earlier.

17. With the above observations and directions, this writ petition is disposed of. A copy of this order be furnished to the learned Standing Counsel for the Respondents-District Council.