

(2003) 07 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (C) . No. 6541 of 2001 and 221 (SH) of 2002

Ewanlangki-Erymbai and Others

APPELLANT

Vs

Jaintia Hills District Council and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 19, 19(2), 28, 29, 30
Constitution of India, 1950 — Article 14, 15, 16, 19(1), 19(6)
Jowai Autonomous District (Administration) Act, 1967 — Section 3
Lushai Hills District (Trading by Non-Tribals) Regulation, 1953 — Section 3
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 2, 3, 4

Citation : (2003) 3 GLT 66

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : K.S. Kaynging and K. Sonar, for the Appellant; A. Sarma, Addl. Advocate, A.G. Meghalaya, B. Dutta, H.S. Thangkhiew, B.W. Phira, M.Z. Ahmed, G.S. Massar and E.C. Saja, for the Respondent

Judgement

P.P. Naolekar, C.J.—These two petitions are filed by Shri Ewanlanglki-e Rymbai who belongs to Jaintia Scheduled Tribe of Meghalaya and Christian by faith and Elaka Jowai Secular Movement represented by its Vice Chairman Shri J. Jones Syngkon and the Executive Member Shri Jopthraw Lato who have claimed to belong to the clan who are entitled to hold the Offices of Dolloi, Elaka Jowai, challenging the constitutional validity of Section 3 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, the notice No. JHADC/POL/25/2000-2001/19 dated 28.8.2001 issued by the office of Jaintia Hills Autonomous District Council, Jowai declaring the programme of election of Dolloi in the Elaka Jowai and the notice No. JHADC/POL/25/2001/25 A dated 4.9.2001 issued by the Secretary, Executive Committee, Jaintia Hills Autonomous District Council, Jowai declaring only certain clans mentioned therein to have the right to stand for the election of the

Dolloiship in the Elaka Jowai whereby the Christians have not been permitted to contest the election.

2. Before we deal with the contentions raised by the parties, it will be useful to have brief resume of the formation of Autonomous District Councils in United Khasi-Jaintia Hills and thereafter Jowai District Council and relevant constitutional provisions and the various Acts and Rules framed thereunder. On the 26th January, 1950 when the Constitution came into force, the United Khasi Jaintia Hills District was formed as one of the Tribal Areas of Assam, and in this area were merged the Khasi States with the other areas of the Khasi Jaintia Hills. The boundaries of this area are defined by paragraph 20(2) of the Sixth Schedule to the Constitution. Under paragraph 2(4) of the Sixth Schedule the administration of the United Khasi Jaintia Hills District vested in the District Council. The District Council has been clothed with administrative, legislative and judicial powers for the territories of the District by the relevant provisions of the Sixth Schedule. Purporting to act on certain representations received, the Governor of Assam appointed a Commission under paragraph 14(1) of the Sixth Schedule on 26th August, 1963. This Commission was required to examine and report in the matter of (1) creation of a new autonomous District for the people of Jowai Sub-Division of the United Khasi-Jaintia Hills Autonomous District and (2) exclusion of the area from the united Khasi Jaintia Hills Autonomous District. The Commission made its report on the 20th January, 1964 and recommended the creation of a new autonomous District Council for the Jowai Sub-Divisions of the United Khasi Jaintia Hills Autonomous District by excluding the areas comprising the area of the said Sub-Division from the United Khasi Jaitia Hills Autonomous District. This report was placed before the Assam Legislative Assembly and the Assembly approved the action proposed to be taken by the Govt, of Assam. On 23rd November, 1964 a notification was issued by the Governor of Assam in accordance with the memorandum which has been placed before the Assam Legislative Assembly. By this notification the Governor of Assam pleased to create a new Autonomous District to be called the Jowai District by excluding the Jowai Sub Division of the United Khasi-Jaitia Hills District with effect from 1st December, 1964.

3. Sixth Schedule to the Constitution of India provides for administration of the tribal areas in Assam. By paragraphs 1 and 20 of the Sixth Schedule the whole tribal area is divided into Autonomous Districts and two other areas. Autonomous District can in turn be divided into Autonomous Regions. Paragraphs 2 to 17 deal with the administration of Autonomous Districts and Autonomous Regions, while in paragraph 18 provides for the application by the Governor of the provision of paragraphs 2 to 17 to the other two areas specified in paragraph 20. The Jaintia Hills Autonomous District Council and thereafter Jowai Autonomous District Council, which was formed out of the area, with which we are concerned in this case, is to comprise the territories which before commencement of the Constitution were known as the Khasi and Jaintia Hills District excluding certain areas within the cantonment and municipality of Shillong District Councils and

Regional Councils are to be constituted under paragraph 2 and the Governor is given power to make rules for first constitution of District Councils and Regional Councils in consultation with the existing tribal councils or other representative tribal organisations with the autonomous districts or regions concerned, and the rules shall provide for the composition of the Councils, the delimitation of territorial constituencies, the qualifications for voting at elections and the preparation of electoral rolls, the qualifications for being elected as members of Councils, the term of office of the members and any other matter relating to or connected with elections or nominations to such Councils, the procedure and the conduct of business in the Councils and the appointment of officers and staff of the Councils. These very powers were conferred on the District or Regional Council after it came into being along with certain other powers for formation of Local Council or Boards and their procedure and conduct of business, and generally all matters relating to the administration of the district or region, as the case may be. All matters relating to the transaction of business pertaining to the Autonomous District Council or Regional Council, as the case may be, was given to the District or Regional Councils. Paragraph 3 gives power to the District and Regional Councils to make laws with respect in various matters including the appointment or succession of Chiefs or Headmen subject to such laws being submitted to the Governor without whose assent they are not to come into force. In exercise of the powers under para 2(6) of the Sixth Schedule the Governor of Assam framed rules in the year 1954 called "the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951. The Rules provide, inter alia, for an Executive Committee with the Chief Executive Member as the head and two other members to exercise the executive functions of the District Council.

4. After constitution of the District Council of Jowai Autonomous District it was felt expedient to have a Constitution for the District Council of Jowai Autonomous District for effective administration of the district and whereas "the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 as amended from time to time by the Governor, was made applicable to the Autonomous District in the past and, therefore, it was felt necessary to make an arrangement for adoption of the said Rules as made by the Governor and, therefore enactment was brought into force as an Act which is called "the Constitution of District Council, Jowai Autonomous District Act, 1967." By Clause 3 of the Jowai Autonomous District Act No. 2 of 1967 all rules as contained in the Assam Autonomous District (Constitution of District Councils) Rules, 1951, as amended by the Governor from time to time (referred to as "The Principal Rules"), was made applicable to the District Council of Jowai Autonomous District subject to certain exceptions. By this Act the Rules framed in the year 1951 were made applicable to Jowai Autonomous District by Section 3 of the Jowai Autonomous District (Administration) Act, 1967, the Acts, Rules and Regulations framed under the United Khasi Jaintia Hills District Council as listed in Appendix-I were made applicable to the Jowai Autonomous District till such time when the Jowai Autonomous District Council makes its own laws. Appendix-1 to the Act No. 1 of

1967 at item 9 gives reference to the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (Act. No. II of 1959). Therefore under the Act of 1967 the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 was made applicable to the Jowai Autonomous District Council (hereinafter for convenience shall be called the Act of 1959).

5. The "Chief as defined u/s 2(a) of the Act of 1959 means a Syiem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadar, as the case may be, of any Elaka. "Elaka" as defined in Section 2(g) means any administrative unit in the District specified in Appendix-I, II and III or any other administrative unit to be constituted and declared as such by the Executive Committee under Appendix-III to the Act of 1959 Jowai is declared to be an Elaka, which is to be headed by the Chief, who would be a Dolloi. Section 3 of the Act, 1959 provides for election and appointment of Chiefs and Headmen. As per this provision the election and appointment of the Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned. Thus, election and appointment of Dolloi is to be held in accordance with the existing customs prevailing in the Elaka concerned Section 4 of the Act of 1959 gives authority to the District Council to give approval and confirmation to the appointment of Chiefs. The approval and confirmation shall be as per the terms and conditions, which the District Council may, by Rules from time to time may adopt Proviso to this Rule contemplates that pending the adoption of such terms and conditions the existing terms and conditions, under which the existing Chiefs were appointed, shall continue to be in force. The second proviso lay down that the terms and conditions, which are adopted by the District Council u/s 4, shall apply immediately to all the existing Chiefs. Under the 1959 Act the Chief who is a Dolloi of Jowai Elaka shall be appointed by election as provided u/s 3 in accordance with the existing customs prevailing in the Elaka of Jowai and his confirmation in the post of Dolloi shall be subject to the approval and confirmation by the District Council. We may now refer to the provisions under which the Dolloi is paid remuneration. Clause (j) of Section 2 of the Act of 1959 defines "Service Land", which means a revenue free land (Reks) held and cultivated by a Chief or Headman as remuneration for his services given in lieu of salary thereof. Clause (k) of Section 2 defines "Puja Land", which means a revenue free land held and cultivated by a Chief or Headman and the yield of income there from is utilised for meeting expenses connected with religious performances according to Customs of each Elaka. Therefore, under the Act, the Dolloi or Chief shall be paid his remuneration from the Service land and shall utilize the income from the yield of the revenue free puja land for meeting the expenses connected with the religious performances according to the customs of each Elaka. No Rules have been framed either u/s 3 or u/s 4 of the Act of 1959 by the Jowai Autonomous District Council for election, appointment and confirmation of Dolloi. These are the broad outline of the relevant provisions of the Act and Rules, with which are concerned for adjudication of the question

involved in this case, and which we shall refer when different submissions raised are considered by us.

6. Coming to facts of the case for Elaka Jowai a notice was issued on 28th August, 2001 by the Returning Officer, Dolloiship Election, Jaitia Hills Autonomous District Council, Jowai declaring programme for election of Dolloi in the Elaka Jowai by which the polling date was fixed on 3.10.2001 and date for counting of votes and declaration of the result was fixed on 4.10.2001. On 4th September, 2001 the Secretary, Executive Committee, Jaintia Hills Autonomous District Council, Jowai issued a notice, which is reproduced below-

OFFICE OF THE JAINTIA HILLS AUTONOMOUS DISTRICT COUNCIL, JOWAI
NOTICE DATED JOWAI, THE 4TH SEPT, 2001

This is a Public Notice that the Executive Committee, Jaintia Hills Autonomous District Council, Jowai after thorough investigation and scrutinisation has decided that the following clans has the right to stand for the election of the Dolloiship in the Elaka Jowai.

"A" From the Clan Sookpoh Khatrar Wyrnai

1. Pasubon 2. Rngad 3. Lipon 4. Nikhla 5. War 6. Payntein 7. Leinphoh 8. Singphoh 9. Niangphoh 10. Katphoh 11. Kynjing 12. Lakiang 13. Blein 14. Lanong 15. Lywait 16. Kma 17. Lytan-Mutyen 18. Paswet 19. Nangbah 20. Siangbood 21. Syngkon 22. Langdoh bad

"B" From the Clan Le-Kvllung

1. Rymbai 2. Najiar 3. Toi "C" From the Clan Talang-Lato

1. Lato 2. Thrna 3. Chynret The Executive Committee has decided those who can contest for the Dolloiship should be only those who are from the Niam Tynrai Niamtre (Non-Christians) who still practice the indigenous religion within the Raij Jowai.

Sd/- E.M. Lyngdoh Secretary, Executive Committee, Jaintia Hills Autonomous District Council, Jowai.

Under this order the Jaintia Hills Autonomous District Council, Jowai after thorough investigation and scrutinisation has permitted the Clans from Sookpoh Khatrar Wyrnai, Le-Kvllung and Talang-Lato to contest the election for Dolloiship in the Elaka Jowai and the Executive Committee has decided that the Dolloiship should be only by a person who is from Niam Tynrai Niamtre (Non-Christians) who still practice the indigenous religion within the Raij Jowai.

7. According to the Petitioner by virtue of this order dated 4th Sept, 2001 Christians have been debarred from contesting the election. That the office of the Dolloiship is elective office and the Dolloi is to be elected on the basis of open franchise and, therefore, the Christians cannot be excluded from contesting the election for the post of Dolloiship. It is further alleged that there is no custom

prevalent in the Elaka Jowai that only the non-Christians can hold the office of Dolloiship, in fact, previously the office of Dolloiship had been occupied by persons belonging to the Christian community. That as back as in the year 1910 the office of the Dolloi was held by a person belonging to "Gatphoh" clan who was a Christian and subsequently a person belonging to "Lato" clan held the office of the Dolloi, Elaka Jowai and continued in the office after he converted into Christianity. It is also stated that everytime the office of Dolloi was held by a Christian, the religious functions which is required to be discharged by a Dolloi was discharged by another person from the eligible clan and that person was known as the Dolloi Niam (Dolloi for religious purpose). The Petitioner has cited certain instances when the Christians held the office of Dolloiship. It is stated that during the tenure of U. Ram Lato as Dolloi Elaka one U. Ksan Rymbai was appointed as Dolloi Niam and on the death of U. Ram Lato said U. Ksan Rymbai was appointed as the Acting Dolloi of the Elaka in addition to his function as Dolloi Niam. That election for the Dolloi Elaka was held in the year 1976 and one U. Laian Kynjing was elected as Dolloi of Elaka Jowai who continued in the office till his death in the year 1998. Thus, it is alleged that previously under the custom prevalent in Elaka Jowai, Christians were permitted to hold the office of Dolloi and when a Christian was holding the office of Dolloiship, to discharge the religious functions a Dolloi Niam is appointed.

8. The averments, advancing the case of the Respondents are that according to the customs prevalent since time immemorial the Dolloi, besides, executing the executive functions in the Elaka Jowai has to perform the religious duties and rituals and observances which are the essential part of his function as Dolloi. The religious functions which are required to be performed by the Dolloi are as follows: The Khasis and Jaintias are tribal population inhabiting the Khasi and Jaintia Hills of the State of Meghalaya. Before the advent of the British and the Missionaries in these hills the Khasi and Jaintia people practiced their indigenous religions and other customary practices such as festivals, namely, the "Behdeinkhlam", which has since been declared as a State festival. This is the most important festival of the Niam Tre people, which is held sometime in the month of July, depending of the lunar calendar as in other Hindu festivals. In this festival, the Dolloi plays the most important role as the rituals start from the month of March over which he has to preside apart from many other religious functions. Within the Jowai Elaka there are four Raij, namely, 1) Raij Jowai, 2) Raij Chyrmang, 3) Raij Tuber and 4) Raij Lalong. From among these four Raij the Dolloi is from the Raij Jowai only. The reason is because God (U. Tre Kirod) sent four sisters, namely, Ka Bon, Ka Tein, Ka Wet and Ka Doh to come and settle with the children of the hynniewtrep (Khasi-Jaintia community) at Jowai, to live and die with the Hynniewtrep only. Not all the residents of Raij, Jowai can become the Dolloi except from the three clan (lai Kur). The three clans are 1) Ka Kur Soo Kpoh Khadar Wyrnai-those who have Cairns or place for keeping bones at the place called, Poh Ka Blai and Khmut Poh Langdoh, Jowai, 2) Ka Kur Le Kyllung-those who have cairns or place for keeping bones at the place called, Tympiah

Skoo(Lum Kyndong), Jowai and 3) Ka Kur Talang Lato-Khase who have cairns or the place for keeping bones at Khimusniang, Jowai. Even from these clans when the Dolloi is elected, the Dolloi is to be pure and untainted in the matter of marital relationship, i.e. he should be Kynsai Pangrai and he should not marry with the prohibited clans. He should be well mannered and God fearing. His family should be pure and untainted and the Dolloi should be a follower of Niam Tre. When the adult male is elected as the Dolloi of Jowai Elaka from the three clans as mentioned above, he is to be firstly anointed at the house of the Priest (Langdoh), by completing the rituals (Niam ka Rukom) before he takes over as the Dolloi. Firstly, the priest (Langdoh) Jowai will fix a date for confirmation of the Dolloi (Kem Dolloi). The Pator Jowai shall inform the three Priests (Lai Langdoh), i.e. the Langdoh Chyrmang, Langdoh Tuber and the Langdoh Lalong to be present on that date. On that date, after all arrangements have been completed, the elected Dolloi shall proceed to the house of the Langdoh together with his relatives and friends. On reaching the house of the Priest (Langdoh) U. Sangot Paswet who will be waiting in the courtyard will catch the elected Dolloi and carry him before the Priest and the Priestess at the same time shouting "the Dolloi! the Dolloi!" The Priest (Langdoh) will give to the Dolloi a wooden staff as a symbol of authority which is called the Dein Synshar which will rule over the religion and the people. The Priest (Langdoh) at the time when he hands over the Dein Synshar also gives words of advice, sacred instructions and blessings to the Dolloi. The Dolloi also when he accepts the Dein Synshar gives his commitment before the Priestess. Elders of the Raj and the Langdoh, Ka Langdoh, Ki Wasan, Ki Rangbah Raj and the people that he will serve and adhere faithfully to the religion and tradition as per God's direction and he will give his blessing to all. That on the Muchai day of the first Behdeinkhlam of the newly elected Dolloi, the Dolloi together with the Langdoh and elders of the Raj shall go to the Mynkoi Pyr di, at Loom Pyr di Longpiah, Jowai wherein the Knia(elder) of the Loom Pyr di longpiah shall bless by anointing on the forehead of the Dolloi with the symbol of the Mother Earth that means earth which has been taken from Mynkoi Pyr di. This is done along with prayers and blessings that the Dolloi shall have good luck and good health till this old age. Here also the Dolloi shall give his blessing to everyone. The Dolloi gives direction to the Priest, the Priestess, Elders to make arrangements before commencing any of the rituals. The Dolloi along with the Priest and the elders shall sit together and fix the date for the annual rituals by observing the market days and the position of the moon. After the dates have been fixed for the various annual rituals, the first religious pronouncement of the Dolloi is to announce the day Kbai Muknor. This is the day when all the pujas/ rituals of the year are to commence. This day of Kbai Muknor is held in the month of Wisu(March).

9. According to the customs of the Raj Jowai before any ritual or puja is performed another ritual or puja is to be completed. This is known as the Dih Soo Pen. In this Dih Soo Pen. The Dolloi and the priest of the Raj will give their prayer that all arrangements for the ritual have been completed and to pray to

God to give his blessings The first ritual to be performed is the Thoh Langdoh which is performed in the month of Wisu(March) of the year. The ritual Thoh Langdoh is to give thanks to the deity Langdoh who will preside at the Khloo Langdoh (sacred forest) and at the same time give thanks to Ka Bleiramew (Mother Earth) before planting maize, cucumber and snow peas. After the ritual Thoh Langdoh is completed the elders will plant maize, cucumber and snow peas at the garden of the Priest so that the public may be able to plant these vegetables in their own gardens. This puja is completed by the Priest(Langdoh) wherein the Dolloi, the elders and the elders of the Raj are present so that the puja will proceed smoothly.

10. The second puja is the Niam Chat Thoh. This puja Chat Thoh is performed after performing the Puja Thoh Langdoh. This Niam Chat Thoh is performed at the Um Chat Thoh at the Wah Synji. This puja in Chat Thoh is similar to the puja Thoh Langdoh, however in the Niam Chat Thoh, paddy is planted. After the Niam Chat Thoh is completed then the public can plant paddy in their own fields.

11. The third puja is the Niam Knia Thang. This puja Knia Thang is performed on the day Muchai of the month of Ynru(June). One day before performing this puja (Knai) i.e. on the lawmusiang day, the Dolloi, the Priest and the elders come out from the house of the Langdoh and proceed to Lawmusiang and the Dolloi by standing on the Muknor makes an announcement for the performance of Knia Thang. Thereafter, collection of money starts from the sellers in the market to meet the expenses of this puja. On the following day, i.e. on the day Muchai, the Knia Thang is held on behalf of the Soo Dwar Soo Luti(Deities) i.e. for U. Mookhai. U Mooralang, Moosniang and U Mutong together with Ka Myntdu. In this puja the Dolloi, the Priest and elders of the Raj will also participate.

12. The fourth puja is the Knai Pyrthat. After the sniang pyrthat (sacrificial animal) is purchased, the Wasan (elders) will go and fetch the Dolloi to come and see the Sniang Pyrthat. This is on the Pynsin day. The Dolloi when he comes to see the Sniang Pyrthat he carries also the Kiad Um (rice beer) to perform the prayer of Kanguh Blei Ka Dem Blei which is also known as Ka Bam Tyngkhong. Early in the following morning on the Mulong day the Langdoh(Priest) and Sangot Paswet (religious elder) will cook the rice cake and at this time the Dolloi, the Priest and the eight clans (Phra Kur Phra Kmai) will wait and observe the signs on the rice cakes which have been specially cooked for the Priest, the Dolloi and the Raj. This is to see the indication by divine signs of the work done in the past year. After the signs are observed on the rice cakes, every one will leave the house of the Priest for the Knia Pyrthat. In the Knia Pyrthat puja all the four Langdohs have a role to play as per the rituals as they bring offering which are necessary for the puja. After this ceremony and the Knia Pyrthat are over, there is a Yutang(spiritual dialogue) between the Dolloi and the Kongsan Langdoh Chyrmang.

The Behdeinkhlam of the 3 nights and four days. On the week of the Behdeinkhlam i.e. Khyllaw day (Lyngka) the Dolloi, the Priest and the elders of

the Rajj will go and see all the sites for the performance of pujas.

13. On the evening of the Pynsin day the Wasan will go and fetch the Dolloi to go and see the Khnong Blai (sacred tree) of Ka Tein, Ka Wet and Ka Doh at the house of the Priest (Langdoh). The Dolloi also will carry the Kiadum(rice beer) to give thanks to God. After it is completed, the Dolloi, the Priest and the elders of the Raj together with the elders of the eight clans (Phra Kur Phra Kmai) holds the Bam Tyngkong(feast). On the Mulong day, the Knia Ait Nar (Puja Ait Nar) is held at Ait Nar which is situated at Loom Pyrdis in Longpiah. All the expenses of this Knia Ait Nar will have to be borne by the Dolloi himself. After the Knia Ait Nar is over all the Dong Knmai Rajj (various localities) i.e. Loom Pyrdis longpiah, Panaliar, etc. will go and fetch the Dein Khlam (sacred tree) from the forest and keep it at lawmusiang. On the next day which is the market day (lawmusiang) all the Kmai Rajj (various localities) will gather at Mynkoi Pyrdis (Loon Pyrdis Longpiah) and after everyone has assembled along with their Ksing and Tangmuri(drums and shehnai) which are under the supervision of the Dolloi, he then orders all to go and dance at Biar Biar Blai and from there to lawmusiang to dance at all these puja sites.

Before carrying the Dein Khlam (sacred tree) to various localities, the Khon Rajj (Shilliang Rajj), a particular locality will bring the Khnong Blai(sacred tree) to Poh), Poh Ka Bon, Sawiar, lawmusiang. Here the Dolloi will give the Kiadum (rice beer) to the Kni Nikhla to give thanks and prayers. After these prayers are over, the various localities will carry the Dein Khlam to their localities by resting and dancing at Kiar Ka Blai (name of a place) before carrying on to their own localities.

14. On the Muchai day which is the last day of the Niam Behdeinkhlam early in the morning, the Niam Bam Tyngkong will have to be completed at the house of the Priest. After this is completed, the Dolloi shall send Harns and Sangot(elders) to fetch the Loompyodi to perform the Kyntin Khnong at iing Langdoh (house of Priest). After the Loom Pyrdis reaches, the Dolloi will give the Kiad Um(rice beer) to the Kni Look Pyrdis to give the prayers for good health and prosperity and to give the blessings to the Rajj and the Shnong all over. After Kynthin Khnong is completed the Dolloi will direct the Chutia to perform the puja at Tympiah Skoo. The Dolloi will go for the Bam Tyngkong (feast) at the house of the Kur Paswet (Paswet clan at Wah Synji), Syngkon clan at Um Thulum, Pakyntein clan at Lum Suwe, Lato clan at Lulong and Paswet clan kper Chyrmang. After the Dolloi has completed the Bam Tyngkong (feast) at these five clans' houses, he will go to the iing Langdoh (Priest house) to complete the Kynting Khnongiong Waheh. After this the Dolloi will perform the Choh Thyndai and will also give the blessing by beating on the roof of the house of the Langdoh (Priest house). After the Choh Thyndai is completed the Dolloi will go together with the Wasan and eight clans by carrying Dein Khlam Ka Doh to Ait Nar. At Ait Nar the Dolloi will direct any one of the locality of Kmai Rajj to bring the Rot (rath) to Ait Nar so that the Symbood Khnongka Bon may be brought at Ait Nar. After this, all the Rot (rath)

will be brought at Ait Nar and the Dolloi will direct the Chutia to perform the Knai Wah Bhang at the Khlaw langdoh. After all the rituals and pujas the ceremonies at Ait Nar are over the Dolloi will direct the Langdoh(Priest) and the Sangot to prepare their teams for playing the Dat La Wa Kor. At this Dat La Wa Kor, the Dolloi is the umpire of the match and he will announce the winning team after the match.

All the materials for these annual ritual and pujas are prepared at the iing langdoh (Priest's house) and when any puja is performed, they will always have to come out from the iing Langdoh (Priest's house).

15. Regarding the allegations made by the Petitioners that the Christians have been appointed as Dolloi of the Elaka Jowai, it is said by the Respondents in their return that during the British Rule in the year 1890 the then administrators of Jaintia Hills attempted to install a person Shri D.Gatphoh who had converted himself into Christianity, as the Dolloi of Elaka Jowai who had to face the wrath of the people in performing the religious functions and resigned from the post. As regards appointment of U. Ram Lato as Dolloi of Jowai Elaka the Respondents state that this person belonged to the indigenous community (Niam Tre) and continued in the post till he was removed in the year 1968. Necessary orders regarding resignation of Shri D. Gatphoh was passed on 19.11.1918 and termination order of U. Ram Lato was passed on 8.10.1968. (copies of the orders dated 19.11.1918 and 8.10.1968 are annexed as Annexures-A and B respectively in the affidavit-in-opposition of Respondents 1, 2 and 3). It is also stated that U. Ksan Rymbai was appointed as Acting Dolloi of Elaka Jowai vide order dated 23.12.1968. He took over charge from the Revenue Officer of the Council and there is no record to show that the aforesaid person was ever appointed as Dolloi Niam (Copies of the order dated 23.12.1968 and letter dated 12.7.1968 are annexed as Annexures C and D) respectively in the affidavit-in-opposition of the Respondents 1,2 and 3). Further it is stated that on the death of U.L. Kynjing on 3.6.1968 the office of the Dolloi of Jowai Elaka was temporarily assumed by the Revenue Officer, Jaintia Hills Autonomous District Council, Jowai. Subsequently, by notification dated 10.8.1998, one U. Comet Rymbai was appointed as Acting Dolloi. The Respondents averred that the alleged concept of a Dolloi Niam (Dolloi for performing religious rituals only) within Jowai Elaka is an alien perception and against the custom prevalent within the Elaka, that as per custom and the provisions of the Act, there can be only one Dolloi or chief in the Elaka who has to perform both administrative and religious functions attached to the office and election for the post of the Chief and the eligibility of candidates in the Autonomous District of Jowai is governed as per custom and the provisions of the Act of 1959. That, the post of Dolloi of Jowai cannot be bifurcated and the Executive Committee will not interfere with the internal religious functions of the Dolloi. However, if the Dolloi or Chief abuses his power in any matter relating to the customary and religious function action can be taken against him as per the provisions of the Act of 1959 and the conditions laid down in his Sanad.

Therefore, it is the case of the Respondents that there is a custom prevalent for election and appointment of Dolloi or Chief in Elaka Jowai since time immemorial that only one person belonging to the indigenous religion have been appointed as Dolloi or Chief. Under the custom there can be only one Dolloi or Chief in Elaka Jowai who is to perform both administrative and religious functions.

16. A custom is a particular rule that has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. A custom to be valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin; and fourthly, it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.

In the case of AIR 1941 21 (Privy Council) the larger Bench of the Privy Council stated-

The English rule that "a custom, in order that it may be legal and binding must have been used so long that the memory of man runneth not to the contrary" cannot be applied to Indian conditions. It is undoubted that a custom observed in a particular district derives its force from the fact that it has, from long usage, obtained in that district, the force of law. It must be ancient, but it is not of the essence of this rule that its antiquity must, in every case, be carried back to a period beyond the memory of man-still less that it is ancient in the English technical sense. It will depend upon the circumstances of each case what antiquity must be established before the custom can be accepted. What is necessary to be proved is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the establishment governing rule of particular district.

17. It is clear from the pleadings of both parties that there is a prevalent custom in the Elaka Jowai, acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule, for election and appointment of Dolloi who is to perform both administrative as well as religious functions. As per the Petitioners when the person is elected and appointed as Dolloi who could not perform the religious functions, a Dolloi Niam can be appointed to perform the religious rites and rituals thus admitting that Dolloi has to perform administrative as well as religious duties.

It is an admitted fact that the Dolloi in Elaka Jowai is required to perform the administrative as well as religious functions as prevalent in the custom. The question is whether there can be two persons who can perform those duties separately as Dolloi and, therefore, the person who is not capable of performing the religious functions can be appointed as Dolloi. The case of the Respondents is

that from time immemorial the custom is to appoint one Dolloi who is to perform the administrative as well as religious functions. It is not admitted by the Respondents that the persons named to have been appointed as Dolloi were Christians and, therefore, there is no continuity of the custom followed in the Elaka Jowai. It is also apparent from the definition of "service land" and the "puja land" given in United Khasi-Jaitia Hills Act No. 11 of 1959 that Dolloi appointed as the Chief has to perform the administrative functions as well as religious rites and rituals. Under the definition of "service land" it is said that it shall be a revenue free land (Reks) held and cultivated by a Chief or Headman as remuneration, for his services, given in lieu of salary thereof. The definition of "puja land" given u/s 2(k) of the Act No. 11 of 1959 means a Revenue free land held and cultivated by a Chief or Headmen and the yield of income there from is utilized by him for meeting expenses connected with religious performances according to Customs of each Elaka. Therefore the "service land" and "puja land" is to be cultivated by the Dolloi and he gets the remuneration out of the service land whereas he has to meet the expenses connected with the religious performance from the income from "puja land". u/s 3 of the Act, 1959 election is held for appointment of Dolloi in accordance with the existing customs prevailing in the Elaka concerned and there can be only one Dolloi in one Elaka. Concept of two Dollo is performing the executive function and religious functions respectively is not borne out from the Act of 1959 and is a concept not in consonance with the Act nor adhered to in Elaka Jowai. It may be for a short time that some person was asked to perform certain prescribed rituals and observance on account of existing emergency, but that would not amount to deviation of age long custom of Dolloi elected and appointed, to perform rituals and observances, ceremonies and modes of worships besides administrative functions.

18. On reading Section 3 read with Section 2(j) and 2(k) of the Act, 1959 and on the pleadings of the parties we hold that the Dolloi elected and appointed in Elaka Jowai was required to perform the executive function as well as religious functions which is a custom prevalent in the Elaka. We further hold that there cannot be two Dollois one performing the administrative functions and the other performing the religious functions. Under the Act, 1959 there can be only one Dolloi performing both administrative as well as religious functions.

19. The learned Counsel for the Petitioner Mr. Kynging submits that the power to appoint, approve and confirm the Dolloi vests with the District Council u/s 3 and 4 of the Act of 1959, and in absence of any rules framed, authorizing any other body to exercise that power, the power exercised in issuing the Circular dated 04.09.2001 excluding the Christian to contest election of Dolloiship in Elaka Jowai by the Secretary, Executive Committee of the Jowai Autonomous District Council, is without jurisdiction and authority. Such exclusion of the Christian by the Executive Committee cannot be given effect, because the executive committee is not the authorized body to either conduct election or to appoint, approve and confirm the Dolloi. The District Council having over all authority

over the entire District can only issue orders, notifications and conduct election for the post of Dolloi.

20. In the case of *T. Cajee v. U. Jormine Siem and Anr.* reported in AIR 1961 SC 276, the Respondent therein who was Syiem of Myllem Syiemship in the district, was elected as such by the Myntries and the people according to the custom in 1951, was suspended from his office. The Respondent had challenged the action taken against him by the Executive Committee of the District Council and it was contended that he could not be removed from his office or suspended by the Executive Committee or District Council as the Executive Committee was not authorised to take any action in the matter of removal from the office of Syiem. The High Court took the view that the appointment and succession of the Syiems was not an administrative function of the District Council and the District Council could only act by making law, with the assent of the Governor, so far as the appointment and removal of the Syiem is concerned. Thus, appointment and removal of the Syiem according to the High Court was not an executive function and could have been exercised only if there is a statutory authority available for exercise of powers. Repealing the view taken by the High Court, a Constitution Bench of the Apex Court held-

10. ...Now, para 2(4) provides that the administration of an autonomous district shall vest in the District Council and this in our opinion is comprehensive enough to include all such executive powers as are necessary to be exercised for the purposes of the administration of the district. It is true that where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law, but where executive power is concerned only with the personnel of the administration it is not necessary-even though it may be desirable-that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council. The Sixth Schedule vested the administration of the autonomous districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on by officers like the Siem or Chief and other below him, and it seems to us quite clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further, once the power of appointment falls within the power of administration of the district the power of removal of officers and other so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under paragraph 19(i)(b) or till the District Council passed laws under para 3(1)(g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para 19(1)(h) or laws are passed under para 3(1)

with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the law so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant items have the power of administration vested in them by the Sixth Schedule.

This decision is a direct answer to the question raised by the counsel for the Petitioner. The Apex Court has held that the District Council has power to appoint or remove administrative personnel and that power would be an executive power of the District Council. By virtue of Sections 3 and 4 of the Act, 1959 election and appointment of Dolloi is to be approved by the District Council. In the absence of rules framed, District Council or its Executive Committee could exercise such power.

21. Under the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951, Executive Committee of the District Council is, constituted under Rule 19 with its Chief Executive Member as the head and one or more but not exceeding six other member or members to exercise function specified in Rules 28,29,30 and 31. Sub-rule(2) of Rule 19 authorise the Chief Executive Member to appoint a Secretary to the Executive Committee who shall not be a member of the District Council. By virtue of Rule 28 all the executive functions of the District councils are vested in the Executive Committee. As the power to hold election to appoint, approve and confirm Dolloi being an executive function of the District Council, by virtue of Rule 28 the same powers can be exercised by the Executive committee i.e. the Executive Committee can exercise power to appoint or remove a Dolloi. Therefore, the Executive Committee in exercise of its delegated powers can issue the public notice for appointment by election of Dolloiship in Elaka Jowai in the absence of rule, regulation or enactment providing for such election and appointment.

22. In the matter of Edwingson Bareh Vs. State of Assam and Others, the Appellant who was elected as a Chief Executive Member of the District Council of United Khasi-Jaintia Hills District Council had challenged the notification issued by the Governor of Assam creating the new autonomous district to be called the Jowai District by excluding the Jowai Sub-Division of the United Khasi-Jaintia Hills District with effect from 1st December, 1964 whereunder the boundaries of the Jowai district were declared to be the boundaries of the Jowai-Sub-Division of the United Khasi-Jaintia Hills District. In paragraph 11 of the judgment delivered by Justice Gajendragadkar, C.J. as he then was, for majority of Constitution Bench, has dealt broadly with the scheme of the Sixth Schedule which contains the provisions in relation to the administration of the tribal areas in Assam and said that "Article 244(2) provides that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam; and that means that tribal areas in Assam would be governed not by the other relevant

provisions of the Constitution which apply to the other constituent State of the Union of India, but by the provisions contained in the Sixth Schedule (underline supplied). These provisions purport to provide for a self-contained code for the governance of the tribal areas forming part of the Assam and they deal with all the relevant topics in that behalf.

Relying on what has been said in this paragraph it is contended by Mr. A. Sarma, learned Addl. Advocate General, Meghalaya that the notice dated 4.9.2001 issued by the Executive Committee of the Jaintia Hills Autonomous District Council, Jowai is in exercise of the powers vested in the District Council under the Sixth Schedule and thus cannot be contended to be in violation of Articles 14, 15 and 16 of the Constitution of India. This argument has been advanced by the counsel in reply to the submissions made by the learned Counsel for the Petitioners that exclusion of the Christians from contesting election of the office of Dolloiship in Elaka Jowai is in breach of Article 15(1) of the Constitution of India wherein State has been restrained from discriminating against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. The notice dated 4.9.2001 does not permit the Christians to contest the election and thus there is a discrimination against the Christians only on the ground of their religion.

23. Having considered the spread of Sixth Schedule and decision of the Supreme Court reported in the case of Edwingson Bareh(supra) and in the case of T. Cajee v. U. Jormanik Siem(Supra) we feel that there cannot be any manner of doubt that the Sixth Schedule is a Constitution within the Constitution and is a self contained code for administrative as well as legislative governance of the tribal areas, but we cannot go to the extent of saying that any laws/regulations/rules/notifications made or actions taken under the Sixth Schedule by the District Council or the Executive Committee formed by the District Council can overlook the fundamental rights guaranteed under Part-III of the Constitution. Clause 3(1) (g) of the Sixth Schedule authorizes the District Councils and Regional Councils to make laws for appointment or succession of Chiefs and Headmen. Thus under this power, laws can be made by the District Council for appointment of Dolloi of Elaka Jowai and this power can also be exercised by the District Council by exercising the executive powers, in absence of any law made therefor. But it cannot be said that any law so made or the executive action taken by the District Council would not be and should not be within the parameters of Part-III of the Constitution of India. The position of the District Council is like that of a State with authority to make laws, to do administration of justice in autonomous districts and autonomous regions; to establish primary schools; to assess and collect land revenue and to impose taxes as permissible under Clause 8; to give licences or leases for the purpose of prospecting for, or extraction of, minerals as per the agreement arrived at between the District Council and the Government of the State. The District Council has powers to regulate and control money-lending trade by non-tribals and can make laws under Clause 3 of the Sixth Schedule but those powers which are to be exercised by the District Council or the Regional

Council would be the powers like the State. Any law/regulation/rule or action taken by any other State in the domicile of India should be in consonance with the fundamental rights guaranteed to the citizens of India and on the same analogy, District Council being like a State has to act within the parameters of Part-III of the Constitution. We find support in our view in the judgment delivered by the Apex Court in the matter of LaLa Hari Chand Sarda Vs. Mizo District Council and Another, In that case the Appellant who was a non-tribal started trading at Mizo District under a temporary licence, issued on depositing the requisite fee. The temporary licence was extended by renewal of the same from time to time upto May 31,1960. The Appellant applied for a further renewal whereupon the Executive Committee of the District refused to renew the same and directed the Appellant to remove his properties from the District. The Appellant challenged the action of the Executive Committee and contended that the reasons given for non-renewal of the licence was mala fide and that Section 3 of the Lushai Hills District (Trading by non-tribals) Regulation, 2 of 1953 were invalid being violative of Article 19(1)(e) and (g) of the Constitution. While dealing with the provision of Section 3 of the Lushai Hills District (Trading by non-Tribals) Regulation, 2 of 1953 it is said by the Apex Court that the Appellant being a citizen of India and the Mizo District being part of the Union Territory, he has undoubtedly a fundamental right under Article 19(1)(g) to carry on the trade in any part of the country including the Mizo District. Any restrictions infringing such a right can only be sustained if it is a reasonable restriction imposed in the interest of the general public as envisaged by Article 19(6). The provisions of Section 3 of the Regulation has been declared to be a unreasonable restriction on the fundamental rights guaranteed under Article 19(1)(g) and, therefore, declared void.

24. The impugned regulation was framed by the District Council of the Jaintia Hills District in exercise of the powers given in Clause 10 of the Sixth Schedule of the Constitution. The validity of the Regulations, which have been framed by the District Council under the Sixth Schedule, was considered by the Court in the touchstone of fundamental rights guaranteed under the Constitution of India. This authority lays down that any enactment made by the District Council under Clause 10 of the Sixth Schedule would be subject to the fundamental right guaranteed under the Constitution. From the decision of the Apex Court it is obvious that any law made by the District Council or the executive action taken by the District Council would be subject to the fundamental rights guaranteed under the Constitution of India. Besides this, we find that nothing has been said by the Constitution Bench in *Edwingson Bareh* (supra) in regard to fundamental rights guaranteed under the Constitution of India vis-a-vis statute, rules, regulations made or administrative action, of the District Council under Sixth Schedule of the Constitution of India. The power exercised by the District Council to legislate under Sixth Schedule is being kept on lower pedestal. The Apex Court in *the District Council of U.K. and J. Hills, District Council of United Khasi and Jaintia Hills and Others, etc. Vs. Miss Sitimon Sawian etc.*, para 14 said that the

power to legislate under para 3(1)(a) of Sixth Schedule is not plenary power like parliament or legislature of the State. These powers to make laws are expressly limited by the provision of Sixth Schedule. We do not find that the learned Advocate General is right in his submission that the laws made under the Sixth Schedule are not subject to fundamental rights guaranteed under the Constitution of India.

25. The Act of 1959 has been enacted in exercise of the power of Section 3(g) of the Sixth Schedule of the Constitution of India. Section 3 of the Act of 1959 reads as under:

3. Election and Appointment of Chiefs and Headmen: Subject to the provisions of this Act and the Rules made thereunder all elections and appointment of Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned.

Section 3 authorises the election and appointment of the Chief of the Elaka subject to the provisions of the Act and the Rules made thereunder. Admittedly no rules have been framed for the conduct of election and appointment of Dolloi. In absence of the Rules the essential requirement for election and appointment of the Chief should be in accordance with the existing custom prevalent in the Elaka. We have already arrived at the conclusion that in the Elaka Jowai, the custom prevalent was that Dolloi elected shall exercise the executive function as well as religious functions. The necessary corollary is that the person who can exercise the executive function along with the religious function can only be elected and appointed as Dolloi, as per existing custom prevailing in the Elaka Jowai. The main grievance and ground of challenge to the election of the Dolloi is exclusion of the Christians from the election and appointment of Dolloi of the Elaka Jowai as it offends and violates Article 15 and 16 as well as Article 14 of the Constitution of India. The Respondents contend that non-election and non-appointment of the Christians as Dolloi of Elaka Jowai does not violate Article 15 and 16 of the Constitution of India as the election and appointment of the Dolloi is in conformity with the long followed mandatory custom and usages of having only one Dolloi of the Elaka Jowai who can perform the prescribed rituals and observances, ceremonies and mode of worship which are regarded as integral part of religious customs and this denies the right of the persons who do not practice and professes the religion in accordance with its tenets and who could not manage the religious affairs which are secured under Article 25 and 26 of the Constitution of India. We have already noticed the rituals and observances, ceremonies and mode of worship in paragraphs 8 to 14 of this judgment which are to be performed in the Dolloi in which his participations is a must as per the custom prevalent in the clans. We have noticed that the rituals and observances, ceremonies and mode of worship is not denied by the Petitioners in the petition nor during the course of arguments before us. Person belonging to Christian religion cannot perform these rituals and observances, which is the admitted case of the Petitioners themselves, when they say that when Christian was

appointed Dolloi the Dolloi Niam was appointed to perform religious functions. There is a judicial decision to that effect passed by A.W. Denitith the then Deputy Commissioner, Khasi and Jaintia Hills, vide order dated 19.11.1918 by which the Dy. Commissioner rejected the appeal of one U. Joyly Wann Dykhar, one of the candidates for the post of Dolloi of Raliang preferred against the order dated 12.8.1918 passed by one Mr. Shadwell, the Sub-Divisional Officer, rejecting his application praying for permission to contest the election of the Dolloi of Raliang as he is a Christian. It was observed-

In these circumstances I am bound to hold that the Dolloi of Raliang must be a non-Christian. I might say that there has apparently been only a single case in the Jowai Sub-Division of a Christian holding the post of Dolloi, namely the case of U. Delington Gatphoh, who was appointed Dolloi of Jowai. The consequences of that appointment, however, were the reverse of satisfactory for during the years two he held the appointment the Beh-dieng-Khlam festival had to be suspended, an appeal was lodged to the Commissioner against his appointment, and in the end he resigned.

The judicial decision of the Deputy Commissioner establishes the customary practice in Khasi and Jaintia Hills that the Christians cannot hold the post of Dolloi.

26. Article 25 guarantees that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State under Sub-clause (2) of Article 25 whereas Article 26 of the Constitution guarantees certain rights to every religious denomination, subject to public order, morality and health, and the rights are capable of being enforced by or on behalf of a denomination. Sub-clause (b) of Article 26 guarantees every religious denomination to manage its own affairs in matters of religion. The question what is the precise meaning or connotation of the expression "religious denomination" and whether a math could come within this expression, came up for consideration before the Seven Judges Bench of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and the Court has held that the word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name of a religious sect or body having a common faith and organization and designated by a distinctive name." Therefore, the sect or sub-sect can be called as religious denomination as it is designated by distinctive name. Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this Article.

27. The question of religious denomination came for consideration while considering whether the devotees of Lord Biswanath are members of the religious denomination and have fundamental rights to manage its affairs in the matter of right to religion guaranteed under Articles 25 and 26 of the

Constitution or administer the property of the temple in accordance with law in the case of *Sri Adi Visheshwara of Kashi Viswanath Temple v. State of U.P.* reported in (1997) 4 SCC 606| and the Court has held that the word "denomination" means a collection of individuals or class together under the same name, a religious group or body having a common faith and organization and designated by a distinctive name. On the practices of the Math, the meaning of the connotation "denomination" in that behalf, is that each such sect or special sects which are founded by their organizer generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organization. Article 26 contemplates not merely a religious denomination but also a section thereof. The words "religious denomination" under Article 26 of the Constitution must take their colour from the word "religion" and if this be so the expression "religious denomination" must also specify three conditions, namely, it must be (1) a collection of religious faith and (2) a system of belief which is conducive to the spiritual well-being, i.e. a common faith; common organization; and (3) a designation by a distinctive name.

Spiritual fraternity are represented by clans Sookpoh Khatar Wyrnai, Le-Kyllung, Talang-Lato belonging to Niam Tynrai Niamtre (Non-Christians) who practice the indigenous religion within the Raij Jowai is a socio-cultural religious organization of the Jaintia people who follow the Niam Tre faith (indigenous religion) from time immemorial who forms collection of individuals or clans to gather under the same names of clans within Raij Jowai, having same religious faith and system of belief conducive to the spiritual well-being. They are governed by common customary laws of their own in the matter of administration as well as in following religious faith. These clans within the Raij Jowai being follower of common religious customs and faith can certainly be a religious denomination within the meaning of Article 26 of the Constitution of India.

28. In the case of *Commissioner, Hindu Religious Endowment (supra)* the Bench has said that the religion is a matter of faith with individuals or communities and it is not necessarily theistic. These are well known religions in India like Buddhism and Jainism, which do not believe in God or any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion, but it will not be correct to say that religion is nothing else but a doctrine or belief. A ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion; and these forms and observances might extend even to matters of food and dress. The Bench considered as to what constitutes the essential part of a religion and said:

What constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at a particular hours of the day, that periodical ceremonies should be performed in

certain way at certain periods of the year or that there should be daily recital of sacred text or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character, all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b).

Further, analysing the Article 26(b), the Court has held-under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent Legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies.

29. In *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , the question came for consideration whether total ban on slaughtering of cow on Bakr-id Day as imposed by the Bihar Legislative Assembly under the Bihar Preservation and Improvement of Animals Act, 1955 is a violation of the fundamental rights of the Petitioner under Article 25 of the Constitution. The Constitution Bench held that even though the Article 25(1) guarantees to all persons freedom to profess, practice and propagate religions, sacrifice of a cow on Bakr-id Day is not an obligatory overt act for a Mussalman to exhibit his religious belief and idea and consequently, there was no violation of the fundamental rights guaranteed under Article 25(1). It has been held that though Article 25(1) deals with right of individual, Article 25(2) widely contends and has reference to right of the community and control both Articles 25 and 26(b) of the Constitution. It is only the essential religious practice which can be protected under Article 25(1) of the Constitution. (Emphasis supplied).

30. In the case of *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, Venkatarama Aiyar J. speaking for the Bench observed that the matters of religion in Article 26(b) embraces not merely matters of doctrine and belief pertaining to the religion but also the practice of it, which are practiced by the community as a part of its religion.

31. Another Constitution Bench in the matter of *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, has considered the nature and extent of protection guaranteed under Articles 25(1) and 26(b), drawing distinction between practice which is religious and which is purely secular and has said-

56. Articles 25 and 26 constitute the fundamental rights to freedom of religion

guaranteed to the citizens of this country. Article 25(1) protects the citizen's fundamental right to freedom of conscience and his right to freely to profess, practice and propagate, religion. The protection given to this right is, however not absolute. It is subject to public order, morality and health as Article 25(1) itself denotes. It is also subject to the laws, existing or future which are specified in Article 25(2). Article 26 guarantees freedom of the denominations or sections thereof to manage their religious affairs and their properties. Article 26(b) provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion.

The Apex Court has further held that religious practice to which Article 25(1) refers are in regard to matters of religion whereas Article 26(b) includes practice which are integral part of the religion itself and protection guaranteed under Articles 25(1) and 26(b) extend to such practice. The Court has further elaborated as to what religious practice are integral part of the religion and says that the test always would be whether it is regarded as such by the community following the religion or not and this question could be required to be decided by the Court and in doing so the Court have to enquire whether the practice in question is religious in character and if it is, whether can be regarded as an integral and essential part of the religion, and the finding of the Court on such an issue always depend upon evidences adduced before it as to the conscientious of the community and the tenets of its religion. In paragraph 59 the Court has said-

59. In this connection, it cannot be ignored that what is protected under Article 25(1) and 26(b) respectively are the religious practices and the right to manage the affairs in the matter of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened. The protection is given to the practice of religion and to the determination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practice religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in the matter of religion. If the practice is religious practice or the affairs are the affairs in matter or religion, then, of course, the right guaranteed by Article 25(1) and Article 26(b) cannot be contravened.

32. In a case reported in *Sri Digyadarsan Rajendra Ramdassjivaru Vs. The State of Andhra Pradesh*, the Apex Court has said that the freedom of religion in Constitution is not confined to religious belief only if extend to religious practice as well subject to the restrictions which the Constitution itself has lays down. Under Article 26(b), therefore, a religious denomination or organization enjoys

complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with its decision in such matters.

33. The Supreme Court relying on the decisions reported in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, ; *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, ; *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, and *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, has expressed its view on the spirit and spread of Articles 25 and 26 in the case of *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* reported in 1962 Supp. (2) SCC 853. The first protection guaranteed under these Articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion and includes practices which are regarded by the community as a part of its religion.

34. In the case of *Sri Adi Vishweswara of Kashi Viswanath Temple (supra)* it is held that religious freedom guaranteed by Articles 25 and 26 is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realize his spiritual self. Sometimes practices religious or secular are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They some times claim the religious system or sanctuary and seek the cloak of Constitutional protection guaranteed by Articles 25 and 26. One hinges upon Constitutional religious model and another diametrically more on traditional points of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. History and customs, utility and the accepted standard of right conducted are the forms, which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest, that will be, thereby impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been

theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself; Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State.

35. On the basis of the aforesaid authorities, we may extract the basic principles for upholding protection to the citizens or religious denominations guaranteed under Articles 25 and 26 of the Constitution of India. This could be broadly stated that Article 25(1) protects the freedom of conscience and free profession, practice and propagation of religion. The practice should be religious in character and should be regarded as an integral and essential part of the religion by the community, which profess that religion. This right is subject to public order, morality and health and to the other provisions of the Constitution and also subject to the laws existing or future, which are specified in Article 25(2). Article 26 gives authority and guarantees freedom to all religious denominations or sections thereof to manage their religious affairs and properties. A distinction has to be drawn between the practice, which is religious and purely secular. If the practice is purely secular, protection is not available whereas essential religious practice is protected. If protection is given to the practice of religious denominations, to manage its own affairs in the matter of religion, then the religious denominations enjoy complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to tenets of the religion involved. Article 26(b) includes protection, which are integral part of the religion. The protection guaranteed is extended also to the acts done in pursuance of the religion and, therefore, contain a guarantee for ritual and observances, ceremonies and modes of worship, which are integral part of religion. What constitutes the essential part of the religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and the change evolved.

36. Tenets of the clan Sookpoh Wyrnai, Lekyllung, and Talang-Lato belonging to Niam Tynrai Niamtre of Raj Jowai cult requires, as a matter of religion, that

religious ceremonies and mode of worship referred in the preceding paragraphs of this judgment, should be carried out by the Dolloi. His participation in those religious ceremonies is essential and integral part of the religion, and is regarded as such by the clan from time immemorial. The religious denominations are entitled to manage its religious affairs and enjoy complete autonomy to decide and indicate as to what ceremonies are essential according to tenets of their religion. As per the religious ceremony of the clan and mode of worship Dolloi is not only to participate in the religious ceremonies but has to lead those religious ceremonies too. The participation and leading the ceremonies by Dolloi is essential and an integral part of those ceremonies, because in the absence of Dolloi in those ceremonies, the very ceremonies cannot be performed. The right of denomination for election of Dolloi, who belong to particular clans who can participate in religious ceremonies, is protected under Articles 25 and 26 of the Constitution of India. We have already held that there cannot be 2(two) Dollois in the Elaka Jowai. Dolloi has to perform administrative as well as religious duties, and those religious duties can be performed by a person belonging to a clan following Niam Tynrai Niamtre of Raij Jowai cult. In these circumstances as there is only one Dolloi in the Elaka Jowai the Dolloi could be a person who could perform administrative as well as religious functions, that is, one, who is administrator at the same time is religious Guru of the clan, and therefore, no outsiders who has no authority to perform or participate in religious ceremonies of the denomination can be permitted to hold the office of Dolloi. This exclusion will extend to the persons, who, by virtue of their religious system or beliefs or doctrines, practices, could not perform the religious rituals or perform modes of worship of the denomination. The Christians on account of their religious practices and tenets of religion could not perform the religious duties required to be performed by the Dolloi of Elaka Jowai and, therefore, their exclusion from participation in election and appointment to the office of Dolloi is in pursuance of the rights guaranteed to the denomination under Articles 25 and 26 of the Constitution of India and is in accordance with law.

37. For the aforesaid reasons, in our considered view, the notifications dated 28.8.2001 and 4.9.2001 issued by the District Council and the Secretary, Executive Committee, Jaintia Hills Autonomous District Council, Jowai respectively are not violative in law. Accordingly the Petitioners are dismissed with costs of Rs. 5000/- each.