
(2019) 09 MAN CK 0018

In the Manipur High Court

Case No : Writ Petition (c) No. 428 Of 2015, 934 Of 2016

Gainaichung Malangme And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Citation : (2019) 09 MAN CK 0018

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : Ng. Premkumar, M. Rarry, A. Modhuchandra Sharma

Final Decision : Allowed

Judgement

MV Muralidaran, J

[1] W.P. (C) No. 934 of 2016 has been filed by the petitioner seeking to quash the order dated 28.09.2016 passed by the first respondent wherein and whereby respondent No. 4 was recognized as Khullakpa-cum-Ex-officio Chairman of Pongringlong Hill Village Authority, Senapati District, Manipur.

[2] W.P. (C) No. 428 of 2015 has been filed by Pongringlong (Charoipandongba) Hill Village Authority, represented by its Ex-officio Chairman (Khullakpa), the petitioner in W.P. (C) No. 934 of 2016, seeking to issue a writ of mandamus for allowing to implement the MGNREGS Scheme through the petitioner village authority in the interest of all the villagers.

[3] Since the parties and the issue involved are one and the same, both the writ petitions were taken up together and disposed of by this common order.

[4] Briefly stated, the case of the petitioner in W.P. (C) No. 934 of 2016 is as follows: The petitioner has been the Khullakpa (Headman) of Pongringlong Hill Village in Senapati District by recording in Hill Village touzi from the year 1981 till 2016. In the years 1984 to 1988, one Gaichungam Rongmei claimed the post of Khullakpa before the Additional Deputy Commissioner, Kangpokpi in Hill

Miscellaneous Case Nos. 11 of 1984 and 7 of 1988. By an order dated 21.8.1990, the said cases were disposed of on compromise in favour of the petitioner. By an order dated 28.10.2003, the Commissioner (Hills), Government of Manipur changed the petitioner's village Charoipandongba as Pongringlong. In the year 2007, the Sub-Deputy Collector, Saitu Gamphazol issued a certificate dated 08.11.2007 to the effect that the petitioner is the Hereditary Khullakpa of Pongringlong village.

[5] In the year 2008, one Lunggaingam of Pongringlong village claimed Chairmanship of Hill Village Authority defying Khullakpaship. Challenging the same, the petitioner filed W.P. (C) No. 826 of 2008 before the Gauhati High Court. By an order dated 10.07.2009, the Gauhati High Court, Imphal Bench disposed of the said writ petition directing the petitioner to approach the Civil Court. Aggrieved by the same, the petitioner preferred W.A. No. 52 of 2009. By the judgment dated 05.02.2010, the Gauhati High Court set aside the judgment dated 10.07.2009 with a direction to approach the Deputy Commissioner, Senapati District to conduct enquiry within a period of eight months from the date of receipt of a copy of the judgment. It is also stated in the said judgment that in case the petitioner is found to be Khullakpa of Pongringlong village, necessary steps should be taken for appointing him as Ex-Officio Chairman of the Village Authority and if not, there shall be an election for the village Authority.

[6] Pursuant to the direction of the Gauhati High Court, the Deputy Commissioner, Senapati District made inquiry into the matter and after hearing of both parties, by an order dated 07.12.2011, concluded that the petitioner is also the Ex-Officio Chairman of the Village Authority. Pursuant to the judgment passed in W.A. No. 52 of 2009 and the order dated 07.12.2011 passed by the Deputy Commissioner, the Governor of Manipur, by an order dated 18.01.2013 recognized and confirmed the petitioner as Khullakpa of the Village.

[7] Respondent No. 4 filed Civil Suit in O.S. No. 1 of 2012 / 2 of 2012 before the Additional District Judge (Fast Track Court), Manipur West, Lamphelpat, wherein an interim injunction was granted on 08.08.2013. To the surprise of the petitioner, the first respondent issued impugned order dated 28.09.2016, thereby according approval to the recognition of respondent No. 4 as Khullakpa-Cum-Ex-OfficioChairmanofPongringlong (Charoipandongba) Village Authority, Senapati District. Challenging the same, the petitioner has filed W.P. (C) No. 934 of 2016.

[8] Resisting the writ petition, respondents 1 to 3 filed affidavit-in-opposition stating that there has been dispute between two parties in the village. One group consisted of supporters of petitioner and the rest are non-supporters i.e., against the petitioner. The majority households who are against the petitioner is 131 and being a majority group, they formed a Development Committee, but the petitioner has only 31 households. It is stated that 31 households have reportedly shifted to a neighboring village Puandaijang and the petitioner himself has given consent to the said shifted job card holders in the form of no objection certificate. Since the petitioner has become the Khullakpaship of no supporters,

the Government Order dated 07.10.2014 has also become vague before its tenure.

[9] It is further stated that a representation was received from the villagers of Pongringlong for appointment of Khullakps. They have published in the local dailies and requested to delete the existing Chief by charging on different grounds in regards to (1) Customary, (2) Hereditary as well as (3) Non-supporters by existing villagers of the village. Accordingly, Sub Divisional Officer was instructed to conduct inquiry into the matter and the Sub Divisional Officer submitted his inquiry report on 28.03.2016.

[10] It is stated that the present Development Committee is the only authority who are looking after all the Development works and in regard to Khullakpaship for customary purpose. The villagers can appoint new Khullakpa by holding an election if the said existing order has been cancelled as per Rules and Act under Manipur Village Authority Act, 1956 by the Government as he has no supporters at the present village.

[11] It is also stated that the petitioner became Khullakpa as per Hereditary and Customary law. However, the other people who are against him spoke in a contradictory manner about his elevation to Khullakpa. According to the respondents 1 to 3, on 17.01.2016, a general body meeting of Pongringlong village was convened by Village Court and has adopted unanimously to enthrone Shri Ilanrrei Daimei to Khullakpa and Shri Gaichungrei Daimei to Khunbu as per traditional norms of Zeliangrong Customary law. The promulgation ceremony was published on local daily on 30.01.2016. Proper implementation of development activities including MGNREGS and smooth functioning of village administration is in turmoil as the petitioner is not recognized/supported by the majority of the villagers. According to respondents 1 to 3, there is no cause of action for the present writ petition and prayed for dismissal of the same.

[12] Respondent No. 4 filed affidavit-in-opposition stating that the petitioner has to clarify and prove how he has become the Hereditary Khullakpa other than mere Khullakpa on compromise with one GaichungamRongmei of Pongringlong village under Hill Misc. Case No. 11 of 1984 and Hill Misc. Case No. 7 of 1988 vide order dated 21.08.1990 passed by the Additional Deputy Commissioner. Under Pongringlong village, there is no Hereditary Khullakpa till today since its establishment. Even though civil case is pending before the Civil Court, a new cause of action had arisen on the grounds that (a) the petitioner had abandoned the Pongringlong village by shifting and settling at a new neighboring village along with 30 minority villages/job card holders out of 162 job card holders of the village and on his removal from Khullakpaship by the majority of Pongringlong villagers and Thoubai of the village on its general body meeting held on 17.01.2016; (b) also for violating the customary practice of ZeliangrongNagas that is prevailing the village for marrying with his uncle's daughter, a prohibited degree particularly applicable to the person holding the post of Khullakpa/Khunbu.

[13] It is further stated in the affidavit-in-opposition that despite server notice, the petitioner has failed to attend the general body meeting and the special meetings regarding consideration of his disqualification and removal from holding the post of Khullakpaship of Pongringlong village. Enquiry was done by the Government officials and lastly recorded his statement at the Deputy Commissioner office at Senapati. It is stated that all the village level meeting proceedings as well as enquiry reports of Lambu of SDC, report of SDC, SDO/S, Gamphazol along with forwarding letters were sent to the Dy. Commissioner/Senapati, who in turn forwarded to the Commissioner/TA and Hills, Government of Manipur for further action. After perusal, examination and consideration, the Commissioner had issued the impugned order dated 28.09.2016 after supersession of all the earlier orders issued in connection with the confirmation of petitioner as Khullakpa of Pongringlong village and then Chairman of Village Authority of the village. According to the respondent No. 4, there is no illegality or arbitrariness in passing the impugned order and prayed for dismissal of the writ petition.

[14] In W.P. (C) No. 428 of 2015, the petitioner averred that Pongringlong is an old hill village, which was formerly known as Charoipandongba as recognized in the Manipur State Hill People Regulation, 1947. The village authority of the hill village has been doing developmental works for the welfare and also in the interest of all the villagers from the enforcement of the Manipur (Village Authorities in Hill Areas) Act, 1956. Due to expiry of the term of earlier village authority, the Deputy Commissioner, Senapati District, addressed a letter dated 07.02.2014 to the Sub Divisional Officer, Saitu Gamphazol for constitution of Pongringlong village authority. The Sub Divisional Officer had issued notice dated 17.06.2014 for completion of the constitution of the village hill authority on 05.08.2014 by nominating official representatives for conducting proceedings of the Village Authority Election and was directed to submit a report by 06.08.2014. After due notice to all the villagers, election was held on 26.07.2014 and Gaithaongam was elected as Secretary, Kajaichung Malangmei was elected as Treasurer and ten villagers were elected as members. The results were also published in the Gazette.

[15] According to the petitioner, there were 163 job card holders, but at present 173 households in the village and every house holder is eligible to avail of the benefit of Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) at the rate of Rs. 175/- per day for 100 days in a financial year. The 163 householders were given employment for 100 days in a financial year till March, 2014, but from the beginning of April, 2014 almost of the villagers have not been allowed to avail of the benefit of working 100 days in a financial year till date. According to the petitioner, MGNREGS is implemented and performed through implementing agency of the village by respondent NO. 2. The Pongringlong hill village authority is the only implementing agency of the execution of the scheme and there is no any competent agency in the village for implementing the scheme except the petitioner village authority. Despite the

request made to respondent No. 2 for allowing the petitioner to implement the scheme, they have not allowed. Hence, the petitioner submitted representations dated 04.12.2014 and 28.02.2015 and the same have not been considered till date by the authorities. Hence, the petitioner village authority has filed the writ petition.

[16] Respondent Nos. 1 and 2 have filed affidavit-in-opposition stating that the village authority in the hill areas of Manipur though election is held, the Khullakpa-Cum-Ex-Officio Chairman is the Hereditary post through customary practices. There has been dissent in the village job card holders where 131 job card holders do not want to work under the present village authority. As per the guidelines, the District Programme co-ordinator should ascertain that the implementing agency is competent to execute the work. But as per the report of the Programme Officer, it would not be possible for the village authority to implement the scheme successfully as majority of the job card holders are refusing to work under them as implementing agency. Therefore, the MGNREGS implementation committee was formed by the Programme Officer/BDO who is implementing the said scheme.

[17] It is stated that though Gainaichung Malangmei is the Chairman of the village authority, no legal right vested on him to be the sole implementing agency. Any development programmes such as MGNREGS may be implemented by another Committee which is agreed upon by the majority of the villagers and having the competence to carry out the works in the larger interest of the villages as a whole. If the petitioner Shri Gainaichung Malangmei can show that he is supported by majority of the job card holders, the scheme may be implemented by the village authority formed with himself as Chairman.

[18] Heard Mr. Ng. Premkumar, learned counsel for the petitioner and learned Additional Advocate General for the official respondents and Mr. A. Modhuchandra, learned counsel for the private respondent.

[19] Assailing the impugned order dated 28.09.2016, the learned counsel for the petitioner submitted that the petitioner was not given notice before issuing the impugned order and that the impugned order was passed in complete violation of natural justice. He would submit that the earlier orders dated 18.01.2013 and 07.10.2014 recognize the petitioner as Khullakpa, were not cancelled in the manner known to law. The learned counsel further submitted that anyhow the matter is at present in seizing before the Civil Court in O.S. No. 1 of 2012/2 of 2012 /18 of 2014.

[20] The learned counsel submitted that post Khullakpa is a customary post recognized by Kabuis which has been recognized by them from time immemorial. So the present respondent authorities have no jurisdiction to recognize another villager as Khullakpa at their sweet will by violating the customary tenets, belief, usage, practices etc and therefore, the impugned order suffers from illegality and also in violation of principles of natural justice.

[21] Per contra, the learned Additional Advocate General submitted that since the petitioner GainaichungMalangmei has no supporters, a representation was received from the villagers of Pongringlong for appointment of Khullakpa. He would submit that the petitioner became Khullakpa as per Hereditary and customary law. However, other people who are against him spoke in a contradictory manner about his elevation to Khullakpa Chief post which makes him ineligible to occupy the Khullakpa or Village Chief post. The learned Additional Advocate General further submitted that since the petitioner has only 31 households and since they also reportedly shifted to a neighboring village, in supersession of earlier orders and also exercising power conferred under the Manipur Hill Areas(Acquisition of Chiefs rights) Act, 1967 and other Acts, the Government accorded approval to recognize respondent No.4 as Khullakpa cum-Ex-officio Chairman of Pongringlong village authority. Therefore, there is no question of violation of principles of natural justice.

[22] The learned counsel for the fourth respondent submitted that after due enquiry and on examination and also on consideration of the letters addressed by the Commissioner/TA & Hills, the impugned order has been passed after supersession of all the earlier orders issued in connection with the confirmation of the petitioner as Khullakpa of Pongringlong village. He would submit that there is no violation in passing the impugned order and that the petitioner has less supporters to hold the post of Khullakpa.

Further, the learned counsel submitted that the respondent authorities have rightly issued the impugned order recognizing the fourth respondent as Khullakpa and there is ground to set aside the same.

[23] I have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[24] It appears that the petitioner has been the Khullakpa (Headman) of Pongringlong hill village in Senapati District from 1981 till 2016. Earlier one Gaichungam Rongmei claimed the post of Khullakpa before the Additional Deputy Commissioner, Kangpokpi and by an order dated 21.08.1990, the same was disposed of. Subsequently, in the year 2008, one Lungaingam claimed for Chairmanship of hill village authority, which necessitated the petitioner in filing W.P.(C) No.826 of 2008. By an order dated 10.07.2009, the learned Single Judge directed the petitioner to approach the Civil Court. Challenging the same, the petitioner has filed W.A.No.52 of 2009.

[25] By the judgment dated 05.2.2010, the writ appeal was disposed of with direction to the Deputy Commissioner of Senapati to make an inquiry over the matter. After enquiry, the Deputy Commissioner came to the conclusion that the petitioner is the Khullakpa of the village and to that effect, the Deputy Commissioner has passed an order dated 07.12.2011 and the same was recognized by the Government of Manipur by issuing orders dated 18.01.2013 and 07.10.2014 respectively.

[26] Thereafter, respondent No. 4 filed a civil suit in O.S. No.1 of 2012/2 of 2012/ 18 of 2014 challenging the hill village Khullakpaship of the petitioner before the Civil Court (Senior Division), Senapati District. Pending suit, the Government of Manipur has issued the impugned order dated 28.9.2016 thereby accorded approval to the recognition of the fourth respondent as Khullakpa-cum-Ex-officio Chairman of Pongringlong village authority, Senapati District.

[27] The first and foremost submission of the learned counsel for the petitioner is that before passing the impugned order, the petitioner has not been heard and that the impugned order is in violation of the principles of natural justice.

[28] It is seen that the impugned order does not disclose issuance of notice and/or personal hearing of the petitioner. However, at the top of the impugned order it has been stated that the Deputy Commissioner, Senapati District, Manipur vide letter dated 31.8.2016 had recommended Mr. Lanirei Daimei (respondent No.4) Khullakpa/Chief of Pongringlong (Charoipandongb) village Saitu-Gamphazol Sub Division Senapati District, Manipur.

[29] On a perusal of the letter dated 31.8.2016, this Court finds nothing about the recommendation of the Deputy Commissioner, Senapati. In the said letter, the Deputy Commissioner has simply forwarded the copy of letter dated 30.05.2016 of the Sub Divisional Officer/BDO Saitu-Gamphazol. On further perusal of the letter dated 30.5.2016, it is seen that the Sub Divisional Officer recorded as follows: "in regards to Chief/Khullakpaship for customary purposes they/villagers can appoint by holding an election if the said existing order has been cancelled as per appropriate rule(s) & Act under Manipur Village Authority Act 1956 by the Government as he has no supporters at the present village". The letter further reads as follows: "I, therefore stated that we may apprise to the Government as per existing condition of the village in regards the vague/invalid Gazette order by considering imperfect minority status of the existing Kuhullakpa as he had already proved minority in the last hearing held on the 27th April, 2015 in the office chamber of Deputy Commissioner, Senapati in the form of 31:131 = 162 jobcard holders. And now, no supporters."

[30] At this juncture, it is to be pointed out that while sending such a report, the Sub Divisional Officer has failed to take into consideration the order passed by the Additional District Judge (Fast Track Court), Manipur West, Lamphelpat in Judicial Miscellaneous Case No.3 of 2012/20 of 2012 in Original Suit No.1 of 2012 / 2 of 2012. The learned Additional District Judge has passed the impugned order in the following line:

"For the observations, reasons and findings given as aforesaid, it is held that the Order dated 7.12.2011 passed by the Learned Deputy Commissioner, Senapati District, Manipur in his Hill Misc. Case No.2 of 2010 in compliance with the direction contained in the judgment and order dated 5.2.2010 of the Hon'ble Gauhati High Court Imphal Bench in its W.A.No.52 of 2009 shall continue to

operate and the present application stands disposed of accordingly."

[31] Admittedly, the said suit in O.S.No.1 of 2012/ 2 of 2012 is still pending. Further, the State of Manipur, the Deputy Commissioner, Senapati District, the Sub Divisional Officer, Saitu Gamphazol were parties to the said suit. Thus, it is clear that pending suit, the impugned order came to be passed that too without giving an opportunity of hearing to the petitioner. The said act of the first respondent is in clear violation of principles of natural justice

[32] In umpteen number of decisions, the Hon'ble Apex Court has considered the significance of following the elementary principles of natural justice and held that no person should be condemned without hearing.

[33] The principles of natural justice signify the basic minimum fair procedure which must be followed while exercising decision making powers. Natural justice forms the very back bone of a civilized society. The wheels regarding the application of principles of natural justice to administrative and quasi-judicial proceedings started turning from 1963 when the House of Lords in the United Kingdom delivered the landmark and oft-quoted judgment of Ridge v. Baldwin [1963] UKHL 2. An order for dismissal of a constable was quashed because he was not provided any opportunity to defend his actions. Presently, in our country, the principles of natural justice are applicable in totality to administrative and quasi-judicial proceedings. This is consistent and in line with the rapidly increasing role, functions and jurisdiction of such bodies in a welfare state like ours.

[34] In the case of Uma Nath Pandey v. State of U.P., reported in AIR 2009 SC 2375, the Hon'ble Supreme Court explained natural justice and it would be appropriate to extract paragraph 6 of the said decision, which reads as under:

"6 Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted Writ Petition No.6427/2017 considerations which are usually associated formulated law e involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form."

[35] Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

[36] Thus, when we look into the case on hand, as stated supra, before passing the impugned order, the petitioner has not been heard and without giving an opportunity of hearing, the impugned order has been passed. Moreover, though the Commissioner, TA & Hills, on placing reliance of the report submitted by the Deputy Commissioner, Senapati, has passed the order but he has failed to serve the copy of the report to the petitioner, nor the petitioner was given an opportunity of being heard before the said order was passed. Therefore, it is a fit case to set aside the impugned order.

[37] On a perusal of the records, it is seen that by an order dated 25.11.2016, the impugned order dated 28.09.2016 has been stayed by this Court and the respondents have not taken any steps to get the stay vacated till date, nor appealed by the respondents against the interim order. Thus, it is clear that the impugned order has not come into force.

[38] Since the petitioner established that the impugned order has been passed in violation of principles of natural justice, the same is liable to be set aside. Further, in view of the interim order of this Court, the implementation and/or operation of the impugned order has been stayed. In such circumstances, as stated supra, this is a fit case to interfere with the impugned order. Accordingly, the impugned order is set aside.

[39] It is apposite to mention that the village Pongringlong (Charoipandongba) is an ancient Kabui village. The village was at times having its Hereditary Khullakpa and sometimes having an elected village authority and earlier the village authority being elected by way of election and the relevant provisions of Rules under the Manipur (Village Authorities in Hill Areas) Act, 1956 provides for conduct and election of members of the village authorities. Therefore, in order to give a quietus to the controversy between two parties of Pongringlong (Charoipandongba) village and in the interest of justice and also in the interest of villagers, it would be appropriate to direct respondent Nos.1 to 3 to conduct election for the village authority (Khullakpa) of Pongringlong village in accordance with law. No prejudice would be caused to villagers, including respondent No.4, if the election is conducted for the Khullakpa/village authority.

[40] Insofar as W.P.(C) No.428 of 2015 is concerned, it is the say of the petitioner that respondent No.4, who is stated to be the self-styled Chairman is mis-utilizing the MGNREGS money and if he continues to do so, the villagers will be affected.

[41] It is an admitted fact that after the expiry of the term of village authority, a new Pongringlong hill village authority was constituted by election after giving notice to all the villagers by a Government notification dated 07.10.2014 and the same was published in the Gazette. It is also admitted that after constitution of the village authority, the petitioner has been requesting the official respondents by way of representations for implementation of MGNREGS through the village authority. However, the said representations of the petitioner have not been

considered by the official respondents till date. It is not the case of the respondent authorities that the representations of the petitioner have been considered and orders issued. Since the representations of the petitioner were pending from 2015, it would be appropriate to direct respondent Nos.1 and 2 in W.P.(C) No.428 of 2015 to consider the same within a reasonable time.

[42] In the result,

(1) W.P.(C) No.934 of 2016 and W.P.(C) No.428 of 2015 are allowed.

(2) The impugned order dated 28.09.2016 passed by the first respondent is set aside.

(3) Respondent Nos.1 to 3 in W.P.(C) No.934 of 2016 are directed to conduct election for the Village Authority of Khullakpa Pongringlong of (Charoipandongba) village in accordance with law within a period of three months from the date of receipt of a copy of this order.

(4) Respondent Nos. 1 and 2 in W.P. (C) No. 428 of 2015 are directed to consider the petitioner's representations dated 04.12.2014 and 28.02.2015 and to implement MGNREGS through the village authority for the villagers.

(5) The said exercise shall be done by respondent Nos. 1 and 2 within a period of three months from the date of receipt of a copy of this order.

(6) No costs.