

(2011) 01 GAU CK 0012

In the Gauhati High Court

Case No : WP (C) No (s) . 21 of 2007, 684 of 2008 and 437 of 2009

Gaipuidun Rongmei

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Constitution of India, 1950 — Article 162, 309, 73

Manipur (Village Authorities in Hill Areas) Act, 1956 — Section 3, 3(1), 3(2), 3(3), 3(4)

Citation : (2011) 3 GLR 167

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : A. Bimol and Mr. H. Prabirkumar, for the Appellant; L. Shyamkishore, K. Jagat, Anand and Mr. S. Rupachandra, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—These writ petitions (three in numbers) having similar questions of fact and law in respect of the same matter in dispute between the parties were taken up for joint hearing for being disposed of by a common judgment and order.

2. Heard Mr. A. Bimol, learned counsel for the petitioner assisted by Mr. H. Prabirkumar, learned counsel for the petitioners as well as Mr. L. Shyamkishore, learned senior Advocate assisted by Mr. Anand, learned counsel for the respondent Nos. 1 and 2 as well as Mr. S. Rupachandra, learned counsel for private respondent No.3.

3. As the facts in the three writ petitions are similar, the facts leading to filing of WP(C) No. 473 of 2009, in brief, will be sufficient for deciding the matter in issue; accordingly, a short factual matrix of WP(C) No. 473 of 2009 in thumbnail is recapitulated.

4. The Khoupum Village in Tamenglong District, Manipur was an old and recognized village in 1947 when the Manipur State Hill Peoples" (Administration)

Regulation 1947 was made by the Maharaja of Manipur and enforced, till a part of the regulation was repealed in 1956 by a subsequent enactment of the Act called "Manipur (Village Authorities in Hill Areas) Act, 1956 ('the 1956 Act'). Admittedly, since before 1947 Khoupum Village has been continuing to be the recognized village till date. In the list of recognized villages in Tamenglong Circle-1 mentioned in the Manipur State Hill Peoples (Administration) Regulation Act, 1947, Khoupum Village appears at Sl. No. 43 and name of the Khullakpa/Chief was Lunggailil, a member of Rongmei Clan; and only the eldest male member of the Rongmei Clan and the blood group of Khullakpa is entitled to be the next Khullakpa on the death of the former Khullakpa. On the death of Lunggailil @ Lugailin, Gaithaodaipou Rongmei who was the eldest male member of Rongmei Clan of the blood group of previous Khullakpa became the Khullakpa of Khoupum Village. The said Gaithaodaipou, as the Headman of Khoupum Village was paying hill house tax of Khoupum village for a considerable number of years during his lifetime.

5. After the death of the said Gaithaodaipou, a dispute arose between the two members of the Rongmei Clan namely, Rongrang Rongmei and Chungailung Rongmei, as to who between them would succeed as the next Khullakpa for Rongrang Rongmei having converted to Christianity.

6. It is not disputed that Rongrang Rongmei became Chief/Khullakpa of Khoupum Village after the death of Gaithaodaipou but the dispute between the Rongrang Rongmei and Chungailung Rongmei was that Rongrang Rongmei cannot continue to be the Khullakpa of Khoupum village after his alleged conversion to Christianity, according to Chungailung Rongmei; and after his conversion to Christianity, Chungailung Rongmei, became Khullakpa of Khoupum Village and also that Rongrang Rongmei voluntarily relinquished his right to the office of the Khullakpaship. Chungailung Rongmei filed a declaratory suit, i.e., O.S. No.7/1990 against Shri Rongrang Rongmei in the court of Munsiff, Tamenglong, Manipur for declaring him (Chungailung Rongmei) as the Khullakpa of Khoupum Village on the pleas that Shri Rongrang Rongmei who was the Khullakpa of Khoupum Village, after his conversion to Christianity, cannot continue to be the Khullakpa; and also that Shri Rongrang Rongmei had relinquished the Khullakpaship in favour of Chungailung Rongmei. Shri Rongrang Rongmei, in his written statement in O.S. No. 7 of 1990 had denied that he relinquished the office of Khullakpa in favour of Chungailung Rongmei and also that after his conversion to Christianity he cannot continue to be the Khullakpa of Khoupum Village. In that civil suit, there were two issues : (1) whether there is a custom that eldest male member of Rongmei Clan only of the blood group of Khullakpa of Khoupum Village shall be the Khullakpa of the Village; and (2) whether conversion to Christianity is the bar on the succession of Rongrang Rongmei to Khullakpaship.

7. The learned Munsiff decided that according to the custom prevailing amongst the members of Rongmei Clan, the eldest male member of the Rongmei Clan of the blood group of Khullakpa of Khoupum Village shall be the Khullakpa of the

village and also that conversion of the incumbent of the post of Khullakpa to the Christianity will not bar on his continuation of the Khullakpa of the village and also to the succession of Khullakpaship. After such findings, the learned Munsiff dismissed the O.S. No. 7 of 1990 filed by Chungailung Rongmei by accepting that the case of Shri Rongrang Rongmei that he continued to be the Khullakpa of the Khoupum Village and also he did not relinquish the Khullakpaship in favour of Shri Chungailung Rongmei vide judgment and decree dated 25.3.1995 passed in O.S. No. 7 of 1990.

8. Against the judgment and decree of the learned Munsiff, dated 25.3.1995 for dismissing O.S. No. 7 of 1990, a Civil Appeal No. 5 of 1995 was filed by Shri Chungailung Rongmei, but the said appeal was dismissed as not pressed on 22.9.1995. Thereafter, Shri Rongrang Rongmei, undisputedly continued to be the Khullakpa of Khoupum Village. The Deputy Commissioner, Tamenglong, pursuant to the judgment and decree of the civil court, dated 25.3.1995, passed an order being No.DC/TML/15/1/87(VA), Tamenglong dated 17.7.1996 for declaring Shri Rongrang Rongmei as the Ex-Officio Chairman of the Village Authority of Khoupum Village in Nungba Sub-Division, Tamenglong District with immediate effect and also election of the Village Authority of Khoupum Village held in 1992 shall stand invalid in respect of Ex-Officio Chairmanship.

9. On the death of Shri Rongrang Rongmei, on 4.2.2001, Shri Gaipuidun Rongmei, the present petitioner was appointed by the members of Rongmei Clan as the new Khullakpa of Khoupum Village by virtue of his being eldest male member of the Clan, according to custom, by performing necessary customary rites and ritual. The D.C. Tamenglong, after making necessary inquiry into the matter, i.e., claim made by the present petitioner that he being the eldest male member of the Clan became the Khullakpa of the Village according to custom and tradition prevailing amongst the members of Rongmei Clan and Villagers, passed an order being No.DC/TML/Khun/2001 dated Tamenglong 15.12.2001 that Shri Gaipuidun Rongmei, is recognized as the Khullakpa and Ex-Officio Chairman of Khoupum Village Authority. For easy reference, the said order of the DC Tamenglong dated 15.12.2001 (Annexure A/4 to the writ petition) is reproduced hereunder :

GOVERNMENT OF MANIPUR OFFICE OF THE DEPUTY COMMISSIONER:

TAMENGLONG

ORDER

Tamenglong, the 15th December, 2001

No.DC/TML/Khun/2001 : Whereas Shri Taipuidun Rongmei of Khoupum Village filed a petition date 30.4.2001 requesting for recognising him as Khullakpa and Ex-Officio Chairman of Khoupum Village Authority.

Whereas Shri Rongrang Rongmei former Khullakpa of Khoupum expired on 4.2.2001 the Rongmei Clan meeting held on 14.2.2001 appointing its eldest male

member Shri Gaipuidun Rongmei as the new Khullakpa of Khoupum as per the tradition of the Clan/village and the necessary customary rites and ceremony of Zeliangrong had been performed by Gaipuidun Rongmei of his becoming the new Khullakpa of Khoupum Village.

And whereas the SDO/Nungba conducted an enquiry into the matter and recommended Shri Gaipuidun as undisputed Khullakpa being the eldest male member of Rongmei Clan vide his letter No.SDO/NBA/BA/01 dated 20.10.2001.

Now under the circumstances as described above and considering and confirming the genuine of having claim hereditary system with eldest male member of the Rongmei clan inherit the post of Khullakpa of Khoupum Village. I Shri K. Moses Chalai I.A.S., Deputy Commissioner Tamenglong do hereby declare that Shri Gaipuidun Rongmei is recognized as Khullakpa and Ex-Officio Chairman of Khoupum Village Authority

Sd/- (K. Moses Chalai) Deputy Commissioner, Tamenglong.

10. The SDO, Nungba, issued Notification dated 17.8.2002 for election on 4.9.2002 which was later on rescheduled on 11.9.2002. The petitioner, after coming to know the said Notification dated 17.8.2002, as a Khullakpa of Khoupum Village and his men made a written complaint to, the Presiding Officer against the election of Member and Chairman of Village Authority as the petitioner was already Khullakpa of the Village. Despite strong objection made by the petitioner, the Presiding Officer and his polling agents forcibly carried out the so called election of Member of the Village Authority. The D.C., Tamenglong, also submitted result of the said election of Members and Chairman of the Village Authority of Khoupum a Village to the State Government, saying that Daisingam Gangmei, private respondent, had been elected as the Chairman of the Khoupum Village. Pursuant to that a Notification was issued by the Government dated 20.6.2003 that Daisingam Gangmei had been elected as Chairman of the Village Authority of Khoupum Village.

11. Later on, a Minister, i.e., local M.L.A, Tamenglong District wrote a letter to the D.C. Tamenglong, stating that Houpanlung Gangmei, is the Khunbu/Luplak of the Khoupum Village, and accordingly necessary actions be taken up vide D.O.No.1/M(P/Hort.& S.C./IPR)/04 dated 18.9.2004. The D.C, Tamenglong, requested the Commissioner, Hills, for necessary publication of the name of Haopanlung Gangmei as Luplak/Khunbu of Khoupum Village in the Manipur Gazette vide his letter No.DC/TML/II/104(VA)92(Pt) dated 4.12.2004. In response to the said request the State Government published the Notification being No. 9.8.2004-CHA (Pt), Imphal 10.3.2005 in the Manipur Gazette Extraordinary No. 320 Imphal, Saturday 19th March, 2005 that the private respondent, Haopanlung Gangmei is declared as Khunbu/Luplak of Khoupum Village, Nungba Sub-Division, Tamenglong.

12. The petitioner, being aggrieved by the said Notification dated 20.6.2003 and 10.3.2005 filed the WP(C) No. 21 of 2007 before this court. During pendency of

the said WP(C) No. 21 of 2007, the term of members of Khoupum Village came to an end. In order to elect new members of the Village Authority of the villages including Khoupum Village an order dated 19.11.2007 was issued by the SDO Nungba notifying the time table for holding election. The Writ Petitioner submitted a representation to the D.C. Tamenglong District with a copy to the SDO, Nungba requesting them to desist from holding election in respect of Chairman of Khoupum Village Authority on the ground that the writ petitioner being the undisputed Khullakpa of Khoupum Village he should be the Ex-Officio Chairman of Khoupum Village by virtue of section 3(4) of the Manipur (Village Authorities in Hill Areas) Act, 1956. Vide circular dated 29.11.2007 issued by the Election Officer postponed the election indefinitely until further order.

13. Later on, another Notification was issued fixing the date for election of Village Authority of Khoupum Village on 15.8.2008 and petitioner also filed representation to the D.C. Tamenglong reiterating his earlier representation dated 28.11.2007 vide his representation dated 12.5.2008. Without considering all the representations submitted by the petitioner, the Village Authority Election, in respect of Khoupum Village was held on 15.5.2008. The result of the election was submitted to the DC, Tamenglong District by the SDO Nungba vide letter of the SDO, Nungba bearing No.SDO/NBA(1)VAE/2007 dated 24.5.2008 addressed to the Deputy Commissioner, Tamenglong. The result of the Village Authority in respect of Khoupum Village was declared on 9.7.2008 and one Daisingam was declared to have been elected as Chairman of the Khoupum Village Authority. The petitioner filed another writ petition being WP(C) No. 684 of 2008 challenging the said election/order for declaring Daisingam as Chairman of the Village Authority of Khoupum Village; and the writ petition was moved on 5.9.2008. This court passed an interim order suspending the operation of the impugned order/Notification dated 9.7.2008 for declaring Shri Daisingam Gangmei as Ex-Officio Chairman of the Village Authority of Khoupum Village. While the WP(C) No.684 of 2008 is pending, the Government of Manipur issued another order in partial modification of the earlier impugned order dated 9.7.2008 declaring private respondent, Shri Haopalung Gangmei respondent No. 3 as Ex-Officio Chairman of Khoupum Village in place of Shri Daisingam Gangmei vide order of the Government of Manipur being No.9/8/2008-CHA dated 27.6.2009. The petitioner being aggrieved by the said order of the Government of Manipur dated 27.6.2009 filed WP(C) No. 473 of 2009.

14. u/s 3(1) of the Manipur (Village Authorities in Hill Areas) Act, 1956 every village having 20 or more tax paying houses shall have a Village Authority. u/s 3(2) of the 1956 Act, members of the Village Authority shall be elected in accordance with the provisions of the Act and Rules made thereunder. Sub-section (4) of section 3 of the Act, clearly provides that where there is a Chief/Khullakpa in a Village, he shall be the Ex-Officio Chairman of the Village Authority of that Village; and where there is such Chief/Khullakpa in the Village, the Chairman of the Village Authority of the Village shall be elected by the members of the Village Authority from amongst themselves. As such, it is the

clear mandate of sub-section (4) of section 3 of the 1956 Act, that the Chief/Khullakpa in a village shall be the Ex-Officio Chairman of the Village of that village. In other words, election of the Chairman of the Village Authority is not required for a village where there is a Chief or Khullakpa. The D.C., has the power u/s 8 of the 1956 Act to remove any Member of Village Authority from his office : -(a) who is convicted of any non-bailable offence; (b) who refuses to act or become incapable of acting or who is declared to be insolvent; or (c) who has been declared by Notification to be disqualified for employment in the public service; or (d) who, without an excuse sufficient in the opinion of the D.C., absents himself from six consecutive meetings of the Village Authority; or (e) who has been guilty of misconduct in the discharge of his duties, or of any disgraceful misconduct; and if 2/3 of the total members of the Village Authority at a meeting recommend his removal.

15. Section 8 of the 1956 Act, does not contemplate power of the D.C. to remove Ex-Officio Chairman of the Village Authority so long as the said Ex-Officio Chairman continued to be Khullakpa or/Chief of that Village. In nowhere of the 1956 Act there is provision for removal of the Ex-Officio Chairman of the Village Authority, in case, the concerned Ex-Officio Chairman of the Village Authority continued to be the Chief/Khullakpa of the Village inasmuch as sub-section (4) of section 3 clearly provides that where there is Chief/Khullakpa in a Village he shall be the Ex-Officio Chairman of the Village Authority of that Village.

16. This court (Division Bench) in *Panti Gongpou v. D.C. Tamenglong*, 1996 (1) GLT 332 had discussed and decided the issue as to whether the State Government or the Deputy Commissioner can remove Ex-Officio Chairman who has been appointed under sub-section (4) of section 3 by virtue of his being Khullakpa (Chief of Village) and held that the Deputy Commissioner or the State Government cannot remove the Ex-Officio Chairman who has been appointed under sub-section (4) of section 3 of the 1956 Act, by virtue of his being Khullakpa (Chief of Village). Paras 7, 8 and 9 of the GLT in *Panti Gongpou* case (*supra*) read as follows :

7. The Manipur Village Authority in Hill Areas Act, 1956 was enacted by the Parliament to consolidate and amend the law relating to the Constitution and function of village Authorities in the hill areas of Manipur. Section 3 of the Act deals with the Constitution of a village authorities and provides that every village having 20 or more tax paying houses shall have a village authority. Sub-sections (2) and (3) of section 3 deal with the election of the members of the village authority.

Sub-section (4) of section 3 deals with the election of the chairman of the village authority. Sub-section (4) of the section 3 has an important bearing for the proper adjudication of the case in hand and it is extracted : -

(4) Where there is a Chief or Khullakpa in a village, he shall be the Ex-Officio Chairman of the Village Authority of that village: and where there is no such

Chief or Khullakpa in the village, the Chairman of the Village Authority of that village shall be elected by the members of the village authority from among themselves.

8. There is no dispute that the Khullakpa is hereditary. The term "hereditary" is some sort of a legal and fictitious continuation of personality of the dead man. The rights which the dead man can no longer own or exercise in propria persons and obligation of which he can no longer fulfil, he owns, exercises and fulfils in the person of a living substitute. Therefore, the legal personality of a man survives his natural personality.

9. In the instant case, admittedly, the petitioner was appointed as Ex-Officio Chairman in 1983 in terms of sub-section (4) of section 3, by virtue of his being a Khullakpa. A quick perusal of the relevant provisions of the Act, we are of the view that there is no provision for either by resignation or by removal of the Ex-Officio Chairman who has been appointed in terms of sub-section (4) of section 3 of the Act. In this connection, we may refer to section 6, section 8 and section 9 of the Act deals with the term of office of the members of the Village Authority and provides that the term of office of the members of the Village, authority shall be 3 (three) years from the date appointed for the first meeting. Section 8 provides for removal of members of Village Authority by the Dy. Commissioner for the offences enumerated in a to section 9 deals with the resignation of members and provides that a member of the Village Authority may resign his office by writing under his hand addressed to the Chairman. From the relevant provision, as recited above, all the provisions are relating to elected members of the Village Authority. There is no provision for removal or tendering resignation by Ex-Officio Chairman who has been appointed under sub-section 4 of section 3 of the Act, by virtue of he being Khullakpa. Necessary corollary is that once a person, is appointed as Ex-Officio Chairman in terms of subsection (4) of section 3 of the Act, by virtue of he being Khullakpa, he cannot be removed or tendered resignation. He can only abdicate or relinquish his office in favour of heir designate when he becomes incapable of performing his duties and function of the khullakpa. Of course, this is subject to removal of the Khullakpa from the office by the villagers for certain exigency, such as personal disqualification incurred by him. Except for the aforesaid exigency, a Khullakpa being hereditary cannot be removed by the State Government or by the D.C., either from Khullakpa or from the Ex-Officio Chairmanship appointed by virtue of his being a Khullakpa in terms of sub-section 4 of section 3 of the Act.

17. The petitioner being the Khullakpa of Khoupum Village, as stated above, had already been declared and recognized as Khullakpa and Ex-Officio Chairman of the Khoupum Village Authority vide said order of the D.C., Tamenglong dated 15.12.2001 which has been quoted above. As discussed above, there is no provision under the 1956 Act which empower the State Government or the D.C., to conduct election for the chairman of the Village Authority of Khoupum Village so long as the petitioner continues to be the Khullakpa of Khoupum Village

Authority.

18. This court (Division Bench) in Panti Gongpou's case (supra) in clear terms held that "There is no provision for removal or tendering resignation by Ex-Officio Chairman who has been appointed under sub-section (4) of section 3 of the Act, by virtue of he being Khullakpa. Necessary corollary is that once a person, is appointed as Ex-Officio Chairman in terms of sub-section (4) of section 3 of the Act, by virtue of he being Khullakpa, he cannot be removed or tendered resignation. He can only abdicate or relinquish his office in favour of heir designate when he becomes incapable of performing his duties and function of the khullakpa. Of course, this is subject to removal of the Khullakpa from the office by the villagers for certain exigency, such as personal disqualification incurred by him." This court is of considered view that even if there is no provision for removal of the Ex-Officio Chairman of the Village Authority under the 1956 Act, there is no bar under the Act from questioning the right of the Ex-Officio Chairman to the office of the Khullakpa of the Village. In other words, since the right to office of Khullakpa of the Village is a civil right a civil suit can certainly be filed for declaring Ex-Officio Chairman of the Village Authority is not the Khullakpa of the Village. Accordingly, so long as there is no declaration that the writ petitioner is not the rightful Khullakpa by the competent civil court or/ competent court, he shall continue to be the Khullakpa and till such declaration by the competent authority that the writ petitioner is not the Khullakpa of the village, he shall continue to be the Ex-Officio Chairman of the village, i.e., Khoupum Village as he had been elected under sub-section (4) of section 3 of the 1956 Act by virtue of he being Khullakpa of Khoupum Village.

19. Mr. A. Bimol, learned counsel for the petitioner contends that while there is no provision in 1956 Act, empowering the State Government or D.C., for removal of the Ex-Officio Chairman of die Village appointed under sub-section (4) of section 3 of the 1956 Act by virtue of he being the Khullakpa, either State Government or the D.C., cannot exercise executive powers by issuing executive orders in infraction of the provisions of sub-section (4) of section 3 of 1956 Act for removal of the Ex-Officio Chairman of the Village Authority.

20. In support of his contention Mr. Bimol, learned counsel for the petitioner placed heavy reliance on the decisions of the Apex Court in Union of India (UOI) and Others Vs. Somasundaram Viswanath and Others, and D.D.A. and Others Vs. Joginder S. Monga and Others, . In Somasundaram's case (supra) the Apex Court held that "if there is a conflict between the executive instructions and the rules made under the proviso to article 309 of the Constitution of India, the rules made under proviso to article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails." Relevant portion of para 6 of the SCC in Somasundaram's case (supra) read as follows :

6. It is well settled that the norms regarding recruitment and promotion of

officers belonging to the civil services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to article 309 of the Constitution of India or by means of executive instructions issued under article 73 of the Constitution of India in the case of civil services under the Union of India and under article 162 of the Constitution of India in the case of civil services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to article 309 of the Constitution of India, the rules made under proviso to article 309 of the Constitution of India prevail, and if there is a conflict between the rules made under the proviso to article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails.

The Apex Court is of similar view in *Joginder S. Monga and Ors.*'s, case (supra).

21. For the foregoing reasons, as the writ petitioner continues to be the Ex-Officio Chairman of Khoupum Village, as he had been appointed as such, in terms of sub-section (4) of section 3 of the 1956 Act by virtue of he being the Khullakpa the subsequent executive orders of the Government of Manipur (impugned orders) for declaring the private respondent No. 3, Daisingam Gangmei, in WP(C) No. 21 of 2007 as Chairman of Khoupum Village and also the impugned Notification for notifying Private respondent No. 3, Shri Houpanlung Gangmei, as the Chairman of the Village Authority of Khoupum Village are the orders issued by the executive authorities without jurisdiction. As a result, the impugned orders dated 27.6.2009, 9.7.2008 and 20.6.2003 are hereby quashed.

The writ petitions are allowed.