
(2014) 09 MEG CK 0023
In the Meghalaya High Court
Case No : W.P. (C). No. 330 of 2013

H.P. Oflyn Dohling

APPELLANT

Vs

The Khasi Hills Autonomous District Council

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : (2014) 09 MEG CK 0023

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

T. Nandakumar Singh, J.—Heard Mr. K. Sunar, learned counsel appearing for the petitioner.

Also heard Mr. L. Khyriem, learned counsel appearing for respondent No. 2, Mrs. S.K. Nongrum, learned counsel appearing for the private respondents" No. 3, 4 and 5 and Ms. P.S. Nongbri, learned counsel appearing for respondent No. 1.

2. This writ petition was filed on the apprehension that the writ petitioner is likely to be removed from being the headman of Malki, Shillong before the expiry of his term as headman i.e. 04.04.2015 and after his removal, election is likely to be held for electing the new headman of Malki, Shillong.

3. The learned counsel for respondent No. 2, Mr. L. Khyriem submits at the Bar that this writ petition is not maintainable inasmuch as the present writ petition has been filed only on apprehension. It is the case of the parties that respondent No. 2, the Syiem of Myllem and Durbar, Mawkhar Main Road, Shillong is the competent authority for issuing the sanad for appointment of the headman of Malki, Shillong and also that the appointment of the Chief or Headman of the village shall be made in compliance with the provisions of the Act "The Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem, Electors and Rangbah Shnong of Myllem Syiemship) Act 2007". (for short, the said Act 2007).

4. The respondent No. 2, being the competent authority to issue the sanad for appointment of the headman of Malki, Shillong, appointed the petitioners as the headman of Malki, Shillong under the letter dated 04.04.2012 (Annexure-1 of the writ petition) The conditions for appointment of the petitioner as the headman of Malki, Shillong are mentioned in the said letter dated 04.04.2012 of the respondent No. 2, and the letter dated 04.04.2012 reads as follows:

"Office of The Syiem of Myllem and Durbar Mawkhar Main Road, Shillong-793001
No. MS/V-111/88-12/24

dated, Shillong the 4th April, 2012.

To,

Shri HP. Offlyn Dohling Malki, Myllem Syiemship

By this Appointment Letter you have been confirmed as the Headman according to the territorial jurisdiction of Malki Myllem Syiemship as per the conditions laid down as follows:-

1. You shall run the village administration in accordance with the prevalent custom and the law for the peace and tranquility among the inhabitants thereof.
2. This Appointment Letter has not conferred on you the right over private lands or raid land according to the prevalent custom.
3. You shall not collect exorbitant royalties or fix the rate in case you are a witness in any sale transaction.
4. You shall not levy any tax on any immovable property or houses of the inhabitants.
5. You shall not impose an exorbitant fine on the inhabitants.
6. You shall not impose an exorbitant entry fee on a new inhabitant but it should be realized as a token fee.
7. You shall see that in case of a house construction there must be a gap of not less than 6 feet from the adjacent land owners and public path.
8. You shall convene the Village Durbar at least once a year.
9. This Appointment Letter shall expire after 3 (three) years and it may be renewed after the date of expiry.
10. The Syiem and the Durbar, Myllem Syiemship can repudiate the said existing conditions or add new ones if needed".

5. The term for appointment of the petitioner as the headman of Malki, Shillong under the said letter dated 04.04.2012 is 3 (three) years i.e. from 04.04.2012 to 04.04.2015. The respondent No. 2 under his letter dated 03.12.2012 instructed the petitioner to appear before the Durbar of the Syiem of Myllem Syiemship on

11.12.2012 at 1.30 PM for hearing of the letter dated 19.11.2012 from Shri B. Warjri, General Secretary, Malki Local Durbar, Shillong with a document enclosed thereto regarding the prayer for cancellation of the appointment of the petitioner as the headman of Malki, Shillong.

6. It is stated in the writ petition that on 11.12.2012 there was no hearing of the parties pursuant to the said letter dated 03.12.2012 and the hearing had been postponed. Thereafter, the General Secretary, Malki Local Durbar, Shillong under his letter dated 06.11.2013 requested the respondent No. 2 to depute the officials or villagers to be present in the ensuing General Durbar on 16.11.2013 at 10.00 AM at Malki Ground to elect the new headman of the locality.

7. The petitioner under his letter dated 13.11.2013 requested the respondent No. 2 to stop the said meeting i.e. General Durbar scheduled to be held on 16.11.2013 till the expiry of his term as the headman of Malki, Shillong under the said letter i.e. 04.04.2012 (Term expired on 04.04.2015) and also that, if the respondent No. 2 failed to stop the meeting, the petitioner shall approach the High Court.

8. Mr. L. Khyriem, learned counsel for respondent No. 2 stated at the Bar that after receiving the said letter dated 13.11.2013, the General Secretary, Malki Local Durbar, Shillong had been requested to postpone the meeting scheduled to be held on 16.11.2013. As such, the respondent No. 2 has no idea regarding the General Body meeting held on 16.11.2013. The learned counsel appearing for the respondent No. 2 further submitted that if there was any General Body meeting held on 16.11.2013 that will not be a legal one.

9. Mrs. S.K. Nongrum, learned counsel for the private respondent No. 3, 4 and 5 contended that the petitioner himself filed a nomination paper for the election of the new headman of Malki, Shillong and also as per the verbal instruction of the respondent No. 2 there was a General Body meeting or election on 16.11.2013 and respondent No. 4 and 5 had been elected as the headmen. It is an admitted fact that the respondent No. 2 who is the competent authority for appointment of the headman of Malki, Shillong has not yet issued the sanad for appointment of respondent No. 4 and 5 as the headmen of Malki, Shillong and as there is no sanad as on today for appointment of respondent No. 4 and 5 as the headmen of Malki, Shillong, the petitioner is still continuing as the headman of Malki, Shillong. The headman of Malki, Shillong can be removed on the conditions mentioned in Section 18 of the Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem, Electors and Rangbah Shnong of Myllem Syiemship) Act 2007. For easy reference, Section 18 of the Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem, Electors and Rangbah Shnong of Myllem Syiemship) Act 2007 is quoted here under:

"18. Term of Office, removal and suspension of the Rangbah Shnong:- (1) A Rangbah Shnong shall hold office as per the terms and conditions in the

appointment order/Sanad provided that he may be removed from office or suspended by the Syiem or the Acting Syiem and his Executive Durbar if:-

(a) He refuses to carry the orders and instructions issued by the Executive Durbar;

(b) He violates any of the provisions of this Act or rules or/and resolutions of the Executive Durbar;

or

(c) He violates any of the laws, regulations, rules and resolutions of the executive committee;

or

(d) He has been convicted of an offence involving moral turpitude;

or

(e) He is found incapable of carrying on his duties and functions due to ill health, old age or habitual drunkenness;

or

(f) He is found to be mentally unfit to carry out his duties and functions;

or

(g) He is found to have been conducting himself in a manner derogatory to his office;

or

(h) He is found to have been conducting himself in a manner which may undermine the authority of the Executive Committee;

or

(i) He has lost the confidence of the majority of the members of the village Durbar who elect him.

(2) An appeal against any order passed under subsection (1) above, shall lie to the Executive Committee whose decision shall be final and every such appeal shall be filled within thirty days from the date the order is communicated or known to the party or parties concerned accompanied by a petition fee as may be prescribed by the Executive Committee.

Notwithstanding anything contained in sub-section (1) above the Executive Committee may removed or suspended any Rangbah Shnong if in its opinion, he is liable for taking action under any of the clauses of sub-section (I) above, and the order passed by the Executive Committee in such cases shall be final;

Provided that a Rangbah Shnong shall not be removed or punished u/s 18(1)

above unless he is given an opportunity of being heard.

Provided, further, that the requirements of the above proviso shall not apply:-

(i) In the case where the order of removal or punishment or suspension is awarded on account of his being convicted of an offence involving moral turpitude;

(ii) In the case of order of suspension pending enquiry.

10. The learned counsel appearing for the petitioner, Mr. K. Sunar contended that the petitioner who is an old man aged about 80 years is not contesting the election for the headman of Malki, Shillong after the expiry of his present term i.e. his term will expire on 04.04.2015 and the petitioner may be allowed to continue till the expiry of his term.

11. It is the settled law that the relief cannot be granted on sympathy. The relief is to be granted under the law. There is a provision for removal of the headman of the village U/S. 18 of the said Act, but the petitioner cannot be removed without giving any opportunity of being heard and he can be removed only under the conditions mentioned in Section 18 of the said Act. If the private respondents and the villagers of Malki, Shillong are not satisfied with the functioning of the petitioner as the headman, they can file complaint against him to the competent authority i.e. respondent No. 2. If the respondent No. 2 received any complaint against the petitioner, he shall be given an opportunity to submit his show cause statement and also the opportunity of hearing to the petitioner and the complainant. Only after hearing the petitioner and the complainant, action can be taken up as provided U/S. 18 of the said Act, 2007. In case, if the petitioner is removed from being the headman of Malki, Shillong, election for the new headman shall follow the prescribed procedure.

12. It is made clear that the petitioner shall be allowed to continue as the chief or headman of Malki, Shillong till appointment of the new headman.

13. With the above observation and direction, this writ petition is disposed of.