
(2008) 06 GAU CK 0029
In the Gauhati High Court

Keyirangding Hegui

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 06-06-2008

Acts Referred:

Nagaland Village and Area Council Act, 1978 — Section 15(1)(g)

Citation : (2010) 1 GLR 163 : (2008) 3 GLT 210

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Judgement

P.K. Musahary, J.—A is born to Naga parents in Nagaland. B is also born in Nagaland but to Naga parents who hail from outside the geographical boundary of Nagaland. Unlike A, B would be required to prove his status as indigenous inhabitant of the State of Nagaland for the purpose of securing public employment. Certain conditions are to be fulfilled for proving the status of indigenous inhabitants of Nagaland and the same have been laid down in Office Memorandum No. AR/8/76 dated 19.4.1983. The petitioner belongs to category A, while the private respondents 6 and 7 belong to category B. They all belong to Zeliang Tribe. The petitioner and the private respondents participated in the recruitment of the Nagaland Civil Services and Allied Services conducted by the Nagaland Public Service Commission in response to Advertisement No. 3/2003-2004 dated 11.11.2003. The Nagaland Public Service Commission (hereinafter referred to as, "the Commission" only) prepared a list of 7 (seven) Zeliang candidates in order of merit. The respondents 6 and 7 were placed at serial Nos. 2 and 3 respectively, while the petitioner was placed at serial No. 4. After perusing all the available materials on record, the Commission, in its meeting held on 9.2.2005 rejected the candidature of persons placed at serial Nos. 1,2 and 3. The candidate who was placed at serial No. 1 in the merit list was rejected as she originally hails from Manipur. The candidature of the respondents 6 and 7 were also rejected on the same ground and ultimately, although the petitioner was placed at serial No. 4, was recommended for the post of EAC and appointed to the said post vide Notification No. PAR-3/19/86

(Pt-1) dated 25.2.2005.

2. The aforesaid private respondents being aggrieved by the decision of the Commission moved this Court by filing WP(C) No. 30(K)/ 2005 and WP(C) No. 33(K)/2005 challenging the decision of the Commission dated 9.2.2005 and the appointment of the present writ petitioner. The aforesaid writ petitions were disposed of by a common judgment and order dated 18.5.2005 with the following directions:

18. The Deputy Commissioner, Peren District, Nagaland is directed to enquire the complaints against the writ petitioners to the Secretary, Nagaland Public Service Commission questioning the status of the writ petitioners as "Indigenous Inhabitants" of Nagaland afresh after giving the proper opportunity of hearing to the writ petitioners and also after supplying all the documents against the writ petitioners on which the Deputy Commissioner, Peren proposed to place reliance for taking action against the petitioners and the Nagaland Public Service Commission shall take appropriate decisions only after receiving the reports of the Deputy Commissioner, Peren District, Nagaland after holding enquiry afresh. Since this matter relates to the appointment to the post of EAC and the Dy. S.P. on the direct recruitment, further delay will not serve any purpose. Accordingly, the Deputy Commissioner, Peren District, Nagaland should complete the enquiry within a period of 3 (three) months from the date of receipt of this judgment and order and the Nagaland Public Service Commission on receiving the report of the Deputy Commissioner, Peren District, Nagaland shall issue the appointment orders as expeditiously as possible.

3. Being aggrieved by the common judgment and order dated 18.5.2005 aforesaid, the present petitioner preferred an appeal being W.A. No. 376/2005, which was disposed of vide order dated 29.7.2005 passed in Miscellaneous Case (WA) No. 1675/2005 with a direction that till submission of the report of the Deputy Commissioner, Peren, the appellant/present petitioner shall be allowed to continue in his training.

4. The Deputy Commissioner, Peren, in compliance to common judgment and order dated 18.5.2005 passed in WP(C) No. 30(K)/2005 and WP(C) No. 33(K)/2005 initiated process for enquiry to determine the status of respondents 6 and 7 as indigenous inhabitants. After completion of the enquiry, the Deputy Commissioner, Peren submitted a report to the Secretary, NPSC, Kohima vide letter No. JUDL-5/83 (Pt-II) dated 25.7.2005. The status of respondent No. 6, Shri D. Robin was determined on the basis of "testimony" purportedly issued by Chain-nan and Head GB of Old Jalukie Village Council dated 23.5.2005. The status of respondent No. 7, Shri Igwangheing Hemang was determined on the basis of declaration dated 15.7.2005 signed by Chairman of Gaili Village Council, Chairman of Haikuke Village Council and Head GB and other two GBs. On the basis of those two documents, the Deputy Commissioner, Peren came to the conclusion that both respondents 6 and 7 are indigenous inhabitants of Nagaland. And on the basis of aforesaid findings and report of the Deputy

Commissioner, Peren, the Commission recommended appointment of respondents 6 and 7 and accordingly, respondent No. 6 was appointed to the post of EAC vide Government Notification No. PAR-3/19/86 (Pt) dated 15.12.2005.

5. The petitioner by filing this writ petition has challenged the Deputy Commissioner's enquiry report dated 25.7.2005 (Annexure-10 to the writ petition) and also of the appointment of respondent No. 6 to the post of EAC vide Government Order dated 15.12.2005 (Annexure-11 to the writ petition).

6. Mr. C.T. Jamir, learned Counsel for the petitioner submits that the Deputy Commissioner, Peren conducted the enquiry behind the back of the petitioner as no notice was issued to the petitioner informing about the holding of the enquiry and also without furnishing the copy of documents proposed to rely by the respondents substantiating their claim for status of being indigenous inhabitants. The testimony dated 23.5.2005 and the declaration dated 15.7.2005 produced by the respondents, according to Mr. Jamir, learned Counsel for the petitioner cannot be valid documents without being testified by the authorities/persons who had issued them in favour of the respondents. According to him, the Chairman, Village Council, Head GB and GBs of the Village Councils concerned were not examined by the Deputy Commissioner. No statements were recorded as to how they happen to issue such testimony and declaration to the respondents. There is, according to Mr. Jamir, no basis for issuing the aforesaid documents by the Village Council and as such these two documents as relied upon by the Deputy Commissioner have no evidentiary value and on the basis of such documents, the status of indigenous inhabitants of the respondents could not be determined and any finding on the basis of such documents would be illegal and unsustainable under the law. The further submission of Mr. Jamir is that the respondents 6 and 7 having failed to prove that their parents were enrolled as voters prior to 5.12.1963 cannot claim the status of indigenous inhabitants unless they can otherwise prove that their parents or legitimate guardians have been paying house tax prior to 1.12.1963 or their parents or legitimate guardians have acquired property and patta of the land prior to 1.12.1963. They have failed to produce any valid documents for payment of house tax or land patta prior to 1.12.1963. In absence of such document, the respondents would not be entitled to claim the status of indigenous inhabitants. The respondents 6 and 7 have managed to obtain the aforesaid documents from the Village Councils only after this Court in the common judgment and order dated 18.5.2005 directed to hold enquiry to establish their claims.

7. Mr. I. Longjem, learned Counsel appearing for the respondents 6 and 7 countered the aforesaid submissions made by the petitioner's counsel. According to Mr. Longjem, the Deputy Commissioner, Peren issued general notice dated 28.6.2005 about holding of the enquiry as directed by this Court to determine the status of the respondents 6 and 7 as indigenous inhabitants of Nagaland. A copy of the said notice was communicated to the writ petitioner and also

respondents 6 and 7. Mr. I. Longjem has drawn the attention of this Court to Annexure-A notice dated 28.6.2005 issued by the Deputy Commissioner, Peren, which was annexed to the Additional Affidavit filed by respondents 6 and 7 on 13.7.2007 in WP(C) No. 33(K)/2007. According to learned Counsel for respondents 6 and 7, opportunity was afforded to the petitioner to participate in the enquiry proceeding but he opted himself not to participate and therefore, he cannot now take the plea that no opportunity was given to him. Mr. Longjem fairly submits that the parents of respondents 6 and 7 were no doubt enrolled in the voter list of 1963 but they were enrolled in the voter list of 1977. The father of respondent No. 6, admittedly was working in the Police Department of Nagaland. The parents of the said respondents although not enrolled in the electoral roll of 1963, acquired land in the non-cadastral area and as such they could not produce any land patta. However, they have obtained documents from the respective Village Council authorities to the effect that their parents acquired properties and since the Village Councils are the authorized revenue officers under the present land revenue administration, the documents issued by them may be treated as sufficient evidence in regard to holding of land and properties and such documents cannot be ignored. It is further submitted by Mr. Longjem that the petitioner is estopped from questioning the legality or illegality of the impugned enquiry report dated 25.7.2005 submitted by the Deputy Commissioner, Peren in view of the fact that the parties, at the time of disposal of Miscellaneous Case (WA) No. 1675/2005 in W.A. No. 376/2005 on 29.7.2005 agreed to abide by the enquiry report to be made by the Deputy Commissioner, Peren and the appellant's (present petitioner) undergoing training be continued till submission of the report. On the basis of the aforesaid consent order, the aforesaid Miscellaneous case as well as the writ appeal were disposed of and as such the petitioner has no scope for resiling and refusing to abide by the enquiry report of the Deputy Commissioner, simply because it is not in his favour. In support of his submission Mr. Longjem has cited the following cases:

1. P.K. Vasudeva Vs. Zenobia Bhanot, ;
2. Rajendra Kumar Vs. Kalyan (D) by Lrs., ;
3. P. Prabhakaran Vs. P. Jayarajan, .

8. The order dated 29.7.2005 passed in Miscellaneous Case (WA) No. 1675/2005 in W.A. No. 376/2005, on the basis of which the above submission has been made by the learned private respondents is quoted below:

After some arguments Mr. H. Roy, learned Counsel appearing for the Appellant, Mr. D.K. Mishra, appearing for the Respondent No. 1 and Mrs. A. Aier, learned Government Advocate, Nagaland appearing for the Respondent Nos. 2, 4 and 6 submits that the writ appeal and the miscellaneous case be disposed by an order that the parties will abide by the report of enquiry made by the Deputy Commissioner, Peren and the appellants' undergoing training be continued till submission 1 of the report.

(2) We think the request made by the learned Counsel for the parties as stated above, is reasonable. We, accordingly, dispose of the Miscellaneous Case as well as the writ appeal without making an order as to cost.

(3) Till making of the report by the Deputy Commissioner, Peren the appellants' training for the post in question shall continue.

(4) Let a copy of this order be handed over to Mrs. A. Aier, learned Government Advocate, Nagaland for its intimation to and necessary action by the respondents.

This order, in my considered view, is not a consent order. It was rather submission of the counsel for the parties and it was not possible to pass any consent order at that stage without having the matter enquired and obtaining the enquiry report. The case of Rajendra Kumar (supra), although relates to question of constructive res judicata it is not applicable to the present case as the said cited case decided an issue under statutory provision and no enquiry was involved. The ratio of P.K. Vasudeva (supra) is also not applicable to the present case as in the said cited case the Apex Court found that the High Court passed certain order on the concession of the counsel for the appellant, which was acted upon when the rci i control officer decided the matter after remand. Here is a case where the main issue is yet to be decided after proper enquiry and there was no scope for making any concession by any party to the writ proceeding. The case of K. Prabhakaran (supra) is basically on the question of interpretation of statute and as such it has no application to the present case.

9. I have perused the documents and also the impugned report dated 25.7.2005 submitted by the Deputy Commissioner, Peren and considered the submissions made by the learned Counsel for the parties. I am conscious about the established law that judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision as such. I have referred myself to the decision rendered by the Apex Court in the case of Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another, without, of course, referring to other catena of decisions in this regard.

10. Now, let me first refer to Office Memorandum No. AR/8/8/76 dated 19.4.1983 by which the Government had laid down the conditions for obtaining the status of indigenous inhabitants of the State of Nagaland for the purpose of securing employment against the quota reserved for Naga Tribes and other Tribes namely, Kuki, Kachari, Garo and Mikir. The aforesaid Office Memorandum is quoted below:

GOVERNMENT OF NAGALAND Department of Personnel and Administrative Reforms (Administrative Reforms Branch)

No. AR-8/8/76 Dated Kohima the 19th April, 1983 OFFICE MEMORANDUM

The undersigned is directed to say that the Government through an order No. APPT-18/6/6 dated 6.7.1973 had reserved 100 p.c. for direct appointment to non-

technical grade-III and IV post and 80 p.c. of all gazetted and technical posts for the persons belonging to the following tribes:

1. Any Naga tribes
2. Kuki
3. Kachart
4. Garo
5. Mikir

Provided such persons are indigenous inhabitants of the State of Nagaland. The above Tribes must possess, in addition, one of the following qualification in order to become an indigenous inhabitant for the purpose of employment vide Notification No. AR-8/8/76 dated 28.4.1977.

(1) His/Her name or name of parents or legitimate guardians, in case the person was then a minor should have been entered in the Electoral Roll published on 5.12.1963.

Or

(2) The person or his/her parents or legitimate guardian should have been paying house tax prior to 1.12.1963.

Or

(3) The person or his/her parents or legitimate guardian should have acquired property and patta on it prior to 1.12.1963.

The Notification is a continuation of the Order No. APPT-18/6/67 dated 6.7.1973 referred to earlier and the eligibility conditions for employment given above apply only to the 5 tribes and not to any other tribe or non-local.

There are Naga/Kuki/Kachari/Garo/Mikir living outside the geographical boundary of Nagaland without possessing any of the above 3 qualifications. They are not eligible for employment under the State. On the other hand, they are eligible for employment provided they are permanent residents in the State and possess one of the qualifications. Certificate to the effect that a person belong to one of the above 5 tribes and that he or she possesses one of the above qualifications shall be issued only either by a Deputy Commissioner or an Additional Deputy Commissioner as per the Notification noted above. Such certificate should be issued with utmost care after verifying all available facts.

It has been observed that Heads of Department Offices mistakenly appoint nonlocal who possesses the above qualification to post reserved for the locals under the State Government. This should be stopped forthwith.

Under the present policy decision of the Government non-locals are not eligible for employment against the reservation made for the indigenous inhabitants of

the State. They are however, eligible for appointment against 20 p.c. of the vacancy relating to gazetted technical posts.

It has therefore requested that this may kindly be brought again to the notice of all concerned for strict compliance.

Sd/I. Longkumer Chief Secretary to the Government of Nagaland.

11. The parents of respondents 6 and 7 are admittedly from the State of Manipur and they were not enrolled in the electoral roll published on 5.12.1963 and they are not paying any house tax prior to 1.12.1963 or subsequent thereto. Admittedly, they are also not holding any patta of the land purportedly occupied by them as the land under their occupation situates in the non-cadastral area and no patta has been issued by the revenue authority. None of the conditions as laid down in the Office Memorandum dated 19.4.1983 has been fulfilled by the respondents. Without fulfilling any of the aforesaid qualifications whether the respondents are entitled to have the status of indigenous inhabitants. The respondent No. 6 obtained the testimony dated 23.5.2005 from the Chairman and Head GB of Old Jalukie Village Council to claim his status as indigenous inhabitants and the Deputy Commissioner determined the status of respondent No. 6 solely on the basis of this testimony. The full text of this testimony is worth reproduction below:

OFFICE OF THE OLD JALUKIE VILLAGE COUNCIL P.O. JALUKIE-797110 DISTRICT PEREN, NAGALAND Testimony

This letter is to testify Shri Lt. D. Kehinga F/o Shri D. Robin as the citizen of Jalukie. As such his son D. Robin has every right to avail and enjoy any facilities and opportunities given to Zeliang tribe by the Government of Nagaland.

That, Lt. Shri D. Kehinga and his younger brother Lt. D. Chilak who at their early teenage came to Old Jalukie way back in 1960 to look after their grandfather Lt. Shri Hunglalang. But unfortunately at the later part of the year their grandfather died who was suffering from leprosy from long time back. Hence, they were advised to have their godfather or legal guardian to guide and care them for anything pertaining to their needs, since then Lt Shri Heileu was chosen to be their legal guardian and in return as per the customary practices they were offered a portion of land called Punggwa Zam as a sign of good gesture to be part of the family hence forth. And as such the relation remain till today to carry forward. Besides, Lt. D. Kehinga also inherited ancestors property from their clan like plot, land etc.

Further, Lt. D. Kehinga had joined Nagaland Police Service in the year 1965 and retired from his active service in 1996. He was a Town Head Constable when he retired, he was posted elsewhere in Nagaland and in the year 1974 he was deputed to Shillong on Shillong Accord duty. His younger brother Lt. D. Chilak was also serving in Taxes Department Government of Nagaland and prematurely died in September 1990.

Therefore, we have every right to stand and claim the right of D. Robin, because what has been done to him is directly or indirectly challenging the authority of Old Jalukie Village Council.

This statement is made in sound mind and health which is true and correct to the best of our knowledge, to clarify the confusion of D. Robin S/o Lt. D. Kehinga indigenous inhabitants status in the Nagaland Public Service Commission, Kohima in 2004 NCS, NPS and allied service examination.

Dated Old Jalukie 23rd May, 2005 (HAINKEING)

Yours faithfully,

Chairman Old Jalukie Village Council (KEISOGUING) Head G.B. Old Jalukie Village Council.

12. From this testimony it is found that there is no mention since when the father of respondent No. 6 acquired land or settled down in the Old Jalukie village and the location, description or surrounding of the land under occupation of his father or his grandfather. There is also no mention as to whether the father or forefathers were in physical occupation of any land in the said village.

13. In respect of respondent No. 7, the Deputy Commissioner, Peren based his finding solely on the basis of declaration dated 15.7.2005 which may also be reproduced below:

OFFICE OF THE GAILI VILLAGE COUNCIL

District Kohima, Nagaland Date: 15.7.2005

DECLARATION

We the undersigned of Gaili Village, do hereby solemnly declared that the forefather of Mr. Pausuiheing, S/o Jewangheing are living in this village since and his family members permanently settled till date. Therefore, there is nothing against Pausuiheing, S/o Iwangheing and his family members about the indigenous inhabitant.

We, therefore, have solemnly declared and put our signature in sound mind and good health on this day the 13th July, 2005. That Pausuiheing and his family members are originally inhabitants of Gaili Village.

Sd/- Illegible Chairman Gaili Village Council Nagaland

(1) Lungwa, Haikuke Village Council, Chairman

(2) Sd/- Illegible, Head GP.

(3) Sd/- Illegible, GP.

(4) Sd/- Illegible, GP.

14. In this declaration, there is no mention as to when the forefather of

respondent No. 7 started living in Gaili Village not to speak of describing the plot of land under purported occupation of his forefather. Nor there is any mention as to whether the forefathers of respondent No. 7 ever acquired or possessed any plot of land in the said village.

15. From the report itself, it is clear that the Chairman, Head GB and GBs who issued aforesaid testimony dated 23.5.2005 and 15.7.2005 were not examined to testify the veracity of the aforesaid documents/ declaration or to derive more information/ particulars about the forefathers of the respondents.

16. Examination of the Chairman, Head GB and GBs was necessary because of the fact that in the aforesaid testimony and declaration there is no mention, as stated earlier, of the date on which the forefathers of the respondents came to the village or came to occupy or own any plot of land with description/boundaries thereof and entry of the said particulars in the written record to be maintained by the Village Council. The Nagaland Village and Area Council Act, 1978 provides for Constitution of Village and Area Councils and regulation of their duties and functions. Section 15(1)(g) of the said Act, under the heading of Village Administration" provides that no transfer of immovable property shall be effected without the consent of the Village Council and a written record of the same shall be maintained by the Village Council. From this, it is incumbent upon the Chairman of the Village Council to maintain written record of the lands under its jurisdiction. The plot of land owned/possessed or acquired by the forefathers of the respondents should have been recorded therein, no matter, whether the land in question is within the cadastral or non-cadastral area.

17. The matter requires roving and fishing enquiry as it involves an important question like determination of status of a person on the basis of which he would acquire a much cherished right to public employment as an indigenous inhabitant of Nagaland. The enquiry has been found to have been conducted in a very casual manner and the report was submitted on the basis of so called unverified testimony and declaration of the Chairman, Head GB and GBs of the Village Councils aforesaid and that too without giving an opportunity to the petitioner to have a look and say on them. It may be true that the notice dated 28.6.2005 issued by the Deputy Commissioner, Peren was served upon the petitioner but it is apparently clear that the copy of the aforesaid testimony and declaration on which the respondents rest their claims were not furnished to him inspite of the clear order dated 18.5.2005 passed in WP(C) No. 30(K)/2005 and WP(C) No. 33(K)/2005 to the effect that all the documents on which the Deputy Commissioner, Peren, proposes to place reliance should be supplied to the present petitioner before enquiry is conducted. This is clearly in violation of the manner prescribed by this Court in conducting the fresh enquiry. This is also clearly in violation of the principle of natural justice and fair play in action.

That apart, the impugned report of the Deputy Commissioner, Peren is based on no valid and reliable documents. It is based on no evidence inasmuch as the veracity of the aforesaid testimony and declaration was not tested. At the time of

hearing Mr. I. Longjem submitted that the declaration dated 15.7.2005 in respect of respondent 7 was made by the Gaili Village Council to the effect that Shri Pausuiheing F/o Shri Igwangheing had a residential and other landed properties since 1960 but this declaration of properties was also not testified by examining the issuing authorities namely, the Chairman, Head GB and GBs of the said Village Council concerned.

18. From the manner in which the Deputy Commissioner, Peren conducted the enquiry it is found that he proceeded with blatant perfunctoriness and took no care to provide fair opportunity to the petitioner by furnishing the copies of the documents sought to be relied upon by the respondents for effective participation in the enquiry proceeding, The decision holding the respondents 6 and 7 as indigenous inhabitants of Nagaland has been taken without strictly observing the manner of enquiry set out by this Court in the order dated 18.5.2005 and thus it calls for interference in judicial review in regard to correctness of the process followed by the Deputy Commissioner. Since the process of enquiry in reaching the decision is not found in accordance with the established principle of law, the impugned enquiry report dated 25.7.2005 is liable to be quashed and the same is accordingly quashed. In consequence, the decision taken by the NPSC and appointment made to the respondent No. 6 vide impugned order dated 15.12.2005 is also liable to be quashed and accordingly, it is quashed.

19. It is directed that a de novo enquiry be conducted by a 3-Member Committee headed by the Commissioner, Government of Nagaland, Kohima with the Additional Deputy Commissioner (Revenue), Peren and the local Revenue Officer concerned with due notice to the petitioner and the respondents 6 and 7 affording them opportunity to participate in the enquiry proceeding. The Enquiry Committee shall summon and examine the Chairman, Head GBs and GBs of the Old Jalukie Village Council and Gaili Village Council and any other local person/ authority as may be deemed necessary by it and may provide chance to examine them by the petitioner and the respondents 6 and 7. The enquiry should be completed within a period of two months from the date of receipt of this order.

20. The petitioner shall obtain a certified copy of this order and furnish the same to the respondent No. 2, the Commissioner, Government of Nagaland, Kohima for his information and taking necessary action.

With the aforesaid observations and directions this petition is disposed of.