

(2013) 05 MEG CK 0005
In the Meghalaya High Court
Case No : W.A. No. 14 (SH) of 2012

Kingland Thongni

APPELLANT

Vs

Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

Citation : (2013) 05 MEG CK 0005

Hon'ble Judges : T. Meena Kumari, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : B.M. Roy Dolloi and Mr. B.M. Roy Chyne, for the Appellant; B. Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.—This Intra-Court appeal is against the judgment and order of a Coordinate Bench (Single Bench) dated 24.04.2012 passed in WP (C) No. (SH)213/2011, wherein and where-under, the learned Single Judge had dismissed the writ petition i.e. WP (C) No. (SH)213/2011 for the sole reason that pursuant to the removal of the writ petitioner (present appellant) from the post of Myntri of Rangjadong Village by the impugned orders dated 15.12.2010 and 27.04.2011, the respondent No. 8 had been appointed as Acting Myntri of Rangjadong Village after holding a Referendum by the respondents No. 6 & 7; and in the absence of prayer in the writ petition for quashing the orders for appointing the respondent No. 8 as Myntri, the writ petition is not maintainable. The reasons for dismissing the writ petition mentioned in the impugned order dated 24.04.2012 reads as follows:-

24.042012

...The basic prayer of the writ petitioner is for quashing and setting aside the impugned orders, abovementioned. It is noted from the records that pursuant to the above said impugned orders, a Notification dated 05.08.2011 was issued for holding the election to the post of Myntri and pursuant to the said Notification, by

order dated 20.08.2011, the respondent No. 8 was duly elected for the post of Myntri of Rangjadong village.

In the present writ petition, the impugned orders dated 15.12.2010 and 27.04.2011 have been challenged. However, the follow up action which has been taken up by the respondent authorities in holding the election and appointing respondent No. 8 to the post of Myntri of Rangjadong village have not been challenged in this writ petition.

Therefore, even if the above impugned orders are quashed and set aside, the follow up orders pursuant to the said impugned orders, having not been challenged in this writ petition, will remain in operation and unless, the subsequent/follow up orders are challenged, this writ petition suffers from not impugning the subsequent orders passed/issued in pursuant to impugned orders dated 15.12.2010 and 27.04.2011.

In other words, the subsequent appointment of respondent No. 8 to the post of Myntri of Rangjadong village having not been also challenged in this writ petition, this writ petition also suffers for not impugning the election/appointment of respondent No. 8 to the post in question.

In this view of the matter, this writ petition hereby stands rejected being devoid of any merit.

In view of the facts stated above, the cases so relied upon by the parties in support of their arguments, have not been relied upon and taken into consideration by this Court, while writing this judgment and order.

2. Heard Mr. BM Roy Dolloi, learned counsel appearing for the appellant/writ petitioner and Mr. B Bhattacharjee, learned counsel appearing for the respondents.

3. Keeping in view of the limited scope of the present Intra-Court appeal, we have given our anxious consideration to the impugned judgment and order of the learned Single Judge dated 24.04.2012, if, there is an apparent error on the face of the record or the impugned judgment and order is against the established or the settled principle of law. For deciding this point, we may require to have a glance of the appellant/writ petitioner's case pleaded in the writ petition and also the relief sought for in the writ petition. Accordingly, we recapitulate only the brief facts sans unnecessary details leading to the filing of the writ petition.

4. Rangjadong Village is one of the villages under the Maharam Syiemship and the administration of the village is run by the Myntri of the village and the Village Durbar consisting of 65 adult male members of the village. The appellant/writ petitioner was elected by the adult male members of the village as per the custom and tradition of the village to the post of Myntri of Rangjadong village, Maharam Syiemship u/s 7 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959. The Sanad for appointing the appellant/writ petitioner to the post of Myntri of Rangjadong

village had been issued by the Syiem of Maharam Syiemship under Sanad No. Ma/V-Ad/43/96/402 dated Mawkyrwat, the 9th Feb., 1996 and he continued as Myntri of Rangjadong village for more than 15 years till disputed Referendum had been held by the Syiem of Maharam Syiemship.

5. The respondent No. 8 & 9 filed a complaint against the appellant/writ petitioner and on receipt of the said complaint, the respondent No. 6 & 7 issued Notice to the appellant/writ petitioner to show cause as to why the appellant/writ petitioner should not be removed from the post of Myntri of Rangjadong Village. The appellant/writ petitioner in his show cause had denied all the allegations made in the said complaint filed by the respondents No. 8 & 9. The respondents No. 6 & 7, without conducting necessary hearing and trial as per the procedure prescribed and the process of law into the allegations made in the complaint and without tendering necessary proof, had passed the impugned order dated 15.12.2010 by the Syiem of Maharam Syiemship for holding Referendum for the post of Myntri of Rangjadong village, Maharam Syiemship in complete violation of the provisions of Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) Act, 2006 and the impugned order dated 15.12.2012 had been upheld by the Executive Committee of the Khasi Hills Autonomous District Council vide impugned order dated 27.04.2011. Subsequent to the removal of the appellant/writ petitioner from the post of Myntri Rangjadong village, Maharam Syiemship, the respondent No. 8 had been appointed as Myntri of Rangjadong village, Maharam Syiemship.

6. It is stated in the writ petition that the petitioner approached the respondents No. 6 & 7 for issuing a certified copy of the Sanad for appointing the respondent No. 8 as Myntri of Rangjadong village, Maharam Syiemship, but surprisingly, the respondent No. 7 did not accept the petition for issuing a certified copy of the Sanad. It is also categorically pleaded in the writ petition that the petitioner came to know from the local news item in the local daily published on 29.08.2011 that the respondent No. 7 had appointed the respondent No. 8 as Regular Myntri of Rangjadong village in place of the appellant/writ petitioner.

7. The fact of the appellant/writ petitioner's case regarding the appointment of the respondent No. 8 by the respondent No. 7 under Sanad/Order as the Myntri of Rangjadong village subsequent to the removal of the appellant/writ petitioner from the post of Myntri of Rangjadong village by the impugned order dated 15.12.2010 and 27.04.2011 and the refusal of the authorities to issue a certified copy of the Sanad/Order for appointing the respondent No. 8 as Myntri of Rangjadong village are clearly pleaded in para-4 of the writ petition, which reads as follows:-

4. That the humble petitioner was elected Myntri by the adult male members of the village as per the Custom and tradition of the village to the post of Myntri, Rangjadong village, Maharam Syiemship u/s 7 of the United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 and the Humble Writ Petitioner was issued the sanad of the Myntri of

the Rangjadong village by the Syiem of Maharam syiemship under Sanad No. Ma/V-Ad/43/96/402 Dated Mawkyrwat the 9th Feb, 1996 and continued as Myntri of the Rangjadong village for more than the last 15 years till dispute of the Referendum made by the Syiem of Maharam Syiemship. The Act, 1959 was annulled by and replaced by the new Act, 2006, "The Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors) Act, 2006." That after holding the Referendum the Opp. Party/Respondents No. 6 & 7 appointed the Respondent No. 8 as Acting Myntri against the statutory provisions of the said Act, 2006. Subsequently, Respondents 6 & 7 appointed the Opp. Party/Respondent No. 8 as regular Myntri. The Humble Writ Petitioner approached the Opp. Party/Respondent No. 7 for the certified copy of the Sanad issued by the Opp. Party/Respondent No. 7 in favour of the Opp. Party/Respondent No. 8 but surprisingly the Opp. Party/Respondent No. 7 did not accept the petition of the Humble Petitioner for the certified copy of the Sanad. It came in the local daily "The Nongsain Hima" on 29.08.2011 that the Opp. Party/Respondent No. 7 has appointed the Opp. Party/Respondent No. 8 as regular Myntri of the Rangjadong village in place of the Humble Writ Petitioner.

Copy of the said Sanad dated 9th Feb 1996 is enclosed herewith and marked as Annexure-3.

Copy of the petition filed by the petitioner for the certified copy of the Sanad and the report in the Local Daily, the Nongsain Hima are enclosed herewith and marked as Annexure-3(a) and 3(b).

8. The relief sought for in the writ petition i.e. WP (C) No. (SH)213/2011, reads as follows:-

In the premises aforesaid, Your Humble Petitioner prays that Your Lordship's may graciously be pleased to admit this Humble Petition, call for the records, issue a Rule/direction calling upon the Opp. Party/Respondent to show cause as to why a Writ of Mandamus or a Writ of like nature should not be issued directing the Opp. Party/respondents to cancel, recall for otherwise forbear from giving effect to:

(i) the impugned Order dated 27.04.2011 issued by the Opp. Party/Respondent No. 1-5 in Misc. Pol. Appeal No. 1/2011;

(ii) Order dated 15.12.2010 and Sanad appointing the Acting Myntri vide letter No. MS/V-Ad/64/11/824 dated Mawkyrwat, the 21st January, 2011 issued by the Opp. Party/Respondents No. 6 and 7;

(iii) The subsequent appointment of the Opp. Party/Respondent No. 8 as regular/life-time Myntri of the Rangjadong village. And upon hearing the Cause shown be pleased to make the Rule absolute or to pass such further or other Order/Orders as Your Lordships may deem fit and proper.

-AND-

Pending the hearing of the Rule Your Lordships may graciously be pleased to stay the operation of the said Orders dated 27.04.2011 issued by the Opp. Party/ Respondent No. 1-5 and Order dated 15.12.2010 issued by the Opp. Party/ Respondent No. 6 and 7 and the appointment of the Opp. Party/Respondent No. 8 as the Myntri of the Rangjadong village.

9. On bare perusal of the writ petition, more particularly, the portion of the pleadings regarding the relief sought for in the writ petition, it is clear that the relief No. (iii) sought for in the writ petition is for quashing the subsequent appointment of the respondent No. 8 as Regular Myntri or lifetime Myntri of Rangjadong village.

10. The Apex Court in

Bharat Singh & Ors. Vs. State of Haryana & Ors: (1988) 4 SCC 534

, had distinguished between the pleadings in the writ petition and that under the CPC i.e. the pleadings of the plaint or the written statement under the CPC and held that:-

When a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this regard there is a distinction between a pleading under the CPC and a writ petition or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

11. The ratio cull-out from the decision of the Apex Court in Bharat Singh's case (supra) is that in the writ petition when a point of law is required to be substantial by the facts, those facts must be pleaded. As such the case of the appellant/writ petitioner that the respondent No. 8 had been subsequently appointed as Myntri of Rangjadong village by the respondent No. 7 should had been pleaded in the writ petition and proved by producing a document i.e. copy of the order for appointing the respondent No. 8 as Myntri of Rangjadong village and a copy of it should be annexed to the writ petition.

12. The Apex Court (Constitution Bench) in

Katra Education Society, Allahabad Vs. State of Uttar Pradesh & Ors.: : AIR 1966 SC 1307

, held that in a writ petition a plea of unlawful discrimination cannot be adjudged unless the petition contains a full averment of the grounds on which equality is claimed, and the denial of equality is pleaded and as such, in the absence of

pleadings in the writ petition on which equality is claimed, plea of discrimination cannot be adjudged.

13. The Apex Court in

Narendra Bahadur Singh & Anr. Vs. State of U.P. & Ors.: : AIR 1977 SC 660

, held that material facts and essential facts should be pleaded in the writ petition. A party seeking to challenge the validity of a notification on a ground involving questions of fact should make necessary averments of the fact before it can assail the notification on that ground. In the instant case, the appellant/writ petitioner who is seeking the prayer for quashing the appointment of the respondent No. 8 as Myntri of Rangjadong village subsequent to his removal as Myntri of Rangjadong village made the necessary averments in the writ petition. It is fairly settled law that roving enquiry is not contemplated in a writ petition by the High Court invoking the jurisdiction under Article 226 of the Constitution of India in the absence of necessary pleadings and materials. Regarding this settled law, it would be suffice to refer to the two decisions of the Apex Court:

(i)

Guruvayoor Devaswom Managing Committee & Anr. Vs. C.K. Rajan & Ors.: (2003) 7 SCC 546

and

(ii)

Commissioner, Bangalore Development Authority Vs. S. Vasudeva & Ors.: (2000) 2 SCC 439

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14. Para 65 of the SCC in Guruvayoor Devaswom Managing Committee's case (supra), held that:-

65. Where access to justice poses a fundamental problem facing the third world today, its importance in India has increased. Laws are designed to improve socio-economic conditions of the poor but making the law is not enough, it must be implemented. The core issues which have been highlighted by the learned counsel of the parties must be considered from that angle. Administration of a temple by entertaining complaints does not lend to a happy state of affairs. Roving enquiry is not contemplated. Principles of natural justice and fair play ought to be followed even in the pro bono publico proceedings. The Courts, undoubtedly, would be a parens patriae in relation to idols, but when the statue governs the field and the State takes over the management, ordinarily the courts would not step in.

15. The Apex Court in

Surinder Singh Vs. Central Government & Ors.: : AIR 1986 SC 2166

, held that whenever an order of the authority is impugned before the High Court under Article 226 of the Constitution, the copy of the order must be produced before it. In the absence of impugned order, it could not be possible to ascertain the reasons which may have impelled the authority to pass the order. Para-9 of the AIR in Surinder Singh's case (supra) reads as follows:-

9....The respondents who had challenged the order of Shri. Rajni Kant should have filed a copy of the order. In the absence of the order under challenge the High Court could not quash the same. Normally whenever an order of the Govt. or some authority is impugned before the High Court under Art. 226 of the Constitution, the copy of the order must be produced before it. In the absence of the impugned order it would not be possible to ascertain the reasons which may have impelled the authority to pass the order. It is therefore improper to quash an order which is not produced before the High Court in a proceeding under Art. 226 of the Constitution....

16. A copy of the impugned order is required to be annexed in the writ petition for the purpose of ascertaining the reasons which may have impelled the authority to pass the order and therefore, the order is required to be annexed for this purpose.

17. The Apex Court in

Shankara Cooperative Housing Society Limited Vs. M Prabhakar & Ors.: (2011) 5 SCC 607

, held that the High Court cannot decide any notice under the Act was issued or not without records; and it can only be decided with reference to the records. Para-111 of the SCC in Shankara Cooperative Housing Society Limited case (supra) reads as follows:-

111. The High Court in the impugned judgment, also gives a finding that the authorities under the Act have violated the principles of natural justice in not issuing notice to the owners of the lands in dispute before taking any action under the Act. We are of the view tat whether any notice under the Act was issued or not, can only be decided with reference to the records. Such records, were neither available nor was any material produced by the petitioners in support of their assertion made in the writ petition. Though, this assertion was denied by the respondents in their counter-affidavit filed before the Court, this issue is answered by the High Court in favour of the petitioners. We disagree with the findings and conclusion reached by the High Court in this regard.

In the instant case, the materials are available for deciding as to whether the Order or Sanad had been issued for appointing the respondent No. 8 as Myntri of Rangjadong village and also ascertaining the reasons which compelled the authority to issue the Sanad/order subsequent to the removal of the appellant/writ petitioner as Myntri of Rangjadong village inasmuch as a copy of the said Order or Sanad for appointing the respondent No. 8 as Myntri of Rangjadong

village, had been produced by the respondent No. 8 as annexures to the joint affidavit-in-opposition filed by the respondents No. 8 & 9 in the writ petition i.e. WP (C) No. (SH)213/2011.

18. That, normally in the writ petition, while granting relief, the Court should be confirmed to those specifically prayed for in the writ petition. For this settled law, it is required to burden ourselves by referring to a cantena of cases, and it would be suffice to refer a case viz.

Krishna Priya Ganguly & Ors. Vs. University of Lucknow & Ors.: (1984) 1 SCC 307

. Para 26 of the SCC in Krishna Priya Ganguly's case (supra) reads as follows:-

26. The High Court further observed that the respondent appears to be a very dedicated worker having acquired a diploma and would have proved an invaluable asset to the Institution. We do not see any proper material for this conclusion to which the High Court has suddenly jumped apart from the fact that admissions were not to be given by the High Court according to its own notions. Finally, in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the M.S. course and thus granted a relief to the respondent which he himself never prayed for and could not have prayed for....

19. For the forgoing reasons, we are of the considered view that there is an apparent error on the face of the record in passing the impugned judgment and order dated 24.4.2012 for dismissing the writ petition for the sole reason that there is no prayer for quashing the Order/Sanad for appointing the respondent No. 8 as Myntri of Rangjadong village in the writ petition i.e. WP (C) No. (SH) 213/2011 filed by the appellant/writ petitioner.

20. Accordingly, the impugned judgment and order dated 24.04.2012 passed by the learned Single Judge is set aside and WP (C) No. (SH)213/2011 is sent down to the learned Single Judge for deciding the writ petition afresh on merit. The appeal is allowed.