
(1983) 03 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 61 of 1979

K.Khubam

APPELLANT

Vs

P.Baochalin Rongmei Naga & Anr

RESPONDENT

Date of Decision : 30-03-1983

Acts Referred:

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

Citation : (1983) 2 GLR 53

Hon'ble Judges : K.Lahiri, J and T.C.Das, J

Bench : Division Bench

Advocate : A.Nilmani Singh, N.K.Singh, Th.Munindia Kumar Singh, Advocates appearing for Parties

Judgement

Lahiri, J.—The point that falls for determination in this writ application is whether the Deputy Commissioner, Manipur West District, Tamenglong had jurisdiction vested in him by law to divide or bifurcate the bill village known as Charoi Chagotlong in Nungba Subdivision, which had been declared as notified village u/s. 3 (2) of the Manipur (Village Authorities in Hill Areas) Act, 1956 for short "the Act", into two separate villages, Charoi Chakotlong PartI and Charoi Chakotlong PartII and directing that there should be separate chairman and village authority for each village. The impugned orders of the Deputy Commissioner are marked as Annexures "A" and "B".

2. Charoi Chakotlong village is a hill village. To consolidate and amend the law governing the administration of the Manipur State Hill people the Maharaja of Manipur made "The Manipur State Hill Peoples (Administration) Regulation, 1947, for short "the Regulation". The Regulation applied to the Hill areas of Manipur and enacted for better administration of the hill villages. Local authorities were constituted so that the hill people of Manipur could have their own local administration for their villages. The villagers were grouped into circles and subdivisions, the names of the villages were set forth in the Schedule to "the Regulation". Charoi Chakotlong falls in Tamenglong Circle No, I in Item 41, The

name of the Chief or Khulakpa was shown as Dingkhorai, The villages acquired the right to govern themselves in respect of many important matters. The villagers were eligible to have members for constituting local authority. The village in question was a notified village and the villagers had their members to look after the local administration of the village. Kabui Nagas were predominant in the village. The Regulation was repealed by the Manipur (Village Authorities in Hill Areas) Act, 1956 for short "the Act", but u/s. 58 of the Act it saved certain acts etc. of "the Regulation". After "the Act of 1956" came into force, a notification was issued declaring that all the hill villages in Manipur having 20 or more tax paying houses "shall have elected village authorities". The first notification is dated 26.12.69 and the second one is dated 17.7.71 and the latter published in the Manipur Gazette, Extraordinary No. 33E19 dated 20.7.71. These notifications were made u/s. 3 (2) of "the Act". Therefore, admittedly it was a hill village having 20 or more tax paying houses, which was declared to be a hill village u/s. 3 (2) of "the Act". The Manipur (Village Authorities in Hill Areas), Act, 1956 provides for constitution and functions of the village authorities in the hill areas of Manipur. The powers include administration of justice apart from other powers. There is a set of rules providing for election of the members of the village authority. To determine the question as to whether the Deputy Commissioner has had the power to divide a village declared to be village authority u/s. 3 (2) of the Act, it is necessary to set out the provisions of Sec. 3 of "the Act", which we extract hereinbelow :

"3. (1) For every village having twenty or more tax paying houses there shall be a Village Authority consisting of

(a) five members, where the number of tax paying houses in the village is not less than twenty but is more than sixty;

(b) Seven members, where the number of tax paying houses in the village is more than sixty but is not more than one hundred;

(c) ten members, where the number of tax paying houses in the village is more than one hundred but is not more than one hundred and fifty;

(d) twelve members, where the number of taxpaying houses in the village is more than one hundred and fifty;

(2) The State Government may, having regard to the general interests of the people of any village as also to the demand, if any, from the people of that village for an elected Village Authority, declare, by notification in the Official Gazette, that the village shall have an elected Village Authority, and thereupon the members of the Village Authority of that Village shall be elected in accordance with the provisions of this Act and the rules made thereunder.

(3) Where no declaration under subsection (2) has been made in relation to any village the members of the Village Authority of that village shall be nominated by the Chief Commissioner.

(4) Where there is a Chief or Khulapka in a village he shall be the exofficio chairman of the Village Authority of that village; and where there is no such Chief or Khulapka 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".

3. A perusal of Sec. 3(1) makes it clear that every village having 20 or more tax paying houses shall have Village Authority consisting of the number of members according to the number of tax paying houses. The minimum is 5 members where the number of tax paying houses is not less than 20 but not more than 60. Similarly, the maximum number of members of a village authority is 12 where the number of tax paying houses in the village is more than 150. Therefore, every village having 20 or more tax paying houses must have a village authority. If we note Sec. 3(2) of the Act, we find that when there is a declaration made by the appropriate authority under subsection (2) of Sec. 3 of "the Act" the village must have an elected village authority. For declared villages the members are to be elected, whereas in the cases of a village in respect of which no declaration under Subsection (2) has been made, the members of the village authority of that village shall be nominated by the State Govt. This is the first distinction that we note in Section 3. The next distinction is that where there is a Chief or Khulapka in a village he shall be the exofficio Chairman of the Village Authority of that village. But where there is no such Chief of that village the Chairman of the Village Authority shall be elected by the members of the Village Authority from amongst themselves. Therefore, where there is an existing Chief, he shall be the exofficio Chairman of the village Authority but where there is none, the Chairman must be elected by the members of the Village Authority from amongst themselves. A perusal of the provision clearly reveals that there are two classes of villages, first a village declared to be so by notification in the official gazette u/s. 3(2). Such villagers acquire the right to elect their members in accordance with the provisions of "the Act" and "the Rules" framed thereunder. Apart from these villages there are villages in respect of which no declaration under subsection (2) has been made. For these villages, the members are nominated and the question of election does not arise.

4. Now, admittedly Charoi Chagotlong village is a declared village u/s. 3(2) of the Act. The provisions of the Section clearly show that the State Government is the only authority to make a declaration. The exercise of the power is circumscribed by certain limitations. First, State Govt. must consider the general interest of the people of the Village. Secondly, it may also consider the demand of the villagers for an elected village authority, and thirdly, it must declare by notification in Official Gazette that the village shall have an elected village authority. Only on fulfillment of these conditions, the members of the village acquire the right to elect the members of the village authority. In exercise of that power, the State Government declared Charoi chagotlong village as a village authority. It will appear clear that the Deputy Commissioner is not competent to make a declaration u/s. 3(2) of "the Act". In the instant case, a notified village u/s. 3(2)

has been bifurcated by the Deputy Commissioner, who has had no jurisdiction to make such a declaration. It is not a case in which by an administrative act for administrative convenience a village has been divided into plots or blocks without affecting the right of the villagers and/or the Chief of the Village. As a result of the bifurcation, two village authorities have been constituted by the Deputy Commissioner which is beyond the competence of the Deputy Commissioner under "the Act". We could not appreciate the arguments of Mr. Nilamoni Singh and Shri Munindra Singh, learned Counsels for the respondents that the impugned orders were merely administrative orders. When the legislature express its intention in clear language that the State Govt. can only declare a village as a village authority no other person can circumvent the law by making administrative order and counter the legislative intent. We have no manner of doubt that the impugned orders could not have been passed administratively or otherwise by the Deputy Commissioner and as such, the impugned orders are liable to be set aside.

5. Learned counsel for the Respondents have also urged that Respondent No.1 made an application for bifurcation of the village into two parts and the matter was enquired into and the objection of the petitioner was heard. But the petitioner never raised objection to bifurcation. As such he is estopped from raising the question. However if we carefully note the objection of the petitioner we find that what he had agreed was that the parts of the Village should remain under one administration and under one Chief. Accordingly, the Deputy Commissioner at first merely bifurcated the village into two parts, but there was one patta and one Chief for the village in question. However the Deputy Commissioner went beyond what the petitioner had agreed but decided, vide Annexure "B" that the question of appointment of two Chiefs should be left open, to be decided by the villagers, and until it was so decided the petitioner should continue as Chief of both the parts. When there was only one village declared by the State Govt. and only one Chief or Khulapka could act as the exofficio Chairman, how could the Deputy Commissioner make such an order is beyond our comprehension. The said order was violative of the provisions contained in sec. 3(2) and 3 (4) of the Act. When there is a Chief he shall be the Chairman of the village authority. The petitioner is Khulapka or Chief and none could be declared as exofficio Chairman. When there is a Chief he shall be the Chairman of the village authority. There was a Chief and none other than the petitioner could be the exofficio Chairman of the village authority. If there is no Chief then and then only the question of election by the members of the village authority from amongst themselves to appoint the Chairman of the village authority comes in. In the instant case, for the village in question, the petitioner was recognised as Chief or "Khulapka" by the Deputy Commissioner himself. Therefore, the question of ousting him by an administrative direction to elect another Chief or Khulapka cannot arise. There is no provision of law empowering the Deputy Commissioner to give such a direction. As such, the direction is positively violative of Sec. 3(4) of the Act. About the bifurcation of the village into two

separate pattas under separate Khulakpas, the successor in office of the Deputy Commissioner considered the complaint made by the petitioner and held that bifurcation was necessary as from the available reports there existed tension and breach of peace in the area between two "religious communities", accordingly, he directed by an order dated 31.1.79, inter alia, as under :

"Therefore, a separate patta be created for Part I of Charoi Chakotlong village and a separate Chairman and village authority be elected for Part I of Charoi Chakotlong village."

6. In short the Deputy Commissioner divided the village into two villages, issued two pattas, constituted two village authorities and directed that the Chairman of the bifurcated village should be elected by the villagers. As a consequence of the order marked Annexure "A", a village notified u/s. 3(2) by the State Govt. was bifurcated by the Deputy Commissioner into two village authorities. However, one thing is clear that the Deputy Commissioner recognised the petitioner as Khulapka or Chief of the notified village and also recognised him to be a Khulapka of one out of the two villages, that is, Part II village.

7. On reading and rereading Sec. 3(2) of "the Act", we do not find that the Deputy Commissioner could constitute any village authority. It can be exercised only by the State Government there is no notification as required u/s. 3(2) of the Act as well. As such, the impugned orders creating two Village Authorities and the follow up order directing electing and/or election of the Chairman must be declared to be invalid in law, which we hereby do. We hold that the impugned orders marked as Annexures "A" and "B" are illegal and void.

8. Let us now consider the other point urged by the Respondents in support of their plea. According to the learned counsel, there was imminent danger of breach of peace amongst two religious communities living in the village. We also feel that if in fact and reality there exists tension amongst the villagers it is highly desirable that the village should be bifurcated, to avoid public disorder and also to honour the religious sentiments of the villagers. It appears that a religious community desired that they should have a say in the administration of the village, they should choose their own members of the village authority, which they could not do so far, as they were outnumbered by the other communities. Generation of illfeeling between the two communities must be avoided. Under such circumstances, it is highly desirable for the State Govt. to step in and take prompt action to see that claim and peace prevail.

9. But how a village can be bifurcated which had already been declared by the State Govt. to be "a village authority" u/s. 3(2) of the Act? We are asked to answer the question by the learned counsel for the parties. According to the petitioner, the village cannot be bifurcated once a declaration is made u/s. 3(2) of "the Act". We are of the opinion that the contention of the petitioner is fallacious. The State Govt. has power to make a declaration u/s. 3(2) and constitute a village authority. Once a declaration is made the power of the State

Govt. is not exhaustive. A village grows, expands and it may be necessary to bifurcate one village authority into two or more village authorities in view of various exigencies. To uphold the general interest of the people of a village, in our opinion, the State Govt. who can declares "a village authority" u/s. 3(2) of the Act have also the power to withdraw the notification and issue a fresh notification declaring two village and/pr two village authorities. The Govt. can surely withdraw the notification in respect of the village and issue a fresh notification bifurcating the said village into two villages for electing members of the village authorities. When by any enactment any power is conferred or any duty is imposed, unless a different intention appears in the Statute, the power may be exercised and that duty may be performed from time to time as occasion requires. When the State has the power to constitute a village authority it has the power to withdraw or recall the notification and issue a fresh notification u/s. 3(2) of the Act. It is the general rule of construction of statute that where by an Act a power to issue notification, orders, rules is conferred on an authority then that power includes the power exercisable in the like manner and subject to like sanction and condition, if any, to add to, amend, vary or rescind any notifications, orders, so issued. There is no provision in the Act to show that once the power is exercised by the State Govt. it is exhausted. This power can be exercised from time to time as occasion requires. The authority had power to issue the notification constituting the said village authority. It has power to withdraw or rescind the notification in respect of the village and may issue a fresh notification, on fulfillment of the conditions precedent. We are of the firm opinion that the State Govt. can withdraw the notification constituting the village authority and taking into consideration the general interest of the people, the demand of the villagers, declare two village authorities by a notification in the official gazette stating that each village shall have elected village authority. Thereupon, the members of the village authorities of those villages shall be elected in accordance with the provisions of "the Act" and "the Rules" framed thereunder. If the petitioner is Chief of one of the villages, he shall continue to remain as the exofficio Chairman of that village. Insofar as the other village is concerned, if there is a Chief he shall be the exofficio Chairman of that village authority. But if there is no Chief of that village it will be for the members of the village authority to elect the Chairman of that village. Therefore, this is the correct procedure by which the village in question can be bifurcated into two village authorities.

10. The next contention is that the petitioner has no locus standi. We are unable to accept the contention. The petitioner is a villager of Charoi Chagotlong village. Nay, he is Khulepka or Chief of the village. He has interest in the village authority. By virtue of the impugned orders, the constitution and function of the village authority of his village was affected. Surely, he has a locus standi. Where a legal wrong or legal injury is caused to a person or to a determined class of persons by reason of violation of any constitutional or legal right without the authority of law or any such legal wrong or legal injury threatens a person or a

determinate class of persons he can maintain an application for appropriate direction, order or writ in the High Court under Article 226 of the Constitution. The petitioner has moved the High Court for judicial redress, acting bonafide, with the view to indicate the cause of justice and to assert his own right as well as those of his villagers. He claimed that his personal rights as well as those of the villagers were affected by the illegal orders of the Deputy Commissioner. In the instant case, the petitioner was adversely affected, so also determinate class of villagers. In a sense it is a public injury caused by the act of the public authority and the actions are contrary to the provisions of the Act. Every member of the public acting bonafide and having sufficient interest can maintain an application for redressal of such public wrong or public injury. We propose not to burden the judgement with a number of decisions of the Supreme Court, as one recent decision is enough to support the view that we have taken. In fact, we have entirely relied upon the law laid down by the Supreme Court in *S. P. Gupta vs. Union of India*, 1981 (Suppl) SCC 87. In view of the law laid down by the Supreme Court we have no hesitation in reaching the conclusion that the petitioner has "locus standi" and is competent to question the validity of the impugned orders.

For the foregoing reasons we hold that the impugned orders marked Annexures "A" and "B" are invalid. The petition is accepted and the stay order is made absolute.