

(1982) 07 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rules No. 207 of 1974

Mornigstar Khontthiem

APPELLANT

Vs

District Council and Others

RESPONDENT

Date of Decision : 05-07-1982

Acts Referred:

Constitution of India, 1950 — Article 14
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 3

Citation : (1983) 1 GLR 1

Hon'ble Judges : S.M. Ali Mohamed, J; B.L. Hansaria, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, S.N. Medhi, M.K. Sarma and B.C. Das, for the Appellant; N.M. Lahiri, General, A. Sarma, Government Advocate, S.C. Das and G.S. Massar, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—Khyrim Syiemship occupies a place of some importance in the autonomous areas of Khasi Hills. At one point of time Khyrim used to be ruled by a Raja and Myllem State was also a part of Khyrim. In its southern part covering 25 villages reside members of four different Raids, namely, Shabong, Nawshun, Rangnah and Lyngkhat. One sirdar is elected from each Raid. The people of these 25 villages seceded from the parent State of Khyrim at one time. This was in 1880. In 1902, the Chief Commissioner of Assam intervened, and by an agreement of 1902, these villages came back to the fold of the State. One of the terms of the agreement was that the election of Sirdars will be by the people of 4 (four) Raids. The case of the Petitioners in that the 4 (four) Sirdars one each from the 4 Raids, used to be elected jointly by the people of these Raids. A departure from this was, however, desired by a Jo Singh on behalf of the people of Rangnah. This was in 1968. The change pleaded was that Sirdar of each Raid should be elected by the people of that Raid only, Syiem of Khyrim expressed his inability to give any opinion as the election was being done in accordance with

the agreement of 1902. U Jo Singh was, therefore, informed by the Deputy Secretary of the District Council that the Executive Committee felt that until a law is made in this regard, the election of the Sirdars has to be in the manner laid down in the agreement of 1902. This communication is of 1963 (Annexure-IV). The matter was further agitated in 1972 and this time by the Chairman of Durbar Raid Rangnah and Durbar Raid Lyngkhat. The proposal was opposed by all the four Sirdars who stated, inter alia, that the change was desired by the selfmade Chairmen of the aforesaid two Raids. The Executive Committees of the District Council however, accepted the change by it. Memo dated 18.3.74 (Annexure IX) which stated, that the Sirdar of each of the four Raids shall be elected by the aside (sic) members of the concerted Raid only. This was said to be in "supersession of any practice or order or of any provision, law or bye - law or rule or regulation" relating to or connected with this matter. It is this order which is under challenge in these petitions. As common questions of law and facts are involved, these petitions were heard together and a common order is being passed.

2. The manner of election of the Chiefs and Headmen was governed by the customs prevailing in the concerned Elaka. These customs varied from place to place No interference with these customs was desired at any point of time when the Britishers had ruled this part of the country. Even the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 hereinafter the Act-stated when enacted that "all elections or nominations and appointment of Chiefs or Headmen shall be in accordance with the existing custom prevailing in the Elaka concerned" (See Section 3). The need for amendment in the Act, was, however, felt because of a large number of disputes relating to elections of Chiefs or Headmen. The first amendment was by Act No. 1 of 1969 and Section 3 of the Act then spoke of "Nomination and appointment of Chiefs and Headmen", instead of "Elicitors and Appointment of Chiefs and Headmen". Section 4, as substituted in 1969, was also headed as "Nomination and Appointment of Chiefs". It is stated by the learned Advocate Central that this change in nomenclature owes its origin to the contention of the elected Chiefs or Headmen that no interference by the District Council was permissible once they are elected. The authority of the District Council in this matter was sought to be established by recasting Section 4 of the Act by Act No. 1 of 1969 to state "A person nominated as a Chief by the Electoral College shall be appointed by the Executive Committee subject to the approval of the District Council". This provision came up for consideration, before a Full Bench of this Court in U.G. Koring Singh v. State AIR 1971 Gau. 129. We are concerned with only one aspect of that decision and the same is the observation in paragraph 8 that although the word "nomination" is used in the Act, it is fact Election by that electoral College" following this decision which was rendered on 12.4.71, the Act underwent second amendment, in 1971 by Act No. II of that year (subsequent amendments to the Act are not material). This Act captioned Section 3 as "Election or Nomination and Appointment of Chiefs and Headmen." Similarly

Section 4 was headed as "Procedure in the Nomination or Election of Chief." This amendment substituted, a new Section 3 in the principal Act to read as below:

3. Election or Nomination and Appointment of Chiefs and Headman Subject to the provisions of this Act and the Rules made thereunder, all elections or nominations and appointment of Chiefs and Headmen shall be in accordance with the existing custom prevailing in the Elaka concerned and or in accordance with the orders as the Executive Committee may issue from time to time. The Secretary of the Executive Committee or any officer appointed by the Executive Committee in this behalf shall be the Returning Officer for all nominations or elections under this section.

(Emphasis)

3. Apart from noting the above provision, we have to read Sections 7 and 8 of the Act as those stood after 1971 amendment.

7. Confirmation of Headmen - i) All nominations and/or elections of headmen shall be reported to on as the case may be, be conducted by the Chief and has Durbar who shall forthwith report the nomination (sic) result of the election to the Executive Committee for approval. On receipt of such approval, the Chief and his Durbar shall issue appointment letter to the person concerned.

(ii) If any dispute arises regarding any matter relating to or connected with the nomination of headmen, the dispute shall be referred by the party or parties concerned to the Chief and his Durbar on payment of Durbar fee of Rs. 10/- (Rupees ten) for decision. An appeal against such decision shall lie to the Executive Committee whose decision is final.

The appeal to the Executive Committee shall be filed within 30 days from the date the order of the Chief and his Durbar is communicated to the party or parties concerned accompanied by:

- (a). The certified copy of the order appealed against;
- (b). A petition fee of Rs. 25 (Rupees twenty five) only".

8. Qualification for the office of the headmen-

(1) Pending making of Rules as provided u/s 3, the Chief and his Durbar shall determine-

- (a). The clan or clans that can set up a candidate for the office of the headmen;
- (b). The qualification of a person eligible for the office of a headman.
- (c) The manner in which a headman shall be nominated.

(2) An appeal against any order passed by the Chief and his Durbar under Sub-section (1) above shall lie to the Executive Committee whose decision shall be final. Such appeal shall be filed within 30 days from the date the order of the

Chief and his Durbar is communicated or known to the party or parties concerned accompanied by-

(a) Certified copy of the order appealed against:

Provided that the appeal may be admitted without a certified copy if the party concerned satisfied the Executive Committee that such copy is not obtainable within a reasonable period.

(b) a petition fee of Rs/- 25 (Rupees twenty five) only.

4. In assailing the order of the District Council passed on 3.4.74, the Petitioners have even challenged the vires of that part of Section 3 of the Act which has stated that the election or nomination of Chiefs and Headmen shall be "in accordance with the orders as the Executive Committee may issue from time to time", It may be stated that u/s 3 the election or nomination has to be either in accordance with the existing custom prevailing in the Elaka or in accordance with the order of the executive Committee. It is urged that the power conferred on the Executive Committee in this regard is unguled and arbitrary and, as such, violative of Article 14 of the Constitution. The next point urged is that the Executive Committee had no jurisdiction to change the manner of election of the Sirdars who under the Act fall within the category of Headmen", inasmuch as u/s 8 of the Act, the power relating to the manner of election of a Headman has been vested in the Chief and his Durbar pending making of the rules as provided in Section 3 of the Act. It is learned by Sri Bhattacharjee that in the power conferred on the Executive Committee by Section 3 is subject to the provisions of the Act, and as Section 8 is one of the provisions findings place in the Act, the requirement of Section 8 has to over-ride the power conferred on the Executive Committee by Section 3, It is admitted petition that no rule has yet been framed, In this view there can be no two opinions that in case of conflict between the powers conferred on the Executive Committee by Section 3 and (sic) powers made available to the Chief and his Durbar by section (sic) the latter has to prevail. As the impugned order has been passed not by the Syiem of Khyrim and his Durbar, but by the Executive Committee, the order has to be regarded as without Jurisdiction if Section 8 has its application.

5. Shri Das, appearing for the District Council, has first urged that Section 8 would not apply. His next submission is that in any case as Sub-section (2) of that section has conferred the power of appeal on the Executive Committee, the impugned order should be read to be an appellate order of that Committee. In making his first submission shri Das has stated that the power Conferred by Section 8(1)(c) of the Act is relating to "the manner in which a headman shall be nominated" (emphasis supplied). It is submitted that we should confine this power only in those cases where a Headman is nominated, and not elected. As the present was a case of election, Section 8(1)(c) does not operate, contends Sri Das. Our attention is invited to the language of the original Section 8 which had stated that the Chief and his Durbar shall determine the manner in which a

headman shall be elected.

6. As the learned Advocate General, Meghalaya had appeared as an observer in view of the challenge to the vires of the Act, we sought his assistance to enlighten us whether the word "nomination" has a different meaning than "election" as used in the Act. Apart from referring to the observation in paragraph 8 of the U.G. Koring Singh (Supra), the learned Advocate General referred us a letter dated 6th July, 1903 emanating from the Secretary to the Government of India in the Foreign Department in the name of officiating Chief Commissioner of Assam. That letter had dealt with some recommendations contained in the report of Captain. Herbert regarding Succession to the Syiemship of the Native States in the Khasi Hills. A reading of that letter makes it clear that the word "nomination" was being used when the selection of Syiem was by a small electoral body. But even there the letter speaks of "popular election". According to the learned Advocate General, the main idea behind "nomination" or "election" was to ascertain the wishes of the people in the choice of a Syiem. From the History of the amendment of the Act which has been set out above it would be clear that though the Act started with the word "election", it was substituted by the word "nomination" Act 1 of 1969, to be followed by both the words "election" or "nomination" after 1971 amendment. As such, we do not think we would be justified in confining the power or the Chief (sic) his Durbar conferred by Section 8(1) of the Act, and (sic) particularly by its Clause (c) to the nomination alone (sic) Headman, as distinct from his election. In this connection (sic) is worthwhile to point out that Section 7(ii) has provided for adjudication of dispute relating to or connected with the "nomination of headman", Nothing specific has (sic) said as to how dispute relating to, election of headmen" shall be settled. We do not think if the law making authority would have provided for a forum for settling dispute relating to nomination only of headmen. We think that when the Act underwent amendment in 1971, though the word "election" was also put along with the word "nomination" in some sections of the Act, to wit, Sections 3 and 4, at places it missed the law making authority. We are, therefore of the view that under the provisions of the Act as they stand, the manner of election of the Sirdars in question should have been changed only by (sic) Chief of Khyrim and his Durbar.

7. This takes us to the second submission of Sri Das which that the impugned order may be read as an appellate order the Executive Committee rendered under Sub-section (2) of Section 8. This submission is untenable inasmuch as there is absolutely nothing to indicate: (I) if any "order" as such was passed by the Chief and his Durbar in this regard, and (ii) if the Executive Committee has exercised its appellate power. Sri Das, however refers to Annexure-III by which the Syiem of Khyrim (sic) informed the District Council that he could not "express any opinion" on the matter, as the election was being held in the four Raids in accordance with the agreement of 1902. This view was expressed by a letter dated 14.5.69. This communication cannot be read to be an order passed by the Chief and his Durbar. (sic) apart, under Sub-section (2) an appeal has to

be filed within 30 days from the date of the order and the same has to company certified copy of the order appealed against, through (sic) Executive Committee has power to admit the appeal without certified copy when the same cannot be obtained within a (sic) able time, When the matter was re-agitated by the Chair (sic) of the Durbars of Raid Rangnah and Lyngkhat, they had corently not done by way of appealing to the Executive Com-mittee against an order of Syiem and his Durbar. What they had done was to address a memorandum to the Chief Executive Member on 23.6.72. Any appeal against what was statetd by, the Sylein on 14.5.69. was hopelessly burred by that time. No. certified copy of the order of Syium was also enclosed. For those reasons we do not think if the impugned order could be sustained by treating it as an appellate order of the Executive Committee passed u/s 8(2) of the Act.

8. Having come, to this conclusion, it is not necessary to examine the vires of the provisions assailed in the petitions. We also refrain from expressing any opinion as to whether the charge sought to be introduced by the Executive Committee is for the good of the people of the Raids, on whether the same was founded on good and cogent reasons.

9. As we have come to the conclusion that the Executive Committee had no jurisdiction to pass the impugned order, we act aside the same. The petitions are, therefore, allowed and the Rules are made absolute.