

(1994) 09 GAU CK 0010
In the Gauhati High Court
Case No : Civil Rule No. 2035 of 1994

Ojom Libang

APPELLANT

Vs

Stase of Arunachal Pradesh and Ors.

RESPONDENT

Date of Decision : 27-09-1994

Acts Referred:

Assam Frontier (Administration of Justice) Regulations, 1945 — Section 5, 5

Citation : (1994) 2 GLJ 329

Hon'ble Judges : V.K.Khanna, C.J. and S.N.Phukan, J

Bench : Division Bench

Advocate : C.Barua, P.J.Saikia, N.M.Lahiri, B.Sharma, A.Roy, A.M.Majumdar, N.Saikia, Advocates appearing for Parties

Judgement

V.K. Khanna, C. J.

1. The present writ petition has been filed challenging the order passed by the respondent No. 3, Additional Deputy Commissioner, Yingkiong, East Siang District forwarding the name of respondent No. 4, Shri Tagin Litin, vide WT Message dated 19.4.1994, for his appointment as the village authority. It has also been prayed that the petitioner be allowed to continue to function as the village authority of Simong Village.

2. At the admission stage we have heard Mr. NM Lahiri, learned counsel appearing for the petitioner, Mr. AM Mazumdar, learned Advocate General appearing for the State of Arunachal Pradesh assisted by Mr. A. Roy, learned Senior Govt. Advocate, Arunachal Pradesh and Mrs. N. Saikia, counsel appearing for respondent No. 4 Shri Tagin Litin. The parties have also exchanged their respective affidavits and the State of Arunachal Pradesh has also produced before us the original records pertaining to this case. The present petition is being finally disposed of at the admission stage after hearing the learned counsel for the parties.

3. The brief facts for the purpose of adjudicating the dispute raised in the present

petition are that the Simong Village is one of the oldest and biggest village in the East Siang District of Arunachal Pradesh. The "Simong" is one of the major tribes of "Adi" of Arunachal Pradesh and the inhabitants of the upper region of the East Siang District which are governed by the existing customs and traditions. There is a Village Council which is headed by the Gaonburah (Gam) appointed by the Deputy Commissioner and he is assisted by the elders of the village. The Village Council tries all the disputes/cases arising between the inhabitants of the village. According to the petitioner, in "Adi" traditional "Kebang" system, which is prevalent in "Adi" society, the Village Councils are empowered to try all the cases/disputes which are within the jurisdiction of "Doleng Kebang" (village level), "Bangoo Kebang" (circle level) and "Bogum Bokang" (the Apex Court of Justice).

4. After the enforcement of the Assam Frontier (Administration of Justice) Regulation, 1945, (hereinafter referred to as "the Regulation"), the village authority is constituted under section 5 of the said Regulation, but the appointment is governed by the customary law of the particular tribe. As per the customary law of "Simong" tribe ("Adi" tribe), the seniormost person in respect of age and experience becomes the Head Gaonburah of the village authority. There are several Gaonburahs in Simong Village headed by late Angkong Tekseng as Head Gam and late Yangkom Liper as the second Head Gam, who had expired in the month of January, 1994 and, therefore, the posts of Head Gaonburah and second Head Gaonburah fell vacant. According to the petitioner, he is aged about 72 years, he is the seniormost and has been serving as Gaonburah for last 45 years.

5. A joint representation was submitted by the Local Panchayat members in consultation with the Gaonburahs of Simong Village to the Additional Deputy Commissioner, East Siang District on 17.1.1994 for appointment of the petitioner as Head Gaonburah and Shri Atteng Sitek as the second Head Gaonburah, so as to fill up the vacant posts caused due to the death of Head Gaonburah and second Head Gaonburah as aforesaid. Copy of the representation has been annexed as Annexure A to the writ petition. On 31.1.94 the Deputy Commissioner approved the appointment of the petitioner as Head Gaonburah and Shri Atteng Sitek as second Head Gaonburah on the basis of their seniority and experience as Gaonburahs and the Political Assistant to the Deputy Commissioner, East Siang District, Pasighat, on behalf of the Deputy Commissioner, Pasighat, intimated the Additional Deputy Commissioner, YingViong about the aforesaid appointment, vide WT Message dated 15.2.94 (appointment order No. HT(J)14/Pt. II) and, accordingly, the petitioner was also informed about the said appointment, which became effective from 31.1.1994. A copy of the WT Message dated 15.2.94 has been annexed as Annexure B to the writ petition.

6. The further case of the petitioner is that the Additional Deputy Commissioner, Yingkiong in exercise of his suo motu power recommended the name of respondent No. 4, Shri Tagin Litin as Head Gaonburah and reverted the petitioner

to second Head Gaonburah of the village by order dated 18.4.94. A copy of the order of the Additional Deputy Commissioner dated 18.4.94 is annexed as Annexure C to the writ petition. The petitioner has challenged the aforesaid order on the ground that he has been removed from the office of Head Gaonburah without affording him an opportunity. It has also been stated that the Circle Officer on behalf of the Deputy Commissioner, East Siang District, Pasighat, vide WT Message dated 19.4.94 informed the Additional Deputy Commissioner about the appointment of respondent No. 4 as Head Gaonburah and the petitioner as second Head Gaonburah. It is this order appointing the respondent No. 4 as Head Gaonburah and reverting the petitioner as second Head Gaonburah which has been challenged in this writ petition. According to the petitioner, the aforesaid order has been passed in violation of the principles of natural justice and the same is arbitrary and not passed in accordance with the customary law.

7. At the very outset it may be stated that it is not disputed that the Simong village is inhabited by "Adi" tribe. Learned counsel for the petitioner has relied on certain portion of Chapter XI, "Arunachal Pradesh Administration of Justice During British Period" from the book, "A Study of Administration of Justice Among the Tribes of North Eastern Region", prepared by the Law Research Institute, Eastern Region, Gauhati High Court. The administration of justice in Arunachal Pradesh during the British period has been dealt with in the aforesaid book as follows :

"Though Assam was occupied by the British as early as 1826, the territories which now constitute Arunachal Pradesh were not properly administered by them. During the 19th century, occasional expeditions were led into sperrin area to penalise this or that tribe which made forays into the plains and caused harassment to the plainsmen.....it was only in 1914 that the British Government thought of treating these areas as separate frontier tracts to be administered somewhat different from the rest of Assam.

The British administration did not alter the system of village councils. Each village had its own chief or a leader with his council of elders. The British authorities gave them recognition by introducing the system of Gaonburas. In areas where the Chief system was not in vogue, usually the leader of the village was made the Gaonbura. He was officially appointed as such and was conferred the status of a village authority under section 5 of the Regulation I of 1945 and the corresponding clauses of earlier Rules for Administration of Justice. Every Gaonbura was given a red coat by the Government, and this was considered a great honour. Under these Rules, he had the power to apprehend culprits who committed heinous crimes. Each village had at least two Gaonburas but in big villages the number went up to twelve.

Where the Chief system was prevalent, the Chief was appointed by the British Government as the Village Authority. The Chief, as in the pre-British period, selected his council of elders from the different clans living within his jurisdiction.

When the Constitution of India came into force in 1950, Autonomous District Councils were established in Mizoram, the Mikir Hills, the North Cachar Hills, the United Khasi and Jaintia Hills and the Garo Hills, under the provisions of the Sixth Schedule and these Councils enacted their own Rules for administration of justice, partially repealing the 1937 set of administration of justice rules of the British period. But, to the territories which now form Arunachal Pradesh, the provisions of the Sixth Schedule except paragraphs 1, 18 and 20 did not apply.

The very first paragraph of the Sixth Schedule divided the Tribal Areas of Assam into two parts as shown in the Table attached to paragraph 20 of the Schedule. Part A included (1) the U.K. & J. Hills, (2) the Garo Hills, (3) the Lushai Hills, (4) the Naga Hills, (5) the North Cachar Hills, and (6) the Mikir Hills. Each of these areas was declared an Autonomous District and paragraphs 1 to 17 and 19 of the Sixth Schedule applied to them. Part B included the North East Frontier Tract (which later on became Arunachal Pradesh) and the Naga Tribal Areas. These two Tribal Areas were not declared Autonomous Districts and paragraphs 1 to 17 and 19 of the Sixth Schedule did not apply to them. Paragraph 18 which alone applied to these Areas, provided that the Governor with the previous approval of the President might apply the other provisions of the Sixth Schedule to these Areas, and till these provisions were applied, these Areas would be administered by the President through the Governor of Assam as his agent according to the provisions of Part IX of the Constitution as if they were a territory specified in the First Schedule, Part D.

In actual fact, the other provisions of the Sixth Schedule (that is, paragraphs 1 to 17 and 19) were never applied to the areas which later on formed Arunachal Pradesh. No new rules for administration of justice under paragraph 4 and 5 of the Sixth Schedule were, therefore enacted for these areas as were done in Mizoram, Khasi Hills etc. When these areas (i.e. Arunachal Pradesh) became a Union Territory, then also no new rules for administration of justice were framed and none have been framed till now. The net result is that the Regulation I of 1945 continues to apply during the post-British period also.

In Arunachal Pradesh, the machinery of administration of justice is a two-tier structure, wherein the executive and the judiciary have been rolled into one. The Deputy Commissioner and the Assistant Commissioner form the upper tier and the village authority the lower tier. In law, the Deputy Commissioner appoints the members of the village authority but in actual fact, he only recognises the existing leaders of the people as the village authority.

Members of a village authority are appointed by DC under 5 of Regulation 1/1945. But he does not select them arbitrarily. Tribal village councils settling disputes among the tribesmen are a deep-rooted ancient institution. In one form or another they have been administering justice in the village from one end of Arunachal Pradesh to the other..... In Siang, the village councils ("Kebangs") of the Adis were a sort of aristocratic institution whose members were selected for life by the villagers and enjoyed a respectable status.

The Regulation I of 1945 does not make any mention of these traditional village councils by name, but the administration is unable to ignore them. During the British periods, the administration introduced the system of "red coat" Gaonburas who were selected by the Deputy Commissioners from among the celebrities of the Village Councils, and the same system continues even now. The Gaonburas are appointed under sections 5 of Regulation I of 1945, which refers to the appointment of members of the village authorities, thereby making them by implication the members of the village authorities. Everywhere the Gaonburas were in actual fact found to have formed the core of the village authorities. Ancbal Samiti members, Zilla Panshad members and Gram Panchayat members elected under the Panchayat Act are also found nowadays to have been included as members of some village authorities, but the Gaonburas embodying the wisdom of the ages still constitute the heart of the institution. The "Tsorgens" and "Tsoblas" have gone, the Chiefs have lost their absolute powers, the mediators are losing their hold, but the "red coat" (i.e. the Gaonburas) still retains the prestige of their past glory.

The political Interpreters are also found to be of great importance in the administration of justice at the level of the village authorities. Whatever their original functions, they are now found everywhere to be assisting the members of the village authorities with advice and guidance. The Assistant Commissioner/Deputy Commissioner are found to depute them to help the village authorities in their deliberations."

8. Some light can also be gathered from the recognised book, "Constitutional and Administrative Growth of the NorthEast Frontier Agency" written by PN Luthre (1971). According to the aforesaid book.

"In the entire history of tribal administration in India, it has been recognized that the tribal communities need simple codes and laws and that in the formulation of such codes and laws, the local customs and usages should be given due importance. Indeed, in the case of the North East Frontier Agency, a special provision known as the Assam Frontier (Administration of Justice) Regulations, 1945, was introduced with the express object of ensuring that a vast majority of disputes and cases, both civil and criminal, may be adjudicated in accordance with the prevailing traditional codes of the tribal communities. The Indian Penal Code was, however, introduced in the year 1916 for the purpose of holding trials by regular Courts of law if this became absolutely necessary.

The North East Frontier Agency Administration has all along taken good care to ensure that the customary laws of the people in deciding judicial cases at the village level or the community level of tribal groups are not allowed to be interfered with. The Regulation referred to recognized the authority of the ancient village councils, village headmen and the system of chieftainship which applied in varying patterns among the various communities. Thus at the basic level of village, the social, cultural and legal affairs of the villages continued to be handled with complete freedom by traditional village authorities.

While the administration at the lowest level was left to be carried on by the indigenous authorities, it was strengthened by the Administration through the appointment, of Interpreters. The functions of the Interpreters were two fold; firstly, to interpret the Administration's policies to the people and this particularly in the remoter areas which were not always within the frequent touring beat of the Administrators and secondly, to provide a representative of the Administration at the discussions held by rival parties to adjudicate local disputes and crimes and to help disposal of criminal and civil suits in accordance with the judicial powers delegated to the local bodies. Above the village level, there being no trace of a universal indigenous structure or mode of administration to look after groups of villages or communities of tribes and subtribes, the gap was filled by the Administration by appointing Circle Officers, Extra Assistant Commissioners, Assistant Commissioners and Additional Deputy Commissioners in addition to the Deputy Commissioners."

9. On the basis of the aforesaid established custom existing in the "Adi" tribe it has been urged by Mr. Lahiri that the Deputy Commissioner while exercising the powers only recognizes the village authority, who is according to the custom a person possessed with the qualities for making him Head Gaonburan of a Village Council. It has been urged that the Deputy Commissioner has, in fact, appointed the petitioner and the petitioner was holding a civil post, as has been held by the Supreme Court and by passing a subsequent order without affording an opportunity, there has been violation of natural justice and violation of Article 311 of the Constitution, as the petitioner was holding a civil post.

10. Mr. AM Mazumdar, learned Advocate General appearing for the State of Arunachal Pradesh, has not disputed the legal position that a village authority holds a civil post as his appointment is statutory and he is invested with the powers of administration of civil and criminal justice and also receives money from the State of Arunachal Pradesh for discharging his duties. However, Mr. Mazumdar has made a submission that from the original record it is clear that only the name of the petitioner had been approved and no appointment letter had been issued and communicated to the petitioner and only on the basis of the approval it cannot be held that the petitioner had been appointed to the post of village authority. In the alternative, it has been urged that the only guideline which the Deputy Commissioner had to follow was to find out who could administer civil and criminal justice according to the Regulation and the customary laws have no application.

11. Mrs. Saikia, however, on the other hand has urged that there has been no appointment of the petitioner and the order was not issued. It has been urged that the respondent No. 4 has been rightly appointed according to the custom prevailing in Simong village.

12. From the original record it is apparent that the appointment letter has been issued. It has also come to the notice that the later order has been passed because of another representation and the report of the Additional Deputy

Commissioner clearly shows that persons had to be selected on the basis of the custom. The original record shows that on 17.1.1994 an application was addressed to the Deputy Commissioner, East Siang District Pasighat (through the Additional Deputy Commissioner, Yingkiong) in which it was stated as follows :

"We would like to inform your gracious honour that the Head and Second Gam of the Simong Village had expired and both the posts are lying vacant.

Therefore, we the people of the Simong Village are proposing Shri Ojom Libang, S/o late Alum Libang as the Head Gam and Shri Atteng Sitek, S/o late Mukhon Sitek as the Second Gam, for which your prudent honour is requested to appoint them as the Head and Second Gam of the Simong Village."

The Additional Deputy Commissioner forwarded the application to the Deputy Commissioner Pasighat for necessary action as there is no Head Gam at Simong, on 18.1.1994.

13. From the original record it also appears that on 27.1.1994 notes were put up before the Deputy Commissioner that the name of Shri Ojom Libang may be approved as Head Gaonburah and Shri Atteng Sitek as second Gaonburah of Simong Village since vacancies have been caused due to demise of the Head Gaonburah and second Gaonburah of the village. On 31.1.1994 the Deputy Commissioner approved the aforesaid proposal. From the original record we find that on 31.1.1994 there is an order, "Issue appointment orders." On 15.2.1994 a WT Message was sent accordingly to Additional Deputy Commissioner, Yingkiong. We are, thus, of the opinion that from the original record it is clear that Shri Ojom Libang and Shri Atteng Sitek were appointed as Head Gaonburah and second Gaonburah of Simong village.

14. From the original record we find that after the appointment of Shri Ojom Libang as Head Gaonburah, an application was received by the Additional Deputy Commissioner, Yingkiong from Shri Tagin Litin and others and the Additional Deputy Commissioner sent a detailed report "on the problem of selection of Head Gam of Simong Village" to the Deputy Commissioner, East Siang District, Pasighat on 5.2.1994. From the original record we find that on 17.2.1994 it was noted that as approval has already been granted, there remains no problem. However, on 8.3.1994, we find from the original record that as per the direction of the Deputy Commissioner regarding the postponement of the appointments of the above Gaonburahs a WT message was made ready.

15. There is an interesting document which we find from the original record which has been a communication written to the Deputy Commissioner East Siang District, Pasighat by Onit Panyeng, EAC, for Additional Deputy Commissioner, Yingkiong. The relevant portion of the aforesaid correspondence runs as follows :

"This has a reference to our Msg. No.YKG 113/94 of 24.1.94, 27.1.94 and 28.1.94 in connection with the selection/appointment of Head Gam of Simong village, which has fallen vacant due to demise of late Ankeng Tekseng on 5.11.93.

2. In this context on 18.1.94 a memorandum addressed to you was submitted to this office, wherein nine Gram Panchayat members including the two selected ASMs and Nine Gams of Simong village, had proposed the names of Shri Ojom Libang as Head Gam and Shri Atteng Sitek as second Head Gam of Simong Village on senioritycummerit basis, for consideration. This was forwarded to you for necessary action at your end.

3. Thereafter on 27.1.94 another group of Gams consisting of 14 Gams, led by Shri Tagin Litin another contender for the post of Head Gam, has submitted another memorandum which is enclosed herewith. Besides 13 other Gams of Simong Shri Tagin Latin is said to be supported by the Head Gams of Pugging and Gette Village, ASM of Gobuk, nominated ASM of Simong village, exofficio ASM of MRB Lamps Ltd. and Shri Gemin Jiji DVP, East Siang Zilla Parishad, on meritcumseniority basis. Out of these 13 Gams" two are said to have supported Shri Ojom L'bang initially. But it is reported that they have again switched over to the Ojom group.

4. From reliable sources, it is reported that out of the 23 Gams of Simong Village the ratio is 12 : 11 for either of the parties on the other hand Shri Tagin Litin claims support of 13 Gams. But the overwhelming majority of the people of Simong village are supporting Shri Ojom Libang.

5. The genesis of the problem arose as a result of factional politics during the last Panchayat Raj elections.

6. The Tagin Litin camp contends that the Head Gam of the village should either be elected by the Gams of the village only or by the people of Yingkiong Circle comprising of four villages. On the other hand the group supporting Shri Ojom Libang argues that the Village Head Gam should not be indulgent in party politics. As he is the Head of the village he should be elected by the people of the village only or be appointed by the administration on the basis of senioritycummerit.

7. Under these circumstances there cannot be a free and fair selection of Simong Village Head Gam. Therefore, you are requested to kindly advise us as to what procedure/steps be should followed for a judicious choice of Simong Head Gam.

8. Further, I would submit before you Sir, that in future we should restrict the appointments of Gams, in villages, as these days it is not the ability and integrity of a person but his political affiliation which has become the criterion for recommendation/appointment of Gams.

It would be advisable to obtain the opinion of the concerned Clan/village before appointment of Gam. It is also submitted that red coats/honorarium of Gams should be sent through Govt. officials only rather than public leaders as because it has been the practice and tendency among public leaders that they take political mileage and pressurise official to issue red coats to their supporters only. Thus the village judicial (Kebang) system is tainted with political colours."

16. The Deputy Commissioner, East Siang District while making appointment to the post of village authority under the Regulation cannot act arbitrarily and while he makes the appointment he has to act in accordance with the wellsettled guidelines. After going through the entire history of "Adi" tribe, it is clear that the customary laws are applicable while choosing the Head Gaonburah and that selection has to be in accordance with the well settled custom. The custom has been clearly spelled in the letter of the Additional Deputy Commissioner dated 18.4.994. It clearly states that village Gaonburah should possess a distinct social status, the best quality of leadership/individual personality/capability to control and conduct village "Kebang" so as to maintain the existing justice system and should also possess distinct social status with helping attitude towards guests, poors and needy persons. From the existing custom it is also clear that before making selection the Deputy Commissioner has to obtain the views of the entire inhabitants of the village concerned and his decision should be in accordance with the majority view.

17. From the admitted facts existing on the record it is clear that the Deputy Commissioner has approved the appointment of the petitioner as Head Gaonbuiah of Simong Village and an order has been passed for the issue of appointment order on 31st January, 1994 and in fact an appointment order has been issued to the petitioner appointing him as Head Gaonburah of Simong Village by issuing the WT Message dated 15.2.1994 under section 5 of the Regulation. As it has not been disputed that the petitioner has been holding a civil post and thus could not be removed without affording an opportunity, we are thus of the opinion that the later order appointing Shri Tagin Litin as Head Gaonburah and the petitioner as second Head Gaonburah amounts to removing the petitioner from the post of Head Gaonburah which he was holding. We are, therefore, of the opinion that the aforesaid appointment as per the WT Message dated 19.4.1994 is liable to be quashed. The petitioner will be entitled to act as Head Gaonburah of Simong Village as per the earlier WT Message dated 15.2.1994.

18. For the reasons stated above, the present petition is allowed. However, looking to the facts and circumstances of the case, parties shall bear their own costs.