
(1986) 02 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Revision No. 72 of 1985

Seikholan

APPELLANT

Vs

The State of Naoaland and Another

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Rules for Administration of Justice and Police in Nagaland, 1937 — Rule 14, 16(3)

Citation : (1986) 2 GLR 73

Hon'ble Judges : S. Haque, J

Bench : Single Bench

Advocate : H.N. Saikia and B.N. Sarma, for the Appellant; Z. Angami, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Haque, J.—The Petitioner Mr. Seikbolan was fined Rs. 500/- by order dated 30.10.84 of the Additional Deputy Commissioner, Dimapur. So he impugnes that order by this Revision Petition under Rule 16(3) of the Rules for Administration of Justice and Police in Nagaland.

2. The Petitioner being a member of kuki Christian Church—was a pastor of kuki Baptist Church at village Maova in Khoima District. About 100 members belonging to 29 families led by the Petitioner separated from the fold of Maova Chrtltian Church (K.C.C.) and formed a separate Church at Maova on 27.5.84 and started building a separate Church from 13-8-84 under the leadership of the Petitioner. But on 18.8.84 Mr. Hender, a Village Council Chairman and Mr. Paokam, Gaonbura of Maova lodged a written complaint before the Addl. Deputy Commissioner, Dimupur against the construction of the New Church by the Petitioner and others, Art Extra Assistant Commissioner issued notice on the petitions and others and Mr. Khupkhelal, Dobhasi wan entrusted for local verification and thereafter the Extra Assistant Commissioner handed over the matter to the Village Council, Maova. The Extra Assistant Commissioner referred the matter to Mr. Rokomcha, M.L.A. for settlement of the dispute, but no

settlement was arrived at. In the mean lime on 3.9.84. Mr. Poakam, Gaonbura and Mr. Henden, village council Chairman with Others of Maova village demolished the Church building constructed by the Petitioner and others, The Petitioner along with five others of Kuki Baptist Association submitted a representation to the Chief Minister, Nagalad on 14 10.84 and that representation was sent to the Deputy Commissioner for disposal.

3. On 25.10.84 the Additional Deputy Commissioner summoned the parties and recorded the statement of six persons and gave his findings with the following effective orders on 30.10 84.:

(a) By destroying the said church Shri Paokara and Shri Hendah and party on the 3rd of September, 1984 they have taken law in their own hands even after reporting to the local administration about this construction. Destruction of a church cannot be construed as the expression of the execution of customary practices. It is rather an act of criminal offence.

As such it is proved beyond any reasonable doubt that Shri Paokam and Shri Hendah and party erred before the eyes of law. Accordingly to meet the end of justice I hereby impose a fine of Rs. 1000/- (Rupees one thousand only) to Shri Paokam and Shri Hendah and party. The said fine shall be paid within one week from the issue of this order failing which Shri Paokam and Shri Hendah being the ring leaders of the group will under S.I. for one month each.

(b) Shri Seikholien is the pivot of the present issue around which the entire problem revolves. It is due to his refusal to step down from the post of Pastor that had ignited the seeds of division of the village.

It is further due to construction of his church in Moava without the prior approval of the village authority that had culminated in the destruction of the said church.

It is most unbecoming of a christian church leader to spurn the Customary practice of a tribe but Shri Seikholien being a church leader had overlooked the prevailing customary practice at by constructing his church without the prior permission of the village authority. As such he has erred before the law.

I, therefore impose a fine of Rs. 500/- (Rupees five hundred only) to Shri Seikholien. He shall pay the fine within one week from the issue of this order failing which he will undergo Section 1 for 15 (fifteen) days.

4. Now the Petitioner impugnes that order alleging that Additional Deputy Commissioner committed illegality in imposing the fine without following the procedure prescribed under the law. It was further alleged that no case was registered against the Petitioner, no Charge was framed and no evidence was collected and as such there was a failure of justice and Petitioner was made to suffer illegally.

5. Learned Counsel Mr. B. Sarma for the Petitioner submits that the Additional Deputy Commissioner ought to have drawn some proceeding against the

Petitioner for non-obtaining the approval of the village authority for constructing a Church, and no opportunity was given to the Petitioner to show cause and therefore the imposition of fine was illegal. According to Mr. Sarma the Petitioner Committed no criminal act liable for punishment. On the other-band Mr. Z. Angami, Public Prosecutor for Nagaland submitted but the Additional Deputy Commissioner held that enquiry by examining 6 persons and come to the finding that Mr. Seikholien (Petitioner) being a Church leader had overlooked the prevailing customary practice by constructing his Church without prior permission of the Village authority and therefore imposition of fine was justified. In this regard, Mr. Angani has referred Rule 14 of the Rule for the Administration of Justice and Police in Naga Hills Districted and submitted that the Additional Deputy Commissioner acted under the said rule and there was no illegality.

6. After going through the entire impugned order it is found that the Addl. Deputy Commissioner heard the complaint of both sides in their presence. Statements at six persons were recorded. It was found during the enquiry that the dispute was in between the Petitioner and the villagers of Maova and the same arose following refusal of the Petitioner to step down from the post of Pastor, Thereafter he formed separate Church with the splinter group of Maova K.C.C. Although the construction of the New Church began but it was not affiliated to Kuki Baptist Association and finally cold war between KJBA and KCC was highlighted to the State Govt. with the result that it attracted the, attention of the Baptist Church of Nagaland and which was unfortunate according to the Addl. Deputy Commissioner. The Addl. Deputy Commissioner was confirmed from the evidence that the Petitioner Shri Seikholien did not obtain prior approval from the Gaonbuia or village Council of Maova Village for construction of the Church. According to Kuki custom an individual invariably requires the formal approval from the Gaoubura of the village for any type of construction. This customary duty was overlooked by Shri Seikholien. He bad admitted before the Addl. Deputy Commissioner at the investigation and bearing that he constructed the Church without prior approval of the village authority. At the same time the Addl. Deputy Commissioner was satisfied by evidence that the said Church was demolished by Mr. Prokan and Mr. Hendah which according to the Addl. Deputy Commissioner was extremely rare and quite unprecedented in the annals of the history of the Churches of Nagaland. Accordingly the Addl. Deputy Commissioner fined both the parties with his reasoning by the impugned order.

7. It is found that the Addl. Deputy Commissioner held an enquiry and on hearing the complaints of both sides, recorded evidence of 6 persons and beard the parties The Petitioner admitted in the hearing that be acted in constructing the Church without approval of the village authority. It was his customary duty to obtain prior approvals according to Kuki custom. Customs of the tribes in Nagaland are regarded as unwritten laws and breach of customary duty is regarded as an offence. Breath of customary duty often leads to disputes and breach of peace amongst the villagers in Nagaland. The enquiry held by the Addl. Deputy Commissioner and the procedure adopted by him was in the spirit of the

prescribed law of the land and there was no illegality in it.

8. Rule 14 of the Rules for Administration of Justice and Police in Naga Hills District refers to customary duties of public purposes enumerating some of them like upkeep of roads, footpath, village well, construction works etc. The language of the Rule makes clear that instance of customary duties of public purposes given are illustrative and by no means exhaustive. Construction of a Church in the village is certainly for public purposes and so it is a customary duty to obtain prior approval for construction when it is a custom of the tribe or the villagers to obtain approval of village authority for any constructions. Moreso, when a new Church was being constructed after bifurcating from the existing Church, then it was very much obligatory on the Petitioners to obtain approval from village authority because it was the custom of the Kukis to obtain approval from village authority for any construction. The Petitioner failed to perform the customary duty as contemplated under Rule 14. The Additional Deputy Commissioner very much acted under the provision of Rule 14 in imposing the penalty on the Petitioners.

9. This revision is dismissed. The rule is discharged. Send-copy of the judgment to the Additional Deputy Commissioner, Dimapur.