
(2017) 12 MEG CK 0010
In the Meghalaya High Court
Case No : 134 of 2017

Seng Khasi Myllem, East Khasi Hills?Represented Vs Shri. Midnightborn Kharlukhi

Date of Decision : 07-12-2017

Acts Referred:

Constitution of India, Article 15 -
Annulment or suspension of acts and resolutions of District and Regional Councils

Citation : (2017) 12 MEG CK 0010

Hon'ble Judges : S.R.Sen

Bench : Single Bench

Advocate : H.S.Thangkhiew, ?T.T.Diengdoh,?A.Thangkhiew,? K.Sunar

Judgement

1. Heard Mr. H.S.Thangkhiew, learned Sr. counsel and Mr. T.T.Diengdoh, learned Sr. counsel assisted by Ms. A.Thangkhiew, learned counsel

on behalf of the petitioner. Also heard Mr. K.Sunar, learned counsel on behalf of the respondents. Both the petitioner as well as the respondents

are present before the Court today.

2. The petitioner's case in a nutshell is that:

The right to profess and practice religion of their choice is one of the most cherished fundamental rights and is enshrined in Articles

25 and 26 of the Constitution. This fundamental right extends to matters of opinion, doctrine or belief and also to outward expression

of these opinion, doctrine and belief. Religious practices or performance of acts in pursuance of religion are as much a part of religion

as faith or belief in particular doctrines. Thus if the tenets of a religion lays down that certain rites and ceremonies are to be performed

at certain times and in a particular manner, such religious rites and practices are also covered within the rights guaranteed under

Articles 25 and 26 of the Constitution. Among the followers of Niam Khasi religious faith, like the Hindus, disposal of the dead is

effected by cremation. Among Muslims, Jews and Christians, it is done by burial. Right to dispose of dead bodies in a particular

manner with particular rites in consecrated places is part and parcel of a religion and is protected in the penumbra of the right to

profess and practice one's religion.

The residents of Myllem belonging to Niam Khasi religious faith were all these years facing great difficulty in cremating the dead

because there was no cremation ground and no cremation facilities for them in Myllem. They faced great difficulties because of denial

of a cremation place in the village. The village authorities and other village people did not allow cremation to take place and the dead

bodies had to be taken to some other place at considerable distance to complete the last rites. In the past 6 Seng Khasi families even

buried their dead instead of cremating. As there was a genuine need for a cremation ground, the petitioner as far back as in the year

2000 by letter dated 12th October, 2000 had prayed before the Headman and Durbar of Syllai U Lor, Myllem for a space for

cremation in the common village land which was also used for burial. However, this was rejected without any reason being ascribed

by the village authorities by letter dated 21.11.2000.

Faced with the scenario the members of the Seng Khasi Myllem prayed before the Durbar U Lyngdoh Raid Myllem (durbar of local

priest of Myllem area) for a small piece of land to perform the cremation and to construct a "Kpep Thangbriew" (Crematorium).

Thereafter, "Durbar of Ki Bakhraw na U San Kur Khatwei Kurka Raid Myllem" (the Durbar of the Elders/Nobles of 5 and 11 clans

of Myllem Area) was pleased to allot a plot of land measuring 30 Ft. X 30 Ft. Vide a document dated 10.07.2010 for construction

of a crematorium. This settlement and allocation was confirmed and recognized by the Syiem of Myllem who issued a certificate

dated 10.07.2014. The said plot of land is Raid Land, controlled and owned by "Durbar of Ki Bakhraw na U San Kur Khatwei

Kurka Raid Myllem" and is at a distance of about 2 KMs from the residential

areas.

The followers of Niam Khasi faith in Myllem area under the aegis of the Seng Khasi Myllem then started mobilizing their meagre

resources to start this construction and finally it was decided to lay the foundation stone and to perform rituals on the piece of land on

24.09.2016. On the said day when the members of Niam Khasi faith were getting ready to perform the rituals and to unveil the

foundation stone the respondent No. 1 to 4 along with a mob of people numbering about 50, all of them Christians, came and abused

the people congregated there and apart from issuing threats, also desecrated the items prepared for the rituals, smashed the plaque

and destroyed the foundation stone. Faced with the situation, the people congregated there had to leave the place. The matter was

brought to the notice of the police vide FIR dated 24.09.2016, however, the police also failed to take any action. In the intervening

period, the respondent No. 1 to 4 organized a meeting in Rngi Myllem on 01.10.2016 wherein they instigated the people of Myllem

calling upon them to not allow construction of their cremation ground in Myllem and to take drastic action and take law in the their

hand to opposed construction of cremation ground. They also instigate the people against the followers of Seng Khasi faith.

Thereafter on 15.10.2016 again, another meeting was convened by the respondent No. 1 to 4 again issued public threats and

boasted that they cannot be arrested. The inaction of the authorities was also reported to the Commissioner and Secretary vide letter

dated 05.10.2016 but no action or inquiry was forthcoming except for some cursory police investigation.

In another shocking incident, on 6th November, 2016, when the followers of Niam Khasi/Seng Khasi went to the Sacred Seng Khasi

Hall for prayers, they found that some people had defecated in the entrance of the hall and several window panes had been broken.

This was reported to the police but no action has been taken by the police. The incident was also reported in the local newspapers.

The respondent No. 1 to 4 and their supporters are depriving the followers of Niam Khasi faith of their fundamental right to profess

and practice their own religion. Till date the followers of Niam Khasi faith in Myllem have not able to construct a crematorium and at

times are forced to bury their dead or they have to take the dead bodies a far distance for cremation. They are not able to perform

the last rites of cremation and other connected last rites which are one of the most important religious rites and practices of the person

following Niam Khasi religious faith. The State respondents have also failed in it sublime constitutional duty of enforcing the

fundamental rights of the petitioners enshrined in Articles 25 and 26 of the Constitution of India by providing a separate cremation

ground to the followers of Niam Khasi in Myllem area.

3. Mr. H.S.Thangkhiew, learned Sr. counsel submits that the people who belongs to the indigenous faith (Seng Khasi) and were permanent

residents of Myllem Village from time immemorial, were using a plot of land meant for cremation, but unfortunately, the respondents for the

reasons best known to them came and dismantled the cremation site, which hence, compelled the petitioner to approach this Court.

4. After hearing the submissions advanced by the learned counsels for the parties on 05-12-2017 and considering the urgency of the matter, both

the parties were called to appear in person as well as the learned Deputy Commissioner and the Superintendent of Police, East Khasi Hills District,

Shillong. After further hearing, a spot inspection was directed to be conducted by an order dated 06-12-2017.

5. Mr. K.Sunar, learned counsel for the respondents tried his best to protect the respondents but he could not justify.

6. As per the direction, learned Deputy Commissioner, East Khasi Hills District, Shillong placed the report before the Court today annexing certain

photographs, wherein it appears that the matter has been settled between the parties amicably and a suitable site was provided to the petitioner for

use as cremation ground. The report of the learned Deputy Commissioner, East Khasi Hills District shall remain as part and parcel of this judgment

and order and is reproduced herein below:

REPORT ON INSPECTION OF CREMATORIUM SITES AT MYLLEM

In compliance with the order of the Deputy Commissioner, East Khasi Hills, District, Shillong vide order No. C&S.10/2017/6 dated

6/12/2017, spot inspection of the sites was conducted on 06/12/2017 in the presence of members of the Dorbar Shnong, Myllem

and the Seng Khasi Myllem, Attendance list enclosed at Annexure A

The first site at Iew Myllem Rim was allotted to the Seng Khasi Myllem by the San Kur Khatwei Kur Raid Myllem vide letter

No.RLM-DR/07-10/10DR dated 10/07/2010. The area allotted is 30x30 square feet and the schedule of boundaries is as under:

North: Myllem Stream

East : Garden of Smti. Klutina Kurkalang

South: Land of San Kur Khatwei Kur

West : Land of San Kur Khatwei Kur

The site is just above the Myllem Stream and is reasonably away from human habitation. The members of Seng Khasi Myllem

informed that the site is feasible for cremating the deceased as the same is centrally located.

The other crematorium site identified by the Dorbar Shnong is approximately about 3(three) kilometers away from the Madan

Ingsyiem Main Road and access to the site is difficult considering the sharp gradient at the entry to the proposed crematorium.

A meeting of the members of the Dorbar Shnong, Myllem and the Seng Khasi Myllem was convened after the inspection of the

sites. After a threadbare discussion, the meeting unanimously resolved to allow the Seng Khasi Myllem to utilize the allotted space at

Iew Myllem Rim with the following terms and conditions:

1. The crematorium shall be used for the purpose of cremation of only the deceased members of the Seng Khasi Myllem.

2. The crematorium shall be constructed at the earliest and latest technology with regard to maintenance of cleanliness shall be

employed to prevent pollution to the environment including the stream.

3. The crematorium shall be confined to the area (30x30 square feet) as per the allotment made by the San Kur Khatwei Kur, Prior

to the commencing of the construction work of the crematorium, the members of the Dorbar Shnong and the Seng Khasi Myllem

shall conduct a joint inspection.

Recommendations:

The site at Iew Myllem Rim as identified by the Seng Khasi Myllem appears to be more feasible for construction of the Crematorium

as the same is centrally located and is away from human habitation. Further, since the members of the Dorbar Shnong, Myllem and

the Seng Khasi Myllem have unanimously agreed to allot the site with the aforesaid terms and conditions the same may be

considered for construction of the crematorium at the earliest. Photos enclosed as Annexure B.

Sd/- Sd/-

(Smti I. Majaw, MCS) (Shri R. Wahlang, MCS)

Additional District Magistrate, Executive Magistrate,

East Khasi Hill District, East Khasi Hills District,

Shillong Shillong.

7. It is an undisputed fact that India is a secular country and every person has the right to choose his or her religion as they like. The Preamble of

the Indian Constitution speaks on: ""We, the people of the India, having solemnly resolved to constitute India into a (Sovereign, Socialist, Secular,

Democratic Republic) and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and

worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the

unity and integrity of the Nation; In our Constituent Assembly this 26th day of November, 1949, do hereby Adopt, Enact and give to ourselves

this Constitution.

8. On bare reading of the Preamble of the Constitution of India, we understand the voluminous desire of our Constituent Assembly. Our

Constitution never put any restrictions on any person's faith, caste and religion. Therefore, any discrimination caused by any person to the faith of

others is guilty, not only of the law, but guilty of our Constitution of India which cannot be accepted and considered. Besides that, Article 15 of the

Constitution is one of the Fundamental Right which prohibits discrimination on the ground of religion, race, caste, sex or place of birth. The same is

reproduced herein below:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classed of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by

law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled

Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions,

whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

9. I am pained that even after so many years of independence, now at the 21st Century, people are not aware of the Constitution of the country

where they live in and violates the Constitution. Now also, we have to remind them about the Constitutional rights and liability. To ensure the rights

and the liability, the Constitution has also enacted 10 fundamental duties which are incorporated in Article 51A, though it is not enforced directed

till date which is unfortunate.

10. In my considered view, until and unless a person is aware of his or her duty, he or she cannot claim to enjoy the fundamental rights.

For example, besides these constitutional provision, I would like to ask today through my small judgment and order;

If the water that we drink does not ask about our faith, caste and religion; if the air that we breathe do not ask about our faith, caste

and religion; and if the land where we all live do not ask about our faith, caste and religion; if the cosmos do not ask about our faith,

caste and religion, then who are we to ask about others faith, caste and religion. Therefore, let the dead rest in peace." It is really very

sad that even after death, we are fighting over our faith, caste and religion. Do the people of this country want to say that after death,

somebody will go to heaven or somebody will go to hell; nobody knows that. My humble belief is that there are not two or three

Gods, God is only one. Another example I would like to put forward is that: "if the blood of a Khasi, Bengali and Nepali or any other

person is mixed together, no science has established any methodology to distinguish the blood whether it belongs to a Khasi, a

Bengali or a Nepali and it is an undisputed fact that the blood of all human beings is red, no matter what faith, caste or religion he or

she belongs to, so why so much difference.

I think it is high time that society should wake up and literate the people of India and it is also my appeal to the society that the time has come to

make the people aware about their fundamental duties, specifically, Clause "h" of Article 51A which speaks about humanity. I further mention that

no person can practice religion or become spiritual, until and unless he or she becomes a good human being because humanity comes first, then

religion.

11. With this, I conclude my judgment since the matter has already been settled amicably and the parties are happy. However, I totally disagree

that the crematorium as proposed in the Myllem village shall be used for cremation of only the deceased members of the Seng Khasi Myllem.

Hence, it is directed that anybody belonging to the indigenous faith and from any locality who needs to use the crematorium, can use it. Further, the

respondents have disrespected the Constitution of India and for that reason, the respondents will have to pay cost. Therefore, I fix a cost of Rs.

One lakh which is to be paid by the respondents to the account of the Registrar

General and the Registrar General in-turn shall deposit the said amount to the account of the Director Social Welfare, Govt. of Meghalaya who shall use the said amount for the benefit of the juvenile inmates.

12. Before I part with this judgment and order, I direct the learned Deputy Commissioner, East Khasi Hills District to demarcate the area

proposed in the report dated 06-12-2017 and to fence the area and take other necessary steps to develop and make it properly functional within

5(five) months. It is further ordered that the respondents will not disturb the petitioner in any manner or encroach in the land already proposed and

allotted to the petitioner. Incase, they disturb the petitioner, they will do so at their own cost. Superintendent of Police, East Khasi Hills District is

also further directed to see that nobody disturbs the petitioner in the village and to extend assistance and help as and whenever requested. It is

further directed that both the parties should maintain peace and tranquillity in the locality. I also appreciate the help extended by the learned Deputy

Commissioner, the Superintendent of Police, East Khasi Hills District, Shillong and the lawyers concerned.

13. With this observation and direction, writ petition is allowed and stands disposed of.

14. Registry is directed to forward a copy of this judgment and order to the Member Secretary, Meghalaya State Legal Services Authority,

Deputy Commissioner, East Khasi Hills District, Shillong and Superintendent of Police, East Khasi Hills District, Shillong.