

(2017) 10 MEG CK 0001
In the Meghalaya High Court
Case No : 395 of 2016

Shri. Abdul Salam, S/o (L) Sainuddin Sk.	APPELLANT
Vs	
Garohills Autonomous District Council, Represented by the Secretary, Executive Committee, & Ors.	RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

Citation : (2017) 10 MEG CK 0001

Hon'ble Judges : Sr Sen

Bench : Single Bench

Advocate : K. Paul, S. Dey, P. Bhattacharjee

Final Decision : Allowed

Judgement

1. Heard Mr. K. Paul, learned counsel for the petitioner as well as Mr. S. Dey, learned Standing counsel for the GHADC/respondents No. 1 & 2 and Ms. P. Bhattacharjee, learned counsel for the respondent No. 3.

2. The brief fact of the petitioner's case in a nutshell is that:

This is an application under Article 226 of the Constitution of India for issuance of writ of mandamus and/or certiorari and or any other writs, orders/directions of like nature assailing the impugned Order dated 05.08.2016 passed by the Respondent No. 1/Garohills Autonomous District Council, Tura and Order No. 138 dated 19.09.16 and Order 139 dated 21.09.2016 passed thereafter thereby removing the Petitioner from the post of Goanburaship in a most arbitrary and illegal manner on the basis of false and frivolous complaint filed against the Petitioner and appointing the Respondent No. 3 as the Goanbura in his place without any meeting

or referendum being held in absolute violation and disregard of the rules/ procedure governing the succession and appointment of

Goanbura.

Being highly aggrieved and dissatisfied with the impugned Order dated 05.08.2016 passed by the Respondent No. 1/Garo Hills

Autonomous District Council, Tura and Orders No. 138 dated 19.09.16 and 139 dated 21.09.2016, passed thereafter, the humble

Petitioner is approaching this Hon"ble Court by way of this instant writ petition for redressal of his genuine grievances.

3. The learned counsel for the petitioner submits that the petitioner was originally elected as headman of Nandirchar and Beparipara villages and

served the village for almost 8(eight) years. Thereafter, the GHADC received an anonymous complaint and without making any enquiry or

providing any opportunity to the petitioner to be heard removed him from his service and the respondent No. 3 was selected.

4. On the other hand, the learned Standing counsel for the GHADC/respondents No. 1 & 2 fairly submits that there was certain deficiency and

defect in removing the petitioner.

5. The learned counsel for the respondent No. 3 submits that since he has been selected, he should not be removed without any enquiry.

6. After hearing the submissions advanced by the learned counsel for the parties, I am of the considered view that headman cannot be selected; in

fact he should always be elected by the people of the locality concerned. Besides that, in this case the petitioner was just removed on the basis of

some anonymous complaint and without conducting an enquiry. Jurisprudence say that no man shall be condemned unheard, whatever the offence

he/she may have committed. Therefore, I find that the removal of the petitioner is totally illegal.

7. I have also perused Clause 162 under Part III, Executive Instructions of the Assam Land Revenue Manual which is reproduced herein below

for ready reference:

162. Nomination and appointment of goanburas. - Gaonburas are appointed by the Deputy Commissioner. In the case of vacancy,

the Deputy Commissioner shall take into consideration (a) the claims of the family of the late gaonbura, (b) the wishes of the villagers

and (c) the views of the mauzadar, and shall appoint the person whom he considers most suitable for the post.

In charges consisting entirely of nisf-khiraj or lakhiraj estate the nomination of gaonburas shall rest with the proprietors unless the nominee is plainly unfit.

The Deputy Commissioner may dismiss a gaonbura from office after recording his reasons in writing.

8. On perusal of Clause 162 indicated above, I find that the said Clause adopted is not in line with the principles of natural justice; however, I leave

the matter to the GHADC authority to review the particular clause so as to make the election more transparent.

9. Lastly, the question of enquiry against the respondent No. 3 does not arise as there is no complaint against him and besides that; his appointment

is illegal since he was selected. The Secretary, GHADC is directed to conduct a fresh enquiry giving full opportunity to the petitioner to defend

himself and in the meantime, the appointment of the respondent No. 3 as well as the termination order dated 19.09.2016 of the petitioner are

hereby set aside. The Secretary, GHADC is further directed to look after the affairs of Nandirchar and Beparipara villages and to complete the

enquiry within 15(fifteen) days from the date of receipt of a copy of this judgment and order. Thereafter, if he feels that fresh election is required,

he may proceed with the fresh election giving full opportunity to the petitioner as well as the respondent No. 3 to take part in the said election. The

Secretary, GHADC is also to ensure that the election should be fair and transparent.

10. With this observation and direction the instant writ petition is allowed and stands disposed of.