
(2012) 02 GAU CK 0112
In the Gauhati High Court
Case No : Writ Petition (C) 609 of 2011

Shri Kh. Morung Maring

APPELLANT

Vs

The State of Manipur

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Executive Business Rules — Rule 28
Manipur (Hill Areas) District Councils (inserted under 3rd Amendment Act) Act, 2008
— Section 29A, 9
Manipur (Village Authorities in Hill Areas) Act, 1956 — Section 3, 3(2)

Citation : (2012) 02 GAU CK 0112

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : Serto T. Kom and Mr. B.R. Sharma, for the Appellant; L. Shyamkishore, Advocate and Mr. L. Anand, for the Respondent

Judgement

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1. All those twenty seven writ petitions, mentioned above, filed by different petitioners against same respondents, were filed on same cause of action and were placed together before this Court for admission hearing as shown in the cause list. This single order shall govern all the cases.

2. Heard learned counsel, Mr. Serto T. Kom, appearing for the petitioners and learned senior counsel, Mr. L. Shyamkishore, assisted by learned counsel, Mr. L. Anand appearing for the respondents.

3. Learned counsel, Mr. Serto submits that the writ petitioners, being Chief of their respective village, approached the State Government for recognizing the petitioners as Chief of their respective village as per the provisions, prescribed in Section 3 of The Manipur(Village Authorities in Hill Areas) Act, 1956 (hereinunder mentioned as "the Act of 1956), and after observance of prescribed formalities, the State Government, by virtue of powers, prescribed in Section 3 of the Act, issued order, marked as Annexure-A/2 to the writ petitions(in WP (C) No.683 of

2011, marked as Annexure-A/3), and thereby recognized the respective writ petitioners as the Chairman of their respective village to perform such duty and activity as recognized by law. Subsequent thereto, the aforesaid order was cancelled by respondent No.1, issuing another order, marked as Annexure-3(Annexure-A/4 in WP (C) No.683 of 2011) and the writ petitioners, thereby, have been deprived of enjoying their civil rights accrued by virtue of the earlier order and the writ petitioners, therefore, challenged the order marked as Annexure-A/3 to the writ petitions(as Annexure-A/4 in WP (C) No.683 of 2011) and prayed for quashing the same.

4. On the other hand, appearing for the respondents, learned senior counsel, Mr. Shyamkishore submits that the Commissioner to the Government of Manipur in the Hills Department, illegally and un-authorizedly, without following the procedures prescribed by law, issued those orders marked as Annexure-A/2 to the writ petitions(Annexure-A/3 in WP (C) No.683 of 2011) and when it was detected that those orders were without any authority, having void ab initio, the said Commissioner issued orders marked as Annexure-A/3 to the writ petitions(Annexure-A/4 in WP (C) No.683 of 2011), canceling the earlier orders and the orders have been notified duly. The State Government already placed the concerned Commissioner, Mr. B.B. Sharma and other officers under suspension for such unauthorized activity and no right was accrued in favour of the writ petitioners by virtue of such illegal and void orders. It is further submitted by learned senior counsel, Mr. Shyamkishore that according to procedure prescribed by law, before issuing order the Commissioner was supposed to get approval of the Minister-in-charge of the concerned Department as prescribed under Rule 28 of the Rules of Executive Business, and the Commissioner, without approval of the concerned Minister of the Department, issued the orders, which were completely beyond his jurisdiction, and therefore, the orders were liable to be treated as void and having no force at all. He has also submitted that according to the provision prescribed in Section 29A (inserted under 3rd Amendment Act, 2008, Sec. 9) of the Manipur (Hill Areas) District Councils Act, 1971, the recommendation of the District Council was necessary but that was not done, and hence, all those orders were illegal and cancellation orders were therefore rightly issued, which does not deserve interference by this Court.

5. For ready reference and for appropriate appreciation, let us first reproduce here the provisions prescribed in Section 3 of the Act of 1956, which read thus:

3. Constitution of Village Authorities.-(1) For every village having twenty or more tax-paying houses there shall be a Village Authority consisting of-

(a) five members, where the number of tax-paying houses in the village is not less than twenty but is not more than sixty;

(b) seven members, where the number of tax paying house in the village is more than sixty but is not more than one hundred;

(c) ten members, where the number of tax paying houses in the village is more

than one hundred but is not more than one hundred and fifty;

(d) twelve members, where the number of taxpaying houses in the village is more than one hundred and fifty.

(2) The Chief Commissioner may, having regard to the general interests of the people of any village as also to the demand, if any, from the people of that village for an elected Village Authority, declare, by notification in the Official Gazette, that the village shall have an elected Village Authority, thereupon the members of the Village Authority of that village shall be elected in accordance with the provisions of this Act and the rules made thereunder.

(3) Where no declaration under sub-section (2) has been made in relation to any village the members of the Village Authority of that village shall be nominated by the Chief Commissioner.

(4) Where there is a Chief or Khulakpa in a village, he shall be the ex-officio chairman of the Village Authority of that village; and where there is no such Chief or Khulakpa in the village, the chairman of the village Authority of that village shall be elected by the members of the Village Authority from among themselves.

Since Annexure-A/2 and Annexure-A/3 are the bone of contention in the writ petitions, those annexed with WP (C) 609 of 2011 are also reproduced here for ready reference, which read thus:

ANNEXURE-A/2

GOVERNMENT OF MANIPUR

SECRETARIAT : HILLS DEPARTMENT

ORDERS BY THE GOVERNOR : MANIPUR

Imphal, the 26th April, 2011

No. 9/29/2009-CHA.-Whereas, Shri Kh. Morung s/o Kh. Angam Maring, Chairman of Molimphai Village under Moreh, Tengnoupal Sub-Division, Chandel District had applied for recognition of his village within the scheduled of land as shown below:-

SCHEDULE OF LAND :

North : Tuishmi Village

South : Salemphai Village

East : Sekmai River

West : Phungthil Village.

2. Whereas, the chiefs of the neighbouring villages, such as Salemphai, Tuishmi and Phungthil have no objection to the recognition of Molimphai Village under the

Chairmanship of Shri Kh. Morung Maring and the village having fulfilled the conditions laid down under Sec. 3 of the Manipur(Village Authorities in the Hill Areas) Act, 1956.

3. Whereas, the Sub-Divisional Officer, Tengnoupal has recommended the case and forwarded the relevant documents vide his letter No. S.D.O.(TPL)/VA(HA)/R/09 dated 21-09-2009.

4. Whereas, the Additional Deputy Commissioner, Moreh has recommended the case and forwarded the relevant documents vide his letter No. ADC(MRH)4(6)/99 dated 21-09-2009.

5. Now, therefore, in exercise of the powers conferred upon him under Sec. 3(2) of the Manipur(Village Authorities in Hill Areas) Act, 1956, the Governor of Manipur is pleased to accord approval to the recognition of Molimphai Village as a full fledged hill house tax paying village and shall have an elected Village Authority under the provision of the Act and rules made thereunder.

6. This order shall have effect from the date of its publication in the Official Gazette.

By orders & in the name of Governor,

B.B. SHARMA, Commissioner(Hills), Govt. of Manipur.

ANNEXURE-A/3

GOVERNMENT OF MANIPUR

SECRETARIAT : HILLS DEPARTMENT

ORDERS BY THE GOVERNOR : MANIPUR

Imphal, the 24th June, 2011

No.9/29/2009-CHA:Whereas vide order No.9/29/ 2009-CHA dated 26-04-2011 of this office approval was accorded to the recognition of Molimphai Village, under Moreh, Tengoupal Sub-Division, Chandel District as full-fledged Hill House Taxpaying village and having an elected Village Authority under provisions of the Manipur(Village Authority in the Hills Areas) Act 1956 and the Rules made thereunder.

Whereas, on review it has been found that the above mentioned Order was issued without jurisdiction and in violation of Rule No. 30 Subhead VIII & XIII of the Business of the Govt of Manipur(Allocation) Rules 2009.

Whereas, approval of the competent authority was not obtained before issuing the Orders;

Hence, the Governor of Manipur is pleased to cancel the above Order No.9/29/2009-CHA dated 26-04-2011 and the same shall be treated as null and void ab-initio.

By orders & in the name of Governor,

B.B. SHARMA, Commissioner(TD & Hills) Govt. of Manipur.

6. It is an admitted fact that orders marked as Annexure-A/3 to the writ petitions (Annexure-A/4 in WP (C) No.683 of 2011) were issued without informing the writ petitioners and behind their back. It is also found in course of hearing that the provision of Section 29(A) of the Manipur (Hill Areas) District Councils Act, 2008 was not followed and the Commissioner of the administrative department of the Government did not follow the procedure prescribed by rules of Business of the Govt. of Manipur.

7. Under such circumstances, in the course of hearing, learned counsel, Mr. Serto submits that all the writ petitions may be disposed of in the circumstances with liberty to the writ petitioners to make their representations before the State Government for consideration of their grievances consistent with the provisions prescribed in Act of 1956, to which learned senior counsel, Mr. Shyamkishore, appearing for the respondents, has no objection but contended that it will be better if the representations are submitted to the District Council for recommendation.

8. In view of the above submission made by learned counsels, and as agreed to, all the writ petitions may be disposed of with liberty to the writ petitioners to make their representations to the State Government as the State Government is the authority to give recognition as prescribed in the provision of the Act of 1956. In the process, the State Government may obtain the recommendation of the District Council, if they so desire.

9. Having regard to the submission made by the learned counsels and having considered the facts and circumstances and the materials placed before this Court, it is hereby ordered that the writ petitioners shall make representations to the respondent No.1, seeking redressal of their grievances within fifteen days from today alongwith a copy of this order. They may enclose copies of the writ petitions and affidavit-in-opposition along with their representations, if so desire. The State Government shall dispose of the representations with a reasoned decision, according to law, within hundred eighty days from the date of receipt of the representations. In the process, the State Government will be at liberty to obtain recommendation from the concerned District Council but such recommendation should be taken in a time bound manner and if the District Council fails to give their recommendations within thirty days from the date of asking for the same by the State Government, the State Government will be deemed to be at liberty to take decision of their own, without such recommendation, according to the provision prescribed in the Act of 1956.

10. In terms of the above all the writ petitions stands disposed of. Parties are to bear their own costs.