

(2017) 03 MEG CK 0001
In the Meghalaya High Court
Case No : 17 of 2014

Shri. Phrangjohn Sing Malai

APPELLANT

Vs

Shri. Paialast Iawrod, & Ors.

RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Section 9 -
United Khasi Jaintia H

Citation : (2017) 03 MEG CK 0001

Hon'ble Judges : S.R.Sen

Bench : Single Bench

Advocate : HL Shangreiso, BMR Chyne, PS Nongbri

Final Decision : Allowed

Judgement

1. Heard Mr. HL Shangreiso, learned counsel for the petitioner as well as Mr. BMR Chyne, learned counsel for the respondent No. 1 and Ms. PS

Nongbri, learned counsel for the respondents-KHADC.

The petitioner's case in a nutshell is that:

In brief, the election to the post of Chief of the Malaisohmat Syiemship used to be held as per the prevailing decade old customary

practices having the force of law. The United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chief and

Headman) Act 1959 (in short the act of 1959) enacted under the Sixth Schedule of the Constitution of India prescribed the inbuilt

procedure for nomination, election, appointment and removal of the Chiefs. In pursuance to the Returning Officer's Notice dated

21.12.2006, all the respondents No. 1, 2, 3, 4 and 5 had filed nomination papers to contest the election for the post of Chief.

However, the other respondents objected that customary law/ practices did not permit the respondent No.1 from Iawrod clan to

contest and hold the post of Chief and therefore, the Executive Committee of the district council u/s 4 on reference made by the then

Returning Officer had seized the said objection and heard all of them personally.

However, the Respondent No 1 had approached the Presiding Officer, Subordinate District Council Court, Khasi Hills, Shillong

(Trial court in short) by instituting the Title Suit No. 8 of 2007 raising the same subject of dispute and sought for declaration to allow

him and other members of his ""Iawrod clan"" to contest and hold the post of Chief. In the meantime , the Executive Committee vide

order 20.07.2007 as per the prevailing customary law had rejected his claim and having aggrieved with, he filed another Misc case

No. 8 of 2007 on 17.08.2007 before the same Trial Court seeking for temporary injunction not to hold the election during the

pendency of the above title suit. Again, in the meantime, the then Returning Officer vide 16.10.2008 had also formerly rejected his

nomination paper and debarred him from contesting the election.

Section 5A of the Act of 1959 clearly provided that any dispute regarding any matter relating to or connected with the election or

nomination of a Chief should only be decided by the Tribunal. To that end, Section 20 deserves reproduction herein:

Section 20: Bar to Civil Suit: No suit or legal proceedings shall lie before any Court of law against any order or action taken or

anything done in good faith under any of the provisions of this Act.

Reading and re-reading of the above sections 5A and 20 read with Section 9 of the Code of Civil Procedure, 1908 clearly evidence

that the jurisdiction of the above Trial court is expressly ousted from adjudicating any election dispute arising with regard to the

election or nomination of the Chief under the Act of 1959. However, in overstepping into the arena of the Tribunal Jurisdiction, the

above Trial court has entertained the above suit and pronounced the impugned judgment and order dated 03.06.2011 by holding that

any member including the Respondent No.1 from ""Iawrod clan"" are entitled to elect, nominate and hold post of Chief.

Relying on the said judgment and order, the Respondent No.1 again filed another nomination paper in the fresh election initiated by

the Returning Officer, Shillong on May, 2014. The present revision petitioner only came to know the existence of the above suit and

judgment only when the said Returning Officer vide order dated 05.06.2014 accepted his nomination paper and allowed him to

contest the election solely on the basis of the above Judgment and he was declared as elected on 17-06-2014 as Chief despite

serious protest. The revision petitioner has immediately obtained the certified copies of the suit and impugned Judgment on 03-06-

2011 and accordingly, came to know that Trial Court had passed the above impugned judgment dated 03.06.2011 without

jurisdiction over the subject matter and as such, the said Judgment is a non est order and nullity in nature and as a result, the

consequential orders dated 05.06.2014 and 17.06.2014 passed by the Returning Officer in allowing his nomination paper as well as

declared him as Chief is also null and void. The above Judgment dated 03-06-2011 till date neither conferred any vested rights on

him nor third party right has ever been created. Thus, the present revision petitioner has filed this instant revision under Article 227 of

the Constitution of India with the prayer to this Hon''ble Court to exercise its supervisory/visitorial jurisdiction to keep the said

subordinate Trial Court within its bounds and to please set and quash the above impugned Judgment and Order dated 03.06.2011 as

well as the above consequential orders dated 05.06.2014 and 17.06.2014 passed by the respondent Returning Officer.

2. Learned counsel for the petitioner submits that if there is any dispute pertaining to the election or any connected matters regarding election, it

needs to be addressed by the Tribunal constituted by the District Council. To support his submission, he relied on section 5A of ""The United Khasi

- Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959."" Similar submission was also endorsed by

the learned counsel for the respondents-KHADC, Ms. PS Nongbri.

3. In reply, learned counsel for the respondent No. 1, Mr. BMR Chyne submits that the matter in this instant revision petition has no connection with the election and referred to Section 9 of the CPC.

Section 5A is reproduced herein below for ready reference:

5A. Dispute regarding Election:- If within 30 days of the declaration of the result by the Returning Officer under Section 4 any

dispute arises regarding any matter relating to or connected with the election or nomination of a Chief, the dispute shall be referred by

the party or parties concerned, by a petition, to the Tribunal constituted by the Council for the purpose which shall submit its report

and finding at the earliest and not later than six months from the date of receipt of the case records, to the Executive Committee for its

decision. However, the Executive Committee may from time to time extend the aforesaid period of six months at the request of the

Tribunal by means of written order. The decision of the Tribunal shall be final.

Such petition shall be filed to the Secretary of the Executive Committee in duplicate accompanied by a fee of Rs. 500 in case.

4. On bare perusal of Section 5A of the Act referred above, it is understood and appears that any matter related to election or nomination of

Chief, a petition should be moved before the Tribunal constituted by the District Council.

5. If it is so, in my considered view, it is the Tribunal constituted by the District Council to decide the dispute and not the Civil Court. Let the

petitioner approach the Tribunal as per the provision of Section 5A of the act referred above and the Tribunal to be constituted by the District

Council to dispose the matter as per the provision of law. However, the Tribunal while deciding the matter should not take into consideration the

limitation prescribed under Section 5A.

6. With this observation and direction, the impugned order passed in Title Suit No. 8 of 2007, dated 3rd June, 2011 by the Presiding Officer,

Subordinate District Council Court, Khasi Hills, Shillong is hereby set aside. Revision petition is allowed to that extent and stands disposed of.