
(2016) 11 MAN CK 0002
In the Manipur High Court
Case No : Writ Petition (C) No. 68 of 2015

Shri Z. Shimthar	Vs	APPELLANT
State of Manipur		RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Business of Government of Manipur (Allocation) Rules, 1999 — Rule 2
Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) AIR(Manipur) 2

Hon'ble Judges : Rakesh Ranjan Prasad, CJ.

Bench : Single Bench

Advocate : Ms. H. Bisheshwari, Advocate, for the Petitioners; Mr. Y. Ashang, G.A, Mr. S. S. Amarjeet, CGSC and Mr. Boboy Potsangbam, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Rakesh Ranjan Prasad, C.J. (Oral) - Heard learned counsel for the petitioners and also learned counsel appearing for respondent No.4 as well as Mr. Y. Ashang, learned GA for the State.

2. Before I proceed with the submission advanced on behalf of the petitioner as well as respondents today, the order which was passed on 22.11.2016 needs to be taken notice of, which reads as follows:

" On the basis of submission made on behalf of the petitioners to the effect that the Principal Secretary (TA & Hills), Government of Manipur, does not have any power to pass order for bi-furcating the two villages which had already been amalgamated, an order was recorded on 9.8.2016. Under that order, liberty was reserved with the petitioners to file an application challenging the order under which representation filed by the petitioners had been rejected.

According to learned counsel, the order passed by the Secretary (TA & Hills), Government of Manipur over the representation has been challenged in WP(C)

No.668 of 2016 whereby the representation was rejected simply on the ground that the concerned Deputy Commissioner had made recommendation for bifurcation of the two villages namely Lamlai Khullen and Lamlai Khunou, which villages had already been amalgamated and were being known as Ramrei village.

In this regard it was submitted that the Deputy Commissioner does not have any right to make any recommendation for amalgamation or bifurcation of the villages. Besides that it was reiterated that it is the Revenue Department, who is competent to take decision in the matter relating to bifurcation of the village. It would be evident from the office memorandum dated 26.8.2008 published in the Manipur Gazette in its extraordinary issue wherein a clear cut stipulation is there that the order relating to creation and alteration of boundaries of villages shall be issued by the Revenue Department as provided by the Business of Government of Manipur (Allocation) Rules, 1999. By referring to that office memorandum it was submitted that it is quite obvious that the order passed by the Secretary (TA & Hills) Government of Manipur is without jurisdiction and hence, it is fit to be set aside.

As against this learned counsel appearing for the State submits that the matter be posted day after tomorrow so that he would be ready on the point.

As prayed for, let this matter be listed day after tomorrow (24.11.2016). Meanwhile, counsel appearing for private respondents shall also be ready on this point."

3. In addition to submission made on 22.11.2016, learned counsel appearing for the petitioner submits that on other ground also the notification dated 30.11.2013 (Annexure-A/13) is bad on account of the reason that the said order was passed without hearing the petitioner being headman of Ramrei Village which came to know by such name when two villages, Lamlai Khullen and Lamlai Khunou were amalgamated and thereby the notification dated 30.11.2013 is fit to be set aside on the aforesaid twin grounds.

4. As against this, learned counsel appearing for the respondent submits that both the applications cannot be maintained on account of non-joinder of necessary parties as the petitioner has impleaded only respondent No.4, who happen to be the headman of village, Lamlai Khunou whereas villagers of that village have never been impleaded as party respondents whose interest would get affected adversely if the order is passed in favour of the petitioner.

5. Learned counsel, in support of his case has referred to a decision rendered in the case of Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee & Ors : (2006) 8 SCC 487 wherein their Lordships in para 31 of the judgment have held as under:

"31. In our view no relief could have been granted to the writ petitioners on account of the fact that the newly elected office-bearers of the Executive Board, who would have been affected by the decision of the writ petitions, were not

impleaded as party to the writ petitions. In *Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue* : AIR 1963 SC 786 it was observed that where in a petition for a writ of certiorari made to the High Court, only the tribunal whose order was sought to be quashed was made a party but the persons who were parties before the lower tribunal and in whose favour the impugned order was passed were not joined as parties, the writ petition was incompetent and had been rightly rejected by the High Court. In *Prabodh Verma v. State of U.P.*, (1948) 4 SCC 251, it was held: (SCC p.256)

"A High Court ought not to hear and dispose of a writ petition under Article 226 without persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

6. Further, so far as merit of the case is concerned, it was submitted that if the impugned orders passed by the Principal Secretary (TA & Hills) Government of Manipur is being taken by the petitioner to be an illegal, on account of it being passed by the authority who order does not have power to pass such order then in that event even the amalgamation order, on that premise, would be wrong, as the said order has been passed by the Revenue Department, rather by the Commissioner, Hills to the Government of Manipur.

It be stated that, according to the case of the petitioners two villages namely Lamlai Khullen and Lamlai Khunou had been amalgamated earlier as has been stated above but subsequently, Principal Secretary (TA & Hills), Government of Manipur vide its notification dated 30.11.2013 (Annexure-A/13) passed an order for bifurcation of the said village into two villages namely, Lamlai Khullen and Lamlai Khunou, which order is under challenge in WP(C) No.68 of 2015. It be stated that when the matter was taken by this Court earlier, the petitioner was asked to submit a representation before the Principal Secretary (TA & Hills) Government of Manipur. The said representation filed by the petitioner was rejected vide order dated 10.12.2014 (Annexure-A/14) which is under challenge in WP(C) No.668 of 2016. By the said order it was held that status of bifurcated village shall remain as such and thereby the prayer made by the petitioner for amalgamation of the village was not accepted, which amounts rejection of the representation.

7. The question which does arise as to whether, Principal Secretary (TA & Hills) does have the authority to pass order in the matter relating to amalgamation or bifurcation of the village.

In order to have answer to it I need not to go far away than to Office Memorandum dated 26.08.2008 published in the Extraordinary Manipur Gazette (Annexure A/15), relevant part of which reads as follows:

""

No.16/2/MISC/2008-Com(Rev): As provided by the Business of the Government of Manipur (Allocation) Rules, 1999, issued by the Confidential and Cabinet Department vide Notification No.3/1/77-Com(PI) dated 10th August, 1999, all matters relating to the creation of Districts, Sub-Divisions, Tehsils, Villages and alteration of boundaries thereof are allocated to the Revenue Department.

It has been brought to the notice of the Government, however, that orders are being issued under Section 3(2) of Manipur (Village Authorities Hill Areas) Act, 1956, regarding recognition of hill villages in Manipur, in spite of the fact that such provisions of the Act deals only with declaration that a village shall have an elected Village Authority. In other words, any orders issued under the provisions of the Act referred to above in regard to recognition of hill villages shall be void ab-initio.

In the above backdrop, it has been decided to issue instructions that orders relating to creation and/or recognition of villages shall be issued by the Revenue Department as provided by the Business of the Government of Manipur (Allocation) Rules, 1999."

8. Thus, it does appear that a clear stipulation is there that in the matter relating to creation and/or recognition of villages, competent authority to take decision is the Revenue Department and, thereby, the order impugned dated 30.11.2013 (Annexure A/13) passed by the Principal Secretary (TA & Hills), Government of Manipur who does not have power to pass such order being illegal is hereby quashed. Consequently, the order which was passed on 10.12.2014 (annexure A/14) by the same authority which is subject matter of challenge in WP(C) No.668 of 2016 is also quashed.

9. So far as submission relating to application being not maintainable on account of non joinder of parties, in the fact and circumstance, is devoid of any merit. It be stated that the villagers of Lamlai Khunou were never parties before the authority who had passed the impugned order and that respondent No.4 being headman of the said village has been impleaded as party and thereby the submission that application being not maintainable on account of non joinder of party is held to be unfounded.

10. Under the circumstance, the dispute as discussed above, since warrants to be resolved by the competent authority, the matter is referred to the Principal Secretary, Department of Revenue, who, after giving notices to the persons concerned shall be deciding the issue relating to amalgamation/bifurcation of the villages namely Lamlai Khullen and Lamlai Khunou as early as possible.

Thus, these two writ applications stand disposed of.