

(2014) 02 TP CK 0001
In the Tripura High Court
Case No : W.P. (C) No. 174 of 2012

Silas Lawrod and Others

APPELLANT

Vs

Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Citation : (2014) 3 GLD 282

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : B.M. Roy Doloi and B.M. Chyne, Advocate for the Appellant; V.G.K. Kynta, Senior Advocate and H.L. Shangreiso, Advocate for the Respondent;

Final Decision : Allowed

Judgement

T. Nandakumar Singh, J.

1. Heard Mr. B.M. Chyne, learned counsel appearing for the petitioners and Mr. V.G.K. Kynta, learned senior counsel assisted by Mr. R. Thangkhiew, learned counsel appearing for the respondents No. 1-16. Also heard Mr. H.L. Shangreiso, learned counsel appearing for the respondents No. 17 & 18. By this writ petition, the petitioners is assailing the order of the Executive Committee, Khasi Hills Autonomous District Council, Shillong dated 21.12.2011 (Annexure-I to the writ petition) which reads as follows:--

"ORDER OF THE EXECUTIVE COMMITTEE, KHASI HILLS AUTONOMOUS DISTRICT COUNCIL IN THE MATTER OF "COMPLAINT AGAINST U RYNGKATDOR MALAI, SUSPENDED SYIEM OF MALAI SOHMAT, MALAI SOHMAT SYIEMSHIP. No. DC.XXVII/Genl/74/2009-12/64 Dated Shillong, the 21st December, 2011 ORDER

Having perused the report and findings of the inquiry Officer who conducted the inquiry into the various charges against U. Ryngkatdor Malai, suspended Syiem of Malai Sohmat, the Executive Committee felt that apart from the report and finding of the inquiry Officer appointed by the Council on that behalf, views and opinions in this regard from the Myntris (electors), Local Committees, Headmen

and Dorbar Shnongs of the Syiemship may also be called for respectively.

Accordingly, by letter dt. 20.9.2011 the Myntris of the Syiemship and Headmen of all the five villages within the Syiemship were asked to give their views and opinions on the matter. All the Myntris and Headmen except the Headman of Mawsawa village Dorbar are against the suspension of U. Ryngkatdor Malai from the post of the Syiem of Malai Sohmat stating that the charges are false and baseless which should be rejected. They express full faith and confidence in him and strongly urged upon the Executive Committee to reinstate him forthwith as Syiem of Malai Sohmat, for the interest of the Syiemship.

The Executive Committee having examined the views and opinions obtained from various quarters of the Syiemship and considering the charges framed against U. Ryngkatdor Malai suspended Syiem of Malai Sohmat, although they were proved but are not so serious which will warrant his removal from the Office and post of Syiem of Malai Sohmat. Therefore, decided to reinstate him with warning that he should mend his ways and style of functioning of the Syiemship and should the same is repeated he shall be liable to removal without further opportunity of being heard of.

Subsequently, the appointment order dt. 24.9.2009 of Shri P. Iawrod as Acting Chief of Malai Sohmat Syiemship is hereby revoked with immediate effect.

(Emphasis supplied) Sd/- Shri P.N. Syiem, Chief Executive Member, Khasi Hills Autonomous District Council, Shillong."

2. For deciding the short question called for consideration in the present writ petition, it is not required to delve deep into the factual matrix leading to the filing of the present writ petition. Sans detail, only the brief fact is noted. The respondent No. 18 was appointed as Syiem of Malaisohmat Syiemship on 8.4.2009 and the respondent No. 18 was to run the administration of Hima (Syiemship) as per the customs and traditions of the Hima (Syiemship) and not at his own sweet will. This fact is not disputed by the parties inasmuch as, the administration of the Hima (Syiemship) is to be carried out as per the customs and traditions of the Hima (Syiemship).

3. In pursuance of Para-11 of the Sixth Schedule to the Constitution of India, United Khasi-Jaintia Hills District after receiving assent of the Governor of Assam, the then Government of Assam enacted the Act called "The United Khasi-Jaintia Hills Autonomous District (Appointment & Succession of Chiefs and Headmen) Act, 1959. It is the case of both the parties that the appointment and succession of Chiefs and Headmen of the Autonomous Khasi Hills District Council including the appointment of Syiem are governed by the said Act, 1959. The appointments of Chief/Syiem are made under Sections 3, 4 & 5 of the said Act, 1959 subject to the conditions mentioned under Section 6 of the said Act, 1959. In other words, the Chief or Syiem is to be removed in case the Chief or Syiem violated the conditions mentioned in the Section 6 of the Act, 1959. As this case relates with the removal and suspension of the Chief/Syiem, it would be profitable to quote

Section 6 of the said Act, 1959, which reads as follows:--

"6. Removal and Suspension of Chiefs.--

(1) The Chief may be removed from office or suspended by the Executive Committee if in its opinion:

(a) he violates any of the terms and conditions of the appointment; or
(b) he violates any of the laws, regulations, rules and the resolutions passed by the Council" or

(Section 5B inserted vide 3rd Amendment Act, 1972) (Section 6 substituted vide Act No. 1 of 1969 and amended vide 6th Amendment Act, 1991 & 7th Amendment Act, 2005)

(c) he refuses to carry out the orders and instructions issued by the Executive Committee; or

(d) he is found to be mentally unfit to carry out his functions; or

(e) has been incapable of carrying on the administration to the satisfaction of the Executive Committee due to ill health, old age or habitual drunkenness; or

(f) he violates any customary rights and practices prevailing in the Elaka concerned and duly approved by the Executive Committee; or

(g) he has been convicted of an offences involving moral turpitude; or

(h) he has been oppressed the people of the Elaka and they have just cause for dissatisfaction with his misrule; or

(i) he has lost the confidence of the majority of his electors or of the people of the Elaka; or

(j) he is an undischarged insolvent; or

(k) he has been conducting himself in a manner derogatory to his office or prejudicial to the interest of the Elaka or part thereof; or

(l) he has been conducting himself in a manner which may undermine the authority of the Executive Committee of the District Council; Provided that every such case shall be placed before the Council in its next Session;

Provided further that no Chief shall be removed from office or punished with suspension unless he is given an opportunity of being heard;

4(i) in the case where the order of removal or punishment or suspension is awarded on account of his being convicted of an offence involving moral turpitude;

(ii) in the case of order of suspension pending inquiry;

(2) REFERENDUM:--If any dispute arises as to whether the Chief has or has not

lost the confidence of the majority of the electors or of the people of the Elaka as provided in clause (i) of sub-section (1) above, the Executive Committee may if deems necessary, hold and conduct a referendum consisting of the electors of the Elaka as the case may be and take appropriate action on the basis of a simple majority of the result of such referendum."

4. The writ petitioners and eight others made a complaint dated 15.6.2009 to the Executive Member, I/C Elaka, Khasi Hills Autonomous District Council making serious allegations against the respondent No. 18 in the matter of discharging and functioning as Chief/Syiem. A copy of the said complaint dated 15.6.2009 is available at Annexure-5 to the writ petition. The Executive Committee after consideration of the said complaint filed by the petitioners and eight others passed an order dated 22.9.2009 for holding an enquiry against the respondent No. 18 for the charges mentioned in the order itself i.e. "that the management of the affairs of the Syiemship by him (respondent No. 18) is against the provision of law of the District Council and as per the Appointment and Succession of Chief and Headmen Act, 1959 has violated the provision of Section 6(f)(h)(i)(k)(l) and (m)".

5. In pursuance of the said order dated 22.9.2009 of the Executive Committee of the Khasi Hills Autonomous District Council, a full enquiry was conducted by the enquiry officer. In that enquiry, the respondent No. 18 was given full opportunity to put up his case as well as opportunity to cross examine the P.Ws and the statements of the P.Ws were recorded in the presence of respondent No. 18. The enquiry officer, after appreciation of oral statements of P.Ws. and D.Ws. and also the documents, submitted the enquiry report dated 9.7.2010; that the charges levelled against the respondent No. 18 had been proved. The relevant portion of the enquiry report dated 9.7.2010 is quoted hereunder:--

"CHARGE No. 5. "That the management of the affairs of the Syiemship by him (respondent No. 18) is against the provision of law of the District Council and as per the Appointment and Succession of Chief and Headman Act, 1959 has violated the provision Section 6(f)(h)(i)(k)(I) and (m)."

From what has been discussed by me in Charges No. 1 to 4 by reproducing the statements of both the P.Ws and D.Ws as above, I am of the view that this particular charge No. 5 should be answered in the affirmative.

I, therefore, forward herewith my findings in the instant Inquiry to the Hon''ble Executive Committee, Khasi Hills Autonomous District Council, Shillong for favour of necessary action."

6. The said enquiry report dated 9.7.2010 was considered by the Executive Committee, Khasi Hills Autonomous District Council and after such consideration, the Executive Committee, Khasi Hills Autonomous District Council did not interfere with the findings of the enquiry officer in his report dated 9.7.2010. In other words, the Executive Committee, Khasi Hills Autonomous District Council had accepted the report of the enquiry officer that the respondent No. 18 had

violated the provision of Section 6(f)(h)(i)(k)(1) and (m). In spite of accepting the said findings of the enquiry officer, the Executive Committee, Khasi Hills Autonomous District Council passed the impugned order dated 21.12.2011 for reinstating the respondent No. 18 as Chief/Syiem of Malaishomat Syiemship. On plain perusal of the impugned order dated 21.12.2011, it is crystal clear that the Executive Committee, Khasi Hills Autonomous District Council had accepted the findings of the enquiry officer in his report dated 9.7.2010, that the respondent No. 18 had violated the provision of Section 6(f)(h)(i)(k)(1) and (m) of the said Act, 1959.

7. Once the Executive Committee had accepted the said findings that the respondent No. 18 had violated the provision of Section 6(f)(h)(i)(k)(1) and (m) of the said Act, 1959, the Executive Committee is bound to take up only the course permissible under the law i.e. the said Act, 1959. The course to be taken up by the Executive Committee is to remove the respondent No. 18 from the post of Syiem of Malaisohmat Syiemship. It goes without saying that, if there is a particular procedure prescribed under the statute in a certain matter, the authority has no alternative except to take recourse to the particular procedure prescribed under the statute. [Ref: (i) S.G. Jaisinghani Vs. Union of India (UOI) and Others, (ii) Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, . For the sake of repetition, it is reiterated that under Section 6 of the said Act, 1959, in case the Chief/Syiem violated the conditions mentioned in Section 6 of the said Act, 1959, the Chief/Syiem is to be removed. This being the situation, this Court has no alternative but to interfere with the impugned order dated 21.12.2011 for reinstating the respondent No. 18 in clear infraction of Section 6 of the said Act, 1959. Accordingly, the order dated 21.12.2011 is hereby set aside.

8. Before parting with the case, regarding submission of Mr. H.L. Shangreiso, learned counsel for the respondents No. 17 & 18 that the order for suspending the respondent No. 18 from the post of Syiem of Malaisohmat Syiemship was passed without giving any opportunity of being heard, this Court observed that the point agitated by Mr. H.L. Shangreiso, learned counsel for the respondents No. 17 & 18 cannot be taken up in this present writ petition inasmuch as, the present writ petition is not concerned with the order for suspension and the order assailed in the present writ petition is the order dated 21.12.2011 for reinstating the respondent No. 18 to the post of Syiem of Malaisohmat Syiemship.

9. Mr. V.G.K. Kynta, learned senior counsel appearing for the respondents No. 1-16 strenuously contended that the post of Syiem of Malaisohmat Syiemship is a very important post and there cannot be vacuum in the said post. Taking into consideration of the submission of the learned senior counsel appearing for the respondents No. 1-16, this Court is of the considered view that the Executive Committee, Khasi Hills Autonomous District Council can take recourse to Section 11 of the said Act, 1959, under which Acting Chief/Syiem can be appointed. In this circumstances, the Executive Committee, Khasi Hills Autonomous District

Council has to appoint Acting Chief/Syiem according to law within a period of two weeks from today. In the interregnum, the Executive Committee, Khasi Hills Autonomous District Council can look into the affairs of the Malaisohmat Syiemship. As the post of Syiem of Malaisohmat Syiemship is a very important post, there should be an election for a regular Chief/Syiem within a period of three months from today. It is open to the respondent No. 18 to participate in the election. With the above, the writ petition is allowed with the observations indicated above.