

**(1964) 06 GAU CK 0001**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 130 of 1963**

Sporsomanick Siem

APPELLANT

Vs

Rokendro, Executive Member in Charge of Rural  
Administration, District Council and Others

RESPONDENT

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**Date of Decision :** 15-06-1964

**Acts Referred:**

Constitution of India, 1950 — Article 226, 32, 329

**Citation :** (1964) 06 GAU CK 0001

**Hon'ble Judges :** G. Mehrotra, C.J.; S.K. Dutta, J

**Bench :** Division Bench

**Advocate :** H. Goswami and B.M. Goswami, for the Appellant; S.M. Lahiri, P. Choudhuri, N.M. Lahiri, B.S. Guha and S.K. Sen, for the Respondent

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## Judgement

G. Mehrotra, C.J.—The Petitioner is a resident of United Khasi and Jaintia Hills and lives in Myllem Stale. On 6th April 1962 a Purwana was issued by the Secretary, Executive Committee, District Council, United Khasi and Jaintia Hills to 46 electors asking the in to nominate a Siem in place of U Jormanik within 20 days from the date of that Purwana. It was alleged that a Durbar was held on the 19th April, 1962 and on 24th April, 1962 and in that Durbar some electors nominated U Franciswell as Siem of Myllem. All the electors did not attend the Durbar and those electors had also right to nominate somebody else for the Siemship within the time fixed. On the 23rd April, 1962 before the time fixed for nominating a Siem by the electors expired, one U Kshvin Myntri filed a petition before this Court challenging the aforesaid Purwana and this Court by its order dated 24th April 1962 issued a rule on this petition and stayed the election of the Siem. The stay order passed by the High Court was subsequently vacated as the petition was rejected. The appointment, however, of U Franciswell was approved by the District Council on the 14th May 1963. Some objections had been filed to the nomination of U Francis well.

On the 17th April, 1963 the Petitioner along with one II. E.S. Kharkongor

objected to the nomination of U Franciswell as Siem of Myllem and also submitted an appeal petition to the Tribunal to be anted by the District Council, United Khasi and Jaintia Hills. On the 4th June, 1963, the Petitioner sent a reminder to the Secretary about the appeal and also prayed for appointment of a Tribunal to hear the election dispute. The election as already indicated was, however, approved on the 14th May 1963. It is this appointment which has been challenged by this petition under Article 226 of the Constitution.

2. The contention of the Petitioner is that the Petitioner's name could not be nominated as before the expiry of 20 days from the date of issue of the Purwana requiring the electors to nominate persons for Siemship, this Court had issued a stay order. The electors were misled and could not file the Petitioner's nomination. The Petitioner's further contention is that as there was no publication of the result of the election, u/s 5 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (hereinafter called "the Act") the Petitioner who is concerned with the election of the Siem, could not within 30 days from the publication refer the dispute for decision to the Executive Committee, against whose order an appeal is provided for to the tribunal constituted under the Act and the Petitioner has also prayed for the constitution of the tribunal to decide the election dispute. The contention is that u/s 5 there is a statutory obligation on the authorities to publish the election result, so as to enable the party concerned to file objection and refer the matter for decision to the Executive Committee. In effect thus the Petitioner claims a mandamus directing the opposite parties to publish the result of the election so as to enable the Petitioner to refer the dispute to the Executive Committee.

3. In paragraph 15 of the petition it is stated as follows:

That the Executive Committee of the District Council has not yet published in any Gazette of the appointment of U Franciswell as the Siem of Myllem. The Petitioner learns no such Gazette Notification has to be made. In this connection the Petitioner attached herewith a notice dated 23rd January, 1961, in connection with the nomination of U Jormapil.

In the counter-affidavit filed on behalf of Respondents Nos. 1, 2 and 5 it is stated with regard to this paragraph that then; is no provision for publication of the appointment of a Siem in any Gazette, nor is it incumbent on the Executive Committee of the District Council to do so, It is further averred that after the confirmation and approval of the appointment of U Franciswell Siem as Siem of Myllem by the District Council a letter of appointment or a Sanad Iurwana was issued to him on 16th. May 1963 and he is functioning as such to the knowledge, of the people of Myllem Siemship.

4. The Petitioner urges that as there was another nomination of U Stonely Maaick, the matter should have been referred to the electors for their votes, and in substance there was no election at all in the present case.

5. A preliminary objection has been raised on behalf of the Respondents that the present petition is not maintainable inasmuch as the Petitioner has no legal right which has been infringed and which he can enforce by means of this petition under Article 226 of the Constitution. It is no longer in doubt that the foundation for applying under Article 226 of the Constitution is the existence of a legal right. In the case of "Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal AIR 1982 SC 1044 it was observed as follows:

The first question that falls to be considered is whether the Appellant has locus standi to file the petition under Article 226 of the Constitution. The argument of learned Counsel for the Respondents is that the Appellant was only managing the industry and it had no proprietary right therein and, therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights contorted by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief there under. The Article in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *The State of Orissa Vs. Madan Gopal Rungta*, this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the Petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a Petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the Petitioner himself, though in the case of some of the writs like habeas corpus or quo warrantor this rule may have to be relaxed or modified.

6. Mr. Lahiri contends that though the Petitioner could be nominated for the office of the Siem, he was neither an elector nor one who had been nominated and thus he was not a candidate for the office of the Siem and he had no legal right which has been infringed and which he could enforce under Article 226 of the Constitution. We do not think that there is any force in this contention. It being admitted that the Petitioner could be nominated, the electors were deprived of their right to file nomination and the applicant's right to be nominated has been affected, which he is seeking to enforce by means of a writ petition under Article 226 of the Constitution.

Mr. Lahiri further contends that the Petitioner never being nominated, he had no right to refer the dispute to the Executive Committee u/s 5 of the Act. According to his contention persons who could be regarded as "party concerned" within the meaning of Section 5 of the Act could say that their right has been affected and thus they could approach this Court under Article 226 of the Constitution. But as

the Petitioner has never been nominated, he is not a party concerned u/s 5 of the Act and he has no legal right which he could enforce under Article 226 of the Constitution. Persons who come u/s 5 of the Act have undoubtedly locus standi to apply under Article 226 of the Constitution. But it cannot be said that those who cannot be re-girded as party concerned u/s 5, cannot say that their right has been affected and apply under Article 226 of the Constitution. There may be cases where persons who are not parties concerned within the meaning of the words in Section 5, may have a right to apply under Article 226 of the Constitution. In the present case we are of opinion that the Petitioner was entitled to refer his dispute to the Executive Committee for decision u/s 5 of the Act. Section 5 of the Act lays down as follows:

If any dispute arises regarding any matter relating to, or connected with, the election of a Chief, the dispute shall within 30 days after the publication of the result of the election be referred by the party or parties concerned to the Executive Committee for decision, An appeal against the decision of the Executive Committee shall lie to a tribunal constituted for the purpose by the District Council and the decision of the tribunal shall be final. Any appeal before the tribunal shall be filed, within 30 days after the order of the Executive Committee is communicated to the party or parties concerned.

Two tailings are essential before reference can be made by a person u/s 5 to the Executive Committee, firstly that the dispute must arise regarding any matter relating to or connected with the election of a Chief and secondly that the person must be a party concerned. The dispute in the present case" r used by the Petitioner relates to or is connected with the election of the Seirn and the first requirement of the section is fully satisfied. The words "relating to on connected with" are of wider import and the word "election" covers the entire process, it is not confined to the poll only. The only question is whether the Petitioner can be said to be a party concerned. The word "party" has not been defined in the Act. It is, however, of wider import than the word "candidate" and the meaning of the word "party" cannot be limited so as to confine it to a person who has been nominated. We are of opinion that the Petitioner is a party concerned u/s 5 and has locus stand to approach this Court The word "election" may have a wider meaning or a narrower meaning depending upon the scheme of the Act, The word "election" in Article 329 of the Constitution has been interpreted; by their Lordships of the Supreme Court in the case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, as embracing the whole procedure of election and not confined to the final result thereof.

7. The next point urged is that the word "publication" in Section 5 does not necessarily mean the publication in the official Gazette. If the result has been given due publicity and the parties concerned know of the result, the requirement of Section 5 has been complied with. There is nothing in the counter-affidavit setting out the manner in which the result was published. The only statement in the counter-affidavit is that a Purwana was issued to the elected

Siem to take charge. Mr. Lahiri contends that as in the petition the allegation was that the result should have been published in the Gazette, the Respondents could only deny the said allegation and there was no occasion for mentioning the details of the manner in which the result was published. The case of the Petitioner was that there was no publication in the Gazette. It was denied that there was any publication and in these circumstances the Respondents who were in the know of the facts, should have alleged the manner in which the result was published. The mere assertion that the Petitioner had knowledge of the result does not satisfy the requirements of Section 5. The word "publication" necessarily implies some act on the part of the authorities and the mere knowledge of the Petitioner cannot be regarded as "publication" by the authorities concerned. Further on the objection filed by the Petitioner, the Executive Committee made a report dated 29th April 1963 to the District Council. Dealing with the prayer of the Petitioner for the appointment of the tribunal, the Executive Committee observed as follows:

It should also be mentioned here that there is a petition to constitute a tribunal. The Executive Committee cannot see its way to place that petition before the Council as the result has not been published as yet. This is in accordance with Rule 5 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959.

This report clearly shows that there was no publication till the 29th April 1963 and there is no averment that anything was done after the 29th April 1963, which may amount to publication. We accordingly allow this petition with costs and issue a mandamus directing the opposite parties to publish the result of the election as quickly as possible. Hearing fee is fixed at Rs. 50.