

(2010) 12 GAU CK 0030

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 205 (SH) of 2007

Stafford Bidiman Sohmat & Ors.

APPELLANT

Vs

Khasi Hills Autonomous District Council & Ors.

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Civil Procedure Code, 1908 — Section 11
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 226

Citation : (2010) 5 GLT 728

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : Advocates appeared for the Petitioners: Mr.Y.S.Massar, Mr.T.T.Diengdoh & Mr.K.Baruah, Advocate appeared for the Respondents: Mr.V.G.K.Kynta, Advocates appearing for Parties

Judgement

B.K. Sharma, J.—Heard Mr. Y. S. Massar, learned senior counsel assisted by Mr. K. Baruah, learned counsel for the petitioners as well as Mr. V. G K. Kynta, learned Standing Counsel, Khasi Hills Autonomous District Council.

2. The dispute involved in this writ petition is whether the particular Sohmat Clan, to which the petitioners belong have the right to contest for the post of Syiem of Malai Sohmat. While in the case of the petitioner, in view of the earlier decision, the issue is no longer res integra, but according to the respondents, the issue has been decided on the basis of the consensus arrived at by and between the parties and also taking into consideration the customary practice being followed in the matter.

3. The petitioners, who belong to Sohmat Clan, are aggrieved by the Annexure8 order dated 20.7.2007 passed by the Executive Committee of the Khasi Hills Autonomous District Council, Shillong in the matter of election and appointment of Syiem of Malai Sohmat, by which it has been held that the members of the Sohmat Clan have no right to Syiemship and their right is restricted to Deputy

Syiemship.

4. The petitioners, in support of their case, have referred to the Annexure2 judgment dated 23rd May, 1980 delivered by the Election Tribunal of the District Council Court, Shillong in Election Tribunal Case No. 1 of 1976. The case was filed by the rival candidate of the petitioner No. 1 challenging the nomination and election of the petitioner No. 1 as Syiem of Malai Sohmat. The pleading of the opponent was that the members of the Sohmat Clan have no right to contest for the post of Syiem of Malai Sohmat.

5. The aforesaid issue was decided by the aforesaid judgment dated 23rd May, 1980 after framing the following issues:

Issue No. 1: Whether the election petition is maintainable and whether it is barred by limitation?

Issue No. 2: Whether the election petition is barred by the principles of waiver, estoppel and acquiescence?

Issue No.3: Whether the Malai clan has the sole right according to custom, from which a person can be elected as Syiem of Malai Sohmat Syiemship, or whether the Sohmat clan has also the same right?

Issue No. 4: Whether there is anything in the conduct of the election of the Syiem of Malai Sohmat which would invalidate it?

Issue No. 5: What is the result of the present Case?

6. The operative part of the judgment is quoted below:

"21. In view of the position as discussed at para 20 above and of the facts as summarized at para 19 it would follow that as the Sohmat clan has the right to the contest to the post of Syiem of Malai Sohmat Syiemship the Sohmat clan must, as a result of such right, also have the right to be elected as Syiem.

The mere fact that none of the persons of the Sohmat clan has been elected (in one case elected but not recognized by the authorities) does not necessarily mean that the Malai clan has the exclusive right to the post of Syiem or Malai Sohmat. This claim of the petitioner that only the Malai clan has the right to the post of Syiem of Malai Sohmat Syiemship does not stand when one takes into account that even a person of the lawmuin clan has also been elected Syiem of the Malai Sohmat Syiemship and which clan, according to the petitioner himself, is quite different from the Malai clan.

22. In the instant case, the respondent who is of the Sohmat clan unanimously been nominated by the Electoral College of the Malai Sohmat Syiemship to be the Syiem of that Syiemship. The petitioner himself did never object to his candidature and no objection was also forthcoming from any quarter until the filing of this case by the petitioner.

23. In the result, this Tribunal finds that the petitioner has not been able to

support his contention that the respondent being of the Sohmat clan has no right to the post of being elected as the Syiem of Malai Sohmat Syiemship. The finding of the Tribunal is actually to the contrary. Accordingly, the issue No.3 is answered in favour of the respondent.

24. Accordingly, the nomination and subsequent confirmation of the respondent by the District Council as the Syiem of Malai Sohmat Syiemship is upheld, and the petitioner's petition challenging the respondent being selected and confirmed as Syiem of Malai Sohmat Syiemship is hereby dismissed."

7. On perusal of the said judgment, what is seen is that the Tribunal, apart from taking the oral evidence also took the documentary evidence to determine the issue involved.

8. The aforesaid judgment of the Tribunal was put to challenge before this Court by filing a writ petition being Civil Rule No. 13(SH) 1980. The writ petition was decided by the Division Bench of this Court by its judgment and order dated 22.9.1988 upholding the aforesaid judgment of the Tribunal. In this connection, paragraphs 7 and 8 of the said judgment are quoted below:

"7. The Tribunal has given its findings that from the oral evidence and from the documents dated 23.1.1891 and 9.9.1932 that there were instances in which the exercise of custom was disputed or departed from. The members of some other clan contested the election and were elected and appointed as Siem's of MalaiSohmat. Those findings are supported by the materials and evidence on record.

8. Mr. Ahmed, the learned counsel for the petitioner, has further submitted that although there were some departure from the custom, it was restored in the year 1958 by the order of the then Deputy Commissioner. The order of the Deputy Commissioner is, however, relevant. But in para 16 of the judgment of the Tribunal, basing on the evidence of No. 1 and document dated 25.8.1967, it has over held that one U. Hedsondar, who belonged to lawmuin clan, was the Siem of MalaiSohmat. Mr. Ahmed Hali however contended that lawmuin clan and Malai clan is one and the same. But the judgment of the Tribunal shows that the petitioner has stated that lewmuin clan and Malai clan are separate clans and they have no relationship whatsoever. In these view of the matter, the contention of Mr. Ahmed cannot be accepted."

9. The aforesaid judgments of the Tribunal and the Division Bench of this Court have attained its finality, a fact which is not in dispute. However, by the impugned Annexure8 order dated 20.7.2007 passed by the Executive Committee of the Khasi Hills Autonomous District Council, Shillong, the issue has again been reopened and by doing so, it has been held that the Sohmat Clan has only limited right to the post of Deputy Syiemship to the exclusion of Syiemship. It has been held that the Syiemship is the exclusive right of the Malai clan. The order has proceeded on the analogy that there is no law and order of the Executive Committee on the eligibility criteria for the post of Syiem. The order

has been passed on the basis of the reference made by the Returning Officer to the Executive Committee of the Council, who in turn, has passed the impugned order dated 20.7.2007. At this stage, it will be pertinent to mention here that the aforesaid judgment dated 23.5.1980 passed by the Election Tribunal in Election Tribunal Case No. 1 of 1976 was also on the basis of the complaint lodged by the opponent of the petitioner No. 1 to the Executive Committee of the Council, who in turn, placed the matter before the Council in Session. Thereafter, the Council constituted the Election Tribunal.

10. In the impugned order dated 20.7.2007, the Executive Committee has placed reliance on the particular report (1903) and some other reports. Commenting upon the aforesaid decision of the Tribunal, the Executive Committee has observed thus:

"Since reference has been made on the ruling of the Tribunal in Election Tribunal Case No. 1 of 1976 we have made it a point to go through the said ruling before we come up with any findings. In the said ruling dt. 23.5.1980 we note that the Election Tribunal has taken oral as well as historical documents as basis to his conclusion and ruling. While going through the findings of the Tribunal we are drawn to the fact that the Tribunal seems to have laid more stress on the oral evidence rather than on historical documents which we feel that it should be the other way round because historical evidence has more bearing than the oral evidence of the later generations. We also observed that the reasoning of the Tribunal is perhaps questionable because he has opined that any person who has the right to be a candidate has also the right to be elected. Going by this logic and his findings the lawmuin clan has also the right to contest as Syiem and if it is so then the claim of U. Pailalast lawrot is justified but as a matter of fact it is not since historical evidence proved otherwise. Going by the report of Herbert we can see that only the Malai clan is eligible to be the Syiem. The fact that only the Malai clan can produce a Syiem is further strengthen by the refusal of the British Government to grant recognition to U. Molishon on the basis of the Report of Captain D. Herbert and Herbert's report was also corroborated by U. Homiwel Lyngdoh in his book "Ki Syiem Khasi bad Synteng". Hence we beg to differ from the ruling of the Election Tribunal."

11. According to the Executive Committee, the Election Tribunal in its aforesaid decision dated 23.5.1980 placed reliance only on oral evidence and did not go into the historical evidence. By holding so, the Executive Committee has sat on appeal over the said judgment dated 23.5.1980, which was affirmed by the Division Bench of this Court. While it is true that as recorded in the impugned order, the parties to the dispute allegedly agreed to settle the matter afresh notwithstanding the prior decision on the point of dispute but the same by itself could not have conferred the jurisdiction to the Executive Committee to reopen the issue. A matter which has attained finality cannot be reopened with the consent of the parties. Law is well settled that when a matter has attained finality cannot be reopened again and again with the consent of the parties.

12. Apart from the above, there is inherent contradiction in the finding of the Executive Committee. In the said order, it has been held that the earlier decision of the Election Tribunal was connected with only oral evidence but the fact of the matter is that on perusal of the said judgment of the Tribunal, what is seen is that not only the oral evidence but the Tribunal also placed reliance on certain documentary evidence.

13. In view of the above, I have no hesitation to set aside and quash the Annexure8 impugned order dated 20.7.2007. Consequently, the writ petition is allowed without, however, any order as to costs.