

(2010) 08 GAU CK 0124

In the Gauhati High Court

Case No : Writ Petition (C) No. 110 (SH) of 2010

Stollysnaitang

APPELLANT

Vs

Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Khasi Hills Autonomous District (Administration of Elaka) Act, 1991 — Section 4
Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) Act, 2006 — Section 11, 8(3), 8(4), 8(5)
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 9(3)

Citation : (2011) 1 GLR 532 : (2011) 3 GLT 435

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : G.S. Massar, T.T. Diengdoh, K. Baruah, B. Hynniewta, D. Warjri and S. Kyndiah, for the Appellant; V.G.K. Kynta and K. Khan, for the Respondent

Judgement

I.A. Ansari, J.—I have heard Mr. G.S. Massar, learned senior counsel, appearing on behalf of the Petitioner, and Mr. V.G.K. Kynta, learned Counsel for the Respondent Nos. 1 to 3.1 have also heard Mr. K. Khan, learned Counsel for Respondent No. 4.

2. The Petitioner's case is, in brief, thus: Following resignation of one Mr. U. Krinson Shylla from the post of Myntri of Mawpait Tlongpleng village, the Petitioner came to be elected, in place of said U. Krinson Shylla, by the village Durbar of Tlongpleng, as Myntri. Pursuant to his election, a Sanad, (i.e., the appointment order) was issued to the Petitioner by the Syiem of Maharam on 9.4.2009, the Syiem of Maharam having exercised the power of appointment, according to the Petitioner, u/s 8(3) of the Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) Act, 2006. While the Petitioner had been functioning as a Myntri on the basis of his appointment, as indicated hereinbefore, he received a letter,

dated 5.4.2010, issued by Respondent No. 2, namely, the Secretary, Executive Committee, Khasi Hills Autonomous District Council, Shillong ("the said Council"), whereby the Petitioner's appointment as Myntri was stayed and Respondent No. 5, namely, Syiem of Maharam, was requested to give his comment on the letter, dated 2.9.2009, received by the Respondent No. 2 from the Respondent No. 4, namely, Deputy Syiem, Bhowal Syiemship. It was further contended in the letter, dated 5.4.2010, that the appointment of the Petitioner, as Myntri of Tlongpleng village, had been stayed in exercise of the power conferred upon the Executive Committee of the said Council u/s 9(3) of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959.

3. Aggrieved by the letter, dated 5.4.2010, aforementioned, the Petitioner has filed this writ petition, under Article 226 of the Constitution of India, seeking issuance of appropriate order(s).

4. Before proceeding further, what needs to be pointed out is that the letter, dated 5.4.2010, which is the subject-matter of challenge in the present writ petition, reads as under:

In attaching herewith letter No. BSS/Genl/1/200-09/210 dated 12.9.2009 from the Deputy Syiem, Bhowal Syiemship for your information and perusal, I am directed to request you to give comment on each and every paragraph of the said letter. At the same time, I am also directed to inform that the appointment of Shri Stelly Snaitang as Myntri vide No. MS/V-Ad/48/09/524 dated 9.4.2009 is stayed in exercise of the power conferred upon it u/s 9(3) of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959 till further orders.

Yours faithfully, Deputy Secretary to the Executive Committee,

Memo No. DC.XXVII/Genl/114/2009-10/6(a) dated Shillong the 5th April, 2010.

Copy for information to:

1. The Deputy Syiem Bhowal, Bhowal Syiemship.
2. Shri Stelly Snaitang, Tlongpleng, Maharam Syiemship.

Sd/- Deputy secretary to the Executive Committee, Khasi Hills Autonomous District Council, Shillong.

5. From a bare reading of the contents of the letter, dated 5.4.2010, aforementioned, what transpires is that the Respondent No. 2 has requested the Syiem of Maharam to give his comments on the statements, made in the letter, dated 12.9.2009, aforementioned, which was received by the Respondent No. 2, namely, Secretary, Executive Committee, Khasi Hills Autonomous Council, from the Respondent No. 4, namely, Deputy Syiem, Bhowal. Besides requesting the Syiem of Maharam to give his comments as aforesaid, Respondent No. 2 has also informed the Respondent No. 5 that the appointment of the Petitioner, as Myntri,

by order, dated 9.4.2009, issued by the Respondent No. 5 stands stayed. Yet another significant part of the letter, dated 5.4.2010, aforementioned is that, according to the Respondent No. 2, the Petitioner's appointment has been stayed in exercise of the powers, which, according to the Respondent No. 2, has been conferred on the said council by Sub-section (3) of Section 9 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959 ("the Act of 1959").

6. The question, therefore, which arises for consideration, is whether the said Council can exercise the power to stay the order passed by the Syiem of Maharam in the manner, as indicated above, by taking recourse to Sub-section (3) of Section 9 of the United Khasi Jaintia Hills Autonomous District. (Appointment, and Succession of Chiefs and Headman) Act, 1959?

7. My quest for an answer to the question, posed above, brings me to Section 11 of the Khasi Hills Autonomous District (Nomination And Election of The Syiem, Deputy Syiem and Electors of Hima Maharam) Act, 2006 ("the Act of 2006"). Section 11 of the Act of 2006 reads as under:

11. Annulment: The provisions contained in the United Khasi Jaintial Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959, as amended, shall on and from the commencement of this Act no longer be operative as far as the Hima Maharam is concerned.

8. From a careful reading of the provisions, contained in Section 11 of the Act of 2006, what becomes clear is that from the date of coming into force of the Act of 2006, the Act of 1959 stands annulled to the extent as the Act of 2006 provides. Let us, therefore, look into the provisions of the Act of 2006 in order to determine as to what role a District Council can play in the matter of election and appointment of a Myntri under a Syiem.

9. Considering the fact that Sub-sections (3), (4) and (5) of Section 8 of the Act of 2006 make provisions regulating the election and appointment of a Myntri, the relevant provisions of Section 8 are reproduced below:

* * *

(3) Any vacancy in the post of Myntris shall be reported to the Syiem and Durbar, who shall in writing summon a meeting of all the recognized adult male residents of that village on such date and time as may be fixed by him for the election of a new Myntri and such meeting shall be presided over by the Syiem or by any person authorized by him. On the basis of the result of such election, the Syiem shall issue appointment under such terms and conditions as the Executive Durbar may provide with simultaneous intimation to the Executive Committee.

(4) In case a dispute arises regarding any matter relating to the election of Lyngdoh or Myntri, a written complain along with the requisite Durbar fee, shall within thirty days from the date of declaration of the result of such election be fixed before the Syiem and Durbar for decision.

(5) An appeal against any order passed by the Syiem and his Durbar shall lie to the Executive Committee whose decision shall be final. Such appeal shall be filed within thirty days from the date the order is communicated or made known to the party or parties concerned accompanied by a petition fee to be prescribed by the Executive Committee.

10. From a cautious reading of the provisions, embodied in Sub-section (3), (4) and (5) of Section 8 of the Act of 2006, what emerges is that any vacancy, in the post of Myntri, shall be reported to the Syiem and the Durbar, who shall, in writing, summon a meeting of all the recognized adult male residents of that village on such date and time as may be fixed by him for the election of a new Myntri and, on the basis of the election, the Syiem shall issue appointment under such terms and conditions as the Executive Durbar may provide with simultaneous intimation to the Executive Committee. However, if a dispute arises regarding any matter relating to the election of a Myntri, a written complaint, along with the requisite Durbar fee, shall be made within thirty days from the date of result of such election and the complaint, so received, shall be fixed before the Syiem and Durbar for decision.

11. Sub-section (5) of Section 8 of the Act of 2006, which is of great significance in the present case, provides that an appeal against any order, passed by the Syiem, shall lie to the Executive Committee within a period of thirty days from the date of communication of the order or the knowledge of the party concerned. The Act of 2006, thus, does not envisage interference of the council with the result of an election of a Myntri and his appointment by Syiem unless an appeal against an order, which may be passed by the Syiem and Durbar, on the election and appointment of a Myntri, is preferred to the council. The grievance of the Petitioner, to the extent, therefore, that the said council could not have taken recourse to the repealed provisions of the Act of 1959 and stayed his appointment, has substance and could not, in fact, be disputed on behalf of the Respondents.

12. Turning to the question as to whether the said council could have issued the impugned letter, dated 5.4.2010, requesting the Syiem of Maharam to comment on the letter, dated 12.10.2009, of the Deputy Syiem, Bhowal Syiemship, it may be noted that according to the Deputy Syiem, Bhowal Syiemship, Tlongpleng village falls within the land Hynniew Kynthei Snaitang as per the Deed (Dulir) issued by Syiem Ramsing of Bhowal Syiemship.

13. In effect, the letter, dated 12.10.2009, raises the question of territorial jurisdiction of the Syiem of Maharam over the Tlongpleng village, which elected the present Petitioner as Myntri of the said village.

14. Thus, the dispute, in reality, is a dispute, which the Deputy Syiem of the Bhowal Syiemship has raised, with regard to the territorial jurisdiction of the Maharam Syiemship over the Tlongpleng village. Necessarily, therefore, the question, which falls for determination, is as to which Syiemship, namely,

Maharam Syiemship or Bhowal Syiemship, has the territorial jurisdiction over the Tlongpleng village? For resolving such disputes, there is the Khasi Hills Autonomous District (Administration of Elaka) Act, 1991 ("the Act of 1991"), which stands amended by the Khasi Hills Autonomous District (Administration of Elaka) (First Amendment) Act, 2007 ("the Act of 2007"). Section (4) of the Act of 1991, which deals with the boundary dispute between elakas (areas), read as under:

4. Boundary Dispute between Elakas. - If a boundary dispute arises between two or more Elaka or between an Elaka and a village of another Elaka or between two villages of different Elakas, the dispute shall be referred by the Elaka or Elakas concerned, by a petition, to the tribunal constituted by the Council for the purpose and the decision of the tribunal shall be final.

15. From a patient reading of Section 4 of the Act of 1991, it clearly transpires that if there be any dispute as regards the boundary between two or more Elakas, or between an Elaka or village of another Elaka or between two villages of different Elakas, the dispute shall be referred to Tribunal to be constituted by the District Council. However, Section 4 of the Act of 2007 also makes provisions for appeal against the decision of the Tribunal inasmuch as it provides that an appeal, against any order and decision of the Tribunal, shall be referred by the aggrieved party or parties, by a petition, to the Executive Committee of the Council and the decision of the Executive Committee shall be final.

16. In the above backdrop of the provisions of Section 4 of the Act of 1991 (as stands amended), it can be safely gathered that since the dispute, raised by the letter, dated 12.10.2009, of the Respondent No. 4, is a dispute with regard to the boundary of the Elaka of a village, such a dispute is a dispute, which falls within the ambit of Section 4 of the Act of 1991 and is adjudicable by the Tribunal, which may be constituted by the said council, the said council having remained as the appellate body or authority thereto.

17. In the face of the conclusion, as reached above, when the impugned letter, dated 5.4.2010, is visited once again, this Court finds that to the extent that by the letter, dated 5.4.2010, aforementioned, Respondent No. 2 has requested the Syiem of Maharam to give his comments on the letter, dated 12.9.2009, of the Deputy Syiem, Bhowal Syiemship, there can be really no objection in the sense that the Syiem of Maharam is free to give or not to give his comment in the matter. So far as, however, the power exercised by Respondent No. 2, by purportedly taking resort to the Act of 1959 and staying the appointment of the Petitioner as Myntri of Tlongpleng village, is concerned, this Court, in the facts and attending circumstances of the present case, is of the firm view that the act of the Respondent No. 2, staying the appointment of the Petitioner as Myntri, is beyond the jurisdiction of the said council and the same cannot stand scrutiny of law.

18. Because of what have been discussed and pointed out above, the impugned

letter, dated 5.4.2010, to the extent that it stays the appointment of the Petitioner, as Myntri of the Tlongpleng village under the Syiem of Maharam, is hereby set aside and quashed. The aggrieved party may, in accordance with the provisions of the Act of 1991, raise the dispute before the Tribunal as indicated hereinabove and if such a dispute is raised, the same shall be dealt with, and disposed of, in accordance with law.

19. In terms of the above observations and directions, this writ petition shall stand disposed of.

20. No order as to cost.