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**(2003) 07 GAU CK 0015**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 95 of 1999 and 137 (K) of 2001

T.A. Rongmei and Another

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

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**Date of Decision :** 10-07-2003

**Acts Referred:**

Constitution of India, 1950 — Article 341, 342, 366

**Citation :** (2003) 3 GLT 232

**Hon'ble Judges :** B. Lamare, J

**Bench :** Single Bench

**Advocate :** Taka Masa Ao and M. Theyo, for the Appellant; L.S. Jamir, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B. Lamare, J.—Heard Mr. Taka Masa, learned Counsel for the Petitioners and Mr. L.S. Jamir, learned Addl. Sr. Govt. Advocate for the Respondents.

2. The Petitioner No. 1 belongs to Rongmei Tribe and the Petitioner No. 2 is the Union of the Rongmei Tribe of Dimapur in Nagaland. The Petitioners as members of the Rongmei Tribe in this petition espoused the cause of the Rongmei community for declaration that the Rongmei Tribe is a recognised Schedule Tribe in Nagaland.

3. The case of the Petitioners is that the Rongmei Tribe, since independence have been treated/recognised as a Scheduled Tribe of Nagaland, but in recent years the State authorities have tried to undermine the said status of the Rongmei community and deprived them of the facilities which they are entitled to as a Scheduled Tribe in the State of Nagaland.

4. The above claim of the Petitioners were denied by the Respondents in their affidavit-in-opposition in which it is stated that the Rongmei Tribe, Mao Tribe and Tangkhul Tribe are not the Scheduled Tribes in the State of Nagaland.

5. Mr. Taka Masa, learned Counsel for the Petitioners, submitted that for all purposes the Rongmei community has been recognised in the State of Nagaland as a Scheduled Tribe. The word Naga used in the Presidential Order of 1970 declaring the Scheduled Tribes in the State of Nagaland also includes the Rongmei Tribe. In support of this contention, the learned Counsel relied on the letter dated 22.1.1981 from the Dy. Secretary to the Govt, of Nagaland, Home Department addressed to the President of Rongmei Naga Council, Tamenglong where it was stated that Rongmeis residing in Nagaland belong to scheduled Tribes and they are entitled to all the benefits as enjoyed by the other Scheduled Tribes and therefore the question of tribe within a tribe does not arise. The learned Counsel also draws the attention of this Court to the various certificates issued by the District Authorities declaring the members of the Rongmei Tribe as Scheduled Tribe in the State of Nagaland. The certificates were issued under the Presidential Order of 1970. However, the learned Counsel has submitted that inspite of all these facts that the members of the Rongmei Tribe have been taken as a Scheduled Tribe, the State has denied their rightful status as members of the Scheduled Tribe in the State.

6. Mr. L.S. Jamir, learned Addl. Sr. Govt. Advocate, however, contended that the Rongmei Tribe is not a recognised Tribe in the State of Nagaland. The Presidential Order of 1970 does not indicate that the Rongmei Tribe is a Scheduled Tribe in the State. The learned Counsel also contended that the letter dated 22.1.1981 issued by the Dy. Secretary to the Govt. of Nagaland, Home Department was issued without the authority of the State Government and that it was the personal opinion of the Deputy Secretary while issuing the letter. It is also contended that at no point of time the Rongmei Tribe has been recognised as Scheduled Tribe in the State and the benefit of reservation was never granted to the members of the Rongmei Tribe as they are not the recognised Scheduled Tribe in the State. The Scheduled Tribe certificates issued by the District Authorities to the members of the Rongmei Tribe were issued without proper application of mind and without taking into consideration that the Rongmei Tribe is not a recognised Tribe as a Scheduled Tribe in the State. Therefore, the issue of such Scheduled Tribe certificates does not confer the status of a Scheduled Tribe on the member of the Rongmei Tribe which is not recognised by the State Government nor by the Presidential Order.

7. Article 342 of the Constitution of India mandates that only the President of India after consultation with the Governor of a State may publish a Notification specifying the Tribes or Tribal Communities or parts of or groups within Tribe or Tribal Communities shall form the Scheduled Tribes in relation to the State. In exercise of this power under Article 342 of the Constitution, the President had issued the order called the Constitution (Nagaland) Scheduled Tribes Order, 1970 which reads as follows:

In exercise of the powers conferred by clause(I) of Article 342 of the Constitution of India, the President after consultation of the State of Nagaland, is pleased to

make the following order, namely

1. This order may be called the Constitution (Nagaland) Scheduled Tribes Order 1970.
2. The tribes or tribal communities, or part of, or groups within, tribe or tribal communities mentioned in the schedule to this order shall, for the purpose of the Constitution be. deemed to be Scheduled Tribes in relation to the State of Nagaland so far as regards members thereof resident in the State.

#### The Schedule

1. Naga
2. Kuki
3. Kachari
4. Mikir
5. Garo

8. After the above Notification was issued by the President, the Govt. of Nagaland in the Home Department in a letter No. HOME/ SCTA-1/86(PT) dated 16.8.2002 addressed to the Under Secretary to the Govt, of India, Ministry of Tribal Welfare intimated that only 16 tribes are recognised in the State of Nagaland as Scheduled Tribes. The said letter reads as follows:

GOVERNMENT OF NAGALAND HOME DEPARTMENT:HOME BRANCH No. HOME/ SCTA-1/86(PT) Dated Kohima, the

16th August, 2002

To,

Shri B.C.Das, Under Secretary to the Govt. of India, Ministry of Tribal Affairs, Shastri Bhavan, New Delhi Fax No. 011 3073607

Sub: Declaration of Scheduled Tribes-Reg.

Sir,

I am directed to refer to your letter No. 15018/136/2002-SG and C dated 24.7.2002 on the above subject and to state that the following 16 tribes are the only recognised tribes of the State of Nagaland. Therefore, the documentation may please be limited to these tribes only so far as the State of Nagaland is concerned.

1. Angami 9. Ao 2. Chakhesang 10. Chang 3. Khaimanuningam 11. Phom 4. Konyak 12. Rengma 5. Lotha 13. Sema 6. Bochury 14. Zeliang 7. Sangtam 15. Kuki 8. Yimchunger 16. Kachari

Yours faithfully,

Sd/-(H.L.KHULU) IAS HOME COMMISSIONER

9. After the State of Nagaland has come into being the Govt, by a Notification dated 26.6.69 has made provision for reservation of 80% of all appointments or posts under the Government to be filled up by direct recruits to the persons belonging to the following tribes:

(1) Any Naga Tribe (2) Kuki (3) Garo (4) Kachari (5) Mikir

However, the said reservation is subject to the person belonging to the indigeneous inhabitants of the State.

10. By a memorandum dated 25.2.1972 the Government has further clarified the said Government order dated 26.6.1969. In this memorandum, the Government has observed that certain Naga candidates, such as Tangkhul, Mao, Zeliangrong etc. whose houses are from place outside the present jurisdiction of the State of Nagaland applied for various posts reserved for indigeneous inhabitants of the State, therefore, doubt has arisen as to whether these categories of candidates can be treated as indigeneous inhabitants of Nagaland. The Government after proper examination of the matter had decided that the reservation of 80% for all appointments of posts under the Government shall apply only to the Nagas/tribes who are residing within the present jurisdiction of the State of Nagaland. The reservation does not apply to the Nagas, such as Tangkhuls, Maos, Zeliangs etc. living outside the jurisdiction of the state. Even a certificate of permanent residentship from District Authorities will not entitle those candidates who are not permanent residents of the State to the benefits of the reservation.

11. The Government by another order dated 6.7.1973 has made reservation of 100% for appointments to non technical Grade-III and IV posts and 80% of all other appointments or posts under the Government to be filled up by direct recruitment for the persons belonging to (1) Any Naga tribe, (2) Kuki, (3) Kachari, (4) Garo and (5) Mikir subject to the conditions that they are indigeneous inhabitants of the State.

12. The meaning of indigeneous inhabitant of the State has been further explained by a Notification dated 28.4.1977 which reads as follows:

GOVERNMENT OF NAGALAND DEPARTMENT OF PERSONNEL AND  
ADMINISTRATIVE REFORMS (ADMINISTRATIVE REFORMS BRANCH)  
NOTIFICATION

NO. AR-8/8/76: Dated Kohima, the 28th April, 1977

1. The Governor of Nagaland is pleased to decide that in order to qualify as an "Indigeneous Inhabitant" of the State of Nagaland for the purposes of employment as envisaged in the order No. APPT-18/6/62 dt. 6.7.73, a person should have settled permanently in Nagaland prior to 1.12.1963. The following shall be the criteria for determining a person to have had a permanent settlement in the State prior to 1.12.1963.

(1) His/her name of parents or legitimate guardian, in case the person was then a minor, should have been entered in the Electrol Roll published on 5.12.1963.

OR

(2) The person or his/her parents or legitimate guardians should have been paying house tax prior to 1.12.1963.

OR

(3) The person or his/her parents or legitimate guardians should have acquired property and patta on it prior to 1.12.1963.

2. It has been further decided that only those certificates issued by a Deputy Commissioner or an Additional Deputy Commissioner shall be accepted and with immediate effect the form of Certificate as annexed shall be used.

3. This supercedes this Deptt's Notification of even number dated the 17th December, 1976.

Sd/- A. Shanmugam, Joint Secretary to the Govt. of Nagaland

13. This Court after seeing the importance of the issue involved in this case relating to the declaration of the Rongmei Tribe as a Scheduled Tribe in the State of Nagaland has passed an order dated 4.7.2002 requiring the Home Commissioner, Govt. of Nagaland to file a detailed affidavit with regard to the status of the Rongmei Tribe in the State of Nagaland. In response to the order of this Court the Home Commissioner has filed his affidavit on 26.9.2002.

14. In paragraph 3 of the affidavit filed by the Home Commissioner, it is stated that in exercise of the power under Article 342 of the Constitution, the President of India has issued the Constitution (Nagaland) Scheduled Tribes Order, 1970. Thereafter the State Government has explained the word Naga which consists of 14 tribes. In paragraph 4 of the affidavit, it is also stated that as per the Notification dated 6.7.1973 the provision was made for reservation of 100% for appointment to non technical Grade-III and Grade-IV posts and 80% for appointment to the persons belonging to the following tribes viz., any Naga Tribe, Kuki, Kachari, Garo and Mikir provided they are indigeneous inhabitants of the State. The words indigeneous inhabitant of the State as notified by Notification dated 28.4.1977 was also referred in the affidavit.

15. In paragraph 6 of the affidavit filed by the Home Commissioner, it is stated that on 20.9.80 a representation was submitted to the then Chief Minister of Nagaland by the Rongmei Naga Council in which the Chief Minister made a note that Nagaland is a tribal state, the question of tribe within a tribe does not arise. The said representation was processed in the Home Department and without taking into consideration the note of the Chief Minister, a communication was made to the President of the Rongmei Naga Council, Tamenglong dated 22.1.1981 stating that the Rongmei's residing in Nagaland belong to Scheduled Tribe and they are entitled to all the benefits as enjoyed by other Scheduled

Tribes and the question of tribes within a tribe does not arise. However, on careful reading of the said letter dated 22.1.81, it is found that it is only an expression of the facilities enjoyed by the Rongmeis in the State of Nagaland at that point of time, but no Notification or order was issued by the State Government granting Scheduled Tribe status to the Rongmeis residing in the State.

16. In paragraph 7 of the affidavit, it is stated that a representation dated 17.1.1987 was submitted to the then Chief Minister of Nagaland by the Rongmei Naga Union, Nagaland, Dimapur, (the Petitioner No. 2 herein). The matter was examined by the State Government and by the letter dated 31.8.87 addressed to the Commissioner, Nagaland the State Government conveyed its inability to recognise the Rongmei Tribe as a Scheduled Tribe in the State.

17. In paragraph 8 of the affidavit, it is further stated that on the query raised by the Ministry of Social Justice and Empowerment, Govt. of India, the State Govt, has intimated that the question of inclusion of Tangkhul, Mao and Rongmei as Scheduled Tribes of Nagaland was examined by the State Govt. and the Govt. expressed its inability to accord Scheduled Tribe recognition to the said Tribes in Nagaland. In paragraph 9 of the affidavit, it is also stated that there is no proposal at hand to accord Scheduled Tribe status to the Rongmei community residing in the State of Nagaland.

18. Article 342 of the Constitution of India gives a clear mandate to the president of India to specify the Tribes or Tribal Communities or parts of or groups within the Tribes or Tribal Communities in consultation with the Governor of a State. The groups so specified by the President cannot be added or subtracted by the court.

19. Article 366 of the Constitution, Clause 25 describes the Scheduled Tribes as such Tribes or Tribal Communities or parts of or groups within such Tribe or Tribal communities which are specified under Article 342 of the Constitution of India. Thus reading Article 342 with Article 366 Clause 25, it clearly shows that the scheduled tribes can only be specified by the President of India by a Presidential Order and no power is vested in the court to interfere with such Presidential Order.

20. The Apex Court in the case of *Srish Kumar Choudhury Vs. State of Tripura and others*, in paragraph 16 of the judgment held as follows:

These authorities clearly indicate, therefore, "that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order.

21. Similarly was the view of the Supreme Court in the case of *Parsram and Another Vs. Shivchand and Others*, when the Apex Court has held as follows:

Reference was then made to Article 341 of the Constitution Classes 1 and 2 and

it was said:

In order to determine whether or not a particular caste is a Scheduled caste within the meaning of Article 341, one has to look at the public notification issued by the President in that behalf. In the present case, the notification refers to Chamar, Jatav or Mochi and so in dealing with the question of dispute between the parties, the enquiry which the Election Tribunal can hold is whether or not the Appellant is a Chamar, Jatav or Mochi. The plea that though the Appellant is not a Chamar as such, he can claim the same status by reason of the fact that he belongs to the Dohar caste which is a sub-caste of the Chamar caste, cannot be accepted. It appears to us that an enquiry of this kind would not be possible having regard to the provisions contained in Article 341.

22. From the materials available on records and the reservation policy of the Government, it shows that the tribes recognised by the State Government as Scheduled Tribes were only those mentioned in the Presidential Order as well as in the letter dated 16.8.2002 issued by the Home Department, Govt, of Nagaland to the Under Secretary to the Govt, of India, Ministry of Tribal Affairs. Neither in the Presidential Order nor in the said letter the Rongmei community was shown as a Scheduled Tribe in the State of Nagaland. The affidavit filed by the Home Commissioner also clearly speaks that the matter was even intimated to the Ministry of Social Justice and Empowerment, Govt, of India that the inclusion of Tangkhul, Mao and Rongmei as Scheduled Tribes of Nagaland was examined by the Government, but the Govt, could not accord Scheduled Tribe status to the said communities. The affidavit also shows that there is no proposal at hand to accord Scheduled Tribe status to the Rongmei community residing in the State of Nagaland.

23. Therefore, taking the stand of the State Government into consideration and keeping in mind the law laid down by the Apex Court as quoted above, this Court is of the opinion that the Court cannot add Rongmei community as a Scheduled Tribe to the Presidential Order when there is no specific provision to that effect in the Presidential Order. The Rongmei community therefore, is not a Scheduled Tribe in the State of Nagaland.

24. For the aforesaid reasons I find no merit in this petition and accordingly it is dismissed.