

(1971) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 739 of 1969

U. Span Suchiang

APPELLANT

Vs

Jowai Autonomous District Council and Others

RESPONDENT

Date of Decision : 19-01-1971

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 107
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 6

Citation : AIR 1971 Guw 109

Hon'ble Judges : P.K. Goswami, C.J.; D.M. Sen, J

Bench : Division Bench

Advocate : T.C. Medhi, General, for the Appellant; N.M. Lahiri A.G. and G.K. Talukdar, Sr. Govt. Advocate A. Sarma, Government Advocate, for the Respondent

Judgement

Goswami, C.J.—This is an application under Article 226 of the Constitution directed against a notice dated 2nd July, 1939 issued by the Secretary, Executive Committee, Jowai Autonomous District Council to the Headmen of Raliang Elaka, requiring them to send a list of all male voices of the villages who are above eighteen years of age and entitled to vote for the post of the Dolloi as the Executive Committee is satisfied that there were reasonable grounds to make a referendum as prayed for by the Chairman and Secretary of the Durbar Elaka, Raliang. A Rule was obtained on 21st August, 1969 and holding of the referendum was stayed.

2. The Petitioner is the Dolloi of Raliang. It appears that general allegations were brought against him by the Respondents Nos. 5 and 6 and a public meeting was held on 28th June, 1969, under the orders of the Executive Committee of the District Council and the Revenue Officer, who was present in the meeting, submitted a report recommending the proposal for referenda to be taken to ascertain whether the Petitioner still enjoyed the confidence of the majority of the people in his Elaka. On receipt of the report of the Revenue Officer, the

executive Committee, before taking any further action on the matter, decided for a referendum of the electors with regard to the Petitioner's dolloiship. It is this attempt of the Executive Committee to hold a referendum which has been sought to be nipped in the bud by means of this application.

3. The Petitioner states that there are several cases pending with regard to his forest and Respondents Nos. 5 and 6 are creating unnecessary harassment and difficulties in enjoyment of his property. A proceeding u/s 107, Code of Criminal Procedure was also instituted.

4. The Petitioner by an application for amendment of his petition wanted to challenge the provisions or the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, hereinafter called "the Act", and particularly Section 6 thereof, but has not raised these questions in the course of the hearing before us.

5. The learned Advocate-General, Assam, on behalf of the Petitioner, makes only two submissions: Firstly, he submits that the Executive Committee has no jurisdiction to order for a referendum without previously giving the Petitioner a reasonable opportunity to show cause against such a step; secondly, he submits that the Executive Committee's action in ordering for a referendum is mala fide.

6. With regard to the first submission, the Petitioner admits that he holds the office of Dolloi under the District Council and although his Sanad is not filed by the Petitioner, it is admitted that the District Council has power to remove him even under the Sanad if he loses confidence of the electors or the people. In any event, Section 6 of the Act provides for removal and suspension of Chiefs and the same may be read:

The Chief may be removed from office or suspended by the Executive Committee if in its opinion.

(a) xx xx xx

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

(c) xx xx xx

(d) xx xx xx

Provided that every such case shall be placed before the District Council at its next session:

Provided further that no Chief shall be removed from office unless he is given an opportunity of being heard.

Since Section 6 has not been challenged, we will assume the section to be valid and operative in the case of the Petitioner. This section therefore empowers the Executive Committee to take action for removal and suspension of a Chief under certain conditions. The Executive Committee has to form its opinion. How the

Executive Committee will arrive at its opinion is not provided for in the Act. It will be therefore open to the Executive Committee to devise its own procedure to ascertain the public opinion about the loss of confidence in the Dolloi. Such a discretion cannot be fettered in any way unless it can be shown to be against any provisions of law or custom or palpably and flagrantly so unjust that it may perhaps be termed *mala fide* to call for interference.

After hearing the learned Counsel for both sides, we find that this is not the first case of the kind where the Executive Committee has ordered for a referendum in a case of this nature. As a matter of fact, this custom of referendum, with regard to the continuance of a Dolloi or a Chief is well recognised. In an unreported Division Bench decision of this Court in Civil Rule No. 407 of 1981 (Assam) *U. Nodri Majau v. U.T Cendromani Rai*, the High Court found this practice of referendum where the majority of the people voted against the Sirdar of Tyrna. That was a case where after the Sirdar, who is equated with Dolloi, was found to have lost the confidence of the people in a referendum the Executive Committee in compliance with the provisions of Section 6 and after hearing him passed the order of removal and this Court refused to interfere in an application under Article 226.

7. In (1962) ILR Gau 139, *U. Doley Singh v. Executive Member*, disposed of in April 1961, a Division Bench of this Court noticed this practice of referendum and when a party came against the proposed referendum this Court was not prepared to interfere at that stage and the referendum was held. We are told by the learned Advocate-General, Meghalaya, that there are other cases also where the practice of a referendum has never been challenged and is a well-recognised custom.

The controversy therefore is limited to challenging the jurisdiction of the Executive Committee to refer the matter to the people at the first instance before it is in a position to arrive at its own opinion as to whether it will take action u/s 6 of the Act. We are clearly of opinion that the Executive Committee is well within its right in choosing its own method of arriving at its conclusion in a matter which is intimately connected with the confidence of the people in a Dolloi or a Chief. There is no question of the failure of the rules of natural justice in the instant case where the Executive Committee is trying to form its own opinion on certain materials which it undoubtedly has a right to look for. Besides, even the Petitioner was informed that such a step has been taken and indeed he was present in the public meeting convened over the matter. No illegality has been pointed out with regard to the exercise of this power or adopting of this procedure by the Executive Committee. It is also not opposed to any custom. There is therefore no substance in the first submission of the learned Counsel.

8. We will now take up the second submission of the Petitioner that the action of the Executive Committee is *mala fide*. The allegation of *mala fide* is denied by the Respondents. We find that the Executive Committee, after receipt of the allegations against the Petitioner, directed the Revenue Officer to attend a public

meeting held over the matter on 28th* June, 1969. According to the report of the Revenue Officer, about six hundred persons attended the meeting and 26 out of 43 villages were represented. According to the Revenue Officer's report, majority of the people was in favour of referendum and according to him there was justification for a referendum as far as he could gather from the opinion of the representatives who attended. The executive Committee in this case has not taken the step merely on receipt of the allegations, but has taken good care to have a preliminary enquiry made before it was in a position to decide whether a referendum would be ordered or not. We are clearly, of opinion that the Petitioner has not been able to make out a case of mala fide against the Executive Committee. The learned Counsel sought to build up a case of mala fide relying upon the litigation centering round the Petitioner's forest. But it is sufficient to state that these cases are still sub-judice and nothing can be inferred against the Executive Committee because of this land dispute between the Petitioner and the Respondents, Nos. 5 and 6. The second submission of the learned Counsel is also without any force.

9. In the result, the application fails and is dismissed with costs. Counsel's Fee Rs. 100/- (one set).

Sen, J.

10. I agree.