

(1963) 05 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 214 of 1962

U. Wiepshon Roy Thangkhiew

APPELLANT

Vs

District Council and Others

RESPONDENT

Date of Decision : 23-05-1963

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 29, 29(1), 29(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1963 Guw 186

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : H. Goswami and B.M. Goswami, for the Appellant; S.M. Lahiri, P. Choudhuri and S.K. Sen for Respondent No. 4 and N.M. Lahiri, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Nayudu, J.—This civil rule is directed against: the decision of the Executive Committee of the United Khasi-Jaintia Hills District Council, dated 23-4-63 holding that the Petitioner is not entitled to stand for election as he did not belong to the "Thangkhicw Lal Rpoh" clan who alone are eligible to stand for Basanship.

2. The case of the Petitioner is as follows:

The "Basan of Nongkeh died in the year 1957. Subsequent to that, the opposite party No. 4 U Owenton Roy Thangkhicw got signatures of some 38 members of the clan to which he claimed to belong and submitted a petition on 19-10-57 to the Durbar of the Siem of Myllem offering himself as a candidate for election to the Basanship in question. The Petitioner in his turn submitted a similar petition signed by about 49 members supporting his candidature for the Basanship. The dispute was accordingly taken up for consideration by the Siem in his Durbar. He apparently tried to compromise the matter and effect a settlement between the parties. But as this effort of his failed, he registered the dispute as Miscellaneous

Case No. 25 of 1957 in his capacity as the Additional Subordinate District Council Court under the United Khasi and Jaintia Hills District Administration and Justice Rules. There was apparently a full hearing before the Siem who recorded evidence from both sides, heard the parties and declared in his Durbar on 30-9-58 that the Petitioner was entitled to stand as a candidate for election to the Basanship in question.

Against this decision, of the Siem in his Durbar, the Opposite party No. 4 preferred an appeal to the Chief Executive Member of the District-Council, which authority registered the appeal as Political Appeal No. 2 of 1958. The Petitioner thereupon objected to the Executive Committee's competence to hear the appeal. Apprehending, apparently, that the objection would be overruled, the Petitioner filed a suit in the Civil Court praying for an injunction restraining the Executive Committee from hearing the appeal. That suit was dismissed by the Subordinate District Council Court, who held that the Executive Committee was competent to hear the appeal. Against this decision, the Petitioner appealed to the Judge District Council Court, who dismissed the appeal and confirmed the decision of the Subordinate District Council Court. Against that decision the Petitioner came up in revision to this Court, which was registered as Civil Revision No. 15(H) of 1960, but was dismissed on 8-6-61. After this decision given by this Court, the Executive Committee heard the appeal on the merits and disposed of it on 23-4-62 after giving full hearing to both the parties. The Executive Committee held that the Petitioner was not entitled to stand for the election of Basanship in question, as he did not belong to the clan of Thangkhiew Lai Kpoh, who alone were eligible to stand for election of the Basanship.

3. It is not disputed that the Petitioner did not belong to the clan of Thangkhiew Lal Kpoh. It is admitted that he belongs to the clan of Thangkhiew Shi Kpoh. The Petitioner's prayer in this petition is that the judgment and order of the Executive Committee of the District Council should be quashed and it should be held that the Petitioner is entitled to stand as a candidate for election to the Basanship in question.

4. Mr. If. Goswami, the learned Counsel for the Petitioner, forcefully contended that the Executive Committee was not competent to dispose of the matter under the customary law in force at the time, and that, in any case, the Executive Committee purported to act under the United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, which came into force after the appeal to the Executive Committee had been preferred, which was illegal, and that under Rule 29 of the Assam Autonomous Districts (Constitution of District Council) Rules, 1951, the Executive Committee could only dispose of minor matters, and as the decision involved the question of eligibility to an important appointment like that of a Headman or Basanship, the action of the Executive Committee or its decision must have received the approval of the District Council to whom the matter should have been referred to, and, therefore, for these reasons the Executive Committee's decision was

bad in law and, therefore, calls for interference by this Court in exercise of its extraordinary powers under Article 226 of the Constitution.

5. Taking up the first of the points, we find that the question whether the Executive Committee is competent to dispose of the appeal on merits or not, was a subject-matter of adjudication between the parties in a prior litigation, and that litigation had become final and the decision reached therein was to the effect that the Executive Committee was fully competent to deal with the matter and hear and dispose of the same. This decision obviously operates as *res judicata* and is conclusive against the Petitioner, and it is not open to him to repaginate the same subsequently much less in an application under Article 226 of the Constitution, the scope whereof is extremely limited. Hence, for the purpose of the disposal of this petition, we must proceed on the assumption that the Executive Committee was fully competent to hear and dispose of the matter.

6. The next contention urged by Mr. Goswami, the learned Counsel for the Petitioner, was that there was not enough evidence before the Executive Committee to justify the conclusion reached by them. This of course relates to the merits of the decision which is not barred by the principles of *res judicata*. But the difficulty is that, this Court acting under Article 226 of the Constitution is not going to embark upon an elaborate consideration of a question of fact based on evidence. That apart, there was undoubtedly evidence before the Executive Committee on which they could have come to the conclusion reached by them. Mr. Goswami contended that there was no evidence at all in support of the finding of the Executive Committee, and therefore, the finding is perverse. In such a case it would have been undoubtedly open to the Petitioner to invite our attention to the total absence of evidence which could possibly have formed the basis of the conclusion reached by the Executive Committee. Such not being the case, and the conclusion of the Executive Committee having been reached on an appreciation of the evidence on the record, and it being a finding of fact, is binding on this Court...and this Court cannot in a proceeding under Article 226 of the Constitution constitute itself a Court of fact, like a Court of First Appeal, and re-examine and re-appreciate the evidence on record and come to an independent conclusion on the evidence. Hence, we must accept the finding reached by the Executive Committee on the facts, and on consideration of the evidence in the case, that it is only a person belonging to the Thangkhiev Lal Kpoh clan that would be eligible for standing as a candidate in the election for Basanship in this case.

7. The next contention urged by Mr. Goswami was that the action taken by the Executive Committee was taken under the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chief's and Headmen) Act, 1959, which came into force subsequent to the filing of the appeal. We do not consider that there is much force in this contention, because, apart from a reference to the Act, it does not appear from the order of the Executive Committee that they purported to act wholesale on the provisions of this Act. Before the Act in

question, the law was customary. When the Act was passed purporting to codify the customary laws in force, the legislature must be assumed to have given effect to these customary laws by reducing them to a concrete shape in the form of a statute, unless the contrary is established by materials placed before us. We have to observe that no such material has been placed before us. Further, in a matter of administering customary law, it would not be incorrect for the Executive Committee of a District Council to follow on principle and in spirit the pith and substance of an enactment which might have come into force a little later and well before the matter was heard and disposed of, as containing the correct law which must have been in existence from the beginning of times, where such enactment is not in any way conflicting with the customary laws in force. In any case, we are not at all satisfied that the Executive Committee exceeded its limits or powers or committed any irregularity in arriving at a decision in this matter, which would justify our interfering with the same.

8. On the question whether under Rule 29 of the Assam Autonomous Districts (Constitution of District Council) Rules, 1951, the Executive Committee should dispose of the matter or to refer it to the District Council, we are not satisfied that this is a matter covered by Rule 29(1) and (2) at all. No doubt. Rule 29(2) (f) relates to all important appointments, but no appointment has been made in this case. It would have been a different matter when an important appointment such as Headman is made by the Executive-Committee, when it may have been necessary or proper for the Executive Committee to place the appointment proposed, for the approval of the District Council. But such a stage has not been reached because we are still at a stage well before the holding of the election itself. Hence no question of any appointment arises.

9. We are not satisfied that there are merits in this petition which must be dismissed. The rule is discharged, but in the entire circumstances of the case, we do not propose to make any order as to costs.