
(1999) 01 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 104 (Sh) of 1998

U.Fairly Syiem

APPELLANT

Vs

Khasi Hills Autonomous District Council

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 226
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of
Chiefs and Headmen) Act, 1959 — Section 16, 16, 6, 6

Citation : (1999) 1 GLJ 261

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : T.T.Diengdoh, S.P.Mahanta, N.D.Chullai, H.S.Thangkhiew,
G.S.Massar, B.B.Narzary, Advocates appearing for Parties

Judgement

1. In this application under Article 226 of the Constitution of India, the petitioner S has prayed for a direction on the respondents to forbear from giving effect to the orders dated 6.8.98 and 7.8.98 issued by the respondent Nos 1 to 4 and for quashing the said orders suspending the petitioner from the office of Syiem of Nongstoin Syiemship and authorising two Executive Members of the Khasi Hills Autonomous District Council to conduct enquiry into the charges as framed in the said orders.

2. The facts briefly are that on the death of U. Hoddington Syiem who was last elected Syiem of Nongstoin, the petitioner was appointed as the Acting Syiem. The appointment of the petitioner as Acting Syiem was however objected to by U. Densil Syiem and others on the ground that he did not belong to the Syiem's clan. But by order dated 2.11.92, the Executive Committee of the Khasi Hills Autonomous District Council (for short, District Council) rejected the said a objection. Aggrieved by a report of the Executive Member dated 28.10.92, U. Phylla Singh Syiem and others filed a writ petition, Civil Rule No.2746 of 1992 before this Court and the said civil rule was disposed of by the Court on 23.12.92 directing that the election to the office of the Syiem of Nongstoin should be held

within a period of four months and if any election dispute was filed thereafter, the Election Tribunal would not be influenced by the decision of the Executive Committee on the basis of the report dated 28.10.92 of the Executive Member. Accordingly, on 27.4.93, a notification was issued for election to the post of Syiem on 11.5.93, yet election was not held on the said date. After a lapse of two years, a notification was again issued on 16.2.95 fixing the date of election as 22.2.95. But the said election was postponed to 25.3.95. One Ka Ispilbinis Syiem and others then filed a writ petition, Civil Rule No.65 (SH) of 1995, against the petitioner and the District Council before this Court and by order dated 25.5.95, this Court directed the respondents 1 to 4 to hold election within a period of two months and for finalisation of electoral roll in the meanwhile. On 4.12.95, the Returning Officer issued a notification for holding election on 14.12.95, but again election was not conducted. In the circumstances, the petitioner filed writ petition bearing Civil Rule No. 123/96/53 (SH)/96 before this Court and by judgment and order dated 2.8.96, this Court held that holding of election was imperative and the election should not be delayed any further. On 12.2.96, the Executive Committee of the District Council appointed U. Thomlin Byrsat as Acting Syiem of Nongstoin and aggrieved by the said appointment, the petitioner filed writ petition, Civil Rule No. 16 (SH) of 1996 before this Court and by order dated 1.3.96, the Court directed the respondents to hold elections as expeditiously as possible. When despite the said orders of the Court to hold elections expeditiously, elections were not held, the petitioner filed a contempt petition, Civil Original Petition (Contempt) No. 12 (SH) of 1996 against the Chief Executive Member of the District Council and others. The Court, however, held that there was no sufficient material on record to establish the fact that the contemner had wilfully disobeyed the orders of the Court and directed the authorities to complete the entire process of election and hold election within a month. When election was not held within the said period of one month, the petitioner filed Misc Case No. 13 (SH) of 1997 for implementation of the earlier orders passed by the Court and by order dated 30.4.97, the Court directed the District Council to hold election within three weeks. A public interest litigation bearing Civil Rule No.4 (SH) of 1997 was & then filed by the Joint Action Committee contending that the electoral roll was not complete and that elections should not be held. The said civil rule however was rejected by the Court by order dated 4.7.97. The said Joint Action Committee filed Review Petition No. 5 (SH) of 1997 against the said order dated 4.7.97. But the same was also rejected. Elections were finally held on 24.7.97 and the petitioner was elected unanimously as Syiem of the Nongstoin Syiemship by 34 electors present out of the total number of 50 electors. But the District Council did not appoint the petitioner as Syiem of Nongstoin. In the circumstances, the petitioner filed writ petition bearing Civil Rule No. 214 (SH) of 1997 which was disposed of by the Court by order dated 9.12.97 of the learned Single Judge of this Court directing the District Council to issue appointment letter to the petitioner. Aggrieved, the respondents 1 to 3 filed Writ Appeal No. 643 of 1997 before the Division Bench, but the same was dismissed on 7.1.98. The respondents 1 to 3 thereafter filed

Special Leave Petition (Civil) No. 3356 of 1998 before the Supreme Court against the order dated 7.1.98 of the Division Bench in the writ appeal, but the same was dismissed by the Supreme Court by order dated 20.2.98. The petitioner was thereafter issued with an appointment Sanad dated 18.3.98 appointing him as the Syiem of Nongstoin. The petitioner then received a show cause notice issued by the Executive Committee of the District Council to show cause against a complaint petition dated 11.5.98 filed by U. Stanley Thongni and others. The petitioner received another show cause notice dated 10.6.98 to show cause against a complaint dated 29.5.98 filed by UAE Marwein and others. On 3.7.98, the petitioner filed a detailed show cause reply to the said two complaints. On 3.8.98, the respondents 3 and 4, Executive Committee Members, heard the petitioner and the complainants on the said complaints and show cause reply and submitted a report dated 5.8.98. On the basis of the said report submitted by the respondents 3 and 4, the Executive Committee of the District Council by the impugned order dated 6.8.98 drew up some charges against the petitioner and suspended him from the office of the Syiem of Nongstoin with immediate effect and authorised the respondent Nos 3 and 4 to conduct enquiry into the charges as framed and submit the findings and report to the Executive Committee of the District Council. The aforesaid orders passed by the Executive Committee of the District Council was followed up by the impugned notification dated 7.8.98 of the Joint Secretary of the District Council.

3. At the hearing Mr. GS Massar, learned counsel for the petitioner, submitted that the impugned order and the notification have been issued suspending the petitioner from the office of the Syiem of Nongstoin only because the petitioner has approached this Court for directions to the respondents to hold election to the office of the Syiem of Nongstoin and the respondents could not succeed in their design to somehow prevent the election to the said office of the Syiem of Nongstoin. He further argued that the entire background of the facts and circumstances of the case would show that repeated attempts were made by different vested interests including the so-called Joint Action Committee to frustrate the orders passed by this Court to hold election to the office of the Syiem of Nongstoin and when such attempts finally failed and the petitioner was unanimously elected by 34 electors to the office of the Syiem of Nongstoin, the respondents in collusion with the said Joint Action Committee have prevailed upon the Executive Committee to suspend the petitioner from the office of the Syiem of Nongstoin. According to Mr. Massar therefore the impugned order and the notification have been passed on extraneous consideration and vitiated by malafide and arbitrary, and are liable to be quashed. He further contended that the office of the Syiem is a traditional institution based on the customary laws prevailing in the State of Meghalaya and the Syiem therefore enjoys a special status and cannot be equated with an employee of the Govt or any public authority and placed under suspension for any allegation made against him. But in the instant case, the Executive Committee of the District Council has ignored such special status enjoyed by the petitioner as Syiem of Nongstoin and has

suspended him from the office of the Syiem if .he was a delinquent employee of the District Council. Mr. Massar further contended that in the two complaints dated 11.5.98 and 29.5.98 in respect of which the petitioner was asked to file his show cause reply there was no allegation of misappropriation and yet in the impugned order dated 6.8.98 of the Executive Committee of the District Council a charge has been framed against the petitioner alleging that the petitioner had misappropriated the fund of the Syiemship. Mr. Massar further contended that the respondents 3 and 4 who heard the petitioner on 3.8.98 on the two complaints and the show cause reply and submitted their preliminary report dated 5.8.98 to the Executive Committee of the District Council also influenced the decision of the Executive Committee taken on 6.8.98 to frame charges against the petitioner c and to suspend him from the office of the Syiem of Nongstoin and hence the impugned order and the notification were vitiated on account of bias. Finally, Mr. Massar pointed out that by the impugned order dated 6.8.98 of the Executive Committee, the respondent Nos 3 and 4, who have submitted the preliminary report and have influenced the decision of the Executive Committee in framing ^ the charges and suspending the petitioner from the office of the Syiem of Nongstoin, have been authorised to conduct the enquiry into the charges framed against the petitioner*and to submit their findings and report to the Executive Committee. The petitioner therefore apprehends that the enquiry and the findings and report of respondents 3 and 4 to the Executive Committee of the District Council would be biased against the petitioner. In this context, Mr. Massar referred to the e documents annexed to another writ petition bearing WP (C) 184 of 1999 filed before this Court in which the Judge of the District Council has been appointed to conduct the enquiry against a Syiem of another Elaka, and submitted that in this case similarly the enquiry should be conducted by the Judge of the District Council so that a fair enquiry is assured to the petitioner.

4. In reply, Mr. BB Narzary, learned counsel appearing for the respondents to 4 submitted that the impugned order dated 6.8.98 was passed by the Executive Committee which is no longer in office and a new Executive Committee has taken over. He further pointed out that the respondents 3 and 4, who has submitted the preliminary report dated 5.8.98 pursuant to which the Executive Committee took the decision in the impugned order dated 6.8.98 to frame the charges against the petitioner and to suspend him from the office of the Syiem of Nongstoin, will not conduct the enquiry into the said charges as by a subsequent order dated 10.10.98 of the newly constituted Executive Committee of the District Council two members of the Executive Committee other than the respondents 3 and 4 have authorised to enquire into the charges against the petitioner. He referred to the provisions of section 6 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, (for short, 1959 Act), to show that power has been vested in the Executive Committee of the District Council to suspend a Chief pending enquiry. He also referred to the pro visions of section 16 of the said 1959 Act, as

amended by the Sixth Amendment Act, 1991, where under the Executive Committee of the District Council could by an order in writing authorise two of its members to exercise on its behalf any power conferred upon it by the Act. In view of the said provisions in sections 6 and 16 of the 1959 Act and the 1991 Amendment Act respectively, he contended that the Executive Committee was fully within its jurisdiction to order suspension of the petitioner from the office of the Syiem of Nongstoin pending enquiry and to have an enquiry conducted against the petitioner in respect of the charges against him. He vehemently argued that the Syiem is an officer of the District Council and if some complaints are made against him, a thorough enquiry has to be made by the Executive Committee of the District Council. He pointed out that in the report submitted by the respondent Nos 3 and 4 on 5.8.98, reasons have been given as to why the petitioner has been placed under suspension and the Executive Committee accepted the said report and suspended the petitioner from the office of the Syiem of Nongstoin pending enquiry. Such an order of suspension was not a punishment and in case the charges against the petitioner are not established, the petitioner will be reinstated in the office of the Syiem. He cited the decisions of this Court in the cases of *U. Thondro Nandah Syiem vs. CEM, KHDC, Shillong*, Civil Rule No. 611 (Gau)/30 (SH) of 1992; *Trowel Syiemiong vs. The Executive Committeje, Khasi Hills District Council, Shillong & others*, Civil Rule No. 4 (SH)/346 (Gaii) of 1986, and *Sri Spontar Roy Diengdoh vs. The Executive Committee, Khasi Hills Autonomous District Council, Shillong & others*, Civil Rule No. 69 (SH)/26 (Gau) of 1993, and the decision of the Supreme Court in the case of *Khasi Hills District Council, Shillong & others vs. U. Franciswell Syiem*, Civil Appeal No.1831/88 arising out of SLP No. 4686/88, to show that neither this Court nor the Supreme Court have interfered with the order of suspension of a Syiem pending enquiry. Mr. Narzary further contended that the averments in the writ petition do not make any case of malafide against the respondents 1 to 4. He further pointed out that this Court has passed an interim order on 17.8.98 in the present case directing that status quo with regard to Syiemship of Nongstoin as on 17.8.98 shall be maintained. But no orders were passed staying the enquiry against the petitioner and yet the petitioner did not participate in the enquiry on the plea that the present writ petition is pending, and has in fact threatened the enquiring authority by his application dated 14.12.98 that in case the enquiring authority proceeds with the enquiry appropriate petition for contempt will be filed before this Court. Mr. SP Mahanta, learned counsel, appeared for respondent No.6 who had submitted one of the complaints against the petitioner to the Executive Committee.

5. It is true as has been submitted by Mr. Massar that the office of the Syiem is a traditional institution and that the Syiem cannot be equated with an ordinary employee of the Govt or a public authority and therefore the powers of the employer to suspend his employee pending enquiry into the allegation of misconduct against him are not available for suspending a Syiem. But section 6 of the 1959 Act specifically empowers the Executive Committee of the District

Council to suspend Chief from the office pending enquiry. In the case of Franciswell Syiem vs. The Executive Committee, Khasi Hills District Council & others, Civil Rule No.301 of 1987, a Division Bench of this Court after interpreting the provisions of aforesaid section 6 of the 1959 Act, quashed the order of suspension pending enquiry on the ground that it was arbitrary and violative of the principles of natural justice. But in the appeal carried against the said judgment and order of the Division Bench by the District Council, the Supreme Court in its order dated 9th May, 1988 in Civil Appeal No.1831/88 arising out of SLP No.4686/88, held, after considering the facts and circumstances of the case, that the High Court was not right in setting aside the order of suspension of the Syiem and set aside the order of the High Court and restored the order of suspension with the observation that no stigma would be attached to the order of suspension and with the direction to complete the enquiry proceedings against the Syiem within three months. Similarly, in Trowel Syiemiong vs. The Executive Committee, Khasi Hills District Council, Shillong & others, U. Thondro Nandah Syiem vs. CEM, c KHDC Shillong and Shri Spontar Roy Diengdoh vs. The Executive Committee, Khasi Hills Autonomous District Council, Shillong & others, (supra) cited by Mr. BB Narzary, learned counsel appearing for the respondents 1 to 4, this Court has consistently taken a view that the Executive Committee has the power under section 6 of the 1959 Act to suspend a Syiem pending enquiry into the charges against him and has refused to interfere with the order of suspension.

6. Thus, it is now well settled that the Executive Committee has the power under section 6 of the 1959 Act to suspend a Syiem pending enquiry into the charges against him. Such power however cannot be exercised arbitrarily and in a mala fide manner. The petitioner has made a grievance that the power of suspension has been exercised in the present case arbitrarily and with malafide. But I find on a reading of the impugned order of suspension dated 6.8.98 that the petitioner has been suspended from the office of the Syiem pending enquiry on account of charges that he had violated certain terms and conditions of his appointment Sanad and on some grounds mentioned in section 6 of the 1959 Act. The suspension of the petitioner pending enquiry therefore appears to be on grounds which are indicated in section 6 of the 1959 Act. As to whether or not the petitioner is really guilty of the charges as enumerated in the impugned order dated 6.8.98 of the Executive Committee will only be decided after the enquiry is completed. The impugned order dated 6.8.98 suspending the petitioner from the office of the Syiem of Nongstoin therefore is not a final order of punishment and has only been passed for the purpose of effectively completing the enquiry. It is quite possible that in the enquiry the charges against the petitioner are not established and the Executive Committee may take a view that this was not a fit case in which the petitioner should be suspended or removed from the office of the Syiem by way of punishment. It is therefore premature for this Court to express any opinion as to whether or not the suspension of the petitioner from the office of the Syiem in the present case was arbitrary and malafide, and to

interfere with the order of suspension pending enquiry.

7. The petitioner however entertains an apprehension that the enquiry against him may not be fair if it is conducted by the two members of the Executive Committee. Although reliance was placed by Mr. Narzary on the amended section 16 of the 1959 Act which provides that the Executive Committee may by an order in writing authorise two of its member to exercise its behalf any power conferred upon it by the Act, the Act nowhere states that the enquiry into the charges against a Chief or Syiem has to be conducted by the Executive Committee and two of its members and no one else. It also appears that in some cases, the District Council itself has directed the enquiry to be conducted into the charges against the Syiem by the Judge of the District Council. That apart, after the enquiry is made, the Executive Committee including the two members who have been authorised by order dated 10.10.98 to conduct the enquiry against the petitioner will have to take a decision on the enquiry report submitted by the enquiring authority. In all fairness therefore the enquiry against the petitioner should be conducted by the Judge of the District Council and not by the two members authorised by order dated 10.10.98 of the Executive Committee. Such an enquiry if conducted by the Judge of the District Council will remove the apprehension in the mind of the petitioner that the enquiry into the charges against him may not be fair and just.

8. In the result, I dispose of this writ petition with the direction that the Executive Committee of the District Council will appoint the Judge or Additional Judge of the District Council as enquiring authority to enquire into the charges against the petitioner within a period of one month from today and the enquiry shall be completed by the Judge, District Council within a period of three months from the date of his appointment as such enquiring authority. The status quo order dated 17.8.98 is vacated and it is made clear that no opinion is expressed by this judgment on the merits of the case of either party. Considering however the facts and circumstances of the case, the parties shall bear their own costs.