

(2005) 11 GAU CK 0024

In the Gauhati High Court

Case No : Writ Appeal Nos. 274 and 275 of 2005

U.Fairly Syiem

APPELLANT

Vs

U.R.Kringwell Syiem

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Nongstoin Syiemship) Act, 2003 — Section 7, 7

Citation : (2006) 1 GLT 614

Hon'ble Judges : D.Biswas, C.J. and Amitava Roy, J

Bench : Division Bench

Advocate : U.R.Saikia, S.S.Dey, S.Banik, M.Nath, A.M.Majumdar, E.C.Saja, A.K.Goswami, D.P.Bora, Advocates appearing for Parties

Judgement

D. Biswas, ACJ.

1. As agreed to by the learned counsel for the parties, by this common judgment and order Writ Appeal No. 274 of 2005 and Writ Appeal No. 275 of 2005 filed by U. Fairly Syiem and Khasi Hills Autonomous District Council respectively are proposed to be disposed of as both these appeals are directed against the common judgment and order dated 1.4.2005 passed by a learned Single Judge of this Court in W.P. (C) No. 287 (SH) of 2004.

2. The controversy in both the appeals relate to a decision of the Khasi Hills Autonomous District Council (hereinafter referred to as the "District Council") relating to reinstatement of U. Fairly Syiem who was suspended by the District Council pending initiation and competition of disciplinary proceedings for alleged misconduct. It may be mentioned here that the Syiem was elected by a majority of 34 electors in a house of 50 for the post of Syiem of Nongstoin and was appointed as such by the District Council on March 18, 1998 as per provisions of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 which stood repealed by the Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and

Electors of Nongstoin Syiemshio) Act, 2003 (hereinafter referred to as the "Act").

3. The Syiem was placed under suspension for certain alleged misconduct as defined in Section 6 of the Act. The Additional District Judge of the District Council Court was appointed as the Enquiry Officer. On completion of the enquiry, a report was submitted to the effect that the charges levelled against the Syiem were not proved. The report also specifically mentioned that the Syiem has not violated any of the provisions of Section 6 of the Act warranting imposition of any penalty. The District Council did not accept the enquiry report and instead, decided to go for a fresh enquiry. The Syiem, aggrieved by the said decision of the District Council, filed WP(C) No. 127(Sh) of 2001 contending the legality and propriety of the decision of the District Council in ordering de novo enquiry. The learned Single Judge disposed of the aforesaid writ petition on April 11, 2003 setting aside the order dated May 24, 2001 passed by the District Council for reinstatement of the Syiem. One Sri S. P. Dkhar who had impleaded himself as respondent in the writ petition challenged the aforesaid judgment and order dated April 11, 2003 passed by the learned Single Judge in Writ Appeal No. 193 of 2003. Sri Dkhar wanted to withdraw the appeal, but was later substituted by an organization, namely, Ka Synjuk Ki Samla Ka Hima Nongstoin. The said appeal was disposed of on August 16, 2004 with direction to the District Council to issue notice to the Syiem "as to why and how the District Council is not agreeing with the finding arrived at by the Enquiry Officer and after giving adequate opportunity of being heard shall pass appropriate order within a period of two months and take appropriate steps in accordance with law". Holding thus, the judgment passed by the learned Single Judge was set aside.

4. The District Council considered the entire matter afresh and on reappraisal of the materials, eventually agreed with the findings of the Enquiry Officer; revoked the order of suspension and reinstated the Syiem to his original position with immediate effect recalling the appointment of U.R. Kringwell Syiem (Private Respondent), who was appointed as Acting Syiem in the suspension vacancy as per provisions of Section 7 of the Act of 2003.

5. Mr. A.M. Mazumdar, learned senior counsel appearing for the Syiem in W.P. No. 274/2005 assailed the order passed by the learned Single Judge in interfering with the order of reinstatement on the ground that the District Council being the employer of the Syiem and having been empowered under the provisions of the Act as the disciplinary authority was well within its competence to take a decision whether to agree or not with the findings of the Enquiry Officer. According to Mr. Mazumdar, learned Single Judge ought to have reappraised the matter on merit while exercising the powers of judicial review since there is no error in the decision making process. Mr. Mazumdar further submitted that the private respondent who was the Deputy Syiem at the relevant time and he was appointed as the Acting Syiem under provisions of Section 7 of the Act as the post of Syiem fell vacant on suspension of the elected Syiem and, as such, he (Acting Syiem) does not have any right to stake for continuance as the Acting

Syiem. On reinstatement of the Suspended Syiem, the Acting Syiem has no option but to vacate the office.

6. Mr. S.S. Dey, learned counsel for the District Council reiterating the above argument of Mr. Mazumdar submitted that the District Council being the disciplinary authority have the powers to decide whether to proceed with or not against any of its officers and the private respondent, according to Mr. Dey, is a third party to the departmental proceedings which is purely a matter between the Acting Syiem and the District Council and he has no locus to challenge the decision taken by the District Council to reinstate the syiem on reconsideration of the enquiry report.

7. Mr. A.K. Goswami, learned Senior Counsel representing the private respondent i.e. the Acting Syiem submitted that the order passed by the Division Bench in Writ Appeal No. 193 of 2003 directing the District Council to issue notice to the delinquent has not been complied with and, therefore, the order of reinstatement being violative of the direction given of the Division Bench cannot be sustained. According to the learned senior counsel, the District Council was rigorously bound by the stand taken in its affidavit filed in WP (C) 127 (SHyO 1 justifying its decision to conduct a de novo enquiry, setting out the reasons for not accepting the enquiry report and, therefore, it was impermissible on its part to take a somersault and direct reinstatement of the appellant in WA 274/05 by endorsing the said report. The District Council having taken a clear and categorical stand in its aforementioned affidavit before this Court cannot be allowed to depart therefrom, he urged. Mr. Goswami in this connection placed reliance on a decision of the Apex Court in *Sikkim Subba Associates Vs. State of Sikkim*, (2001)5 SCC 629.

8. We have carefully considered the respective submissions of the learned counsel for the parties. It would appear that the terms and conditions of service of an Acting Syiem is governed by the provisions of Section 7 of the Act which clearly lay down that an Acting Syiem will remain in office until the appointment of a new Syiem or until further orders of the Executive Committee, whichever is earlier. The provisions in Section 7 as a whole clearly indicate that an Acting Syiem is appointed to fill up the vacuum in the office of the Syiem occasioned by death, resignation, retirement due to old age, removal or suspension of the Syiem etc. Therefore, there cannot be any legal right available to an Acting Syiem to insist for his continuance if the Executive Committee of the District Council decides to reinstate the suspended Syiem. The powers of the judicial review does not vest with the Court any supervisory role in the matter of disciplinary proceeding and, therefore, no direction either express or implied could be issued by any Court to any disciplinary authority to take final decision in a particular manner. It would further appear that there is also no infringement of any legal or constitutional right of the private respondent (Acting Syiem) to continue in office.

9. On the above background, we are now required to examine as to whether

there is any violation of the order passed by the Division Bench as alleged by Mr. Goswami. The Division Bench directed the District Council to give adequate notice to the elected Syiem as the District Council was not agreeing with the finding of the Enquiry Officer, and after giving adequate opportunity of hearing to pass "appropriate orders". The Division Bench was further of opinion that in view of this direction, a second enquiry was not called for. The language employed in the aforesaid direction does not show that the disciplinary authority was called upon to act in a particular manner in the decision making process. The words "not agreeing with the finding arrived at by the Enquiry Officer" does set a course for the District Council to give reasons for not agreeing with the report of the Enquiry Officer whereby the elected Syiem was exonerated of all the charges. This direction was obviously to protect the interest of the Syiem who was facing a departmental proceeding and not any body else. Thereby the prerogative of the District Council to accept the enquiry report on a suo motto review of its earlier decision was not intended to be foreclosed while passing the order dated 16.8.2004. We are inclined, on consideration of the pleadings of the parties and the text and tenor of the above order to hold that the direction to issue notice would have been obligatory in case the District Council on remand was inclined to stand by its assertions in the affidavit. We are of the definite opinion that the Division Bench did not form any opinion deprecating the findings of the Enquiry Officer. The direction given in the order dated 16.8.2004 was only for reconsideration of the report after hearing the suspended Syiem. The direction to pass "appropriate orders" in fact enlarged the powers, of the District Council to pass any order, they deem fit after hearing the suspended Syiem. The District Council in their affidavit filed before the Division Bench expressed their desire to proceed with the earlier decision not to agree with the report of the Enquiry Officer. The Division Bench while passing the above order did not express any opinion on merit. Since the ultimate decision is in favour of the delinquent Syiem, nonservice of notice on him does not make any difference. The direction to pass "appropriate orders" after service of notice to the delinquent Syiem was not for protection of any right of the Acting Syiem. If the District Council had decided not to accept the report of the Enquiry Officer and to impose penalty without giving notice to the suspended Syiem as directed by the Division Bench, the person aggrieved would have been the suspended Syiem. We have perused the order dated 31.08.2004 passed by the District Council, reinstating the appellant in Writ Appeal No. 274/05. The conclusions recorded therein, are preceded by adequate discussions and reasons. The factors, which had weighed with the District Council cannot be rejected as wholly absurd or illogical. The decision does not appear to be afflicted by any irrelevant or extraneous consideration, so as to warrant interference in exercise of the powers of judicial review.

We fail to understand as to how the Acting Syiem is prejudiced because of nonissuance of notice to the suspended Syiem. The Acting Syiem does not appear to have any legal or constitutional right in the matter and, therefore, he

could not be treated as a person aggrieved for omission on the part of the District Council in issuing notice in terms of the directions of the Division Bench. As the law provides, the Acting Syiem has to step down as and when the Syiem is elected.

10. The decision of the Apex Court in *Sikkim Subba Associates*, (supra), runs on its own facts. The Apex Court in the reported decision disapproved the stand of the appellants to avoid hearing of the appeals on merits of the matters involved therein in the teeth of orders passed by it to treat the appeals on merits and that too on the agreement expressed by the counsel of both sides. The situation is not analogous to the one as obtains in the instant case. The decision, in our view, is of no avail to the respondent.

11. In the above facts and circumstances, we are of the view that the impugned judgment and order dated April 01, 2005 passed by the learned Single Judge in W.P. (C) No. 287 (SH) of 2004 calls for reversal. Accordingly, we allow both the appeals and set aside the judgment under appeal.

12. No costs.