

(1971) 04 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 718 of 1970

U.G. Koring Sing	Vs	APPELLANT
Executive Committee, District Council and Others		RESPONDENT

Date of Decision : 12-04-1971

Acts Referred:

Assam Autonomous Districts (Constitution of District Councils) Rules, 1951 — Rule 2, 28(1), 29(2)
Constitution of India, 1950 — Article 226
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 5(1)

Citation : (1971) 04 GAU CK 0008

Hon'ble Judges : P.K. Goswami, C.J.; M.C. Pathak, J; B.N. Sharma, J

Bench : Full Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, General, for the Appellant; M. Lahiri, General and A. Sarma, Government Advocate, for the Respondent

Judgement

Goswami, C.J.—This application under Article 226 of the Constitution of India is directed against an order dated 20th March, 1970 of the Chief Executive Member, District Council, United Khasi-Jaintia Hills (Respondent No. 3), allowing the Respondents 4 to 7 to run the day-to-day administration of the Mawphlang Lyngdohship until further orders, in view of a pending election dispute over the election of the Petitioner as Lyngdoh on 10th January, 1970.

2. U Robi Singh (since deceased), Lyngdoh of Mawphlang Lyngdohship was bed-ridden for a long time due to illness and he was unable to carry on the administration of the Lyngdohship. The Executive Committee of the District Council, under the circumstances issued an order on 5th June, 1969 directing U Bonick Blah Myntri (Respondent No. 4) to function as the Chairman of the Administrative Durbar and as Presiding Officer of the Additional Subordinate District Council Court of Mawphlang Elaka "as long as U Robi Singh Lyngdoh continues to be ill". U Robi Singh died on 23rd July, 1969. Thereafter, the Executive Committee of the District Council fixed 10th of January, 1970 as the

date for election of the new Lyngdoh of Mawphlang Lyngdoh-ship in the place of late U Robi Singh. The procedure laid down by the District Council (as per Annexure II) for election shows that. the right of franchise is given to the following persons, namely, all males of 18 years and above residing in the Mawphlang Elaka recognised by the Lyngdohship. other males of 18 years and above belonging to the 12 Clans of the Mawphlang Lyngdohship, any male (tribal or non-tribal) who married within the Mawphlang Lyngdohship and continues to live with his -wife or children, and any male (tribal or non-tribal) who married any woman of the 12 Clans within or without the Lyngdohship and continues to live with his wife or children. There is a provision for raising objections in writing on the spot to the Presiding Officer at the time of counting of the votes of any candidate. All these objections received by the Presiding Officer will be placed before the Executive Committee. Canvassing is prohibited -within the area of the place where the election is held. The election will begin at 11 a.m. No one will be allowed to enter the polling station or move out from the place set apart for a candidate to another candidate's area after 11 a.m. It appears that there is no secrecy about the election.

In this case, there were three candidates for the Lyngdohship in the election and the Petitioner obtained the highest number of votes, namely 838, while the other two candidates secured 770 votes and 90 votes respectively. The Petitioner was declared elected as the Lyngdoh of Mawphlang. By a letter dated 29th January, 1970, he was informed by the Respondent No. 3.

that the Executive Committee, District Council, United Khasi-Jaintia Hills accepted your election to be the Lyngdoh of Mawphlang Elaka as indicated by the majority of the electors in the election held on the 10 January, 1970 and as such you are appointed as the Lyngdoh of the Mawphlang Elaka but this appointment as the Lyngdoh of the Elaka will not be final until the District Council in its Session to be held shortly confirms it. It will also lay down terms and conditions.

The Petitioner accepted, in writing, the office of the Lyngdoh of Mawphlang Elaka the same day, namely 29th January, 1970, as will appear also from the endorsement at the foot of this letter as under:

I, Koring Singh Lyngdoh, agree to the above writing and accept the office of the Lyngdoh of Elaka Mawphlang this day the 29th of January, 1970." On the same day, the result of the election was published by notice by the Respondent No. 3 u/s 5(1) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Head-men) Act, 1959, as amended, and copies of the notice were sent to the Myntries of Mawphlang Elaka, that is to say Respondents 4 to 7, for wide circulation in the Elaka. The notice (Annexure IV) may be quoted:

Office of the Executive Committee, District Council, United Khasi-Jaintia Hills, Shillong.

No. DC/PC32/69/55/2834, Shillong, the 29th January, 1970.

NOTICE

As required by Section 5(1) of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) (Amendment) Act 1968 (Act No. 1 of 1969), it is hereby widely notified in order that the people of Mawphlang Elaka will know that according to the election held on the 10th January 1970 the majority of the Electors elected Koring Singh of the Lyngdoh Clan to be the Lyngdoh of Mawphlang Elaka in the place of the late U Robi Singh Lyngdoh.

Sd. J. Swer, 29-1-70 Chief Executive Member, District Council United K.J. Hills, Shillong.

3. The Petitioner, on being elected and appointed as the Lyngdoh, started to function and issued a notice on 13th March, 1970 for leasing out the Mawngap Market, on 18th March, 1970. He, however, soon found that the Respondent No. 4 and the other Myntries, namely, Respondents 5 to 7, were not co-operating with him. He, therefore, wrote to the Secretary of the Executive Committee, District Council, on 16th March, 1970 referring to the non-co-operation of the Myntries and praying "that such order as you may deem fit may kindly be issued because the time for leasing out the market in the Elaka is due this month of March". He also drew attention of the Executive Committee to the fact that even the Myntries without intimating and consulting him have issued notice to lease out the same market on 29th March, 1970. The Petitioner, therefore, solicited for an early order. On the same day the Respondent No. 4, describing himself as the Myntri in charge of Mawphlang Lyngdohship, addressed the Chief Executive Member of the District Council informing the circumstances under which he refused to "obey the call" of the Petitioner "unless so authorized by the District Council." He indicated in this letter that as the Myntri in charge of Mawphlang Elaka, who is to run the administration of the Elaka, he has not received any information or guidance from the Executive Committee about the matter and therefore feels that the action of the Petitioner without the authority of the District Council is not warranted. The Respondent No. 4 adds:

In order that I and my other fellow Myntries may understand, I request that I may kindly be informed "whether I am still empowered to run the administration of this Elaka as a Myntri in charge while this matter pertaining to the post of a Lyngdoh continues to be in an unsettled state.

He, therefore, prayed for an early order. It may be observed that his plea that he had no earlier "information" may not be correct in view of the notice (Annexure IV). It also appears that meanwhile an election petition was filed against the election of the Petitioner.

4. It is in the above background that the impugned order dated 20th March, 1970 was passed by the Chief Executive Member in what is described as Political Case No. 32 of 1969. The order directs that.

in view of the pending case over the election of the new Lyngdoh it is ordered that the administrative arrangement already made as contained in this office letter No. DC. XXVII/4/69/ 5/438 dated the 5-6-1969 will continue to be operative until further order. The Myntries of the Lyngdohship, with U Bonick Blah Myntri as the Chairman of the administrative Durbar and also as the Presiding Officer of the Additional Subordinate District Council Court will continue to run the administration of the Lyngdohship until further order.

The auction-sale of the market was also ordered to be postponed. We have already referred to the order passed on 5th June, 1969, by which the Respondent No. 4 was allowed to function during the continued illness of the Lyngdoh.

5. Mr. J.P. Bhattacharjee, the learned Counsel for the Petitioner submits that the Respondent No. 3 acted illegally and without jurisdiction in issuing the impugned order preventing the Petitioner from functioning as the Lyngdoh of the Elaka and directing the Myntries of the Lyngdohship to run the administration. He next contends that the impugned order of the Chief Executive Member is not authorised under the provisions of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, as amended by Act I of 1969, hereinafter called "the Act". Thirdly, he contends that the order, staying the functioning of the Lyngdoh, elected and appointed under the Act, on the sole ground of the pendency of a dispute regarding the election, is illegal and without any authority of law.

6. When we enquired from the learned Advocate General, Meghalaya, whether there is any custom with regard to the questions raised in this proceeding, he frankly submitted that the practice followed so far has not been uniform. He stated that there are cases where a chief immediately on election is appointed and allowed to function subject to the approval of the District Council later. There are again cases where the elected chief has not been allowed to function immediately on election. Indeed, the Petitioner has mentioned in his application a case where the Lyngdoh was allowed to function immediately on appointment following a nomination.

7. The Act which is applicable In this case is the Amendment Act, as mentioned earlier, which came into force on 9th April, 1969. We may, therefore, note the following material provisions of the Act.

Section 1(3) provides inter alia that the pending appointments of Chiefs and Headmen shall be dealt with, and disposed of, under the provisions of the Act.

Section 2 (a): "Chief" means a Syiem, a Lyngdoh, a Dolloi, a Sirdar or a Wahadadar, as the case may be, of any Elaka."

Section 2 (f): "'The Chief and his Durbar" means a Durbar presided over by the Chief of the Elaka with certain number of Headmen as members as may be determined by the Executive Committee from time to time and shall be: elected by the Headmen of the Elaka. The function of this Durbar shall be to run the day-

to-day administration of the Elaka."

Section 2 (h): ""Electoral College" means the body of persons consisting of the electors so recognised by the Executive Committee under any of the Act, Regulations or Rules of the District Council or. under the prevailing practices in the Elaka concerned and recognised as such by the Executive Committee and the Headman of the Elaka concerned."

Section 3 provides as follows:

Nomination and appointment of Chiefs and Headmen:

(1) Subject to the approval of the District Council, the Executive Committee may make Rules governing the nomination and appointment of Chiefs and Headmen:

Provided that separate Rules may be made for each Elaka.

(2) Pending making of such Rules all nominations and appointments of Chiefs and Headmen shall, subject to the provisions of this Act, be in accordance with the existing customs prevailing in the Elaka concerned and duly approved by the Executive Committee, the decision of which is final." Section 4 reads:

Nomination and appointment of Chiefs:

(1) A person nominated as a Chief by the Electoral College shall be appointed by the Executive Committee subject to the approval of the District Council.

(2) The Executive Committee may, by rules made under the provisions of the Act, prescribe the terms and conditions of the appointments of the Chiefs: and such terms and conditions shall among others, provide for.

(a) the duration of their office;

(b) their remuneration;

(c) their relationship with the District Council and or with the Elaka:

(d) the manner in which they shall conduct and carry out the administration of the Elaka;

(e) the manner in which they shall manage the fund of the Elaka;

(f) their code of conduct:

Provided that pending adoption of such terms and conditions, the existing terms and conditions under which the existing Chiefs were appointed shall continue to be in force:

Provided further that the terms and conditions that may be prescribed under this Act shall immediately apply to all the existing Chiefs.

Section 5 provides for disputes regarding nomination of Chiefs, which will be first dealt with by the Executive Committee and thereafter an appeal is provided

against the decision of the Executive Committee to a Tribunal whose decision shall be final. Dispute has to be referred to the Executive Committee within thirty days of the publication of the result of the nomination. Similarly, an appeal has also to be lodged within thirty days after the communication of the order of the Executive Committee. Section 6 provides for removal and suspension of Chiefs by the Executive Committee. Section 11 provides for appointment of Acting Chief and reads as follows:

If at any time the post of a Chief becomes vacant as a result of death, removal or the Chief is under suspension, the Executive Committee may by order in writing appoint any person to act as an Acting Chief who shall exercise all the powers and functions of the Chief.

An Acting Chief will remain in office until appointment of a new Chief or until further order of the Executive Committee whichever is earlier.

8. Although the word "nomination" is used in the Act, it is, in fact, election by the electoral college. The election that has taken place in this case was done under the provisions of the Act as amended. The learned Counsel for the Petitioner submits, relying upon Section 4, that when the Petitioner has already been elected by majority of votes and has thereafter been appointed by the Executive Committee, although subject to the approval of the District Council, he is entitled to function on his acceptance of the office. According to him, after the Petitioner's election, the Executive Committee or the Chief Executive Member has no power under the Act not to let the Petitioner function as a Chief. He, however, concedes that if later approval is not accorded by the District Council, he will not be entitled to continue to be a Chief.

9. We have, therefore, to consider, when the Executive Committee had appointed the Petitioner after his election by the electoral college, whether his appointment will take effect from the date of the appointment in absence of approval by the District Council. The Executive Committee in this case has stayed the Petitioner's functioning on account of a dispute raised before the Executive Committee challenging his election. Section 11, in the unamended form, may in this connection be noticed:

If at any time the post of a Chief is vacant, the Executive Committee may by an order in writing appoint any person to act as an Acting Chief who will exercise all the powers and functions of the Chief. An Acting Chief will remain in office until the appointment of a new Chief or until he is removed by the Executive Committee.

It will be seen, comparing the old section with the amended section which we have already set out, that appointment of an Acting Chief under the amended provision is only made under certain given conditions, namely when the vacancy has occurred as a result of death, removal or suspension of the Chief. Prior to the amendment, the Acting Chief could be appointed at any time when the vacancy occurred and for any reason whatsoever. It appears that under the Act, as it

stands, there is no specific provision for appointing an Acting Chief in any other contingency, unless u/s 4(2) Rules are made by the Executive Committee. We are told by the learned Advocate General, Meghalaya that no Rules have been made u/s 4(2) of the Act. Therefore, under the first proviso to Section 4(2) the existing terms and conditions under which the existing Chiefs were appointed shall continue to be in force.

10. We have seen that the Executive Committee had appointed the Respondent No. 4 by its order dated 5th June, 1969 to function during the continued illness of the previous Lyngdoh. This order has not, however, been challenged in this proceeding, as, according to the Petitioner, the same has lapsed. The impugned order dated 20th March, 1970 has been passed after the death of the former Lyngdoh, although after the election had taken place and the Executive Committee had appointed the Petitioner subject to the approval of the District Council. The important questions, therefore, are: whether the impugned order is authorised under the scheme of the provisions of the Act and whether the elected Chief after the appointment by the Executive Committee is entitled to function in absence of an order of approval or any specific order to the contrary by the District Council? Mr. Bhattacharjee submits that although in the appointment letter dated 29th January, 1970, it was stated that the appointment will not be final until the District Council in its session to be held shortly confirms it, yet the Executive Committee did not lay the matter before the District Council in spite of two sessions of the Council had been held in March and July, 1970. Therefore, this is a case where there is no order of any kind from the District Council in this case.

11. Before we answer the questions raised in the proceeding, it will be appropriate to refer to the relevant decisions on the subject. With regard to the appointment of a Syiem, we have the decision of the Supreme Court dated 19th April, 1960, reported in *T. Cajee Vs. U. Jormanik Siem and Another*, (*T. Caiee v. U. Jormonik Siem*), hereinafter called "Cage's case". That decision centering round the removal of a Syiem prior to the Act II of 1959 was made without consideration of the provisions of Act II of 1959 which came into force on 16th October, 1959. The Supreme Court had therefore to decide the case with reference to the provisions of the Sixth Schedule to the Constitution and the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, hereinafter called the "1951-Rules". In *Cajee's case*, the Supreme Court observed as follows:

The Constitution could not have Intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under paragraph 19 (1) (b) or till the District Council passed laws under Para 3 (1) (g). The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under Para 19 (1) (b)

or laws are passed under Para 3 (1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does "not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule.

The matter regarding election of a Syiem came up before a Division Bench of this Court reported in AIR 1969 Gau 94 (U. Mesingh v. District Council), hereinafter referred to as "Mesingh's case", which was disposed of on" 29th July, 1968, prior to the Amendment of the Act II of 1959. The Court this time had before it the decision in T. Cajee Vs. U. Jormanik Siem and Another, the Act II of 1959 and the 1951-Rules. The question that arose for decision in that case was whether the Executive Committee was competent to order for a fresh election after election had taken place nominating a Syiem in accordance with an earlier Purwana of the Executive Committee. This Court quashed the Purwana issued by the Executive Committee ordering a fresh election. While doing so, Pathak J., speaking for the Court, observed as follows:

On an examination of the scheme of the Act, it is found that the power of appointment of Syiem has been kept with the District Council itself and this power cannot be exercised by the Executive Committee. Though under Rule 28(1) of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, the executive functions of the District Council have been vested in the Executive Committee, but under Rule 29(2) (f) of the said Rules, all important appointments are to be referred to the District Council for final approval. That this power of appointment of the Syiem or the Chief has not been vested in the Executive Committee is also clear from the express provision in Section 11 of the Act, which authorises the Executive Committee to appoint the Acting Chief.

Again, at Paragraph 23, the Court observed:

In view of the facts as found from Aitcheson's book and the Sanad granted to the Syiem of the State of Cherra in 1877 by the Viceroy and Governor General of India and more particularly in view of the findings of the Supreme Court in T. Cajee Vs. U. Jormanik Siem and Another, we are constrained to hold that after the election of Syiem or Chief the election has to be approved and an appointment has to be made by the District Council both in accordance with the age-old custom and the provisions of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (Act II of 1959). Without such approval and appointment, the Chief or the Syiem will not be an administrative officer under the District Council for purposes of administration, which is vested in the District Council under the Sixth Schedule.

12. As noted earlier, the Supreme Court in *T. Cajee Vs. U. Jormanik Siem and Another*, was not required to consider the provisions of any Act and had only the 1951-Rules before it, together with the provisions of the Sixth Schedule to the Constitution. In *Mesingh's case* AIR 1969 Gau 94 again, the Court had the Act II of 1959 and the Rules 2 well as the decision of the Supreme Court in *Cajee's case*. The Court in *Mesingh's case* was, therefore, "cons trained to hold that after the election of Syiem or Chief the election has to be approved and an appointment has to be made by the District Coun cil " In the instant case, however, we have the amended Section 4, which we have already set out. In absence of a provision like the amended Section 4, it was held by the Division Bench in *Mesingh's case* "this power of appointment of the Syiem or the Chief has not been vested in the Executive Committee." The position is different in view of the provision in the amended Section 4 which confers in terms the power of appointment to the Executive Committee, after a person has been nominated as Chief by the electoral college, subject to the approval of the District Council. We are, therefore clearly of opinion that, after the amendment of Section 4, the Executive Committee alone has the power to appoint a Chief after he has been nominated by the electoral college. This, in fact, has been done by the Executive "Committee by its order dated 29th January, 1970. Again this appointment has been accepted by the Petitioner. Hence, so far as the Executive Committee is concerned, there is already an appointment and acceptance of the appointment. This appointment u/s 4 has to receive the approval of the District Council in due course.

It is admitted by the learned Advocate General as well as by the learned Counsel for the Petitioner that the Executive Committee is bound u/s 4 (1) of the Act to appoint the Petitioner after his nomination by the electrol college. The only point of controversy is while the Petitioner contends that he can function as a Lyngdoh after the appointment, the learned Advocate General contends that he can do so only after approval of the appointment by the District Council. We are clearly of opinion that after the appointment of the Chief by the Executive Committee, following the election in accordance with the procedure laid down by the District Council, the said Committee possesses no power to deal with the matter itself any more pending approval of the appointment by the District Council. In the instant case, after the appointment and its acceptance by the elected Chief, the Chief Executive Member of the Executive Committee has himself passed the impugned order interfering with the appointment which has already been made by the Executive Committee. It does not even appear from the impugned order that the same has been passed by the Executive Committee, who had earlier appointed the Petitioner in pursuance of the nomination. We have no doubt that after the order of appointment had been made by the Executive Committee, that Committee will have no more jurisdiction to deal with the matter except to place the same before the District Council for approval and it will be for the Council to consider and decide whether the appointment meets with their approval or not.

Section 11 of the amended Act; which is called in aid by the learned Advocate

General, Meghalaya, does not support his contention. After the nomination and appointment by the Executive Committee, a new situation has arisen, namely that a Chief has been elected and appointed. This situation cannot be equated with a situation which existed prior to the election and appointment on the death of the Chief. The only authority competent to deal with the matter subsequent to the election and appointment by the Executive Committee is the District Council and in absence of an order of the District Council to the contrary, the elected Chief, who has been duly appointed by the Executive Committee u/s 4(1) of the Act, is entitled to function under the provisions of the Act. The impugned order of the Chief Executive Member is, therefore, void and without jurisdiction and is not contemplated under the scheme of the provisions in the Act. We, therefore, accost the first two submissions of the learned Counsel.

13. We may next refer to the third submission of the learned Counsel for the Petitioner. The ground given in the impugned order is that there is a pending election dispute with regard to the- Petitioner's nomination. Such a dispute is contemplated u/s 5 of the Act and there is no express provision in the Act or under any rules empowering the Executive Committee or even the Tribunal later in appeal to stay the election or the appointment. Even under the Representation of the People Act, there is no provision for staying an election pending an election dispute. In the absence of such a provision in the law, the lacuna cannot be filled up by an executive or administrative order. The Executive Committee far less the Chief Executive Member individually, has no jurisdiction to revoke, stay or suspend the appointment of a Chief following his election, pending approval of the District Council, who alone can pass appropriate orders at that stage in relation to the appointment that had been already made by the Executive Committee u/s 4(1) of the Act. Such an appointment by the Executive Committee will take effect and be effective for all purposes of administration, subject to the approval of the District Council.

14. The expression "subject to the approval" in the case of an appointment in a case of this kind will mean that the appointment is valid and effective until disapproved by the District Council. The words "subject] to the approval" are not the same thing as "subject to permission", nor are they same as the words "with the approval". In case of an appointment, subject to approval of a higher authority, in absence of any express provision to the contrary, the appointment in law will be effective until it is disapproved by the higher authority. When the appointment is disapproved, the same will cease to have effect, but all actions done by the appointee prior to the approval will be valid in absence of any express provisions to the contrary. If an appointment is required to be made "with the approval" of a higher authority, the appointment is not valid nor effectual in absence of the approval. This is not so when the appointment is "subject to the approval" of a higher authority. Hence, in the absence of disapproval of the appointment by the District Council, the appointment of the Petitioner u/s 4 (1) of the Act made by the Executive Committee following his election is valid in law and the Petitioner is entitled to function as the Lyngdoh of

Mawphlang Elaka. _ We are happy to arrive at this decision which is also in accord with democratic notions which are embedded in the grass-roots of the Hills.

15. In the result, the application is allowed. The impugned order of the Respondent No. 3 dated 20th March, 1970 is hereby quashed. We will, however, make no order as to costs.

B.N. Sarma:

16. I agree.

M.C. Pathak:

17. I agree.