

(1998) 03 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 31 (SH) of 1993

Ukresto Sun and Others

APPELLANT

Vs

Autonomous District Council

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226
United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 2, 4, 5A

Citation : (1998) 1 GLT 465

Hon'ble Judges : V.D. Gyani, J;A.P. Singh, J

Bench : Division Bench

Advocate : P.K. Deb, for the Appellant; B.B. Narzary, E.S. Jyiwa and B. Das, for the Respondent

Judgement

V.D. Gyani, J.—By this petition under Article 226 of the Constitution, the Petitioners who claim to be the authorised persons representing Marbisu Sun Clan of Marbisu Sirdarship Elaka challenge the orders dated 19.12.90, Annexure-J as passed by the Executive Committee of the District Council holding that Kurban Clan is eligible to contest election in Political Case No. 1/89 and 15.3.92 Annexure-K declaring U. Alexious Kurbah, elected as Sirdar of Marbisu Elaka on the basis of his having secured the highest vote, as inherently lacking in authority and jurisdiction, they further pray for quashing the same.

2. The Sun Clan filed a petition before the Executive Committee seeking a declaration to the effect that only the members of the Sun Clan have the exclusive right to the office of the Sirdar of Marbisu Elaka of the Khasi Hills District in Meghalaya.

3. The claim as put forth by the Sun Clan was widely published in the Marbisu Elaka, this claim was challenged by the Kurbah Clan, the Executive (Committee, on the basis of evidence both documentary and oral, as placed before it held that the Kurbah Clan was eligible to contest and hold the office of Sirdar of marbisu

Elaka, vide order dated 19.12.90, Annexure-I which is challenged in this petition. Election to the post of Sirdar was held on 9.3.92 wherein Kurbah was allowed to contest and was declared elected.

4. This is an election related dispute. The election is governed by the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 for short" the Act". Section 2(a) defines "Chief and 2(b) defines "custom" as follows:

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

(b) "Custom" with reference to any Elaka means any rule regarding the appointment of a Chief or Headman for the Elaka which having been continuously and uniformly observed for a long time, has obtained the force of law in that Elaka.

5. Section 5A provides election dispute:

5-A Dispute regarding Election :- If within 30 days of the declaration of the result by the Returning Officer u/s 4 any dispute arises regarding any matter relating to or connected with the election of nomination of a Chief, the dispute shall be referred by the party or parties concerned, by a petition, to the Tribunal constituted by the Council for the purpose. The decision of the Tribunal shall be final.

6. Where there is a statutory remedy by way of election petition u/s 5A of the Act is provided under the Act, invoking the extra-ordinary powers and jurisdiction of this Court under Article 226 of the Constitution, is neither advisable nor necessary.

7. There is yet another hurdle, the issue raised in the petition is not a live one and the Courts do not entertain a case which does not raise a live issue (See Harsharan Verma Vs. Union of India (UOI) and Anr,

8. The facts as averred raise highly disputed questions of facts which cannot be decided without recording evidence. Courts do not decide abstract questions as urged by the learned Counsel (See Indian Legal and Economic Forum v. Union of India, 1997 (10) SCC 728) Lastly, a Writ petition under Article 226 is not maintainable in respect of an election dispute (See N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,

9. For the foregoing reasons, without commenting any further on merits of the case, the petition is dismissed with no order as to costs.