
(2021) 03 MAN CK 0016
In the Manipur High Court
Case No : Writ Petition No. 911 Of 2018

W. Ranchong

APPELLANT

Vs

State Of Manipur

RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Hill Areas Act, 1956 — Section 2(f), 3(4)
Government Of Union Territories Act, 1963 — Section 52(2)
District Council Act, 1971 — Section 2, 3
Manipur Panchayati Raj Act, 1994 — Section 1
Constitution Of India, 1950 — Article 40, 226, 243A To 243O, 244(2)

Citation : (2021) 03 MAN CK 0016

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : D. Julius Riamei, Serto T. Kom, M. Rarry

Final Decision : Allowed

Judgement

[1] Heard Shri D. Julius Riamei, learned Advocate appearing for the petitioners; Shri Serto T. Kom, learned Advocate appearing for respondent No.3 and Shri M. Rarry, learned Addl. AG appearing for the State respondents.

[2] The validity and correctness of the order dated 06-05-2008 issued by the Addl. Deputy Commissioner, respondent No. 2 herein appointing respondent No.3 as GB/ Chairman of Irang Part-I village is under challenge in this writ petition.

[3.1] According to the petitioners, they are the Chairmen of Thonglang Atongba village, Tapon Naga (old Tapon) village, Chawangkening village, Tapon Namsuan village, Harup Naga village, Thonglang Akutpa village and Makui village under Senapati and Kangpokpi Districts, Manipur. While Thonglang Atongba village, Thonglang Akutpa village and Chawangkening village are under Irang Part-I cluster of villages, Tapon Naga (old Tapon) village, Tapon Namsuan village, Harup Naga village and Makui village are under Irang Part-II cluster of villages, the people of which are Liangmai Naga Tribe. Under their village jurisdiction, the

Nepali grazers were permitted to stay as the tenants for grazing purpose by the then Government during pre- independence period because of which the Nepali grazers have been paying grazing rent/ tax (Rampon in local dialect and Lousal in Manipuri). The Nepalese who came to the State of Manipur sometime in the 1st decade of 19th Century were ordered to move to Irang Part-I and Irang Part-II villages by the then Political Agent to rear cows and buffalos and since then, they have been living as the tenants of the petitioners by paying rampon regularly. The Nepalese gave declarations, undertakings, agreements and assurances, from time to time, to the effect that they as the tenants would abide by the customs, practices, traditions and abide the bye laws of the petitioners' villages before the village authorities and the police.

[3.2] The Nepalese started claiming that they are the indigenous inhabitants and are making representations/ petitions to the Government of Manipur to grant a native resident status to them, because of which an NGO, namely Joint Action Committee for Protecting Liangmai Ancestral Lands submitted a memorandum to the Chief Minister, Manipur not to grant such status to them. To their shock and surprise, the respondent No. 3 filed a suit being O.S No.2 of 2018 before the Court of Civil Judge, Junior Division, Kangpokpi praying for declaring the said declarations/ undertakings as null and void. In support of the said claim, respondent No.3 produced lists of documents including the order dated 06-05-2008 appointing him as GB/ Chairman of Irang Part-I villages. The said order was filed by respondent No.3 in his capacity as the GB/ Chairman of Irang Part-I villages.

[3.3] Being aggrieved by the said order dated 06-05-2008, the instant writ petition has been filed by the petitioners contending inter-alia that the said order was issued by respondent No.2 without any jurisdiction and authority; that the said order passed by the respondent No.2 was dehors the provisions of Manipur (Village Authorities in Hill Areas) Act, 1956 (hereinafter referred to as "the Hill Areas Act, 1956"); that the Nepalese are the tenants of the petitioners being grazers and that the Chairman of the Village authority is a statutory authority as provided under the provisions of the Hill Areas Act, 1956; that there cannot be a village or a Chairman of the village within the jurisdiction of the petitioners' village and that the Nepalese cannot claim any right independent of the petitioners' village rights.

[4.1] An affidavit has been filed by the respondent No.3 raising issues as regards the maintainability of the writ petition on the inter-alia grounds that this Court has no power to declare facts which are disputed and that the petitioners have a remedy before the civil court having jurisdiction both on territorial and value of the suit. The petitioners have no locus standi to challenge the order dated 06-05-2008 issued by the Addl. DC, Kangpokpi, as they are not the residents of Irang Part-I and Part-II villages. All the villages of Irang Part-I and Irang Part-II are within 50 Kangpokpi (Gen) Assembly Constituency, the electoral roll of which reflects the names of the villages under Irang Part-I while the

villages of the petitioners are within 49 Tadubi (ST) Assembly Constituency. The writ petition is barred by the principle of laches and delay for the reason that the impugned order was issued as back as on 06-05-2008. The petitioners have filed documents like receipts which are fabricated and not genuine. In his affidavit, it has been denied that Nepali Grazers have been permitted to stay in the land of the petitioners as the tenants for grazing purpose. The documents filed by the petitioners do not indicate that Nepali grazers are settling within the land of the petitioners except by order dated 28-12-1951 of the SDO, Sadar which had been overruled by the order dated 19-10-1953 of the Chief Commissioner, Manipur. The Nepalese have been given the right to stay at Irang Part-I and Part-II vide order dated 02-07-1938 passed by the Political Agent. The people whom the respondent No.3 represents, have not made any declaration nor have they given any undertaking that they would abide by the customs and practice of the petitioner's village except those which have been obtained under duress and are the subject-matter in issue in Suit No.2 of 2018. It has become a valid practice for the Government to appoint GB/ Chairman in respect of Irang Part-I and Part-II villages since the year, 1938. The provisions of the Hill Areas Act, 1956 are not enforced in Irang Part-I and Part-II with the result that Irang Part-I and Part-II are not declared as the hill villages.

[4.2] The stand of the State Government as indicated in the affidavit filed on behalf of the respondent No.1 is that the administration of villages in the hill areas is governed by the provisions of the Hill Areas Act, 1956. The Chief or Khullakpa in a village shall be the ex-officio Chairman of the village authority as provided in Section 3(4) thereof and where there is no chief, the Chairman of the village authority shall be elected by the members of the village authority. The office of the Addl. Deputy Commissioner, Kangpokpi has no authority to appoint the respondent No.3 as the GB/ Chairman of Irang Part-I village. The order dated 06-05-2008 impugned herein is not issued by him as per the provisions of the said Act.

[5.1] From the aforesaid pleadings, the short question that arises for consideration by this Court is as to whether the Addl. Deputy Commissioner, Kangpokpi had any authority to issue the impugned order appointing the respondent No.3 as GB/ Chairman of the Irang Part-I village. It is purely a question of law. As has been stated by the respondent No.3 in his affidavit, GB stands for Guan Bura which are hindi words where "Guan" means village and "Bura" means headman in respect of Irang Part-I. But it is nowhere stated in his affidavit about the provisions of law by which the impugned order dated 06-05-2008 was issued by the Addl. Deputy Commissioner, Kangpokpi. All that has been stated in his affidavit, is that there has been a valid practice for the Government to appoint GB/ Chairman since the year, 1938. The corollary issue is as to whether such a practice can be said to be valid even after the Constitution of India being enacted. No material has been placed on record by the respondent No.3 to prove that such a practice is still valid in the State. The existence or enactment of any law has not been brought to the notice of this Court by the

respondent No.3 by which the system of Guan Bura was introduced in the State, although the same appears to have been prevailing in the State of Nagaland. Our democratic country is governed by the rule of law or for that matter, the provisions of the Constitution of India and any other law enacted thereunder. It may be noted that any action taken by the authority shall be backed by law enacted either by the State Legislature or by the Parliament and in the absence of any law, such action shall be rendered illegal or without any authority of law. In the affidavit filed by the Deputy Commissioner, Kangpokpi, no any provision of law has been referred to to justify the order issued by the Addl. Deputy Commissioner. The only thing that has been stated therein, is that the impugned order was issued as per the resolution of the Irang Part-I village in its meeting held on 04-05-2008. It may further be noted that a village is not an authority in law to confer power upon the Addl. Deputy Commissioner, Kangpokpi to issue such order. The source of power is the Constitution of India and any other law enacted thereunder. In any case, the stand of the State Government is very clear and unambiguous and according to it, the Addl. Deputy Commissioner, Kangpokpi has no authority to issue the impugned order.

This stand of the State Government is more than sufficient for this Court to hold that the order issued by the Addl. Deputy Commissioner, Kangpokpi is illegal, as he has issued it without any authority of law. The Addl. Deputy Commissioner is nothing but an officer of the State Government and being an officer, he had to act in accordance with law. In this regard, the provisions of Section 3(4) of the Hill Areas Act, 1956 as mentioned hereinabove, is quite clear and it requires no interpretation at all. Since the order issued by the Addl. Deputy Commissioner, Kangpokpi is null and void ab-initio, the principles of delay and laches will have no application at all and is liable to be quashed and set aside by this Court.

[5.2] The submission which has been emphasized by Shri Serto T. Kom, learned counsel appearing for the respondent No.3 is that since the instant writ petition involves disputed questions of facts, this Court may refrain from exercising its jurisdiction under Article 226 of the Constitution of India. This Court is not oblivious of the law that it shall not exercise its power under Article 226 of the Constitution, when the issue relates to the disputed questions of facts. But it is not so in the present writ petition. The issue formulated hereinabove for consideration by this Court, has nothing to do with the disputed questions of facts but it is purely a question of law, as has been observed hereinabove. In order to decide the question of law involved herein, this Court needs to look into the provisions of law only to find out, if the Addl. Deputy Commissioner, Kangpokpi had any authority to issue the impugned order. It is made clear that this Court will not go into the disputed questions of facts and it is open to the parties to approach any appropriate forum for redressal of their grievances in this regard.

[6] In view of the peculiar facts and circumstances of the present case as contended by the parties, one aspect which needs to be considered by this Court

is as to what will happen to the Nepalese residing in Irang Part-I and Irang Part-II villages after the impugned order having been quashed and set aside by this Court as aforesaid. Will they be governed by the provisions of the Hill Areas Act, 1956 or will they be made to be governed by the provisions of the Manipur Panchayati Raj Act. The answers to these questions will depend upon the policy decision to be taken by the State Government. After all, since they have been residing at Irang Part-I and Irang Part-II villages for a quite long time, their claims need to be considered by the State Government in accordance with law. It may be noted at this juncture that Article 40 of the Constitution of India provides that the State shall take steps to organize Village Panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government. In order to give effect to this article, the Constitution of India came to be amended in the year, 1993, as a result of which Article 243A to 243O came to be inserted therein. What was sought to be achieved by this amendment was that the constitutional status was conferred upon the Panchayats. A State Legislature cannot do away with these democratic bodies at the local level nor can their normal tenure be curtailed other than in accordance with law nor can the State delay elections of these bodies. As the Constitution of India mandates, a local body either in the form of a Panchayat or a Village Authority is required to be constituted at Irang Part-I and Irang Part-II villages. It is the State Government which is incumbent to look into it and ensure that a Panchayat or a Village Authority, whichever is applicable in law, is constituted at Irang Part-I and Irang Part-II villages. In other words, it is the State Government which has to take a policy decision at the earliest possible, failing which its inaction may lead to or may result in an administrative failure which needs to be avoided at any cost in order to achieve the object sought for in the Constitution of India. Any delay in taking such a policy decision by the State Government will cause a lot of inconvenience and hardship to them.

[7] In a PIL No.11 of 2015, Shri Ram Bahadur Vs. State of Manipur & ors, the validity and correctness of the Notification dated 11-09-2009 which brought four Gram Panchayats within the ambit of the Manipur (Hill areas) District Councils Act, 1971 came to be challenged by the petitioner therein. After having heard the counsels appearing for the parties and having considered the relevant provisions of law, the said PIL was rejected by this Court vide its judgment and order dated 19-02-2018. The relevant paragraphs of which read as under:

"[20] The Manipur (Hills Areas) District Councils Act, 1971 has been enacted with the object to provide for the establishment of the District Councils in the Hill Areas in the Union Territory of Manipur, as it then was. Section 2 (f) of the Act defines "Hill Areas" to mean the Hill Areas determined by the President by any notification issued under sub-section (2) of section 52 of the Government of Union Territories Act, 1963 and in force immediately before the commencement of this Act.

[21] Section 2 of the District Council Act provides for the constitution of District

Councils. Section 3 of the Act vests power in the Administrator to cause all the Hill Areas to be divided into not more than six ADCs. Section 3 (2) empowers the Administrator, by order to be notified in the Official Gazette, to declare any area an autonomous district, and increase or decrease the area of the autonomous district. The Act is applicable to the State of Manipur even after it ceased to be a Union Territory. There is no dispute regarding this aspect. In exercise of power vested in Section 3 of the District Council Act, 1971, the Governor of Manipur constituted the Hill Areas vide the Notification dated 14th February, 1972. The four villages mentioned by the petitioner formed a part of these Hill Areas as mentioned in the Notification. It, therefore, appears that the four villages in question were already included in the Hill Areas as far back as in the year 1972. There is nothing on record to suggest the contrary.

[22] Due to the non-functionality of the District Council Act, 1971, for about twenty years, which situation is not disputed, it appears that elections under the Panchayati Raj Act were conducted in these four villages. However, once the District Council Act, 1971 was re-enforced to rectify the situation and the exercise of delimitation, after constituting the District Council, Delimitation Committee commenced in the year 2008, the impugned Notification dated 11-09-2009 including the four villages in question under the District Council Act, 1971 came to be issued, pursuant to the recommendation of the said Committee. As these four villages were already included as Hill Areas in the Notification dated 14th February, 1972, they are, for all intents and purposes, considered to be Hill Areas and would be governed by the provisions of the District Councils Act, 1971.

[23] We may now refer to the relevant provisions of the Manipur Panchayati Raj Act, 1994. Section 1 reads as below:

"1 (1) This Act may be called the Manipur Panchayati Raj Act, 1994.

(2) It extends to the whole of the State of Manipur excepting any area of which the Manipur (Hill Areas) District Council Act, 1971 or the Manipur (Village Authorities in Hill Areas) Act 1956 extends or which has been or may hereafter be declared as, or included in a municipality under any law for the time being in force, or which has been or may hereafter be declared as, or included in a cantonment under the Cantonment Act, 1924." (emphasis supply)

[24] The area covered by the four villages with which we are concerned, has already been declared as a Hill Area under the Manipur (Hill Areas) District Councils Act, 1971. This Hill Area, therefore, would be excluded from the purview of the Manipur Panchayati Raj Act, 1994 as per Sec. 1(2) thereof. This provision makes it clear that the Manipur Panchayati Raj Act shall not apply to any area to which the District Council Act 1971 applies. The four villages, therefore, are not liable to be included under the Panchayati Raj system. The fact that elections may have been held in these areas under this system at some point of time, does not mean that these areas be excluded from the purview of the District Council Act, 1971, or be included under the Manipur Panchayati Raj Act. If the

law was not properly enforced or implemented during the particular period of time and elections were held under the Manipur Panchayati Raj Act, in areas to which this Act does not apply, does not mean that the mistake ought to be perpetuated. The statutory provisions applicable are required to be enforced. There is no justification in the submission advanced on behalf of the petitioner that these four villages should remain under the Panchayati Raj System when the legal position is that the Manipur Panchayati Raj Act cannot be made applicable to them.

[25] There is another more important aspect of the matter that seems to have escaped the attention of both learned counsel for the respective parties. It is Article 243-M of the Constitution of India, which clinches the issue. The relevant extract reads as follows:

"243-M. Part not to apply to certain areas - (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of article 244.

(2) Nothing in this Part shall apply to -

(a) the States of Nagaland, Meghalaya and Mizoram;

(b) the Hill area in the State of Manipur for which District Councils exist under any law for the time being in force."

This article falls under Part IX of the Constitution of India, under the heading "The Panchayats". It is therefore, most relevant and goes to the root of the matter.

[26] A perusal of the above Constitutional provision makes it amply clear that the Hill Areas in the State of Manipur are excluded from the Panchayats. Hence, the four villages namely, (i) Santolabari Gram Panchayat (ii) Toribari Gram Panchayat (iii) Koubru Leikha Gram Panchayat and (iv) Kala Pahar Gram Panchayat mentioned by the petitioner, which are the subject matter of the dispute and are within the Hill Areas, cannot be included under the Panchayat Raj system, as the Hill Areas of the State of Manipur are governed by the District Councils and have been expressly excluded by virtue of Section 243-M of the Constitution of India."

The facts of the said PIL are not exactly the same with that of the present case but the said judgment and order passed by this Court therein will throw a light, when the claims of the respondent No.3 or for that matter, the villagers of Irang Part-I and Irang Part-II villages are considered by the State Government for taking an appropriate policy decision so that such issue will never arise again. The State Government ought to take into account the grievances of the Nepalese who are not tribals but have been residing in the hill areas of Manipur for more than two centuries keeping in mind the mandates of the Constitution of India.

[8] In view of the above and for the reasons stated hereinabove, the instant writ

petition is allowed and consequently, the order dated 06-05-2008 issued by the Addl. Deputy Commissioner, Kangpokpi is quashed and aside with the direction that the State Government shall take a policy decision, at the earliest possible preferably by three months from today, as regards the constitution of a Panchayat or a Village Authority or any other authority permissible in law at Irang Part-I and Irang Part-II villages keeping in mind the object sought to be achieved in the Constitution of India and in particular, Article 40 and Chapter IX of the Constitution of India. It is made clear that this Court has expressed no opinion on the disputed questions of facts as contended by the parties.

There shall be no order as to costs.