

(1996) 04 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 42 (SH) of 1996

Wes Bamon

APPELLANT

Vs

Jaintia Hills Autonomous District Council, Jowai and Ors.

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Schedule 6, Schedule 6

Citation : (1996) 2 GLJ 315 : (1996) 3 GLT 30

Hon'ble Judges : D.N.Chowdhury, J

Bench : Single Bench

Advocate : H.S.Thangkhiew, T.T.Diengdoh, R.Kar , G.S.Massar, S.P.Mahanta,
Advocates appearing for Parties

Judgement

1. This writ petition involves the interpretation of matters relating to the United Khasi and Jaintia Hills Autonomous District (Appointment and Succession of Chief and Headman) Act, 1959.

2. The brief facts of the case are summed up as below: The petitioner in the writ petition claimed to be himself as an elected Headman of the Brishyrnot Village by the Village Durbar on 1.2.93 and the same was confirmed by the Doloi, ElakaNarpuh, the proforma and respondent No.5 and respondent No.2. The Executive Committee in turn communicated its approval of the appointment of the petitioner by its memo dated 28.7.94. A complaint was filed by one U. Bren Pala of Brishyrnot Village before the Doloi questing some of the conduct of the petitioner on 27.10.95 and Doloi, proforma respondent No.5, on examination of the matter rejected the same. While the petitioner was functioning as such the Administrative Officer of the District Council, the respondent No.3 issued a letter informing that the Executive Member Incharge was to come to Brishyrnot Village on 26.2.96 at 12 PM to supervise the election/nomination of a Headman of Brishyrnot Village Narpuh Elaka. By the said letter the Doloi, the proforma respondent No.5 was directed to convene a Village Durbar in Brishyrnot Village (Annexure 3 of the writ petition). Subsequently, by a communication dated

8.3.96 the respondent No.3, the Administrative Officer of the District " Council, Jowai, informed the Doloi that the Executive Committee has approved/ recognised the respondent No.4 as the Headman of the Brishyrnot Village for a period of one year in exercising of power under section 7 (2) of the Act. The said communication also disclosed that respondent No.4 as the Headman of the Brishyrnot Village by the Village Durbar held on 26.2.96%The petitioner stated and contended that he is the elected Headman of the village and the statutory authority has since affirmed and approved the same the question of approving and recognising the respondent No.4 as Headman without removing the petitioner by the authority/officer Incharge is not sustainable. The petitioner also questioned the impugned notice dated 8.3.96 about the election of the village Headman is arbitrary and malafide and also contrary to the provisions of the Act referred to above. The petitioner in this regard also referred and relied a communication dated 22.3.96 from the proforma respondent No.5 to the respondent No.3. By the said letter the Doloi, the Chief of the Elaka under the custom informed customary practice of the election of Headman in Jaintia Hills. In such election only male adult members of the Elaka who are permanent resident of the village are eligible to vote and after being elected by the Village Durbar the village authority is required to intimate the same to the Doloi and the Doloi on ascertaining the facts and on being satisfied himself about the legality and validity of the election. He is to recommend to the District Council for approval of the Headman elected by the villagers. The Doloi as per the said communication, the Chief of the Elaka also informed that he was present in the meeting dated 26.2.96 but no election could be held since the present incumbent of the post has not been removed from the office who is recognised as Headman. By the said communication the Chief of the Elaka requested the respondent No.3 to withdraw the order dated 8.3.96. "

3. The respondent Nos.1, 2 and 3 entered appearance and submitted its affidavit and stated that the petitioner was no doubt a Headman who is appointed only for a period of one year and in support of the aforesaid statement the respondent referred a communication of the petitioner dated 7th June, 1993. The appointment of the petitioner according to the District Council was also confirmed by the proforma respondent No.5 for a period of one year along with other office bearers. In the affidavit respondent Nos. 1 to 3 also mentioned some of the misconduct of the petitioner. From the document which is placed before me by the respondent Nos. 1 to 3 in its affidavit, it appears that respondent No.3 advised proforma respondent No. 5 the Chief of the Elaka to meet the Executive Member on 1.2.96 at 11 AM positively for interrogation and discussion on the matter by its letter dated 22.1.96 and thereafter on 1.2.96 the statement of the Doloi in the meeting with Executive Member incharge were recorded and the same was signed by the respondent No.5, proforma respondent. The same statement is extracted as below :

"...Statement of the Doloi in his meeting with the EM I/C Political in his office room on 1.2.96 at 11 AM.

The Executive Member Incharge asked clarification from the Doloi on his order passed in his judgment which says "You Bren Pala is not entitled to live at Brishymot and to be the headman." What does the Doloi means by these words :

The Doloi gave his statement as below :

After hearing from the Executive Member InCharge I the Doloi of Narpuh, understood that the order passed in my judgment on the case of Brishyrnot is errands which copy had already been issued to Shri Bren Pala and others. I have understood that I have committed a mistake. I ask for an excuse that I will not repeat the same in future. If the office found me repeating the same offence, I am liable to any action.

In connection with the Headmanship of Brishyrnot I request the office to come with me for our joint settlement of the dispute.

In authentication whereof, I give my signature in the presence of the Executive Member Incharge."

4. The respondent in its counter also stated that since term of the petitioner have already been expired, the District Council is duty bound to hold election and accordingly the said election was held and as such there no infirmity in approving or recognising respondent No.4 as Village Headman. The respondent No.4 also filed his affidavit and denied the averment of the petitioner. He claimed that he is duly elected by the voters of the locality and therefore respondents No. 1 to 3 have rightly discharged their statutory duty.

5. Mr. GS Massar, learned senior counsel appearing on behalf of the petitioner assisted by Sri T Diengdoh, Advocate has submitted that the impugned actions of the respondent Nos.1 to 3 is destructive to the basic scheme and object of the Sixth Schedule and is in total violation of the provisions of section 7 (2) of the United Khasi and Jaintia Hills Autonomous District Act, 1959. According to Mr. Massar, under the custom prevailing in the Elaka a Village Headman is elected only by the adult male members who are the permanent members of the locality and after the election as per the prevailing custom and practice the Doloi, the Chief is required to satisfy himself about the validity of the election and thereafter appointment of the Headman is confirmed by the Chief and its Durbar. According to Mr. Massar, under the Act and also according to custom, confirmation of election of the Village Headman is based only on the Doloi, the Chief of the village and not on the Executive Committee and that power cannot be arrogated by the Executive Committee. In the instant case, as pointed out by Mr. Massar, the petitioner was elected by the Village Durbar on 7.6.95 and he was elected for 3 years. In this context Mr. Massar, brought my attention to a letter dated 7.7.95 which is annexed as Annexure 10A of the affidavit in opposition of respondent Nos. 1 to 3. By the said letter the petitioner intimated the Executive Committee through the Administrative Officer about the election of the office bearer of the Brishyrnot Village Durbar which was held on 7.6.95. The said letter was received by the Executive Committee and the Executive Committee

through its Administrative Officer by its letter dated 7.10.95 sent a copy of the letter dated 7.6.95 and advised the Chief, Doloi to submit a clear report on this for taking necessary action by the Executive Committee. According to Mr. Massar the said letter shows that the petitioner was elected in the meeting on 7.6.95 for three years according to the custom prevailing in the Elaka as per the mandate of section 7 (1) of the Act. It is submitted that the 1959 Act is a complete Code by itself and which prescribed its procedure of election and approval of Village Headman. It is submitted by Mr. Massar that the Executive Committee particularly the Executive Member Incharge even acted in a derogatory manner by taking step for holding election of the Village Headman by requesting the Doloi to hold election.

In support of the aforesaid contention the learned counsel referred to the communication dated 13.2.96 which is annexed as Annexure 7A of the affidavit. According to Mr. Massar the Act provided the manner of holding of election and the same statute also clothed the Executive Committee, the power of hearing the appeal and therefore the action initiated by the Executive Committee is without jurisdiction. In this context the report relating to meeting dated 25.2.96 where the respondent No.4 was alleged to be elected which is annexed as Annexure 8 of the affidavit. The said report also disclosed that the respondent No.4 along with the Head Assistant proceeded to Brishyrnot Village on 26.2.96 along with the proforma respondent No.5 and 7 police personnel from Khliehriat Police Station. Some of the observation of the report extracted below :

"...Reaching there we hold the meeting and after a speech from the Doloi, we could understand to the seriousness of the dispute between the two parties in the village. Having acquainted with the facts of seriousness and intensity of the dispute, first of all we have tried to appease their quarrel. With many view and opinion we have tried to bring them into mutual understanding and mutually settle the dispute in our presence and with our help. Then most of the villagers express their desire for peace and harmony among themselves. So the Durbar decided that both the name of Sri West Bamon and Sri Bren Pala be cancelled from the list of contesting candidate for Headman, and to elect new one.

Then, on the selection of a person to be its headman, the name of Sri Khlur Khonglah was proposed and three/forth majority of the villagers rose up their seat in support. Then the name of Sri Phiewlus Thamar was also proposed and seconded by some persons.

Then we asked them to withdrew the name of anyone of them but none of the parties comply with the supporters Shri Khlur Khonglah demanded that they cannot withdraw because they got the support of the majority and the supporter of Sri Phiewlus Thamar also stick to their cause. So we called them to come forward and give their signature or thumb impression in favour of a person whom they like, the supporters of Khlur Khonglah accept this, while the supporters of Sri Phiewlus Thamar protest.

Apprehending the seriousness and intensity of the dispute, and with a view to avoiding controversy and quarrel among themselves after our leaving the village, I just conclude the meeting without declaring the name of Headman elected, but concluded it with a word that the matter shall be brought to the notice of the higher authority.

In this connection, we have seen that 3/4 majority have supported Sri Khlur Khonglah as their Headman, I would suggested that the Doloi may be asked to confirm him or the office may take any other alternative steps."

6. In the instant case respondent Nos. 1 to 3 only initiated the process of election and conducted the election and the said election was not even confirmed by the Chief viz. the Doloi. The makers of the Constitution in order to preserve and protect the age old custom and also for administration of certain areas known as tribal areas specifically curved out the Sixth Schedule. The District Council under the scheme of the Sixth Schedule is to work as a guardian of the customary institution, so that the time tested custom and the customary practices are preserved.

7. Mr. Mahanta, learned counsel appearing on behalf of the respondent Nos. 1 to 4 have submitted that the action of the respondents was to establish peace in the Brishyrnot Village since petitioner was in no way allowed to function in the Brishyrnot Village as Village Headman because of his misconduct.

Considering the materials on record, I find that the action of the respondent

Nos.1 to 3 right from initiation of election on 26.2.96 and thereafter confirmation, approving recognising respondent No.4 as Headman of the village (Annexure 5 of the writ petition) is contrary to the provisions of the Act, respondent Nos. 1 to 3 are the approving authority who is to approve though confirmation made by the Chief of the Durbar on appointment of the village Headman. Any dispute regarding election of the Village Headman is appealable and such appeal lies with Executive Committee. The scheme of the Act do not envisage any other mode other than the mode prescribed by section 7(1) in the instant case. (

The impugned order dated 8.3.96 is accordingly quashed as unsustainable. The respondents are also directed to complete the process of approval of the election of the petitioner as the Headman of the village in accordance with law. Accordingly this writ petition is allowed. No order as to costs. The rule made absolute.