
(2014) 11 MEG CK 0009
In the Meghalaya High Court
Case No : WP(C) No. 272/2014

Wilas Pale

APPELLANT

Vs

The State of Meghalaya

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 324, 327, 328, 329
Representation of the People Act, 1951 — Section 100, 105, 170, 80
United Khasi Jaintia Hills Autonomous District Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 — Section 3, 4, 5

Citation : (2014) 5 GLT 664

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T. Nandakumar Singh, J.—Heard Mr. N. Syngkon, learned counsel for the petitioner, Mr. H.S. Thangkhiew, learned senior counsel assisted by Mr. P.N. Nongbri, learned counsel appearing for the respondents No. 2 & 3, Dr. O.D.V. Ladia, learned senior counsel assisted by Mr. P. Yobin, learned counsel appearing for the respondent No. 5 and Mr. V.G.K. Kynta, learned senior counsel assisted by Mr. K.K. Khongjoh, learned counsel appearing for the respondent No. 6. None appears for the respondents No. 1 and 4.

2. By this writ petition, the petitioner is assailing the list of the candidates for the election of Dolloi, Elaka Nongjngi declared by the Executive Committee, Jaintia Hills Autonomous District Council (for short "JHADC"), Jowai. It is admitted case of both the parties that the Deputy Secretary Executive Committee & Returning Officer, Dolloiship Election, 2014, JHADC, Jowai had issued Notification of the Election dated 09.06.2014, a copy of it is available at Annexure-3 to the writ petition. English translation of the said Election Notification dated 09.06.2014 is also available at page 16 to the writ petition. Learned counsel appearing for the parties are not disputing the translated copy of the said Election Notification dated 09.06.2014. For easy reference, the said Notification dated 09.06.2014 is quoted hereunder:-

"TYPED COPY

OFFICE OF THE JAINTIA HILLS AUTONOMOUS DISTRICT COUNCIL::::JOWAI.

NOTICE

DATED JOWAI THE 9TH JUNE, 2014

No.JHADC/POL/9/2014/6:- By this Public Notice the Executive Committee, JHADC, Jowai have decided to conduct election of Daloiship at the Elaka Nongjingi. According to the dated Mention Below:-

16.06.2014:- Publication of the Notification of the draft electoral roll at the office of the District Council and at the office of the Secretary of Elaka Nongjingi.

19.06.2014 to 24.06.2014} To receive the application form for enrollment of claim correction of name etc. of the voter's list an application form will be sold at Rs. 5/- (five rupees) only at the office of the JHADC.

04.07.2014:- Publication of the final electoral roll and the selling at the rate of Rs. 150/- (Rupees one hundred and fifty) only.

21.07.2014 to 22.07.2014} To receive the nomination paper of the candidate (Doloi). The Nomination form will be sold at the office at the rate of Rs. 50/- only.

23.07.2014: Verification of the nomination papers withdrawal of name and distribution of symbols will be started from 11:00 AM.

19.08.2014:- Date of voting will be started from 7:00 AM to 4:00 PM.

Sd/- Deputy Secretary Executive Committee & Returning Officer, Dolloiship Election, 2014, Jaintia Hills Autonomous District Council, Jowai.

Memo No. JHADC/POL/9/2014/6-A, Dated Jowai, the 9th June, 2014 Copy to:-

1. Secretary, Executive Committee, JHADC, Jowai.
2. Deputy Commissioner, East/West Jaintia Hills District.
3. Superintendent of Police East/West Jaintia Hills District.
4. All the Department of JHADC, Jowai.
5. Secretary/Chairman, Dorbar Elaka Nongjingi.
6. All the Headman in the Elaka Nongjingi.
7. All the MDC, JHADC, Jowai.
8. Local MLA.

Sd/- Deputy Secretary Executive Committee & Returning Officer, Dolloiship Election, 2014, Jaintia Hills Autonomous District Council, Jowai."

3. It is well settled that the election process started from the time of Notification

of the election and ends on the declaration of the result. Any process between the time of Notification of the election and declaration of the result is an election process. The election process is not to be stopped at the middle, and the election process should be allowed to be completed in normal process and if anybody is aggrieved by the process of the election or/election, there is a remedy. Article 329 of the Constitution of India barred to interference by Courts in electoral matters. It would be more profitable to reproduce Article 329 of the Constitution of India as follows:-

"329. Bar to interference by Court in electoral matters- [Notwithstanding anything in this Constitution]

(a) the validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

4. The Constitution Bench of the Apex Court in celebrated case of N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, clearly defined the word "election" in the context of Article 329(b) of the Constitution of India and held that the law does not contemplate two attacks on matters connected with the election, one under Article 226 of the Constitution and another election petition under the Representation of the People Act, 1951. Paras 7, 9, 11 & 12 of the AIR in N.P. Ponnuswami's case (Supra) read as follows:-

"7. These arguments appear at first sight to be quite impressive, but in my opinion there are weightier and basically more important arguments in support of the view taken by the High Court. As we have seen, the most important question for determination is the meaning to be given to the word "election" in article 329(b). That word has by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow meaning. In the narrow sense, it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected. In A.V. Srinivasalu Reddy and Another Vs. S. Kuppuswami Goundar, the learned Judges of the Madras High Court after examining the question, expressed the opinion that the term "election" may be taken to embrace the whole procedure whereby an "elected member" is returned, whether or not it be found necessary to take a poll. With this view, my brother, Mahajan J., expressed his agreement in Sat Narain Gurwala vs. Hanuman Parshad and Another; and I also find myself in agreement with it. It seems to me that the word "election" has been used in Part XV of the

Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including article 329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage under the heading "Commencement of the Election":-

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is "reasonably imminent". Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when "the conduct and management of" an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

The discussion in this passage makes it clear that the word ""election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could

be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.

11. The Representation of the People Act, 1951, which was passed by Parliament under article 327 of the Constitution, makes detailed provisions in regard to all matters and all stages connected with elections to the various legislatures in this country. That Act is divided into II parts, and it is interesting to see the wide variety of subjects they deal with. Part II deals with "the qualifications and disqualifications for membership", Part III deals with the notification of General Elections, Part IV provides for the administrative machinery for the conduct of elections, and Part V makes provisions for the actual conduct of elections and deals with such matters as presentation of nomination papers requirements of a valid nomination, scrutiny of nominations, etc., and procedure for polling and counting of votes. Part VI deals with disputes regarding elections and provides for the manner of presentation of election petitions, the constitution of election tribunals and the trial of election petitions. Part VII outlines the various corrupt and illegal practices which may affect the elections, and electoral offences. Obviously, the Act is a self contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. The provisions of the Act which are material to the present discussion are sections 80, 100, 105 and 170, and the provisions of Chapter II of Part IV dealing with the form of election petitions, their contents and the reliefs which may be sought in them. Section 80, which is drafted in almost the same language as article 329(b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part". Section 100, as we have already seen, provides for the grounds on which an election may be called in question, one of which is the improper rejection of a nomination paper. Section 105 says that "every order of the Tribunal made under this Act shall be final and conclusive". Section 170 provides that "no civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election." These are the main provisions regarding election matters being judicially dealt with, and it should be noted that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage.

12. It is now well-recognized that where a right or liability is created by a statute

which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes J. in *Wolverhampton New Water Works Co. v. Hawkesford*: (1859) 6 C.B. (N.S.) 336, at p. 356 in the following passage:-

"There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it..... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspaper Limited*: (1919) A.C. 368 and has been reaffirmed by the Privy Council in *Attorney-General of Trinidad and Tobago v. Gordon Grant & Co.*, 1935 A.C. 532 and *Secretary of State v. Mask & Co.*, 44 Cal. W.N. 709; and it has also been held to be equally applicable to enforcement of rights (see *Hurdutrai Jagdish Prasad and Others Vs. Official Assignee of Calcutta* . That being so, I think it will be a fair inference from the provisions of the Representation of the People Act to state that the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage."

5. The Apex Court in *Harnek Singh Vs. Charanjit Singh and Others*, held that in an election matters, the High Court, even though, exercising a plenary jurisdiction under Article 226 of the Constitution of India should not exercise the power under jurisdiction under Article 226 of the Constitution in a case where there is an alternative remedy of election petition under the statue. Paras 7, 14 & 15 of the SCC in *Harnek Singh's* case (*Supra*) read as follows:-

"7. A writ petition was filed by the respondents in the High Court of Punjab and Haryana alleging inter alia therein that the Returning Officer did not have the power to fix a date of the adjourned meeting to elect the Chairman of the Panchayat Samiti and only the State Election Commission is empowered therefor. Accepting the contention of the respondents, the High Court set aside the election of the petitioner as Chairman of the Panchayat Samiti. Aggrieved by the order of the High Court, the Appellant is before us.

14. It may be true that the respondent herein questioned the jurisdiction of the

Deputy Commissioner and/or the Returning Officer in fixing a date for election but in his writ petition he had prayed inter alia for the following:

"(a) Issue a writ, order or direction quashing the entire process, manner and method adopted by respondent 3 in holding the election and for quashing the result declared by respondent 3 in declaring respondent 4 elected as Chairman of the Block Samiti to be illegal and bad.

(b) Issue a writ, order or direction, quashing the action of respondent 3 in rejecting the valid vote cast in favour of the petitioner, the same being actuated with malice and motive and otherwise being arbitrary and illegal.

(c) Issue a writ, order or direction declaring the petitioner elected as Chairman of the Block Samiti on the basis of votes cast in his favour if necessary by calling for the records of the election and ballot papers and after examining the same.

(d) Issue a writ, order or direction commanding the respondents to restart the election process from the stage respondent 3 illegally adjourned and reassemble the meeting or, alternatively, to direct the respondent to hold a fresh election by following the process of law and the procedures and rules prescribed in the Act and the Rules.

(e) Issue a writ, order or direction quashing the order passed by DC on the representation filed by the petitioner, the same being illegal and in violation of the statutory provision.

(f) Dispense with service of advance notice on the respondents."

15. Prayers (b) and (c) aforementioned, evidently, could not have been granted in favour of the petitioner by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view of the fact that an efficacious alternative remedy is available therefor. (See Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., ."

6. It is well settled law that the Constitutional authority cannot do indirectly what is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the Constitutional provisions. (Ref:- Dr D.C. Wadhwa and Others Vs. State of Bihar and Others,

7. On bare perusal of Article 329 of the Constitution of India, it is crystal clear that the Courts are barred from interfering with the election process. Democratic process for election of the office of Dolloiship of Elaka Nongjngi is also not to be interfered with by the Court, save and except, in the manner provided under the statute. The election to the office of Dolloiship of Elaka Nongjngi is conducted under the provisions called "The United Khasi-Jaintia Hills Autonomous District

(Appointment and Succession of Chiefs and Headmen) Act, 1959 (for short "the said Act of 1959"). Mr. N. Syngkon, learned counsel for the petitioner by referring to Sections 3 & 4 of the said Act of 1959 strenuously contended that all the elections process for Dolloiship should be in strict compliance with the procedures prescribed under the said Sections i.e. Sections 3 & 4 of the said Act of 1959. Mr. N. Syngkon, learned counsel for the petitioner further contended that the fundamental right of the petitioner guaranteed under the Constitution of India is violated because of conducting the election of Dolloiship of Elaka Nongngi in clear violation of the procedures prescribed under Sections 3 & 4 of the said Act of 1959. Sections 3 & 4 of the said Act of 1959 are quoted hereunder:-

"3. Elections and Appointment of Chief's and Headmen:-Subject to the provision of this Act and the Rules made thereunder all elections and appointments of Chiefs or Headmen shall be in accordance with the existing customs prevailing in the Elaka concerned.

4. Confirmation of Chief:- All appointments of Chiefs shall be subject to the approval of the District Council which may confirm such appointments under terms and conditions which it may by Rules from time to time adopt. 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 the administration of the Elaka will be carried out by them;
- (e) The manner in which the fund of the Elaka is to be managed by them;
- (f) Their code of conduct.

Provided that pending the 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 adopted by the District Council under this Section shall immediately apply to all the existing Chiefs."

8. To the contra, senior counsel Mr. H.S. Thangkhiew, learned senior counsel appearing for the respondents No. 2 & 3, Dr. O.D.V. Ladia, learned senior counsel appearing for the respondent No. 5 and Mr. V.G.K. Kynta, learned senior counsel appearing for the respondents 6 contended that there is a remedy provided under Section 5 of the said Act of 1959, if the petitioner disputed the process of the said election, by filing an election petition. Section 5 of the said Act of 1959 also reads as follows:-

"5. Dispute regarding election of Chiefs:- If any dispute arises regarding any

matter relating to, or connected with, the election of Chief, the dispute shall within 30 days after the publication of the result of the election be referred by the party or parties concerned to the Executive Committee for decision. An appeal against the decision of the Executive Committee shall lie to a tribunal constituted for the purpose by the District Council and the decision of the tribunal shall be final. Any appeal before the tribunal shall be filed within 30 days after the order of the Executive Committee is communicated to the party or parties concerned."

9. It is nobody's dispute that pursuant to the said Election Notification dated 09.06.2014, the election process had already been started and nomination of candidates had already been finalized and only casting of votes is yet to be held. In such circumstances, this Court is of the considered view that the election process had already been started and the Court shall not interfere with the election process as provided under Article 329 of the Constitution of India. However, any person is not to be left without remedy. But in the present case, there is a remedy for the petitioner as provided under Section 5 of the said Act of 1959, which had been quoted above in extenso. On conjoint reading of Sections 3, 4 & 5 of the said Act of 1959 and Article 329 of the Constitution of India, this Court is of the considered view that the petitioner has the remedy in the form of election petition as provided under Section 5 of the said Act of 1959. Learned senior counsel appearing for the respondents seriously disputed the questions of fact raised by the petitioner in the present writ petition. However, these disputed questions of fact are not deciding in the present writ petition.

10. In the above factual backdrop, this writ petition is disposed of by directing the petitioner to seek appropriate remedy as provided under Section 5 of the said Act of 1959 by way of filing an election petition. Mr. N. Syngkon, learned counsel for the petitioner however, contended that remedy is only after the election. When, a remedy is provided under the Act or statute, that remedy is to be pursued.

11. With the above observations and directions, this writ petition is closed.

12. Interim order dated 18.08.2014 also stands vacated.