



GAHC020003912022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/145/2022**

SRI. HANGLONG WANGHAM AND 15 ORS  
CHIEF ANGH OF NOKYAN VILLAGE, S/O LATE THANGWANG  
WANGHAM, R/O NOKYAN VILLAGE. P.O/P.S. TIZIT, MON  
NAGALAND

2: SRI. CHAKWANG WANGYEN

3: SRI. TINGNYE MANGHAM

4: SRI. LEIBONG NGOAHAM

5: SRI. WANGKEP AMAHAM

6: SRI. NYEMHAO KONYAK

7: SRI. KHAMTAI KONYAK

8: SRI. HONGPHA KONYAK

9: SRI. LEICHOI KONYAK

10: SRI. MENYEM AMAHAM

11: SRI. TAHKHU KONYAK



12: SRI. TAHYAO SANGHAM

13: SRI. TAINI MANGHAM

14: SRI. MIHLEI KONYAK

15: SRI. APHOA KONYAK

16: SRI. WANGZING WANGZE

VERSUS

THE STATE OF NAGALAND AND 21 ORS  
REPRESENTED BY THE HOME COMMISSIONER, NAGALAND -  
KOHIMA

2:DEPUTY SECRETARY TO THE GOVT. OF NAGALAND

3:COMMISSIONER NAGALAND

4:ASSISTANT COMMISSIONER

5:DEPUTY COMMISSIONER

6:ADDITIONAL DEPUTY COMMISSIONER

7:SUB-DIVISIONAL OFFICER (CIVIL) SADAR

8:EXTRA ASSISTANT COMMISSIONER

9:SRI. TINGKHAM KONYAK

10:SRI. ASHEH



11:SRI. MANPHOA

12:SRI. NOKTUN

13:SRI. YANGAM

14:SRI. APE

15:SRI. LOAKAI

16:SRI. ASHEAH

17:SRI. NGAMWANG

18:SRI. TINGKAP

19:SRI. MAOWANG

20:SRI. MENYAO

21:SRI. KHAMPEI

22:SRI. NGAMPH

**Advocate for the Petitioner** : K TSUKRU

**Advocate for the Respondent** : GOVT ADV NL



## **B E F O R E**

### **THE HON'BLE MR. JUSTICE NELSON SAILO**

Date of hearing : 20.03.2023  
Date of Judgment : 24.03.2023

### **J U D G M E N T & O R D E R ( C A V )**

Heard Mr. H. Rahman, learned counsel for the petitioners, Mr. Moa Imchen, learned Senior Govt. Advocate appearing for the State respondent Nos. 1 to 8 and Mr. Sentiyanger, learned counsel appearing for the private respondent No. 9 to 22.

**[2.]** By filing this writ petition, the petitioners have challenged the communication dated 25.04.2022 (Annexure - VII) by which the State Government in the Home Department communicated the approval of the State Government on the updated list of Village Council members of Nokyang village and also the disqualification of its Village Council members to the Commissioner, Nagaland, Kohima. The petitioners have also challenged the appointment order of the respondent No. 9 issued on 08.06.2022 (Annexure - VIII) by the Deputy Commissioner, Mon District appointing the respondent No. 9 as the Village Council Chairman of the Nokyang village for the tenure 2021 – 2026 with immediate effect.



**[3.]** Brief facts of the case as projected by the petitioners is that as the tenure of the incumbent members and Chairman of Nokyang Village Council was due to expire, selection of new members was required to be made for the tenure 2021 to 2026 and for that a meeting was scheduled on 28.03.2021. However, the meeting was rescheduled for 08.04.2021 on account of the appeal made by the public so as to drop some of the Village Council members from the respective Morung (Sector). As scheduled, the meeting was held on 08.04.2021 wherein, 4 names were drop from Amayong Morung and likewise, 5 names were drop from Thamseayong Morung. After dropping the 9 names, as many as 18 names were shortlisted and selected as Village Council members. The 18 names were sent to the State Government for approval and accordingly, vide communication dated 17.06.2021 (Annexure - II), the 18 names were approved as Village Council members of Nokyang village. From amongst the 18 names, the name of Sh. Ponwang Konyak was selected by the Village Council members as the Chairman of the Village Council.

**[4.]** However, while such was the position, a circular dated 28.07.2021 (Annexure - IV) was issued by the Extra Assistant Commissioner (EAC), Office of the Addl. Deputy Commissioner, Tizit, Nagaland directing the Ahng/GBs/Morung President and members to be present in their respective Morungs on 30.07.2021 from 11 am onwards for conducting of selection/election Village Council members in Nokyang village as directed by the



Deputy Commissioner, Mon District, Mon. Pursuant to the circular, although no meeting was held on 30.07.2021, the State Government in the Home Department vide the impugned communication dated 25.04.2022 approved the updated list of Village Council members and also approved the disqualification of the 12 village council members. Thereafter, vide the impugned appointment order dated 08.06.2022, the respondent No. 9 was appointed as the Village Council Chairman of Nokyang Village Council. Aggrieved, the petitioners are before this Court.

**[5.]** Mr. H. Rahman, learned counsel for the petitioners submits that the disqualification of the Village Council members who were selected as per the meeting minutes dated 28.03.2021 is in violation of the Nagaland Village Councils Act, 1978 (VC Act). He submits that Section 16 of the VC Act provides for the conditions under which a Village Council member can be disqualified. He submits that the said provision can be invoked prior to the approval given by the Government on the selected Village Council members and not after approval is given by the Government. In other words, he submits that Section 16 comes into play prior to the approval given by the State Government and not post-approval. He further submits that Section 9 of the VC Act provides for the powers of the State Government to remove members of the Village Council but in the instant case, this provision has not been invoked. The learned counsel further submits that under the VC Act, the Deputy Commissioner or the



Government do not have the power to appoint the Chairman of a Village Council and that the Chairman has to be selected by the Village Council members themselves. In making such selection, the approval of the State Government is not necessary. Referring to the affidavit-in-opposition filed by the State respondents, the learned counsel also submits that according to the State respondents, the 12 members of the Village Council which includes some of the petitioners were disqualified due to the complaint submitted about their selection. That it so turns out that the complaint was submitted by those persons who themselves came to be included in the updated list of Village Council members. He submits that the updated list of Village Council members has been prepared at the behest of the complainants and in violation of Section 4 of the VC Act and as such, the impugned action of the respondents concerned cannot be sustained. He submits that as per Section 4 of the VC Act, Village Council members are to be chosen in accordance with the prevailing customary practice and usage and which is to be approved by the State Government. Referring to the customary law of the Konyak tribe as prepared by the North Eastern Law Research, the Konyak has hereditary chief called Ahngs. The Ahng is the head of the village and the power and authority is vested in him and the law and order is in his authority. He is responsible for observing and exercising customary laws and conditions. Therefore, preparation of the updated list of the Village Council members at the behest of some interested parties and to the



exclusion of the Ahngs, the impugned action of the respondent authorities concerned is liable to be interfered with. He submits that when the law requires a thing to be done in a certain manner, it has to be done in that manner alone or not at all. In this connection, he relies upon the case of ***Dhananjaya Reddy -Vs- State of Karnataka (2001) 4 SCC 9.***

[6.] Mr. Moa Imchen, learned State counsel on the other hand submits that Section 20 of the VC Act provides that when a dispute arises as to the selection of any member of a village council, the matter has to be referred to the State Government and whose decision thereon shall final. Section 17 of the VC Act also provides that if any question arises as to whether a member of the Village Council has been subject to disqualification, the question should be referred for the decision of the State Government and whose decision thereon shall be final. In the present case as well, upon receiving the complaint submitted on the selection of the Village Council member of the Village Council concerned, the Deputy Commissioner and his Assistants conducted an enquiry by issuing a circular to all the stakeholders and also, summoning them for selection of the Village Council members by notifying 30.07.2021 as the date of the meeting. It was only after a meeting was conducted on the assigned date that a recommendation and selection of as many as 19 persons was made for them to be the Village Council member of the Village Council concerned. Therefore, the Government has already settled the dispute in accordance of the



VC Act and as such, the interference of this Court is not called for. He submits that Article 317 of the Constitution of India does not debar the application of the VC Act in any manner. He submits that as per Section 4 of the VC Act, the Ahng is only an ex-officio member of the Village Council and therefore, he has no role to play in the selection of the Village Council members. He further submits that as per Section 22 of the VC Act, the Deputy Commissioner and his Assistants have the overall control of the Village Council within their jurisdiction. A complaint was received by the Deputy Commissioner and therefore, an enquiry was directed to be held and all the stakeholders have been summoned to attend the meeting scheduled on 30.07.2021. Based on the report and the recommendation made by the meeting minutes, the approval of the State Government was obtained on the updated list. Under the circumstance, the petitioners cannot have any grievance against the State respondents. He therefore submits that the writ petition should be dismissed.

**[7.]** Mr. Sentiyanger, learned counsel appearing for the private respondents also submits that under the VC Act, Ahng is only an ex-officio member and has no role to play in the selection of the Village Council member. The role of Ahng is to be considered in terms of the VC Act only. Therefore, the Ahng on its own has no authority to recommend names for being appointed as Village Council member. The learned counsel submits that the petitioners have approached this Court with unclean hands inasmuch as, they have suppressed



the fact that a circular was issued by the EAC as authorized by the Deputy Commissioner calling for a meeting to be held amongst all the stakeholders on 30.07.2021. A meeting was held on the scheduled date and it is pursuant to the meeting that the 19 names were recommended and which resulted in the preparation of the updated list of Village Council members which was also approved by the State Government. The petitioners having failed to bring this to the notice of the Court, the writ petition should be dismissed on this ground alone. In support of his submission, the learned counsel in ***K.D Sharma -Vs- Steel Authority of India Limited & Others, (2008) 12 SCC 481.***

[8.] The learned counsel further submits that Section 20 of the VC Act empowers the Government to examine and decide the dispute on the selection of members of a Village Council. Such decision taken by the Government shall be final. In the present case also, the matter was examined by the Deputy Commissioner and his Assistants and based upon their findings and recommendation, the approval of the Government was sought for and accordingly, the same was given. The petitioners therefore cannot have any grievance upon such decision. In this connection, the learned counsel relies upon the case of ***Apongo Ovung & Others -Vs- State of Nagaland & Others, 2011 (4) GLT 823.*** The learned counsel finally submits that the petitioners may not be allowed to reap the fruits of deceit that they have practiced and the writ petition should be dismissed.



**[9.]** I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The dispute in the present writ petition as can be seen is regarding the Village Council concerned i.e., Nokyang village in the district of Mon, Nagaland. The meeting minutes dated 08.04.2021 which is recorded in the letter head of Chief Ahng of Nokyang village states that Nokyang village held a meeting on 28.03.2021 to select the new term Village Council members sectorial wise for the term 2021 to 2026. However, on the basis of public appeal, the meeting was rescheduled on 08.04.2021. As many as 4 names from Amayong Morung and 5 names from Thamseayong Morung were dropped as per the meeting minutes. The meeting minutes also recorded the selection of 18 persons as Village Council members. What transpired on 28.03.2021 is not known as there are no materials available on record for appreciation. However, there appears to have been some deliberation on 28.03.2021 which was not agreed to by the public requiring the holding of a meeting again on 08.04.2021 for selecting the Village Council members. The selected names for membership to the Village Council was then approved by the State Government and it was conveyed to the authorities concerned by the Sub-Divisional Officer (Civil) Sardar, Office of the Deputy Commissioner, Mon District, Nagaland on 17.06.2021.

**[10.]** However, through the impugned communication dated 25.04.2022, a new updated list of Village Council members was recommended to the



Commissioner, Nagaland after approval was given by the State Government in the Home Department, General Administration Branch - I. The communication also indicated the approval of the disqualification of 12 Village Council members. The basis of the updated list admittedly is on account of the complaint submitted by 9 individuals on behalf of Nokyang village public to the Addl. Deputy Commissioner, Mon District, Nagaland which was received by the said authority on 28.06.2021. Following the complaint, the Deputy Commissioner, Mon District wrote to the Deputy Commissioner, Tizit to make necessary verification and to submit a report. Accordingly, a report was prepared on the selection/election of Village Council members for Nokyang village on the basis of the meeting held on 30.07.2021. The detailed report was submitted by the EAC, Tizit to the Deputy Commissioner, Mon District on 03.08.2021. Along with the report, a list of 7 names from Thamseayong Colony to be the Village Council member was submitted. Likewise, a list of 6 names from Hahiyong Morung Colony was submitted and another list of 6 names from Amayong Morung Colony was submitted, totaling to 19 names in all. The names were submitted on 30.07.2021 on which date, a meeting was held as per the circular dated 28.07.2021. Although the petitioners have denied the fact that there was any meeting held on 30.07.2021 at paragraph No. 15 of the writ petition but the State respondents as well as the private respondents have annexed the report about the meeting held on 30.07.2021 along with the names



of 19 persons suggested/recommended by the 3 Colonies to be the Village Council members as Annexure - 6 and Annexure - 10 respectively in their counter affidavit.

**[11.]** In their reply affidavit, the petitioners have only made plain denial while reiterating what was stated in the writ petition. The same in the considered view of this Court is not sufficient to dispute the fact of there having been a meeting held on 30.07.2021 in terms of the complaint submitted by the complainants. Merely because some of those who had submitted the complaint have been included in the updated list also cannot be the ground to doubt the correctness of the deliberation in the meeting which was held on 30.07.2021. Section 20 of the VC Act clearly provides that where a dispute arises to the selection of any member of a Village Council, the matter shall be referred to the State Government whose decision shall be final. No doubt the complaint in the instant case was made to the Addl. Deputy Commissioner, Mon District, who directed that enquiry be made. Accordingly, enquiry was done and a report prepared on the proceeding which was undertaken on 30.07.2021. The same has been duly approved by the State Government in the Home Department, General Administration Branch - I. Section 16 of the VC Act provides for 9 points for disqualification of a Village Council member. However, it does not anywhere provide that the points for disqualification are restricted only to those which is provided in the said Section. Although the counsel for the petitioners has made



a submission that disqualification cannot be done post-approval given by the State Government but a plain perusal of Section 16 of the VC Act goes to show that a person can be disqualified not only from being selected as Village Council member but also while being a member of a Village Council. It is therefore clear that while being a member of the Village Council, one can also be disqualified. Section 17 of the VC Act further provides that where a question arises whether a member of Village Council has been subject to disqualification, the question shall be referred to the decision of the State Government and whose decision thereon shall be final.

**[12.]** In the present case, the State Government as can be seen has approved the updated list and also the disqualification of the 12 members to the Village Council concerned out of the 18 persons who were earlier selected and approved. Therefore, it is seen that the provisions of Section 16, 17, 20 part from Section 20 has been adhered to by the respondent authorities concerned. In view of the findings arrived at, I do not find it necessary to refer to the case of ***K.D. Sharma*** (surpa). The case of ***Apongo Ovung & Others*** (supra) also is found to be different from the present case inasmuch as, this Court in that case had observed that the role of the State Government under Section 16 & 17 of the VC Act should not be usurp by the Court whereas in the present case, the State respondents have already taken their decision which is found to be sustainable and the question of usurping the role of the State Government



would not arise. Thus, under the facts and circumstances of the case, I do not find any merit in the writ petition and accordingly, the same is dismissed. The interim order/orders passed earlier shall stand merged with this order. No cost.

Sd/-  
**JUDGE**

**Comparing Assistant**