

*IN THE GAUHATI HIGH COURT*  
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,  
TRIPURA, MIZORAM AND ARUNACHAL PRADESH  
**SHILLONG BENCH**

W.P.(C) No. 166(SH) of 2008

Shri Adningwell Nongkhlaw  
S/o (L) E Kharpuri  
R/o Umshing Mawlai  
East Khasi Hills District  
Meghalaya

: Petitioner

-vs-

1. Khasi Hills Autonomous District  
Council, represented by its Secretary

2. Executive Committee,  
Khasi Hills Autonomous District  
Council, Shillong.

3. Syiem of Myllem,  
Myllem Syiemship,  
East Khasi Hills District.

4. Shri Konfred Nongkhlaw  
R/o Myllem Mawsawa Village  
Myllem Syiemship  
East Khasi Hills District.

5. Shri Dronsing Nongkhlaw  
Rangbah Kur (Clan Elder) of  
Nongkhlaw Rngi Clan  
S/o (L) T Kharkongor  
R/o Myllem Mawsawa,  
East Khasi Hills District  
Meghalaya

: Respondents

BEFORE  
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner : Mr L Khyriem, Adv.

For the Respondents : Mr VGK Kynta, SC KHADC  
Mr H Nongkhlaw, Adv respdt 4  
Mr K Sunar, Adv respdt 5

Date of hearing : 15.11.2010

Date of Judgment & Order : 15.11.2010

### **JUDGMENT AND ORDER (Oral)**

Heard Mr L Khyriem, the learned counsel for the petitioner. Also heard Mr VGK Kynta, the learned counsel for the District Council, Mr H Nongkhlaw, the learned counsel for the respondent No. 4 and Mr K Sunar, the learned counsel for the respondent No. 5.

2. This case has a chequered history. This is the second round of litigation initiated by the petitioner in this Court. The controversy arose when the Acting Syiem of Myllem, Myllemship issued the order dated 7.7.2008 removing him from the post Myntri of Nongkhlaw Rngi Clan. Aggrieved by this order, the petitioner filed Political Appeal 1 of 2007 before the Executive Committee of the Khasi Hills Autonomous District Council ("District Council") against his removal. According to the petitioner, his appeal was dismissed when he could not file his written argument and was remain unrepresented before the Executive Committee when the hearing was done. This prompted him to approach this Court in WP(C) No. 20(SH) of 2008. This Court by the order dated 17.3.2008, after hearing the parties, set aside the impugned order dated 14.1.2008 and remanded the case to the Executive Committee, District Council for fresh hearing. The Executive Committee after hearing the parties, again passed the impugned order dated 03.07.2008 setting aside the Sanad dated 11.12.1973 issued to the petitioner and directed the holding of a fresh election to the post held by the petitioner. This led him to initiate this second round of litigation before this Court. The first contention of Mr L Khyriem, the learned counsel for the petitioner is that though the petitioner is a

Myntri which is otherwise known as Headman within the meaning of Section 2 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 ("the Act"), his removal having been done contrary to the provisions of the 1<sup>st</sup> Proviso to Section 9(3) of the Act, the same is liable to be quashed for this reason alone. He also contends that the election conducted by the respondent authorities for the appointment of the respondent No. 4 has also been conducted in contravention of Section 7 (1) of the Act, which warrants the interference of this Court. He further contends that even if we assume that there has been a dispute with regard to the election/nomination of the Myntry, it should have been referred to the Syiem of Myllem and as the election was conducted without observing this procedure, the election of the respondent No. 4 cannot stand in law.

3. On the other hand, Mr H Nongkhlaw, the learned counsel for the respondent No. 4, while justifying the impugned order, submits that the petitioner was already removed from the post of Myntry by the resolution of the Dorbar Nongkhlaw Rngi Clan on 27.4.2001 whereafter the respondent No. 4 came to be appointed in his place after giving an opportunity of hearing to the petitioner. It is also submitted by the learned counsel for the respondent No. 4 that as the petitioner had lost the confidence of the clan members, his continued functioning as the Myntri of Nongkhlaw Rngi Clan became untenable thereby warranting his removal from that post. In any case, contends the learned counsel, the respondent No. 4 is ready to face fresh election if such direction is issued by this Court. Mr. VGK Kynta, the learned counsel for the District Council, also supports the impugned order and also expresses

his agreement with the proposal made by the learned counsel for the respondent No. 4 for holding a fresh election.

4. The question of holding fresh election for the post of Myntri will arise only if the removal of the petitioner from that post is valid: if his removal is found to be not valid, no vacancy will arise for filling up the post in a fresh election. This Court by the order dated 17-3-2008 in **WP(C) No. 20(SH) of 2008** had passed the following orders:

*“From the submissions of the learned counsel for the petitioner as well as upon perusal of the impugned order dated 14-1-2008, in my considered opinion, there is a clear violation of the principles of natural justice inasmuch as the petitioner has not been heard and the impugned order has been passed on a simple ground that the written argument has not been filed by the petitioner. This case being a clear case of violation of principles of natural justice, the impugned order dated 14-01-2008 is hereby quashed and set aside. The matter is remitted back to the District Council for re-hearing the parties and after giving them due opportunity pass any order that would be appropriate.*

*With the above direction this writ petition stands disposed.”*

In purported compliance with the aforesaid direction, the District Council heard the appellant and the respondent No. 4 and passed the impugned order canceling the election of respondent No. 4 as the Myntri and directed the Kur Nongkhlaw Rngi to hold an early election of a new Myntri as per the custom and traditions of the clan and to inform them of the date of the election so as to enable them to appoint an observer. On careful reading of the impugned order, the core issue raised by the petitioner that he was not given an opportunity of hearing prior to his removal in contravention of the first proviso to Section 9(3) of the Act, was not considered by the District Council. The Section 9(3) of the Act reads thus:

*“(3) Notwithstanding anything contained in sub-section (1) above, the Executive Committee may remove or suspend a headman if in its opinion he is liable for taking action under any of the clauses or sub-section (1) above; and the order passed by the Executive committee in such case shall be final.*

*Provided that no headman shall be removed or punished with suspension under Section 9 above unless he is given an opportunity of being heard:*

*Provided further that the requirements of the first proviso shall not apply:*

*(i) in the case where the order of removal or punishment of suspension is awarded on account of his being convicted of an offence involving moral turpitude;*

*(ii) in the case of order of suspension pending inquiry.”*

5. The term “Headman” is defined by Section 2(k) of the Act to mean a Myntri, a Syiem Raid, a Basan, a Lyngdoh Raid, Matabor, Elector, a Pastor, a Sangot and village elder, a Sirdar Shnong, Sirdar Raid and Rangbah Shnong. As the bone of contention between the rival parties is over the post of Myntri, which is also indisputably a Headman within the meaning of Section 2(k) of the Act, the first proviso to Section 9(3) is squarely applicable to the case of the petitioner. The petitioner was appointed as Myntri on 11-12-1973 by following the procedure laid down by law, he can be removed only by complying with the procedure laid down by the first proviso to Section 9(3) of the Act, which in clear terms says that no Headman shall be removed or punished with suspension under Section 9 of the Act unless he is given an opportunity of being heard. The order removing the petitioner for his post is found at Annexure-2, which bears dated 14-2-2007 and is issued by the respondent No. 3. On perusing this order as well as other materials on record, it is obvious that the petitioner was not given an opportunity of being heard by the respondent No. 3 before removing him from the post

of Myntri. The respondent No. 3 in paragraph 5 of his written argument dated 28-5-2008 filed before the Executive Committee has stated thus:

*“5. That the respondent No. 3 begs to state that the previous Acting Syiem, Shri Armstrong Syiem issued the letter 14-2-2007 removing or terminating the petitioner/appellant as Myntri only on a mere recommendation of some of the leaders of the Kur Nongkhlaw Rngi vide their letter dt. 27-4-2001 and in his place was pleased to appoint the Respondent No. 4 as Myntri. If such be the fate, based on the instruction or direction of the Syiem iof Hima Myllem to elect a new Myntri or an heir apparent and his name was forwarded for acceptance by this dorbar. It is, therefore, beyond human imagination, custom and the rules of law to appoint the Respondent No. 4 as a Myntri after a lapse of six years time from the date when the result of the election claimed to have been declared by the Dorbar Nongkhlaw Rngi Clan on 27-4-2001.”*

In paragraph 7 of the same written argument, the respondent No. 3 submits that:

*“7. The Respondent No. 3 begs to state that there is no record to show of the handing over charge of the Nongkhlaw Rngi Clan between the petitioner/appellant (the petitioner herein) and the Respondent No. 4 (the respondent No. 4 herein) but only to state that his name was not given approval by the Hon’ble Executive Committee of the Khasi Hills Autonomous District Council till date.”*

6. As noticed earlier, the core issue raised by the petitioner before the Executive Committee of the District Council was as to whether he was given an opportunity of hearing at the time of or before passing the impugned order of his removal, but this issue was never considered by the Executive Committee. Be that as it may, as found by me earlier, there can be no dispute that he was never given an opportunity of being heard by the Executive Committee in contravention

of the first proviso to Section 9(3) of the Act: this renders the order dated 14-2-2007 issued by the Acting Syiem of Myllem and the order dated 3-7-2008 of the Executive Committee of the District Council illegal. As the removal of the petitioner from the post of Myntri is found to be illegal, there is no vacancy for holding election to this post. Election to the post of Myntri can be held only when there is vacancy for this post. Therefore, the contention of the learned counsel for the respondent No. 4 that this is a fit case for holding fresh election cannot be conceded.

7. The result of the foregoing discussion is that this writ petition succeeds. The order dated 14-2-2007 at Annexure-2 issued by the respondent No. 3 and the order dated 3-7-2008 at Annexure-11 issued by the respondent No. 2 are hereby quashed. It shall, however, be open to the respondents to remove the petitioner from the post of Myntri after following the procedure laid down by the provisions of the Act. Till his removal in accordance with law, the petitioner should be allowed to function as the Myntri of the Kur Nongkhlaw Rngi.

JUDGE

*dev*

