IN THE GAUHATI HICH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM AND ARUNACHAL PRADESH)
SHILLONG BENCH

W.P.(C) No.(SH) 40 of 2009.

Shri Hesparwell Wahlang
S/o (L) H Lyngkhoi,
R/o Mawkrok Porsohsat,
West Khasi Hills District,
Meghalaya. : Petitioner

Versus

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

2. Executive Committee,
   Khasi Hills Autonomous District Council.

3. The Executive Member
   i/c Elaka Administration etc.
   Khasi Hills Autonomous District,
   Shillong.

4. The Deputy Secretary,
   i/c Elaka Administration etc.,
   Khasi Hills Autonomous District Council,
   Shillong.

5. The Acting Syiem of Nongstoin,
   Nongstoin Syiemship,
   West Khasi Hills District.

6. Shri Klemen Nongsiej,
   S/o (L) W. Marngar,
   Pyndenglawar Village,
   Nongstoin Syiemship,
   West Khasi Hills District.

: Respondents

B E F O R E

THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioner : Mr HS Thangkhiew, Sr Adv
Mr L Khyriem,
Mr P Nongbri,
Mr N Mozika,

Advocates

For the respondents : Mr VGK Kynta, SC KHADC
Mr TT Diengdoh,
Mr LLyngdoh,
Mr K Baruah,
Advocates

Date of hearing : 24.04.2012

Date of judgment & Order : 27.07.2012

JUDGMENT AND ORDER (CAV)

This writ petition is directed against the order dated 28-11-2008 issued by the District Council-respondents recognizing Pyndenglawar village as a separate village within Nongstoin Syiemship with the private respondent as its Headman.

2. For better appreciation of the controversy, I may straightaway refer to the material facts of the case as pleaded by the petitioner. According to the petitioner, he is the duly elected Headman of Mawkrok-Porsohsat village under the jurisdiction of Nongstoin Syiemship. The village under the name and style of Pyndenglawar with a few residents living in it is not a separate village so much so that the respondent No. 2 vide his letter dated 20-12-2001 had rejected the appointment of the Headman of this village due to the manner in which the respondent No. 6 had declared himself as its Headman. This drove the respondent No. 6 to move this Court in ***WP(C) No. 14(SH) of 2002*** for quashing the said letter. This Court by the order dated 29-11-2005 disposed of the writ petition by directing the parties, among others, to submit their claims/counter-claims before the Executive Committee of the District Council (respondent 2) within a period of two weeks, and that the Executive Committee should then consider and dispose of the case on merit after affording them an opportunity of hearing including taking of evidence in support of their respective claims. The respondent No. 2 thereafter proceeded with the case by issuing notices to all the parties including the newly impleaded respondent 5. The case was

adjourned for a number of times for no fault of the petitioner. While the petitioner was waiting for the next date to be fixed for filing of show cause by the respondent No. 5, he was shocked to receive the letter/order dated 27-7-2006, which was issued in his absence recognizing Pyndenglawar ("the village") as a separate and full-fledged village.

3. Aggrieved by the order dated 27-7-2007, the petitioner then filed ***WP(C) 208(SH) of 2006*** before this Court for quashing the same and for re-hearing of the case by the District Council. This Court by the order dated 16-4-2008 allowed the writ petition and remanded the case to the respondent No. 2 for fresh adjudication of the dispute after hearing both the parties. The respondent No. 2, after hearing the parties and pending final orders, instructed the respondent No. 5 to make spot enquiry on 6-11-2008 at 12-30 noon but without issuing notice to the petitioner, who is the Headman of the parent village and the Headmen of the surrounding villages sharing boundaries with respondent 6. The contents of the enquiry report were never made known to the petitioner nor was the copy thereof ever supplied. Having learnt of the said enquiry, the residents of Nongritong village lodged a complaint, which was received by the respondent No. 2 on 13-11-2008, but the respondent No. 2 without hearing them issued the impugned order. It is alleged by the petitioner that one of the presiding members of the Executive Committee in the adjudication proceeding is the brother-in-law of the then Acting Syiem who had granted recognition to the village of the respondent No. 6. Contending that the impugned order is illegal, this writ petition has been filed for quashing the same.

4. The writ petition is contested by the respondent No. 1 and 2, but no affidavit-in-opposition is filed by them. However, Mr. VGK Kynta, the learned counsel for the District Council, submits that he will rely on the affidavit-in-opposition filed by the respondent No. 6 at the time of the hearing to defend the impugned action of the District Council. Interestingly, the respondent No. 5, in his affidavit-in-opposition, does not support the case of the respondent No. 6: in fact, he is supporting the case of the petitioner. The case of the

respondent No. 6 therein is that the village is one of the villages within Nongstoin Syiemship and came into existence in the year 1994; that the village was previously one of the constituents of Mawrok-Prohsat village. The village was initially created in the year 1988 when eight families residing therein were expelled/ex-communicated by the Dorbar of Mawrok-Porohsat village. This induced them to have a village of their own under the name and style of Pyndenglawar with one Isfrining Iawphniaw as their Headman. The Acting Syiem of Nonstoin Syiemship thereafter by the letter dated 4-12-1994 approved the appointment of the said Isfrinning Iawphniaw as the Headman of the village and demarcated the boundaries of Pyndenglawar village. Subsequently, the Acting Syiem of Nongstoin was informed by the respondent No. 2 about their approving the members of the Village Court of the village thereby recognizing the existence of the village as a separate village. The Acting Syiem of Nongstoin also by his letter report dated 5-12-1995 informed the respondent No. 2 that the Headman of the village had been confirmed and referred to the letter dated 25-8-1995 regarding his appointment as Chairman of the Village Court.

5. It is also the case of the respondent No. 6 that after the death of the said Isfrning Iawlhniaw, he was elected as the Headman of the village, and the Syiem of Nongstoin also confirmed the members of the Executive Dorbar of the village. The boundaries of the village were modified by the Syiem by his letter dated 22-5-1998. However, the Acting Syiem of Nongstoin, without his knowledge, by his notice dated 18-11-1998 declared that the village had been de-recongized/cancelled on the purported ground that the respondent No. 1 by the letter dated 6-4-1997 had decided to de-cognize/cancel the village: such letter has never been served to him till date. Anyway, on receipt of the notice, he and residents of the village on 21-11-1998 filed a representation to the respondent No. 2, but no action was taken for sometime. In the meantime, various departments of the Government of Meghalaya under the Rural Development Department as well as the Deputy Commissioner, West Khasi Hills District recognized the village as a separate village by

sanctioning various development schemes: the village was included as one of the villages of Nongstoin Community and Rural Development Block. Though no action was taken by the respondent No. 2 on the representation of the answering respondent and the residents of the village, he continued to function as the Headman of the village for all purposes of the administration. On 10-4-2000, he again petitioned the respondent No. 2 for restoring the status of the village as a separate village as on 14-12-1994 and quash the notice dated 18-11-1998. On the basis of this petition, the respondent No. 2 directed the Syiem of Nongstoin to conduct enquiry on the creation of the village and submit his report. After holding the enquiry, the Syiem of Nongstoin informed the respondent No. 2 that the village was created/recognized as per custom with 225 inhabitants of the village and the notice dated 18-1-1998 was considered non-existent, and Mawkrok Porsohsat village should no longer interfere in the affairs of the village.

6. It is the further case of the respondent No. 6 that the respondent No. 2, without giving an opportunity of hearing to him, issued the letter dated 20-12-2001 stating that the village could not be accepted as a full-fledged village. This prompted him to file **WP(C) No. 14(SH) of 2002** before this Court, which by the order dated 29-11-2005 disposed of the writ petition by directing the respondent No. 2 to re-examine the matter after hearing all the concerned parties. On 31-10-2008, the respondent No. 2 took up the matter and heard all the parties and also took note of the stance taken by the Acting Syiem that the residents of the village were not in favour of the action of the answering respondent and that there were only very few families residing within the village. Perhaps to ascertain the allegations of the Acting Syiem, respondent 2 visited the village. It was under the aforesaid circumstances that the impugned order was passed, which, according to the answering respondent, does not suffer from any infirmity. On the recommendation of the Acting Syiem of Nongstoin, the respondent No. 2 issued the order dated 13-1-2009 confirming and demarcating the boundaries of the village. Though the village has been in existence as

a separate village since 1994, the petitioner, without any apparent reason, is bent upon harassing the answering respondent, who stands up against his arbitrary and discriminatory actions as Headman of Mawrok Porohsat village. In his additional affidavit, the answering respondent points out that the writ petitioner is, in fact, a resident of the village: by the resolution dated 18-10-1995, he was appointed as one of the auditors of the village. The fact that he is a resident of the village is further demonstrated by (i) his letter dated 4-9-1995 addressed to the then Headman of the village; (ii) by Consumer's General Ledger of the Meghalaya State Electricity Board and (iii) his electricity bill for the months of June and July, 2010. The affidavit-in-opposition of the respondent No. 5 supports the case of the petitioner, which, for the sake of brevity, need not be reproduced. In any case, the affidavit is unnecessarily long and virtually repetitive. Pleadings in a writ petition cannot be confused with oral submissions: drafting a pleading is not an exercise in history writing.

7. After going through the respective pleadings of the parties and on hearing Mr. P. Nongbri, the learned counsel for the petitioner, Mr. VGK Kynta, the learned counsel for the District Council, Mr. L. Lyngdoh, the learned counsel for the respondent No. 5 and Mr. T.T. Diengdoh, the learned counsel for the respondent No. 6, the sole question which falls for consideration is whether the impugned order suffers from illegality or procedural impropriety or arbitrariness? Mr. VGK Kynta, the learned counsel for the District Council, supports the impugned order and submits that the view taken by the respondent No. 2 in passing the impugned order is a possible view, and this Court in exercise of its jurisdiction under Article 226 of the Constitution would not substitute its view for the view taken by the respondent No. 2, which under the law is vested with the discretion to decide the dispute. He, therefore, contends that the writ petition, which is devoid of merit, is liable to be dismissed at the very threshold. The first submission of the learned counsel for the petitioner is that the impugned order suffers from procedural impropriety inasmuch as petitioner or, for that matter, the Headmen of the surrounding villages, were never

informed of the spot enquiry conducted by respondent 5 under instruction from respondent 2, which formed the basis of the impugned order nor was the copy of the enquiry report ever supplied to him. He further contends that the impugned order dated 28-11-2008 was passed by respondent 2 without considering the representation dated 8-11-2008 of the petitioner received by them on 13-11-2008. It is also contended by the learned counsel that the impugned order cannot be sustained in law on the ground of bias as one of the presiding members of respondent No. 2 adjudicating the dispute is the brother-in-law of the then Acting Syiem who had granted recognition to the village. The entire approach of the respondent No. 2 in issuing the impugned order, according to the learned counsel, betrays non-application of mind inasmuch as they completely overlooked the illegal and irregular manner in which such recognition had been accorded to the village. He, therefore, strenuously urges this Court to quash the impugned order and declare the village to be a part of Marok Porohsat village. Mr. L. Lyngdoh, the learned counsel for the respondent No. 5, supports the case of the petitioner and submits that the respondent No. 2 cannot keep on changing its decision, and there was absolutely no reason to review its earlier order of de-recognizing the village: the shifting positions taken by the respondent on different occasions have resulted in confusion and instability in the village administration. Mr. T.T. Diengdoh, the learned counsel for the respondent No. 6, supports the impugned order and contends that the decision under impugn does not suffer from procedural impropriety or Wednesbury unreasonableness or illegality calling for the interference of this Court.

8. As observed by the Apex Court ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself: it is different from an appeal. When hearing an appeal, the court is concerned with the merit of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact the Court is

hardly equipped to do so, it would not be desirable either. It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The principles are succinctly explained in para 77 of the judgment: (SCC p. 677)

> *"77. The duty of the Court is to confine itself to the question of legality. Its concern should be:*
> 1. *Whether a decision-making authority has exceeded its powers?*
> 2. *Committed an error of law,*
> 3. *committed a breach of the rules of natural justice,*
> 4. *reached a decision which no reasonable tribunal would have reached or,*
> 5. *abused its powers.*
>
> *Therefore, it is not for the court to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*
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> *(i) This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
> *(ii) Irrationality, namely Wednesbury unreasonableness.*
> *(iii) Procedural impropriety.*
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> *The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in* ***R. v. Secretary of State for Home Department v. Brind****, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases, the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".*

9. It is against the backdrop of the aforesaid legal principles that I propose to examine the impugned order, the relevant portions whereof are reproduced hereunder:

> **"In compliance to High Court Order dt. 16-04-08 passed in WP(C) 208(SH)2006, the Executive Committee, has authorized us to hear and dispose of the instant matter. Accordingly, vide No. DC.III/Genl/PF/13/2002-08/20 dt. 15-9-08 the parties were directed to appear before on 25-9-08. However, on the adjournment sought by one of the parties the matter was re-fixed on 31-10-08 where all the parties have**

appeared and were represented by their respective lawyers including the lawyers for the Acting Syeim, Nongstoin Syiemship.

During hearing on 31-10-08, the parties reiterated their claims and counter-claims along with testimonial documents. The lawyer for the Acting Syiem, Nongstoin submitted that Pyndenglawar is not a village but only a locality of Mawrok-Porsohsat. The lawyer for Acting Syiem, however, admittedly submitted that Pyndenglawar was earlier recognized as a village by the then Syiem, Shri F. Syiem, yet such recognition was done at the personal discretion of the then Syiem and not as per custom of the Hima. This was however strongly objected by the lawyer for Pyndenglawar and we also disagree on this point for we are of the opinion that Khasi Traditional institution such as Syiemship or Hima is a continuous institution and generally all decisions of the successor Syiem are honoured by the successor Syiem.

The Lawyer for Pyndenglawar on the other hand submitted that for many years Pyndenglawar has exist (sic) as a full-fledged village duly recognised and approved by then Syiem vide letter No.NS-6/A (1)5366(A) dt. 4-12-94. It is also submitted that since that time Pyndenglawar had elected U Isfrining Iawphniaw as Headman duly approved by then Syiem vide Sanad No.NS-6/A(1) dt. 1412-1994 which has been affirmed by then Acting Syiem vide letter No. NS-6/A(1)116 dt. 5-12-1995. This position has been re-affirmed by then Syiem vide letter No. NS-6/A (1)116 dt. 8-9-2000 and further the boundary of the village was registered by the office of the Syiem vide letter No. NS/A/ADM/33/98-99/302A dt.22-5-1998. The Village Court of Pyndenglawar was also constituted and recognised by the Syiem and approved by office of the Syiem by this Office vide letter dt. 25-8-1995. It is further submitted that ever since the creation of a full-fledged village of Pyndenglawar till today, the administration of the village is running smoothly and all developmental schemes from various departments of the Government are being implemented for the welfare of the inhabitants within village. Hence, since Pyndenglawar continues to function as a separate village as apparent by spot verification on 6-11-08, it must be allowed to continue and function as a village.

On careful examination of the relevant documents available in this office, it is clear that the then Syiem of Hima Nongstoin had approved the recognition of Pyundenglawar as a full-fledged village since 1994. Further, the then Syiem of the Hima has vide letter No. NS-6A(1)116 dt. 8-9-2000 reported that Pyndenglawar has functioned as a full-fledged village with its own Headman who has been recognised by various Government departments since that time. Since Pyndenglawar has (been?)and is being recognised as a full-fledged village for many years and continue functioning as such till today under separate Headman duly approved by the Syiem of Nongstoin from the beginning as well as recognised by Government as well as non-Government departments, we are of the decision that in keeping with the wish of the residents of Pyndenglawara, it rightly deserves to continue and function as a recognized village with the existing area having its own Headman within Hima Nongstoin.

Whatever be the reason that led to the creation of Pyngdenlawar and taking into consideration of the records available in Office and on

the basis fact that Pyndenglawar has for many years function as separate village with its own Headman duly acknowledged by local residents as well as honoured by different Government departments and non-Government departments. We are of the considered view of the fact that since Pyndenglawar has in earlier occasion being approved by the Syiem of Nongstoin and this position has been re-affirmed vide No.NS-6/A(1)116 dt. 8-9-2000 by then Syiem. Accordingly, since the residents have enjoyed and are still enjoying this basic right we are of the opinion that such basic democratic right enjoy (enjoyed?) by local residents of Pyndenglawar can no longer be disturbed now and hence we uphold that Pyndenglawar shall continue to exist as a separate village having its own Headman within Nongstoin Syiemship. Further this order succeed order No.NS-1/Pol(15)20077-08 or any other order passed by the Acting Syiem of Nongstoin so far as Pyndenglawar village is concerned. With this observation the matter is disposed of and that the parties including the Syiem of Nongstoin to respect and comply accordingly."

10. The question is whether the impugned order suffers from procedural impropriety. Reading and re-reading of the impugned order does not indicate that the petitioner and other interested parties were not heard by the respondent No. 2 before issuing the same: all the parties were adequately represented by their lawyers. The only grievance of the petitioner appears to be that he was not given notice for the spot verification made by the officers detailed to do so on 6-11-2008. In my opinion, violation of principles of natural justice per se cannot vitiate a decision-making process unless prejudice is, *ipso facto*, proved to have been occasioned to the complainant. The question is whether this omission on the part of the enquiry officers would have materially affected the findings of the Executive Committee of the District Council. I do not think so for more than one reason. The undisputed facts on record are that the village came into being as a separate village in the year 1994; that the then Acting Syiem of Nongstoin, who was undoubtedly the competent authority, by his letter dated 4-12-1994 approved the appointment of U Isfrining Iawphniaw as the Headman of the village as well as the demarcation of the boundaries of the village. There cannot also be any dispute that the respondent No. 1 by the letter dated 25-8-1995 approved the members of the Village Court of the village; that the then Acting Syiem by his report dated 5-12-1995 informed the respondent No. 1 about the confirmation of the said Isfrining Iawphniaw as the Headman of the village; that after the death of the

said I. Iawphniaw, the respondent No. 6 was elected as the Headman of the village, which was confirmed by the Syiem of Nongstoin on 23-4-1998; that the Syiem by his letter dated 22-5-1998 modified/re-registered the village boundary of Pyundengnawar of the village and that various departments of the State Government such as Nongstoin Community and Rural Development Block, the office of the Block Development Officer, Nongstoin, the Office of the Deputy Commissioner including the Electoral Roll, 2005 in respect of 34-Nongstoin (ST) Assembly Constituency, Meghalaya have already recognised Pyndenglawar village as a separate village. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his *just* rights. They are not incantations to invoke or rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the individual or not on account of the denial to him of the opportunity of hearing has to be considered on the facts and circumstances of each case [see ***Managing Director, ECIL v. Karunakar, (1993) 4 SCC 727***]. On the facts and circumstances of the case so found, in my considered view, no prejudice could have possibly been caused to the petitioner for not giving him the notice before conducting the spot verification. Consequently, the impugned order does not suffer from procedural impropriety or illegality or *Wednesbury* unreasonableness.

11. For the reasons stated in the foregoing, there is no merit in this writ petition, which is hereby dismissed. However, on the facts and in the circumstances of the case, I pass no order as to costs.

JUDGE

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