

RESERVED

THE HIGH COURT OF MEGHALAYA

WP(C). No. 125 of 2011

1. **Shri. Goodnight L. Syiemlieh**, R/o Pyndengsynnia Village, Elaka Langrin, West Khasi Hills District, Meghalaya.

...Petitioner

-Versus-

1. **State of Meghalaya**, represented by the Secretary, District Council Affairs, Govt. of Meghalaya, Shillong.
2. **The Khasi Hills Autonomous District Council**, represented by its Secretary, Shillong.
3. **The Chairman**, Khasi Hills Autonomous District Council, Shillong.
4. **The Deputy Secretary**, Khasi Hills Autonomous District Council, Shillong.
5. **The Executive Member, i/c Elaka**, Khasi Hills Autonomous District Council, Shillong.
6. **Shri Nangtei Singh Syiemiong**, R/o Phlangmawprah, Langrin Syiemship, West Khasi Hills District, Meghalaya.
7. **Shri Edward Syiemiong**, R/o Pyndensynnai village, Langrin Syiemship, West Khasi Hills District, Meghalaya.
8. **Shri Leadership Syiemiong**, R/o Shnongkalong village, Langrin Syiemship, West Khasi Hills District, Meghalaya.

...Respondents

Shri. H. Kharmih, Advocate, Shri. SM Suna, Advocate, Shri L. Shongwan, Advocate, present for the petitioner.

Shri BB Narzary, Advocate, Shri N.D.Chullai, Sr. Govt. Advocate, Shri R.Gurung, Govt. Advocate, Shri. H.S.Thangkhiew, Sr. Advocate, Shri P.Nongbri, Advocate, present for the respondents.

Date of Hearing 14th July, 2014.

Date of Judgment & Order 18th July, 2014.

HON'BLE THE CHIEF JUSTICE,
and HON'BLE MR. JUSTICE S.R.Sen.

JUDGMENT AND ORDER

(ORAL: Hon'ble Prafulla. C. Pant, Chief Justice)

1. By means of this writ petition, the writ petitioner has challenged the constitutional validity of amendment made in Section 2 of the Khasi Hills Autonomous District Council (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act, 2010. The writ petitioner has further challenged the report dated 25-5-2009 of Executive Members of Khasi Hills Autonomous District Council (for short KHADC), and the consequential order dated 2-6-2009 passed by Executive Committee of KHADC. The writ petitioner has further sought his reinstatement to the post of Syiem of Langrin Syiemship.
2. Heard learned counsel for the parties and perused the papers on record.
3. Briefly stated, the writ petitioner has pleaded that he was duly elected as Syiem of Langrin Syiemship in the election held on 18-10-2000 and a Sanad to this effect was issued in his favour by the District Council. He has further pleaded that under KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2007, only the members belonging to Syiemlieh Clan or Syiemiong Clan of Langrin Syiemship are entitled to contest and hold the post of Syiem of Langrin Syiemship. It is further stated that KHADC (Nomination and Election of Syiem, Deputy Syiem,

Headman of Langrin Syiemship) (Second Amendment) Act, 2010 was passed whereby the definition of “Syiem Clan” given in clause (n) in Section 2 of the said Act was changed, and thereby the writ petitioner and other members of the Syiemlieh Clan are deprived of their right to contest and hold the post of Syiem of Langrin Syiemship, allegedly, in total disregard to the customs and practices prevailing in the Elaka from time immemorial.

4. It is also stated in the writ petition that earlier, WP(C) No. 271 (SH) of 2000 was filed by one U Edward Syiemiong (respondent No.7), against the present writ petitioner and said petition was dismissed vide order dated 1-11-2000 as infructuous. In said writ petition, U Edward Syiemiong had challenged the nomination for the election of Chief of Langrin Elaka on the ground that the present writ petitioner did not belonged to the clan. Thereafter, WP(C) No. 259 (SH) of 2000 was filed by one Stelin Syiemiong, challenging again the nomination of the writ petitioner for the election of Syiem of Langrin on the same ground, but the same was withdrawn and the Court directed Stelin Syiemiong to approach the Tribunal. It is alleged by the present writ petitioner that KHADC wrongly placed him under suspension vide order dated 30-9-2010 and appointed Shri Nangtei Singh Syiemiong (respondent No.6) as Acting Syiem.
5. KHADC passed the KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2007, on 29-10-2007 which received the assent of the Governor of Meghalaya on 12-3-2008, and was published in

the Gazzette of the State of Meghalaya on 25-3-2008. Said Act was passed with an object to safeguard and preserve the customs and practices prevailing within the Langrin Syiemship in the matter relating to administration, appointment and succession of Syiem, Deputy Syiem, Lyngdoh, Myntri and Headman of Langrin Syiemship.

6. The KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (First Amendment) Act, 2008, was passed amending clause (n) of Section 2 of the Principal Act and definition of "Syiem Clan" was widened to include both Syiemiong Clan and Syiemlieh Clan of Langrin Syiemship who are native residents of the Syiemship, and the genealogical table of the Syiemlieh Clan and Syiemiong Clan was shown in the Appendix –II and Appendix – III of said amended Act. However, strangely, Second Amendment Act i.e. KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act, 2010, was passed omitting the word "Syiemlieh Clan" and Appendix-III from the Principal Act. It is alleged on behalf of the writ petitioner that in 1985 when Shri. Clive Langrin Syiemlieh, brother of the writ petitioner, contested for the post of Syiem of Langrin Syiemship, objections were raised, and the Returning Officer of KHADC rejected the objections, and allowed him to contest the election.
7. It is alleged in the writ petition that the finding and report dated 25-5-2009 submitted by the Executive Members of District Council holding that the present writ petitioner is

neither from the Syiemlieh Clan nor from the Syiemiong Clan, nor from the Langrin Syiemlieh Clan but from Lyngdoh Langrin Clan is against the facts and the evidence on record. It is also pleaded that the authority concerned failed to read the evidence correctly. It is stated in the writ petition that TS. No. 6 of 2006 is filed on this issue (by Nangtei Singh Syiemiong, respondent No.6) in 2006, and the finding of KHADC before the decision in said lis, is erroneous in law. It is also pleaded that though complaint relating to misconduct was made against the writ petitioner who was appointed Acting Syiem, but he was reinstated vide order dated 4-3-2008 and charges were withdrawn vide order dated 26-5-2008. However, vide order dated 2-6-2009, on the basis of finding and report dated 25-5-2009 submitted by the Executive Members, the writ petitioner was illegally suspended from the post of Acting Chief and in his place respondent No.6 was appointed as Acting Chief of the Syiemship. It is alleged that the Second Amendment in the Principal Act has been passed at the behest of vested interest due to personal enmity, as such, the same is liable to be declared null and void. It is pleaded that the respondent cannot be allowed to get wrongful gain and cause wrongful loss to the petitioner with malifide intent.

8. On behalf of respondents No. 2, 3, 4 and 5, Secretary of Executive Committee of KHADC has filed the counter affidavit denying the allegations made in the writ petition. It is pleaded in said counter affidavit that the writ petition does not fulfill the criteria laid down by the Apex Court for challenging validity of enactment. It is stated that no

constitutional infirmity has been mentioned in the writ petition as to the impugned KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act, 2010. It is further pleaded that neither there is lack of legislative competence nor any violation of constitutional provisions in passing the KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act, 2010. It is further stated on behalf of answering respondents that the law in question has been enacted by KHADC by exercising powers under paragraph 3 of the Sixth Schedule of Constitution of India. It is further pleaded that in Langrin Syiemship only two Clans namely, Syiemlieh Clan and Syiemiong Clan are eligible to hold the post of Syiem of Langrin Syiemship, and the petitioner, being Member of Lyngdoh Clan cannot claim post of Syiem of Langrin. It is alleged that the writ petitioner is a direct descendant of Ka Kyrwatiang Lyngdoh Langrin, and as such there is no violation or infringement of his fundamental right guaranteed under the Constitution of India. It is further alleged that petitioner's brother, Shri. Clive Langrin who contested the election on 18-10-2000 was not eligible to hold office of Syiem of Langrin Syiemship, and he lost to U Bakingstar Syiemiong. As far as election of writ petitioner is concerned, that too, was challenged before the Election Tribunal of the District Council, but the petition was abated due to the death of the Election Petitioner. Thereafter the dispute relating to eligibility of writ petitioner was examined by the Executive Committee under orders of the High Court. It is further stated

that in the enquiry, hearing was given to the concerned parties before finding was given in the report dated 25-5-2009 whereby it was found that Goodnight Langrin (present petitioner) belongs to Lyngdoh Langrin Clan and said finding was accepted by the Executive Committee of the KHADC vide its impugned order dated 2-6-2009. It is further alleged by the answering respondents that the writ petitioner was placed under suspension on the basis of the complaints received from the public against him. It is also stated that under the KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2007, Syiem Clan means Syiemiong Clan of Langrin Syiemship who are direct descendants from the womb of Ka Roin Syiemiong, Ka Siang Syiemiong and Ka Labon Syiemiong. The Syiemlieh Clan was not shown in the Principal Act as said Clan had become non-existent after the death of U Dolising Syiemlieh. It is further stated on behalf of respondents No. 2, 3, 4 and 5 that by the First Amendment, Langrin Syiemlieh Clan was included in the definition of the Syiem Clan in Section 2(1) and Appendix III was added to it but after death of U Dolising Syiemlieh, the Syiemlieh Clan has become non-existent and the Second Amendment in the Act was accordingly needed. It is further pleaded that vide order dated 16-3-2009 passed in WP(C) No. 248 (SH) of 2008, the High Court directed the complainant (writ petitioner of said case) to make representation before the Executive Committee. Said order was challenged by the present writ petitioner who filed Writ Appeal. No. 4 (SH) of 2009, and the Division Bench of the High Court disposed of the writ appeal

directing that the appellant (present writ petitioner) shall be heard before disposal of the representation made by the complainant. As such, the impugned finding and report dated 25-5-2009 suffers from no illegality and the Executive Committee of KHADC has committed no error of law in accepting the same vide order dated 2-6-2009 challenged in this writ petition. It is also pointed out in paragraph 11 of said counter affidavit that in the Electoral Roll prepared in 1995, the writ petitioner's name has been shown simply as "Gudnait Lyngdoh" at Sl. 253, the same name has been repeated in the Electoral Roll of 1999 at Sl. 324 and in the Electoral Roll of 2002 at Sl. 334.

9. The respondent No.6 has filed separate counter affidavit, and in substance, it has been stated that the writ petitioner does not belong to Syiem Clan of Langrin Syiemship. Rather he hails from Lyngdoh Clan of Langrin Syiemship who is direct descendant of Ka Kyrwatiang Lyngdoh Langrin. As such, he cannot occupy the Chair of Syiem of Langrin Syiemship either legally or customarily. It is further stated that the petitioner belongs to none of the two royal families of Syiemship, namely, Syiemlieh (White Branch) and Syiemiong (Black Branch). It is further stated in the counter affidavit of respondent No.6 that with the death of U Dolising Syiem in 1984, none of the members of Syiemlieh Clan of Langrin Syiemship existed. Defending the impugned enquiry report, it is stated that oral evidence and documentary evidence was adduced by both sides before Shri S. Kharsyiemlieh, the then Additional District Judge, District Council Court, before the issue was examined as to the Clan

of the petitioner. It is also pleaded by respondent No.6 that though two Clans namely, Syiemiong and Syiemlieh are eligible to the office of Syiem of Langrin Syiemship, there is no evidence on record to show that the present writ petitioner is nephew of U Dolising Syiem. It is further stated that merely by changing the title, one is not entitled to hold office of Syiemship. As to the petitioner's brother, U Clive Lyngdoh Syiemlieh, it is pleaded that he contested the Syiemship of Langrin, but the electors did not vote him, and he lost the election.

10. Separate counter affidavit has been filed on behalf of respondents No. 7 and 8 who also denied the allegations made in the writ petition. It is stated in their counter affidavit also that the writ petitioner does not belong to the Clan entitled to contest election of office of Syiem of Langrin Syiemship. It is stated as pleaded by other respondents that only the members of Syiemiong and Syiemlieh Clan were entitled to contest the election of said office, and now Syiemlieh Clan has become extinct with the demise of Late U Dolising Syiemlieh.
11. In the rejoinder affidavits, the writ petitioner has reiterated the pleas taken in the writ petition.
12. Before further discussion, we think it just and proper to mention here that as to the legislative competence of KHADC to enact the law challenged, is not seriously questioned. Rather during arguments, learned counsel for the writ petitioner conceded that KHADC has the power to enact the law under paragraph 3 of Sixth Schedule of the

Constitution. On behalf of the writ petitioner, it is argued that the amendment in question (Second Amendment) is directed only to harm the writ petitioner's interest, as such, it is discriminatory and violative of Article 14 of the Constitution of India. To examine this argument, we think it just and proper to get the relevant provisions of original law and amended laws. Section 2 (n) of KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2007, i.e. Principal Act originally stood as under:

(n) "Syiem Clan" means the Syiemiong Clan of Langrin Syiemship who are the descendants from the womb of Ka Roin Syiemiong, Ka Siang Syiemiong and Ka Labon Syiemiong. The genealogical table of the Syiem's family of Langrin Syiemship is as shown in the Appendix - I of this Act. The Syiemlieh Clan of Langrin Syiemship has become extinct since the death of (L) Dolising Syiem."

13. Perusal of the First Amendment Act, i.e. KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (First Amendment) Act, 2008, shows that it was this amendment by which Section 2 (n) Syiemlieh Clan was included in the definition of Syiem Clan whereafter Section 2 (n) stood changed as under:

(n) "Syiem Clan" means the Syiemiong and Syiemlieh Clan of Langrin Syiemship who are the native residents of the Syiemship. The genealogical table of the Syiemiong Clan and the Syiemlieh Clan of Langrin Syiemship is as shown in Appendix – II and Appendix – III respectively of this Act."

14. Now we come to the further amendment (i.e. questioned one) made in the aforesaid Act, KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act, 2010, which provides amendment of Section 2 of the Principal Act and reads as under:

“The words “and the Syiemlieh Clan” as well as the words “and Appendix – III respectively” appearing in the second and third lines of Section 2 (n) shall be omitted.”

15. As such, by the Second Amendment, the original definition of Syiem Clan has been restored. Therefore, the argument advanced on behalf of the writ petitioner that the impugned amendment was made only to deprive the members of his Clan from contesting the election cannot be said to be correct, particularly when from the report dated 25-5-2009, submitted by the Executive Member, it appears that the writ petitioner “Gudnait Lyngdoh” was not found belonging to either Syiemlieh Clan or Syiemiong Clan. He was found to be member of Lyngdoh Langrin Clan.
16. It is contended on behalf of the writ petitioner that the Inquiry Officer has misread the facts and evidence on record and the finding against the writ petitioner is not correct. However, It is relevant to mention here that we are not sitting as an Appellate Authority to examine the correctness of said report. In our opinion, the Executive Committee of KHADC committed no illegality in accepting the said report dated 25-5-2009, and passing the impugned order dated 2-6-2009 (copy Annexure - X to the amended writ petition). Perusal of

the impugned report dated 25-5-2005 (copy Annexure – IX to the amended writ petition) submitted by the two Executive Members of KHADC shows that the same is well discussed and it appears that not only the evidence on record was discussed, but arguments of the counsel for the parties were also considered. From the papers on record, it further reveals that the inquiry was made in compliance to the order dated 31-3-2009 passed in WA. No. 4 (SH) of 2009, by the Division Bench of the High Court.

17. Our attention is drawn on behalf of the writ petitioner to the principle of law laid down in ***P. Venugopal vrs Union of India (2008) 5 SCC page 1*** in which the Apex Court has held, proviso added to Sub-Section I (A) of Section 11 of All India Institute of Medical Sciences Act, 1956 as unconstitutional. We have carefully gone through said case law. The Apex Court has found that legislation creating invidious discrimination are invalid. But in the present case, though the writ petitioner has pleaded that the impugned amendment was brought about to deprive him from contesting the election, but he was not entitled to contest the election even under the original definition contained in the KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2007, as it stood prior to 2008. It was only after the 2008 amendment (i.e. First Amendment Act) which was undone by the Second Amendment Act, that too, after the inquiry report was received by KHADC, and the inquiry was conducted as directed by the High Court. Therefore, the facts of the

present case cannot be said to be similar to the case of P.Venugopal (Supra).

18. Similarly, the case of ***Dinnapati Sadasiva Reddi vrs Vice Chancellor, Osmania University AIR 1967 SC page 1305***

relied on behalf of writ petitioner is of little help to him for the reasons already discussed above.

19. As far as the plea of the writ petitioner that he was appointed Acting Chief of the Syiemship is concerned, we think it relevant to quote Section 11 of the United Khasi Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headman) Act, 1959 (as amended), which reads as under:

“11. Appointment of Acting Chief :- (1) *If at any time the post of Chief becomes vacant as a result of death, resignation, expiry of tenure of office, removal or the Chief is under suspension, the Executive Committee may by order in writing appoint the Deputy Chief or any Khasi male adult belonging to customary ruling clan of the Elaka and/or is a native of the Elaka concerned to act as an Acting Chief, who shall exercise all the powers and function of the Chief.*

An Acting Chief will remain in office until appointment of a new chief or until further order of the Executive Committee whichever is earlier.

(2) *Whenever, there is a change of incumbent on account of sub-section (1) above there shall be a proper taking and handing overcharge of office properties duly recorded in writing between the predecessor and the successor incumbent in the presence of the witnesses.*

Any deliberate or willful violation of this provision shall be treated to be an act of criminal breach of trust and the incumbents be proceeded with accordingly.”

20. The above quoted Section makes it clear that not only Deputy Chief, or any Khasi male adult of the concerned Clan, but also a native of Elaka (even if he is not member of Clan) could be appointed as Acting Chief. As such, merely

for the reason that the writ petitioner was once appointed as Acting Chief, it cannot be said that he belongs to the Clan of Syiemlieh. (It has come on the record that after the complaints were received against him, he was suspended from the post of Acting Chief, and respondent No.6 was appointed on said post). In our opinion the questioned KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) (Second Amendment) Act 2010, does not violate any constitutional provision of law nor is it discriminatory.

21. For the reasons as discussed above, we find no ground to hold amendment made in Section 2 (n) of KHADC (Nomination and Election of Syiem, Deputy Syiem, Headman of Langrin Syiemship) Act, 2010, as unconstitutional, nor is there any ground to quash the inquiry report dated 25-5-2009 or the order dated 2-6-2009 passed by the KHADC based on the inquiry report.
22. Therefore, the writ petition is dismissed. No order as to costs.

(Hon'ble Mr Justice S.R.Sen)
JUDGE
18th July, 2014

(Prafulla C. Pant)
CHIEF JUSTICE
18th July, 2014.

S.Rynjah