

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WP(C) No. 30 of 2015

Shri Auxilius Syiem Nongbah

..... Petitioner

-Vrs-

1. Khasi Hills Autonomous District Council,
Shillong, represented by its Secretary.
2. Executive Committee,
Khasi Hills Autonomous District Council,
Shillong
3. The Executive Member I/C Elaka
Administration etc, Khasi Hills
Autonomous District Council,
Shillong.
4. The Joint Secretary to the Executive
Committee, Khasi Hills Autonomous
District Council, Shillong
5. Returning Officer,
Khasi Hills Autonomous District Council,
Shillong
6. Shri Hindro Samakha,
Sirdar of Hima Raid Mynsaw,
West Khasi Hills District

..... Respondents

**BEFORE
THE HON'BLE MR JUSTICE SR SEN**

For the Petitioner : Mr. P. Nongbri Adv.

For the Respondent s : Ms. P.S. Nongbri, Adv.

Date of hearing : **31.07.2015**

Date of Judgment & Order : **31.07.2015**

JUDGMENT AND ORDER (ORAL)

The petitioner's case in a nutshell is that:

"This is an application under Article 226 of the Constitution of India praying for a writ in the nature of mandamus directing the respondents to take fresh decision on the issue whether the Nongmynsaw Syiemship should be restored to its original status or should continue as a Raid in compliance to the directions contained in the order dated 18.10.2010 of this Hon'ble Court and further to suspend the elections due to be held on 11.03.2015 pending hearing.

The brief fact of the case is that Nongmynsaw Syiemship was one of the prominent and independent Khasi states prior to the advent of the British in the year 1826. The ancestors of the Syiem Nongbah clan belonging to the Khasi Muliang community were the founders and the rulers of this syiemship. The Syiem Nongbah clan being the founding clan of Nongmynsaw Syiemship, all administrative affairs of this syiemship including the appointment of the Chief (Syiem) were being carried out in accordance with the ancient customs and usages of the Khasi Muliangs. The appointment of Syiem/Deputy Syiem is always hereditary and only the surviving members who are presently living at the villages of Langpih, Mawdiengsnam, Nongma etc. are the only legal heirs that can be appointed as the Syiem/Deputy Syiem of this Elaka.

Since ancient times and till date Nongmynsaw Syiemship is a neighbouring syiemship of the Nonglang, Riangsih, Jyrngam, Nongstoin, Rambrai, Jirang and Nongkhlaw States. Till date it is only the Syiem Nongbah clan who has occupied the office of Syiem. All the Syiem (Rajahs) belong to the Syiem Nongbah clan were the Khasi Muliangs. The custom prevalent therefore was that only a male adult who is a Khasi Muliang of the Syiem Nongbah clan was and is eligible to be appointed as the Syiem/Deputy Syiems of Nongmynsaw Syiemship. During the British Rule, alien Government namely, the British had recognized and approved Nongmynsaw Syiemship as one of the States in Khasi-Jaintia Hills including a place called Langpih as per the boundaries mentioned in purwana No. 97 dated 27.12.1873.

As per the prevailing customs and usages of Nongmynsaw Syiemship, the Syiem Nongbah clan is the only clan that is eligible for appointment as the Syiem/Chief of the Elaka. The Myntris, the Kongors and the Headmen who are the male adults belonging to the Khasi/Khasi Muliang/Khasi-Lyngngams are the only electors eligible for appointment of the Syiem/Deputy Syiem of Nongmynsaw Syiemship. After India independence and after the coming into force of the Constitution of India in the year 1952 villages that fell under Nongmynsaw Syiemship were included in the Electoral Rolls of the United Khasi & Jaintia Hills District Council and later on under Nongstoin Constituency.

In the year 1963, the Clan Durbar of Syiem Nongbah Clan together with some elders had unanimously resolved and appointed Shri Lesly Roy Swangrei (Bah Bandyng) the husband of Mrs. Mittimai Syiem Nongbah to be the Chief of Nongmynsaw Syiemship. However, the same did not fructify inasmuch as the same was not pursued in the right manner. The issue and the existence of Nongmynsaw Syiemship was never disputed but the only challenge was to restore the same to status of Syiemship at par with other Khasi Syiemships and further that the nomination and succession to be as per custom established.

Representations dated 20.10.2008 and 04.04.2009 was made consequent to the resolution of the Clan Durbar held on 02.06.2008 at Langpih wherein U Phlowing Syiem Nongbah of Mawdiengsnam village had been nominated to be the Acting Syiem of Nongmynsaw Syiemship with Langpih as the Headquarter. The respondents without hearing the petitioner and his clan in a most arbitrary manner, vide impugned Notification dated 02.06.2009 did not recognize the status of Nongmynsaw as a Syiemship but instead renamed Nongmynsaw Syiemship as Hima Raid Mynsaw which is absolutely contrary to the prevailing customs and usages. The respondent No. 6 was appointed as full fledged Sirdar of the renamed Hima Raid Mynsaw.

Being aggrieved by the aforesaid Notification dated 02.06.2009, the petitioner then filed a writ application being W.P. No. 188 (SH) of 2009 praying for quashing and setting aside of the Notification dated 02.06.2009. This Hon'ble Court after hearing the parties vide order dated 18.10.2010 was pleased to remand back to

the respondent No. 2 for final adjudication. The petitioner, by way of abundant caution, then submitted a letter dated 20.01.2011 before the respondent No. 2 as a reminder of the order dated 18.10.2010 passed by this Hon'ble Court. The petitioner on several occasions requested the respondents to take up the matter but the respondents have turned a blind eye to the request of the petitioner. On seeing this, the petitioner again submitted representations dated 20.08.2013, 25.10.2013 and 30.10.2013 praying to expeditiously take up the matter. Since the matter was not taken up, the petitioner then through his counsel also issued a Legal Notice for taking steps to hear the matter.

The respondents finally vide letter dated 16.12.2013 informed the petitioner and other parties to be present on 20.12.2013 for hearing but due to adjournment the matter was refixed on 15.01.2014. But, again since there was some personal difficulty on the part of the counsel for the petitioner the matter was not taken up and since then, the matter has been kept in cold storage. On seeing that the matter was not moving, nor a new date fixed, through his counsel, again issued a Legal Notice on 07.07.2014 for compliance of the order dated 18.10.2010 passed by this Hon'ble Court. However, till date no steps have been taken by the respondent No. 2, to take up the matter.

Instead the respondents in utter disregard to the order dated 18.10.2010 passed by this Hon'ble Court, introduced a Bill pertaining to the nomination and election of Sirdar and Sordar Nongmynsaw Sirdarship and the same was introduced in the session of the Khasi Hills Autonomous District Council in October 2014, and the same was accordingly passed but vide letter dated 24.10.2014 Bill was returned with a direction to fulfill and comply with all the necessary requirements and to resubmit the same.

Suddenly, the petitioner came to learn that the respondent No. 2 behind the back of the petitioner vide letter dated 19.01.2015 has notified for the holding of elections in Hima Raid Mynsaw and has also invited interested candidates to file their nominations papers. Further, the respondent No. 2 vide letter dated 23.02.2015 has notified that the elections will be held on 11.03.2015 from 8.00 am to 4.00 pm. The entire exercise has been conducted without the knowledge and behind the back of the

petitioner's clan that too by deliberately violating the order dated 18.10.2010 passed by this Hon'ble Court. The petitioner on coming to learn about the proposed elections, immediately submitted a letter dated 03.03.2015 requesting to keep the election due to be held on 11.03.2015 in abeyance and to conduct the hearing to firstly decide the issue whether the Nongmynsaw Syiemship should be restored to its original status or should continue as a Raid.

The core issue in this entire matter is that the petitioner belongs to the Syiem Nongbah Clan which the ruling clan of Nongmynsaw Syiemship. As laid out in the preceding paragraphs, the prevailing customs and usages of Nongmynsaw Syiemship, is that the Syiem Nongbah clan is the only clan which is eligible for the appointment as the Syiem. Further, as per the established custom and usage of Nongmynsaw Syiemship, the Myntris, the Kongors and the Headmen who are the male adults belonging to the Khasi/Khasi Muliang/Khasi-Lyngngams are the only electors eligible for appointment of the Syiem/Deputy Syiem of Nongmynsaw Syiemship. As such, if the holding of elections is allowed at this stage wherein ineligible clans are allowed to contest, the claim of the petitioner's clan to restore Nongmynsaw Syiemship to its original status will be a futile exercise. Further the issue and the existence of Nongmynsaw Syiemship was never disputed but the only challenge was to restore the same to status of Syiemship at par with other Khasi Syiemships and further that the nomination and succession to be as per custom established.

The actions of the respondents is not taking a decision as to whether the Nongmynsaw Syiemship should be restored to its original status or should continue as a Raid which is pending for more than 4 (four) years is highly illegal and irregular. Further, the actions of the Respondents in calling for elections behind the back of the petitioner are in violation of the principles of natural justice. The respondents has deliberately violated the order dated 18.10.2010 passed by this Hon'ble Court whereby it has directed to take a fresh decision on the issue whether the Nongmynsaw Syiemship should be restored to its original status or should continue as a Raid. Furthermore, the respondent acted illegally and irregularly in calling for elections that in spite of the fact that Bill pertaining to the nomination and election of Sirdar and Sordar

Nongmynsaw Sirdarship being returned by the Governor for resubmission on certain aspects as earlier mentioned. The announcement of elections is based on the returned Bill with a view to circumvent the orders of this Hon'ble Court and the requirements of law, in the passing of the Bill. As such the respondents are liable to be directed to take up the matter and dispose the same forthwith and further to suspend the purported election due to held on 11.03.2015. Therefore it is a fit case for interference by this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India”.

2. Mr. P. Nongbri, learned counsel appearing for and on behalf of the petitioner submits that, the petition is pending before the Executive Committee, Khasi Hills Autonomous District Council, Shillong (For short 'KHADC') pertaining to the matter to decide the status whether, it should be Raid Nongmynsaw or Nongmynsaw Syiemship, but the Executive Committee, KHADC, Shillong did not take any step inspite of the order passed by this court earlier on 18.10.2010. The learned counsel further submits that, there is a new development because the KHADC, Shillong has issued a letter dated 19th June, 2015 fixing 10th July, 2015 for hearing on the said petition, but due to the pendency of this case, hearing could not take place. The learned counsel also further submits that, since the KHADC, Shillong is willing to hear the parties; the matter can be disposed of.

3. Ms. P.S. Nongbri, learned counsel appearing for the respondents No. 1-5 (KHADC) submits that, she could not file the counter affidavit till date and she has also consented that, if the matter is disposed of, she has no objection.

4. Considering the submissions advanced by the learned counsel at Bar, the Executive Committee, KHADC, Shillong is hereby directed to fix a fresh date and to hear the parties and to disposed of the matter expeditiously.

5. Accordingly, the notification dated 23.02.2015 is hereby quashed.

6. Let the Executive Committee, KHADC, Shillong complete the whole exercise within 3(three) months from the date of this order.

7. With these observations and directions, the instant writ petition stands disposed of.

JUDGE

D. Nary