

THE HIGH COURT OF MEGHALAYA

WP(C). No. 175 of 2016

Shri. Smiling Sohmad,
Son of (L) D. Tynhiang
Resident of Riangsih Sirdarship
West Khasi Hills District,
Meghalaya.

... Petitioner

-Versus-

1. The Khasi Hills Autonomous District Council,
Shillong through its Secretary, Shillong.
2. The Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.
3. The Executive Member, In-Charge
Elaka Administration etc,
Khasi Hills Autonomous District Council,
Shillong.
4. The Deputy Secretary to the
Executive Committee,
Khasi Hills Autonomous District Council,
Shillong.
5. The Sirdar Riangsih Sirdarship,
West Khasi Hills District, Myndo.
6. Shri Aldinal Sohmad,
S/o N.Nonglang,
R/o Myndo Village Riangsih Sirdarship,
B.P.O. Umsohpieng – 793126,
West Khasi Hills District, Meghalaya.
7. Shri Blastarland Sohmad,
S/o M. Nianglang,
R/o Mawlien Village,
Riangsih Sirdarship,
B.P.O. Umsohpieng – 793126,
West Khasi Hills District, Meghalaya.

8. Shri. Dios Sohmad,
S/o (L) H.Nongbri,
R/o Mawnar Village,
Riangsih Sirdarship,
B.P.O. Umsohpieng – 793126,
West Khasi Hills District, Meghalaya.

...**Respondents**

**BEFORE
THE HON'BLE MR. JUSTICE S.R.SEN
CHIEF JUSTICE (ACTING)**

For the petitioners	:	Mr. H.L.Shangreiso, Adv.
For the respondents	:	Mr. N.D.Chullai, Sr. Adv. Mr. A.Pakyntein, Adv. Ms. P.S.Nongbri, Adv. Mr. S.Changkija, Adv.
Date of hearing	:	24-04-2018
Date of Judgment	:	24-04-2018

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. H.L.Shangreiso, learned counsel on behalf of the petitioner as well as Ms. P.S.Nongbri, learned counsel on behalf of the respondents No. 1 to 4, Mr. N.D.Chullai, learned Sr. counsel assisted by Mr. A.Pakyntein, learned counsel on behalf of the respondent No. 6 and Mr. S.Changkija, learned counsel on behalf of the respondent No. 5.

2. The petitioner's case in a nutshell is that:

"The brief fact of the case is that the Office/Judicial durbar of Riangsih Sirdarship vide notification dated 20th November 2013, wrote to the secretaries/ Presidents of the Durbar Kurs (clans) of

the Sohmad clan to submit the name(s) of the eligible candidates for the post of the Deputy Sirdar who have the qualifications as prescribed in rule 7 of the said Rules, 2004 but the respondent no. 6, 7 & 8 submitted their own names which was strongly objected by Shri R. Sohmad and Shri Phiewshorland Sohmad, President and Secretary respectively of the Durbar Kur (Clan) vide their objection letter dated 25-04-2014 as they are not the elder maternal uncles but are the nephews/ grand nephew and are not eligible as per the prevailing custom, the copy of the objection application dated 25-04-2014 was send to the respondent no. 6 & 7 on the 28th of April 2014 by the Secretary Riangsih, Sirdarship through postal office with a direction to the respondents to file their show cause over the said complaint within a period of 15 (fifteen) day from the date of the receipt of the letter, however the said letter was redirected to the Secretary Riangsih, on the ground that the respondent no.6 and 7 refused to receive the same. Seeing that the private respondents no. 6 & 7 pay no heed to the letter dated 28th April 2014 with regard to the objection application filed by President and Secretary of the Durbar Kur Sohmad, the same was also published on the 11-07-2014 on the local daily i.e. Mawphor, thereby directing the whole of Hima and the respondents 6 & 7 to file their show cause over the said objection application but in spite of the same the Private Respondent pay no heed over the matter and after exhausting/ taking all steps for issuance of the show cause notice the order dated 09.08.2014 was passed by the Sirdar Riangsih upholding the prevailing custom of the Durbar Kur i.e., only the male adults of the Sohmad clan who are the elder maternal uncles are eligible to file the nominations for the post of the Deputy Sirdar/Sirdar and accordingly rejected the candidature of the respondent No. 6, 7 & 8 as they are not the maternal uncles as per the prevailing customs of the Sohmad clan and thus has violated Rule 7 of the said Rules, 2004 and accordingly the Secretary of Riangsih, in order to enforce Section 8 of the (Appointment and Succession of Sirdar and Headman of Riangsih Sirdarship) Act 1995 vide letter

dated 30th September, 2014 call upon all the approved electors who are of the male adults to come on 18th of October 2014 to cast their vote in order to elect a New Deputy Sirdar and the only candidate found to be eligible for the post of the Deputy Sirdar is the writ petitioner and vide a proceeding dated 18th October, 2014 the candidature of the writ petitioner was confirmed whereby the respondent Sirdarship by its letter No. RS/ED/Official/10/2014/2 dated 01.11.2014 wrote to the Executive Committee of the respondent District Council for according approval as per the provision of the Section 8 (1) of the said Act, 1995 to enable the petitioner to exercise the powers to be delegated by the Executive Durbar of the respondent Sirdarship.

However being aggrieved by the same the Private Respondents No. 6 filed an Political Appeal before the Khasi Hills Autonomous District Council registered as Political Appeal No. 3 of 2014 challenging the Order dated 09-08-2014 passed by the Sirdar Riangsih and to the surprised of the writ petitioner the District Council, Shillong by its Order dated 25.01.2016 in Political Appeal No. 3 of 2014 directed the Office of the respondent Sirdarship to ascertain clearly which of the two Durbar Kur has the majority support of the members is a gross violation of the basic tenet and customary practice of the Sohmad clan and the same cannot be sustained in the eye of law, as much as the same has been passed by the respondent No. 2 in not discharging the power/function vested on it as an Appellate Authority under Section 5 of the said Act, 1995 and moreover, without referring/dealing the contentious issues or grounds raised in the appeal and for consideration/decision of the same on merits but it rather summarily disposed of the instant appeal with a direction to hold the aforementioned referendum in the matter which is perverse, arbitrary and bad in law and as such the same is liable to be set aside and quashed.

Under the above circumstances, the writ petitioner with folded hands filed this writ before this Hon'ble Court under Article 226 of the Constitution of India

for an appropriate remedy as Your Lordship may be deemed fit and proper.”

3. Mr. H.L.Shangreiso, learned counsel for the petitioner submits that he has no objection if election is held as per the prevalent customs and practices, to which all the learned counsels for the respondents also agreed.

4. Considering the submissions advanced by the learned counsels for the parties, the impugned order at page 62 of the writ petition dated 25th January, 2016 passed by the Executive Member i/c Elaka Administration etc, Khasi Hills Autonomous District Council, Shillong is set aside. It is hereby directed that the Khasi Hills Autonomous District Council, Shillong shall direct the Sirdar to conduct fresh election of the village in question as per the prevalent customs, practices and rules.

5. With this observation and direction, this instant petition is allowed to that extent and stands disposed of.

CHIEF JUSTICE (ACTING)

S.Rynjah