

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P(C) No. 948 of 2019

Gainaichung Malangmei

....Petitioner

-Versus-

State of Manipur & 2 Ors.

....Respondents

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

Order

28.11.2019

Heard Mr. NG. Premkumar, learned counsel for the petitioner. Also heard Mr. M. Rarry, learned Addl. A.G., Manipur appearing on behalf of all the respondents.

[2] By this writ petition, the petitioner is challenging the notice dated 22.11.2019 which reads as under:

**"GOVERNMENT OF MANIPUR
OFFICE OF THE SUB DIVISIONAL OFFICER
KANGCHUP GELJANG**

**NOTICE OF ELECTION
Kangchup, the 22nd Nov, 2019**

No. SDO1/2/V AE (K-G)/201/59 In pursuance of Deputy Commissioner, Kangpokpi vide letter No. DC(KPI)/3/10/2017/1360 dated the 21st Nov,2019 having reference to the Hon'ble High Court order dated the 13th Sept,2019 and the provision under section 3 of the Manipur(Village Authorities in Hill Area) Act 1956, I am to inform you that the Village Authority Election/ Khullakpa should be held in respect of Pongringlong (Charoipandongba village) of this Sub Division as per rule.

The said Election shall be Schedule to be held on the 28/11/2019 (Thursday) at 10.30 and to 2:30 pm at the location of Primary Health Sub Centre, Pongringlong (Charoipandongba) Village under appropriate procedure as per

provision of the said Village Authority Act in Hill areas Act 1956 and the following officials are empowered to conduct the same and the overall in charge of the same will be done by the Shri Koijam Pochou SO/Kangpokpi Geljang TD Block

Name of the officials who assigned for the said purpose viz.

- 1.P. Ranna Singh PA, SDO/BDO/K Geljang.*
- 2. E. Gourakishor Singh Mandol/SDO/BDO/K Geljang*
- 3. S. Puneshwar Singh, Lambu/SDO/BDO/k Geljang*
- 4.S. Tombisana Singh, Peon/SDO/BDO/ K Geljang*

Further, they are directed to ensure proper recording/conducting the proceeding of the said election after due observation of proper proceedings like finalization of list of contesting candidates etc. and please do ensure that all the said procedure(s) should be completed in between the 8 A.M. sharp of the very day of the said election.

*Sd/-
(T. Opendro Singh)
Sub Divisional Officer,
Kangchup Geljang”*

[3] Learned counsel for the petitioner submits that there was a dispute between the petitioner and one Mr. Lungaingam Gonmei for the Khullakpa/ Headman of Pongringlong/ Charoipandongba Village and therefore, the petitioner filed WP(C) No. 826 of 2008 which was disposed of on 10.07.2009 observing that there is serious disputed questions of facts as to the Khullakpa/ Headman of Pongringlong/ Charoipandongba village and directed the present petitioner to approach the Civil Court. Being aggrieved the petitioner filed W.A. No. 52 of 2009 before the Division Bench of the Gauhati High Court which was disposed of by judgment and order dated 05.02.2010 directing the petitioner and the said Mr. Lungaingam Gonmei to appear before the Deputy Commissioner, Senapati who will conduct an enquiry into the matter and in case, the petitioner is found to be

the Khullakpa of Pongringlong/ Charoipandongba Village, necessary steps should be taken for appointing him as Ex-officio Chairman of the village authority of Khullakpa of Pongringlong/ Charoipandongba Village and if not, there shall be election for the Village Authority of Khullakpa of Pongringlong/ Charoipandongba village according to law. Thereafter, the learned Deputy Commissioner, Senapati by an Order dated 07.12.2011 passed in Hill Misc. case No. 02 of 2010 came to the conclusion that all the relevant documents available with the concerned Revenue Offices, bears the name of the petitioner as Khullakpa and consequently, he was constrained to go with the claim of the petitioner of being the Khullakpa of his village. It was also observed that this in actual effect may also mean that the petitioner is also the Ex-officio Chairman of the village Authority.

Thereafter, the Addl. Joint Secretary (TA & Hills), Government of Manipur issued an Order dated 18.01.2013 notifying the petitioner, Khullakpa of Pongringlong/ Charoipandongba Village as the Ex-officio Chairman of Pongringlong/ Charoipandandongba Village.

[4] The contesting party, namely, Mr. Lungaingan Gonmei along with 3 (three) others again filed an Original Suit No. 1 of 2012/2/2012 against the petitioner before the learned Additional District Judge (First Tract Court) Manipur West with regard to the

Khullakpa of the said Pongringlong/ Charoipandongba Village. The Court of the learned Addl. District Judge(FTC) in Misc. Case No. 3 of 2012/ 20 of 2012 passed an order dated 08.08.2013 holding that the Order dated 07.12.2011 passed by the learned Deputy Commissioner, Senapati District, Manipur in Hill Misc. No. 52 of 2019 shall continue to operate.

Thereafter, WP(C) No. 934 of 2016 was filed by one Mr. Gainaichung Malangmei against the State Government of Manipur and one, Mr. Lanirei Daimei challenging the order dated 28.09.2016 passed by the Tribal Affairs and Hills Department whereby one Lanirei Daimei was recognized as Khullakpa-cum-Ex-officio Chairman of Pongringlong Hill Village Authority. Another writ petition being WP(C) No. 428 of 2015 was filed by the Pongringlong/ Charoipandongba Hill Village Authority praying for a direction for allowing to implement the MGNREGS Scheme through the petitioner Village Authority.

[5] This Court by a common judgment and Order dated 13.09.2019 disposed of the said two writ petitions directing the State respondents in WP(C) No. 934 of 2016 to conduct election for the Village authority of Khullakpa of Pongringlong/ Charoipandongba Village in accordance with law within a period of 3 (three) months from the date of the Order along with other directions. Thereafter, the impugned notice dated 22.11.2019,

extracted hereinabove, was passed by the Sub Divisional Officer, Kangchup Geljang.

[6] Learned counsel for the petitioner submits that the petitioner is the Khullakpa of Pongringlong/ Charoipandongba Village as per the customary practices. The petitioner continues to be the Khullakpa till his death or on being removed by his clan members. However, till date, he has not been removed by his clan members and in terms of the Order dated 07.12.2011 passed by the Deputy Commissioner, Senapati in the Hills Misc. case No. 02 of 2010, he continues as the Khullakpa. However, by the notice dated 22.11.2019, the respondents are intending to have an election of the Village Authority as well as Khullakpa of Pongringlong/ Charoipandongba Village which is not permissible in view of the customary practices followed by the villagers. He submits that the petitioner has no objections with regard to the election of the Village Authority, however, as he continues to be the Khullakpa of Pongringlong/ Charoipandongba Village, there can be no election of Khullakpa as intended in the notice dated 22.11.2019.

It is also clarified by the learned counsel for the petitioner that the petitioner is not aggrieved with the common judgment and order dated 13.09.2019 passed by this Court in WP(C) No. 934 of 2016 and WP(C) No. 428 of 2015. However, the

directions of this Court has been misconstrued by the respondents and has wrongly issued a notice dated 22.11.2019 directing for having an election of the Khullakpa of Pongringlong/Charoipandongba Village.

In that view of the matter, he submits that the notice dated 22.11.2019 be quashed and set aside in so far as election of Khullakpa of Pongringlong/ Charoipandongba Village is concerned.

[7] Mr. M. Rarry, learned Addl. A.G., submits that the present writ petition is not maintainable inasmuch as the petitioner can file either a review or an appeal against the order dated 13.09.2019. He also submits that the petitioner has already filed a Misc. case No. 288 of 2019 with a prayer for amending the order dated 13.09.2019 passed in WP(C) No. 934 of 2016 and WP(C) No. 428 of 2015. However, this Court by an order dated 15.11.2019 had dismissed the said Misc. case. Learned Addl. A.G. further submits that the petitioner does not have the support of the majority of the villagers and therefore, the villagers have ousted the petitioner as Khullakpa of Pongringlong/ Charoipandongba Village.

[8] It is admitted by both the parties that the post of Khullakpa is a hereditary post and the incumbent, who is Khullakpa can be removed by the clan members of the village or

in a meeting of the Village Court. It is also an admitted position that the election for khullakpa in a particular village is done only when there is no Khullakpa in the said village and on being elected, he becomes the Ex-officio Chairman of the concerned village authority. However, when there is Khullakpa, the Khullakpa automatically becomes the Ex-officio Chairman of the village authority.

[9] In the instant case in hand, the petitioner is continuing as the Khullakpa of Pongringlong/ Charoipandongba Village and as per the customary practices, he therefore will automatically become the Ex-officio Chairman of the village authority after the election to the village authority is completed. The notice dated 22.11.2019 indicates an election of the Village Authority. Therefore, after completion of the election of the Village Authority, the petitioner would automatically be the Ex-officio Chairman of the Village Authority as per the customary practice and usages. The petitioner here is before this Court by way of the present writ petition apprehending that he may not be made Khullakpa. This Court does not entertain writ petitions merely by apprehension and therefore, in the considered opinion of this Court no cause of action has arisen permitting the petitioner to approach this Court at this stage.

In that view of the matter, there is no merit in the writ petition and is accordingly, dismissed.

However, liberty is given to the petitioner to approach the appropriate forum having jurisdiction if for any reason, the elected village authority acts in violation of the customary practice and usages.

JUDGE

joshua

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