

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C) No. 38 of 2019

Date of Decision : 30.08.2019

Shri Arwordsing Kharmawphlang Vs. The Chief Executive Member,  
Executive Committee,  
KHADC & 4 Ors.

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

For the Petitioner(s) : Mr. K.C. Gautam, Adv.

For the Respondent(s) : Mr. V.G.K. Kynta, Sr. Adv. with  
Ms. V. Mawlieh, Adv. (For R 1&2)  
Mr. L. Khyriem, Adv. (For R 3 & 4)  
Mr. P. Yobin, Adv. (For R 5)

i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

**ORAL**

1. The instant writ petition under Article 226 of the Constitution of India has been filed seeking a mandamus to direct the respondent Syiem of Myllem to reinstate the writ petitioner as Rangbah Shnong of Mawpynthih village, cancel the impugned order of removal dated 17<sup>th</sup> January, 2019, and also for a further direction to withdraw/cancel the Sanad issued to the respondent No. 5 dated 13<sup>th</sup> December, 2018.

2. The brief facts of the case is that the writ petitioner was serving as Rangbah Shnong of village Mawpynthih under Myllem Syiemship on his election to the said post and the Sanad was issued to him on 27<sup>th</sup> March, 2018. The pleaded case is that in total violation of the provisions as

contained in *The Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem, Electors and Rangbah Shnong of Myllem Syiemship Act, 2007*, (hereinafter referred to as 'The Act') the petitioner before his removal was not afforded any opportunity of hearing. Being aggrieved thereby, this writ petition has been preferred before this Court.

3. Mr. K.C. Gautam, learned counsel for the petitioner submits that after his election, the writ petitioner was functioning in a most satisfactory manner and that his removal by the impugned order dated 17<sup>th</sup> January, 2019 is illegal and arbitrary, for the reason that Section 16 of 'The Act' mandates that opportunity of hearing should be afforded to the petitioner. Learned counsel submits that the case of the petitioner does not come within the exceptions of the proviso to Section 18 which speaks about conviction, moral turpitude and suspension pending enquiry, which would have enabled the respondent to do away with the requirement of hearing. He further submits that the action of the respondents No. 3 & 4 is all the more illegal, inasmuch as, during the subsistence of the term of his Sanad itself, the impugned appointment was given to the respondent No. 5. The learned counsel further contends that the purported election of the private respondent, being no election in the eye of law nor held as per custom and set procedure cannot be given any credence to justify the appointment of the respondent No. 5 in his place. With regard to the point of maintainability as put up by the respondents due to the fact that he had already filed a representation before the District Council respondents, the learned counsel submits that there is no impediment in approaching this Court to invoke the power under Article 226 of the Constitution, as the action of the respondents is highly arbitrary and perverse and that in such matters there can be nothing that can prevent this Court from passing appropriate orders in exercise of powers of Article 226 of the Constitution of India . He closes his submissions by submitting that the entire sequence of events which is highly arbitrary and illegal, deserves to be interfered with by this Court, and the impugned orders be set aside and quashed.

4. Mr. P. Yobin, learned counsel for the respondent No. 5 draws the Court's attention to Annexure-11 of the writ petition, which is the copy of the representation preferred by the petitioner before the Executive Member, i/c Elaka dated 22<sup>nd</sup> January, 2019. Learned counsel vehemently submits that the writ petitioner having chosen to subject himself to the adjudication of the dispute by the District Council cannot now turn around and at the same time seek remedy from this Court. He submits that on this ground alone, the writ petition should be dismissed. He submits that the contentions as raised by the petitioner, with regard to the election and to the other connected facts, has given rise to serious disputed questions of facts which cannot be gone into by this Court in exercise of writ jurisdiction. He therefore submits that the matter can be adequately adjudicated by the appellate forum, a quasi judicial authority which has been empowered under the Act to adjudicate such matters. The learned counsel for the respondent No. 5 also submits that the removal of the writ petitioner was caused by the fact that he had acted in total defiance and against the wishes of the residents of the village and also against the respondent Syiem of Myllem and others. Learned counsel reverts to the fact that when a notice was issued to the petitioner on 5<sup>th</sup> December, 2018 for convening a Dorbar on 10<sup>th</sup> December 2018, the petitioner did not do so but remained absent. The 945 residents along with the representatives of the KHADC and the Syiem of Myllem who had come for the same he submits, then had no other option but to elect a new Headman, as the petitioner had miserably failed in discharging the duties of his office. He further submits that the election had been conducted in a free and fair manner and was not vitiated in any manner. He lastly submits that the election of the respondent No. 5 cannot be faulted with and the Sanad issued was as per due process in accordance with law and custom.

5. Mr. V.G.K. Kynta, learned senior counsel assisted by Ms. V. Mawlieh, learned counsel for the respondents No. 1 & 2 submits that Section 16 provides for the procedure by which a Headman is to be elected and confirmed when a vacancy occurs. He submits that the Sanad issued to the petitioner in fact reflects the perpetuity of the tenure as it reads that the term was for one year or until fresh orders were passed. He also draws the

attention of this Court to the letter dated 17<sup>th</sup> January, 2019 (Annexure-10 of the writ petition) and submits that the respondent No. 3 in fact still recognized him as Headman of the said village on the said date which was also the date when he was removed from office. He further submits that there is a cloud over the office of the Headman of Mawpynthih village and a solution would be to call for fresh elections and let the people choose a new Headman.

6. Mr. L. Khyriem, learned counsel for the respondents No. 3 & 4 submits that notwithstanding any other events or facts as submitted by the other counsels, one aspect which needs to be highlighted is that the writ petitioner by his own actions had acted in violation of the Section 18 (a) (b) of the Act. Learned counsel submits that the averments made at Para-10 of the writ petition makes out a clear case of insubordination and defiance which warranted the removal of the petitioner from office. He then further reiterates the submissions of the learned counsel for the respondent No. 5 to the available alternative remedy which have already been availed by the petitioner and submits that the petitioner is estopped from pursuing two remedies. He closes his submissions by submitting that the writ petition being not maintainable the same should be dismissed.

7. I have heard learned counsels for the parties, and have given my thoughtful consideration to the facts and circumstances and the materials as placed before this Court. The uncontroverted facts are that the petitioner was duly elected as Headman of Mawpynthih village under Myllem Syiemship and was still in office when he was removed by the impugned order dated 17<sup>th</sup> January, 2019. The other fact also as reflected from the records is that the Sanad to the respondent No. 5 was issued on 13<sup>th</sup> December, 2018, i.e. a period of over a month before the order of removal of the petitioner from office was passed on 17<sup>th</sup> January, 2019. The other facts which are also noticed are the claims and submissions that have been made with regard to the election of the respondent No. 5 wherein it has been contended that it was conducted as per due process. It is also an admitted fact that the writ petitioner after being removed had immediately approached the Executive

Member i/c Elaka by way of a representation dated 22<sup>nd</sup> January, 2019 wherein all his grievances have been portrayed.

8. In the back drop of these facts, what is noted, is that firstly, removal of the writ petitioner was made under Section 18 (1) of *The Khasi Hills Autonomous District (Appointment and Succession of Syiem, Deputy Syiem, Electors and Rangbah Shnong of Myllem Syiemship Act, 2007*. However, there are no materials to indicate that there was any proceeding contemplated or otherwise which resulted in the said order dated 17<sup>th</sup> January, 2019. The other aspect also which deserves consideration is the manner in which the Sanad was issued to the respondent No. 5 which pre-dates the removal order, and was as per submissions advanced, issued in pursuance to the election which was held on 10<sup>th</sup> December, 2018. These two events as indicated above show that there has been some irregularities in the manner in which the writ petitioner was removed and respondent No. 5 appointed, especially in view of Section 16 (1) of the Act, which is for easy reference is quoted herein below:-

***“16 (1) When a vacancy occurs in the Office of a Rangbah Shnong, the Syiem or the Acting Syiem shall, on the advice of the Executive Durbar, direct the Khasi male adults/ elders of the village/urban locality concerned to summon a meeting of the heads of households/elders of the village/ urban locality or the male adults of the village/urban locality as the case may be, on such date and time as may be fixed by him for the election of a new Rangbah Shnong. Such meeting shall be presided over by the Basan, the Myntri, the Lyngdoh, the Syiem Raid or the Lyngdoh Raid duly authorized by the Syiem or Acting Syiem and his Executive Durbar.”***

9. The third aspect, however, with regard to the presence of alternative remedy, deserves due consideration by this Court, especially when placed against the facts that have unfolded after the removal of the writ petitioner. It is settled law that the power of this Court under Article 226 of the Constitution cannot be circumscribed even when there is presence of alternative remedy, however, the impugned actions should have resulted in deprivation of the fundamental rights or in violation of the principles natural justice.

10. In the instant case, the impugned order in clear terms has indicated that the same has been passed in exercise of the powers under Section 18 (1) of the Act. Section 18 (2) of the Act in this regard provides for an appellate forum, and the same is also quoted herein below:-

***“18 (2) An appeal against any order passed under sub-section (1) above, shall lie to the Executive Committee whose decision shall be final and every such appeal shall be filed within thirty days from the date the order is communicated or known to the party or parties concerned accompanied by a petition fee as may be prescribed by the Executive Committee.***

***Notwithstanding anything contained in sub-section (1) above, the Executive Committee may remove or suspend any Rangbah Shnong if in its opinion, he is liable for taking action under any of the clauses of sub-section (1) above, and the order passed by the Executive Committee in such cases shall be final;***

***Provided, that a Rangbah Shnong shall not be removed or punished under Section 18(1) above unless he is given an opportunity of being heard.***

***Provided, further, that the requirements of the above proviso shall not apply:-***

- (i) in the case where the order of removal or punishment or suspension is awarded on account of his being convicted of an offence involving moral turpitude;***
- (ii) in the case of order of suspension pending enquiry.”***

11. Normally the Court would be slow to interfere in matters where alternative remedy readily available but would not hesitate to do so if the situation so demands. In the instant case, the fact that the petitioner has not approached this Court directly against the said impugned order is apparent, inasmuch as, by the representation dated 22<sup>nd</sup> January, 2019 the petitioner himself has sought intervention by the Khasi Hills Autonomous District Council against the said impugned order. It is also a fact that the representation has not been addressed till date and the same is lying in limbo. This being the case in view of the express provision as contained in Section 18 (2) of the Act, the pursuit of two remedies simultaneously by the petitioner cannot be condoned or allowed.

12. In view of the discussions and circumstances as they pertain, the writ petition is disposed of with the following directions:

- i) That the said representation dated 22<sup>nd</sup> January, 2019 shall be converted into an appeal under Section 18 (2) of the Act and the same shall be placed before the Executive Committee, KHADC within a period of one week from the date of receipt of certified copy of this order for registration as a regular Appeal. Parties shall be issued notices immediately thereafter for appearance on a date fixed which shall not be later two weeks from the date of issue of notice.
- ii) The petitioner will be at liberty to supplement his grounds that have been made therein by filing an additional petition. This shall be done positively within a week from the fixation of a date of appearance and commencement of proceedings by the Executive Committee, KHADC. The respondents shall be allowed to file written statements or replies within 1(one) week of receipt of the said appeal petition.
- iii) The Executive Committee, KHADC shall dispose of the entire matter within a period of 6(six) weeks thereafter.
- iv) All the points that have been raised shall be examined and a reasoned/speaking order shall be passed by the Executive Committee. If deemed necessary, the Executive Committee shall allow oral evidence to be adduced by the parties to substantiate their respective claims.
- v) It is also directed that the respondents shall cooperate fully and not cause any delay to the proceedings.

13. With the following directions, the writ petition is accordingly disposed of.

14. No order as to costs.

**JUDGE**

Meghalaya  
30.08.2019  
"V. Lyndem PS"