

GAHC020000052023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WP(C) 290/2022

1:SHRI.S. MOANGKABA OZUKUM
S/O LATE T. SENTICHUBA

R/O H/NO.NMH-B/014
NEW MINISTERS HILL COLONY
CIRCUIT HOUSE ROAD
KOHIMA

NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF NAGALAND
KOHIMA

NAGALAND

2:THE DEPUTY COMMISSIONER
DISTRICT - MOKOKCHUNG

MOKOKCHUNG
NAGALAND

3:THE EXTRA ASSISTANT COMMISSIONER
CHUCHUYIMLANG CIRCLE

CHUCHUYIMLANG TOWN

DISTRICT - MOKOKCHUNG
NAGALAND

4:THE MONGSENYIMTI RIONGSANGER PUTU MENDEN/VILLAGE COUNCIL
REPRESENTED BY THE CHAIRMAN AND/OR THE AOLA
MONGSENYIMTI VILLAGE

P.O - CHUCHUYIMLANG - 798614

MOKOKCHUNG
NAGALAND

5:THE MONGSENYIMTI SENSO MUNGDANG
REPRESENTED BY ITS PRESIDENT

MONGSENYIMTI VILLAGE

P.O - CHUCHUYIMLANG - 798614

MOKOKCHUNG
NAGALAND

Advocate for the Petitioner : IMTI LONGJEM
Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE L.S. JAMIR**

ORDER

Date : 31-01-2023

Heard Mr. Imti Longjem, learned counsel for the petitioner. Also heard Mr. Moa Imchen, learned Sr. Government Advocate for the State respondents and Mr. C.T. Jamir, learned Sr. counsel assisted by Mr. I. Imchen, learned counsel for respondent No.5.

2. The petitioner being debarred from contesting in the general election to the 14th Nagaland Legislative Assembly by the Mongsenyimti Riosanger Putu Menden/Village council is before this Court by way of the present writ petition with the following prayers:-

"A. Quash and set aside:

i. The decision/Resolution No.4 taken by respondent No.4 in the General meeting of the respondent No.5 held on 28.12.2021 (Annexure-3)

ii. The Announcement made by respondent No.4 to various Mongsenyimti Citizens Union through its Letter dated 1.6.2022. (Annexure-4)

iii. The coerced undertaking dated 13.10.2022 which the petitioner was compelled to make in the meeting convened by the respondent No.4. (Annexure-6)

iv. The Announcement/Pronouncement made by the respondent No.4 dated 19.10.2022 (Annexure-7)

v. The Information/Announcement dated 23.10.2022 made by the respondent No.5 and published in the 25.10.2022 edition of the Tir Yimyim Newspaper (Annexure-8).

3. At the outset Mr. C.T. Jamir, learned Sr. counsel for the respondent No.5 submits that he is conceding prayer No.(ii), (iii), (iv) and (iv) made in the writ petition. He however, submits that in so far as prayer No.(i) is concerned, the same pertains only to 'Shilu Maong'(blessing) given by the Mongsenyimti Senso Mungdang/General Citizen Meeting and therefore, the same does not in any way infringe the right of the petitioner for contesting the forthcoming election. He submits that bestowing renewed blessing to the said Shri Tongpang Ozukum during the 61st Senso Mungdang (General Citizens Meeting) held on 28/12/2021 was on the basis of invitation from the respondent No.5 to all citizens of the village to bestow blessing to the intending candidates. He also submits that the petitioner was present in the said meeting and the petitioner was also a part of such decision and therefore, the petitioner cannot allege any illegality on the part of the respondent No.5 in bestowing renewed blessing given to the said Shri Tongpang Ozukum.

4. Contesting the submissions made by the learned Sr. counsel for respondent No.5, Mr. Imti Longjem, learned counsel for the petitioner on the other hand draws attention of this Court to the Proclamation dated 1/6/2022 made by the Riosanger Putu Menden/respondent No.4 wherein it was proclaimed to all the citizens of Mongsenyimti village that in the

2023 Nagaland State Assembly election from 24-Angetyongpang Assembly constituency, except for the person whom the privilege has been given to contest the election, no Mongsenyimti citizens shall contest the said election from the aforesaid constituency. It was further stated that no person shall act or speak contrary to the aforesaid decision made in the meeting dated 1/6/2022 and whoever disobeys, he/she shall be summoned by the Putu Menden and appropriate punishment would be imposed. Therefore, a conjoint reading of the resolution No.4 of the Monsenyimti Senso Mungdang and the Proclamation dated 1/6/2022 clearly indicate that the 'Shilu Maong' (blessing) is not a blessing but an indirect way of proclaiming that the said Shri Tongpang Ozukum is the only candidate for contesting the 24-Angetyongpang Assembly constituency from Mongsenyimti village. He therefore submits that even the prayer No.1 should be allowed in favour of the petitioner by quashing and setting aside the same.

5. Mr. Moa Imchen, learned Sr. Government Advocate submits that the official respondents have not received any representation nor official report about the decision allegedly taken by respondent Nos. 4 and 5. Further, the official respondents have not received any official intimation about the violation of any fundamental right of any individual including the petitioner. He also submits that the State respondents have not denied any citizens to contest for election nor the State shall advise any citizens to contest for election because all citizens are free to contest for any election as he/she likes. Ac-

cordingly, a circular dated 5/1/2023 was issued by the Deputy Commissioner, Mokokchung/respondent No.2 to that effect.

6. I have heard the learned counsels appearing for the parties.

7. This Court has also considered the resolution No.4 adopted by the Mongsenyimti Senso Mungdang in its 61st general meeting held on 28/12/2021. The same is reproduced herein below:-

"4. Riosanger Putu Mongsenyimti lemtet yimyim nungita taraktep yokji akangshia nokyumedema nokdi, nü amusü toklokja 'Shilu Maong' Wb. Tongpang Ozukum Minister PWD (Housing and Mechanical) Govt. of Nagaland) nem taruba Nagaland Legislative Assembly Election nung tokteptsü khuret agüja Senso sangertem-i moatsür."

The translated version reads as under:-

4. The citizen of Mongsenyimti endorse the proclamation of the Riosanger putu Mongsenyimti to bestow the privilege and responsibility of contesting the forthcoming Nagaland State Assembly Election on Shri Tongpang Ozukum Minister PWD (Housing & Mechanical Government of Nagaland)."

8. The Ao dictionary (AROK OSEP) published by the Ao Senden Literature Board defines 'Shilu' as "return, recur a second time". Further, 'Moang' is defined as "blessing, benevolence". Therefore, a reading of the resolution No.4 of the Mongsenyimti Senso Mungdang would indicate that only renewed blessing was given to the said Shri Tongpang Ozukum.

9. The Proclamation dated 1/6/2022 made by the Riosanger Putu Menden of Mongsenyimti village clearly indicates that the 'Shilu Maong' (blessing) bestowed by the Mongsenyimti Senso Mungdang upon the said Shri Tongpang

Ozukum have been stretch too far by the Riosanger Putu Menden of Mongsenyimti village. Basing on the 'Shilu Maong' (blessing), the Riosanger Putu Menden of Mongsenyimti Village has debarred all other citizens of Mongsenyimti Village except the said Shri Tongpang Ozukum to contest from 24-Angetyongpang Assembly constituency to the forthcoming general Assembly election. Such Proclamation debarring any citizens of Mongsenyimti Village, except one, to contest from 24-Angetyongpang Assembly constituency is not permissible in law and therefore, the Proclamation dated 1/6/2022 stands vitiated and consequently all other actions taken on the basis of the Proclamation dated 1/6/2022 also stands vitiated in law.

However, considering the true meaning of 'Shilu Maong' as defined in the Ao dictionary (AROK OSEP), it is only a renewed blessing given to the said Shri Tongpang Ozukum and therefore, I see no reason to interfere with the resolution No.4 of the Mongsenyimti Senso Mungdang adopted in its 61st general meeting held on 28/12/2021. However, it is made clear that the 'Shilu Maong' bestowed upon the said Shri Tongpang Ozukum shall have to be construed only as a blessing and such blessing shall have no implication or extension in any manner or in any sense in the forthcoming general assembly election from 24-Angetyongpang Assembly constituency.

10. Recording the submission of the learned Sr. counsel for respondent No.5 that he is conceding prayer No.(ii), (iii), (iv) and (v) made in the writ petition, the Proclamation dated 1/6/2022 issued by the Riosanger Putu Menden of Mongsenyimti village, the Undertaking dated 13/10/2022

made by the petitioner in the meeting convened by the respondent No.4, the Proclamation/Pronouncement made by the respondent No.4 dated 19/10/2022 and the Information/Announcement dated 23/10/2022 made by the respondent No.5 and published by Tir Yimym on 25/10/2022 are all set aside and quashed.

11. The circular made by the respondent No.2 has also been considered by this Court and the relevant portion is reproduced here below:-

"It is hereby brought to the notice of all the concerned that every citizen of India has a statutory right to participate/contest election as per his/her own free will subject to the fulfillment of the requisite qualifications and any attempt of force/coercion to subvert the free will of the citizen is violation of the rights guaranteed to the individuals by the constitution and subsequent statutes. Announcement/declaration of consensus candidates by the councils/organizations and issuing directives/diktats in favour of the consensus candidates and/or against other candidates/voters violates the right of the citizen to participate/vote as per their free will. Further, any attempt to influence free and fair election by any means or any attempts to interfere with the exercise of the free will of the citizen/voter in election matters is an offence under section 171C, 339 and 340 of IPC. The same has been reiterated by the Election Commission of India (ECI) in its instruction NO.437/6/INST/2014-CC & BE dated 26th Oct, 2014 which further prohibits any organization/group from any activity/statement that amounts to attack on the citizen from exercising their rights to participate/vote with free will.

Further, the village council being government agencies and auxiliary to the district administration under section 15 of the Nagaland Village Council Act, 1978, are hereby directed to refrain from any type of political activity and remain politically neutral at all time. Non-compliance may invite disciplinary action under the relevant section of the Nagaland Village Council Act 1978 and other statute."

12. The submission of the learned Government Advocate that the official respondents have not received any representation nor official report about the decision allegedly taken by the respondent Nos. 4 and 5 and also that they have not received any official intimation about violation of any fundamental right of any individual including the petitioner has been noted by this Court. The right to contest an election is neither a fundamental right nor a common law right but a right conferred by statute. The very fact that the copy of the writ petition along with annexure appended thereto has been received by the official respondents shall be deemed to be a notice upon the official respondents on the illegal decisions taken by the respondent Nos. 4 and 5.

A very disturbing fact which has come to the notice of this Court is the open indulgence in politics by the Riosanger Putu Menden of Mongsenyimti village by supporting one particular candidate and debarring other citizens of Mongsenyimti village to contest from 24-Angetyongpang Assembly constituency. The action of the respondent No.4 (Riosanger Putu Menden) of Mongsenyimti Village is not permissible in law. The official respondents particularly, respondent No.2 is therefore directed to take appropriate steps against the Riosanger Putu Menden of Mongsenyimti Village in accordance with law. The respondent No.2 is also directed to file action taken report against the Riosanger Putu Menden of Mongsenyimti Village before the Registry of this Court within a period of 3(three) weeks from the date of receipt of a copy of

this order. Failure to do so, Registry is directed to initiate suo moto contempt proceedings against the official respondents.

13. The Deputy Commissioner, Mokokchung district is also directed to ensure that free and fair election is held in the forthcoming General Election to the 14th Nagaland Legislative Assembly in all the constituencies under Mokokchung district particularly with regard to the 24- Angetyongpang Assembly Constituency.

14. With the aforesaid observation and direction this writ petition is partially allowed. No cost.

**Sd/-
JUDGE**

Comparing Assistant