

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.22/2023 in
WA No.24/2023

Date of order: 03.08.2023

Nenjing M. Marak & ors

Vs.

Garo Hills Autonomous
District Council & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Applicants/Appellants : Mr. P.T. Sangma, Adv

For the Respondents : Ms. N. Rajee, Adv with
Mr. L. Nongtdu, Adv for R/1-3

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In view of the good grounds made out, the delay of about 211 days in preferring the appeal is condoned and the appeal is taken on board.

2. The matter pertains to the appointment of Nokma for the Tochapara II-19 (16) A'khing.

3. The appeal arises out of an order allowing a writ petition that was instituted before a Single Bench of this Court, questioning the propriety of an appellate order dated May 30, 2019 passed by the Chief

Executive Member, Garo Hills Autonomous District Council. The relevant appeal was apparently filed under Section 8(2) of the Garo Hills Autonomous District (Social Customs and Usages) Validating Act, 1958.

4. Such appeal was preferred against an order of October 28, 2016 passed by the Executive Member, I/C Land Revenue, GHADC. The relevant order of the revenue official has been appended to the appeal papers. In the third paragraph of such order of October 28, 2016, it is recorded as follows:

“Heard both sides for passing this consensus order, it is clearly mentioned the fact of the case in detail leading to the filing of the case for nokma of Tochapara II-19 (16) A’khing it is the present case of the petitioners and the opposite party and son-in-law and the nokma daughter of the existing nokma Smti. Kinti Ch. Sangma by side tracking all of them according to cheran Dopatchi Granding clan people succession to nokmaship does not arise, at this juncture since the present Nokma Smt. Kinti Ch. Sangma is till alive, and performing all the duties of nokmaship and looking after the A’khing affairs as routine works of the interest of the clan.”

5. The operative part of the relevant order, obviously by consent of the parties as indicated in the earlier part of the order, provided as follows:

“Finally, I doth order that Smt. Kinit Ch. Sangma shall continue to be Nokma of Tochapara II-19 (16) till her death without interference from any (*corner*) whatsoever, in the matter in the interest of the clan people of the said A’khing in question.”

6. The present appeal is directed against the order of December 2, 2022 by which the private respondent's writ petition was allowed against the order of May 30, 2019 passed by the Chief Executive Member of the GHADC. The order impugned herein records that the order dated May 30, 2019 was passed "without going into the aspects as to whether the said order under appeal was a consensus order ..."

7. It is a cardinal principle, applicable in all cases without exception, that a party consenting to an order cannot be a party aggrieved by such order to be entitled to prefer an appeal therefrom. It is also a fundamental tenet of jurisprudence that when a judicial or a quasi-judicial body records a fact as to how a matter was conducted before it, particularly whether the order passed by it was on consent or not, a party aggrieved by such recording would have to return to the same forum by way of a petition or application in the nature of review; but when a judicial or a quasi-judicial forum records that an order has been passed on consent, no consenting party would be entitled to prefer an appeal therefrom.

8. It is such aspect of the matter that weighed with the writ court in the present case. The order passed by the revenue official clearly indicated that it was an order passed on consent. Though the rest of the relevant paragraph may not have been happily worded, nothing therein

detracts from the fact that the relevant forum considered that the opposing parties before it had consented to the form and substance of the order that was passed. It is possible, in such a scenario, that the forum misconstrued the intention of the parties. It is equally possible that an apparently consenting party may have laboured under a misapprehension or may not have consciously accorded consent. However, such exceptions to the general rule of not being entitled to assail an order passed by consent would entail that the grievance has to be carried to the same forum to explain to such forum that the recording of the consent had to be undone upon satisfying the forum that the consent may not have been willingly or consciously given.

9. It is the bounden duty of any appellate forum entertaining a judicial or a quasi-judicial matter to first ascertain whether the appeal is maintainable. Since an appeal is a creature of a statute and not an inherent right, an appellate forum has first to assess whether the appeal carried before it falls within the four corners of the appellate provision. Even more fundamental is the rule that the appellant must be a person aggrieved by the order under appeal. *A fortiori*, a party who has consented to an order can never be regarded as a party aggrieved by such order.

10. There is no error committed by the Single Bench in setting aside the order passed by the Chief Executive Member of GHADC of May 30, 2019 since the lower appellate forum could not have been availed of by the writ petitioner herein to challenge an order which was passed upon, what appears to be the express consent of the writ petitioner before the revenue official in course of the order dated October 28, 2016 being passed.

11. Accordingly, WA No.24 of 2023 is dismissed.

12. MC (WA) No.22 of 2023 is disposed of.

13. There will, however, be no order as to costs.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
03.08.2023
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