

GAHC020000292017



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

Case No. : WP(C)/214/2017

Rongmei Council, Nagaland
Having its Headquarter Office at
Dimapur, Nagaland
Represented by its President
Sri. Chinkhiulung Gonmei

.....Petitioner

-Versus-

- 1. The State of Nagaland**
Represented by the Chief Secretary
to the Government of Nagaland, Kohima
- 2. The Home Commissioner, Home**
Department
Home Branch, Government of
Nagaland, Kohima.
- 3. The Commissioner,**
Government of Nagaland, Kohima.
- 4. Zeliang People Organisation (ZPO)**
Madipuiram Ward
P.O and P.S. - Peren, Nagaland.
- 5. G. Chingkhulung Rongmei**
S/o Late G. Mohanchao Rongmei
Ragailong Colony, Burma Camp
Dimapur, Nagaland

.....Respondents

Advocate for the Petitioner : S. DUTTA, SR. ADV

Advocate for the Respondent : GOVT

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

JUDGMENT AND ORDER (CAV)

Date : 29-09-2023

Heard Mr. K. Alin Rongmei, learned counsel for the petitioner and also heard Mr. L. T. Sangtam, learned Additional AG assisted by Mr. Veto V. Zhimomi, learned Government Advocate for the State of Nagaland and Mr. Pfosekho Pfotte, learned counsel for respondent No. 5. None appears for respondent No. 4.

2. By filing this writ petition, the petitioner had challenged the part of the Cabinet Decision 25.04.2017 and the State Government notification dated 26.04.2017 by which the recognition of Rongmei as one of the Naga tribes in the State of Nagaland vide notification dated 04.08.2012 has been withdrawn.

3. The petitioner, the Rongmei Council, is represented by its President, Shri. Chinkhiulung Gonmei. The facts projected by the petitioner are that historically, the Rongmei tribe in the then nomenclature of Kabui was already found recognized in 1891 Assam population census. Edward Trite Dalton in his Ethnology of Bengal, groups the Nagas broadly into two divisions- the Eastern and Western, separated by the river Dhansiri. Henry Dament, political Officer, Naga

Hills in an official report of 1878-79 mentioned the existence of eighteen tribes, but the census of 1891 recognized the following nine tribes namely, Angami, Ao, Kabui, Kuchcha, Kezhemer, Lotha, Rengma and Sema. Therefore, it is the case of the petitioner that in fact the Rongmei does not need recognition which was already recognized when Naga Hills district was under the administrative control of Assam.

4. When the Nagaland attained statehood in 1963, necessity of recognition for Rongmei identity was greatly felt. Memorandums were submitted for recognition from various political leaders expressing grievances of the community. Thereafter, series of representation and reminders were submitted by the Rongmei council of Nagaland in various stages. Following submission of countless representations and memorandums, the Government of Nagaland through cabinet decision on 03.08.2007, vide notification No. HOME/SCTA A-6/2007 dated 28.09.2007 had decided to undertake verification and investigation on the legitimacy of Rongmei for its recognition as indigenous inhabitant of Nagaland and constituted a committee that consists of three members to take detailed enumeration of the Rongmei community whose names or ancestors names were entered in the electoral rolls of 1963 of the three districts of Kohima, Dimapur and Peren. The Committee had series of meetings for 5 years and conducted a minute verification of the Rongmei community whose names or their ancestors' names entered in the electoral roll of 1963.

5. The Committee on receipt of the final enumerated list from the three districts and also consent and objections from various tribal

organizations of village/ municipal authority/ concerned GBS/ Local Administrative Officers/ DC of a District/ Rongmei Council of Nagaland, had recommended to the council of ministers and the Government of Nagaland. Following the decision of the cabinet meeting held on 23.07.2012, the State Government had declared recognition of Rongmei tribe as one of the Naga tribes of Nagaland and thereafter incorporated Rongmei tribe in the notification as one of the Naga Tribes of Nagaland.

6. According to petitioner the historical background of the petitioner tribe is to be taken into consideration. The Naga tribes call themselves by their tribal names. In the early period, the name Naga was not known but it was the outsiders like the Assamese, Bengali and Ahom, with whom they had very wide contact, gave this name to the tribes. For example, the tribes like Angami, Ao, Sema, Rongmei etc. are known by the outsider names and not by their own original names. The origin of the Naga tribes is shrouded in mystery and is encapsulated in folklores and legends. After examining various oral sources, it was concluded that the Nagas belong to the Mongoloid racial stock and that their original home was in central China. Originally Nagas were not known as tribes. The Naga tribes were linked with tribes in Assam and Myanmar. From 1816 invasion onwards, Assam came under the rule of Myanmar. Naga tribes belonged to Indo-Mongoloid family. Each of the Naga tribe is divided into as many as twenty clans. Some of the major Naga tribes are Angami, Chang, Konyak, Lotha, Phoms, Rengma, Sema, Pochury and Zeliang. When the British left the Naga Hills after the India got

Independence, the Nagas declared Nagaland (Nagalim) as an Independence Nation on 14th August 1947. But the Indian Government did not recognize the unilateral declaration of the Naga National Independence and the indigenous Naga people continue to struggle to get sovereignty from the Indian Government. The exact number of Naga tribes is not known because they are found not only in Nagaland, but also in the contiguous areas of the Indian states of Manipur, Assam, Arunachal Pradesh and also in Burma. Some smaller Naga tribes are absorbed by larger ones and are treated as sub-tribes, while sections of larger tribes, separated by state boundaries sometimes prefer to be treated as distinct tribes. Among the Nagas, the Rongmei tribe is considered to be one of the major tribe. They are found in Assam, (the N.C. Hills region). In Nagaland they are found in the district of Dimapur, Peren and Kohima. However majority of the population are found in the state of Manipur, in Tamenglong, Imphal East, Imphal West, Bishnupur, Thoubal and Senapati district of the region. The settlement of Rongmei in Nagaland is traced back to 1920s under the British period and the Rongmei were first settlers of Naga Bazar of Kohima and they called it Kaithulong village.

7. The Rongmei tribe dates back to history who cleared the jungles of Dimapur for settlement and farming during the British rule. The Rongmei tribe were actively involved and productively participated in the socio-economic and educational development in Dimapur. Schools, local unions and villages were established by the pioneers of the Rongmei tribe as a matter of fact and record. It is pointed out that in last platinum jubilee celebration of Ragailong village, Burma camp

established in 1937 the Chief Minister, Mr T.R. Zeliang and his Cabinet colleagues duly graced and explicitly spoke about the existence of the Rongmei tribe since time immemorial in the state of Nagaland, Assam and Manipur. The Rongmei tribe is one of the Scheduled Tribes included in the Scheduled Tribes List of the Constitution of India and the status of the Scheduled Tribe being granted to the Rongmei is a Constitutional entitlement anywhere within the territories of India.

8. During the British era, the people belonging to the Rongmei tribe were economically exploited and the Britishers at that point of time had vehemently suppressed the Jadonang's Naga Raj movement in Manipur to strategically weaken the tribe consequent to which thousands of people were deported to different places like Cachar Valley of Assam, Kohima and Dimapur of the then undivided Assam. It is a matter of fact that the Britishers had engaged the deserted people of the Rongmei tribe as their porters to Dimapur. The people of Rongmei tribe were later on employed as Railway Labourers at Dimapur and subsequent to such stay at Dimapur the Rongmei's discovered untilled and virgin land which was suitable for cultivation adjacent to the Railway areas. It is stated that the Rongmei tribe inhabited from the Dimapur region which was a part of state of Assam and subsequent to 1963 became a part of the State of Nagaland and the same is an undisputed matter of fact and record.

9. Vide settlement order No.8955-57/G dated 12th November, 1947 passed by Dy. Commissioner Naga Hills, Kohima regularized the occupation of the people belonging to Rongmei tribe. Meanwhile, the

Tsutuonuo mia Khel Union, Kohima Village in its declaration dated 20.04.2008 duly held that the Rongmei community (Kabui Naga) had been settling and residing in Kohima since early 1920's prior to the statehood of Nagaland and strongly recommended that the Rongmei tribe should be traditionally treated as indigenous inhabitants and as such Rongmei tribe are entitled to equal rights, status and opportunities which are being enjoyed by the other indigenous tribes in the State. It is in furtherance placed on record that several tribal Hohos including Naga Hoho, Zeilangrong Councils, Zeliangrong Baudi, ZPO and leaders like Dr. Hokishe Sema strongly recommended the government to grant Rongmei tribe a status of Indigenous Naga tribe of Nagaland and that the Rongmei Tribe are basically inhabitant of Dimapur, Peren, Kohima District of Nagaland.

10. The State of Nagaland was a Part-'B' Tribal Area within the State of Assam. In 1960, an agreement was reached by the Government of India with the leaders of Naga Peoples Convention under which it was decided that Naga Hills Tuensang Areas (Nagaland) would be formed into a separate State in the Union of India. The agreement *inter-alia* provided that- Act of parliament shall not apply to Nagaland unless so decided by the Nagaland legislature with regard to -

- (i) Religious or social practice of Nagas;
- (ii) Naga customary law and procedure;
- (iii) Administration of civil and criminal justice involving decisions according to Naga Customary Law;
- (iv) Ownership and transfer of land and its resources.

11. As these matters are peculiar to the proposed new State of Nagaland, provision with respect thereto has to be made in the Constitution (Thirteenth Amendment) Act, 1962 in the constitution of India. The State of Nagaland Act, 1962 for the formation of the new State relatable to Article 3 was simultaneously passed.

12. Article 371A of the constitution of India provides a special provision for the State of Nagaland. Administration of civil and criminal justice would be governed by Naga Customary Law which cannot be interfered by any parliamentary enactment. Land and its resources would be regulated by the enactments made by the legislatures. The customary law of the Naga means customs as prevailed amongst Nagas residing within the territory of Nagaland. According to the Naga Customary Law right over land and its resources are vested with recognized Naga Tribe of the State. The Naga Tribe is a Schedule as determined under Article 342 through the Constitution Scheduled Tribe Order, 1970 , but, who are Nagas that is to be determined by the Government of Nagaland.

13. According to the petitioner, the Government of Nagaland formulated a policy in order to quantify as an indigenous inhabitant of the State of Nagaland for the purpose of employment. It provides that a person in order to have a status of indigenous inhabitant should settle permanently in Nagaland prior to 01.12.1963 which can be inferred if the name of person or his parents or guardian has been enrolled in the Electoral roll published on 05.12.1963. If a person or his parents or guardian have been paying house tax prior to

01.12.1963 should be considered as indigenous inhabitant. If any person or his parent or guardian had acquired property or patta land he shall also be considered as indigenous inhabitant of Nagaland. The decision of the Government was notified on 28.04.1997.

14. The contention of the petitioner is that for a long spell of time, Rongmei community of Nagaland who are basically inhabitants of Dimapur, Kohima and Peren districts of Nagaland are to be declared as Naga Tribe were persistently demanded.

15. Finally, the Government of Nagaland constituted a committee on 28.09.2007 to examine the issue of granting the status of Indigenous Naga tribe to Rongmei community. Pursuant to the cabinet decision of the meeting held on 30.08.2007, the committee consists of Home Commissioner as the Chairman with Additional Secretary, Law and Additional Secretary as Members was constituted. Vide a letter dated 24.07.2008, the Government of Nagaland issued an order whereby the procedure for enumerating of members of Rongmei community was settled.

16. In the Districts of Kohima, Peren and Dimapur verifications of persons belonging to Rongmei Community whose names or their ancestors names were registered in the Electoral Roll of 1963 were conducted. The various tribal Hoho /NGO and Union etc. have also given their views on this issues of declaring Rongmeis as indigenous Naga inhabitants. Thus on 17.08.2011 various organisation of tribal bodies like Zeliangrong Baudi (N), Rongmei Council, Zeme Council,

Zeliangrong Student Union endorsed their views of granting status of indigenous Nagas in Nagaland. Similar views were expressed on 10.01.2011 and 09.04.2011 by Rongmei Council. The Zeliang People Organisation, Nagaland has stated that it has no objection to the recognition of Rongmei as a tribe in Nagaland indigenous to Dimapur, Kohima and Peren Districts.

17. By notification dated 28.09.2007, the Government of Nagaland had constituted a committee to examine the issue of granting the status of indigenous tribe to the Rongmei community residing in the State of Nagaland. The committee submitted its report on 31.05.2012 and was placed before the State Cabinet for its acceptance through cabinet memorandum dated 22.06.2012.

18. On 24.07.2012, the Cabinet taken a decision to recognize the Rongmei tribe as one of Naga tribes. Pursuant to such decision, the Government of Nagaland passed an order on 04.08.2012 whereby Rongmei tribe of Nagaland has been recognized as one of the Naga tribes. It also declared that schedule tribe certificate will be issued to only those members of Rongmei Hoho or whose ancestors were enumerated in the 1963 Electoral Roll of the State and whose name were enumerated in the report dated 31.05.2012. It is also noticed that the order dated 04.08.2012 was assailed in the Hon'ble High Court by Zeliang People Organization through a writ petition being WP(C)/4519 of 2012 which was transferred to the Kohima Bench and registered as WP(C)/214(K) of 2014. The writ petition was withdrawn with a leave to file the same vide order dated 12.06.2017.

19. Pursuant to the decision of the State Cabinet dated 25.04.2017 impugned notification No.HOME /SCTA-6/2007 (PT.1)/19 dated 26.04.2017 was issued by which the recognition of Rongmei as one of the Naga tribes in the State of Nagaland vide notification dated 04.08.2012 has been withdrawn de-recognizing the Rongmei tribe as one of Naga tribes of Nagaland. Hence this presence writ petition for setting the State Cabinet Decision dated 25.04.2017 and impugned notification 26.04.2017 to extent of withdrawing recognition of the Rongmei tribe as one of the Naga tribes of Nagaland.

20. Mr. K. Alin Rongmei, learned counsel for the petitioner submits that the status and recognition given is confined only to the recorded, defined and enumerated Rongmei's of the State of Nagaland who were living in the State prior to 1963. The cabinet decision dated 24.07.2012 was taken after considering the views of various tribal Hoho's/NGO's and Unions who consented to the issue of declaring Rongmei's as Indigenous Naga inhabitants. The cabinet also considered the objection in conferring the status of Naga tribes to the Rongmei in respect of Peren district only.

21. The learned counsel for the petitioner submits that the cabinet meeting held on 24.07.2012 and consequential order passed on 04.08.2012 were taken openly after a long process of discussions, negotiations and consideration of objections and, as such, the notification dated 26.04.2017 by which the recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland has been withdrawn as notified by the Government notification dated

04.08.2012 is illegal, arbitrary and cannot stand the scrutiny of law.

22. The learned counsel for the petitioner submits that the decision of the Government in withdrawing the recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland vide notification dated 26.04.2017 is one of those mysterious decision taken in the shrouded secrecy of Ministerial chambers. While withdrawing the status of the Rongmei Community, the government did not apply its mind to relevant considerations. The Cabinet memorandum revealed that relevant consideration had not been taken into account and that what was not said in the memorandum could not latter be supplemented by considerations which were never present in the mind of the decision making authority.

23. He submits that the decision of the cabinet meeting held on 23.07.2012 is the outcome of process of protracted discussions, consultations, negotiations, objection and consideration of various aspects covering about 5 years and the decision and the reasons therefore could only be gathered by looking at the entire course of events and circumstances. The recommendation of Rongmei tribe as one of the indigenous tribe of Nagaland vide cabinet meeting held on 23.07.2012 had a public element and such a decision was taken fairly and acted in conformity with standards or norms without being arbitrary, irrational or irrelevant manner. Therefore, the act of withdrawal of the Status conferring Rongmei tribe as Naga tribe of Nagaland vide notification dated 26.04.2017 is based on irrational, unreasonable and arbitrary method and liable to be struck down.

24. The learned counsel for the petitioner submits that the Rongmei indigenous status and tribe recognition issues were settled after due process, through the proper channel, by constituting a committee in the highest level which had undergone several rounds of proper investigation and verification and thereafter came to the conclusion that Rongmei permanently residing in Nagaland prior to its Statehood, 1963 have legitimate rights and entitlements to be recognized as one of the indigenous Naga tribes of Nagaland. Therefore, the sudden decision of the State Cabinet and impugned notification dated 26.04.2017 of de-recognizing the Rongmei tribe as indigenous tribe of Nagaland without there being any committee recommendation, or re-verification or reinvestigation to disprove the genuineness and legitimate rights of Rongmei Naga Indigenous as Scheduled Tribe of Nagaland is not sustainable and as such same is liable to be set aside and quashed.

25. The learned counsel for the petitioner submits that the impugned government notification dated 26.04.2017 is a product of total non application of mind inasmuch as the decision in withdrawing the status of Naga tribe to the Rongmei community is based on no material at all and as such, such a decision which takes the constitutional right of the petitioners' is liable to be quashed and struck down.

26. The learned counsel for the petitioner has placed reliance on the following judgments of the Hon'ble Supreme Court:

(i)**State of Orissa and Ors vs. Gopinath Dash and Ors** reported in

(2005) 13 SCC 495

(ii) State of U.P. Vs. Chaudhari Ran Beer Singh and Anr reported in **(2008) 5 SCC 550**

(iii) State of Maharashtra Vs. Milind And Ors reported in **(2001) 1 SCC 4**

(iv) GJ Fernandez vs. State of Mysore & Ors reported in **AIR 1967 SC 1753**

(v) Nagendra Nath Bora & Another vs The Commissioner Of Hills Division and Appeals reported in **AIR 1958 SC 398.**

(vi) South Central Railway, Sechunderabad Vs. G. Ratnam reported in **(2007) 8 SCC 212**

(vii) Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra & Ors reported in **(2013) 4 SCC 465**

(viii) Bir Singh v. Delhi Jal Board & Ors reported in **(2018) 10 SCC 312**

27. Per contra Mr. L. T. Sangtam, learned Additional AG submits that the Rongmei is a Schedule tribe in the State of Manipur vide the Constitution (Schedule Tribe) Order (Amendment) Act, 2011, that by itself however, would not mean that the Rongmei is also a schedule tribe in the State of Nagaland unless a Presidential order is issued under Clause (1) of Article 342 of the Constitution of India. It is only the persons from the Rongmei community numbering 1313 who has

settled in the State of Nagaland prior to 01.12.1963 and whose names finds mention in the Enumeration of Members of the Rongmei community under Peren District are entitled to enjoy the status, privileges and entitlements of Indigenous inhabitants of Nagaland similar to the ones enjoyed by the members of the other Indigenous inhabitants, who have permanently settled in the present territory of Nagaland prior to 01-12-1963 as notified by the State government vide notification dated 06.07.1973 and 28.04.1997. Besides the enumerated Rongmei's, the rest members of the community has no right to claim the Indigenous inhabitant of the State of Nagaland.

28. The learned Additional AG submits that the recognized Naga tribes in the State of Nagaland confines only to the 14 tribes as approved by the Home department of the Government of Nagaland vide letter dated 06.07.2009 which is spelt out in No. R-11011/16/2009-Tab Government of India, Ministry of Home Affairs/ Griha Mantralaya, Office of the Director of Census Operations, Bayavu Hill, H.S. Road, Kohima, Nagaland.

29. The learned Additional AG submits that subsequent to the issuance of the Notification dated 04-08-2012 recognizing Rongmei as one of the Naga tribe and for issuance of the schedule tribe certificate and Indigenous tribe certificate to the members of the Rongmei tribes who or whose ancestors were enumerated in the 1963 Electoral Roll of the State and whose names were enumerated in the report dated 31-05-2012 of the Committee set up by the Government to examine the issue of granting the status of Indigenous of Naga tribe to the members of the Rongmei Community, there was vociferous objections

from various tribal Hohos and indigenous communities of the state. The objection raised by different groups was examined by the Home department and a Cabinet Memorandum No. HOME/SCTA-6/2007 (PT-II) dated 10-09-2013 was prepared to review the Cabinet decision dated 23-07-2012 granting the status of indigenous Naga tribe to the members of Rongmei Community. The cabinet examined the matter and constituted a Committee to study the issue and to submit its report and recommendation for consideration of the Cabinet. The minutes of the Cabinet meeting held on 17-02-2014 was brought out in the Office Memorandum dated 24-02-2014 . Considering the importance of the matter the Cabinet in its meeting held on 26-09-2016 again constituted a nine member Cabinet Sub- Committee to examine the matter in all its aspects and to give its recommendation at the earliest to the State Government. However in view of the inability of both the Committees to submit its report and recommendation to the Cabinet in time and in view of the pressing demands from the various tribal organizations of the State, the Cabinet Memorandum dated 25-04-2017 on review of recognition of Rongmei as one of the Naga tribes was prepared by the Home department and the issue was taken up as an additional agenda in the Cabinet meeting held on 25-04-2017 and the Cabinet decided to modify its earlier decision dated 23-07-2012 as follows:

1. Recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland as notified by the Government vide Notification No. Home/SCTA-6/2007 (PT-1)/34 dated 4th August 2012 may be withdrawn with immediate effect.

2. The 1313 people belonging to the Rongmei tribe, already identified by the Government of Nagaland through special enumeration process as having permanently settled in the present territory of Nagaland prior to 01-12-1963, along with their legitimate descendants, may continue to enjoy the status, Privileges and entitlements of indigenous inhabitants of Nagaland, similar to the ones being enjoyed by members of other indigenous inhabitants, who had permanently settled in the present territory of Nagaland prior to 01-12-1963, as notified by the State Government vide Notification No. APPT-16/6/67 dated 06-07-1973 and No.AR-8/8/76 dated 28-04-1977

The Cabinet decision taken on 25-04-2017 is brought out in the impugned Notification dated 26-04-2017.

30. The learned Additional AG submits that the Rongmeis are a schedule tribe in the State of Manipur but not in the State of Nagaland. He states that prior to the issuance of the Notification 04-08-2012 the Government of Nagaland has declared only 14 (fourteen) tribes as the recognized tribes of Nagaland. The Notification dated 04-08-2012 recognizing Rongmei as one of the Naga tribes has been withdrawn by the Notification dated 26-04-2017 in the larger interest of the State and only the persons numbering 1313 belonging to the Rongmei community who have been identified through the special enumeration process has been allowed to enjoy the entitlements of indigenous inhabitants of Nagaland similar to the ones being enjoyed by the other indigenous inhabitants of the State on fulfilling the criteria

laid down by the State. He states that by the Notification dated 04-08-2012 the policy decision of the Government to recognize Rongmei as one of the Naga tribes and issuance of schedule tribe and indigenous certificate to those class of Rongmei's who or whose ancestors were enumerated in the 1963 Electoral Roll of the State and in the enumeration report dated 31-05-2012 was brought out. However in view of the strong objections raised by the various indigenous/recognized Naga tribes of Nagaland and the overall interest of the State, the Government took the subsequent policy decision to withdraw recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland and to grant indigenous inhabitants only to 1313 persons belonging to the Rongmei community. The actions of the Government in issuing the Notification dated 26-04-2017 superseding the Notification dated 04-08-2012 was done in public interest and for a legitimate purpose i.e., to protect the interest of the recognized Naga tribes of Nagaland.

31. The learned Additional AG submits that the decision taken by the State Cabinet on 25.04.2017 was finalized only after minutely examining the objections raised by the larger interest of the State. He further states that as both the committees constituted by the O.M dated 24.02.2014 and 27.09.2016 to examine and recommend the status of indigenous Naga tribes to the members of the Rongmei community did not submit its report to the Cabinet for a decision and in view of the importance of the matter having a pressing demand the Cabinet took the decision on 25.04.2017 to withdraw recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland. The

learned Additional AG states that even with or without the report/ recommendation of the Committee, the State Cabinet is not handicapped to take a decision on the matter provided it is not arbitrary or unreasonable.

32. Mr. L. T. Sangtam, learned Additional AG submits that the Notification dated 26.04.2017 was issued by the Chief Secretary, Nagaland pursuant to the decision adopted by the Cabinet on 25.04.2017. The Notification dated 26.04.2017 is therefore a Notification issued by the Government of Nagaland and there is no infirmity in the same. He submits that in view of the Special enumeration drive carried out by the Government of Nagaland only 1313 members of the Rongmei Community are entitled to the benefit of indigenous inhabitants of Nagaland. The Notification dated 26.04.2017 has been legitimately issued in the interest of the state and accordingly no fundamental rights of the petitioner has been violated.

33. I have considered the submissions of the learned counsel for the parties and the materials available on record.

34. It is noticed that on the representations/memorandum of the petitioner community, the State of Nagaland had constituted a committee and on the basis of the report of the committee, the State cabinet has decided to declare and recognize the Rongmei community as one of the Naga tribes of Nagaland.

35. Vide notification dated 04.08.2012, the petitioner community was recognized as one of the Naga tribes. Considering the fact that Rongmei tribe is also one of the indigenous tribes of neighbouring

Manipur and Assam States, Schedule Tribe certificate and Indigenous Tribe Certificate would be issued to only those members of the Rongmei tribe who or whose ancestors were enumerated in the 1963 Electoral Roll of the State and whose names were enumerated in the report dated 31.05.2012 of the Committee set up by the State government to examine the issues of granting the status of indigenous Naga tribe to the members of the Rongmei community.

36. Thereafter, again the State Cabinet vide O.M. dated 27.09.2016 constituted a 9 (nine) member Cabinet Sub-Committee to examine the issue of status of indigenous Naga tribe for members of Rongmei community. The cabinet discussed the matter on 25.04.2017 with regard to the implementation of the earlier cabinet decision dated 23.07.2012 regarding recognition of the Rongmei tribe by the Government of Nagaland. Accordingly Cabinet decided as follows:

The Cabinet decided to modify its earlier decision dated 23.07.2012 as under:

- (i) Recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland as notified by the Government vide Notification No. HOME/SCTA-6/2007 (Pt-1)/34 dated 4th August, 2012, may be withdrawn with immediate effect.
- (ii) The 1313 people belonging to the Rongmei tribe, already identified by the Government of Nagaland through special enumeration process as having permanently settled in the present territory of Nagaland prior to 01-12-1963, along with their legitimate descendants, may continue to enjoy the status, privileges and entitlements of indigenous inhabitants of

Nagaland, similar to the ones being enjoyed by members of other indigenous inhabitants, who had permanently settled in the present territory of Nagaland prior to 01-12-1963 as notified by the State Government vide notification No. APPT-16/6/67 dated 06-07-1973 and No. AR-8/8/76 dated 28-04-1977.

37. Pursuant to the above Cabinet decision, the impugned notification dated 26.04.2017 was issued by the Chief Secretary to the Government of Nagaland, whereby the recognition of Rongmei tribe as one of the indigenous Naga tribes of Nagaland as notified by the Government vide Notification No.Home/SCTA-6/2017 (Pt-I)/34 dated 04.08.2012 had been withdrawn. It further provides that the 1313 people belonging to the Rongmei tribe, already identified by the Government of Nagaland through special enumeration process as having permanently settled in the present territory of Nagaland prior to 01-12-1963 along with their legitimate descendants, would continue to enjoy the status, privileges and entitlements of indigenous inhabitants of Nagaland, similar to the ones being enjoyed by members of other indigenous inhabitants, who had permanently settled in the present territory of Nagaland prior to 01-12-1963 as notified by the State Government vide notification No. APPT-16/6/67 dated 06-07-1973 and No. AR-8/8/76 dated 28-04-1977.

38. The Constitution (Nagaland) Scheduled Tribes Order, 1970, was issued which is reproduced herein below:

"In exercise of the powers conferred by clause (1) of article 342 of the Constitution of India, the President, after consultation with the Governor of the State of Nagaland, is pleased to make the following

1) *This Order may be called the Constitution (Nagaland)*

Scheduled Tribes Order, 1970.

2) *The tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in the Schedule to this Order, shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to the State of Nagaland so far as regards members thereof resident in that State.*

THE SCHEDULE

1. *Naga 2. Kuki 3. Kachari 4. Mikir 5. Garo*”

39. On the perusal of the Constitutional (Nagaland) Scheduled Tribes Order, 1970, it clearly provides that the tribes deemed to be Scheduled Tribes in relation to the State of Nagaland so far as regards members thereof resident of the State are 1) Naga 2) Kuki 3) Kachari 4) Mikir and 5) Garo. It does not include the Rongmei tribe in the Constitutional Order. Therefore, the Rongmei tribe is not a recognised schedule tribe in the state of Nagaland in the Constitutional Order of 1970. In fact the petitioner community is recognised Schedule Tribe of State of Manipur vide Presidential Order, 2011 for the State of Manipur.

40. The provision for Scheduled tribes is provided under Article 342 of the Constitution of India which is reproduced herein below:

"342. Scheduled Tribes

(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification "

41. On bare perusal of the Article 342 (1) and (2) it clearly provides that the President with respect to any State or Union territory after consultation with the Governor by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall be deemed to be Scheduled Tribes in relation to that State or Union territory. Parliament may by law include or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community and same shall not be varied by any subsequent notification. Therefore, it is the Parliament only by law which may include or exclude any tribe or tribal community from the list of Schedule tribes issued by the President and no other authorities it be Court or State Government have any authority or power to do so.

42. This Court has carefully gone through the judgments of the Hon'ble Supreme Court relied on by the learned counsel for the petitioner and finds them not at all relevant and as such all the judgements referred to above are not applicable in the present case.

43. The relevant case law is **State of Maharashtra Vs. Milind And Ors** reported in **(2001) 1 SCC 4**, which this court would refer to wherein the Hon'ble Supreme Court has held which is reproduced as under:

"36. In the light of what is stated above, the following positions emerge:-

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically

mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of [Article 342](#), specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of [Article 342](#) only by the Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of [Article 342](#).

5. Decisions of the Division Benches of this Court in [Bhaiya Ram Munda vs. Anirudh Patar & others](#), did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter"

44. The petitioner community/the Rongmei community has not been included in the Constitution (Nagaland) Scheduled Tribe Order, 1970. As held by the Constitution Bench in Milind's (supra) it is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1970. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a

tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it. Any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 of the Constitution of India by the Parliament by law only and by no other authority. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

45. In view of the above discussion and law laid down by the Hon'ble Supreme Court, neither the State Government nor this Court has any authority to add, modify or alter the list of Scheduled tribes in the Constitution (Nagaland) Scheduled Tribe Order, 1970 as it is the Parliament only by law which may amend the Constitution (Nagaland) Scheduled Tribe Order, 1970 under Article 342 of the Constitution of India. Therefore there is no merit in this writ petition.

46. Accordingly, the present writ petition stands dismissed.

No order as to the cost.

JUDGE

Comparing Assistant