

GAHC020002882022



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

Case No. : WP(C)/111/2022

SMTI. LEVI SUMI,
H. NO. 58 BL-2 SANGTEMLA WARD,
MOKOKCHUNG, NAGALAND

~~~~~ **Petitioner.**

VERSUS

1. THE STATE OF NAGALAND,  
REPRESENTED BY THE CHIEF SECRETARY TO THE  
GOVERNMENT OF NAGALAND.

2. THE PRINCIPAL SECRETARY TO THE  
GOVERNMENT OF NAGALAND,  
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS,  
NAGALAND, KOHIMA.

3. THE COMMISSIONER,  
NAGALAND, KOHIMA.

4. THE DEPUTY COMMISSIONER,  
KIPHIRE, NAGALAND, KOHIMA.

5. THE NAGALAND PUBLIC SERVICE COMMISSION,  
REPRESENTED BY ITS SECRETARY, NPSC,  
NAGALAND, KOHIMA.

6. SHRI PIKETO H.,  
SON OF SHRI HOIKHE L. YEPTHO,  
RESIDENT OF PHISAMI VILLAGE,  
KIPHIRE, NAGALAND.

~~~~~ **Respondents.**

PRESENT
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

For the petitioner : Mr. Taka Masa, Sr. Adv.,
 Mr. Arenlong, Adv.

For the State respondents: Mr. E. Thiba Phom, Govt. Adv.

For the private respondent : Ms. Z. Zhimomi, Advocate.

Date of hearing : 13th of December, 2022.

Date of and Judgment & Order : 22nd of December, 2023.

JUDGMENT AND ORDER

[C.A.V]

Heard Mr. Taka Masa, learned senior counsel, assisted by Mr. Arenlong, learned counsel appearing on behalf of the petitioner. Also heard Mr. E. Thiba Phom, learned counsel for the State respondents as well as Ms. Z. Zhimomi, learned counsel for the respondent No. 6. None appeared for the Nagaland Public Service Commission.

2. The case of the petitioner, in brief, is that she belongs to Sumi (Naga) Tribe and is an indigenous inhabitant of Nagaland, who belongs to the Sumi (Kiphire) (Naga). The petitioner is a post-graduate degree holder and in all her official documents, i.e., from her matriculation till her post-graduation, birth certificate, Aadhar Card, PAN Card, etc., her father's name is entered as Shri Hotoshe Sumi. The said Shri Hotoshe Sumi hails from Yangzitong village, Kiphire of Sumi (Naga) Tribe. The petitioner was issued with an indigenous certificate by the Deputy Commissioner, Kiphire, on 09-06-2017 after observing all formalities.

3. Pursuant to an advertisement No. NPSC-3/2018, dated 31-08-2018,

wherein applications were invited to fill up several vacancies in different services of the State of Nagaland including 40 posts of Secretariat Assistant. The petitioner submitted her application for the post of Secretariat Assistant. She was declared successful for the post of Secretariat Assistant by a Notification dated 19-12-2019 against the Backward Tribe Sumi (Kiphire). After her selection and recommendation, the Kiphire Tuensang District of Sumi Student Union made a complaint on 21-12-2019 to the Controller of Examination, NPSC that she is not a *bona fide* indigenous citizen of Yangzitong village, Kiphire district. The Deputy Commissioner, Kiphire, thereafter conducted an inquiry on 29-01-2020, in presence of all the stakeholders. The petitioner, in the said inquiry, produced all her official documents. Her father Hotoshe Sumi and Village Council Chairman of Yangzitong village deposed in favour of the petitioner. However, the representatives of the Eastern Sumi Hoho had insisted for DNA testing of both the petitioner and her father.

4. Thereafter, the Deputy Commissioner, Kiphire, issued an order dated 16-06-2020, whereby the indigenous certificate of the petitioner, which was earlier issued by the Deputy Commissioner, Kiphire, on 09-06-2017, bearing registration No. 1012/2017 was cancelled. Consequently, the Nagaland Public Service Commission issued the Notification dated 30-06-2020 modifying the Commission's earlier Notifications dated 19-12-2019 and 22-01-2020 by deleting the petitioner's name from the list of selected candidates and replacing her by the private respondent No. 6.

5. Being aggrieved, the petitioner preferred WP(C) No. 85/2020 before this Court, which was disposed of by judgment and order dated

27-09-2021 whereby the order dated 16-06-2020 was set aside and quashed and the Deputy Commissioner, Kiphire, was directed to conduct a thorough enquiry by giving opportunities to all the stakeholders or the parties involved the chance of producing their evidences (both oral and documentary) and thereafter draw a conclusion, supported by evidences so produced, within a period of three months from the date of the judgment. The judgment and order dated 27-09-2021 further directed that the Notification dated 30-06-2020, issued by the Nagaland Public Service Commission shall remain suspended till the Deputy Commissioner, Kiphire, come to a conclusion on the issue of the petitioner's indigenous identity.

6. Thereafter, the Deputy Commissioner, Kiphire, Nagaland, conducted an inquiry in terms of the directions issued by this Court in WP(C) No. 85/2020. In the said inquiry, the petitioner, Sri Hotoshe Sumi, Smti Yevile Sumi, Sri Yeheto, Sri Simon Awomi, Smt. Vitoli and Sri H. Iphoto deposed before the Enquiry Authority, along with all her official documents taking a collective stand that the Scheduled Tribe and Indigenous Certificate of the petitioner were wrongly cancelled merely on the basis of the pension papers of Sri Onil Rava (husband of Yevile). It is also deposed that she is the adopted daughter of Sri Onil Rava and the petitioner is the legitimate daughter of Hotoshe Sumi of Yangzitong village of Sumi (Kiphire) (Naga) Tribe. It was deposed before the Deputy Commissioner, Kiphire that the petitioner was born on 05-01-1992 through an extra-marital affair between her father and one Nepali citizen of Mokokchung Town, Smti. Meena. However, as the wife of her father Smti Lukhuli H Sema refused to accept her, the younger sister of her father Ms. Yevile Sumi had

agreed to raise the petitioner for her livelihood and to protect the honour of the family. Accordingly, she was brought up from her infancy by Sri Onil Rava, his wife Mrs. Yevile Sumi, who is also her aunt.

The contention of the complainant, namely, Messers Isukha, Kokhuto Yeptthomi, Nikheto, Kivishe Sumi and Anato had taken a collective stand that they support the representations submitted to the Government to nullify the NPSC result and to appoint a *bona fide* citizen in place of the petitioner. They took a ground that the name of the petitioner is mentioned as daughter in the pension paper of Sri Onil Rava, Yevile is the biological mother of the petitioner and, hence, the said Hotoshe cannot be the biological father of the petitioner. The enquiry, which was held on 20-11-2021, was extended to 04-12-2021 to enable the absentee to join in the inquiry proceeding. In the inquiry proceeding held on 04-12-2021, the statement of Sri Onil Rava was recorded wherein he stated that Hotoshe Sumi to be the biological father of Levi Sumi. Sri Hotolu Ex VCC of Yangzitong village, Iphoto H Yeptthomi, G.B. of Yangzitong village had stated that initially the name of Hotoshe Sumi was Zheheve and is the biological father of the petitioner. Yangzitong villagers also submitted a joint declaration that the petitioner is the biological daughter of Hotoshe Sumi. The complainants also insisted to have a DNA test of the petitioner, her father and her uncle. The Inquiry Report indicates that the Deputy Commissioner, Kiphire decided to conduct DNA test of the petitioner, Sri Onil Rava and Hotoshe Sumi, to which both the parties agreed to comply.

7. Accordingly, the Deputy Commissioner, Kiphire, Nagaland, by

communication dated 04-12-2021, addressed to the Chief Medical Officer, Kiphire, Nagaland, requested to perform DNA test of the petitioner, Sri Hotoshe Sumi and Sri Onil Rava. By another order dated 11-04-2022, the Deputy Commissioner, Kiphire, Nagaland, directed to conduct DNA test of the petitioner, Sri Hotoshe Sumi and Sri Onil Rava. In the meantime, the Additional Secretary to the Government of Nagaland, Department of Health and Family Welfare, wrote to the Deputy Commissioner, Kiphire, on 26-04-2022 stating that the State does not have DNA testing facility and requested to take appropriate action and if required for DNA testing of the three persons, the same may be taken up at DNA Forensics Laboratory Centre, C/O Dr. Tridip Kar, Kar Medical Centre, near Utapal Dutta Mancho Maheshtala Banerjee Hat, Kolkata, West Bengal. Consequently, the petitioner, Sri Hotoshe Sumi and Sri Onil Rava were directed to undergo DNA testing before 20-06-2022 in Kolkata, West Bengal, by communication dated 05-05-2022. The Deputy Commissioner, Kiphire, also requested Dr. Tridipta, DNA Forensic Laboratory Center, Kolkata, West Bengal by communication dated 17-05-2020 to conduct paternity test of the petitioner, Sri Hotoshe Sumi and Sri Onil Rava and determine the biological father of the petitioner.

8. Being aggrieved with the direction to go for DNA testing, the petitioner made a representation to the Deputy Commissioner, Kiphire, on 13-06-2022, to review the order dated 11-04-2022 and the letter dated 05-05-2022 and to decide the matter on the basis of available materials. As no step was taken, the petitioner is before this Court by way of the present writ petition impugning the order dated 11-04-2022 and the letter dated 05-05-2022.

9. The learned senior counsel for the petitioner submits that the inquiry proceedings which were held by the Deputy Commissioner, Kiphire, on 20-11-2021 and 04-12-2021, clearly substantiate that the petitioner is the biological daughter of Sri Hotoshe Sumi. In the said inquiry proceedings, the parties were permitted to produce documentary evidence as well as oral evidence and, therefore, there was no necessity on the part of the Deputy Commissioner, Kiphire, to direct for conducting of DNA test with regard to the petitioner, Sri Hotoshe Sumi and Sri Onil Rava. He submits that the impugned order dated 11-04-2022 and the letter dated 05-05-2022 infringes the right of privacy, more particularly, when there are enough evidence before the Deputy Commissioner, Kiphire, to decide as to whether the petitioner is the biological daughter of Sri Hotoshe Sumi. He submits that the petitioner is not willing to undergo the DNA test and in such a situation, no adverse inference can be drawn against her for her refusal to undergo for DNA test.

10. Mr. Thiba Phom, learned Government Advocate appearing on behalf of the State respondents submits that the impugned order dated 11-04-2022 and the letter dated 05-05-2022 are only part of the inquiry conducted by the Deputy Commissioner, Kiphire, and no final decision has been taken. Therefore, the impugned order and the letter do not warrant any interference.

11. Ms. Zhimomi, learned counsel appearing on behalf of respondent No. 6, on the other hand submits that the petitioner is the biological daughter of Sri Onil Rava, who is not a local resident and was residing at Mokokchung. It is also submitted that Sri Onil Rava retired from service

on 28-02-2003 and as per the Pension Payment Order (PPO), his date of birth is 01-03-1996 and they have six children including the petitioner and in the PPO the recipient of pension is Smt. Yevile Sumi, Kavitolli and the petitioner. It is also submitted that Sri Hotoshe Semi, who is the uncle of the petitioner, retired on 30-09-2014 and his PPO indicates that he has eleven children and the name of the petitioner does not appear amongst the beneficiaries. It is submitted that no concrete evidence could be taken in the inquiry proceedings. The Deputy Commissioner, Kiphire, had, therefore, decided to go for DNA testing of the petitioner, Sri Hotoshe Semi and Sri Onil Rava, which were agreed to by the petitioner in the inquiry proceedings. Therefore, there is no reason as to why the petitioner should backtrack at this stage refusing to have DNA testing.

12. I have considered the submissions forwarded by the learned counsel for the parties.

13. This Court has considered the inquiry proceedings of the Deputy Commissioner, Kiphire, which was held on 20-11-2021 and 04-12-2021. The issue that arises before this Court is whether the petitioner can be directed to undergo DNA test against her will. A special protection is given by the law to the status of the legitimacy in India. The law is very strict regarding the type of the evidence, which can be let in to rebut the presumption of legitimacy of a child. Before a direction is issued to have a DNA test, the consent of the party is required inasmuch as such test is a constraint on the personal liberty and, therefore, cannot be carried out without the consent of the person concerned.

14. In a circumstance where other evidence is available to prove or dispute the legitimacy, the order for DNA test should be refrained from inasmuch as such test infringe the right of privacy and also have major social repercussion.

15. The Hon'ble Supreme Court in the case of **Ashok Kumar Vs. Raj Gupta**, reported in **(2022) 1 SCC 20**, has held as under:-

"11. In circumstances where other evidence is available to prove or dispute the relationship, the Court should ordinarily refrain from ordering blood tests. This is because such test impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled."

Further, in the case of **Goutam Kundu Vs. State of West Bengal and another**, reported in **(1993) 3 SCC 418**, the Hon'ble Supreme Court has held as under:-

"17. In Hargovind Soni v. Ramdulari, it was held:

The blood grouping test is a perfect test to determine questions of disputed paternity of a child and can be relied upon by courts as a circumstantial evidence. But no person can be compelled to give a sample of blood for blood grouping test against his will and no adverse inference can be drawn against him for this refusal.

18. Blood grouping test is a useful test to determine the question

of disputed paternity. It can be relied upon by courts as a circumstantial evidence which ultimately excludes a certain individual as a father of the child. However, it requires to be carefully noted no person can be compelled to give sample of blood for analysis against his/her will and no adverse inference can be drawn against him/her for this refusal.”

16. The learned counsel for the respondent No. 6 has taken a preliminary objection that the Eastern Sumi Hoho and Student Union are not made parties and, therefore, the present writ petition should be dismissed on the ground of non-joinder of parties. However, on a consideration of the merit of the case involved, this Court is of the considered opinion that not making the Eastern Sumi Hoho and Sumi Student Union as necessary parties would not be fatal to the petitioner. Accordingly, the preliminary objection raised by the respondent No. 6 is rejected.

17. Considering the observation made in the present writ petition, this Court is of the considered opinion that the Deputy Commissioner, Kiphire, can come to a conclusion on the basis of the inquiry proceedings held on 20-11-2021 and 04-12-2021.

18. As this Court intends to remand the matter back to the Deputy Commissioner, Kiphire, to take a decision on the basis of the materials available in the inquiry proceedings, this Court refrains from making any observation with regard to the oral and documentary evidence produced before the Deputy Commissioner, Kiphire.

19. Accordingly, it is directed that the Deputy Commissioner, Kiphire, shall come to a final decision on the basis of the materials available in the inquiry proceedings held on 20-11-2021 and 04-12-2021 without directing the petitioner, Sri Hotoshe Sumi and Sri Onil Rava to undergo for DNA test.

20. In that view of the matter, the impugned order dated 11-04-2022, issued by the Deputy Commissioner, Kiphire, Nagaland and the letter dated 05-05-2022 written by the Deputy Commissioner, Kiphire, addressed to the petitioner, Sri Hotoshe Sumi and Sri Onil Rava are set aside and quashed.

21. It is directed that the Deputy Commissioner, Kiphire, shall give his decision within a period of three months from the date of receipt of a copy of this order.

22. The writ petition is accordingly allowed.

23. No costs.

24. The Registry is directed to forthwith transmit the records to the Deputy Commissioner, Kiphire, Nagaland.

JUDGE

Comparing Assistant