

GAHC020003452021



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

Case : No. WP(C)/123/2021

SHRI NCHUMO YANTHAN AND 8 ORS
HEAD G.B
S/O LATE ATSAMO YANTHAN

2: SHRI NKHANIMO KIKON
GB/COUNSEL SECRETARY
S/O LATE KHONSAO KIKON

3: SHRI NKHYINGO KIKON
GB
S/O LATE NYIMSHIO KIKON

4: SHRI SINIMO PATTON
GB
S/O LATE SHANBEMO PATTON

5: SHRI ORENTHUNG YANTHAN
GB
LATE S. YANTHAN

6: SHRI PHYSAO YANTHAN
GB
S/O SHRI EVUNGSHAN YANTHAN

7: SHRI YILOBEMO ODYUO
GB
LATE WOBANSAO ODYUO

8: SHRI LIKHYAMO KIKON
S/O LATE TSUPOMO KIKON

9: SHRI MISAMO PATTON
S/O LATE NBEMO PATTON

ALL RESIDENTS OF LAKHUTI VILLAGE UNDER DISTRICT WOKHA
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 8 ORS
REPRESENTED BY THE HOME COMMISSIONER TO THE GOVT OF
NAGALAND
NAGALAND
KOHIMA

2:THE DEPUTY COMMISSIONER (D.C)
WOKHA
NAGALAND

3:THE ADDL. DEPUTY COMMISSIONER (ADC)
SANIS
WOKHA
NAGALAND

4:THE EXTRA ASSISTANT COMMISSIONER
AITEPYONG
SANIS
WOKHA

5:SHRI ETONGO YANTHAN
S/O LATE NTSUBOMO YANTHAN
R/O LAKHUTI VILLAGE
DISTRICT WOKHA
NAGALAND

6:SHRI ELONTHUNG EZUNG
S/O SHRI RHANBEN EZUNG
R/O LAKHUTI VILLAGE
DISTRICT WOKHA
NAGALAND

7:SHRI MERITHUNG PATTON
S/O SHRI THECHAMO PATTON
R/O LAKHUTI VILLAGE
DISTRICT WOKHA
NAGALAND

8:SHRI CHUMDAMO HUMTSOE
S/O LATE LIMONTHUNG HUMTSOE

R/O LAKHUTI VILLAGE
DISTRICT WOKHA
NAGALAND

9:SHRI WOCHUTHUNG YANTHAN
S/O LATE TSENTHUNGO YANTHAN
R/O LAKHUTI VILLAGE
DISTRICT WOKHA
NAGALAND

Advocate for : W R NGULLIE

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 8 ORS

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioners : Mr. W. R. Ngullie, Advocate

For the Respondents : Ms. V. Suokhrie, Addl. A.G.
: Mr. L. Iralu, Advocate
(For respondent Nos. 5 to 9)

Date of Judgment : 17.10.2023

JUDGMENT

1. Heard Mr. W. R. Ngullie, learned counsel for the petitioners. Also heard Ms. V. Suokhrie, learned Additional Advocate General for the State of Nagaland and Mr. L. Iralu, learned counsel for the respondent Nos. 5 to 9.

2. This writ petition under Article 226 of the Constitution of India has been filed by 9 nos. of petitioners impugning the election/selection of

private respondent Nos. 5, 6, 7, 8 and 9 as Village Council Members of Lakhuti Village and also for setting aside and quashing the letter No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021 whereby approval of the Government of Nagaland was accorded to the list of Village Council Members of Lakhuti Village including the respondent Nos. 5, 6, 7, 8 and 9 and also for setting aside and quashing the order No. GEN/VC/2020-21 dated 20th July, 2021 whereby the date of selection/election of Village Council Chairman of Lakhuti Village was notified as on 24th July, 2021.

3. The petitioners' case, in brief, is as follows:-

(i) That the petitioners as well as respondent Nos. 5, 6, 7, 8 and 9 are the residents of Lakhuti Village in Wokha District. On 9th March, 2021, Additional Deputy Commissioner, Wokha, Nagaland issued a circular bearing No. SNS-GEN/VC/2020-21/581-21 dated 9th March, 2021 informing all the recognized village under Sanis Sub-Division were dissolved w.e.f. March, 2021 and that the Head GB shall resume the charge of village administration till the constitution of New Village Council. It was also notified by the said circular that the process of selection/election of new Village Council Members for the next tenure in accordance with prevailing customary practices, is to be completed and is to be submitted along with Village Council Members' resolution, meetings, minutes and attendance-sheet to the Office of the Additional Deputy Commissioner, Sanis, Wokha on or before 31st March, 2021.

(ii) That, accordingly, the Lakhuti Village Council/GBs had

convened a meeting dated 12.03.2021 and in the said meeting, the terms and conditions for conducting the election/selection and eligibility of the Village Council Members were formulated and it was resolved as follows:-

i. He should be a bonafide member of the Khel/colony.

ii. He should not be a convicted person for theft.

iii. He should not married a person from the same clan.

iv. The selected/elected name (VCM) shall be endorsed by the concern GB of the Khel/colony.

v. He should be a person who can read and write (literate person).

vi. Selection/election of VCM must complete and submit on 20-03-2021, scrutiny shall be done on 22-03-2021 and thereafter, the final list shall be submitted to the office of the Additional Deputy Commissioner (respondent No-03) on 23-03-2021."

(iii) Thereafter, the scrutiny of selected/elected members was conducted on 22.03.2021 in the presence of Extra Assistant Commissioner, Aitepyong along with 3(three) dobashis and 13 GBs and one Head GB and after completion of the scrutiny and verification, the final list of 11 Village Council Members was submitted to respondent No. 4 on 23.03.2021. The list of approved Village Council Members which was submitted to the Additional Deputy Commissioner, Sanis, Nagaland by the Head GB included the names of the petitioner No. 8, namely, Likhyamo Kikon and

petitioner No. 9, namely, Misamo Patton and at the time of scrutiny which was held on 22.03.2021, it was found that for the Patton Khel, which has one village council post, two candidates, namely, Misamo Patton (petitioner No. 9) and Merithung Patton (respondent No. 7) had applied for the lone post of Village Council Members, however, the petitioner No. 9 was found to secure 29 votes against the respondent No. 7 who secured only 23 votes and accordingly, the petitioner No. 9 i.e., Misamo Patton was elected/selected as a Village Council Members for Patton khel. Similarly, as regards Yanthanro khel, the petitioner No. 8, namely, Likhyamo Kikon was selected as Village Council Members having support of 16 households whereas the candidature of Sri Etongo Yanthan (respondent No. 5) was rejected as per resolution dated 12.03.2021 which stipulated that a candidate must be able to read and write. In case of Haili Khel, the candidature of Sri Elonthung Ezung (respondent No. 6) was rejected on the basis of complaint received against the respondent No. 6. As regards, Upper Khel, the GB of the said Khel voluntary decline to elect/select the Village Council Members. After proper scrutiny on 22.03.2021, the head GB (petitioner No. 1) along with the GB of Lakhuti Village accepted the names of 11 members and forwarded the list containing the name of 11 members to the Government for approval.

(iv) Thereafter, on 01.04.2021, the petitioner No. 1, on behalf of all the 13 GBs submitted a representation to respondent No. 4 affirming the resolution adopted by the GBs on 12.03.2021 as well as affirming the outcome of the scrutiny which was done on

22.03.2021.

(v) However, it has been alleged that respondent No. 4 i.e., Extra Assistant Commissioner, Aitepyong, on 3rd April, 2021, along with Head Dobashi, Aitepyong had forcibly confined the Head GB, Lakhuti Village (petitioner No. 1) and made him to sign certain documents without reading out and explaining the contents of the said documents which as reported by petitioner No. 1 to the Deputy Commissioner, Wokha by filing two separate representations on 03.04.2021 and 15.04.2021. On 10th June, 2021, by letter No. GAB-01/WKA/VCM/2020-21(PT), the respondent No. 1 had accorded approval to newly elected Village Council Members in respect of Wokha district and the names of respondent Nos. 5, 6, 7, 8 and 9 appeared in the said approved list. Whereas the names of petitioner No. 8 and petitioner No. 9 who were selected/elected by the said Clan/Khel were arbitrarily dropped. The said approval dated 10th June, 2021 is impugned in this writ petition. Thereafter, the respondent No. 4 by Order No. SNS-GEN/VC/2020-21 dated 20th July, 2021 notified that the election/selection of the Village Council Chairman shall be conducted at the office of Additional Deputy Commissioner, Sanis on 24th July, 2021. This order has also been impugned in this instant writ petition.

4. The learned counsel for the petitioners has submitted that as per Section 4 of the Nagaland Village Councils Act, 1978, the members of village council shall have to be chosen by the villagers in accordance with prevailing customary practices and usages and same shall have to be

approved by the State Government thereafter. It is submitted that in pursuant to the provisions of Section 4 of the Nagaland Village Councils Act, 1978, the selection of Village Council Members was held on 20th March, 2021 and thereafter the scrutiny of the same was conducted on 22nd March, 2021 in pursuant to the resolution adopted on 20th March, 2021. It is submitted by learned counsel for the petitioners that the scrutiny was done in presence of respondent No. 4 along with 3 dobhashi and 13 GBs of Lakhuti Village. It is further submitted by learned counsel for the petitioners that the petitioner No. 8, namely, Shri Likhyamo Kikon of Yanthanro khel was selected as Village Council Members as he had support of 16 household whereas his competitor Shri Etongo Yanthan (respondent No. 5) failed to have submitted his application without having any household support. Similarly, the petitioner No. 9, namely, Shri Misamo Patton of Patton Khel which had only one post of Village Council Members was selected on the basis of securing 29 votes against the Shri Merithung Patton (*respondent No. 7*) who secured only 23 votes. It is further submitted by learned counsel for the petitioners that though the petitioner No. 1 along with 13 GBs had accepted and submitted a list of names of 11 Village Council Members to the respondent No. 3 for onward forwarding to the State Government for approval. However, the respondent No. 4 forwarded another list of 12 names to the respondent No. 3 on 06th April, 2021 whereas the State Government had approved list containing 13 nos. of Village Council Members by its approval letter dated 10th June, 2021 which is impugned in this writ petition.

5. Learned counsel for the petitioners has submitted that

discrepancy in the total numbers of village council members whose names were approved at different levels itself shows that the respondent authorities have indulged in manipulation and have arbitrarily dropped some of the names which were originally forwarded by the petitioner No. 1 and other GBs of Lakhuti Village to the Government. Learned counsel for the petitioners has submitted that as per Section 4 of the Nagaland Village Councils Act, 1978, it is for the villagers to chose the Village Council Members and it is not open for the Government before according approval to the list forwarded to it by the Head GB to add to the list or to replace the names which were originally forwarded to the Government for approval.

6. It is submitted that such an addition or replacement of names in the list forwarded to the Government for approval is without any authority of law. And therefore, the learned counsel for the petitioners prayed for setting aside and quashing the impugned approval letter No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021 and also prayed for issuance of appropriate directions to the State respondent to approve the names of petitioner No. 8 and petitioner No. 9 as duly chosen Village Council Members of Lakhuti Village.

7. On the other hand, learned Additional Advocate General, Nagaland has submitted that the scrutiny on 22.03.2021 was not done in presence of respondent No. 4 as well as the Dobhashi as claimed by the petitioners rather true fact is that the Extra Assistant Commissioner, Aitepyong being in control of the administration of that area ought to have been informed about the meeting dated 12.03.2021 conducted by the GB

of Lakhuti Village. However, he was neither informed about the meeting which was held on 12.03.2021 nor he was informed about the scrutiny for Village Council Members of Lakhuti Village to be conducted on 22.03.2021. It is submitted by learned Additional Advocate General that on 22.03.2021, the respondent No. 4 received the reports that the situation at Lakhuti Village was tense and law and order situation would may arise and, therefore, the respondent No. 4 along with 3 dobhashi went to Lakhuti Village, where it was found that the scrutiny of Lakhuti Village Council Members were going on. After reaching the spot, the respondent No. 4 informed the GBs present in the scrutiny process that the selection/election process of the Village Council Members should be conducted in a free and fair manner and that the list of Village Council Members would be further subjected to scrutiny in the Officer of Extra Assistant Commissioner, Aitepyong in case of any receipt of complaints regarding the same.

8. It is submitted by learned Additional Advocate General that the respondent No. 4 and the 3 dobhashi did not attained the said scrutiny process as stated by the learned counsel for the petitioners. It is further submitted by the learned Additional Advocate General, Nagaland that, in the meanwhile, the respondent No. 3 received complaints regarding scrutiny of Village Council Members conducted by the Head GB on 22.03.2021 and the Additional Deputy Commissioner, Sanis, Wokha (respondent No. 3) forwarded the complaint letters to the respondent No. 4 by letter No. ADC/SNS/COUN/2020-21 dated 25th March, 2021 and also directed to verify the matter and take necessary action so as to enable free and fair selection of Village Council Members. Accordingly, the

respondent No. 4 by order dated 30.03.2021 directed the Head GB, Khel in question in respect of which the complaint has been received, namely, Haili Khel, Patton Khel, Yanthanro Khel and Upper Khel to submit list of nominations along with household support on 03.04.2021 at 10 am at Lakhuti Community Hall.

9. It is further submitted by learned Additional Advocate General, Nagaland that in pursuant to the order dated 30.03.2021, the above four mentioned Khel submitted the list of nominations of their Village Council Members along with household support list. Thereafter, the scrutiny of the said list was conducted on 03rd April, 2021 in presence of GB, Dobhashi and the nominated candidates. It is submitted by learned Additional Advocate General, Nagaland that though the Head GB and four other GBs submitted letter dated 01.04.2021 to the respondent No. 4 intimating that their stand firm on the decision of scrutiny which was held on 22.03.2021 and that they shall not accept any further selection/election of Village Council Members, however, in order to ensure free and fair election/selection, the respondent No. 4 explained them that the order dated 30.03.2021 was based on the complaint received as regards selection/election process of Village Council Members of the four Khels, namely, Haili Khel, Patton Khel, Yanthanro Khel and Upper Khel. However, it is submitted that in spite of clear direction, the petitioners did not submit any lists of nominations for Village Council Members along with their household support and it is further submitted that except petitioner Nos. 2 and 6 all the petitioners including the petitioner Nos. 8 and 9 were present during the scrutiny of the list of nominated candidate for Village Council Members of Lakhuti Village which was held on 03.04.2021 as per

order dated 30.03.2021.

10. Learned Additional Advocate General, Nagaland has submitted that the petitioners having not submitted any list of nominations for Village Council Members and having participated in the scrutiny of the list of nominated candidates for the Village Council Members have no right to challenge the selection and election/selection of Village Council Members for Lakhuti Village. Learned Additional Advocate General, Nagaland has further submitted that the allegations levelled against the respondent No. 4 in the representation filed by the petitioner No. 1 and other GBs on 03.04.2021 to the Deputy Commissioner, Wokha, Nagaland is false and denied by the respondent No. 4. It is further submitted that the respondent No. 2 had forwarded the said representation dated 03.04.2021 filed by the petitioner No. 1 to the respondent No. 3 with a request to review the selection/election of the Village Council Members in respect of Lakhuti Village. Accordingly, the respondent No. 3 reviewed the matter and submitted a report by letter No. SNS/GEN/VC/2021-22 dated 22.04.2021 wherein it was found that the allegations levelled against the respondent No. 4 i.e., Extra Assistant Commissioner were baseless. It has been submitted that during enquiry, it was found that the complaints were received against the selection/election of Village Council Members in respect of Upper Khel, Yanthanro Khel, Haili Khel and Patton Khel of Lakhuti Village and as there were complaints, the Extra Assistant Commissioner, Aitepyong was directed by the respondent No. 3 to verify the matter and take necessary action and accordingly, the respondent No. 3 issued order dated 30.03.2021 and directed submission of fresh list of nomination for the Khels in respect of which complaints were received.

11. It is submitted by learned Additional Advocate General that in the report submitted by respondent No. 3 to the respondent No. 2 nothing wrong was found on the part of respondent No. 4 in handling the situation regarding the manner in which the respondent No. 4 conducted the scrutiny and submitted the list of selected Village Council Members. It is submitted that thereafter by letter dated 03.05.2021, the respondent No. 2 forwarded the consolidated list of selected/elected Village Council Members under Wokha district including that of Lakhuti Village to the respondent No. 1 and thereafter, by letter dated 10.06.2021, the Government gave its approval to newly elected/selected Village Council Members.

12. Learned Additional Advocate General has submitted that when the petitioners except petitioner Nos. 2 and 6 had participated in the scrutiny process and did not submit any list of nominated candidates for Village Council Members in spite of clear directions by order dated 30.03.2021 by respondent No. 4, they do not have any right to challenge the selection/election process of Village Council Members of Lakhuti Village. It is further submitted by learned Additional Advocate General, Nagaland that the State respondents have duly followed procedures laid down in Nagaland Village Councils Act, 1978 and, hence, writ petition filed by present petitioners does not merit any intervention by this Court and the same is liable to be dismissed.

13. Mr. L. Iralu, learned counsel for the respondent Nos. 5, 6, 7, 8 and 9, on the other hand, has submitted that out of the eight khels of Lakhuti Village, total numbers of Village Councils Members allotted against

each Khel is as follows:-

<i>i. Haili Khel</i>	- 2 VCM
<i>ii. Pangtilan Khel</i>	- 2 VCM
<i>iii. Yanthanro Khel</i>	- 1 VCM
<i>iv. Humtso Khel</i>	- 2 VCM
<i>v. Ngullie Khel</i>	- 1 VCM
<i>vi. Elang Khel</i>	- 2 VCM
<i>vii. Patton Kehl</i>	- 2 VCM
<u><i>viii. Upper Khel</i></u>	<u>- 2 VCM</u>
<i>TOTAL</i>	- 14

14. Learned counsel for respondent Nos. 5 to 9 has submitted that dispute raised in the instant writ petition is concerned, only in respect of choosing Village Council Members pertaining to four Khels, namely, Patton Khel, Yanthanro Khel, Upper Khel and Haili Khel as complaints were received in respect of choosing of Village Council Members against the said Khels. It is submitted by the learned counsel that in respect of other four Khels, namely, Pangtilan Khel, Humtso Khel, Ngullie Khel and Elang Khel, there is no dispute. It is submitted by learned counsel for respondent Nos. 5, 6, 7, 8 and 9 that as per Section 4 of the Nagaland Village Councils Act, 1978 which lays down that the Village Council Members are to be chosen as per prevailing customary practices and usages.

15. It is submitted by learned counsel for the respondent Nos. 5 to 9 that after the Khel choose its representatives, the Head GB, as per convention is required to forward the names of chosen Village Council

Members to the controlling administrative office of the area concerned and it is not for the Head GB to undertake the process of selection of Village Council Members upon themselves by re-scrutinizing, re-examining and re-verifying the chosen name even after Khels have chosen and send the same names as Village Council Members. It is not open for the GBs and Head GB to scrutinize the list of chosen candidates, however, in the instant case by scrutinizing the names of the chosen candidates, the petitioner No. 1 and other GBs have gone beyond the purview of what has been permitted under Section 4 of the Nagaland Village Councils Act, 1978. It is submitted by learned counsel for the respondent Nos. 5 to 9 that the petitioner No. 1 and other GBs, the name of scrutinizing the names of chosen Village Council Members, have arbitrarily and unilaterally disqualified some of the candidates on flimsy grounds. In this regard, learned counsel for the respondent Nos. 5 to 9 have pointed out to the resolution adopted on 22.03.2021 to show that in case of Upper Khel two nos. of seats were abolished for five years on the based on unverified report. Similarly, it is also pointed out by learned counsel that by the same resolution for same purported allegation against respondent No. 6 regarding commission of forgery but without having any prove of the same one seat of Village Council Members was abolished in case of Upper Khel. Similarly, in case of Patton Khel, the manner in which one N. Echungthung Odyuo from Patton Khel was selected on the basis of signatures of the attendees even prior to the dissolution of the earlier Village Council is not as per mandate of Section 4 of the Nagaland Village Councils Act, 1978.

16. Learned counsel for the respondent Nos. 5 to 9 has also

submitted that the petitioners have not challenged the order dated 30.03.2021 issued by the respondent No. 4 on the basis of which fresh selection for the Village Council Members from four disputing Khels was conducted, hence, subsequent orders and actions which were based on the order dated 30.03.2021 may not be disputed in this writ petition. In support of his submission, learned counsel for the respondent Nos. 5 to 9 have relied on a ruling of Hon'ble Supreme Court of India in "***Edukanti Kistamma vs. S. Venkatareddy***" reported in "***(2010) 1 SCC 756***" wherein it was observed as follows:

"22. It is a settled legal proposition that challenge to consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed cannot be entertained. Therefore, it is a legal obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined."

17. Learned counsel for the respondent Nos. 5 to 9 has also submitted that the petitioners have challenged the approved list of Village Council Members of Lakhuti Village as a whole. However, the other members in the said approved list, namely, from serial No. 1 to 7 have not been impleaded as respondent in this writ petition, and therefore, this writ petition is bad for the non-joinder for necessary parties. It is also submitted by learned counsel for respondent Nos. 5 to 9 that the relief sought for in this writ petition is confined only to petitioner Nos. 8 and 9 who are from Yanthanro Khel and Patton Khel respectively and as regards Village Council Members who have been selected in respect of Haili Khel and Upper Khel, the petitioners have not claimed any relief and, therefore,

same may not be granted to them.

18. I have considered the submissions made by learned counsel of the rival parties and have gone through the materials available on record carefully.

19. Section 4 of the Nagaland Village Councils Act, 1978 provides as Follows:-

***“A Village Council shall consist of members, chosen by villagers in accordance with prevailing customary practices and usages, the same be approved by the State Government, provided that hereditary village Chiefs, GBs and Angs shall be Ex-Officio Members of such councils and shall have voting right.*”**

A bare perusal of aforesaid provision makes it abundantly clear that it is the villagers who are to choose the members of village council in accordance with prevailing customary practices and usages.

20. Learned counsel for all the contesting parties have not disputed that as per the prevailing customary practices and usages of the Lakhuti Village, which has eight Khels, the respective Clan Members, after due deliberations, choose requisite numbers of Village Council Members allotted against their respective Khels and thereafter, informs the Head GB of the Village, who in turn forwards the names of such chosen Village Council Members to the Government for approval. However, in the instant case, it appears that there were allegations that during scrutiny of the candidates for Village Council Members, on 22.03.2021, the Head GB and 13 other GBs arbitrarily disqualified some of the candidates and forwarded

the list of Village Council Members against four Khels, namely, Patton Khel, Haili Khel, Yanthanro Khel and Upper Khel containing names of the candidates who were not chosen by villagers (Clan/Khel Members).

21. On the other hand, it also appears that on receipt of the complaint regarding selection of some of the Village Council Members during the scrutiny which was held on 22.03.2021, the respondent No. 3 forwarded the said complaint to respondent No. 4 by letter No. ADC/SNS/COUN/2020-21 dated 25th March, 2021 directing the respondent No. 4 to verify the matter and take necessary action at his end to enable free and fair selection of Village Council Members. However, it appears that on the basis of the complaint received and on finding certain discrepancies, the respondent No. 4 by order No. SNS-GEN/VC/2020-21 dated 30th March, 2021 directed the Haili Khel, Patton Khel, Yanthanro Khel and Upper Khel to submit list of nominations along with the household support, signatures on 03rd April, 2021 at Lakhuti Community Hall. Thus, it appears that by order dated 30th March, 2021, the respondent No. 4 had discarded the process which was conducted on 20th March, 2021 and 22nd March, 2021 for selection of Village Council Members in respect of above four Khels. It also appears that a complaint was also filed against respondent No. 4 on 03.04.2021 by the Head GB, Lakhuti Village (petitioner No. 1) which was enquired into by respondent No. 3, who found no lapses on the part of respondent No. 4.

22. Though, learned Additional Advocate General, Nagaland has submitted that in view of the provisions contained in Section 22 of the

Nagaland Village Councils Act, 1978, which bestows the control of all the Village Councils within his jurisdiction to the Extra Assistant Commissioner subject to general superintendence of State Government and other higher authorities, the respondent No. 4 was within his powers to direct fresh submission of list of nominations for four Khels of Lakhuti village in respect of which complaints were received, however, it appears that Section 20 of the Nagaland Village Councils Act, 1978 provides that when a dispute arises as to the selection of any Member of a Village Council, the matter shall be referred to the State Government, which in the instant case was not done by the respondent No. 4.

23. On consideration of the submissions made by learned counsel for both sides as well as from the materials available on record, it appears that, in the instant case, there is a dispute with regard to two select lists of Village Council Members of Lakhuti Village, the first list which was forwarded after scrutiny conducted on 22.03.2021 which consisted of the names of petitioner Nos. 8 and 9 but without the names of respondent Nos. 5 and 7 and the second list which was forwarded after scrutiny which was done on 03.04.2021, which consisted of names of respondent Nos. 5 and 7, but without the names of the petitioner Nos. 8 and 9. Thus, apparently, the dispute in this case is undoubtedly regarding the selection of Village Council Members of Lakhuti Village in respect of four Khels in respect of which complaints were received.

24. Considering the nature of dispute involved in this case, we may gainfully refer to a judgment of this High Court in “*Rukhrellhoulie Thepa and Another Vs. State of Nagaland*” reported in “**2017 (4) GLT 295**” wherein

while dealing with the dispute regarding selection of a member of Tsiemekhuma Basa Village Council, another ruling of this High Court, which is also relevant in the instant case was referred to and same is quoted herein below:

*“7. Mr. K. Angami, learned Government Advocate has produced the records and on perusal of the same it is seen that the complaints and the counter-complaint were never placed before the State Government and the Deputy Commissioner, Kohima had taken a decision at his own level. With regard to Section 20 of the Act of 1978, this Court has already settled the matter in **W.P(C) No. 234 (K) of 2006** in the case of **Mr. poseruh Lohe & Ors. Vs. The State of Nagaland and Others** by order dated 16.11.2007. The operative portion is reproduced herein below:-*

"while considering the present writ petition, what needs to be noted is that Section 20 of Nagaland Village and Area Act, 1978, casts a duty on the State Government to resolve the dispute if any dispute arises with regard to the selection of members of a village council. This is the statutory obligation, which the State Government has the onus to discharge. The State Government, in the present case, appears to have shirked this responsibility of directing the Deputy Commissioner, Dimapur to resolve the dispute. Though it is not wholly improper for the State Government to seek assistance of the Deputy Commissioner in resolving the dispute, the State Government cannot absolve itself of the responsibility by taking a final decision in the matter, for, such an approach would amount to abdicating its statutory duty. Part IX and IC (A)

of the Constitution of India conceive of running of governance involving people at the grass-root level. The abdication of its responsibility by the State to take action according to law, which it has itself framed, would amount to refusing to carry out the constitutional obligation of the State. Situated thus, it is clear that the order dated 23.2.2006 needs to be set aside and the State Government need to be directed to consider afresh the matter of constitution of the village council in respect of Diezephe Village.

Considering therefore, the matter in its entirety and in the interest of justice, the order dated 23.02.2006, represented by the Chief Secretary to the Government of Nagaland is hereby directed to deal with the matter in accordance with the provisions of Section 20 of the said Act and dispose of the same in accordance with law. The whole exercise, so directed, shall be completed within a period of two months from today."

25. In the instant case also, though, the dispute relates to selection of members of Lakhuti Village Council, however, instead of referring the matter to the State Government as per Section 20 of the Nagaland Village Council Act, 1978, the respondent No. 3 forwarded the complaint to the respondent No. 4 and directed to verify and take necessary actions from his end. The mandate of Section 4 of the Village Council Act, 1978 is for the villagers to select the members of the Village Council, similarly in case of any dispute regarding selection of a Village Council Member, Section 20 mandates referring such a dispute to the State Government and under

such circumstances it was not lawful for the respondent No. 4 to ignore the mandate of Section 20 of the Nagaland Village Councils Act, 1978 and decide the issue himself by issuing order dated 30th March, 2021 by calling for fresh nominations for selection of Village Council Members of four Khels of Lakhuti Village even if he was directed to take necessary action at his end by the respondent No. 3. Under the facts and circumstances of this case, the proper course of action for the respondent No. 4 ought to have been to suggest to his higher authorities, i.e., respondent No. 3 and respondent No. 2 to refer the dispute to the State Government under Section 20 of the Nagaland Village Councils Act, 1978. This Court is of considered opinion that the statutory mandate of Section 20 of the Nagaland Village Councils Act, 1978 ought not to have been overlooked by the respondent authorities.

26. In view of above, this writ petition is disposed with a direction to the Deputy Commissioner, Wokha i.e., the respondent No. 2 to refer all the complaints received with regard to the selection of Village Council Members of Lakhuti Village as per the list of Village Council Members forwarded after conduct of scrutiny on 22.03.2021 which consisted of the names of petitioner Nos. 8 and 9 but without the names of respondent Nos. 5 and 7 and the second list which was forwarded after scrutiny which was done on 03.04.2021, which consisted of names of respondent Nos. 5 and 7, but without the names of the petitioner Nos. 8 and 9 to the State Government for taking a final decision as provided under Section 20 of the Nagaland Village Councils Act, 1978. The State Government shall take a final decision with regard to the dispute regarding selection of Village Council Members of Lakhuti Village within a period of 3(three) months

from the date of receipt of copy of this judgment.

27. As the dispute in this case mainly pertains to selection of Village Council Members with regard to Upper Khel, Haili Khel, Yanthanro Khel and Patton Khel of Lakhuti Village, till a final decision, in this regard is taken by the State Government as per Section 20 of the Nagaland Village Councils Act, 1978, the impugned order No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021, to the extent as it relates to Village Council Members of above mentioned four Khels of Lakhuti Village, shall remain suspended. As regards the Village Council Members of other Khels of the Lakhuti Village, namely, Pangtilan Khel, Humtso Khel, Ngullie Khel and Elang, the suspension of the order dated 10th June, 2021 is hereby revoked. The Extra Assistant Commissioner, Aitepyong shall have the control over the activities of Lakhuti Village Council, subject to the general superintendence of the State Government under Section 22 of the Nagaland Village Council Act, 1978 so that during the pendency of the matter before the State Government, the developmental activities of the Lakhuti village does not suffer for want of a full-fledged Village Council.

28. With the above observations, this writ petition is hereby disposed of.

JUDGE

Comparing Assistant