

GAHC020003452021



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

Case No. : WP(C)/142/2021

NCHUMO YANTHAN (HD. GB) AND ANR
S/O LT. ATSAMO YANTHAN,
R/O LAKHUTI VILLAHE, WOKHA,
WOKHA, NAGALAND

2: SHRI ECHUNGTHUNG ODYUO
S/O LT. NGHEO ODYUO
R/O LAKHUTI VILLAGE
WOKHA
WOKHA
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY HOME COMMISSIONER,
TO THE GOVT. OF NAGALAND,
NAGALAND, KOHIMA

2:THE DEPUTY COMMISSIONER (DC)
WOKHA
NAGALAND

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

4:THE EXTRA ASSISTANT COMMISSIONER
AITEPYONG
SANIS
WOKHA
NAGALAND

5:SHRI MHONTHUNG YANTHAN
S/O LT. NPFUO YANTHAN
R/O LAKHUTI VILLAGE
DISTRICT
WOKHA
NAGALAN

Advocate for the Petitioner : W R NGULLIE

Advocate for the Respondent : GOVT ADV NL

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

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 No. 5.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners impugning the selection of respondent No. 5, as Village Council Chairman of Lakhuti Village Council by appointment order bearing No. DCW-COUN-1/2020-21/698-4 dated 26th

July, 2021.

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

(i) That the petitioners as well as respondent No. 5 are the residents of Lakhuti Village in Wokha District. On 9th March, 2021, Additional Deputy Commissioner, Wokha, Nagaland had issued a circular bearing No. SNS-GEN/VC/2020-21/581-21 dated 9th March, 2021 informing that all the recognized villages 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) dobhashis and 13(thirteen) GBs and one Head GB. After proper scrutiny on 22.03.2021, the head GB (petitioner No. 1) along with the GBs of Lakhuti Village accepted the names of 11 members and forwarded the list containing the names of 11 members to the Government for approval on 29th March, 2021.

(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 Dobhashi, 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.

(vi) 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 Etongo Yantham, Elongthung Ezung, Merithung Patton, Chumdamo Humtsoe and Wochuthung Yantham appeared in serial No. 8, 9, 10, 11 and 12 respectively but they were not selected by their respective Clan/Khel. However, names of Likhyamo Kikon and Misamo Patton who were selected by their Clan/Khel were arbitrarily dropped.

(vii) The petitioners had submitted another representation to the Commissioner, Government of Nagaland on 18.06.2021 and reiterated the arbitrary conduct on the part of respondent No. 4 on 03.04.2021 wherein the petitioner No. 1 was forcefully and illegally made to sign some documents without being informed about the contents of the said documents.

(viii) Being aggrieved by the approval order dated 10th June, 2021, the present petitioner No. 1 along with 8(eight) others had filed a writ petition, impugning the said approval order which was registered as WP(C) No. 123/2021 wherein by order dated 27th July, 2021, the aforesaid approval order was stayed.

(ix) That respondent No. 4 on 20th July, 2021 issued order No. SNS-GEN/VC/2020-21 whereby Lakhuti Village Council was informed that selection/election of Village Council Chairman shall be conducted at the office of Additional Deputy Commissioner, Sanis on 24th July, 2021 against which the present petitioner Nos. 1 and 6 GBs of Lakhuti Village submitted a representation to respondent No. 1 on 26th July, 2021, however, same was not responded to by the respondent authorities.

(x) The petitioners also submitted complaints against respondent No. 5 for misappropriation of public funds by him when he was the Chairman of Lakhuti Village Council during the years 2016 to 2019. However, in spite of such complaints, the respondent No. 1 by order No. DCW-COUN-1/2020-21/698-4 dated 26th July, 2021 appointed the respondent No. 5 as Chairman of Lakhuti Village Council which has been impugned in this writ petition.

4. The learned counsel for the petitioners has submitted that though complaints regarding misappropriation of funds by the respondent No. 5 were made against him by petitioners, instead of enquiring into the said allegations, the respondent authority notified the appointment of the respondent No. 5 by the impugned order dated 26th July, 2021. It is submitted by learned counsel for the petitioners that the selection/election of the respondent No. 5 as Chairman of Lakhuti Village Council was on the basis of votes casted in his favour by those Village Council Members of Lakhuti Village who were not chosen by the members of their respective Clan/Khel, namely, Etongo Yantham, Elongthung Ezung, Merithung Patton,

Chumdamo Humtsoe and Wochothung Yantham and Wochuthung Yantham, hence, the impugned appointment order of the respondent No. 5 as Chairman of Lakhuti Village Council is liable to be cancelled.

5. On the other hand, Ms. V. Suokhrie, learned Additional Advocate General, Nagaland, submitted that 7 GBs out of 14 GBs and 9 Village Council Members out of 13 approved Village Council Members extended their support to the respondent No. 5, namely, Sri Mhonthung Yanthan to be the new Village Council Chairman of Lakhuti Village. Accordingly, the respondent No. 4, by letter dated 24.07.2021, forwarded the support list of respondent No. 5 to the Additional Deputy Commissioner, Sanis, Wokha and by order dated 26.07.2021, the respondent No. 5, namely, Sri Mhonthung Yanthan was appointed as Village Chairman. Learned Additional Advocate General, Nagaland submitted that the respondent No. 5 has been duly selected as Chairman of Lakhuti Village Council as per the provisions of Section 7(1) of the Nagaland Village Councils Act, 1978 hence, same warrants no interference by this Court.

6. On the other hand, Mr. L. Iralu, learned counsel for the respondent No. 5 has submitted that the outcome of this writ petition is dependent on the outcome of WP(C) No. 123/2021. Learned counsel for the respondent No. 5 has cited a ruling of this Court in “**Vesopa -Vs- State of Nagaland**” reported in “**(1995) 1 GLR 418**” wherein it was observed that the action of Extra Assistant Commissioner in convening a meeting of Village Council Members to select the Chairman was covered under Section 22 of the Nagaland Village Councils Act, 1978. Learned counsel for

the respondent No. 5 has also cited a ruling of this Court in “***Yitsabemo Odyuo -Vs- State of Nagaland***” reported in “***(2017) 4 GLT 1992***” wherein it was reiterated that once the Village Council Members select the Chairman, such selection requires no further approval from the Government except to affirm or acknowledge such selection.

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

8. Section 7 of the Nagaland Village Councils Act, 1978 provides as Follows:-

“1) The Village Council will choose a member as Chairman of the Council.

(2) During the absence of the Chairman from any sitting of the Village Council a member of the Council nominated by the Chairman shall act as Chairman.”

It appears from the submissions made by learned Additional Advocate General, Nagaland that in the selection process of Chairman of Lakhuti Village Council, the Village Council Members of the Upper Khel, Haili Khel, Yanthanro Khel and Patton Khel as regards whom complaints were received, also took part in the voting.

9. It is pertinent to mention herein that by judgment dated 17.10.2023 passed in WP(C) No. 123/2021, the Deputy Commissioner, Wokha has been directed to refer all complaints received regarding selection of Village Council Members of Lakhuti Village to the Government

for taking a final decision under Section 20 of the Nagaland Village Councils Act, 1978 and till a final decision is taken by the State Government, the order No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021 to the extent it relates to Village Council Members of Upper Khel, Haili Khel, Yanthanro Khel and Patton Khel of Lakhuti Village has been suspended. However, suspension in respect of other four Khels of Lakhuti Village, namely, Pangtilan Khel, Humtso Khel, Ngullie Khel and Elang Khel has been revoked.

10. As the impugned selection and appointment of respondent No. 5, who is a Village Council Member against Elang Khel, as Chairman of Lakhuti Village Council, was on the basis of votes received by him from the Village Council Members including that of Upper Khel, Haili Khel, Yanthanro Khel and Patton Khel of Lakhuti Village in respect of which the order No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021 has been suspended until a final decision from the Government under Section 20 of the Nagaland Village Councils Act, 1978, the selection of respondent No. 5 on the basis of the votes of such Village Council Members may not be sustained and is liable to be set aside. However, as the suspension of order No. GAB-1/WKA/VCM/2020(Pt) dated 10th June, 2021 in respect of the Village Council Members of the other four Khels of Lakhuti Village, namely, Pangtilan Khel, Humtso Khel, Ngullie Khel and Elang Khel has been revoked, the Village Council Members of the said Khels may chose a Chairman from amongst them to be the Chairman of the Lakhuti Village Council in pursuant to Section 7 of the Nagaland Village Councils Act, 1978, till a final decision as regards Village Council Members against other

four Khels of Lakhuti Village is taken by the Government as per Section 20 of the Nagaland Village Councils Act, 1978.

11. In view of above, the impugned appointment order bearing No. DCW-COUN-1/2020-21/698-4 dated 26th July, 2021 is hereby set aside and quashed. The respondent authorities are directed to take steps for notifying the process of selection of a new Chairman of the Village Council of Lakhuti Village in pursuant to the direction given in paragraph No. 10 of this judgment.

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

JUDGE

Comparing Assistant