

GAHC020005372021



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

Case No. : WP(C)/268/2021

MR. NPFUO KIKON
S/O LATE CHIPORAO KIKON, R/O KOIO VILLAGE,
DISTRICT - WOKHA, NAGALAND

VERSUS

1:THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
NAGALAND, KOHIMA

2:THE HOME COMMISSIONER TO THE GOVT. OF NAGALAND
NAGALAND
KOHIMA

3:THE COMMISSIONER TO THE GOVT. OF NAGALAND
NAGALAND
KOHIMA

4:THE DEPUTY COMMISSIONER
WOKHA
NAGALAND

5:MR.HATHUNGO KIKON
S/O MR. MYAMO KIKON
CHUKITONG VILLAGE
DISTRICT - WOKHA
NAGALAND

Advocate for the Petitioner : N. MOZHUI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT AND ORDER (CAV)

Date : 19-10-2023

(Mridul Kumar Kalita, J)

1. Heard Mr. N. Mozhui, learned counsel for the petitioner. Also heard Mr. V. Zhimomi, learned Government Advocate for the respondent Nos. 1 to 4 and Mr. Tongpok Pongener, learned counsel for the respondent no. 5.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner, namely, *Mr. Npfuo Kikon*, impugning the letter No. GAB-1/WKA/VCM/2021 dated 02.08.2021, whereby the Government conveyed its approval for replacement of name of the petitioner by the respondent No. 5, namely, Mr. Hathungo Kikon, as Village Council Member (VCM) of Koio Village for the tenure 2021-26 and also praying for appropriate directions to the respondent authorities not to disturb the post of petitioner as Village Council Member of Koio village which was duly approved by the Government by letter No. CN/GEN/VCM/WKA-2021 dated 10.06.2021.
3. The petitioner's case, in brief, is as follows:-
 - (i) That on 05.03.2021, the respondent no.2, i.e., the Home Commissioner to the Government of Nagaland wrote to Deputy Commissioner of all Districts by letter No.CND-1/VC/ELE/2015/2304 dated 05.03.2021 for formation of Village Councils in the State of Nagaland for the tenure

2021-26 as per the provisions of Nagaland Village Council Act, 1978 and thereafter, the respondent No.3 by order No. DCW-SDR-NOTIFICATION/1/2019 dated 09.03.2021 directed the Head GBs of all Villages under Wokha Sadar to take charge of the Village Administration until constitution of new Village Council and it was also notified that all recognized villages under Wokha Sadar to select/elect new Village Council for the next tenure as per prevailing customary practices and usages in accordance with Nagaland Village Tribal Council Rules, 1979 and Nagaland Village Councils Act, 1978.

- (ii) Accordingly, the petitioner's clan namely, Chuchurui Wopan of Koio Village invited applicants from its clan for nomination as Village Council Member. Thereafter, the clan members decided to select/elect the petitioner as a Village Council Member to represent Chuchurui Wopan of Koio village for the tenure 2021-26 and submitted his name to the Head GB of Koio village. Thereafter, the name of the petitioner was forwarded to the Government for approval and accordingly by letter No. CN/GEN/VCM/WKA-2021 dated 10.06.2021, the Government approved the list of newly selected Village Council Members under Wokha District, wherein the name of the petitioner appeared at Serial No. 6 under Koio village.
- (iii) Thereafter, in the later part of July 2021, the petitioner came to know from reliable sources that some move was

made by some vested interested persons to replace him by respondent no.5 as Village Council Member. After coming to know about such move, the petitioner submitted a representation dated 22.07.2021 to the respondent No. 4, i.e., the Deputy Commissioner, Wokha, Nagaland clarifying that his name was duly forwarded by the Chuchurui Wopan and was duly approved by Government letter dated 10.06.2021 and a request was made not to entertain any the complaint in this regard. However, by letter No. GAB-1/WK/VCM/2021 dated 02.08.2021, respondent No.2 conveyed the approval of the Government for replacement of the petitioner as VCM in respect of Koio Village Council by respondent no. 5 and no specific grounds were mentioned for such replacement of the petitioner by the respondent no.5 in the said approval order.

- (iv) Thereafter, on 08.09.2021, the petitioner submitted representation against his replacement by respondent No. 5 stating therein that the present petitioner was duly selected as Village Council Member of Chuchurui Kikon Clan of Koio village. It was also stated in the said representation that the respondent No.5 is not a resident of Koio village, but he is a permanent resident of Chukitong village and prayed for declaring the impugned approval of respondent No.5 as Village Council Member of Koio village as null and void and to approve the petitioner as Village Council Member of Koio village, as per the earlier approval list

dated 10.06.2021. However, no action was taken on the representations filed by the present petitioner.

4. It is pertinent to mention herein that by order dated 02.11.2021, passed by this Court, in the instant writ petition, the operation of impugned letter No. GAB-1/WKA/VCM/2021 dated 02.08.2021 was suspended till next returnable date and thereafter, on subsequent occasions the suspension of impugned letter was extended from time to time.

5. Mr. N. Mozhui, learned counsel for the petitioner has submitted that the petitioner was duly chosen by the villagers of Chuchurui Wopan as Village Council Member to represent Chuchurui Wopan of Koio village for the tenure 2021-26. It is further submitted that after his name was duly forwarded by the Head GB to the Government, the Government had also approved the selection/election of the present petitioner as Village Council Member by letter dated 10.06.2021. However, by the impugned letter dated 02.08.2021, the Government has illegally conveyed the approval for replacement of the name of the respondent no.5 in place of present petitioner in respect of Koio village, without any statutory authority.

6. Mr. N. Mozhui, learned counsel for the petitioner has submitted that there is no provision in the Nagaland Village Councils Act, 1978 which authorizes the Government to replace an elected Village Council Member of a Village Council unless such member is either removed by the Government in exercise of its powers under Section 9 of the said Act or he is disqualified under

Section 16 of the Nagaland Village Councils Act, 1978. Learned counsel for the petitioner has submitted that the impugned letter dated 02.08.2021 by which the replacement of present petitioner with the respondent No.5 was conveyed is beyond jurisdiction and beyond the statutory mandate of Nagaland Village Councils Act, 1978.

7. Mr. N. Mozhui, learned counsel for the petitioner submits that none of the grounds mentioned in Clause (a) to (f) of Section 9(1) of the Nagaland Village Councils Act, 1978 is present against the petitioner so as to justify his removal as Village Council Member of Chuchurui Wopan of Koio village. He has further submitted that at no point of time any communication was made to him by the State Government regarding any allegation against him and he was not given any opportunity of defending himself before the impugned order of replacement was issued by the respondent authority.

8. It is further submitted by learned counsel for the petitioner that the respondent No. 5 could not have been selected as a Village Council Member of Chuchurui Wopan of Koio village as he is a resident of a different village, namely, Chukitong village. It is further submitted that the name of the respondent No. 5 was not submitted in pursuant to the Order dated 09.03.2021 by which the process of electing/selecting the Village Council Members of the Village Councils of Wokha District was initiated. Learned counsel for the petitioner has submitted that the name of the present petitioner was clandestinely replaced by the respondents without having any authority of law to do so.

9. On the other hand, Mr. V. Zhimomi, learned Government Advocate, Nagaland has submitted that though initially the petitioner was selected/elected as the Village Council Member of Chuchurui Wopan of Koio village and his name was also approved by the Government, however, the Office of the Deputy Commissioner, Wokha had received a No Objection Certificate from the Head GB of the Koio village for selection of Mr. Hathungo Kikon as Village Council Member of Chuchurui Wopan of Koio village. The said No Objection Certificate was accompanied by a meeting resolution dated 16.06.2009 endorsed by twenty nine (29) members of Kikon Chuchurui Clan of Koio village unanimously conveying the approval of the clan members to replace the present petitioner by the respondent No. 5 as Village Council Member. Learned Government Advocate has submitted that thereafter, in exercise of power enacted under Section 4 and Section 20 of the Nagaland Village Councils Act, 1978, the matter was forwarded to higher authority of the State Government and thereafter, the Government decided to approve the name of respondent and replace the petitioner by respondent No. 5 in exercise of its powers under Section 20 of the Nagaland Village Councils Act, 1978, on the basis of the resolution dated 16.06.2009.

10. Mr. V. Zhimomi, learned Government Advocate has further submitted that as per Section 20 of the Nagaland Village Councils Act, 1978, whenever any dispute arises as to selection of a Member of a Village Council, the matter shall have to be referred to the

State Government and any decision of the State Government on the same shall be final and in the instant case also the State Government has acted well within the limits of its power bestowed on it by the statute.

11. Mr. V. Zhimomi, learned Government Advocate has submitted that the impugned approval order for replacement of respondent No.5 in place of the petitioner was issued only after receipt of several objections and letters by the State respondents, wherein it was clearly stated that though the petitioner was elected as a Village Council Member of their clan, however, he was made to resign as VCM in accordance with Clan's Resolution No. 1 dated 16.06.2009 due to his failure to obey and adhere to the clan and family resolution. It is submitted by learned Government Counsel that as the present petitioner went against the will of clan and acted according to his own will, the clan decided to make him resign and to elect a new member as his replacement. It is submitted by learned Government Counsel that the State respondents acted as per the provisions of Section 4 and Section 20 of the Nagaland Village Councils Act, 1978 and that the petitioner's prayer in this writ petition is liable to be rejected.

12. On the other hand, Mr. Tongpok Pongener, learned counsel for the respondent No. 5 has submitted that the respondent No. 5, namely, Mr. Hathungo Kikon is eligible to be elected/selected as a Village Council Member for Chuchurui Wopan of Koio village as per Clause 6 (b) of the resolution dated 19.07.2017 adopted by Koio village. He has submitted that as per the said resolution, Koio

village people living outside the village in other places including Chukitong Koio Ekhung would be eligible to be considered for selection as the Village Council Members of Koio village. It is also submitted by learned counsel for respondent No.5 that apart from the resolution dated 19.10.2017, the Chuchurui Kikon Clan of Koio village had also adopted a resolution dated 16.06.2009, *inter-alia*, providing that the clan member selected by the clan as Village Council Member must act in accordance with Clan's decision and if he fails to do so and acts according to his own will, he will be made to resign and another member will be selected as his replacement. It is submitted by learned counsel for the respondent No. 5 that the replacement of petitioner was made on the basis of above mentioned resolutions adopted by villagers of the Koio village.

13. Learned counsel for the respondent No.5 has also submitted that the petitioner has not made even a whisper about the aforesaid two resolutions dated 19.10.2017 and 16.06.2009 in his writ petition, though he was aware about the same and therefore, he is guilty of suppression of material facts and, therefore, is not entitled to the reliefs prayed for in the writ petition. In support of his submission, learned counsel for the respondent No. 5 has cited ruling of "***Prestige Lights Ltd. v. SBI***" reported in "***(2007) 8 SCC 449***", wherein it was observed as follows:

"33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The

High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R. v. Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] , in the following words:

"It has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and

fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

14. Learned counsel for the respondent No.5 has also cited another ruling of Hon'ble Apex Court in "***K.D. Sharma v. SAIL***" reported in "***(2008) 12 SCC 481***", wherein it was observed as follows:

"36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a

false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] Viscount Reading, C.J. observed: (KB pp. 495-96)

"... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be

heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

15. Learned counsel for the respondent No.5 has also submitted that the petitioner after being selected as Village Council Member refused to act as per clan's decision and thereby he violated clan's resolution dated 16.06.2009 and accordingly, the clan took a decision to replace him by the respondent No.5. Learned counsel for the respondent No.5 has further submitted that selection of respondent No.5 as Village Council Member is perfectly in keeping with Lotha Naga Customary Law and the settled practice of Koio village. It is further submitted by learned counsel for the respondent No. 5 that a co-ordinate Bench of this Court, in a writ petition i.e., WP (C) 117/2021, where the facts were similar to the facts of the instant case, by judgment dated 09.12.2021 had quashed the appointment of Village Council Member in that case and directed holding of fresh election/selection of the Village Council Member. It is submitted by learned counsel for respondent No.5 that in tune with the judgment passed in WP (C) 117/2021, if the approval orders of the Government in respect of both the petitioner and respondent No.5 are set aside and fresh election is directed, the respondent No. 5 would not object to the same. Though, it is also submitted by the learned counsel for the respondent No.5 that while issuing the impugned order of approval to election/selection of the respondent No.5 as a Village Council Member of Chuchurui Wopan of Koio village, the Government had acted well within its powers under the provisions of Nagaland Village Councils Act, 1978.

16. I have considered the submissions made by learned counsel

for rival parties and have gone through the materials available on record.

17. It appears that by Order No. DCW-SDR-NOTIFICATION/1/2019 dated 09.03.2021, the respondent No.3 notified that all recognized villages under Wokha Sadar to select/elect new Village Council Members for next tenure as per the prevailing customary practices and usages in accordance with Nagaland Village Councils Act, 1978. It was further mentioned in the said order that the whole process of selection/election of the Village Council Members should be completed on or before 25.03.2021 and the list of new Village Council Members may be submitted to the SDO, Sadar for strict compliance. It appears that in pursuant to the said order dated 09.03.2021, the petitioner was elected/selected by the Members of Chuchurui Wopan of Koio village for the tenure 2021-26 and by letter dated 17.03.2021, his name was forwarded to the Government. Later on, by letter bearing No. CN/GEN/VCM/WKA-2021 dated 10.06.2021, the Government approved the list of newly selected/elected Village Council Members under Wokha district and the said list contained the name of the present petitioner which appeared at Serial No. 6 under Koio village. The selection of the petitioner by the Chuchurui Wopan of Koio village has not been disputed by any of the respondents including the respondent No.5. From what has been pleaded by the contesting parties and from what has been submitted by the learned counsel for both sides, it appears that there is no dispute regarding the initial selection/election of the

present petitioner as Village Council Member and approval of the Government to the same. However, it is the case of the petitioner that his name was later on replaced by the name of respondent No. 5 by the respondent authorities behind his back without any sanction of law.

18. In this case it appears that, the moot question is as to whether once a Village Council Member is selected and approval to same is accorded to such selection in pursuant to Section 4 of the Nagaland Village Councils Act, 1978, is it open for the respondent authorities to replace the name of such a selected member by another person, and if so under what circumstances and under which provision of law ?

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

"4. A Village Council shall consist of members, chosen by Villagers in accordance with the prevailing customary practices and usages, the same being approved by the State Government, provided that hereditary Village Chiefs GBs and Angs shall be Ex-officio members of such council and shall have voting right."

20. A bare perusal of the above provision shows that it is for the villagers to choose the Village Council Members in accordance with prevailing customary practices and usages and after they have chosen such a member, same has to be approved by the Government. On being approved by the Government, the chosen member is deemed to be an elected/selected Village Council Member from the date on which such approval is accorded.

21. It also appears that under Section 9 of the Nagaland Village

Councils Act, 1978, the Government has the power to remove the selected/elected members. Section 9 of the Nagaland Village Councils Act, 1978 is quoted herein below:

"Power to remove members

9. (1) The State Government may remove any member of a Village Council from his office:

(a) Who is convicted of any offence involving moral turpitude by a court of law, or

(b) Who refuses to act, or become incapable of acting or

(c) Who is declared to be insolvent, or

(d) Who has been declared by notification in the Gazette to be disqualified for employment in the Public Service, or

(e) Who without an excuse or sufficient ground in the opinion of the State Government absents himself from the majority of meeting in a year of Village Council, or

(f) Who has been guilty of misconduct, in discharge of his duties or of any disgraceful conduct, and two third of the total members of the Village Council at a meeting recommend his removal.

(2) No person who has been removed from his office under clause (a) or clause (d) or sub-section shall be eligible for re- election except with the previous permission of the State Government obtained by such person in the prescribed manner."

22. On perusal of the above provisions, it appears that there are six contingencies under which an elected/selected Village Council Member may be removed from his office. Any of the contingencies mentioned in Section 9 (1) (a) to (f) must exist before the power of removal of a Village Council Member, under Section 9 of the Nagaland Village Councils Act, 1978 is exercised by the

Government. In other words, unless at least one of the circumstances as provided under Section 9 (1) (a) to (f) is present, the power of removal under Section 9 of the Nagaland Village Councils Act, 1978 may not be exercised by the Government and if it does so, it would be an arbitrary exercise of power not vested in it by the statute.

23. In the instant case, the impugned letter No. GAB-1/WKA/VCM/2021 dated 02.08.2021 does not mention any reason for replacement of the petitioner by the respondent No. 5 as Village Council Member in respect of Koio village. It is also to be noted that though the respondent side relied heavily on the resolution dated 16.06.2009 of the Kikon Chuchurui of Koio village whereby it was resolved that if a selected/elected Village Council Member goes against the will of the clan and acts according to his own will, the clan will make him resign and a new member will be elected as his replacement and that the decision to replace the present petitioner was taken in accordance with the said resolution by the Chuchurui clan of Koio village, however, on careful perusal of the provisions of Nagaland Village Councils Act, 1978, it appears that the said statute does not provide for any such contingency where the elected/selected Village Council Member may be made to resign for not acting as per the will of the clan after his selection as Village Council Member.

24. The only statutory provision as stated herein before, in the Nagaland, Village Councils Act, 1978 for removal of a Member of Village Council is in Section 9 of the said Act, where the State

Government has power to remove the Member from his office under certain contingencies. However, it goes without saying that once a Village Council Member is duly selected/elected and his name is approved and, thereafter, if the Government wishes to exercise its power under Section 9 of the said Act, the concerned Village Council Member must be given an opportunity of being heard in respect of the allegations levelled against him. The power of removing an elected/selected Village Council Member may not be exercised arbitrarily by the Government, behind the back of such Village Council Member, without affording any opportunity to him of being heard.

25. Moreover, said power may only be exercised subject to existence of any of the contingency mentioned in Section 9 of the Act. In the instant case, the respondent authorities have failed to show that any of the circumstances mentioned in Section 9 of the Act was present before the decision to replace the present petitioner was taken by the state respondents. They also failed to show that the present petitioner was heard or that he was given any opportunity of being heard before the order of replacing him by the defendant No. 5 was taken by the impugned order dated 02.08.2021. There is no explicit provision in the Nagaland Village Councils Act, 1978 which contemplates replacing an existing Village Council Member with another person behind the back of the incumbent Village Council Member.

26. Further, it also appears that the power of choosing the Village Council Members as per Section 4 of the Nagaland Village Councils

Act, 1978 vested in the villagers and when once they have exercised this power in accordance with the prevailing customary practices and usages and have chosen such members and after the same has been approved by the State Government, such villagers, under the scheme of the Nagaland Village Councils Act, 1978 do not have any power to recall or replace their chosen members. The question of choosing a new member to the Village Councils arises only when a seat becomes vacant and same has been provided under Section 19 of the Nagaland Village Councils Act, 1978.

27. The circumstances under which a seat of a Village Council Member may be treated to have become vacant are provided in Section 18 of the Nagaland Village Councils Act, 1978 which is quoted herein below:-

"18. A seat shall become vacant (1) when a member dies; or (2) when a member resigns his seat in writing under his own hand; or (3) when a member is removed by the State Government on becoming disqualified."

Thus, when a Village Council Member dies, or when a member resigns his seat in writing under his own hand, or when a member is removed by the State Government on becoming the disqualified, a seat of such a Village Council Member may be treated to be as vacant. Apart from the aforesaid circumstances, a seat of an elected Village Council Member, under the provision of Nagaland Village Councils Act, 1978 may not be treated to be vacant seat. In the instant case though the respondent side has relied heavily upon the resolution adopted by Koio village to the effect that the petitioner was made to resign from Village Council Member in

accordance with resolution dated 16.06.2009, due to his failure to obey and adhere to clan and family's resolution, however, the State respondents have failed to show any resignation letter, in writing, under petitioner's own hand as mandated by Section 18 of the Nagaland Village Councils Act, 1978. Thus, there is nothing to show that the seat against which the present petitioner was elected as Village Council Member ever became vacant after his election/selection. Hence, the question of election/selection of respondent No. 5 as Village Council Member against the said seat does not arise.

28. In the instant case, the facts which are brought on record does not show that there is any dispute in this case as regard to initial selection of the petitioner as Village Council Member. What is disputed is the manner and the power of the respondent authorities to replace the petitioner as Village Council Member without taking recourse to his removal under Section 9 of the Act or without the petitioner himself resigning from the said seat by tendering resignation in writing in his own hand.

29. Moreover, even if it is assumed that there is a dispute regarding selection of the present petitioner as Village Council Member and the matter is referred to the State Government under Section 20 of the Act, the State Government, while deciding such a dispute is expected to act judiciously in arriving at a decision with regard to the dispute referred to it. The State Government is expected to come to a decision on the basis of materials made available before it on the basis of law applicable to the disputed

facts. If required in exercise of powers under Section 20 while deciding a dispute, the State Government may have to allow the contesting parties to adduce evidence. While exercising powers under Section 20 of the Act, the State Government cannot come to a decision arbitrarily or whimsically. While taking a decision with regard to a dispute, which is referred to it, with regard to selection of any Member of Village Council, the State Government is expected to act as a *quasi judicial* body. The decision by it has to be arrived at only after following the fair principles of natural justice and not arbitrarily. However, in the instant case there is no material to show that in arriving at the decision to replace the petitioner by respondent No. 5, the respondent authorities had followed the principles of natural justice by affording the present petitioner, who was duly selected/elected Member of Chuchurui Wopan of Koio village, an opportunity of being heard.

30. Further, with regard to the submissions made by learned counsel for the respondent No.5 that the present petitioner has suppressed the material facts in this writ petition, there is no cogent materials on record to show that the petitioner had any knowledge about the resolutions adopted against him to replace him by respondent No. 5 as Village Council Member, on the basis of resolution No. 1 dated 16.06.2009. There is nothing on record to show that any opportunity was afforded to the petitioner before such resolution was adopted against him. There must be sufficient materials on record, for this Court to arrive at a finding that the petitioner has willfully suppressed material facts in his writ petition

so as to disentitle him from the reliefs, to which he seems to be otherwise entitled to this writ petition, which are not there in the instant case.

31. Moreover, on perusal of the Order No. DCW/SDR/Notification/1/2019 dated 09.03.2021, it appears that it clearly stipulates that the process of selection/election of Village Council Members ought to be completed on or before 25.03.2021 and list of new Village Council Members be submitted to SDO Civil Sadar for strict compliance. Hence, the stage of submission of list of newly elected/selected members to the Government by the villagers in the instant case was over by 25.03.2021 and though the forwarding of the name of the present petitioner was much prior to the said deadline, the name of the respondent No. 5 has been sent to the respondent authority much later and much beyond the deadline prescribed in the order dated 09.03.2021. Moreover, when the name of respondent No. 5 was sent for approval as Village Council Member of Chuchurui Wopan of Koio Village, no vacant seat was available to which respondent No. 5 could have been appointed.

32. For the above mentioned reasons, this Court is of considered opinion that the respondent authorities acted beyond jurisdiction and beyond the mandate of the provisions of the Nagaland Village Councils Act, 1978 in replacing the name of the present petitioner with the name of respondent No. 5 as Village Council Member of Chuchurui Wopan of Koio Village.

33. In view of the above, the impugned approval letter No. GAB-

1/WKA/VCM/2021 dated 02.08.2021 issued by the respondent authorities, whereby the name of the present petitioner was replaced by the name of the respondent No. 5 as Village Council Member of Chuchurui Wopan of Koio Village is hereby set aside and quashed and the selection/election of the petitioner as a Village Council Member of Chuchurui Wopan of Koio village and subsequent approval to said selection/election by the Government is hereby affirmed and upheld.

34. With the above observations, this writ petition is hereby allowed.

35. No orders as to cost.

JUDGE

Comparing Assistant