

GAHC020007332022



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

Case No. : WP(C)/294/2022

LOTHA BAPTIST CHURCHES ASSOCIATION
MISSION CENTRE VANKHOSONG, GOVT. REGD. NO. RS 988,
P.O. BOX-04, WOKHA-797111, NAGALAND,
REPRESENTED BY ITS PRESIDENT - REV. DR.E.NRIO EZUNG AND
EXECUTIVE SECRETARY REV. KHONBEMO P KIKON

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE HOME COMMISSIONER NAGALAND KOHIMA

2:THE COMMISSIONER
NAGALAND KOHIMA.

3:THE DEPUTY COMMISSIONER
WOKHA NAGALAND

4:THE LOTHA BAPTIST CHURCHES ASSOCIATION (RCC)
WOKHA NAGALAND REPRESENTED BY REV. DR. EZAMO MURRY
EXECUTIVE SECRETARY (RCC)

Advocate for the Petitioner : LIMAWAPANG

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/215/2022

LOTHA BAPTIST CHURCHES ASSOCIATION
MISSION CENTRE VANKHOSANG GOVT. REGD. NO. RS 988,
P.O. BOX-04, WOKHA-797111, NAGALAND,
REPRESENTED BY ITS PRESIDENT - REV. DR.E.NRIO EZUNG AND
EXECUTIVE SECRETARY REV. KHONBEMO P KIKON

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE HOME COMMISSIONER
NAGALAND KOHIMA

2:THE COMMISSIONER
NAGALAND KOHIMA

3:THE ADDITIONAL SECRETARY AND EX-OFFICIO
REGISTRAR OF SOCIETIES, NAGALAND KOHIMA

4:THE DEPUTY COMMISSIONER
WOKHA, NAGALAND

5:LOTHA BAPTIST CHURCHES ASSOCIATION(RCC)
WOKHA NAGALAND REPRESENTED BY REV. DR. EZAMO MURRY
EXECUTIVE SECRETARY(RCC)

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO

ORDER

Date : 04-04-2023

Heard Mr. Limawapang, learned counsel for the petitioner, Ms. V. Soukhrie, learned Addl. Govt. Advocate appearing for the State respondents and Mr. Bendangwabang, learned counsel appearing for the private respondent.

[2.] This Order will dispose of both the writ petitions. Both the

writ petitions are filed by the Lotha Baptist Churches Association (LBCA for short). The petitioner LBCA represented by its Executive Secretary has filed WP(C) No. 215/2022 challenging the order dated 30.09.2022 (Annexure - T) passed by the Addl. Secretary to the Govt. of Nagaland and Ex-Officio Registrar of Societies, Nagaland, Kohima (Respondent No. 3) calling for a Special General Conference of all the delegates in terms of the Memorandum of Association (MoA) to assemble on 11.10.2022 at the Mission Centre, Vankhosung, Wokha in order to test the confidence enjoyed by the current Office Bearers of the LBCA and elect/select the Officer Bearers in accordance with the MoA. The petitioner has also challenged the order dated 07.10.2022 (Annexure - V) passed by the same authority re-fixing the Special General Conference on 21.10.2022 instead of 11.10.2022.

[3.] The petitioner by also filing WP(C) No. 294/2022 has prayed for a direction to the respondent authorities to consider and dispose of the petitioner's representation dated 29.11.2022 (Annexure - U) and further refrain the respondent No. 4 from holding parallel Annual Delegates Conference scheduled for 10th and 11th December, 2022. Be it stated herein that this Court vide order dated 06.12.2022 passed an interim order directing both the petitioner as well as the respondent No. 4 from holding the Annual Delegates Conference which were both convened on 10th and 11th December, 2022. In so far as WP(C) No.

215/2022 is concerned, this Court vide order dated 18.10.2022, suspended the operation of the order dated 30.09.2022 impugned by the petitioner.

[4.] Brief facts of the case as projected by the petitioner in WP(C) No. 215/2022 is that the Lotha Hoho vide Memorandum dated 18.03.2022 (Annexure - H) dissolved the LBCA Officer Bearers and the Executive Body based on Article 372 (A) of the Constitution of India and Point No. 8 of the 16 Point Agreement of the State of Nagaland and appointed an interim administration of the LBCA for a period of 6 (six) months. The LBCA being a newly registered body governed by its own MoA therefore submitted an application dated 25.03.2022 to the respondent No. 4 i.e., Deputy Commissioner, Wokha, Nagaland requesting the said authority to vacate the Memorandum dated 18.03.2021 passed by the Lotha Hoho. The respondent No. 4 forwarded the representation of the petitioner to the Commissioner, Nagaland, Kohima (respondent No.2) on 27.03.2022 (Annexure - J) requesting that the appropriate authority may examine the matter and give necessary directions at the earliest considering the sensitivity and urgency of the case. The respondent No. 4 at the same time vide an Appeal dated 27.03.2022 (Annexure - K), in view of the schedule installation program of protem officials of LBCA on 28.03.2022 at 11 am at Mission Compound Centre, Vankhosung, apprehending law and order situation, in the larger interest

of public peace and tranquility, requested all parties involved to refrain from carrying out any activities which may be regarded as provocative till such time the matter is amicably resolved between the parties concerned.

[5.] The respondent No. 2 in turn forwarded the letter and enclosure of the respondent No. 4 dated 27.03.2022 to the Home Commissioner, Nagaland, Kohima (respondent No. 1) on 06.04.2022 (Annexure - L). In forwarding the said letter, the respondent No. 2 also wrote that the Office of the respondent No. 2 is of the opinion that the Memorandum dated 18.03.2022, issued by the Lotha Hoho should be considered null and void since it is ultravires and also as legal adjudication is pending before the High Court. The action of the Lotha Hoho in dissolving the existing LBCA administration and replacing/constituting a separate protem/interim LBCA administration on its own volition at the moment tantamount to interference in the Court's proceeding and may be considered as obstruction in the administration of justice and put established law under bad light. The respondent No. 2 also suggested that the Nagaland Baptist Churches Council (NBCC) may be requested to make an attempt in resolving the dispute as per the direction of the High Court. Besides this, the respondent No. 2 also stated that the view and comments of the Justice & Law Department may also be solicited to enable the Government in taking appropriate decision.

[6.] In response to the letter dated 06.04.2022, the Deputy

Secretary to the Govt. of Nagaland, Home Department to the General Administration Branch - I vide Communication dated 10.06.2022 (Annexure - M) wrote to the respondent No. 2 informing the said authority that all the concerned parties may be advised to maintain status quo as it existed prior to 18.03.2022, till the pending matter is disposed of by the High Court or fresh directions are given by it. A copy of the Communication was also addressed to the respondent No. 4 for information and necessary action and also to all the ADCs/SDOs in Wokha district for information and necessary action. The Communication dated 10.06.2022 was in turn conveyed to the respondent No. 4 by the Addl. Deputy Commissioner (HQ), Office of the Commissioner, Nagaland, Kohima stating that all the parties may be asked to maintain status quo as conveyed vide the Communication dated 10.06.2022 by the Deputy Secretary to the Govt. of Nagaland, Home Department.

[7.] Thereafter, upon coming to learn that the protem team set up by the Lotha Hoho on 18.03.2022 scheduled a delegates meeting on 13.06.2022. Apprehending confrontations and clashes and also in view of the directive from the respondent No. 2, the Addl. Deputy Commissioner, Wokha, Nagaland vide order dated 11.06.2022 (Annexure - N) issued a direction not to conduct the scheduled delegates meeting on 13.02.2022 by the protem team set up by the Lotha Hoho on 18.03.2022. The respondent No. 4 also on 28.07.2022 and 10.08.2022 invoked Section

114 Cr.PC, prohibiting assemblage of 5 or more persons in Wokha town including all the wards and perimeter of 5 km around the town including Vankhosung Mission Centre. The Executive Secretary, LBCA vide letter dated 28.03.2022 wrote to the respondent No. 3 complaining about the unauthorized and illegal use of LBCA nomenclature and logo by Lotha Hoho and requested appropriate action.

[8.] The respondent No. 3 vide Notice dated 10.08.2022 (Annexure - R), in view of the ongoing dispute amongst the members of LBCA directed the petitioner LBCA and the Lotha Baptist Churches Association (RCC) (respondent No. 5) to appear before the Registrar on 16.08.2022 and 17.08.2022 respectively. The Notice was said to be issued under Section 3 read with Section 23 of the Societies Registration Act, 1860 (Societies Act). By the said Notice, both the parties were directed to bring their written submissions along with all evidences/proofs in support of their submissions. The petitioner as directed appeared before the respondent No. 3 and vide letter dated 05.09.2022 (Annexure - S) submitted the required documents. Thereafter, vide the impugned order dated 30.09.2022, the respondent No. 3 directed that a Special General Conference of all the delegates in terms of the MoA be called to assemble on 11.10.2022 to test the confidence enjoyed by the current Office Bearers of the LBCA and elect/select the Office Bearers in accordance with the MoA. The respondent No. 3 in the said order also requested the

NBCC to depute one of its representatives as observer to the General Conference while deputing ADC (HQ), Wokha be also an observer to the General Conference. Again vide the impugned order dated 07.10.2022, the date for calling the General Conference was refixed for 21.10.2022 instead of 11.10.2022. Aggrieved with the same, the petitioner is before this Court.

[9.] Mr. Limawapang, the learned counsel submits that the respondent No. 2 while forwarding the representation received from the petitioner was of the opinion that the Memorandum dated 18.03.2022 issued by the Lotha Hoho should be considered null and void and ultravires since adjudication of the matter was pending before the High Court. The respondent No. 1 therefore vide Communication dated 10.06.2022 directed all the parties concerned to maintain status quo as it existed prior to 18.03.2022. However, without adhering to the order of status quo, the respondent No. 5 time and again attempted for installation of the protem team set up by the Lotha Hoho on 18.03.2022. Therefore, the matter is pending before the State Government and in view of the status quo directed by the State Government, the impugned orders dated 30.09.2022 and 07.10.2022 passed by the respondent No. 3 cannot be sustained and should be set aside.

[10.] Ms. V. Soukhrie, learned Addl. Advocate General, Nagaland appearing for the respondent Nos. 1 to 4 on the other hand submits that

the respondent No. 3 has acted well within his power to call for a Special General Conference to test the confidence enjoyed by the current Officer Bearers of the LBCA. She submits that even in the absence of any such provision under the Societies Act, the same is permissible under the facts and circumstances of the case. In support of her submission, the learned Addl. Advocate General has relied upon the Apex Court decision in *Swati Ulhas Kerkar and Others -Vs- Sanjay Walavalkar and Others*, reported in *2021 SCC Online SC 77*. She therefore submits that the order passed by the respondent No. 3 should not be interfered with by this Court. She also submits that the status quo order was directed on 10.06.2022 asking the parties to maintain the position as it existed prior to 18.03.2022 and now since the respondent No. 3 has passed the orders impugned by the petitioner, there is nothing left for the Government to decide. She therefore submits that the special General Conference be allowed to be held to test the confidence enjoyed by the current office bearers of the LBCA and the writ petitions be dismissed.

[11.] Mr. Bedangwabang, learned counsel for the private respondent No. 5 adopting the arguments made by the learned Addl. Advocate General submits that the petitioner as a registered Association under the Societies Act has failed to abide by Section 4 and Section 6 of the Societies Act. As per Section 4 of the Societies Act, a list has to be filed with the Registrar of Societies once every year containing the

names, address and occupations of the governors, council, directors, committee etc, which is entrusted with the management of the affairs of the society. It is clear from the order dated 30.09.2022 of the respondent No. 3 which is impugned by the petitioner that the petitioner has failed to abide by the said provision. He further submits that as per Section 6 of the Societies Act, every society registered under the Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society. However, in the present case, the petitioner LBCA is represented by an Executive Secretary who was not even elected by convening an Annual General Meeting of the society. Therefore, the challenged made by the petitioner to the impugned orders is without any basis. The learned counsel further submits that as per Section 23 of the Societies Registration, Nagaland (2nd Amendment Act), 1984, an appeal against an order made by the Registrar of Societies cancelling the registration of any society registered under the Act can be made before the appropriate authority. The petitioner without exhausting such remedy has directly approached this Court through the instant writ petition. Even on this ground, the writ petitions are not maintainable and should be dismissed. In support of his submission, the learned counsel relied upon the following authorities:-

(i) State of Orissa and Others -Vs- MESCO Steels Limited and

Another, (2013) 4 SCC 340.

(ii) Sadhana Lodh -Vs- National Insurance Co. Ltd. and Another, (2003) 3 SCC 524.

(iii) Kanaiyalal Lalchand Sachdev & Ors. -Vs- State of Maharashtra and Others, (2011) 2 SCC 782.

(iv) Vipulbhai M. Chaudhury -Vs- Gujarat Cooperative Milk Marketing Federation Limited and Others, (2015) 8 SCC 1.

[12.] Mr. Limawapang, learned counsel in quick response to the submissions made by Mr. Bendangwabang, submits that if Section 4 of the Societies Act is not complied with, the Registrar of Societies can very well invoke the penal provision provided under Section 21 (1) of the Societies Registration (Nagaland First Amendment) Act, 1969 by imposing cost. However, the same has not been done in the instant case and instead, the respondent No. 3 has summoned a Special General Conference to test the confidence enjoyed by the current Officer Bearers of the LBCA. In so far as the petitioner being represented by the Executive Secretary is concerned, the previous Executive Secretary expired and therefore, in order to select a new Executive Secretary, due process was followed by the LBCA as per the relevant provisions of its Constitution by forming a Search Committee. The Search Committee recommended the name of the present Executive Secretary and the

recommendation was deliberated upon by the LBCA delegates and finally approved by the LBCA delegates vide Resolution dated 04.08.2022.

[13.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record and also the authorities relied upon by the parties.

[14.] The Lotha Hoho vide Memorandum dated 18.03.2022 dissolved the LBCA on the basis of Article 371A of the Constitution of India and Point No. 8 of the 16 Point Agreement of the State of Nagaland. Be it stated herein that the reason for such an action is traced back to the time when Wokha Town Baptist Church, which is the mother church of all the Baptist Churches in Wokha in course of time having increased in the number of its members, 3 (three) fellowships came into existence under the fold of the mother church. The three fellowships wanted to have their independent entity for better management and growth. Therefore, the mother church in a meeting held on 30.12.2016 decided to release them as independent churches after the 100 years anniversary celebration. However, despite the 100 years anniversary celebration, the 3 (three) fellowships were not released from the mother church and therefore, the 3 (three) fellowships approached the LBCA seeking its intervention. In the process, some misunderstanding between the parties occurred and the Wokha Town Baptist Church approached the Deputy Commissioner, Wokha seeking intervention in the matter. The

Deputy Commissioner passed an order dated 12.02.2021 making an arrangement for the parties to worship separately at different time. Aggrieved with the arrangement made by the Deputy Commissioner, the Wokha Town Baptist Church filed WP(C) No. 69/2021 before this Court. During the pendency of the writ petition, it was submitted before the Court by the parties that the LBCA, which is the apex body of the Baptist Churches among the Wokhas through letter dated 14.08.2021 informed the 3 (three) fellowship churches that they have been recognized as independent full-fledged local church under the LBCA and accordingly, Recognition Certificates had also been issued. In view of such development, Court was of the view that no purpose would be served by keeping the writ petition pending any longer. Therefore, the writ petition was disposed of by directing the Deputy Commissioner, Wokha to hand over the keys of the churches to the respective functionaries so that the parties may be able to worship in their respective church building and start functioning independently. The writ petition was thus disposed of vide order dated 16.09.2021.

[15.] Against the order dated 16.09.2021, the 3 (three) fellowships who were arrayed as respondent Nos. 4, 5 & 6 in WP(C) No. 69/2021 filed Review Petition No. 3/2021 seeking review of the order dated 16.09.2021. The Review Petition was consequently disposed of vide order dated 24.02.2023 by relegating the parties to approach a competent Civil

Court having jurisdiction of the matter and till such time, the Civil Court is approached, the status quo regarding the properties be maintained as on the date of the order i.e., 16.09.2021. Therefore, WP(C) No. 69/2021 and the subsequent Review Petition filed i.e., Review Petition No. 3/2021 has already been disposed of in the above manner. However, since the parties concerned could not reconcile and come to a settlement, the Lotha Hoho apparently has intervened by passing/issuing the Memorandum dated 18.03.2022 dissolving the LBCA in the manner as already stated in the preceding paragraphs. Against such action, the matter ultimately reached the State Government through the respondent No. 1 and that is how the direction to maintain status quo vide Communication dated 10.06.2022 was issued by the State Government in the Home Department, General Administration Branch - I through its Deputy Secretary. The contents of the Communication dated 10.06.2022 may be abstract below for ready perusal:-

**"GOVERNMENT OF NAGALAND
HOME DEPARTMENT
GENERAL ADMINISTRATION BRANCH-I**

NO.GAB-1/COURT/194/211/467

Dated Kohima, the 10th June 2022

To ,

*The Commissioner,
Nagaland, Kohima,*

*Sub:- **Matter regarding Lotha Hoho Memorandum dissolving Lotha Baptist Church Association (LBCA)***

Sir,

I am directed to refer to your letter no. CN/CON/WKA/2022 dated 6th April 2022 on the subject cited above and to submit that the matter has been examined, and it is found that the grounds which have been given for dissolving the Lotha Baptist Church Association (LBCA) administration, and replacing it with an Interim Administration by the Lotha Hoho by its Memorandum dated 18th March 2022, has its genesis primarily on issues/disputes concerning the control and administration of certain churches in Wokha District, the legal adjudication of which is pending before the Hon'ble High Court. The aforesaid steps taken by the Lotha Hoho, and consequent actions, if any, at this juncture, could be construed as interference in the court proceedings, and also considered as obstruction in the Administration of Justice.

In view of the above, all the concerned parties may be advised to maintain status quo as it existed prior to 18th March 2022, till the pending matter is disposed of by the Hon'ble High Court or fresh directions are given by it.

This is for your kind information and further necessary action.

Yours faithfully,

Sd/-

(WARREN HOLOHON YEPTHOMI)

Deputy Secretary to the Govt. of

Mizoram"

[16.] From the above abstract, it may be seen that the matter placed before the State Government in the Home Department was examined and it was observed that the grounds for dissolving the LBCA administration primarily was due to the disputes concerning the control and administration of certain churches in Wokha district and that legal adjudication was pending before the High Court. It was further observed that since the steps taken by the Lotha Hoho and the consequent actions

could be construed as interference with the court proceedings and obstructing administration of justice, the concerned parties have been advised to maintain status quo as it existed prior to 18.03.2022 till the matter is disposed of by the High Court. As already stated herein above, the dispute between the rival parties initiated through WP(C) No. 69/2021 had already culminated by passing of the order dated 16.09.2021. A Review Petition i.e., Review Petition No. 3/2021 preferred against the order dated 16.09.2021 also has been considered and disposed of vide order dated 24.02.2023. As such, no such dispute is pending before the High Court obstructing the consideration of the matter by the State Government as was referred by the respondent No. 2 to State Government through the respondent No. 1 vide Communication dated 06.04.2022 and which resulted in the passing of the status quo direction vide Communication dated 10.06.2022. The status quo order also clearly provides that status quo be maintained by the parties as it existed prior to 18.03.2022. It may be noticed that the Memorandum was passed by the Lotha Hoho on 18.03.2022, which therefore means that status quo prior to coming into existence of the Memorandum passed by the Lotha Hoho on 18.03.2022. Therefore, without the Memorandum the respondent No. 5 will not be in existence and as a result, the respondent No. 3 cannot be called upon to decide a dispute which has fallen out of the Memorandum passed by the Lotha Hoho. As such, it is for the State Government to take a decision in the matter in terms of the

Communication made by the respondent No. 2 to the respondent No. 1 on 06.04.2022. As may be noticed, challenge made in the writ petitions is with regard to the orders passed by the respondent No. 3 and also for disposal of the representation submitted by the petitioner on 29.11.2022 to the Deputy Commissioner, Wokha for restraining the Lotha Baptist Churches Association (RCC) to hold parallel Annual Delegates Conference, which of course is in consequence of the Memorandum of the Lotha Hoho dated 18.03.2022.

[17.] Although Ms. V. Soukhrie, learned Addl. Advocate General has submitted that there is no matter related to LBCA pending with the State Government for adjudication and in support of her submission, she refers to the affidavit-in-opposition filed by the State respondents on 26.10.2022. However, as already noticed herein above, the direction for maintaining status quo clearly stipulates that the concerned parties should maintain status quo as it existed prior to 18.03.2022 and importantly, in view of the adjudication pending before the Court. As on the date of issuance of the status quo direction i.e., 10.06.2022, the only matter pending before this Court was Review Petition No. 3/2021 arising out of the order dated 16.09.2021 passed in WP(C) No. 69/2021. The Review Petition was disposed of vide Judgment & Order dated 24.02.2023 and the manner in which it was disposed has already been indicated in the preceding paragraphs. The present writ petitions were

filed only on 05.12.2022 and 01.11.2022 respectively. Therefore, the submission of the learned Addl. Advocate General and the statements made in the counter affidavit to this effect cannot be accepted. Moreover, it is a settled law that the stand of a litigating party cannot be improved upon by filing affidavits.

[18.] In view of the above observations and findings, this Court is of the considered view that the impugned orders dated 30.09.2022 and 07.10.2022 are not sustainable and should be set aside. Accordingly, they are set aside. The State Government shall now examine the legality or otherwise of the Memorandum dated 18.03.2022 passed by the Lotha Hoho along with the opinion rendered by the respondent No. 2 and take a decision in accordance with law as early as possible and until such decision is taken, the status quo asked to be maintained by the parties vide Communication dated 10.06.2022 shall continue.

[19.] In view of the findings, observations and directions made herein above, there will be no requirement to examine WP(C) No. 294 of 2022 separately and the decision made in WP(C) No. 215 of 2022 will cover the same. Likewise, there will be no requirement to refer to the authorities relied upon by the parties. Before parting with the records, it is also made clear that depending upon the decision to be taken by the State Government as directed herein above, it will be open for the parties to avail any legal recourse permissible in law, including those that may be

available under the Societies Act.

[20.] With the above observations and directions, both the writ petitions are disposed of. No cost.

**Sd/-
JUDGE**

Comparing Assistant