

Serial No. 15
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 94 of 2024

Date of Decision: 28.05.2024

Shri Niandro Syiemiong,
Syiem of Maharam Syiemship,
South West Khasi Hills District,
Meghalaya.

.....Petitioner(s)

- Versus-

1. The Khasi Hills Autonomous
District Council (KHADC)
Through its Secretary
Meghalaya, Shillong
2. The Secretary to the Executive
Committee, KHADC, Shillong
Meghalaya
3. The Chief Executive Member,
KHADC, Shillong, Meghalaya
4. The Joint Secretary to the
Executive Committee KHADC,
Shillong, Meghalaya
5. The Under Secretary to the
Executive Committee, KHADC
Shillong, Meghalaya
6. Shri. Phamles Syiemlieh,
Joint Secretary Kur Syiemlieh
Maharam Syiemship.

... Respondent(s)

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. P. Biswakarma, Adv.
Mr. T. Dkhar, Adv.

For the Respondent(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Ms. C. Nongkhlaw, Adv. (For R 1-5)
Ms. G.C. Marboh, Adv. (For R 6)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER (ORAL)

1. The writ petitioner who is the Syiem of Maharam Syiemship is before this Court assailing the order dated 27.03.2024, passed by the Executive Committee Khasi Hills Autonomous District Council (KHADC), represented herein, by the respondent No. 2.

2. The basic challenge, is with regard to the interpretation of the provisions of the *Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima*

Maharam) Act, 2006, more specifically the First and Second proviso to Section 5, and Rule 10 (2) of the Rules framed, under the said Act.

3. Mr. H.L. Shangreiso, learned Senior counsel assisted by Ms. P. Biswakarma, learned counsel for the petitioner has submitted that a series of Complaints that had been filed against the writ petitioner as the Chief or Syiem, as per the stipulation of the Act, were not placed before the Dorbar Hima. He further submits that this requirement, being mandatory in law as provided by the Act, and other related legislations of other Syiemships in such matters, has made the Complaints premature and incompetent, and that without this stipulation being satisfied, the respondent No.2, has no jurisdiction to take up the complaints at this stage.

4. It is further submitted that the writ petitioner by way of WP(C) No. 3 of 2024, had raised the same issue that the Complaints had been taken up without the same being first brought to the notice and knowledge of the Dorbar Hima. The learned Senior counsel has then referred to the order dated 11.01.2024 passed by this Court in the said writ petition, wherein it was directed that the objections so raised, in view of Section 5 of the Act of 2006, be taken up and examined before the Complaints were proceeded with by the Respondents. He

further submits that this Court by the order dated 01.03.2024, then closed the matter, with a direction that the Executive Committee hear the matter and dispose of the Complaints expeditiously.

5. It is then contended that the order dated 27.03.2024, passed by the Executive Committee, which is impugned herein, has not addressed the issues as raised, and that the power vested with the Executive Committee under Section 5, i.e. to remove or suspend the Syiem from office after an opportunity of being heard, is subject to the First proviso of Section 5, that is, the matter be first brought to the Dorbar Hima. He lastly submits that the First proviso of Section 5, being mandatory and not directory, the entertainment of the Complaints by the Executive Committee, is misplaced and liable to be interfered with, by this Court.

6. Mr. V.G.K. Kynta, learned Senior counsel assisted by Ms. C. Nongkhlaw, learned counsel for the respondent District Council, has submitted that as per the directions of this Court, the matter was taken up and the issue has been minutely examined, and the findings have been arrived at by the impugned order. It is submitted that as per the impugned order, a plain understanding of the First proviso, is that a complaint against the Syiem should be brought

to the knowledge and notice of the Dorbar Hima, but the said proviso does not contemplate any further role or any action to be taken by the Dorbar Hima, insofar as, the complaint against the Syiem is concerned.

7. The learned Senior counsel then submits that compliance of the First proviso is also incumbent upon the writ petitioner, inasmuch as, the Chief or Syiem chairs the Dorbar Hima, and in this capacity, should have brought the complaints to the notice of the Dorbar Hima. It is further contended that the Executive Committee, possesses the plenary power to take action against the Chief or the Syiem as he is considered an officer of the District Council, and that the First proviso, cannot be interpreted as to denude the powers of the Executive Committee vested by the Second proviso, in any manner. He lastly submits, that this is not a case where adverse orders have already been passed against the writ petitioner without the complaints being brought to the knowledge of the Dorbar Hima, but that, the entire process is at a very nascent stage, and as such, no intervention is called for by this Court at this stage.

8. Having heard the learned counsels for the parties, this Court notes that the pointed issue, is with regard to the stipulation as

given in the *Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) Act, and Rules, 2006*, and the interpretation thereto. For the sake of convenience, Section 5, and provisos 1 and 2 thereto, so also Rule 10 (2) of the *Maharam Syiemship (Administration) Rules, 2009* are reproduced hereinbelow: -

“Section 5. Term of office of the Syiem:- The Syiem of Maharam shall be appointed for life from the date of his appointment.

However, in the event of any complain against the Syiem which prima facie disclosed that he has violated any of the terms and conditions of his appointment/Sanad or that he has lost the confidence of the majority of his electors, or he has been conducting himself in a manner derogatory to his office or which may undermine the authority of the Council, or he is found to be mentally unfit or incapable to carry out the administration of the Hima due to ill health, old age or habitual drunkenness, the Executive Committee may after inquiry suspend or remove him from office.

Provided that, any complain against a Syiem should first be brought to the knowledge and notice of the Durbar Hima.

Provided further that, the Syiem shall not be removed or suspended from office unless he is given an opportunity of being heard.”

The Maharam Syiemship (Administration) Rules, 2009

“10. Miscellaneous :-

(2) As per custom, any complaint against a Syiem must be brought to the knowledge of the Durbar by a Lyngdoh or Myntri which shall be discussed in the Durbar convened for the purpose. A Lyngdoh or Myntri cannot directly complaint against a Syiem or the

functioning of the Durbar without the knowledge or discussion in the Durbar Hima or Durbar Syiem. Violation of these provisions by any person who claim themselves as self-styled Lyngdoh or Myntri and misuse official seal of any duly appointed Lyngdoh or Myntri is treated as a criminal act, and stern action shall be taken against him/her as the Syiem and Durbar may decide.”

9. A perusal of the above quoted Section, shows that any complaint against the Syiem, should first be brought to the knowledge and notice of the Dorbar Hima. A plain reading of the same would therefore necessarily mean, that in the event that any complaint is made against the Syiem, the same is first to be brought to the notice of the Dorbar Hima. Though the Dorbar Hima is not vested with any power to either issue directions or any recommendations, it is to be understood that this provision has been inserted in the statute with the intent, that a complaint against the Chief, who is the most important functionary in the Elaka should be made known publicly. Rule 10 (2), which is in the same vein, provides that as per custom, any complaint against a Syiem, must be brought to the knowledge and notice of the Dorbar by a Lyngdoh or Myntri wherein, it shall be put up for discussion. It is seen further that a Lyngdoh or Myntri also cannot directly complain against the Syiem, or the functioning of the Dorbar without the knowledge or discussion in the Dorbar Hima or Dorbar

Syiem. By reading this Rule read together with the First proviso to Section 5, it can therefore be safely assumed and it would mean that any complain made against the Syiem, should first be brought before the Dorbar Hima.

10. The second proviso in the considered view of this Court, is but a procedural safeguard to ensure the adoption of the principles of Natural Justice in such proceedings, inasmuch as, it has been provided that the Syiem shall not be removed, or suspended from office unless he is been given an opportunity of being heard.

11. Though a lot has been made out, about the conflict between these two provisions, to the mind of the Court, the need for harmonious interpretation or construction does not even arise, as these two provisos are on separate footings, as only on compliance of the First proviso, the matter can be taken up by the respondent District Council, and the same be dealt with in accordance with law.

12. At this juncture, it is also apt to observe herein that, in the impugned order, the Executive Committee has also come to the following findings as quoted below: -

“The appointment being Sanad No. DC.XXVIII/Genl/16/90/(Pt)’8’/52, Dt. Shillong, the 4th April, 1991 was issued in favour of the Syiem in terms with the provisions of the United Khasi-Jaintia Hills

Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959.

The terms and conditions of appointment of the said Syiem vide Sanad dated 4th April 1991 granted under the Act of 1959 ipso facto over shadowed the Act of 2006.

To our mind, the Executive Committee has the plenary authority to take action against the Syiem in terms of the conditions contained in the Sanad dated 4.4.1991 in the event of necessity.”

13. This finding to the mind of the Court, will find no place for any application in view of the fact that Section 11 of the ***Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Electors of Hima Maharam) Act, 2006*** has repealed the application of the ***United Khasi-Jaintia Hills Autonomous District Council (Appointment and Succession of Chiefs and Headmen Act, 1959***, to Maharam Syiemship, and as such any prospective action which is sought to be taken up, recourse to the 1959 Act, will no longer available to the District Council.

14. In this view of the matter, the grievance of the writ petitioner with regard to the non-observance of procedure by the District Council, as mandated by law, in the facts and circumstances of the case is correct, as it is seen that it is necessary as per the First proviso that, before the District Council proceed further with the Complaints, the same should be placed before the Dorbar Hima.

15. Though strong objections have been raised by Mr. V.G.K. Kynta, learned Senior counsel for the respondent District Council, that it is not mandated in the Act, that any deliberation be done by the Durbar Hima and that the same is only for notice and knowledge, in the considered view of this Court, the First proviso and the Rules framed thereunder, have been framed by the District Council with the intent and object that these provisions be in consonance with the customary practices of the Syiemship. It is perhaps in this context, that a complaint was needed to be first brought before the Durbar Hima so the same could be discussed. However, it is not incumbent, but open to the District Council to accept any findings, or to take the discussions made before the Durbar Hima into consideration, while taking up the complaints, as per the Act and in accordance with law.

16. Accordingly, it is directed that the complaints be placed before the Durbar Hima, by a Lyngdoh or Myntri as the case may be, on being assigned by the writ petitioner as the Chairman of the Durbar Hima, for discussion. The said Durbar Hima for this purpose shall be convened at the earliest possible time of not less than 6(six) weeks from the date of this order. The proceedings thereof, or outcome of the discussion, shall thereafter be submitted before the Respondent No.2,

who shall then proceed in accordance with law. Needless to add the writ petitioner apart from instructing that a Lyngdoh or Myntri as assigned, to place the complaints before the Durbar Hima, shall not chair the Durbar Hima in these proceedings, or participate in any manner in the discussions.

17. With the above noted directions, this matter stands closed and is accordingly disposed of.

JUDGE

Meghalaya
28.05.2024
"V. Lyndem-PS"