

GAHC020001282022



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

Case No. : WA/5/2022

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT
OF NAGALAND, KOHIMA NAGALAND

2: THE HOME COMMISSIONER
TO THE GOVERNMENT OF NAGALAND
HOME DEPARTMENT
KOHIMA NAGALAND

3: THE COMMISSIONER
GOVERNMENT OF NAGALAND
NAGALAND KOHIMA

4: THE DEPUTY COMMISSIONER
KOHIMA NAGALAND

5: THE ADDITIONAL DEPUTY COMMISSIONER
CHIEPHOBOZOU
KOHIMA NAGALAND

6: THE EXTRA ASSISTANT COMMISSIONER
BOTSA
CHIEPHOBOZO

VERSUS

SHRI. NEIZO ZUMU AND 22 ORS
G.B BOTSA VILLAGE, SUB-DIVISION- CHIEPHOBOZOU. KOHIMA
NAGALAND 2:SHRI. SIETUO-O SEYIE
G.B. BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

3:SHRI. THEPFUNEITUO RIO
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

4:SHRI. ZHAHELIE RIO
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

5:SHRI. PFELIEZHU RIO
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

6:SHRI. DUORELIE SANCHU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

7:SHRI. KEVIMEDO SANCHU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

8:SHRI. VILALHOULIE SANCHU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

9:SHRI. ASOU SEYIE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

10:SHRI. KEDUOLHOUTUO SEYIE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

11:SHRI. KHRIEBOU SEYIE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

12:SHRI. THEPFUSIELHOU KENSE
BOTSA
CHIEPHOBOZOU

KOHIMA NAGALAND

13:SHRI. KEVICHATUO-O KENSE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

14:SHRI. KEDUOKUOLIE KENSE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

15:SHRI. ASOU ZUMU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

16:SHRI. KEZHAMEDO ZUMU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

17:NEISALHOU ZUMU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

18:SHRI. KEHOUZELIE RIO
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

19:SHRI. KETOUKHRIELIE SEYIE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

20:SHRI. KECHANGULIE KENSE
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

21:SHRI. KEVILETUO ZUMU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

22:SHRI. KHRIEVIZOLIE SANCHU

BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAND

23:SHRI. SATUOLIE ZUMU
BOTSA
CHIEPHOBOZOU
KOHIMA NAGALAN

Advocate for the Petitioner : GOVT ADV NL

Advocate for the Respondent Nos.1 to 10 & 13 to 17: Imti Longjem

Advocate for the Respondent Nos.18 to 23 : A.Zho

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

Date : 22.04.2024

JUDGMENT AND ORDER
(CAV)

Heard Mr. K.N. Balgopal, learned Advocate General for the State of Nagaland, assisted by Ms. V. Suokhrie, learned Addl. Advocate General. Also heard Mr. Imti Longjem, learned counsel for the respondent nos. 1 to 10 and 13 to 17 as well as Mr. A. Zho, learned counsel for the respondent nos. 18 to 23. None appears on call for the respondent nos. 11 and 12 through notice was served on them.

2) By filing this intra-court appeal, the State has assailed the judgment and order dated 19.01.2022, passed by the learned Single Judge of in W.P.(C) No. 126/2021.

3) The said writ petition was filed by the respondent nos. 1 to 17 herein, *inter-alia*, challenging the appointment of the respondent

nos. 18 to 23 herein as the newly constituted Village Council Members (hereinafter referred to as 'VCM' for short) of Botsa Village. The proforma respondent nos. 18 to 23 herein were arrayed as respondent nos. 7 to 12 in the writ petition. The appellants herein were arrayed as respondent nos. 1 to 6 in the writ petition.

4) At the outset, it would be appropriate to have a brief glimpse of the relevant provisions of the Nagaland Village Councils Act, 1978 (formerly, Nagaland Village and Area Councils Act, 1978, as well as Nagaland Village and Tribal Councils Act, 1978). As per section 3 thereof, it is provided that every recognized village shall have a Village Council. Under section 4 of the said Act, it is provided that a Village Council shall consist of members, chosen by the villagers in accordance with the prevailing customary practices and usages, the same being approved by the State Government, provided that hereditary Village Chiefs, *Gaonburas* (GBs for short), and *Angs* shall be Ex-Officio members of such council and shall have voting right. As per the provision of section 6(a) thereof, amongst others, it is provided that every Village Council, unless otherwise dissolved by the State Government, shall continue for five years from the date of appointment. Under section 6(b) thereof, amongst others, it is provided that all members shall hold office during the life of the Village Council. Under the provision of section 20 thereof, it is provided 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 whose decision thereon shall be final. Under the provision of section 22 thereof, it is provided that subject to the general superintendence of the State Government, the Deputy Commissioner/ the Additional Deputy Commissioner or Sub-

Divisional Officer (Civil) in-charge of the Sub- Division, Extra Assistant Commissioner or Circle Officer shall have control over all the Village Councils within his jurisdiction.

In brief, case of the respondent nos. 1 to 17:

5) The case of the respondent nos. 1 to 17 herein, in brief, was that they belong to Botsa village in Kohima District. By a notification dated 18.03.2021, issued by the Deputy Commissioner, Kohima (respondent no.4), the Village Councils of all the recognized villages within Kohima District was dissolved with immediate effect and all recognized villages were informed to form a new Village Council for the current tenure by selecting/ electing their VCMs in accordance with the prevailing customary practices and usages as provided for in the Nagaland Village and Tribal Councils Act, 1978 and Nagaland Village and Tribal Councils Rules, 1979. It was directed that the selection process of the VCMs should be completed on or before 31.03.2021.

6) It may be mentioned that the name of the Act and Rules are incorrectly stated in the said notification dated 18.03.2021. The name of the original Act was amended by section 2 of the Nagaland Village and Area Councils (Second Amendment) Act, 1990. Thus, the name of the said act is Nagaland Village Councils Act, 1978. Moreover, the correct name of the Rules made thereunder is called the "Nagaland Village and Area Councils Rules, 1979".

7) The said notification dated 18.03.2021, was forwarded by the Addl. Deputy Commissioner, Chiephobozou to all the Head GBs of all recognized villages of Kohima District vide forwarding letter dated 19.03.2021, so as to enable them to complete the selection process of VCMs within 31.03.2021. Moreover, direction was issued

to form new VCMs in accordance with the prevailing customary practices and usages as provided for in the said Act and Rules and submit the same before 26.03.2021 for onward submission to the Government for approval.

8) Thereafter, by a communication dated 23.03.2021, Keduolhoutuo Seyie, the Head GB of Botsa Village (respondent no.10) had submitted 5 (five) following names for VCMs for Botsa Village, viz., (i) Thepfuneituo Rio (respondent no.3); (ii) Keduo Kuolie Kense (respondent no.14); (iii) Asou Seyie (respondent no.9); (iv) Vilalhoulie Sanchu (respondent no.8); and (v) Aso-u Zumu (respondent no.15) for the tenure 2021-26.

9) The grievance of the respondent nos. 1 to 17 was that instead of accepting/ forwarding the list sent by the Head GB for approval, vide circular dated 03.04.2021, the EAC, Botsa (appellant no. 6) had directed the Head of House tax-paying households of 6 (six) clans of Botsa village to attend his office on 06.05.2021 at 11.00 AM for verification. However, on 06.05.2021, the respondent nos. 1 and 2, namely, Neizo Zumu and Sietuo-O Seyie, both GBs of Botsa village had submitted a letter to the EAC, Botsa that there was an endorsement of Touphema Village Council in the process creating chaos and undesirable situation and it was further stated that it is clearly mentioned in Nagaland Village Councils Act, 1978 that every Village Council shall have full powers to deal with internal administration and function of the Village Council. It was also alleged that to such aforementioned involvement in the process is a direct challenge and infringement of the Botsa Village Council's powers which is unlawful and violation of the Act and that the administration also failed to deliver justice to the matter. As such,

the Botsa village clans shall withdraw from the verification process and appeal was made to the administration to fix another date for the verification process. Subsequently, the respondent nos. 1 and 2 had submitted a clarification to the Deputy Commissioner, Kohima (respondent no.4) on withdrawal from verification process of household for formation of VCMs on 06.05.2021, wherein, it was alleged that a large number of people from ToupHEMA village had assembled outside the office of the EAC, Botsa and prevented the villagers of Botsa from entering into the EAC's office, which led to clash and four Botsa members were beaten by the ToupHEMA youth in the presence of the village leader, EAC, Chiephobozou P.S. O/c. It was stated that the overt brutality and illegitimate infringement by the people of ToupHEMA was a direct challenge to the law and administration and the failure of administration had led to withdrawal of the members of Botsa from the verification process. It was also stated that the matter has been verbally and in writing submitted to the EAC, Botsa. Later on, another representation was submitted by the respondent nos. 1 and 2 before (a) the Home Commissioner, Nagaland; (b) Commissioner, Nagaland; and (c) Deputy Commissioner, Kohima on 30.06.2021. In the said representation, it was projected that about 200 persons from ToupHEMA village had assembled outside the office of the EAC, Botsa and prevented the villagers of Botsa from entering into the EAC's office, which led to clash and 4 (four) persons from Botsa Village were beaten up. It was now portrayed that 30 members of Rio clan managed to enter into the office of the EAC, Botsa and a leader of said clan told the EAC not to conduct the verification. It was stated that after the Rio clan had left, only a leader of Seyie

clan managed to enter and he too similarly told the EAC. It was alleged that after majority of the Botsa villagers had left, at the instance of ToupHEMA villagers gathered, some villagers of Botsa, who were in favour of change of name of the village met the EAC and submitted a list of 6 persons for VCMs and though complaints were made to the EAC, Botsa and the Deputy Commissioner, Kohima, the EAC, Botsa had accepted the names illegally submitted, which was forwarded and was approved by Government on 08.06.2021 for constitution of new Village Council of their village and it even includes a person from Zirü clan which had only 2 (two) household.

10) On the ground that the manner of selection and approval for appointment of VCMs was against prevailing customary practice and usages of the village, the respondent nos. 1 to 17 had filed W.P. (C) No 126/2021, praying for (a) quashing of (i) the report dated 06.05.2021; (ii) approval letter dated 08.06.2021 in respect of Botsa Village; (iii) letter dated 09.06.2021 in respect of Botsa Village; (iv) letter dated 14.06.2021 in respect of Botsa Village; and (b) to direct the State respondents to approve and appoint the persons who were selected by their respective clans and whose names were submitted by the Head GB of Botsa by letter dated 23.03.2021, or direct a fresh selection in accordance with the prevailing customary practices and usages of the village.

Stand of the appellants, in brief, in the writ proceeding:

11) On behalf of the appellants (i.e. respondent nos. 1 to 6 in writ petition), the Home Commissioner had filed an affidavit-in-opposition. It was stated that vide communication dated 05.03.2021, the Home Department, Govt. of Nagaland had given its

approval for re-constitution of Village Councils, which was communicated to the Deputy Commissioners on 05.03.2021. Accordingly, by notification dated 18.03.2021, the Deputy Commissioner, Kohima had dissolved all the Village Councils in Kohima district and directed to conduct the whole process for selection/ election of new Village Councils and complete the said process within 31.03.2021. It was also projected that vide circular dated 31.03.2021, the time for selection process was extended till 30.04.2021 and that the proposals should be submitted to the Government for approval before 05.05.2021.

12) It was stated that regarding the representative of Zirü clan in the Botsa Village Council for the first time, the EAC, Botsa had made necessary enquiry in respect of the complaint that unless a clan has 8 to 10 houses, however, it was found that there was no such decision of the Village to substantiate their complaint. It was specifically stated that it was a practice of the Botsa Village that each clan will have its representative in the Village Council. It was denied that while submitting letter dated 23.03.2021, the Head GB of Botsa Village had submitted letters of endorsement by persons representing the households in each clan in favour of the persons selected by way of resolution from each clan. It was also stated that documents (from page 42 to 57 of writ petition) was never brought to the notice of the respondent authorities, except the letter dated 23.03.2021. It was also stated that another list of VCMs was submitted to the Deputy Commissioner, Kohima on 05.04.2021 by way of representation, supported with resolution of the respective clans, thereby endorsing the name of respondent nos. 18 to 23 to be the new VCMs. Accordingly, the Office of the Deputy

Commissioner, Kohima, vide letter dated 09.04.2021, asked the Addl. Deputy Commissioner, Chiephobozou (respondent no.5) to verify the veracity of the claims made by the parties, which was ultimately forwarded to the EAC, Botsa (appellant no.6)). Accordingly, the EAC, Botsa issued a circular dated 03.04.2021 to all the Clan heads and the GBs of Botsa, thereby informing the Heads of all families (house tax-paying households) of the 6 (six) clans of Botsa Village that verification process for the VCMs will be held on 06.05.2021 from 11.00 AM, and a further direction was issued to be present in the verification process and it was also informed that no excuse or letter of absence would be entertained. In the affidavit-in-opposition, it was also stated that an error of writing date of 08.04.2021 instead of 09.04.2021 had crept in circular issued by the EAC. It was stated that the respondent nos. 10 and 5 herein (i.e. petitioner nos. 10 and 5 in writ petition) were employees of PWD and they were disqualified by appellant no. 3 for holding the post of GBs. It was also stated that the appellant no. 6, vide order dated 17.04.2021, had omitted the name of 47 non-indigenous tax-paying household and included 13 indigenous inhabitant of tax-paying household of Botsa village. It was also stated that though there was some commotion outside the office premises, but as there was adequate security in the premises, the verification process was completed by 1.40 PM and the EAC (appellant no.6) vide letter dated 06.05.2021, forwarded his verification report along with relevant papers to the higher authorities for approval. It was stated that keeping in mind the provisions of the Nagaland Village Councils Act, 1978, the respondent authorities had not interfered with the selection process. It was also stated that the administrative

authorities are only to verify the veracity of the list of VCM and forward it to the Government for final approval and therefore, customary practices of Botsa Village Council was not violated. It was also stated that the allegation about preventing the villagers to enter into the Office of the EAC was misleading and fabricated and it was stated that the verification process was carried out in all fairness. It was further stated that by an order dated 05.05.2021, the Addl. Deputy Commissioner, Chiephobozou had detailed EAC, Chiephobozou as Magistrate on duty and Officer-in-Charge of Chiephobozou P.S. to make adequate security arrangement.

13) It was stated that verification was done in terms of circular dated 03.05.2021 whereby a head-count was made from the members who were present during the verification process and accordingly, the EAC, Botsa had submitted his report. Thus, it was stated that the question of majority support does not arise. It was also the plea of the appellants herein that no legal or Constitutional right of the respondent nos. 1 to 17 was violated and as such, they cannot invoke Article 226 of the Constitution of India. It was also denied that any illegality was committed by the appellants. It was stated that each clan of the Village chooses VCMs through deliberations amongst themselves in the Village and thereafter, through GBs, names were submitted for approval of the Government. However, it was stated that in this case the Head GB of Botsa had submitted his own list and did not forward the names of those selected by various clans.

14) Allegations of any outside interference in the verification process, preventing the Botsa villagers to enter in the office of EAC, Botsa (appellant no.6) and beating up of villagers were denied. It

was also stated that Village Council, being a statutory body have responsibility in day to day functioning of the village administration and monitoring law and order situation and therefore, interference to constitution of Village Council by way of writ requires cogent reasons.

Stand of the respondent nos. 18 to 23, in brief:

15) The respondent nos. 18 to 23 had filed a joint affidavit-in-opposition and took a stand that the respondent nos. 1 and 2 were Government appointed GBs of Botsa Village and were not fighting for the post of VCMs.

16) It was stated that the respondent nos. 4, 5, 6, 7, 11, 12, 13, 16 and 17 were not fighting for the post of VCMs and therefore, they were not the aggrieved parties to challenge the approval of VMCs by the Home Department. It was projected that there was suppression of material facts because the respondent no.3 was the Head GB of Razhaphe Basa Village under Dimapur District and moreover, the said respondent had admitted that he was a resident of Signal Angami Village, Dimapur and thus, it was stated that he cannot have a claim for the post of VCMs in a different village. It was also stated that the respondent no. 5 and 10 had also suppressed material fact that they were Government servants. The respondent no. 5 was working as Grade-IV staff under PWD, Kohima Mechanical Division and the respondent no.10 was working as Grade-IV staff under PWD, Office of Executive Engineer, R&B Construction Division, Chiephobozou and therefore, they could not be an aggrieved person.

17) In their affidavit-in-opposition, the history of establishment of Botsa Village was stated and it was further stated that the people

are from ToupHEMA Village, representing different clans. It was denied that practice was followed from the beginning that unless a clan had 8-10 households, no clan is allowed to have representation and in this regard, it was stated that in the past, though Seyie clan had 4-5 household that had VCM and therefore, choosing VCM from Zirü clan is not contrary to customary practice of Botsa Village.

18) It was stated that even otherwise, there was no record to show that unless a clan had 8-10 households, such clan is not entitled to have its representative as VCMs. It was stated that select list containing the names of respondent nos. 18 to 23 was justified and that though the select list was submitted before the Head GB (respondent no.10), but he had refused to accept it for onward submission to the Government. It was alleged that by sending his list, the respondent no.10 had committed fraud.

19) It was stated that Khrievizolie Sanchu (respondent no.22) had not endorsed the candidature of Vilalhoulie Sanchu (petitioner no.8) to be the VCM of Sanchu Clan. Instead, the Sanchu Clan had held meeting on 30.03.2021 and chose Khrievizolie Sanchu (respondent no.22). Similarly, it was stated that Razoukhrielie Rio had not endorsed the candidature of Thepfuneituo Rio (respondent no.3) as VCM for Rio clan.

20) It was also stated that the EAC, Botsa had rightly passed the order dated 17.04.2021, by which names of 47 non-indigenous house tax-paying households from Botsa village were deleted and names of 13 indigenous households were included. It was further stated that on 06.05.2021, the EAC, Botsa had conducted clan-wise verification and it was denied that 150-200 ToupHEMA (also spelt in some places as '*Tuophema*') villagers were present outside the office

of EAC, Botsa to prevent persons who did not want to change the name of Botsa Village and it was asserted that there was elaborate security arrangement and no one had filed any FIR to report any clash. It was claimed that the two GBs filing complaint before the EAC on 06.05.2021 and 07.05.2021 were hand in glove with respondent nos. 3, 8, 9, 14 and 15. It was also stated that verification of all the Head of household of Botsa village was done in a fair and transparent manner to the full satisfaction of all six clans of Botsa village. It was denied that the respondent nos. 18 to 23 herein did not have support of the majority of the clan members.

21) It was stated that initially the first settlers in the Village had run the village administration and gradually when more clans had joined the village, leaders were chosen from different clan members irrespective of the size of clans. Accordingly, the Government approval order dated 08.06.2021 was justified by stating that the Head GB had sent a list of respondent nos. 3, 8, 9, 14 and 15 as VCMs to the EAC, Botsa without knowledge of the clan members and did not include any VCM from Zirü Clan, which was in violation of the Village customary practices.

Affidavit-in-reply by the respondent nos. 1 to 17:

22) The respondent nos. 1 to 17 had filed two separate affidavit-in-reply against the affidavit-in-opposition filed by the appellants as well as the respondent nos. 18 to 23 respectively. It was admitted that respondent no. 3 was the GB of Razhaphe Basa Village but he also belongs to Botsa village and has his house in the village and it was also stated that being GB of one village does not attract disqualification to be GB in another village. It was stated that petitioner nos. 5 to 10 were not regular Govt. employees but they

were work-charged employees. It was stated that the respondent nos. 1, 2, 4 to 7, 10 to 13, 16 and 17 are all villagers of Botsa and had a right to choose VCMs in a free and fair manner and as same was not done, they have a right to approach the Court. It was stated that Khrievizolie Sanchu (respondent no.22) had endorsed the candidature of Vilalhoulie Sanchu (petitioner no.8) to be the VCM of Sanchu Clan. However, it was admitted that Razoukhrielie Rio had not endorsed the candidature of Thepfuneituo Rio (respondent no.3) as VCM for Rio clan, and it was stated that it was Razoungulie Rio, who had supported the candidature of Thepfuneituo Rio (respondent no.3) as VCM and thus, recording of the name of Razoukhrielie Rio was a mistake. It was stated that names of persons supporting respondent nos. 3, 8, 9, 14 and 15 were submitted by respective clan members, which was approved and sent to the appellant no.6 and it was denied that the Zirü clan was discriminately not included by the Head GB because the said Zirü clan did not have the required number of household and moreover, the Head GB had already submitted his list.

Decision impugned in this intra-court appeal:

23) This Court while deciding the writ petition had held that there was unanimity that the prevailing customary practices and the usages in the village is that the respective clan members after due deliberation chooses and selects one member each from the clan and informs the Head GB of the village who in turn forwards the names to the Government for approval and appointment as the VCM to constitute the village council. It was held that the Botsa village has 6 (six) clans and it was held that the disagreement as to whether the Zirü clan can have representation in the village council

was not the issue for deciding the present case and it was held that the pertinent question germane for a decision is as to whether the private respondents were chosen and selected as the VCMs in accordance with the mandate of Section 4 of the 1978 Act. On examining the contents of the letter dated 06.05.2021, by the EAC, Botsa addressed to the Addl. Deputy Commissioner, Chiephobozou, it was held that the majority household of different clans of Botsa village barring the Zirü clan did not attend the verification process and the private respondents were chosen as the VCMs by the minority household of the clans. This Court had accepted the contention of the respondent nos. 1 to 17 that the group supporting the candidature of respondent nos. 3, 8, 9, 14 and 15, who were opposing the change in the name of the village were either restrained or prevented by the members of the parent village from attending the verification process and only the respondents who were supporting the change in the name of the village were allowed to enter the office of EAC and take part of the deliberation for choosing the VCMs, the reasons being very obvious. The submissions made by the learned State counsel that there was information about some commotion taking place outside the EAC office was held to be corroborative of the account of the respondent nos. 1 to 17 that there was a clash outside the office of EAC as the persons from ToupHEMA Village were preventing the respondent nos. 1 to 17 from entering the EAC office. It was also held that the letter dated 06.05.2021 containing the verification report was held to be making it abundantly clear and irrefutable that only the head of the household of the clans supporting the membership of the private respondents were allowed to attend the verification

proceeding and chose their VCMs, which was forwarded to the Government for approval. It was held on the basis of the said letter dated 06.05.2021 that there was no deliberation, but only verification was carried out in respect of choosing/ selecting the VCMs of the Botsa village with the involvement and participation of all the stakeholders i.e. the villagers as mandated by Section 4 of the 1978 Act.

24) It was held that the process of conducting a fair and impartial verification to ascertain as to which of the rival groups have the majority support of household of the clan to be chosen as the representatives of the clan was thrown to wind and only the group supporting the candidature of respondent nos. 18 to 23 were allowed to attend the verification. Accordingly, it was held that the said letter dated 06.05.2021 by EAC, Botsa addressed to the Addl. Deputy Commissioner, Chiephobozou was liable to be struck down.

25) It was further held that the State respondents, in their affidavit have attempted to improve and explain the verification report contained in letter dated 06.05.2021. It was held that in the report it was not mentioned that the two separate list of the VCMs submitted by the two rival groups was duly verified by the EAC, Botsa and it was held that the list of the VCM in support of respondent nos. 3, 8, 9, 14 and 15 and respondent nos. 18 to 23 were resolved in the presence of all the parties and accordingly, it was held that the State respondents cannot be permitted to traverse beyond the verification report brought out in the letter dated 06.05.2021.

26) Accordingly, the writ petition was allowed by setting aside and quashing the hereinbefore referred letter dated 06.05.2021 and

also the approval order dated 09.06.2021 in respect of the Botsa village issued by the Deputy Commissioner, Kohima and letter dated 14.06.2021 issued by the EAC, Botsa, insofar as Botsa village is concerned to quashed and set aside the prayer made by the respondent nos. 1 to 17 to appoint the respondent nos. 3, 8, 9, 14 and 15 as the VCMs of Botsa village was also rejected and the State respondents, particularly, the appellant nos. 2, 3 and 4 who had directed to reconstitute the village council of Botsa village under Kohima district in a fair, impartial and transparent manner with the participation of all the stakeholders i.e., the Botsa villagers strictly as mandated by Section 4 of the 1978 Act and in accordance with the prevailing customary practices and usages by further directing that the entire exercise for reconstitution of the village council of the Botsa village shall be completed not later than 60 days from the date of receipt of the copy of the said impugned order.

Reasons and decisions in this appeal:

27) It is observed that under section 4 of the Nagaland Village Councils Act, 1978 and rules framed thereunder, the only prescription is that a village council shall consists of members, chosen by the villagers in accordance with the prevailing customary practices and usages, the same being approved by the State Government. There are no guidelines in force as to how the VCMs would be chosen and/ or selected. In this regard, the provision of relevant sections 3, 4, 20 and 22 of the Nagaland Village Councils Act, 1978 are extracted below:-

3. *Constitutions:* Every recognised Village shall have a Village Council.

Explanation: Village means and includes an area recognised as a Village as such by the Government of Nagaland. An area in order to be a village under this act shall fulfill the following conditions,

namely;

- (a) The land in the area belong to the population of that area or given to them by the Government of Nagaland, if the land in question is a Government land or is given to them by the lawful owner of the land, and*
- (b) The village is established according to the usage and customary practice of the population of the area.*

4. A Village Council shall consist of members, chosen by the 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. When a dispute arises as to selection of any member of the Village Council, the matter shall be referred to the State Government whose decision thereon shall be final.

* * *

22. Subject to the general superintendence of the State Government. The Deputy Commissioner/ the Additional Deputy Commissioner or Sub- Divisional Officer (Civil) in-charge of the Sub-Division, Extra Assistant Commissioner or Circle Officer shall have the control over all the Village Councils within his jurisdiction.

28) It may be reiterated that in the impugned judgment it was had held to the effect that Botsa village has 6 (six) clans and it was held that the disagreement as to whether the Zirü clan can have representation in the village council was not the issue for deciding the present case and it was held that the pertinent question germane for a decision is as to whether the respondent nos.18 to 23 were chosen and selected as VCM in accordance with the mandate of Section 4 of the 1978 Act. However, in the light of the provisions of section 3 and 4 of the Nagaland Village Councils Act, 1978, we are of the considered opinion that without delving upon the said incidental issue, the matter cannot be effectually decided. Therefore, we are compelled to touch upon the issue only for the limited purpose of deciding this case, without intending that the finding is to be cited as a precedent. Thus, the issue As to whether a clan having less than 8-10 household in a Village is entitled to

have VCMs in the State of Nagaland is kept open to be decided in a more appropriate case.

29) On a perusal of the provision of clause (a) of section 3 of the 1978 Act, which is extracted hereinbefore, it is seen that the legislative intention is that in order to constitute a village, the land must come from three sources, viz., (a) land must belong to population; or (b) land must have been given by the Government; or (c) land must have been given by the lawful owner. In our view, when the legislature has used the word population, in connection with the present case, the said word would be inclusive of even a single villager. Moreover, the stand of the appellants and the proforma respondent nos. 18 to 23 that Seyie Clan had a VCM when they had 4-5 household has not been negated, we are unable to accept that as per the customary practice and usages in Botsa Village, the population of the Zirü clan cannot have representation in the village council because they did not have 8-10 households.

30) Therefore, in this case, the provision of section 4 of the Nagaland Village Councils Act, 1978 cannot be given a restrictive interpretation that if in past one particular clan did not participate in the selection of VCMs, the right of such clan to select VCMs would extinguish till their population exceeds 8 to 10 House Tax-paying households.

31) Therefore, the Head GB of Botsa Village, *ex facie*, had not included the name of the representative of the Zirü clan in his select list vide communication dated 23.03.2021, there cannot be an escape from the fact that the Head GB of Botsa Village (respondent no. 10) had not complied with the provision of section 4 of the Nagaland Village Councils Act, 1978.

32) As regards the procedure adopted by the EAC, Botsa (appellant no.6) in conducting the verification process held on 06.05.2021, it is seen from the impugned judgment that the verification process that carried out by the EAC, Botsa (appellant no.6) has received the approval of this Court. Therefore, one of the questions which arise for decision in this appeal is whether the EAC, Botsa (appellant no.6) was required to conduct a fair and impartial verification to ascertain as to which of the rival group have the majority support of household? In this regard, it is seen that there is no provision in the Nagaland Village Councils Act, 1978 proving that when a dispute arises as to selection of any VCMs, the concerned EAC had the power to determine whether or not the VCMs were selected as per majority decision.

33) In the writ petition, the respondent nos. 1 to 17 have enclosed a copy of the letter jointly written by the respondent nos. 1 and 2 and purportedly handed over to the EAC, Botsa (appellant no.6) on 06.05.2021, thereby withdrawing themselves from the verification process. The content of the said letter is extracted below:-

Office of the G.B.'s Court Botsa

*To,
The Extra Assistant Commissioner,
Botsa,
Kohima, Nagaland.*

Sub: Withdrawal from verification process.

Sir,

As per your order dated 3rd April, 2021 for verification process of the household head for the formation of VCM, all the Clan of Botsa has come to your office for the same.

However, there is an endorsement of Tuophema Village Council in the process creating chaos and undesirable situation. Sir, as you are aware, it is clearly mentioned in the Village Council Act,

1978 of the Government that every Village Council shall have full powers to deal with internal administration and function of the Village Council. To such the aforementioned involvement (sic.) in the process is a direct challenge and infringement of the Botsa Village Council's powers which is unlawful and violation of the Act. The administration also failed to deliver justice to the matter.

As such, the Botsa Village Clans shall withdraw from the verification process and appeal to the administration to fix another date for the verification process.

Thanking you in anticipation.

Yours sincerely,

(Sietuo-o Seyie)

(Neizo Zumu)

G.B., Botsa Village

G.B., Botsa Village

34) From the above, it appears that the initial complaint by the respondent nos. 1 and 2 before the EAC, Botsa was only that "... *there was an endorsement of Tuophema Village Council in the process creating chaos and undesirable situation ...*" Accordingly, on said ground the respondent nos. 1 and 2 had withdrawn from the verification process.

35) In the writ petition it has been projected that by their letter submitted to the Deputy Commissioner, Kohima (appellant no.4) on 17.05.2021, the respondent nos. 1 and 2 had issued a clarification in connection with the withdrawal from verification process on 06.05.2021. From the contents of the said letter, it appears that a picture which is different from the one written on 06.05.2021, has been portrayed. The contents of the said letter purportedly handed over to the respondent no.4 on 17.05.2021 is extracted hereunder for ready reference:

Office of the G.B.'s Court Botsa

*To,
The Deputy Commissioner,
Kohima, Nagaland.*

Sub: Clarification on withdrawal from verification process of

household for formation of VCMs on 6th May, 2021.

Sir,

With due respect and honour, we the undersigned on behalf of the general public of Botsa would like to state a few lines for your information and necessary action.

As per the order of the EAC Botsa all household heads of Botsa were Informed to report to the EAC office for verification process for formation of the VCMs. However, on the said date, the people of Touphema deliberately arrived and blocked entry of genuine household heads who were in favour of the Botsa nomenclature. Their participation in the verification was disallowed and also four of the Botsa members were brutally beaten by the Tuophema Youth in the presence of the village leader, EAC, Chiephobouzou Police Station OC.

Therefore, Sir, the overt brutality and illegitimate infringement by the people of Tuophema which is also a direct challenge to the law and administration and also the failure of the administrative concerned has led to the withdrawal of the members of Botsa from the verification process. The matter has been verbally as well as in written intimated to the EAC Botsa.

Sir, you might have received the reports of the verification. However, as clarified the people of Botsa shall never accept the said reports which was done through intimidation and illegitimate means.

We look forward to your perusal and examination of the matter and on the basis of the veracity and authenticity of the issue, fixed another date for re-verification of the household for the formation of the VCM.

Thanking you in anticipation.

Yours Sincerely,

(NEIZO ZUMU)

G.B., Botsa Village

(SIETUO-O SEYIE)

G.B., Botsa Village

- 36) The letter of withdrawal dated 06.05.2021 was submitted by the respondent nos. 1 and 2 to the EAC, Botsa (appellant No.5). However, the respondent nos. 1 to 17 have not assigned any reasons why the respondent nos. 1 and 2 had submitted their clarification to the Deputy Commissioner, Kohima (appellant no. 4)

on 17.05.2021 i.e. after 11 (eleven) days. It is noticed that in the said letter delivered to the Deputy Commissioner, Kohima (appellant no.4) on 17.05.2021, it was projected that (i) on 06.06.2021, people from Tuophema Village deliberately arrived and blocked entry of genuine household heads who were in favour of Botsa nomenclature and their participation in the verification process was disallowed; (ii) four of the Botsa members were beaten up by Tuophema youth in the presence of the Village leader, EAC, and O.C. of Chiephobozou P.S.; (c) there was a failure of administration which led to withdrawal from verification process. Thus, compared to the said letter dated 06.05.2021, there is a total change in the nature of allegations.

37) In the letter served on 17.05.2021, the respondent nos. 1 and 2 have alleged that the entry in office of EAC, Botsa was blocked. However, it is seen that the respondent nos. 1 and 2 had been able to serve their letter to the EAC, Botsa on 06.05.2021, thereby withdrawing from the verification process. In the letter served on 17.05.2021, as well as in the writ petition, there is no explanation why no FIR was lodged although the entry of a section of people in the office of EAC, Botsa was allegedly blocked, and moreover, 4 (four) Botsa village youths were allegedly beaten up by Tuophema youths. The Court also takes notice of the fact that in the writ petition, the respondent nos. 1 to 17 could not disclose the name of at least one accused person.

38) From the contents of the communication purportedly made on 23.03.2021, it is noted that the respondent no.10 had forwarded his recommendations to EAC, Botsa for appointing VCMs. However, we also find that in the said communication, there is no mention

about any enclosure to the said communication dated 23.03.2021. However, in the writ petition, the respondent nos. 1 to 17, have annexed the said communication dated 23.03.2021 by Head GB (respondent no.10) as Annexure-E, enclosing thereto the purported endorsement by the Clans i.e. attendance sheet of 5 (five) clans of Botsa village, viz., Rio Clan, Sanchu Clan, Kense Clan, Seyie Clan, and Zumu Clan. However, in the affidavit-in-opposition, the appellants have denied receiving the endorsement by five clans along with recommendation of names for VCMs submitted by the Head GB (respondent no.10) and thus, the said endorsements were alleged to be concocted document. The respondent nos. 1 to 17, in their affidavit-in-reply have neither disputed that the respondent no.10 had not submitted endorsement sheets of five clans to the EAC, Botsa nor a proof of service thereof to the EAC, Botsa has been annexed.

39) It may also be mentioned that it was never the case of the respondent nos. 1 to 17 that there was a customary practice in the Botsa village to make a list of the names of the members of the clan supporting and/or endorsing clan members as VCMs.

40) It is also nobody's case that in previous selection meetings all the Heads of every House-Tax paying household of every clan gave their opinion on selection of VCMs. Moreover, the head-count of persons endorsing the selection process of VCMs in previous selection processes has not been brought on record. Moreover, none of the parties to this appeal have brought any document on record to show that in previous VCM selection process, the Head of every house-tax-paying household were physically presented in the selection process of VCMs. Therefore, we are unable to concur with

the finding in the impugned judgment that as representation by households was low during the verification process on 06.05.2021, it could be presumed that the Head of all house tax-paying households who were allegedly against re-naming of Botsa village were not allowed to enter the office of the EAC, Botsa (appellant no.6). Save and except for alleged communication dated 17.05.2021, there is nothing on record for the Court to presume that the Head of all house tax-paying households who were allegedly against re-naming of Botsa village were not allowed to enter the office of the EAC, Botsa (appellant no.6) during the verification process on 06.05.2021. The initial complaint on 06.05.2021, was only to the effect that chaos and undesirable situation was created. We have no material to suggest that it is uncommon to see some element of chaos or undesirable situation even in club meetings, not to speak of elections.

41) Thus, the Court is of the considered opinion that after 06.05.2021, the respondent nos. 1 and 2 have changed and/or developed their story vide clarification given on 17.05.2021 to the Deputy Commissioner, Kohima and representation submitted on 30.06.2021 by respondent nos. 1 and 2 before the appellant nos. 2, 3 and 4 i.e. (a) the Home Commissioner, Govt. of Nagaland; (b) the Commissioner, Govt. of Nagaland; and (c) the Deputy Commissioner, Kohima. Hence, contents of letter dated 17.05.2021 and representation dated 30.06.2021 are the result of an after-thought by the respondent nos. 1 and 2 to improve their complaint.

42) Even in the writ petition, the respondent nos. 1 to 17 have withheld (i) the names of the 4 (four) youths who were allegedly beaten up, as well as the names of at least few persons who had

prevented the clan members of Botsa village to enter the office of the EAC, Botsa. Those names were also withheld by the respondent nos. 1 and 2 in their representations submitted on 17.05.2021 and 30.06.2021. When such serious allegations, as complained of, have been made, there is no apparent reason for the respondent nos. 1 to 17 to withhold names. Thus, ring of truth cannot be found in the said representations submitted by the respondent nos. 1 and 2 on 17.05.2021 and 30.06.2021.

43) In the impugned judgment, it has been observed in para-24 that if any member of the village is aggrieved by the wrongful selection of the VCMs, can always question such action. We are of the considered opinion that precisely that was done by the aggrieved clan representatives. As per the affidavit-in-opposition filed by the respondent nos. 18 to 23 in the writ petition (as respondent nos. 7 to 12 in the writ petition), the representatives of 5 (five) clans, viz., Rio Clan, Zirü Clan, Sanchu Clan, Zumu Clan and Kense Clan had given their mandated select list to the Head GB. However, the Head GB (respondent no.10) had allegedly refused to accept the same. Thus, it was alleged that the Head GB had submitted his un-mandated select list of VCMs. Accordingly, on 05.04.2021, request was made by the representatives of Rio Clan, Zirü Clan, and Sanchu Clan to the Deputy Commissioner, Kohima not to entertain the un-mandated list of VCMs for Botsa Village. It was further stated that another list of VCMs containing names of proforma respondent nos. 18 to 23 were submitted by the 5 (five) clans named hereinbefore, which were supported by resolutions adopted by their respective clans, which contained the name of the participants in the selection process and their signatures.

44) Documents annexed to the writ petition as Annexure-E series is the select list dated 23.03.2021, prepared and submitted to the EAC, Botsa by Keduolhoutuo Seyie (respondent no.10), who is the Head GB of Botsa Village. On a perusal thereof, it is seen that it merely contains 5 (five) names and it is stated in the said communication dated 23.03.2021 that the Head GB was presenting names of 5 (five) VCMs for the tenure from 2021-2026. It is not stated that any selection process whatsoever was undertaken as per the mandate of Nagaland Village Councils Act, 1978. However, it may be stated that as a part of Annexure-E series, purported clan-wise endorsement by Rio Clan, Zirü Clan, Sanchu Clan, Zumunuo Clan (also referred as Zumu Clan), and Kense Clan are also enclosed. However, one set of the said list do not contain any signatures, except for the GB. However, another set of list contains some signatures. However, as already referred hereinbefore, the respondent nos. 18 to 23 had denied and disputed the correctness of the said lists, and their stand appears to have been vindicated because the petitioners had stated in their affidavit-in-reply to the effect that Khrievizolie Sanchu (respondent no.22) had endorsed the candidature of Vilalhoulie Sanchu (petitioner no.8) to be the VCM of Sanchu Clan. Moreover, it was admitted that Razoukhrielie Rio had not endorsed the candidature of Thepfuneituo Rio (respondent no.3) as VCM for Rio clan, and it was stated that it was Razoungulie Rio, who had supported the candidature of Thepfuneituo Rio (respondent no.3) as VCM and as such the recording of the name of Razoukhrielie Rio was a mistake. Thus, even if one participant in selection process had admittedly not participated in the process, the select list submitted by the Head GB

of Botsa Village (respondent no.10) on 23.03.2021 does not and cannot inspire the confidence of the Court.

45) It was strenuously urged by the learned Advocate General and the learned counsel for the respondent nos. 18 to 23 that the stand of the respondent nos. 18 to 23 were not discussed in the judgment impugned in this appeal. With utmost respect to the impugned judgment, we are compelled to accept the said contention. Therefore, we are constrained to hold that the non consideration of pleaded case of the respondent nos. 18 to 23 is found to have vitiated the judgment impugned herein.

46) The Court is conscious that in the case of *N. Ramachandra Reddy v. State of Telengana*, (2020) 16 SCC 478: AIR 2019 SC 4182, the Supreme Court of India has held that unless the appellate Bench concludes that the findings of the learned Single Judge is perverse, it shall not disturb the same. Moreover, in the case of *Raghubir Singh v. State of Rajasthan*, (2019) 17 SCC 408, while referring to the intra-court appeal, it was held by the Supreme Court of India that it was incumbent upon the Division Bench to deal with all issues urged and record its finding.

47) In light of the decision in the case of *Raghubir Singh (supra)*, we had ventured to examine the entire matter afresh in the foregoing paragraphs.

48) The Court is inclined to hold that the select list of VCMs, which was forwarded by the Clan representatives of Rio Clan, Zirü Clan, Sanchu Clan, Zumunuo Clan (also referred as Zumu Clan), and Kense Clan to the Deputy Commissioner, Botsa carries more weight because the respondent nos. 18 to 23 have been able to successfully demonstrated that two persons in the list submitted by

Head GB (respondent no.10) have disowned their presence in selection process and they have disowned their purported signatures. Therefore, verification process as ordered by the Deputy Commissioner, Kohima (respondent no.4), which was carried out by the EAC, Botsa (appellant no.6) was fully justified.

49) In light of the discussions above, the Court is inclined to hold as follows:-

- a. The deadline of selection process of VCMs, which was 31.03.2021 vide communication dated 05.03.2021 by Addl. Secretary, Home, Govt. of Nagaland (Annexure-2 to affidavit-in-opposition filed by the appellants in the writ petition), which was required to be sent to the Government for approval by 05.04.2021. The said deadline was extended to 30.04.2021 vide communication dated 31.03.2021, issued by the Joint Commissioner (HQ), Office of the Commissioner, Nagaland (Annexure-4 to affidavit-in-opposition filed by the appellants in the writ petition). Therefore, it is not open to the respondent no.10, being the Head GB of Botsa to feign ignorance of extension of such deadline.
- b. Therefore, when the clan representatives of 6 (six) clans, namely, (i) Rio Clan, (ii) Zirü Clan, (iii) Sanchu Clan, (iv) Zumunuo Clan (also referred as Zumu Clan), (v) Kense Clan (vi) and Seyie Clan had submitted their VCMs, the respondent no. 10, being the Head GB of Botsa Village could not have refused to accept the said list. After accepting the list, the respondent no. 10 could have assigned reasons, as deemed appropriate, for forwarding

or for not forwarding the list to the EAC, Botsa.

- c. The appellants, in their affidavit-in-opposition filed in the writ petition (as respondent nos. 1 to 6) had specifically stated that along with list of VCMs submitted by the respondent no.10 on 23.03.2021, no other document was filed. The respondent nos. 1 to 17 have not produced any proof of submitting the purported mandated list from 5 (five) clans of Botsa Village, i.e. Rio Clan, Sanchu Clan, Zumunuo Clan (also referred as Zumu Clan), and Kense Clan along with his letter dated 23.03.2021. Therefore, it is held that the list of VCMs recommended by the respondent no.10 on 23.03.2021, was not supported by any mandate by the 6 (six) clans of Botsa Village, namely, Rio Clan, Sanchu Clan, Zumunuo Clan (also referred as Zumu Clan), Kense Clan and Seyie Clan.
- d. As the word "population" is used in section 3(a) of the Nagaland Village Councils Act, 1978, qua this writ appeal, the Court is inclined to hold that the VCMs from Zirü Clan could not have been denied on the ground that their clan members did not have 8-10 household as restrictive reading of section 4 of the Nagaland Village Councils Act, 1978 would take away the right of clans residing in Botsa Village to select the clan representative for the VCMs.

In the judgment impugned herein, it has been held that "... *the disagreement as to whether the Zirü Clan can have representation in the village council is however not the issue for deciding the present case, the pertinent question germane for a decision being as to*

whether the private respondents were chosen and selected as the village council member in accordance with the mandate of section 4 of the Act." Therefore, we have also not decided the said issue finally and this issue is, thus, left open to be decided in a more appropriate case.

- e. The verification process was conducted by the EAC, Botsa, (appellant no.6) as per directions vide letter dated 09.04.2021 (Annexure-7 to affidavit-in-opposition filed by the appellants in the writ petition), issued by the Sub-Divisional Officer (C) Sadar, Kohima. As per the said communication, the EAC, Botsa was only required to verify the veracity of claims made in two letters mentioned therein. Therefore, the verification was not for fresh head-count and the said process cannot be construed to be a fresh selection process. The impugned judgment, in our opinion, is flawed due to erroneous appreciation of the said communication dated 09.04.2021. We are inclined to hold that the verification process appears to be in consonance with the powers vested on the State Government under section 22 of the Nagaland Village Councils Act, 1978.
- f. By their communication dated 06.05.2021, regarding withdrawal from verification process, the respondent nos. 1 and 2 had not alleged that (a) the heads of household of the clans of Botsa Village were not being allowed to enter the office of the EAC, Botsa, or (b) that the 4 youths of Botsa village were beaten up. Hence, it is evident that the said set of allegations were introduced by the respondent

nos. 1 and 2 by way of (i) subsequent clarification given to the Deputy Commissioner, Kohima on 17.05.2021, and (ii) a different picture is portrayed by the respondent nos. 1 and 2 in the representation submitted on 30.06.2021 to the appellant nos. 2, 3 and 4, which has already been referred herein before. However, in the impugned judgment, an adverse view was taken against the verification process without taking into consideration that the respondent nos. 1 and 2 were supplementing their letter dated 06.05.2021 regarding withdrawal from verification process by supplanting it with fresh allegations vide representation dated 17.05.2021, which was further improved and expanded vide representation dated 30.06.2021, which were hitherto not there in the letter dated 06.05.2021. Therefore, we are unable to concur with the judgment impugned herein.

- g. In the impugned judgment, it was not appreciated that vide Circular dated 03.05.2021, the EAC, Botsa (appellant no.6) had informed all the Heads of House Tax-paying households of the 6 (six) clans of Botsa Village that verification process for the VCMs of the Clans will be held on 06.05.2021 at his office at 11.00 AM. It is not anyone's case that the said circular dated 03.05.2021 was not served on any particular Clan Head. Therefore, if any Head of House Tax-paying household does not appear, we are unable to agree that for that reason it can be said that the verification process was faulty. The learned counsel for the respondent nos. 1 to 17 has not placed before us anything

from which it can be inferred that if during verification process, if one Head of House Tax-paying household does not attend, the verification process must be scrapped. We have also not been shown any customary practice or usages by which one could have been compelled to attend the verification process held on 06.05.2021. Thus, merely because few clan-wise Head of the House Tax-paying household did not attend the verification process, it cannot be held that the verification process was vitiated. Moreover, just because all Heads of House Tax-paying households did not turn-up in the verification process, yet if the persons attending the verification process do not dispute that their respective clans had selected their respective VCMs, then even if the minority had selected the VCMs, yet recommendations of those names cannot be invalidated.

In other words, no record of customary practice and usages was shown to the Court that in Botsa Village (a) each Head of House Tax-paying household has to attend deliberations for selection of the respective clan's VCMs; (b) all Head of House Tax-paying household have to attend the verification process, if any, (c) or that in the selection process of VCMs, if the people who are present and participating are in the minority, they cannot select VCMs.

- h. In the impugned judgment, it was held, amongst others, to the effect that the supporters of respondent nos. 3, 8, 9, 14 and 15, who were opposing the change in the name

of the Village were either restrained or prevented by the members of the parent village from attending the verification process, and that only the respondents who were supporting the change in the name of the village were allowed to enter the Office of the EAC and take part in the deliberations for choosing the VCMs, the reason being obvious. We are constrained to hold that the said finding is not based on the contents of the letter of withdrawal from verification process submitted on 06.05.2021 by the respondent nos. 1 and 2, but that view appears to flow from (i) the subsequent clarification given to the Deputy Commissioner, Kohima on 17.05.2021, and (ii) representation submitted on 30.06.2021 by respondent nos. 1 and 2. Therefore, we are unable to affirm the said finding because (i) no complaint of any assault on 4 Botsa villagers was lodged on 06.05.2021; (ii) the respondent nos. 1 and 2 had withheld the names of the alleged 4 (four) victims from Botsa village, who were allegedly beaten-up; (iii) the names of the assailants and/or law-breakers from Tuophema Village was withheld by the respondent nos. 1 and 2 in their representations submitted on 17.05.2021 and 30.06.2021; (iv) such names were also withheld by the respondent nos. 1 to 17 in the writ petition filed by them; and (v) the respondent nos. 1 to 17 have also withheld the names of even one out of 200 alleged Tuophema villagers who had restrained any person from Botsa village from entering the office of the EAC, Botsa during verification process. It needs be mentioned that as

per the communication dated 03.05.2021 issued by the EAC, Botsa, only *bona fide* Head of families (House Tax-paying households) were invited to attend the verification process and therefore, we are unable to accept that all persons of Botsa village could attend the verification process. Thus, the allegations made in the writ petition are too vague and without disclosure of any material particulars.

- i. In the opinion of the Court, the respondent nos. 1 and 2, by their communication submitted before the EAC, Botsa on 06.05.2021, had voluntarily withdrawn from the verification process. The reason for such withdrawal must be examined in the light of the statements made in communication dated 06.05.2021 and not from the subsequent improvement vide clarification dated 17.05.2021 and representation dated 30.06.2021. The allegations made in the representations dated 17.05.2021 and 30.06.2021 is clearly an after-thought, and made after long lapse of time. If anyone including respondent nos. 1 and 2 had withdrawn from the verification process on 06.05.2021, they had done so at their own risk.
- j. The respondent nos. 1 to 17 had not filed any complaint before the police or the administration that any particular person was prevented from attending the verification process. Moreover, at least, two persons out of the list submitted by the respondent nos. 1 and 2 have denied supporting the VCM of their respective clans. Thus, it appears that the two communications/ representations

submitted by the respondent nos. 1 and 2 long after 06.05.2021, are prepared as an after-thought and therefore, we are unable to give any credence to them.

- k. We are unable to concur with the finding in the impugned judgment that "... *It is clear that the respondents in their affidavit has only made an effort to unduly justify the verification report by supplementing with grounds and reasons non-existent in the verification report. The State respondents therefore by their affidavit cannot be permitted to traverse the verification report brought out in the letter dated 06.05.2001.*"

The reason for not concurring is that when an affidavit-in-opposition is filed, the concerned respondent is expected to respond to whatever has been stated in the writ petition. We do not find that the State respondents were put to notice to restrain their statements only to the contents of the verification report dated 06.05.2021. In the absence of such notice, it cannot be held that State respondents cannot be allowed to traverse beyond the verification report by responding to all the statements made in the writ petition.

Thus, we are unable to concur with the finding in the impugned judgment that this was a case where the State respondents are trying to justify their action by supplementing reasons in their affidavit. We are of the considered opinion that the verification report dated 06.05.2021 is self-contained. It is the respondent nos. 1 to 17, who are expanding the scope of their withdrawal letter

dated 06.05.2021 by subsequent letters dated 17.05.2021 and 30.06.2021. Therefore, it cannot be said that the State respondents should not traverse the allegations which are made subsequently on 07.05.2021 and 30.06.2021. Accordingly, the case of *State of Punjab v. Bandeep Singh & Ors., (2016) 1 SCC 724*, on which reliance was placed in the impugned judgment does not help the respondent nos. 1 to 17 in any manner whatsoever.

50) In light of the reasons discussed above, we are unable to concur with the judgment impugned herein. Therefore, this appeal is allowed. Accordingly, the impugned judgment dated 19.01.2022, passed by the learned Single Judge of this Court in W.P.(C) No. 125/2021 is interfered with and set aside.

51) Resultantly, (i) the verification report of the EAC, Botsa (respondent no. 6) bearing no. BOTSA/VC/2012 dated 06.05.2021 (Annexure-N to writ petition); (ii) approval letter no. HOME/VC/ELECTION/2021/106 dated 08.06.2021, issued by the Deputy Secretary to the Govt. of Nagaland, Home Department (Annexure-O to the writ petition) in respect of Botsa Village; (iii) approval order bearing no. CND-I/VC/ELE/2015 dated 09.06.2021 issued by the Joint Commissioner (HQ) in respect of Botsa Village (Annexure-P to the writ petition); (iv) forwarding of approval order bearing no. DCK/SDR/ VC/42/2011 (PT-1)/AK-169 dated 12.06.2021, issued by the Deputy Commissioner, Kohima (Annexure-Q to the writ petition) in respect of Botsa Village; and (v) forwarding of approval of newly elected/ selected VCMs bearing no. BOTSA/VC/2012 dated 14.06.2021, issued by the EAC, Botsa (Annexure-R to the writ petition), which were set aside and quashed by the impugned

judgment and order are all restored and will be in full force and effect.

52) There shall be no order as to cost.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Comparing Assistant