

GAHC020002782023



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

Case No. : C. REVN/2/2023

SHRI VIKUTO ACHUMI AND 2 ORS
HD. GB,
R/O ZUTOVI VILLAGE,
P.O AND P.S, CHUMUOKEDIMA,
CHUMOUKEDIMA, NAGALAND

2: SHRI. LHOVISHE ACHUMI

GB

S/O. LATE YEKHEXU ACHUMI

R/O. NIJETO VILLAGE

P.O. AND P.S. NIULAND

NIULAND
NAGALAND.

3: SHRI SHIKAVI ZHIMO

HD. GB

R/O. YEVELO VILLAGE

P.O. AND P.S. NIULAND

NIULAND
NAGALAND

VERSUS

SHRI PHUSHITO AYEMI AND 2 ORS
S/O. LATE VIYIHO AYEMI,

R/O. PHUSHITO VILLAGE,
CHUMOUKEDIMA, NAGALAND

2:SHRI VIKUTO ROCHILL

R/O. LOTОВI VILLAGE

P.O. KUHUBOTO BRANCH OFFICE P.S.

DIPHUPAR
DIST. NIULAND
NAGALAND.

3:SHRI KUGHATO AWOMI

R/O. NIKIHE VILLAGE

PO AND PS NIULAND

DIST. NIULAND
NAGALAND

Advocate for the Petitioner : P. B. PAUL

Advocate for the Respondent : IMTI LONGJEM

Date of hearing	: 06.06.2024.
Date of Judgment	: 25.07.2024

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

**:: Judgment and Order ::
[CAV]**

This civil revision petition has been filed by the petitioners assailing the impugned judgment and order dated 16.05.2023, passed by the learned Principal District & Sessions Judge,

Dimapur, Nagaland in Civil Appeal No. 04 of 2022. By the said impugned judgment and order, the learned Principal District & Sessions Judge, Dimapur has stayed the order dated 04.11.2022 passed in IA(C)/181/2022 passed by the learned Civil Judge (Senior Division), Dimapur and allowed the defendants/respondents herein to continue to hold the office of President, Vice-President and General Secretary of Western Sumi Kukami Hoho (WSKH).

2. I have heard Mr. P. B. Paul, learned counsel for the petitioners and Mr. Imti Longjem, learned counsel for the respondents.

3. The case of the revision petitioners in brief is that the petitioners who belong to the Sumi Naga tribe of the Nagaland are Head Gaon Buras and Gaon Buras (Kukamis) of their respective villages, situated within the Western Sumi Areas of the State. The petitioners being the Gaon Buras (Kukamis) are the member of apex body of the Western Sumi Kukami Hoho (WSKH). The Western Sumis (general Sumi public) are also having its own constitution.

4. As per the customary procedure, the Kukami (G.B) is the Chieftain of the Village and the Kukami has command over the general public (residents) of the village. And in no circumstances the General public can command the G.B. The G.Bs (Kukamis) in Sumi Tribe are the hereditary posts and one person is selected as G.B as per the Sumi Customary practice. The Western Sumi Kukami Hoho (WSKH) is the Hoho (Union/Association) of the

Kukamis (GBs). None other than the Kukamis can be the member of the Hoho. And the member ship of WSKH is limited to the Kukamis (Sumi Village Chief) under Western Sumi Area.

5. As per Article 2 of the Constitution, the nomination committee in its meeting dated 05.03.2022 proposed the name of the petitioners for the post of President, Vice President and General Secretary of Western Sumi Kukami Hoho (WSKH) which was placed before the 26th General Conference of Western Sumi Kukami Hoho (WSKH) held on 16.03.2022 wherein the said conference unanimously approved the appointment of the petitioners as President, Vice President and General Secretary respectively for the tenure 2022-24. Pursuant to such approval, and in consonance with the provisions of Constitution and by-laws the petitioners resumed the office of Western Sumi Kukami Hoho (WSKH). Article 6, 7, 8 and 9 of the Constitution provides mode of selection of Office bearers, qualification etc. And the selection of the petitioners made by the Western Sumi Kukami Hoho (WSKH) for 2022-24 in accordance with the laid down provisions of the Constitution of the Western Sumi Kukami Hoho (WSKH), by constituting nomination committee recommended under the presidentship of the predecessor of the petitioner No. 1.

6. For better understanding, the relevant provision of Article 6, 7, 8 and 9 are reproduced herein below:

- i. *Art.6(c) The Executive Committee shall select the Ex-President of Western Sumi Kukami Hoho (WSKH) along with*

5-7 veteran Kukami and shall constitute them as Nominating Committee.

ii. *Art.6(d) The nominating committee shall select the Western Sumi Kukami Hoho (WSKH) office bearers which shall be approved by the House.*

ii *Art.7 (a) Qualification of office bearers: He shall be a Kukami.*

iii. *Art. 8(a) President and Vice President: (a) He shall be selected for a three (3) years. However, if necessitated, he shall be selected for second tenure only if desirable, he can be re-selected after a period of interval.*

iv) *Article 9 (a) General Secretary and Joint Secretary:*

(b) He shall be selected for 3 (three) years and if desirable, he can be selected for second term.

7. Accordingly, the nomination committee was constituted in the meeting held on 21.02.2022 and vide appointment dated 28.02.2022 for selection of the petitioners had been recommended and subsequently the petitioners were proposed by the nomination committee and it was the General conference of the Western Sumi Kukami Hoho (WSKH) held on on 16.03.2022 the petitioners have been nominated as per the provisions of Article 6 of the Constitution of Western Sumi Kukami Hoho (WSKH). While the petitioners were functioning its office, the respondents started running a parallel office causing confusion and damaging the image of Western Sumi Kukami

Hoho (WSKH).Thus, the petitioners as Plaintiffs filed Civil Suit No.06 of 2022 before the Hon'ble Court of Civil Judge (Sr. Division) Dimapur, Nagaland praying for a decree to declare the petitioners(Plaintiffs in the Civil Suit No.06/222) as the legally constituted office bearers of Western Sumi Kukami Hoho (WSKH) for the tenure 2022-24.

8. The petitioners had filed an Interlocutory Application being IA(C) No.181/2022 in the said Civil Suit seeking temporary injunction under Order 39 Rule 2 of CPC restraining the respondents from functioning as the Office bearers of Western Sumi Kukami Hoho (WSKH). The Ld. Civil Judge (Sr.Division) Dimapur, Nagaland after hearing the parties vide order dated 04.11.2022 granted temporary injunction in favour of the petitioners restraining the respondents from functioning as office bearers of Western Sumi Kukami Hoho (WSKH). After hearing the parties, the Learned Civil Judge (Sr. Division), Dimapur, Nagaland by order dated 04.11.2022 had granted temporary injunction in favour of the petitioners restraining the respondents from functioning as office bearers of Western Sumi Kukami Hoho (WSKH).

9. The respondents thereafter filed an appeal under Order 43 Rule 1 of CPC challenging the Order dated 04.11.2022 in I.A(C) No.181 of 2022, before the Ld. Principal District and Sessions Judge, Dimapur, Nagaland The said appeal was registered as Civil Appeal No.04 of 2022 and the Hon'ble Court vide order dated 16.05.2023 disposed the said appeal staying the order

dated 04.11.2022 passed in I.A.(C) No.181 of 2022, on the ground that the matter in issue of Western Sumi Kukami Hoho (WSKH) was decided by the Western Sumi Hoho (WSH).

10. Highly aggrieved by the said impugned order dated 16.05.2023, the appellant is before this Court challenging the said impugned order dated 16.05.2023 on the ground that the said order dated 16.05.2023 has been passed by the Ld. Principal District & Sessions Judge, Dimapur, Nagaland without taking into consideration of the factum that the Western Sumi Hoho (WSH) and the Western Sumi Kukami Hoho (WSKH) are the different entities and having their own separate Constitution, whereby the Constitutional right of the Western Sumi Kukami Hoho (WSKH) cannot be overridden or superseded by the Western Sumi Hoho (WSH).

11. It is further contended that the Principal District & Sessions Judge, Dimapur, Nagaland has failed to take into consideration that the Ld. Court of Civil Judge(Sr. Division) Dimapur, Nagaland passed the injunction order after hearing the parties and also judiciously considering the Golden Principle of Order 39 Rule 1 and 2 of CPC, 1908.

12. The Principal District & Sessions Judge, Dimapur, Nagaland has failed to adjudicate the matter marshalling the reasoning and findings of the Ld. Civil Judge (Sr.Division) Dimapur, Nagaland that the Western Sumi Kukami Hoho (WSKH) enacted/adopted its Constitution keeping in mind the collective interest of the Kukamis wherein Article 6, 7, 8 and 9 of the Constitution provides

mode of selection of Office bearers, qualification etc.

13. That the Western Sumi Kukami Hoho (WSKH) is not an affiliated Body of the Western Sumi Hoho (WSH). It is contended that the Constitution of Western Sumi Kukami Hoho (WSKH) nowhere adopted to be affiliated with the Western Sumi Hoho (WSH), as such the Western Sumi Hoho (WSH) does not have any right and authority to interfere with the affairs of the Western Sumi Kukami Hoho (WSKH) overriding the Constitutional provisions of the Western Sumi Kukami Hoho (WSKH). The learned counsel for the petitioners submits that the Principal District & Sessions Judge, Dimapur, Nagaland has wrongly conceived the factum and Constitutional Provisions of Western Sumi Kukami Hoho (WSKH) and passed the impugned order without application of mind as such the same being highly arbitrary and illegal, liable to be set aside and quashed.

14. It is further submitted that the Principal District & Sessions Judge, Dimapur, Nagaland has acted arbitrarily while not considering the factum that the Western Sumi Kukami Hoho (WSKH) is not bound by the decision of any other organization and the approved Constitution of the Western Sumi Kukami Hoho (WSKH) cannot be superseded by any clause/article of any other organization. It is the further submission of the learned counsel for the petitioners that the Principal District & Sessions Judge, Dimapur, Nagaland has failed to apply judicious mind while disposing the Civil Appeal No.04 of 2022 and the said appeal has been disposed in whimsical manner without applying rationality

and judicious mind, therefore the impugned order is highly illegal and liable to be set aside and quashed.

15. And finally, it is also submitted that the Principal District & Sessions Judge, Dimapur, Nagaland has utterly failed to appreciate the fact and to marshal the findings and reasons of the Ld. Civil Judge (Sr. Division) Dimapur, Nagaland as regards to the Golden Principle of injunction as provided under Order 39 Rule 1 and 2 of CPC, thereby passed the order dated 16.05.2023, arbitrarily, which cannot stand the test of law as such, the impugned order is liable to be set aside and quashed.

16. The case of the respondents, on the other hand, in brief is that in the year 2016, the office bearers of Western Sumi Kukami Hoho (WSKH) headed by Shri.Vihuto Yeptho (hereinafter referred to as the previous President) as the president were selected for the term 2016-2019. However, at the expiry of their term in July 2019 the previous president did not demit the office and continued to hold office and on 27.01.2020 the office bearers led by Shri. Vihuto Yeptho whose tenure had ended in July 2019 held a Sumi Cultural Centre inauguration and General Conference wherein they got themselves re-elected for the term 2020-2023 without following due procedure. As such, there were many objections. One such complaint was also made to the Western Sumi Hoho(WSH) by the Kukamis of the Aqahuto Area. The WSH is the apex body of the Sumi tribe of the Western Sumi region. The Kukamis of the Agahuto Area are also members of the Western Sumi Kukami Hoho (WSKH). On receiving the complaint,

the President of the WSH, by Letter dated 17.03.2020, referred the matter to the Advisory Board of Western Sumi Hoho(WSH) in terms of Article 13(A) of WSH Constitution.

17. Article 13 (A) of the Western Sumi Hoho(WSH) Constitution provides that incase of dispute/conflict in the selection of office bearers of Western Sumi Hoho(WSH) and Subordinate Frontal Organizations, the Western Sumi Advisory Board shall resolve the matter. Western Sumi Kukami Hoho (WSKH) is one of the Frontal Organization/affiliated bodies of the WSH which is also reflected in Article 5 of the WSH Constitution. Furthermore, Article 1 of the Western Sumi Kukami Hoho (WSKH) Constitution deals with name and affiliation of Western Sumi Kukami Hoho (WSKH). Article 1(b) of the said Constitution provides for cordial relationship with WSH and other organizations. The Preface of the Western Sumi Kukami Hoho (WSKH) Constitution also clearly mentions that the said Constitution was reviewed by leaders of Western Sumi Hoho(WSH) and Western Sumi Kukami Hoho (WSKH). Thus, the Western Sumi Kukami Hoho (WSKH) is an affiliated body of the WSH.

18. Therefore, when the previous president of Western Sumi Kukami Hoho (WSKH) was disregarding the constitutional provisions of Western Sumi Kukami Hoho (WSKH) and not taking steps to select new office bearers, the Western Sumi Hoho(WSH) had to intervene as per Article 13(A) of Western Sumi Hoho(WSH) Constitution. At this, the learned counsel for the respondents submits that when the previous president tried to

re-elect himself without following the Constitutional provisions, there was a break down in mechanism provided by the Western Sumi Kukami Hoho (WSKH) Constitution for selecting of new office bearers. As such, Western Sumi Kukami Hoho (WSKH) being an affiliated body of WSH, the Advisory Board of Western Sumi Hoho(WSH) was empowered to resolve the issue by adopting a fair method. Accordingly, on being requested to resolve the issue, the Western Sumi Hoho(WSH) Advisory Board convened a meeting of all the Chairmans under the Western Sumi Kukami Hoho (WSKH) area jurisdiction. This meeting was held on 19.02.2020 and resolutions were taken. It was decided that the re-election of the previous president was not proper and would not be accepted. It was also decided that all the area chairman shall select and submit the names of their representatives and that a Nominating Committee would be selected for selecting the Western Sumi Kukami Hoho (WSKH) office bearers. Thereafter, by a Notice dated 20.03.2020 all village Chiefs and area Chairmans under Western Sumi Kukami Hoho (WSKH) area were informed to send the names of their choice representatives to Western Sumi Hoho(WSH) Advisory Board before 31.03.2020. Thereafter, the representatives from all the area under Western Sumi Kukami Hoho (WSKH) and the Advisory Board of WSH held a meeting on 23.06.2020 and selected 7 members Nominating Committee and the same was notified to all concerned by notice dated 23.06.2020.

19. Article 6 of the Western Sumi Kukami Hoho

(WSKH) Constitution provides the method for selection of office bearers and executive members of Western Sumi Kukami Hoho (WSKH). Article 6(c) provides that the Executive Committee shall select the ex-president of Western Sumi Kukami Hoho (WSKH) along with 5-7 veteran Kukami to select the Nominating Committee. Article 6(d) provides that the Nominating Committee shall select the Western Sumi Kukami Hoho (WSKH) office bearers which has to be approved by the House. (House means, the General body of the Western Sumi Kukami Hoho (WSKH).)

20. The learned counsel for the respondents submits that in view of the act of the previous office bearers and the executive members who despite of expiry of their tenure in July 2019 had tried to re-elect themselves de-hors the Constitutional provision of the Western Sumi Kukami Hoho (WSKH). Thus, there was a break down in the method provided under Article 6 of the constitution of Western Sumi Kukami Hoho (WSKH) for selecting new office bearers. Therefore, the only way to overcome and resolve the matter was with the intervention of the Western Sumi Hoho (WSH) under which the Western Sumi Kukami Hoho (WSKH) was affiliated. The method adopted by the WSH Advisory Board was absolutely transparent and fair. It is further submitted that the previous president and the executive members were refusing to constitute the Nominating Committee and instead wanted to illegally continue in the office. Thus, with the intervention of the Western Sumi Hoho (WSH) Advisory Board, the representatives from all the areas under Western

Sumi Kukami Hoho (WSKH) jurisdiction themselves selected the Nominating Committee. The previous president was also not a part of this Committee because he did not want to constitute a Nominating Committee but continue himself as president.

21. It is also submitted that in the ensuing election the previous president was one of the contesting candidates along with the present respondent No. 1. Therefore, even on this ground he could not have been the member of the Nominating Committee. It is further submitted that the method adopted by the areas representatives and the WSH Advisory Board may not be strictly in accordance with the provision of the Western Sumi Kukami Hoho (WSKH) Constitution. It was because of the refusal to adhere to the Constitutional provisions by the previous president and office bearers, the method prescribed under Article 6 of the Western Sumi Kukami Hoho (WSKH) Constitution could not be strictly implemented. Therefore, the area representatives under the Western Sumi Kukami Hoho (WSKH) jurisdiction and the Advisory Board of WSH had to appoint the Nominating Committee. However, it is submitted that the appointment of the Nominating Committee was done in the most transparent and fair manner and also it was the only way out to resolve the matter in the instant case. It is further submitted that it was themembers of the Western Sumi Kukami Hoho (WSKH) through their representatives who had selected the Nominating Committee.

22. Thereafter, on 30.06.2020 the aforesaid 7 member

Nominating Committee selected the defendant/respondent No. 1 as President, defendant/respondent No. 2 as Vice President and one Shri. Khevito Chishi as General Secretary. It is contended that the previous President namely, Shri. Vihuto Yeptho was also one of the candidate for the post of President but he failed to get re-elected as he got only 2 votes. Thereafter, the Nominating Committee by Letter dated 30.06.2020 informed the Western Sumi Hoho (WSH) Advisory Board of the selection and asked to call a General Conference for approval and induction of the new office bearers before 12.07.2020. Thereafter, as required under Article 6(d) of the Western Sumi Kukami Hoho (WSKH) Constitution, a General Conference was held on 10.07.2020 for approval of the office bearers by the general body of Western Sumi Kukami Hoho (WSKH). However, one Mr. Khevito Chishi who was selected for the post of General Secretary by the Nominating Committee expressed his inability to accept the post due to his personal difficulties and therefore, he was replaced by the present defendant/respondent No. 3.

23. In the General Conference held on 10.07.2020 the defendants/respondents were approved by the House as President, Vice President and General Secretary of Western Sumi Kukami Hoho (WSKH) respectively as provided by Article 6(d) of the Western Sumi Kukami Hoho (WSKH) Constitution. Therefore, it is submitted that even though the Nominating Committee was not constituted strictly in terms of Article 6 of Western Sumi Kukami Hoho (WSKH) Constitution, but with the approval by the

General Conference of the Western Sumi Kukami Hoho (WSKH), the appointment of the defendants/respondents as office bearers of the Western Sumi Kukami Hoho (WSKH) stood legitimized. It is further submitted that there was no objection from any quarter including the plaintiffs/petitioners herein or Shri. Vihuto Yeptho, previous President and his group to the selection/appointment of the defendants/respondents as office bearers till then.

24. However, despite of all these, the previous office bearers lead by Shri. Vihuto Yeptho (previous president) refused to relinquish office. Therefore, a reconciliation programme was convened by the Western Sumi Hoho (WSH) on 28.11.2020 between the two groups. It is submitted that the plaintiffs/petitioners herein belonged to the previous president's group. In the said meeting dated 28.11.2020, it was decided that the group lead by Shri. Vihuto Yeptho (previous President) shall hold office of Western Sumi Kukami Hoho (WSKH) up to the Silver Jubilee celebration to be held on 28.12.2021 and after 14 days of the Silver Jubilee Celebration, the group led by the present defendants/respondent No. 1 shall assume office for one tenure. The previous president Shri. Vihuto Yeptho accepted the said agreement and also signed on the same.

25. The 14 days period after the Silver Jubilee of Western Sumi Kukami Hoho (WSKH) expired on 11.01.2022. Therefore, from 12.01.2022 the defendants/ respondents herein took charge of the office of Western Sumi Kukami Hoho (WSKH) and a thanksgiving programme was also held on 27.01.2022. He further

submitted that in the said programme 4 ex-presidents of Western Sumi Kukami Hoho (WSKH) and the Areas Chairmans gave exhortation speeches.

26. However, most surprisingly, the previous president Shri. Vihuto Yeptho and his team, after they ceased to be the president of Western Sumi Kukami Hoho (WSKH), convened a meeting on 21.02.2022 and illegally appointed a Nominating Committee consisting of 5 members. The previous President and his team were no longer the office bearers of Western Sumi Kukami Hoho (WSKH) on 21.02.2022 and therefore, they did not have the authority to select the Nominating Committee. However, they illegally appointed Nominating Committee and went ahead and selected the plaintiffs/petitioners as the President, Vice President and General Secretary respectively of the Western Sumi Kukami Hoho (WSKH) on 05.03.2022.

27. Not only that, the previous President Shri. Vihuto Yeptho also illegally convened a so-called General Conference on 16.03.2022 with a view to show fulfilment of the procedure. For this purpose; first, the previous president tried to hold the said meeting at Niuland public ground but permission was refused by the Office of the Deputy Commissioner, Niuland. Therefore, he convened the so-called General Conference at Hovishe village wherein it is claimed that the plaintiffs/petitioners have been approved as office bearers. It is submitted that the entire process of selecting the Nominating Committee and the petitioners as office bearers was carried out by the previous

president when he did not have the mandate to do so, and while the defendants/respondents were already functioning with the mandate of the members of the Western Sumi Kukami Hoho (WSKH) as office bearers.

28. The previous president then illegally selected the Nominating Committee on 21.02.2022. This purported Nominating Committee stated to have selected the plaintiffs/petitioners herein as office bearers on 05.03.2022 and claims that the so-called General Conference approved them on 16.03.2022. However, by the time, the defendants/respondents had already taken charge of the office on 12.01.2022 and a thanksgiving programme was also held on 27.01.2022. It is further contended that a congratulatory message dated 11.02.2022 to the defendants/respondents by the Sumi Hoho, which is the apex body of the Sumi Naga, also shows the approval of the general public and the taking of charge of office by the defendants/respondents. Thereafter, a memorandum dated 07.06.2022 addressed to the Chief Minister in the capacity of the President of Western Sumi Kukami Hoho (WSKH) which is also evidence that the defendants/respondents are functioning as office bearers of Western Sumi Kukami Hoho (WSKH).

29. It is also submitted by the learned counsel for the respondents that when the plaintiffs/petitioners failed in their efforts to take charge of the office of Western Sumi Kukami Hoho (WSKH), they filed the suit along with the application for a temporary injunction against the defendants/respondents. Even

though the plaintiffs/petitioners did not have a prima facie case, the Hon'ble trial court erroneously passed temporary injunction in their favour. However, in appeal filed against the said order, the Hon'ble Court of the Principal District Judge by the Judgment & Order dated 16.05.2023 rightly stayed the said order of the trial court and allowed the defendants/respondents to continue in the office.

30. With regards to the contention by the plaintiffs/petitioners that the defendant/respondent No. 1 is not a government recognized Kukami and therefore, he cannot be the President. The learned counsel for the respondent contended that, the Article 1(a) of the Western Sumi Kukami Hoho (WSKH) Constitution provides that Western Sumi Kukami Hoho (WSKH) shall consist of all hereditary of Kukamis in the western area. Article 2 of the Western Sumi Kukami Hoho (WSKH) Constitution provides that all Kukamis within western Sumi area shall be a member of the Hoho and Article 7 of WSKH Constitution, which deals with qualification of office bearers, provides that the office bearer shall be a Kukami and contended that there is no provision in the Western Sumi Kukami Hoho (WSKH) Constitution which stipulates that a member of the Western Sumi Kukami Hoho (WSKH) and/or an office bearer of Western Sumi Kukami Hoho (WSKH) have to be a government approved Kukami. He also contended that the only requirement provided by the provisions of the Western Sumi Kukami Hoho (WSKH) Constitution is to be hereditary kingship/Kukami of the western

Sumi area. It is also contended that there is no dispute that the defendant/respondent No. 1 is a Kukami and he is a bona fide member of the Western Sumi Kukami Hoho (WSKH). Therefore, the respondent no. 1 is eligible to become the President and the same cannot be questioned on the ground that he is not a government recognized Kukami.

31. It is further submitted by the learned counsel for the respondent that in order to obtain a temporary injunction in their favour, the plaintiffs/petitioners must first establish a prima facie case; they have to stand on their leg and must first prima facie disclose that they have been validly selected as office bearers of Western Sumi Kukami Hoho (WSKH). However, they cannot rely on the weaknesses of the defendants/respondents to obtain a temporary injunction in their favour.

32. Further, in support of his submission, the learned counsel for the respondent relied on the decision of the **Hon'ble Supreme Court in Kashi Math Samsthan -vrs- Shrimad Sudhindra Thirtha Swamy** reported in **(2010) 1 SCC 689** wherein, at paragraph No. 16 it was held that “...*the party who seeks for a temporary injunction must first prove a prima facie case. When the party fails to prove a prima facie case, the question of considering balance of convenience or irreparable loss and injury would not be material*”.

33. In the present case, it is absolutely clear that the plaintiffs/petitioners have not been selected in accordance with the Constitution but have been selected at the instance of the

Nominating Committee which was selected by the previous office bearers when they were no longer holding the office. Thus, the plaintiffs/petitioners having not been selected validly cannot seek or be granted an injunction in their favour to take charge and continue in the office.

34. The learned counsel for the respondents also relied upon the decision of the Hon'ble Supreme Court in **Gujarat Bottling Co. Ltd.-vrs- Coca Cola** reported in **(1995) 5 SCC 545** wherein at paragraph 43 it was held that "*...the need for injunction to protect the plaintiff must be weighed against the corresponding weight of the defendant to be protected against the injury resulting from the injunction*". And submitted that in the present case, the defendants/respondents had already assumed office and were functioning as office bearers of Western Sumi Kukami Hoho (WSKH) when the plaintiffs/petitioners were illegally selected. Therefore, to oust the defendants/respondents from the office and to put the plaintiffs/petitioners in office through a temporary injunction would cause irreparable harm, inconvenience and hardships to the defendants/respondents. The balance of convenience also weighs in favour of the defendants/respondents, in as much as, they were selected and approved in the year 2020 and were already functioning as office bearers from 12.01.2022 when the plaintiffs/petitioners claim that they were appointed.

35. The learned counsel for the respondents further submitted that the plaintiffs/petitioners belong to the previous

president/office bearer's group. The said group entered into an agreement on 28.11.2020 to allow them to continue in office till 14 days after the Silver Jubilee and thereafter, to handover charge to the defendants/respondents. In accordance with the said agreement, they held office and enjoyed the benefit of the Agreement dated 28.11.2020. However, when it as the turn of the defendants/respondents to take charge of the office as per the said Agreement dated 28.11.2020, they dishonoured the same. In this regard, the learned counsel for the respondents relied upon the decision of the Hon'ble Supreme Court decided in **Union of India -vrs- N. Murugesan** reported in **(2022) 2 SCC 25** wherein at paragraph 26 it was held that ***"...No party can be allowed to accept and reject the same thing or approbate or reprobate and that one cannot take advantage with one part while rejecting the rest"***. Therefore, the plaintiffs/petitioners having enjoyed the fruits of the Agreement dated 28.11.2020 is not permissible in law to turn around and not honour their obligations or keep their end of the bargain.

36. The learned counsel for the respondents further submitted that the present revision petition is filed under Rule 31 of Rules for Administration of Justice & Police in Nagaland, 1937 read with Section 115 of the Code of Civil procedure, 1908 (hereinafter referred to as CPC) and Article 227 of the Constitution of India. In this regard, the learned counsel for the respondents relied upon the decision of this Hon'ble Court in

Registrar General, Gauhati High Court - vrs- Union of India and Ors. reported in **2013 (4) GLT 1109** wherein at paragraphs 32 and 33 it is held that “...*CPC will be applicable in regularly constituted courts*”. Therefore, the present petition is not maintainable under the aforesaid Rule.

37. It is further submitted by the learned counsel for the respondent that, the present petition is not maintainable under Section 115 of the CPC because an injunction order in favour of the respondent does not dispose of the suit finally. The present petition is only maintainable under Article 227 of the Constitution. However, it is further submitted that the supervisory powers of the Hon'ble High Court under Article 227 of the Constitution are limited. In this regard, the learned counsel for the respondents relied on the decision of the Supreme Court in **Surya Devi Rai -vrs- Ram Chander Rai** reported in **(2003) 6 SCC 675** wherein at paragraphs 38(1), 38(4), 38(5), 38(6), 38(7) and 38(8) and the decision in **Shalini Shyam Shetty -vrs- Rajendra Shankar Patil** reported in **(2010) 8 SCC 329** wherein at paragraph 49 it was held that “ ***The jurisdiction under Article 227 is exercised when subordinate court assumes jurisdiction which it does not have or fails to exercise jurisdiction which it does have or the jurisdiction is exercised in manner not permitted by law resulting in grave injustice. It has also been held that the supervisory powers are not available to correct mere errors of facts and law unless the error***

is manifest and apparent on the face of the proceedings which is based on clear ignorance or utter disregard to the provision of law and thereby leading to gross failure of justice or grave injustice. It has also been held that a patent error is one which is self-evident without involving lengthy or complicated argument. It has also been held that when two inferences are reasonably possible and the subordinate court has chosen one, the error cannot be called gross or patent". The learned counsel for the respondents submits that in the present case, the learned Principal District Judge, Dimapur has rightly exercised jurisdiction, and has not committed any error, least a patent error and no gross failure of justice or grave injustice has been occasioned by the impugned Judgement & Order.

38. The learned counsel for the respondent submitted that the plaintiffs/petitioners have not made out a prima facie case, the balance of convenience is also in favour of the defendants/respondents and irreparable loss and injury would be caused to the defendants/respondents if the defendants/respondents are to be enjoined from continuing as the office bearers of Western Sumi Kukami Hoho (WSKH). While defending the decision of the learned Principal District Judge, Dimapur, the learned counsel for the respondents submits that in view of the facts and circumstance submitted the Court of the Principal District Judge, Dimapur has rightly passed the Judgement & Order dated 16.05.2023. Hence, prays that the

present revision petition has no merit and liable to be dismissed.

39. I have heard both the learned counsels for the parties and also considered the documents available on record and due consideration has also been given to the contention made by them and the submission advanced in their favour.

40. From the pleadings and the submission of the parties, the question which emerges for the decision of this Court is as to ***whether the impugned judgment and order dated 16.05.2023 passed by the learned Principal District and Sessions Judge, Dimapur, Nagaland requires interference of this Court.***

41. From the record, it appears that, the office bearers lead by the previous president were selected for the term 2016-2019 and their tenure expired in July, 2019. However, despite of expiry of their terms, the previous president did not demit his office and continued to hold office. It also reveals that after expiry of their term on 27.01.2020, the office bearers led by Shri. Vihuto Yeptho (previous president) whose tenure had ended in the year 2019 held a Sumi Cultural Centre inauguration and General Conference wherein they got themselves re-elected for the term 2020-2023. The said re-election according to the respondent was done without following due procedure. Because of such re-election, there were many objections. A complaint was also made to the Western Sumi Hoho (WSH) which is the apex body of the Sumi tribe of the Western Sumi region. On receiving the complaint,

the President of the Western Sumi Hoho (WSH), by letter dated 17.03.2020, referred the matter to the Advisory Board of Western Sumi Hoho (WSH) in terms of Article 13(A) of WSH Constitution. This was done by the Western Sumi Kukami Hoho (WSKH) as the Western Sumi Kukami Hoho (WSKH) is also one of the Frontal Organization/affiliated bodies of the Western Sumi Hoho (WSH). This is also found reflected in Article 5 of the Western Sumi Hoho (WSH) Constitution. Such power for intervention has been provided by the Western Sumi Hoho (WSH) constitution which provides that in case of dispute/ conflict in the selection of office bearers of Western Sumi Hoho (WSH) and Subordinate frontal organizations the Western Sumi Kukami Hoho (WSKH) shall resolve the matter. Besides, Article 1(b) of the said Constitution also provides for cordial relationship with Western Sumi Hoho (WSH) and other organizations.

42. Further, it is seen that the provisions of Western Sumi Kukami Hoho (WSKH) Constitution also clearly mentions that the said Constitution was reviewed by leaders of Western Sumi Hoho (WSH) and Western Sumi Kukami Hoho (WSKH) and in view of the above, it appears that the Western Sumi Kukami Hoho (WSKH) is an affiliated body of the Western Sumi Hoho (WSH). Therefore, in the instant case, when the occasion arises that the previous president of the Western Sumi Kukami Hoho (WSKH) by disregarding the constitutional provisions of the Western Sumi Kukami Hoho (WSKH) and not taking any steps

to select any new office bearers and instead, the previous president got themselves re-elected dehors the rules, the Western Sumi Hoho (WSH) had intervened as per Article 1 of the Western Sumi Hoho (WSH) Constitution.

43. Admittedly, the tenure of the office bearers led by the previous president expired. However, instead of demitting their office, they tried to re-elect themselves without following the constitutional provisions and thus, according to the learned counsel for the respondents there was a breakdown in the mechanism provided by the Western Sumi Kukami Hoho (WSKH) Constitution for selecting new office bearers. And as such, Western Sumi Kukami Hoho (WSKH) being an affiliated body of WSH, the Advisory Board of Western Sumi Hoho (WSH) was empowered to resolve the issue by adopting the method which is stated to be fair. Accordingly, the Western Sumi Hoho (WSH) Advisory Board convened a meeting of all the Chairmans under the Western Sumi Kukami Hoho (WSKH) area's jurisdiction. This meeting was held on 19.02.2020 and resolutions were taken wherein, it was decided that the re-election of the previous president was not proper and would not be accepted. It was also decided that all the area Chairmans shall select and submit the names of their representatives and that a Nominating Committee would be selected for selecting the Western Sumi Kukami Hoho (WSKH) office bearers. Thereafter, it appears that by a Notice dated 20.03.2020 all village chiefs and area Chairmans under Western Sumi Kukami

Hoho (WSKH) area were informed to send the names of their representatives to Western Sumi Hoho (WSH) Advisory Board before 31.03.2020. Thereafter, the representatives from all the area under Western Sumi Kukami Hoho (WSKH) and the Advisory Board of Western Sumi Hoho (WSH) held a meeting on 23.06.2020 and selected a 7 member Nominating Committee and the same was notified to all concerned by Notice dated 23.06.2020.

44. Article 6 of the Western Sumi Kukami Hoho (WSKH) Constitution provides the method for selection of office bearers and executive members of Western Sumi Kukami Hoho (WSKH). Article 6(c) provides that the Executive Committee shall select the ex-president of Western Sumi Kukami Hoho (WSKH) along with 5-7 veteran Kukami to select the Nominating Committee. Article 6(d) provides that the Nominating Committee shall select the Western Sumi Kukami Hoho (WSKH) office bearers which has to be approved by the House.

45. However, in the instant case, it is discernible from the record that the previous office bearers and the executive members who despite of expiry of their tenure in July 2019 had tried to re-elect themselves de-hors the Constitutional provision of the Western Sumi Kukami Hoho (WSKH). In view of the above, as submitted there was a break down in the method provided under Article 6 of the constitution of Western Sumi Kukami Hoho (WSKH) for selecting new office bearers. Therefore, the only way to overcome and resolve the matter

was with the help of the WSH to which the Western Sumi Kukami Hoho (WSKH) was affiliated. Thus, with the intervention of the Western Sumi Hoho (WSH) Advisory Board, the representatives from all the areas under Western Sumi Kukami Hoho (WSKH) jurisdiction themselves selected the Nominating Committee. The previous president was not a part of this Committee because he did not want to constitute a Nominating Committee but continue himself as the president.

46. It is further seen as submitted by the learned counsel for the respondent that in the said election the previous president was one of the contesting candidates along with the present respondent No. 1 and because of which he could not have been a member of the Nominating Committee.

47. Be that as it may, under the given circumstances, the method adopted by the area representatives and the Western Sumi Hoho (WSH) Advisory Board although may not be strictly in accordance with the provision prescribed under Article 6 of the Western Sumi Kukami Hoho (WSKH) Constitution. However, the appointment of the Nominating Committee seems to have been done in the reasonably transparent and fair manner. And on 30.06.2020 the aforesaid 7 member Nominating Committee selected the defendant/respondent No. 1 as President, defendant/respondent No. 2 as Vice President and one Shri. Khevito Chishi as General Secretary. It is also not disputed that the previous President namely, Shri. Vihuto Yeptho was also one of candidate for the post of President but he failed to get re-

elected as he got only 2 votes. Further, the appointment of the defendants/respondents as office bearers of the Western Sumi Kukami Hoho (WSKH) received an approval by the General Conference of the Western Sumi Kukami Hoho (WSKH) thereby it stood legitimized as claimed. Thus, there was no any objection from any quarter including the plaintiffs/petitioners or Shri. Vihuto Yeptho, previous President and his group to the selection/appointment of the defendants/respondents herein as office bearers till then.

48. It appears that, despite all the above, the previous office bearers lead by Shri. Vihuto Yeptho (previous president) did not relinquish his office. Therefore, a reconciliation programme was convened by the WSH on 28.11.2020 between the two groups. In the said meeting dated 28.11.2020, it was decided that the group lead by Shri. Vihuto Yeptho(previous President) shall hold office of WSKH up to the Silver Jubilee celebration to be held on 28.12.2021 and after 14 days of the Silver Jubilee the group led by the present defendants/respondent No. 1 shall assume office for one tenure. The previous president Shri. Vihuto Yeptho had also accepted the said agreement and found signed on the same.

49. It is also not denied that after 14 days period after the Silver Jubilee of Western Sumi Kukami Hoho (WSKH) expired on 11.01.2022,the defendants/ respondents herein took charge of the office of Western Sumi Kukami Hoho (WSKH) and a thanksgiving programme was also organised by them on

27.01.2022 wherein 4 ex-presidents of Western Sumi Kukami Hoho (WSKH) and the Area Chairmen gave exhortation speeches.

50. However, again it is seen that the previous president Shri. Vihuto Yeptho and his team, convened a meeting on 21.02.2022 and appointed a Nominating Committee consisting of 5 members. The contention of the learned counsel for respondent is that, the previous President and his team were no longer the office bearers of Western Sumi Kukami Hoho (WSKH) on 21.2.2022 and therefore, did not have the authority to select the Nominating Committee. However, the illegally appointed Nominating committee went ahead and selected the plaintiffs/petitioners as the President, Vice President and General Secretary respectively of the Western Sumi Kukami Hoho (WSKH) on 05.03.2022.

51. It is further seen that, thereafter also the previous president Shri. Vihuto Yeptho and his team, convened a meeting on 21.02.2022 and appointed a Nominating Committee consisting of 5 members. It appears that, the previous President and his team had no jurisdiction to nominate the said committee, in view of the fact that the previous president and his team were no longer office bearers of the Western Sumi Kukami Hoho (WSKH) on 21.02.2022. However, the said appointed committee went ahead and selected the plaintiff/respondents as President, Vice President and General Secretary respectively of Western Sumi Kukami Hoho (WSKH)

on 05.03.2022. Thus, it appears that the entire process of selecting the Nominating Committee and the petitioners as the office bearers was carried out by the previous President when he did not have the mandate to do so and while the defendants respondents have already taken charge of the office on 12.01.2022 and were already functioning as office bearers.

52. Under the above facts and circumstances when the plaintiff /petitioners failed in their effort to take charge of the Western Sumi Kukami Hoho (WSKH) they filed suit for temporary injunction against the respondents and the learned Trial Court passed an injunction order in favour of the plaintiff/petitioners. However, in the appeal filed against the said order, the learned Court of Principal District Judge by an order dated 16.05.2023 stayed the order of the Trial Court and allowed the defendants/ respondents to continue in the office.

53. Having considered and going through the impugned order and in view of the discussion made above, I found the submission advanced by the learned counsel for the respondent to be fair enough with no any exaggerations or falsehood with a view to obtain any favourable order.

54. Having regards to facts and circumstances of the instant case as stated above and in view of the observation made above and the decision of the Hon'ble Supreme Court in the above referred cases, this Court does not find any infirmity in the order dated 16.05.2023 passed by the learned Court of Principal District & Sessions Judge, in Civil Appeal No.04/2022.

55. Accordingly, this Civil revision petition being devoid of merit is hereby dismissed. No cost.

JUDGE

Comparing Assistant