

GAHC020003222023



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

Case No. : WP(C)/128/2023

SHRI T. CHALUKUMBA AO,
S/O LATE TEKANUNG TEN AO,
PRESENTLY RESIDING AT HOUSE NO NMH-A/003, NH 29, NEAR
SOUTH PS,
NEW MINISTERS HILL COLONY, KOHIMA SADAR,
KOHIMA 797001, NAGALAND.
PERMANENT RESIDENT OF CHUNGTIA VILLAGE,
MOKOKCHUNG 798601, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 17 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVERNMENT OF
NAGALAND,
NAGALAND, KOHIMA

2:THE COMMISSIONER

NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER

MOKOKCHUNG
NAGALAND

4:THE CHUNGTIA VILLAGE COUNCIL

MOKOKCHUNG 798601
NAGALAND
REPRESENTED BY ITS CHAIRMAN.

5:SHRI B. KILANG

SON OF LT. BURSASHI

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND.

6:SHRI B. WATI

SON OF SHRI PUSOCHIBA

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601. NAGALAND

7:SHRI CHUBATOSHI

SON OF LT. MESOATSU

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

8:SHRI NAROKABA

SON OF LT. WATIMEREN

RESIDENT OF CHUNGTI VILLAGE

MOKOKCHUNG 798601
NAGALAND

9:SHRI T. BURSANGBA

SON OF LT. TEMJENSASHI

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

10:SHRI I. WATI

SON OF SHRI IMERENBA

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

11:SHRI BENDANGMAYANG

SON OF LT. TINUMAYANG

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

12:SHRI CHUBASANGBA

SON OF LT. IMDONGDANGBA

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

13:SHRI T. BENDANG

SON OF LT. TSUMEZOBA

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

14:SHRI MOATEMJEN

SON OF KARIMAYANG

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

15:SHRI U. YANGER

SON OF LT. UNGERCHANG

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601

NAGALAND

16:SHRI SUPONGTSUBA

SON OF LT. RONGSENTEMJEN

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

17:SHRI PURLEMBA

SON OF LT. TEKAMONGSHI

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAND

18:SHRI PUNAREPBA

SON OF LT. SASHIBA

RESIDENT OF CHUNGTIA VILLAGE

MOKOKCHUNG 798601
NAGALAN

Advocate for the Petitioner :

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER [ORAL]

21.03.2024

The instant writ petition under Article 226 of the Constitution of India has been preferred by the writ petitioner to assail two orders – Order dated 16.02.2023 and

Order dated 30.06.2023 – passed by the respondent no. 4, that is, the Chungtia Medemchanger Putu Menden, District – Mokokchung. The petitioner has also prayed for a direction to the respondent no. 3, that is, the Deputy Commissioner, Mokokchung to initiate proper action against the respondent nos. 5 to 18 as provided under the law. The respondent nos. 5 to 18 are members in the Chungtia Medemchanger Putu Menden, that is, the respondent no. 4.

2. By the Order dated 16.02.2023, the respondent no. 4 had inter alia debarred the petitioner from being a part of Chungtia Village temporarily on the ground that the petitioner did not act in the best interests of the Chungtia Village. By the subsequent Order dated 30.06.2023, the petitioner was excommunicated from Chungtia Village citizenship for his lifetime with the allegation that the petitioner had acted in contravention of the customary practices of the Chungtia Medemchanger Putu Menden. The Order dated 30.06.2023 passed by the respondent no. 4 was published in a local newspaper, Tir Yimym in its issue dated 02.07.2023, for wide publicity.

3. The petitioner has asserted that he is a native of Chungtia Village under District – Mokokchung and belongs to Scheduled Tribe. In order to stand in the General Election to the Nagaland Legislative Assembly, held on 28.02.2023, as a Member of Legislative Assembly [MLA] from the 28th Koridang Assembly Constituency, the petitioner submitted his nomination papers as a Janata Dal [United] candidate. The petitioner was found himself aggrieved by the alleged action of the respondent no. 4, when he was not extended similar benefit like another candidate who stood against the petitioner in the same General Election. Though many other aspects are mentioned in the writ petition, the same are found not necessary to reproduce herein, save and except the relevant facts. But in the Election, the petitioner did not emerge as the returned candidate.

4. As mentioned above, the Order dated 16.02.2023 was passed under the signatures of the members of the respondent no. 4, Chungtia Medemchanger Putu Menden. By the said Order, the petitioner had been informed that his alleged acts

were not found in the best interests of Chungtia Medemchanger Putu Menden. Therefore, the Chungtia Medemchanger Putu Menden had taken a decision to debar the petitioner from being a part of Chungtia village temporarily. By the subsequent Order dated 30.06.2023, the petitioner has been debarred and excommunicated from the citizenship of Chungtia Village for his lifetime and it has thereby, been informed that any household that harbours/welcomes the petitioner within Chungtia Village shall be locked. In the said Order dated 30.06.2023, the respondent nos. 5 to 18 had subscribed their signatures, meaning thereby, the decision to excommunicate the petitioner by the respondent no. 4, Chungtia Medemchanger Putu Menden, also referred to as the Chungtia Village Council, was a collective decision taken by the respondent nos. 5 to 18 as the members of the respondent no. 4 Village Council.

5. I have heard Mr. Sentianger, learned counsel for the petitioner; Ms. A. Ayemi, learned Government Advocate, Nagaland for the respondent nos. 1, 2 & 3; and Mr. Wati Jamir, learned counsel for the respondent nos. 4 to 18.

6. Mr. Sentianger, learned counsel for the petitioner has submitted that the respondent no. 4, Chungtia Village Council is a statutory body under the Nagaland Village and Area Councils Act, 1978 [‘the Act’, for short] and its powers and duties have been defined in the said Act. It is his contention that a Village Council like the respondent no. 4 - Chungtia Village Council, does not have any power, authority and jurisdiction to pass any order to excommunicate any inhabitant of the areas within such Village Council either temporarily or permanently. He has submitted that none of the two Orders were passed after affording any kind of prior opportunity to the petitioner to present his case and as such, both the impugned Orders are in clear violation of the principles of natural justice. He has further referred to the decision of this Court in *Mangyang Lima vs. State of Nagaland and others*, reported in 2019 [1] GLT 409, to submit that even taking shelter under the customary laws, a Village Council/Putu Menden cannot pass any order of punishment of excommunication or banishment.

7. Ms. Ayemi, learned Government Advocate, Nagaland appearing for the

respondent nos. 1, 2 & 3 has submitted that the writ petition has been preferred challenging the legality and validity of the Order dated 16.02.2023 and the Order dated 30.06.2023 passed by the respondent no. 4 - Chungtia Village Council and the State respondents, that is, the respondent nos. 1, 2 & 3 had no role in passing of the said two Orders. The legality and validity of the said two Orders are required to be considered qua the provisions of the Nagaland Village and Area Councils Act, 1978.

8. Mr. Jamir, learned counsel for the respondent nos. 4 to 18 has submitted that the two Orders were results of collective decision-making by all the members of the duly constituted Chungtia Medemchanger Putu Menden. He has further submitted that after passing of the order debarring the petitioner temporarily from Chungtia Village citizenship, the members of the Putu Menden had participated in a meeting with the Sub-Divisional Officer [Civil] and Returning Officer, 28th Koridang Assembly Constituency on 16.02.2023 and apprised the said authority about the background in which the Order dated 16.02.2023 had to be passed. Mr. Jamir, learned counsel for the respondent nos. 4 to 18 has further contended that it was due to certain actions on the part of the petitioner which had resulted into a situation not conducive for a peaceful atmosphere to exist in the Chungtia Village Council areas, the impugned Orders had to be passed in order to maintain a peaceful situation in the Chungtia Village Council areas. When the petitioner did not abide by the advisories issued by the Chungtia Village Council, during the subsequent period also, the Council members unanimously and collectively had taken the decision to debar the petitioner by the impugned Order dated 30.06.2023.

9. I have given due consideration to the submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the relevant provisions of the Nagaland Village and Area Councils Act, 1978 and the decision in Mangyang Lima [supra].

10. The Nagaland Village and Area Councils Act, 1978 [hereinafter referred to as 'the Act', for easy reference] is an Act for consolidating the law relating to

constitution of Village and Area Councils in Nagaland and to regulate their duties and functions and for matters connected therewith. As per Section 3 of the Act, every recognized village shall have a Village Council. As per Section 4 of the Act, a Village Council shall consist of members, chosen by villagers in accordance with the prevailing customary practices and usages, the same being approved by the State Government. As per Section 6[a], every Village Council, unless otherwise dissolved by the State Government, shall continue for five years from the date of appointment, provided that the said period may be extended by the State Government by a notification in the Gazette for a period not exceeding one year at a time. As per Section 6[b] of the Act, all members shall hold office during the life of the Village Council. The second proviso to Section 6[b] has provided that the village institutions which were traditionally established like the 'Putu Menden' in Ao Area and recognized as Village Council shall continue to function as Village Council according to respective custom and usage.

11. The provisions contained in Section 12 of the Act have outlined the powers and duties of a Village Council. For ready reference, the provisions of Section 12 are reproduced hereinbelow :-

Powers and Duties

12. The Village Council shall have the following powers and duties :

- [1] to formulate Village Development Schemes, to supervise proper maintenance of water supply, roads, forest, sanitation, education and other welfare activities.
- [2] to help various Government agencies in carrying out development works in the Village.
- [3] to take development works on its own initiative or on request by the Government.
- [4] to borrow money from the Government, Banks or financial institutions for application in the development and welfare work of the Village and to repay the same with or without interest as the case may be.
- [5] to apply for and receive grant-in-aid, donations, subsidies from the Government or any agencies.

[6] to provide security for due repayment of loan received by any permanent resident of the Villages from the Government, Bank or financial institution.

[7] to lend money from its funds to deserving permanent residents of the Village and to obtain repayment thereof with or without interest,

[8] to forfeit the security of the individual borrower on his default in repayment of loan, advanced to him or on his commission of a breach of any of the terms of loan agreement entered into by him with the Council and to dispose of such security by public auction or by private sale;

[9] to enter into any loan agreement with the Government Bank and financial institutions or a permanent resident of the Village.

[10] to realise registration fees for each litigation within its jurisdiction.

[11] to raise fund for utility service within the Village by passing a resolution subject to the approval of the State Government.

Provided that all monetary transactions shall be conducted through a scheduled Bank or the Nagaland State Co-operative Bank,

[12] to constitute Village Development Board;

12. As regards Administration of Justice, the provisions contained in Section 14 are applicable. Section 14 reads as under :-

Section 14.

[1] The Village Council constituted under the law in force from time to time shall administer justice within the Village limits in accordance with the customary law and usages as accepted by the canons of justice established in Nagaland and the law in this respect as enforced from time to time.

[2] In case of disputes between villages falling in different areas or districts, two or more Village Councils may settle a dispute in a joint session or refer it to the appropriate authority.

13. Article 19[1][d] of the Constitution of India has provided that all citizens shall have right to move freely throughout the territory of India whereas Article 19[1][e] has provided that all citizens shall have right to reside and settle in any part of the

territory of India. Clause [5] of Article 19 has stipulated that nothing in sub-clauses [d] and [e] of the Clause [1] shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Article 19[1][d] of the Constitution guarantees that the citizens of the country shall have right to go wherever they like in the Indian territory without any kind of restriction whatsoever. The citizens can move from one State to another and can move one place to another within the same State as the Constitution has treated the entire Indian territory as one unit so far as the movement of citizens are concerned. The fundamental right under Article 19[1][e] is of similar nature. Reasonable restrictions can, however, be imposed on the exercise of any of those rights by law either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Article 21 which protects life and personal liberty, has enunciated that no person shall be deprived of his life or personal liberty except according to procedure established by law.

14. The respondent no. 4, Chungtia Medemchanger Putu Menden is a village institution, which comes within the ambit of the second proviso to Section 6 of the Act. One of the issues which has come up for consideration in Mangyang Lima [supra] was whether a Village institution which comes within the ambit of the second proviso to Section 6 of the Act, is amenable to the writ jurisdiction under Article 226 of the Constitution of India or not. The respondent no. 4 therein was a similar village institution like the respondent herein known as the 'Putu Menden'. The respondent no. 4 therein was Chuchuyimlang Village Council or Rionsanger Putu Tatar Salang and it was contended that the institution was an Ao Naga Village customary institution belonging to Chuchuyimlang village of Mokokchung district of Nagaland State and was known as Putu Menden in general. It was contended that being only a Village institution, it could not be treated as the Village Council just because its members were also members of the Village Council. Following the decision in Board of Control for Cricket in India vs. Cricket Association of Bihar, reported in [2015] 3 SCC 251, the Court in Mangyang Lima [supra] has observed that even if the

respondent Village institution in the form of Putu Menden was not a Government or statutory authority, as claimed by it, because of their pervasive and monopolistic control over the villagers with regulatory power in the areas under its territorial jurisdiction and discharge of public functions and duties, such kind of body is amenable to writ jurisdiction. It has been held therein that the village institutions which were traditionally established like the 'Putu Menden' in Ao area and recognized as Village Councils shall continue to function as Village Councils according to respective custom and usage and since Rule 6 of the Act recognizes 'Putu Meden' in Ao area also as Village Council under the Act, such body cannot deny coverage under Article 226 of the Constitution of India.

16. The facts in Mangyang Lima [supra], in brief, were that the 'Putu Meden' involved therein had banished and excommunicated the petitioner from his own village for a period of 11 years with other restrictions. The petitioner challenged such order of banishment and excommunication by preferring the writ petition. The Court analyzing the provisions of the Nagaland Village and Area Councils Act, 1978, more particularly, the provisions of Section 12 and Section 14 as well as the provisions of the Rules for the Administration of Justice and Police in Nagaland Act, 1984, as amended from time to time, and has concluded that the statutory laws do not recognize any form of punishment of excommunication or banishment even for offences involving customary laws. Having regard to the issues involved in the said writ petition whether such mode of punishment would be permissible by any body or entity in purported exercise of enforcing customary laws, the Court in authoritative terms has held that no such body or entity in purported exercise of enforcing customary laws can impose any form of penalty of excommunication or banishment. By holding so, the impugned order of excommunication and banishment, assailed therein, was set aside as void, being violative of the fundamental rights of the petitioner therein as guaranteed under Article 19[1][d]&[e] and Article 21 of the Constitution of India. It has been held that the petitioner would be entitled to remain in his village and cannot be subjected to social boycott/expulsion from the village, as directed by the concerned Putu Meden.

17. The fact situation obtaining in the case in hand are similar to the one involved in Mangyang Lima [surpa]. The petitioner herein, by the impugned Order dated 16.02.2023, was first, temporarily debarred from being part of Chungtia Village and by the subsequent impugned Order dated 30.06.2023, the petitioner has been debarred and excommunicated from the citizenship of Chungtia village for lifetime by the respondent no. 4, Chungtia Medemchanger Putu Menden. As the respondent no. 4, Chungtia Medemchanger Putu Menden, being a body amenable to the writ jurisdiction under Article 226 of the Constitution of India, the legality and validity of the impugned orders are definitely within the scope of judicial review under the writ jurisdiction of this Court. The power of judicial review under Article 226 of the Constitution of India to issue a writ in the nature of certiorari is available when subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission or error or excess has resulted in manifest injustice. As the respondent no. 4 does not have the power, authority and jurisdiction to pass an order to excommunicate and debar a native within its territorial jurisdiction either temporarily or permanently on the pretext of enforcing customary laws, the impugned Order dated 16.02.2023 and the impugned Order dated 30.06.2023 are found to be passed in excess of its power, authority and jurisdiction of the respondent no. 4 and the same, thus, are liable to be set aside and quashed. The impugned Orders are also found to have passed in clear violation of the principles of natural justice as the petitioner was never afforded any opportunity to represent his case before passing of the impugned Orders. In such view of the matter, both the Orders, that is, the Order dated 16.02.2023 and the Order dated 30.06.2023, are set aside and quashed. As a corollary, the petitioner can remain in his village and he cannot be subject to social boycott/expulsion from Chungtia Village, as directed by the respondent no. 4 Chungtia Village Council, that is, Chungtia Medemchanger Putu Menden.

18. In granting a writ of certiorari, a High Court does not exercise the power of an appellant authority. It sets aside or quashes the order which it considers to be

without power, authority and jurisdiction or palpably erroneous but does not substitute its own views for those of the subordinate tribunals or bodies or officers, found to have been acted without jurisdiction. The offending order or proceeding is put out of the way as one which should not be used to the detriment of any citizen. As the respondent nos. 5 to 18 had issued the impugned Orders – dated 16.02.2023 and dated 30.06.2023 - as members of the respondent no. 4 in their capacity as its members and the impugned Orders were decisions taken collectively, the Court is not persuaded to observe anything further as regards the relief sought for by the petitioner in the form of a direction to the respondent no. 3 to initiate proper action against them as provided under the law. It is, however, made clear that such observation shall not, however, preclude the petitioner to resort to any other appropriate remedy, as permissible under the law.

19. The writ petition is allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant