

GAHC020004172023



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

Case No. : WP(C)/169/2023

SHRI VETHISA LOHE
S/O LATE VEDIMA LOHE, R/O YORUBA VILLAGE, PHEK,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND

2:THE HOME COMMISSIONER TO THE GOVT. OF NAGALAND
DEPT. OF HOME
NAGALAND KOHIMA

3:THE COMMISSIONER
NAGALAND KOHIMA

4:THE DEPUTY COMMISSIONER
PHEK NAGALAND

5:THE ADDL. DEPUTY COMMISSIONER
CHOZUBA
PHEK NAGALAND

6:THE YORUBA VILLAGE COUNCIL
REPRESENTED BY SHRI MUDIHI LOHE
HEAD GB
PHEK NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

Linked Case : WP(C)/338/2023

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S/O LATE VEDIMA LOHE
R/O YORUBA VILLAGE
PHEK NAGALAND

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Advocate for : JOSHUA SHEQI

Advocate for : GOVT ADV NL appearing for THE STATE OF NAGALAND
AND 5 ORS

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 27 & 28.08.2024

Date of Judgment : 30.08.2024

J U D G M E N T & O R D E R (CAV)

Heard Mr. Joshua Sheqi, learned counsel for the petitioner, Mr. N. Angami, learned State Counsel for the State respondents and Ms. Nancy Lotha, learned counsel for the respondent No. 6. The parties in both the writ petitions are similar and likewise the issue involved as well. Therefore, both the writ petitions will be disposed of by this common order.

[2.] The prayer of the petitioner in WP(C) No. 169/2023 amongst others is for setting aside the Report of the Special Session in regards to Yoruba Village dated 17.07.2023 and the order dated 25.07.2023 by which he was removed from the post of Village Council Chairman of Yoruba village passed by the Deputy Commissioner, Phek, Nagaland (respondent No. 4). In WP(C) No. 338/2023, the petitioner has prayed for setting aside of the Removal Order dated 30.09.2023 issued by the respondent No. 4 removing him from the Village Council Member as well as from the post of Village Council Chairman of Yoruba village and also, the Corrigendum dated 19.10.2023 by which the Removal Order dated 30.09.2023 was corrected as removal of the

petitioner from the Village Council Member of Yoruba village under Chozuba Sub-Division, Phek District.

[3.] Brief facts of the case as projected by the petitioner is that the petitioner and ten (10) others were elected as Village Council Members of Yoruba village for the tenure 2021-2026 and the same was approved by the State Government in the Home Department and conveyed to the Commissioner, Nagaland by the Deputy Secretary to the Govt. of Nagaland, Home Department vide letter dated 10.06.2021. The Commissioner, Nagaland in turn communicated the said approval to the Deputy Commissioner, Phek District vide letter dated 14.06.2021. In the meeting of the Village Council for selection of Village Council Chairman for Yoruba Village Council for the tenure 2021-2026 held on 26.03.2021, the petitioner was elected to be the new Village Council Chairman.

[4.] After the petitioner took charge as the Chairman of the Yoruba Village Council, the compensation relating to the two (2) lane highway was disbursed where it was detected that Rs. 15 lakhs compensation for Yorubami Women Welfare Society was misused by the respondent No. 6 to the tune of Rs. 13 lakhs. In retaliation, the respondent No. 6 instigated Razuvi Hoho Yoruba village directing the petitioner and the Chairman WATSAN to surrender the work order of Jal Jeevan Mission Project (JJM) to

the Head Gaonburah in person on or before 22.01.2022 while also writing a letter dated 18.04.2022 to the respondent No. 4 for cancellation of the JJM project. The petitioner also wrote a letter to the respondent No. 4 on 14.10.2022 against the respondent No. 6 regarding the misuse of village community fund. The respondent Nos. 4 & 5 instead of taking up the issue endorsed the matter to the Dobashi Court (DB Court) having concurrent jurisdiction. The DB Court then imposed a fine of Rs. 5,000/- to the petitioner alleging that the petitioner had insulted the DB Court. Though the petitioner submitted an appeal letter to the respondent No. 5 but the latter directed the petitioner to pay the fine or to be sent to jail. The petitioner then wrote a letter to the respondent No. 1 on 15.06.2023 complaining about the functioning of the respondent No. 5.

[5.] Thereafter, the Head Dobashi, ADC Office, Chozuba along with eight (8) other DBs submitted an FIR against the petitioner on 01.07.2023 alleging that the petitioner had insulted the DBs Court on 11.11.2022. The respondent No. 6 also wrote another letter dated 04.07.2023 to the respondent No. 4 alleging that the petitioner has been taking law into his own hands after he assumed the office of the Village Council Chairman. The respondent No. 4 then issued a summon order dated 11.07.2023 to the Head DB, ADC Office, Chozuba, the Village Council Chairman, Village Council

Members and Head GB of Yoruba village to discuss the issue pertaining to the complaint made against the ADC, Chozuba and the request for termination of the Village Council by Head GB Yoruba. Thereafter, the respondent No. 4 issued another summon order dated 15.07.2023 authorizing Extra Assistant Commissioner (EAC Sardar) to preside over the Special Session being summoned as per the provisions under Section 9(3) of the Nagaland Village Council Act, 1978 (VC Act). Thereafter, on the basis of the Special Session Report dated 17.07.2023, the respondent No. 4 issued the impugned order dated 25.07.2023 removing the petitioner from the post of Village Council Chairman of Yoruba village. Aggrieved, the petitioner filed WP(C) No. 169/2023.

[6.] According to the petitioner, while WP(C) No. 169/2023 was pending disposal, the respondent No. 4 again issued the Removal Order dated 30.09.2023 by which the petitioner was removed from being the Village Council Member as per Section 9(1)(f) of the VC Act and also from the post of Village Council Chairman as per Section 9(3)(c) of the same Act with immediate effect. Again, vide Corrigendum dated 19.10.2023, the Removal Order dated 30.09.2023 was corrected as removal of the petitioner from being the Village Council Member as per Section 9(1)(f) of the VC Act with immediate effect. According to the petitioner, while he was challenging his

removal from the post of Village Council Chairman, the respondent No. 4 in terms of the two (2) orders removed him from his membership to the Village Council which amounts to interference and obstruction in the course of justice as the Court was seized with the matter. He therefore filed his second writ petition i.e., WP(C) No. 338/2023 praying for setting aside of the Removal Order dated 30.09.2023 and the Corrigendum dated 19.10.2023.

[7.] Mr. Joshua Sheqi, learned counsel for the petitioner submits that the impugned orders removing the petitioner from the post of Village Council Chairman and from being the Village Council Member of Yoruba Village Council has been issued in a most mechanical and arbitrary manner and importantly without giving the petitioner any show cause notice to show cause as to why he should not be removed. He submits that by the impugned actions of the respondent authorities, it is abundantly clear that they have violated the principles of natural justice. The learned counsel submits that the "No Confidence Motion" and the removal of the petitioner from the post of Village Council Chairman and from being the Village Council Member was not preceded by any show cause notice with such allegations made against the petitioner and thereby requiring him to reply to the same by giving him a reasonable opportunity to make his defense. As such, the impugned orders are mechanical, arbitrary and not sustainable in law. He

submits that although the VC Act may not specifically provide for an opportunity to be given to the person concerned for showing cause as to why appropriate action should not be taken against him but the same is only implied in view of the various judicial pronouncements in this regard. He submits that there has been many allegations and counter allegations between the parties concerned but in the absence of the petitioner being specifically charged with the allegations and giving him a opportunity to rebut the same in his defense, the impugned orders could not have been passed. He therefore submits that the orders removing the petitioner from the post of Chairman of the Village Council and from being a Member of the Village Council should be set aside. In support of his submission, the learned counsel has relied upon the following authorities:-

- (1) Etsonimo, Chairman, Village Council of Humtso, Nagaland –Vs- State of Nagaland & Ors. 2005 SCC OnLine GAU 87.*
- (2) N. Chumben Odyuo –Vs- State of Nagaland & Ors. 2019 SCC OnLine Gau 5787.*
- (3) UMC Technologies Private Limited –Vs- Food Corporation of India & Anr. (2021) 2 SCC 551.*
- (4) Indian Performing Rights Society Limited –Vs- Sanjay Dalia & Anr. (2015) 10 SCC 161 and*

(5) Regional Provident Fund Commissioner –Vs- Hooghly Mills Company Limited & Ors. (2012) 2 SCC 489.

[8.] Mr. N. Angami, learned State Counsel on the other hand submits that the petitioner has been removed from being the Village Council Member and the Village Council Member of Yoruba Village Council as per the relevant provisions of the VC Act. He submits that there were certain allegations against the petitioner and for which, the respondent no. 4 had summoned the Head Dobashi, ADC Office, Chozuba, the Village Council Chairman, the Head GB and the Village Council Members on 15.07.2023. However, the petitioner on the pretext of having pre-engagements failed to attend the scheduled meeting. The meeting was held on 15.07.2023 as per schedule and the respondent No. 4 upon being satisfied that there were grounds to believe that the allegations against the petitioner were with substance issued the summon order dated 15.07.2023 summoning a Special Session to be conducted on 17.07.2023 in terms of Section 9(3) of the VC Act at the place and time mentioned in the said order while authorizing the EAC Sardar to preside over the Special Session. All the parties concerned including the Village Council Chairman were asked to attend the Session without fail. The petitioner yet again failed to attend the said Session and all the members who attend the Session voted against the petitioner who was the incumbent

Village Council Chairman. In other words, 10 out of 19 Village Council Members or GBs who had the voting rights voted against the petitioner. Consequently, the order of removal of the petitioner from the Village Council Chairman was issued by the respondent No. 4 on 25.07.2023. As such, the claim of the petitioner that he was not given any opportunity before issuance of the order of his removal from the Village Council Chairman and as Village Council Member is without any basis and wholly misconceived. Referring to the Attendance Sheet which shows the number of persons who attended the Special Session held on 17.07.2023, the learned State Counsel submits that it is clear that the majority of the members present in the Session voted against the petitioner and therefore, Section 9(1)(f) as well as Section 9(3) (c) of the VC Act has been fully complied with. Therefore, the petitioner cannot have any grievance for his removal as Chairman of the Village Council. He submits that the writ petitions are without any merit and should be dismissed.

[9.] Ms. Nancy Lotha, learned counsel for the respondent No. 6 submits that she adopts the arguments made by the learned State Counsel. She further submits that the petitioner was removed from being the Chairman and Member of the Village Council by popular demand and vote as he was found to be incompetent to hold the post. She submits that various

organizations have submitted complaints against the petitioner before the authorities concerned not only stating their lack of confidence on him but also to the extent of disowning him as their representative. Therefore, in terms of the relevant provisions of the VC Act, the petitioner was removed from his post with due approval of the competent authority. As such, the writ petitions do not have any merit and the same should be dismissed.

[10] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The impugned orders go to show that the petitioner was removed from the post of Village Council Chairman of Yoruba village after summoning a Special Session under Section 9(3) of the VC Act. The removal order rectified vide Corrigendum dated 19.10.2023 also indicates that the petitioner was removed from being a Member of the Village Council as per Section 9(1)(f) of the VC Act.

[11.] Section 9 of the VC Act deals with the power to remove Village Council Members. The same may be abstracted hereunder for ready perusal:-

“9. Power to remove Members

(1) The State Government may remove any member of a Village Council from his office:

- (a) Who is convicted of any offence involving moral turpitude by a court of law, or*
 - (b) Who refuses to act, or become incapable of acting or*
 - (c) Who is declared to be insolvent, or*
 - (d) Who has been declared by notification in the Gazette to be disqualified for employment in the Public Service, or*
 - (e) Who without an excuse or sufficient ground in the opinion of the State Government absents himself from the majority of meeting in a year of Village Council, or*
 - (f) Who has been guilty of misconduct, in discharge of his duties or of any disgraceful conduct, and two third of the total members of the Village Council at a meeting recommend his removal.*
- (2) No person who has been removed from his office under clause (a) or clause (d) or sub-section (1) shall be eligible for re- election except with the previous permission of the State Government obtained by such person in the prescribed manner.*
- *(3) The State Government may remove any chairman of Village Council from his office:*
- (a) if he cases to be a member of the village council;*
 - (b) if he resigns from Chairmanship of the Village Council on his own volition by submitting a written registration letter addresses to the Secretary of the village council who shall forward it to the State Government though the Deputy Commissioner concerned;*
 - (c) when a "no-confidence motion" is moved a passed by the majority of the Village Council members present and voting in a special*

session for the purpose that may be summoned by the Deputy Commissioner, and to presided by an administrative officer not below the rank of EAC, duly authorized in this behalf by the Deputy Commissioner of the District concerned."

[12.] From the above abstract and for the purpose of the instant case, it may be seen that under Section 9(1)(f), the State Government may remove any member of a Village Council from his office who has been found of misconduct in discharge of his duties or of any disgraceful conduct and two third of the total members of the Village Council at a meeting recommend his removal. Further, as per Section 9(3)(c), the State Government may remove any Chairman of a Village Council from his office when a No Confidence Motion is moved and passed by the majority of the Village Council members present and voting in the Special Session for the purpose that may be summoned by the Deputy Commissioner and to be presided by an administrative officer not below the rank of EAC duly authorized in his behalf by the Deputy Commissioner of the district concerned. In the present case, although certain allegations have been sought to be made against the petitioner and likewise, there certain counter allegations made by the petitioner against the respondent No. 6 but however, there are not materials to show that specific charges have been framed against the petitioner and

that he was asked to show cause or explain as to why appropriate action should not be taken against him. This may be necessary in view of the fact that Section 9(1)(f) provides for removal of a Village Council Member found to be guilty of misconduct in discharge of his duties or of any disgraceful conduct by way of two third majority of the total members of the Village Council in a meeting recommending his removal. In so far as the votes are concerned, the majority of the members present in the Special Session may have voted against the petitioner but the fact remains that specific charges have not been framed against the petitioner requiring him to reply to the same by giving him an opportunity and that the charges were established. The meeting summoned by the respondent No. 4 including the Special Session in the considered view of this Court cannot be considered as a show cause notice and an opportunity given to the petitioner to respond as to why he should not be removed from being a Chairman and Member of the Village Council.

[13.] In *N. Chumben Odyuo –Vs- State of Nagaland & Ors.* (supra), a coordinate Bench of this Court in the given facts of that case held that even in the absence of any provisions under the VC Act following the principles of natural justice has to be read into the rules.

[14.] The Apex Court in *UMC Technologies Private Limited* (supra) at

paragraph No. 13 of the said judgment held as follows:-

“13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in [Nasir Ahmad v. Custodian General, Evacuee Property²](#) has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.”

[15.] Although the above referred case was relating to blacklisting of the Contractor concerned but the principle propounded is that whenever any action is sought to be taken or whose right of interest is to be affected, the same should be preceded by due opportunity with a notice to enable the person to defend himself. In the present case, apart from summoning a meeting and thereafter a Special Session, there are no materials to show

that the petitioner was put to notice with specific grounds or allegations made against him requiring him to respond to the same and further asking him as to why he should not be removed from being the Chairman and also Member to the Village Council concerned.

[16.] Therefore, upon considering the facts and circumstances of the case, this Court is of the considered view that there has been violation of the principles of natural justice and as such, the impugned order dated 25.07.2023, Removal Order dated 30.09.2023 and the Corrigendum dated 19.10.2023 cannot be sustained in law and accordingly, they are set aside. Since the impugned orders have been set aside for violation of the principles of natural justice and therefore notwithstanding the interference of the same by this Court, the respondent authorities are not debarred from proceeding against the petitioner in accordance with law.

[17.] With the above observations and directions, the writ petitions are disposed of. Parties to bear their own cost. Any interim order passed earlier shall stand merged with this Order.

JUDGE

Comparing Assistant