

GAHC020005652021



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

Case No. : WP(C)/286/2021

MR. M. NCHUMBEMO KIKON AND 32 ORS
S/O LT. MENSEMO KIKON, NUNGYING VILLAGE, DISTRICT -
WOKHA, NAGALAND

2: MR. N. SHANPAU KIKON

S/O MR. NCHUMBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

3: MR. N. ZUCHANBEMO KIKON

S/O MR. NCHUMBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

4: MR. N. THUNGCHIBEMO KIKON

S/O MR. MCHUMBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

5: MR. MHABEMO KIKON

S/O MR. RENJAMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

6: MR. MHONJAN KIKON

S/O MR. RENJAMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

7: MR. NCHUMBEMO KIKON

S/O MR. RENJAMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

8: MR. ORENTHUNG KIKON

S/O MR. RENJAMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

9: MR. PHYOBENTHUNG KIKON

S/O MR. RENJAMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

10: MR. RENJAMO KIKON

S/O MR. TSUPOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

11: MR. MHONYAMO KIKON

S/O MR. CHOPHATHUNG KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

12: MR. YANPOTHUNG KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

13: MR. C. YIPOMO KIKON

S/O MR. CHOMOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

14: MR. THUNGBEN KIKON

S/O LATE CHIPOSAO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

15: MR. S. LONGTSUO KIKON

S/O LT. SEMONTHUNG KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

16: MR. CHIPOSAO KIKON

S/O LATE THUNGBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

17: MR. N. ZUCHAMO KIKON

S/O LT. NILO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

18: MR. NSHUMBEMO KIKON

S/O LT. NGANCHIO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

19: MR. M. MHABEMO KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

20: MR. M. LONGSHITHUNG KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

21: MR. M. RHONBEMO KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

22: MR. SAMUEL KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

23: MR. MHONIMO KIKON

S/O LATE THUNGBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

24: MR. THOMAS KIKON

S/O MR. CHIPOSAN KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

25: MR. RENBEN KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

26: MR. CHUMTHUNGO KIKON

S/O MR. MHONIMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

27: MR. MOSEN KIKON

S/O LT. LITHUNG MOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

28: MR. THUNGCHAMO KIKON

S/O LT. LITHUNG MOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

29: MR. YARENTHUNG KIKON

S/O CHOPHATHUNG KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

30: MR. EYILO KIKON

S/O MR. NCHUMBEMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

31: MR. NRUTHUNG KIKON

S/O LT. CHOMOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

32: MR. C. MHOYAMO KIKON

S/O LT. CHOMOMO KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

33: MR. WOPENTHUNG KIKON

S/O LATE SEMONTHUNG KIKON
NUNGYING VILLAGE
DISTRICT - WOKHA

NAGALAN

VERSUS

THE STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND,
NAGALAND, KOHIMA

2:THE COMMISSIONER TO THE GOVT. OF NAGALAND

NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER

WOKHA
NAGALAND

4:THE EXTRA ASSISTANT COMMISSIONER

CHUKITONG
DISTRICT - WOKHA
NAGALAND

5:MR. RHANPAMO NGULLIE

HEAD G.B
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

6:MR. TSUMOMO KIKON

G.B
NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAND

7:MR. NCHUMOMO KIKON

S/O LATE BENTHUNGO KIKON
PERMANENT R/O NUNGYING VILLAGE
DISTRICT - WOKHA
NAGALAN

Advocate for the Petitioner : N. MOZHUI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER (CAV)

07.02.2024

1. Heard Mr. N. Mozhui, learned counsel for the petitioners. Also heard Mr. N. Angami, learned Senior Government Advocate for the respondent Nos. 1, 2, 3 and 4 and Mr. Z. Nlumsao Ngullie, learned counsel for the respondent Nos. 5, 6 and 7.

2. This writ petition under Article 226 of the Constitution of India has been preferred by 33 nos. of petitioners who are the Clan Members of the Kikon clan of Nungying Village impugning the selection of respondent No. 7 as Village Council Member to represent the Kikon clan of Nungying Village on the ground that the selection of respondent No. 7 as VCM was done by respondent No. 6 in his personal capacity without any consent or consultation with the members of Kikon clan of Nungying Village.

3. The facts relevant for consideration of the instant writ petition, in brief, are as follows:-

(i) On 3rd March 2021, the Additional Deputy Commissioner (HQ), Office of the Commissioner, Nagaland, Kohima, wrote a letter to all Deputy Commissioners in the State of Nagaland for

formation of Village Council in the State of Nagaland in accordance with the Nagaland Village and Tribal Councils Act, 1978. Thereafter, on 9th March 2021, the Sub-Divisional Officer (C), Wokha, Nagaland issued an order to the effect that all the Village Councils under Wokha Sadar stand dissolved, w.e.f 10th March 2021 and the Head G.B. shall resume charge of Village Administration till constitution of New Village Council. It was further notified that all recognized villages under Wokha Sadar to select/elect new village Councils Member for the next tenure in accordance with Nagaland Village and Tribal Councils Rules, 1979 and the Nagaland Village and Tribal Councils Act, 1978.

(ii) It was further directed that the whole process of the selection/election of the Village Council Members should be completed on or before 25th March 2021 and the list of New Village Councils Members may be submitted to the SDO (Civil) Sadar.

(iii) As per the Government notifications mentioned hereinabove to select/elect the new Village Council Member for the tenure 2021-26 as per the prevailing customary practices and usages, Humtsoruiden of Kikon clan deliberated over the matters of representation of its clan members to the post of Village Council Member and accordingly

unanimously selected/elected Mr. Mhabemo Kikon (Petitioner No.5) and thereafter, Mr. Mosen Kikon, who is the Secretary of the clan wrote to respondent No. 4 i.e., the Extra Assistant Commissioner, Chukitong, Wokha district regarding selection/election of petitioner No. 5 to represent the Kikon clan as Village Council Member of Nungying Village.

(iv) In the meanwhile, the respondent No. 6 Mr. Tsumomo Kikon without the consent of the other clan members, submitted the name of Mr. Nchumomo Kikon, respondent No. 7 as the clan representative to be the Village Council Member of Nungying Village to the Head G.B.

(v) It is stated that the name of respondent No. 7 was forwarded by respondent No. 6 to the government without the consent of the other members of the petitioners' clan.

(vi) After coming to know about the fact of respondent No. 6 nominating the name of respondent No. 7, the members of petitioners clan deliberated on the issue and by a resolution adopted in the meeting dated 30.03.2021 adopted a resolution that the respondent No. 6 has nominated the name of respondent No. 7 to be the Village Council Member without the consent and consultation of Humtsoruiden of Kikon clan and accordingly wrote a

letter to Extra Assistant Commissioner (EAC), Chukitong appraising about the decision of the clan against the selection of respondent No. 7 without the consent of Humtsoruiden of Kikon clan and reiterated the decision of the clan to nominate petitioner No.5 as VCM for the tenure 2021 – 2026.

(vii) The respondent No. 4 after receipt of complaint from the present petitioners endorse the matters to the Dobashi to verify the complaint and to submit a report and accordingly the Dobashi submitted a report on 26.04.2021 wherein it was reported that the all 33 signatories in the complaint letter were appended by the complainants and are genuine and correct. However, in spite of said verification report, no action was taken by the authority and name of respondent No. 7 was forwarded to the Government for approval.

(viii) Thereafter, the petitioners again submitted a representation on 28.05.2021 to the Government of Nagaland (respondent No. 2) with a request not to approve the name of respondent No. 7 as Village Council Member and to appoint respondent No. 5 as the Village Council Member of the village for the tenure 2021-26. However, by letter dated 10.06.2021, which is impugned in this writ petition, the Government approved the name of respondent

No. 7 as Village Council Member representing the Humtsoruiden of Kikon clan for the tenure to 2021-26.

(ix) Thereafter, by letter dated 17.06.2021, the Assistant Commissioner (HQ), Office of Commissioner, Nagaland, forwarded the representation of the present petitioners to the Deputy Commissioner, Wokha and requested to verify the matter and submit a report. Thereafter, on 5th July 2021, the Deputy Commissioner, Wokha wrote to the Commissioner, Nagaland, inter alia, informing that the Kikon clan of Nungying Village is sub-divided into three and each sub-clan is entitled to one VCM totaling three VCMs from Kikon clan. One of the sub-clan represented by Shri Tsumomo Kikon who is also a GB and in the absence of eligible candidate from his clan, he nominated/selected Shri Nchumomo Kikon which was duly accepted and signed by the head GB and forwarded to the EAC, Chukitong for further necessary action. Therefore, it was stated by the Deputy Commissioner, Wokha that Shri Tsumomo Kikon and the clan by their own violation gave their share of VCM to Shri Nchumomo Kikon and the allegations that the selection/election of Shri Nchumomo Kikon was illegal or unauthorized does not hold water.

(x) Considering the letter dated 05.07.2021 and finding no other option, the present petitioners approached this Court by filing WP(C) No. 115/2021. The said writ petition was disposed of in the motion stage itself and by order dated 09.07.2021, the respondent No. 2 was directed to consider the representation dated 28.05.2021 within a period of two months.

(xi) The aforesaid order dated 09.07.2021 was duly served to respondent No. 2 by letter dated 16.7.2021, and thereafter on 19.07.2021, the Government wrote a letter to the respondent No. 3 forwarding the copy of court's order and direct him to furnish the detailed report of respondent No. 4, along with verification report of the DB's dated 26.04.2021 within 7 days. However, thereafter, even after the passage of 2 months, the respondent No. 2 failed to dispose of the representation of the petitioners, as per the directions of this Court by order dated 09.07.2021 in WP(C) 115/2021 Kohima, hence, the petitioner filed a contempt case, which was registered as COP(C) 24/2021.

(xii) Thereafter, the Government again wrote a letter on 08.10.2021 to the respondent No. 3 apprising about the contempt petition and seeking a

specific report on the question as to whether the candidature of respondent No. 7 should be upheld or removed.

(xiii) Thereafter, by letter dated 21.10.2021, the respondent No. 3 reiterated its earlier letter dated 05.07.2021 and stated that the respondent No. 7 was selected on the basis of no objection certificate given by respondent No. 6.

(xiv) Thereafter, by a speaking order, bearing number CNJ/MISC/2021/592 dated 29.10.2021, the respondent No. 2 rejected the representation of the petitioners solely on the basis of the report of the respondent No.3. It is pertinent to mention herein that on passing of the speaking order, the contempt petition filed by the petitioners was withdrawn by order dated 03.11.2021. The said speaking order is impugned in the instant writ petition.

4. Mr. N. Mozhui, learned counsel for the petitioners has submitted that the representation of the petitioners dated 28.05.2021 was disposed of without considering the facts in the right perspectives and without taking into consideration the DB's report. He has also submitted that as per Section 4 of the Nagaland Village and Tribal Councils Act, 1978, the members of the village council are to be chosen by the villagers in accordance with the prevailing

customary practices and usages and in the instant case, it is not the clan members who had chosen the name of respondent No. 7, but it was the selection/recommendation of respondent No. 6 only without any consultation with other clan members. He has also submitted that the provisions of the Nagaland Village and Tribal Councils Act, 1978 does not speak about nomination of a village council member, but it speaks about selection/election of the same. However, in the instant case, it is the respondent No. 6 who had nominated the respondent No. 7 without any consultation with the other clan members. It is also submitted by learned counsel for the petitioner that while considering the representation dated 28.05.2021, the respondent No. 2 did not take into consideration the fact that all the 33 clan members had deliberated upon the matter and unanimously selected the petitioner No. 5 to represent the Humtsoruiden of Kikon clan for the year 2021-26. It is also submitted by learned counsel for the petitioners that by later dated 8th October, 2021, the Office of the Commissioner wrote to Deputy Commissioner to submit a specific report as to whether the candidature of Nchumomo Kikon should be upheld or removed. However, the Office of the Commissioner ought not to have asked the Deputy Commissioner to take decision on behalf of the Government when the representation was filed to the Government and it ought to have only taken feedback on the basis of which the Government should have taken a

decision, which is not the case in the instant case and, hence, learned counsel for the petitioners has submitted that the speaking order is, therefore, liable to be set aside.

5. Learned counsel for the petitioners has also submitted that though the speaking order dated 29th October, 2021 has rejected the representation dated 28th May 2021 filed by the clan members of Kikon clan of Nungying Village on the basis that the Deputy Commissioner, Wokha submitted a report on 05.07.2021 stating therein that the Kikon clan of Nungying Village is subdivided into 3 and each sub-clan is entitled to 1 VCM each totaling 3 VCM from Kikon clan and one of the sub-clan represented by Tsumomo Kikon who is also a GB and in the absence of eligible candidate from his clan, he nominated/selected Nchumomo Kikon which was duly accepted and signed by the head GB and forwarded to the EAC Chukitong, however, it is submitted that the Extra Assistant Commissioner Chukitong, Wokha by its letter dated 9th June, 2023 written to the Deputy Commissioner, Wokha with regard to the verification report called for by this Court by ordered dated 29.05.2023 had clarified that there is no sub-clan in the Kikon clan and it was further stated that the Kikon clan of Nungying Village is divided into 3 family tree and each family line is entitled to a seat in VCM in the village council and, therefore, the word sub-clan has been used. Learned counsel for the petitioners has submitted that the letter dated 9th June, 2023 of the

extra Assistant Commissioner, Chukitong, Wokha itself makes clear that there is no sub-clan in the Kikon clan of Nungying Village however, he also submits that the statement that there are only 3 family trees of Kikon clan made in the said letter is not true and in fact there are 6 family trees of Kikon clan which is mentioned in Annexure-10 at page 5 of the affidavit-in-opposition filed by the petitioners against the additional affidavit filed by respondent Nos. 1, 2, 3 and 4.

6. Learned counsel for the petitioner has also submitted that though the EAC has clarified that each family tree can select its representative of its own choice but in consultation with the whole clan, however, it is apparent that in the instant case the nomination/selection of respondent No. 7 was made only by respondent No. 6 without any consultation with other clan members and, therefore, same is liable to be set aside.

7. Mr. N. Angami learned Senior Government Advocate representing respondent Nos. 1, 2, 3 and 4 has submitted that after issuance of order dated 9th March, 2023 by the SDO(C), Wokha, Nagaland, the existing village councils stood dissolved w.e.f 10th March, 2021 and the head GB resumed the charge of village's administration till the constitution of new village council. And accordingly, by letter which has been annexed as Annexure-E to the writ petition,

the head GB, Nungying Village had submitted the list of new village council member in respect of Nungying Village and in the said list at serial No. 10, the name of Nchumomo Kikon (respondent No. 7) has been mentioned.

8. Learned Senior Government Advocate referring to the report regarding selection of VCM in Nungying Village by the head GB Nungying which was forwarded to the EAC Chukitong has stated that in his report the head GB has mentioned categorically that the Kikon clan is having a total of three village council member in Nungying Village and the village council member is nominated as per the desire of the clan or sub clan. It also mentions that as a tradition, nomination of village council member by each of the three Kikon sub-clan was made and same was accepted by him and was forwarded to the higher authority for necessary action. It was also stated therein the report that Shri Nchumomo Kikon was nominated by Shri Tsumomo Kikon representing his sub-clan. It is also stated in the report that there is a practice in the village that if a clan or sub-clan is not having qualified member to be nominated as VCM, Wokha the post of VCM may be given to the member of other sub-clan with proper understanding between the members and the clan and sub clan and it is stated in the report that in this case Shri Tsumomo Kikon has in absence of a qualified member in his own sub-clan has nominated the respondent No. 7 Shri Nchumomo Kikon and hence the

interference by other sub clan members is not justified. Learned Senior Government Advocate has submitted that the Government has approved the list as it has been duly forwarded by the Head GB as per the prevailing practice and learn Senior Government Advocate has also submitted that the verification report of the Extra Assistant Commissioner, Chukitong dated 9th June 2023 which was sent in compliance with the directions given by this Court by order dated 29.05.2023 passed in Writ Petition (Civil) No. 286/2021 also shows that though there is no sub-clan in Kikon clan in the literal sense of the word however the Kikon clan of Nungying Village is divided into three family trees and each family tree is entitled to a seat in VCM body. Learned Senior Government Advocate has also submitted that as the Head GB of Nungying Village was in-charge of the village administration at the relevant point of time as per the order dated 9th March, 2021, the rejection of the representation dated 28.05.2021 by the speaking order dated 29.10.2021 on the basis of the report of the Head GB was correct and, therefore, it does not justify any interference by this Court.

9. On the other hand, Mr. Z. N. Ngullie, learned counsel for the private respondent Nos. 5, 6 and 7 has also made his submission on the similar lines to that of learned Senior Government Counsel representing respondent Nos. 1, 2, 3 and 4. Learned counsel for the private respondent Nos. 5, 6 and 7 has submitted that the report of the Head GB

Nungying in respect of the selection of village council member of Nungying Village which was forwarded to EAC Chukitong clearly shows that there are three sub-clans of Kikon and Shri Tsumomo Kikon has in absence of a qualified member from his own sub-clan has nominated Shri Nchumomo Kikon (respondent No. 7) as village council member with understanding between them though Nchumomo Kikon belongs to others sub-clan. It is also submitted by learned counsel for the respondent Nos. 5, 6 and 7 that the nomination of respondent No. 7 by respondent No. 6 has been done as per the prevailing customary practices and usages of the Kikon clan and, therefore, the representation filed by the petitioners on 28.05.2021 has been rightly dismissed by the respondent No. 2.

10. I have considered the submissions made by learned counsel for the rival Parties and have gone through the materials available on record very carefully.

11. Section 4 of the Nagaland Village and Tribal Councils Act, 1978 provides as follows: -

"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, provided that hereditary village Chiefs GBs and Angs shall be ex-

officio members of such Council and shall have voting right."

12. A bare perusal of the aforesaid provision would make it abundantly clear that it is the villagers who are to choose the members of the village council in accordance with prevailing customary practices and usages. In the instant case the 33 signatories of Kikon clan of Nungying Village who claims to be the members of the said clan had filed a representation which was received by the Office of the Commissioner, Nagaland on 28.05.2021, wherein it was alleged that the respondent No. 6 Sri Tsumomo Kikon, Gaonbura representing the Kikon clan in absence of any eligible candidate from his own clan has nominated Mr. Nchumomo Kikon (respondent No. 7) without any support from other clan members. It was further asserted in the representations submitted by the 33 signatories, who are the petitioners in this case, that the clan members have selected/elected petitioner No. 5, Mhabemo kikon and, therefore, selection/election should be approved by the Government as the third village council member of Kikon, representing Kikon clan in the village council of Nungying Village. It appears that the representation of the petitioners which was received by the office of the Commissioners on 28.05.2021 was rejected by the speaking order dated 29.10.2021 on the ground that the report of the Deputy Commissioner, Wokha, has categorically mention that

Tsumomo Kikon (Gaonbura) and sub-clan by their own volition gave their share of the village council membership to the respondent No. 7 Mr. Nchumomo Kikon and same has been duly forwarded to the EAC by the Head GB who was the administrator of the village at the relevant point of time and, therefore, there is no aberration or anything on record to justify the interference with the selection of the respondent No. 7 as one of the village council representing Kikon clan in the village council of Nungying Village. It appears that the speaking order dated 29.10.2021 had heavily relied on the report of the Deputy Commissioner which in turn is based on the report of EAC which is again filed on the basis of the report submitted by the Head GB i.e., the respondent No. 6 and in the said report respondent No. 6 has himself justified the sending of the name of respondent No. 7 as one of the nominated member representing Kikon clan in the village council of Nungying Village on the ground that the Gaonbura i.e., Tsumomo Kikon has in absence of any eligible candidate from his family tree/sub-clan has nominated the name of Mr. Nchumomo Kikon with understanding between them. However, as stated earlier the Section 4 of the Nagaland Village and Tribal Councils Act, 1978 provides that the members of the village council shall have to be chosen by the villagers i.e., the clan members and not by the individual members.

13. In this respect we may also refer to the verification report dated 9th June, 2023 submitted by Extra Assistant Commissioner, Chukitongin, Wokha in pursuant to the direction of this Court passed in this case on 29.05.2023 wherein State respondents were directed to clarify by an affidavit as to whether the village council members of Kikon clan in the Nungying Village are selected/elected/nominated by clan as a whole or by the sub clan and in the said letter it is categorically mentioned that the village council member of Kikon clan are selected/elected/nominated by the clan as a whole by the clan. It is clarified that each family tree select elect nominates a representative of its own choice but in consultation with the whole clan. However, in the instant case it is seen that the name of respondent No. 7 was nominated by respondent No. 5 and was forwarded by respondent No. 6 to the Government. There is no material or evidence on record to show that any consultation with other clan members of Kikon clan was done before sending the recommendation of the name of respondent No. 7 for approval to the Government.

14. Though in its letter dated 9th June, 2023, the EAC Chukitong has stated that that Kikon clan of Nungying Village is divided into three family trees and that there is no sub clan in the Kikon clan, however by letter dated 21st September, 2023 written to the Deputy Commissioner, Wokha and annexed along with the affidavit-in-opposition by

the petitioner against the additional affidavit filed by respondent Nos. 1, 2, 3, and 4, it is stated that there are six family trees in the Kikon clan of Nungying Village, namely, Tampvusao Kikon, Zuchumthung Kikon, Nrushan Kikon, Junglamo Kikon, Khumkho Kikon and Yaktamo Kikon.

15. Be that as it may, when the 33 numbers of clan members of Kikon clan have filed a complaint/representation to the Government wherein it has been categorically stated that Mr. Nchumomo Kikon have been nominated by respondent No.5 without any consultation with other clan members, the respondent No. 2 ought to have applied his mind and ought to have held some independent inquiry to find out as to whether there was any consultation with other clan members before forwarding the name of respondent No. 7 for approval to be a village council member of Nungying Village. However, in the instant case, it appears that the respondent No. 2 has entirely relied upon the report of the Deputy Commissioner, Wokha for rejection of the representation filed by the present petitioners and the report of the Deputy Commissioner, Wokha is also based on the report of the Extra Assistant Commissioner, Chukitong which in turn is on the basis of the reports submitted by the head Gaonbura i.e., the respondent No. 6 who has also not mentioned in his report about any consultation with other clan members before the name of respondent No. 7 was forwarded by him to be a village council member of

Chukitong village.

16. Though, it has been clarified that there is no sub-clan in the Kikon clan, however, the fact that as to whether the Kikon clan has three family trees or six family trees remains disputed and same cannot be resolved in this writ petition by this Court, however, even if we believe that the village council members may be nominated to represent each family tree, such a nomination has to be in consultation with the whole clan i.e., the other members of the clan and same has been reiterated in the letter dated 9th June, 2023 of the Extra Assistant Commissioner, Chukitong. If we look at the provision of Section 4 of the Nagaland Village and Tribal Councils Act, 1978 it also speaks about selection of village council members by the villagers of the particular village. Therefore, the clarification given by the Extra Assistant Commissioner to the query put by this Court by order dated 29.05.2023 that the selection of village council members by a particular family tree has to be in consultation with whole clan confirms to the provisions laid down in Section 4 of the Nagaland Village and Tribal Councils Act, 1978. In the instant case, there is nothing on record to show that such a consultation was done amongst the clan members before forwarding the name of respondent No. 7 to be a village council member, rather, in the complaint letter which was received by the commissioner office on 28.05.2021, 33 signatories have objected to the

selection of the respondent No. 7 as village council member and has stated that instead they have selected the petitioner No. 5 as one as the village council member.

17. Thus, from the materials available on record, it appears that the name of respondent No. 7 was not forwarded by the Head Gaonbura after ascertaining as to whether his name has been selected/elected in consultation with other clan members, this Court is constrained to hold that the selection/nomination of the respondent No. 7 as village council member to represent kikon clan in the village council of Nungying Village is not good and liable to be set aside and further it also appears that the speaking order dated 29.10.2023 has accepted the report of the Deputy Commissioner without ascertaining the fact that as to whether the respondent No. 7 was elected/selected by the villagers of Nungying Village or whether there was consultation with other clan members of the Kikon clan before selecting/electing his name as village council member of Nungying Village representing the Kikon clan, hence, the speaking order dated 29.10.2021 is also liable to be set aside, which this Court accordingly do.

18. In view of above, this instant Writ petition is allowed and the speaking order dated 29.10.2021 as regards rejection of the representation filed by the 33 numbers of signatories (present petitioners) is here by set aside. The

selection/election of respondent No. 7 as village council member of Nungying Village representing Kikon clan is also set aside.

19. The State respondents are hereby directed to re-notify the process of election to the post of the village council member of Nungying Village representing Kikon clan which has fallen vacant due to cancellation of the selection/election of the respondent No. 7 as village council member of Nungying Village. The process of selection of the village council member representing the kikon clan of Nungying Village should be conducted as per Section 4 of the Nagaland Village and Tribal Councils Act, 1978 under the supervision of the Deputy Commissioner, Wokha or his nominated officer and the said process of election to the post of village council member which has fallen vacant due to the cancellation of selection/selection of respondent No. 7 as village council member shall have to be completed by the State respondent within a period of three months from the date of this order.

20. This writ petition is accordingly disposed of.

21. Let, the Registry of Principal Seat of this Court transmit this case record to the Registry of Kohima Bench immediately along with a copy of this judgment.

JUDGE

Comparing Assistant