IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P. (C) No. 103 of 2020

Gainaichung Malangmei ***… Petitioner(s)***

Vs.

State of Manipur ***…. Respondent(s)***

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

O R D E R

11-02-2020

[1] Heard Shri Ng. Premkumar, learned Advocate appearing for the petitioner.

[2] According to the petitioner, he is the Chief of the Pongringlong Hill Village, Kangpokpi District. Sometime in the year, 2008, Shri Lungaingam made an initiative for electing him as the Chairman of the Pongringlong Hill Village, because of which the petitioner approached the Hon'ble Gauhati High Court by way of a writ petition being WP(C) No.826 of 2008 which was disposed of with the direction that he should approach the competent civil court but in the appeal being WA No.52 of 2009 preferred by him, the High Court vide its order dated 05-02-2010, setting aside the judgment and order dated 10-07-2009 of the Single Judge, directed the Deputy Commissioner, Senapati to hold an enquiry. The State Government, on the basis of the report of the Deputy Commissioner, Senapati, issued an order dated 18-01-2013 notifying the petitioner as the Ex-officio Chairman.

[3] The controversy did not end here and Shri Lungaingam Golmei and Lanirei Daimei filed a suit being OS No.1 of 2012/ 2 of 2012 questioning the chiefship of the petitioner. While the suit was pending, the State Government issued an order dated 28-09-2016 according approval to the recognition of Shri Lanirei Daimei as Khullakpa cum Ex-officio Chairman of the Pongringlong Village. Being aggrieved by it, the

petitioner filed a writ petition being WP(C) No.934 of 2016 challenging it. Prior to that, the petitioner had filed a writ petition being WP(C) No.428 of 2015 praying for direction to implement the MGNREGS through the Village Authority. While disposing of the said writ petitions, this Court vide its judgment and order dated 13-09-2019 issued certain directions, of which the direction No. 3 reads as under:–

> ***"Respondent Nos. 1 to 3 in writ petition being W.P. (C) No. 934 of 2016 are directed to conduct election for the Village Authority of Khullakpa Pongringlong of (Charoipandongba) village in accordance with law within a period of three months from the date of receipt of a copy of this order."***

[4] In a purported compliance with the said judgment and order, the SDO, Kangchup Geljang issued a Notification dated 22-11-2019 stating that the Village Authority election/ Khullakpa should be held in respect of Pongringlong (Charoipandongba) Village of this Sub-division as per rule. The said Notification dated 22-11-2019 came to be challenged by the petitioner in writ petition being WP(C) No.948 of 2019 wherein this court viede its order dated 28-11-2019 observed as under:–

> ***"In the instant case in hand, the petitioner is continuing as the Khullakpa of Pongringlong/ Charoipandongba Village and as per the customary practice, he, therefore, will automatically become the Ex-Officio Chairman of the village authority after the election to the village authority is completed."***

[5] Even though the above observation was made by the learned Single Judge, the writ petition was dismissed as devoid of any merit and consequently, the Notification dated 22-11-2019 was not interfered at all with the result that no relief was granted in favour of the petitioner. Thereafter, the election appears to have been held and the result thereof was submitted by the Deputy Commissioner, Senapati. In a further purported compliance with the order dated 28-11-2019 passed by this court in WP(C) No.948 of 2019, the Additional Chief Secretary (TA &

Hills), Government of Manipur issued an order dated 13-12-2019 according approval to the declaration of the elected persons as the Khullakpa and members of the Village Authority. The validity and correctness of the order dated 13-12-2019 is under challenge in this writ petition on the inert-alia grounds that the post of Khullakpa/ Chief is a hereditary post and that this post cannot be elected by the villagers.

[6] It has been submitted by Shri A. Sachikumar, learned counsel appearing for the caveator that the said election was held pursuant to the Notification dated 22-11-2019 and moreover, since the order dated 13-12-2019 has been issued in compliance with the order passed by this court, the instant writ petition is not maintainable and is, accordingly, liable to be dismissed.

[7] It is matter of record that in the judgment and order dated 13-09-2019 passed by this Court, the direction (3) is that the election for the Village Authority of Khullakpa Pongringlong village shall be conducted in accordance with law. The above direction does not appear to be to the effect that the election of the Khullakpa shall be held and this is substantiated by the expression "**in accordance with law**" used in the direction. Misinterpreting the direction and without seeking any clarification from this Court, the SDO, Kangchup Geljang issued the Notification dated 22-11-2019 stating that the Village Authority election/ Khullakpa should be held as per rule. On perusal of the Notification dated 13-12-2019, it appears to have indicated that the election of the Khullakpa should also be held. It may be noted that since the expression "**as per rule**" has been used in the Notification, the respondent ought to have applied their mind before the election was held. The contention of the learned counsel appearing for the petitioner that the post of Khullakpa/ Chief is a hereditary post and that this post cannot be elected by the villagers, is correct to that extent. In the Manipur (Village Authority in Hill Areas) Act, 1956 (hereinafter referred to as "**the Act, 1956**"), there is no provision for holding election to the post of Khullaka by the villagers. All that has been provided therein, is that when there is no chief in the

village, the Chairman of the Village Authority shall be elected and that too, from amongst the members of the Village Authority. The respondents knew about it but they deliberately held the election of the Khullakpa/ Chief of Pongringlong village, as is evident from the order dated 13-12-2019 which is absolutely contrary to the provisions of the Act, 1956.

[8] The validity and correctness of the Notification dated 22-11-2019 was challenged by the petitioner which he failed as this Court vide its order dated 28-11-2019 declined to interfere with it. No appeal appears to have been preferred by the petitioner against the order dated 28-11-2019 with the result that it has attained its finality. This bench has some reservation over the validity and correctness of the Notification dated 21-11-2109 which could have been clarified but since this bench is not an appellate forum sitting over the order dated 28-11-2019, it cannot make any observation. Moreover, it has been submitted by the counsel appearing for the caveator that the election of Khullakpa was held pursuant to the said Notification dated 22-11-2019 which was issued in compliance with the judgment and order dated 13-09-2019 passed by this Court. It is unfortunate that the respondents, in purported compliance with the judgment and order/ order passed by this Court, have consciously violated the provisions of the Act, 1956 which may set a bad precedent. In other words, it is the Central Government which has enacted the Act, 1956 but the State Government has failed to implement its provisions. If the State Government had any doubt about the Court's order, it could have approached the Court for clarification but it failed to do that and instead, it had wrongly interpreted the Court's order so as to enable it to defeat the very purpose of the Act, 1956. But be that as it may, in view of the facts and circumstances as aforesaid, this bench has no option but to dismiss the writ petition.

JUDGE

Devananda WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.02.12 16:50:36 +05'30'