WAIKHOM TONEN MEITEI
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
PIL No. 8 of 2020

The Kangchup Chingkhong Women's Association through its Secretary, A. Mema, aged about 53 years, W/o Angom Charai resident of Kangchup Chingkhong, P.O. Lamshang, P.S. Gammom Sapermeina, Imphal West District, Manipur - 795146

… Petitioner

-Versus-

1. The State of Manipur represented by the Chief Secretary (Home), Government of Manipur, Old Secretariat Complex, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
2. The Principal Secretary/ Special Secretary (Home), Government of Manipur, Old Secretariat Complex, Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.
3. The Director General of Police, Manipur Babupara, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

… Principal Respondents

4. The Deputy Commissioner, Imphal West, Lamphelpat, P.O. & P.S. Lamphel, Imphal West, Manipur – 795004.

… Proforma Respondent

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the petitioner	::	Shri A. Mohendro, Advocate.
For the respondents	::	Shri N. Kumarjit, A.G.
Date of Hearing & order	::	**05-03-2020**

O R D E R

Kh. Nobin Singh, J.

[1] Heard Shri A. Mohendro, learned Advocate appearing for the petitioner and Shri N. Kumarjit, learned Advocate General, Manipur appearing for the respondents.

[2] This is a Public Interest Litigation filed by an association known as Kangchup Chingkhong Women's Association. The prayers in this PIL read as under:-

(i) Admit the present writ petition;

(ii) Issue a writ in the nature of mandamus or any other appropriate writ thereby quashing and setting aside the Government Order Nos. 13(1)/49/984-H/(Pt)/2373 dated 5th Aug., 1999, in so far as Sl. No. 70, thereof, as regards the Village No. 57 and 58 of Kangchup and Kangchup Chingkhong are concerned, thereby restoring the said village under its original jurisdiction of Lamsang Police Station;

(iii) Pass any other order or directions which the Hon'ble Court deems fit and proper in the facts and circumstances of the case.

[3.1] According to the petitioner, it is a society registered under the provisions of the Manipur Societies Registration Act, 1989 and their members are the residents of Kangchup @ Kangchup Chingkhong village. The Kangchup Chingkhong village is a village under the revenue jurisdiction of Lamsang Sub-Division, Imphal-West District, Manipur and all activities including voting rights, are exercised/ undertaken under the Sekmai Assembly Constituency in Imphal-West District.

[3.2] The Kangchup Chingkhong village was originally under the jurisdiction of the Lamsang Police Station which is about 6-7 km only

away from the village. In the year 1999, the Government of Manipur in exercise of power conferred under Section of Cr.P.C, issued an order dated 05-08-1999 to include about 100 villages including the Kangchup Chingkhong Village under the jurisdiction of the Gammon Saparmeina Police Station, about 50 km away from the village, which falls within Senapati District (now Kangpokpi District). The Kangchup Chingkhong village being a part of Kangchup, figured at Sl. No.70 of the list of villages shown in the said order.

[3.3] In order to bring Kangchup Chingkhong Village back within the jurisdiction of the Lamsang Police Station, a voluntary organization called "**Kangchup Chingkhong Kharang Phayeng Singlup**" submitted a representation dated 22-10-2010 to the Superintendent of Police, Imphal West, as there is a lot of inconveniences being faced by the villagers. The said representation was submitted by it after the Pradhan, Village Club, Meira Paibi etc. took a joint resolution on 10-10-2010 for transfer of their village under the jurisdiction of the Lamsang Police Station. On receipt of the said representation, the Senior Superintendent of Police, Imphal West vide its letter dated 24-10-2010 informed the Inspector General of Police (IGP)(Adm.), Manipur enclosing therewith the said representation and the IGP, in turn, wrote a letter dated 04-11-2010 to the Commissioner (Home), Government of Manipur requesting him to examine it and communicate a decision thereof.

[3.4] The Deputy Secretary (Home), Government of Manipur wrote a letter dated 03-12-2010 to the Deputy Commissioners, Imphal-West

and Senapati District seeking a clarification whether the Kangchup Village which appears at serial No.70 of the Government order dated 05-08-199, is different from Kangchup Chingkhong village or both are one and the same. After a necessary enquiry being held, on 03-05-2011, the Sub-Deputy Collector, Lamsang gave its report to the Sub-Divisional Officer, Lamsang stating that the Kangchup Chingkhong village is a part of the revenue village No.57, Kangchup within the revenue jurisdiction of Lamsang Sub-Division, Imphal West under the control of the Deputy Commissioner, Imphal-West and requested for its inclusion/ transfer within the jurisdiction of Lamsang Police Station and accordingly, the Deputy Commissioner, Imphal West submitted the said report to the Deputy Secretary (Home), Government of Manipur on 25-06-2011 for consideration.

[3.5] The Secretary, Kangchup Chingkhong Kharang Phayeng Singlup submitted an application dated 20-06-2019 to the Hon'ble Chief Minister for transfer of the village, Kangchup No.57 and 59 under the jurisdiction of the Lamsang Police Station. On 09-07-2019, the Officer In-charge, Lamsang Police Station submitted a report to the Superintendent of Police, Imphal West District stating that the villages known as Kangchup & Kangchup Chingkhong are included in Sl. No.70 of the list of villages proposing for consideration of the request of the villagers. The Superintendent of Police, Kangpokpi District, Manipur vide its letter dated 05-08-2019 addressed to the DGP, Manipur, submitted a report of the Addl. Superintendent of Police (L & O), Kangpokpi in

respect of the said villages wherein it has been stated by the Addl. Superintendent of Police that the claim made by the Kangchup Chingkhong Kharang Phayeng Singlup is genuine. The SDO, Lamsang has published a list of villages which are under the jurisdiction of SDC Circle, Lamsang Sub-Division and the said villages are shown at Sl. No.13 and 15 thereof.

[3.6] Being aggrieved by the inaction on the part of the respondents, the instant PIL has been filed by the petitioner on the inter- alia grounds that Gammom Sapermeina Police Station is 47 km. away from the village; that it takes almost three hours to reach there from the village; that the benefit of police assistance and freedom from any kind of fear from unwanted and unlawful elements being a part of the right to life under Article 21 of the Constitution of India, shall be made available to the villagers; that free and speedy excess to police assistance shall be made available to the villagers and that to lodge a complaint with the Gammon Saparmeina Police Station, one has to travel from the village about 47 km, to and fro, by hiring a vehicle.

[4] From the materials placed on record, it is clearly seen that the Kangchup Chingkhong village is a part of Kangchup revenue village situated within the Lamsang Sub-Division, Imphal-West District. It was originally under the jurisdiction of the Lamsang Police Station which is about 6-7 km only away from the village. In the year 1999, the Government of Manipur vide its order dated 05-08-1999 brought the Kangchup village under the jurisdiction of the Gammon Saparmeina

Police Station which is about 47 km away from the village and is situated within Senapati District (now Kangpokpi District). The rationale behind the issuance of the order dated 05-08-1999 in respect of Kangchup village, is not disclosed therein and therefore, it is not known to the public in general. But one thing which is quite sure and definite, is that in order to lodge a complaint with the Gammon Saparmeina Police Station, one has to travel about 47 km which is almost impossible for a common man and that the police, with its usual speed, will have to travel a similar distance for investigation. In other words, the villagers and the police will have to face a lot of inconveniences, every now and then, which cannot be said to be in public interest. The role of the police, in short, is to maintain law and order in the society and is, indubitably, a part of the criminal justice system or the criminal administration of justice as has been observed by this Court in **Shri Maibam Sanjoy Singh & ors. Vs. State of Manipur & ors, WP(C) No.287 of 2019** decided on 14-10-2019, the relevant paragraphs thereof read as under:

> ***"[8]*** *Mob lynching or mob violence is one of the worst forms of crime committed by a group of people in a locality without any botheration of its consequence. According to them, there might be various causes or reasons which may not be just or legal, on the basis of which such said crime is committed by them, out of which one is commonly or generally said to be due to the delay in the delivery of justice or the administration of justice. In order to understand the criminal administration of justice in a simple way, it can be broadly divided into two- one, for the men and women and two, for the children.*

Crime committed by men and women:

The administration of justice is, in a sense, a legal process which can be said to be complete in respect of a case when the judgment and order is delivered by a Judge. The administration of justice involves three stakeholders or for that matter, three organs of the Government- one, the Legislature; two, the Executive and three, the Judiciary. The role of the Legislature is to make the law. It is for the Executive to implement it and the Judiciary will interpret the law as and when it is brought to the notice of the Court. The Executive and the Judiciary are, by and large and directly, concerned and involved with the administration of justice. Two Departments of the Executive namely, the Home Department and the Law Department play a vital role towards implementing the law, of which the role of the Home Department is paramount. The legal process of the administration of justice involves many stages which can be broadly divided into four. The first stage commences from the day when a case is registered by the police till the completion of the investigation thereof. The second stage starts when a charge sheet is filed in the Court after the investigation is over and continues till when the recording of the evidence is completed or in other words, till when the examination of witnesses is completed. The third stage is the one where the hearing of the case takes place in the Court and the fourth stage is the period during which the judgment and order is prepared and delivered by the Judge.

First Stage *- As long as a case is not registered, the police cannot investigate it properly and effectively but there are cases which have been brought to the notice of this Court complaining that the police have refused to register a case. These days, it appears to be a common phenomenon or the attitude of the police which shall be avoided and the police shall be sensitized about it. In the case of* ***Lalita Kumari Vs.***

Government of Uttar Pradesh, (2014) 2 SCC 1, *it has been held by the Hon'ble Supreme Court that in case of any complaint being lodged with the police as regards the cognizable offence, the police is duty bound to register a case. After a case being registered, the police will commence its investigation. A lot of time is consumed by the police during investigation for many reasons, some of which mention may be made, are that there is no enough Investigating Officers at the police station and that the forensic reports are not received by the police in time. Even after the law being laid down by the Hon'ble Supreme Court in some cases, the State Government appears to have not insulated the function of the police of maintaining law and order from that of the investigation. The consequence is that the charge sheet is not filed in time, because of which the trial gets delayed and many a times, the accused are to be released on bail after the statutory period thereof is over. It is the State Government and not the Judge concerned, which has to take immediate and appropriate actions so as to overcome this problem in future.*

Second Stage*- It is the stage of recording evidence or examining the witnesses. It is the prosecution and not the Judge concerned, which has to produce the witness before the Court to prove the guilt of the accused. The prosecution means nothing but the State Government. Even if a case is listed before a Court, the statement of the witness cannot, sometimes, be recorded due to non-availability of the witness on the date fixed for the evidence. It is at this stage during which a maximum time is consumed by the Court. In this regard too, it is the prosecution and in other words, the State Government and not the Judge concerned, which has to produce its witness, in the absence of which the Judge cannot proceed further with the trial. The main problem that is being faced commonly and frequently by the Courts, at the second stage, in the State is the inability on the part of the State*

Government and in particular, the Home Department, to execute the warrant for years together. Similar is the case with the summons to be served upon the witnesses. Recently, a list of about forty cases pending in the State of Manipur, for more than twenty-five years, has been sent to this Court by the Hon'ble Supreme Court with the direction that immediate and appropriate steps be taken to ensure that the same are disposed of at an early date and on perusal thereof, it is found that many of them have been pending for such a long time for want of execution of the warrants. It is, therefore, the right time for the State Government to inquire into the causes of such inability and the remedial measures thereof are timely & promptly taken by it so that the legal process will become faster and can be made even faster than the earlier one. What a Judge can do at this stage is minimal and limited as stated hereinabove.

***Third Stage**- It is at this stage that the arguments of both the public prosecutor and the private advocate are to be heard at length and sometimes, it takes time for the Court to conclude it for one reason or the other. The frequent adjournment sought for by the private advocate or the public prosecutor is one of the problems which generally lead to the delay of the conclusion of the argument. But it may be noted that the time taken during the course of hearing is not so long as that of the first or the second stage mentioned above.*

***Fourth Stage-** After the hearing is over, the Judge will normally reserve his/ her judgment and order and while writing it, some time is taken by him/ her. It may be noted at this juncture that a Judge will write his/ her judgment and order only after the hearing is over and not prior to that. In other words, a Judge cannot write his/ her judgment and order before the completion of the aforesaid three stages. Here lies the responsibility of the Judge to do it within a reasonable time which can be hardly few months.*

[9] *The term "**Court**" does not mean the Judges only and it involves and includes the Court building and staff of the Court as well or in other words, the infrastructure and the manpower which are to be provided by the State Government. As has been observed hereinabove, a Judge cannot write his judgment unless and until the hearing is over. It is a lengthy legal process commencing from the registration of a case till the conclusion of the hearing and during this long period, the role of a Judge is minimal and limited and he/ she cannot do much without the co-operation being extended to him/ her by the prosecution and the private advocates. A Court needs a building and its sufficient staff and judges, in the absence of which the delivery of justice will automatically get delayed for no fault of the Judges. In the State of Manipur, the sanctioned strength of the judges, as on date, is fifty only plus five judge co-terminus with the fourteen finance award which is valid till 31-03-2020 as compared with the sanctioned strength of the judges in the State of Tripura which is about hundred & ten judges. The final stage for encadrement of four posts of Judicial Officer Grade-III created by the State Government recently, to work as the Principal Magistrates of the Juvenile Justice Boards, is in the pipeline. Out of the sanctioned strength of fifty Judges, four posts of Judicial Grade-II which are, at present, lying vacant for want of eligible officers for promotion from the post of Judicial Officer Grade-III, while three posts of Judicial Officer Grade-I which are lying vacant for want of eligible candidates for appointment by direct recruitment, may not be available for service in the near future. Similar is the case with the four posts of Judicial Officer Grade-III, created recently to work as the Principal Magistrates of the Juvenile Justice Boards, because their services will not be available, at least, for a year as they will have to undergo requisite training. On top of that, the unfortunate part is that the five Judicial Officer Grade-I will retire by the early part of*

the next year except one who will retire in the later part of the next year. The working strength of the Judges, by the end of the next year, will be reduced to less than forty Judges who will not be able to cope up with the present volume of works towards the administration of justice. Consequently, the administration of justice may have to remain a far dream. The solution for these problems lies mainly in the hands of the State Government and not in the hands of the Courts alone. There is a misconception in the mind of the general public in the State that the justice is not delivered in time for which the Judges shall be held responsible. It is no doubt true that the delivery of justice, in a sense, is nothing but the pronouncement of a judgment and order in a case by a Judge but a Judge cannot write his/ her judgment and order whenever he/ she feels like without the legal process being completed as aforesaid. He/ she has to start writing his/ her judgment and order only after the hearing/ argument is over and not prior to that at all, as has been observed hereinabove, the role of a Judge is minimal in the sense that it is the State Government through the prosecution, and not the Judge, which has to produce the materials/ evidences to prove the guilt of the accused. Therefore, it is incumbent upon the State Government to take pro-active actions to enhance the effective functioning of the police and the prosecution so as to get the legal process completed in time. As long as the legal process is not completed, the administration of justice will remain unmateralised. If the State Government fails to discharge its duties and functions effectively in this regard, the delay in the administration of justice may continue to occur leading to the occurrence of such unfortunate incidents like mob lynching or mob violence.

Crime committed by the children:

Prior to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the

"Juvenile Justice Act"*), both the crimes committed by the men & women and the children were being dealt with by the normal criminal Court. After the Juvenile Justice Act being enacted by the Parliament, the crime committed by the children has been carved out of the common and legal process of criminal administration of justice. The term "****accused****" is no longer used in respect of the children and in its place, the expression "****Child in Conflict with law****" has been used therein. The duty and the responsibility to deal with the child in conflict with law have been entrusted to the Juvenile Justice Board whose role is different from that of the ordinary Court. A special training is required to deal with the child in conflict with law. Only an Investigating Officer who is well versed & trained with the technicalities of dealing with the child, shall investigate the case involving a child. Whenever a child in conflict with law is apprehended, he is required to be kept in the* ***observation home*** *and not in the* ***jail****. Since the Juvenile Justice Boards are institutions like Courts, they require adequate infrastructure and sufficient staff, members & Judges of the Board which are not adequately available with the present Juvenile Justice Boards in the State. The independent and separate Principal Magistrates for the Juvenile Justice Boards which have been established formally in all the districts of Manipur, are not available at all with the result that the existing Judicial Officers Grade-III are given the additional charge of the Juvenile Justice Boards, even though they are already overburdened with their normal works in the Courts. Since the Courts and the offices of the Juvenile Justice Boards are situated at different places, the Judicial Officers who are given the charge of both, are required to make frequent moves from one place to another disturbing their functioning in the Courts. Most of the time, the Juvenile Justice Boards who have to sit at 2 pm after the Judicial Officers leaving their normal work in the Courts, are compelled*

to hold sitting upto 7 pm creating a lot of inconvenience to themselves as well as the staff, private Advocates, APPs and the general public. In one of its judgment and order, the Hon'ble Supreme Court has observed that the Juvenile Justice Boards shall hold their sitting regularly which is impossible in the State of Manipur for the reasons stated hereinabove. The State Government needs to keep in mind this aspect as the number of crimes committed by the children is increasing day by day and the Juvenile Justice Boards, in its present form, will not be able to tackle it effectively. The Juvenile Justice Boards are, presently and in fact, functioning only for namesake, as the requisite infrastructure and the manpower have not yet been provided by the State Government. As per the list furnished by the Registry of the High Court, there are five observation homes in the State, out of which only the observation home situated at Takyel, Imphal, is stated to be run and managed by the State Government but the unfortunate part thereof is that the staff working at the observation home at Takyel i.e., the employees who have been working there for the last many years, have not yet been appointed on regular basis. The State Government needs to pay its attention to it without any further delay. The remaining four observation homes are being run by the NGOs with the assistance provided either by the Central Government or by the State Government. These observation homes lack adequate security and infrastructure and even the money earmarked for them, are also not released in time by the State Government as alleged by them. On top of that, in some of the districts, there is no observation home at all as a result of which when a child in conflict with law is apprehended by the police in these districts, he or she is to be kept in the observation home, Imphal. On the date on which the case is listed for further proceedings before the Juvenile Justice Board, the child being kept at observation home, Imphal, is

required to be taken to the Board which puts a lot of inconvenience to the persons running the NGOs or the child friendly police stations. Many a times, the proceedings are to be deferred due to non-production of the child in conflict with law before the Board in time. Therefore, the observation homes are required to be established by the State Government in all the districts at the earliest possible and that too, they shall be run by the State Government itself keeping in mind the security of the child in conflict with law. It may be noted that the Juvenile Justice Act was enacted by the Parliament as back as in the year, 2000 with the amendments being made from time to time. Therefore, it is expected that the State Government shall do the needful at the earliest possible in the interest of public as well as in its own interest so as to enable it to tackle the law & order problems effectively in the State.

[10] *From the aforesaid circumstances, it is seen that the roles of the police and the prosecution are paramount in both the Courts and the Juvenile Justice Boards and the need for the State Government to take pro-active actions, is indispensable failing which the number of crimes and in particular, such crime like mob lynching or mob violence may increase day by day, since it is impossible for the State Government to provide security to each and every individual in the State and therefore, the only option left with the State Government is to ensure that immediate steps are taken to contain it in terms of the guidelines laid down by the Hon'ble Supreme Court in* ***Tehseen S. Poonawalla*** *case (supra).***"**

[5] Admittedly, the villagers approached the concerned authorities including the Hon'ble Chief Minister, Manipur praying for transfer of the Kangchup Chingkhong village under the jurisdiction of the Lamsang Police Station and there appears to be no objection from any angle, as

is evident from the correspondences and the reports of the police including the one submitted by the Addl. Superintendent of Police, Kangpokpi to the effect that the request of the villagers is genuine and the revenue authorities which are placed on record. Moreover, the access to justice at the doorstep of the people is paramount & indispensable and is considered to be a right included in the right to life as guaranteed under the provisions of Article 21 of the Constitution of India. It is for the State Government to ensure it in public interest.

[6] It is no doubt true that to take a policy decision is the domain of the State Government and therefore, the High Court shall not normally or shall be slow in interfering with it. In other words, since it is the prerogative of the State Government to take policy decisions keeping in mind the circumstances prevailing in the State, the power of judicial review is limited. But it may be noted that the State Government being an institution, ought to act fairly and reasonably and in public interest, as has been held by the Hon'ble Supreme Court in a catena of decisions. In **Tata Cellular Vs. Union of India, (1994) 6 SCC 651** wherein the scope of judicial review in matter relating to contracts in which one of the parties was a public authority, was considered, the Hon'ble Supreme Court held:

> *"**77.** The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> *1. Whether a decision-making authority exceeded its powers?*
>
> *2. Committed an error of law,*

3. Committed a breach of the rules of natural justice,

4. Reached a decision which no reasonable tribunal would have reached or,

5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

Referring to its decision in Tata Cellular case, the Hon'ble Supreme Court in **Municipal Council, Neemuch Vs. Mahadeo Real Estate & ors., (2019) 10 SCC 738** held:

"***14.*** *It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that*

there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

16. *It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice**."***

[7] As seen from the above decisions, the issue relating to exercise of power by the High Court under Article 226 of the Constitution of India in matter relating to policy decision is no longer res integra. In the present case, the Kangchup Chingkhong village which was originally under the jurisdiction of the Lamsang Police Station, has been placed under the jurisdiction of Gammon Saparmeina Police Station, Kangpokpi District which is about 47 km away from the village creating a lot of inconveniences and problems both for the villagers and the police at Gammon Saparmeina Police Station. What are the reasons for it, is not known to this Court, as the instant PIL is being disposed at the motion stage without an affidavit being filed on behalf of the respondents. But considering the submissions of the learned counsel appearing for the

petitioner that the representations submitted by the villagers have not been considered and are still pending for consideration by the respondents, this Court is of the view that the instant PIL can be disposed of by passing an innocuous order. Accordingly, the instant PIL stands disposed of with the direction that the respondents and in particular, the respondent No.1 & 2 shall consider the representation dated 22-10-2010 submitted to the Superintendent of Police, Imphal-West and the application dated 20-06-2019 submitted to the Hon'ble Chief Minister, Manipur and dispose of the same within a period of a month from the date of receipt of a copy of this order by issuing a speaking order in respect thereof.

JUDGE **CHIEF JUSTICE**

FR/NFR

Devananda