Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 92 of 2019

Date of Decision: 14.09.2020

Shri Pyndapborthiaw Saibon	Vs.	Election Commission of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Ms. S. Alam, Adv. Mr. S. Dey, Adv. Mr. A.R. Passah, Adv.
For the Respondent(s)	:	Dr. N. Mozika, Sr. Adv. with Ms. T. Sutnga, Adv. for R 1 & 2 Mr. S.C. Chakrawarty, Sr. Adv. with Ms. E. Slong, Adv. for R 3.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Being aggrieved and dissatisfied with the letter dated 7th February 2019 (Annexure-8 of the writ petition), issued by the Under Secretary, Election Commission of India, whereby the petitioner was advised to resolve the internal dispute within the party either amicably or by an order of a competent Court, the petitioner herein have approached this Court with this writ petition seeking relief thereof on the prayers so made.

2. According to the petitioner, he is the elected President of the Khun Hynniewtrep National Awakening Movement (hereinafter known as KHNAM), a regional registered, although unrecognized Political Party, which was established on 17th July 2002 and registered under Section 29A of

the Representation of the People Act, 1951. The petitioner was then the founding Secretary.

3. The last election to the Central Executive Committee and to the post of Office Bearers were held on January, 28th 2017 during the General Convention of the Party and the petitioner was returned as the President while the respondent No. 3 was elected as the Working President.

4. On 3rd March, 2018, the respondent No. 3 was elected as a Member of the Legislative Assembly, Meghalaya from the KHNAM Party, but on 10th July, 2018, he choose to resign from the Central Executive Committee which was accepted by the CEC in its meeting on 3rd September 2018.

5. The petitioner has alleged that the respondent No. 3 claiming that the KHNAM Party has been defunct for many years and seeking to revive the party, he has furnished a new list of office-bearers to the Election Commission, whereupon, the Election Commission had called for a response from the petitioner in this regard.

6. The petitioner has further stated that although detailed and documentary evidence was submitted to refute the claim of the respondent No. 3, the Election Commission has unilaterally recorded the name of the respondent No. 3 as the new President of the party and has also recorded his residential address as the new address of the petitioner's party.

7. The petitioner has termed the act of the Election Commission of India as an evasion of its responsibility to perform its quasi-judicial function in this regard by not adjudicating in the dispute.

8. The respondent No. 3 in his affidavit-in-opposition has raised a preliminary objection to this instant writ petition by challenging the locus of the petitioner on the ground that he is not identified /verified by the Election Commission of India.

9. In the affidavit-in-opposition filed by the respondent No. 3, another point raised is that the Election Commission of India vide its letter No. 56/71/LET/ECI/FUNC/PP/PPS-III/2018/818 dated 5th March 2019 had called upon the respondent No. 3 for his explanation/comments/clarification on the Representations dated 7/01/2019, 18/01/2019 and 29/01/2019 received by the Commission from the petitioner herein and as such, this writ petition is premature and sub-judice before the Election Commission. The Election Commission of India is therefore called upon to decide the matter on merits.

10. The respondent No. 3 has also stated that the KHNAM is an un-recognized political party and as such, is not covered under Rule 15 of the Election Symbols (Reservation and Allotment) Order, 1968.

11. Admitting that he is the lone representative to the State Legislative Assembly having been elected on 3rd March 2018 as a candidate of the KHNAM party, the respondent No. 3 has however denied that there is any post of Working President of the party as per the Constitution of KHNAM.

12. The respondent No. 3 has also admitted that he had sent a representation dated 14th September 2018 to the Election Commission of India for updating the list of Office-Bearers of the party.

13. The respondent No. 3 while praying for dismissal of this writ petition, has however reiterated that the Election Commission of India (respondent No.1) may be directed to decide the matter on merits.

14. The respondent No. 1 & 2 in the affidavit-in-opposition has admitted that the KHNAM is a registered un-recognized political party with the Election Commission of India under Section 29A of the Representation of People Act, 1951 with effect from 11.09.2002.

15. It is also stated that since its registration, no information was received by the Election Commission of India with regard to the organizational elections of the party, and it was only in the year 2012 that a group headed

by Shri Paul Lyngdoh, the founding President informed about the merger of the party with the United Democratic Party (UDP) a recognized state party of Meghalaya.

16. The said merger was opposed by the group headed by the petitioner as the President and the respondent No. 3 as the General Secretary who claimed that the party that is, KHNAM is still in existence. The Election Commission of India had requested for the required documents regarding internal organizational elections of the party, but the same was not communicated up to 03.12.2018.

17. It is also stated that the respondent No. 3 had furnished the documents regarding election of new office-bearers and change of office address of the party vide letter dated 14.09.2018 and letter dated 17.09.2018, on the basis of which, the Election Commission of India had accepted the new office-bearers headed by the respondent No. 3.

18. It was further stated that the Election Commission of India had received claims and counter claims as regard the election of the office-bearers of the party from the two groups, that is, one headed by the petitioner herein and the other headed by the respondent No. 3 and not being clear as to which group has a genuine claim, the Election Commission of India had accordingly, vide letter dated 07.02.2019, advised the rival groups to settle the dispute within the party.

19. The respondent No. 1 & 2 has also stated that there is no provision either in the Representation of People's Act, 1951 or the Conduct of Election Rules, 1961 of the Symbols Order which empowers the Commission to decide disputes in respect of registered un-recognized political party. Order dated 16.03.2012 passed in LPA No 522 of 2011 by the Delhi High Court in the case of ***Chandra Prakash Kaushik v. Election Commission of India & Anr*** was cited in this regard.

20. The learned counsel for the petitioner, Ms. S. Alam submitting on behalf of the petitioner has stressed on the fact that the petitioner was the Assistant General Secretary of the party at the time of registration, while the respondent No. 3 was not among the office -bearers then.

21. That in the last organizational election in the General Convention of the party held on the 28th January 2017, the petitioner was elected as the President, while the respondent No. 3 was elected as the Working President of the Central Executive Committee.

22. It was again submitted that on 1st February 2018, in preparation for the Assembly elections in the State, the petitioner as President had endorsed the candidature of the respondent No. 3 from the KHNAM party by signing Forms A and B as required under Paragraph 13(c) of the Election Symbols (Reservation and Allotment) Order 1968 (Election Order), whereby the respondent No. 3 was returned as a successful candidate to the Legislative Assembly on 3rd March 2018 as a member of the KHNAM party.

23. The respondent No. 3 on 10th July 2018 sought to resign from his position as an office-bearer as well as member of the Central Executive Committee and had sent his resignation letter addressed to the petitioner as President of the party. His resignation was accepted on 3rd September 2018.

24. However, the respondent No. 3 on 6th August 2018 claimed to have convened a meeting of the General Convention with 100 members and to have called for fresh elections of the office-bearers of which he was elected the President which he was not authorized to, as the power to convene the General Convention lie with the President or the General Secretary as per Article VII of the Constitution of the party.

25. It was also submitted that the respondent No. 3 having convened his own election and appointed President on 6th August 2018, has on 10th August, 2018 written a formal letter to the petitioner addressing him as the President of KHNAM party explaining his reasons for having resigned.

26. On 14th September 2018, the respondent No. 3 wrote to the Election Commission of India under Section 29A (4) (d) of the Act claiming that he was the new President of KHNAM and also seeking for change of the official address of the party and the Election Commission of India acting on the respondent No 3's letter unilaterally made changes to the record putting the name of the respondent No. 3 as the President of the party and also changed the official address of the party on its rolls.

27. On 10th January 2019, the Election Commission of India issued notice to the petitioner asking him to respond to the claim of the respondent No. 3 and on the response received, had issued the impugned letter dated 7th February, 2019 advising the warring parties to solve the dispute amicably and internally or by an Order of a competent Court.

28. The learned counsel for the petitioner has also submitted that the action of the Election Commission of India, whereby it has changed the name/address on record on the strength of the application of the respondent No. 3 under Section 29 A (4) (d) in effect de-registers the original party and then registered a new party under the same name, which is in contravention of the right to be heard.

29. The case of ***Indian National Congress v. Institute of Social Welfare and others: (2002) 5 SCC 685*** was cited by the learned counsel for the petitioner submitting that in the said case, the Hon'ble Supreme Court has held that the grant of registration under Section 29 A is not an administrative but a quasi-judicial function and therefore, any revocation or change in registration cannot be done by the Election Commission of India unilaterally without hearing the parties concerned.

30. Referring to the case of ***Chandra Prakash Kaushik (supra)*****,** relied upon by the learned counsel for the respondent No. 1 & 2, the learned counsel for the petitioner has submitted that in the case cited, no changes were made to the record until the matter was either amicably settled or a suit was filed and dismissed in default. Also when it was found that the matter

had not in fact been amicably settled, or that there were fresh claims even after the dismissal of the suit for non-prosecution, the changes made to the record were revoked and status-quo ante was restored. Thus the Election Commission of India exhibited a completely 'hands off' approach and did not blow hot and cold as in the present case.

31. Again, while referring to another case cited by the learned counsel for the respondent No. 1 & 2, ***Swarn Samaj Party v. Election Commission of India,*** the learned counsel for the petitioner has submitted that in this case, the Election Commission of India refrained from making any changes in the record before referring the matter to a competent Court, even while the Hon'ble High Court of Madhya Pradesh has relied in the case of ***Chandra Prakash Kaushik (supra)*** as far as the stand of the Election Commission of India not to interfere with the internal dispute of registered but unrecognized political parties is concerned, yet the High Court of Madhya Pradesh has ruled on the facts of the specific case to find that the Election Commission of India not recognizing or allotting election symbol to the candidates fielded in the election since neither faction could produce credible documents.

32. The learned counsel for the petitioner has also submitted that the respondent No. 1 & 2 have erroneously relied on a case law to show that the Election Commission of India could not have intervened in an internal dispute under section 29 A (9) of the Act when in the present case, the application for change by the respondent No. 3 was made under section 29 A (4) (d) for de-registration of the original KHNAM party and re-registration with new office-bearers and address.

33. In support to the case of the petitioner, the learned counsel has referred to the case of ***Gorkha Janmukti Morcha and Anr. v. The Election Commission of India and Ors.*** (WP No 5027(W)/2019), wherein, the Single Bench of the Calcutta High Court, in the facts and circumstances of the case, has held that the Election Commission of India is not without jurisdiction

when it is faced with the issues as raised by the petitioners so far the affairs of the first petitioner is concerned.

34. The learned counsel for the petitioner is however quick to point out that there is an appeal preferred by the Election Commission of India against the judgment of the Single Bench which is pending before the Division Bench of the same High Court, that is, the Calcutta High Court.

35. Another case referred by the learned counsel for the petitioner is the case of ***Apna Dal v. Election Commission of India and Ors.*** where the Division Bench of the Allahabad High Court while considering the ***Chandra Prakash case*** has held that *"...it is evident that the Commission has been held to have the power of review when a situation arises out of Sub-Section (9) of Section 29-A of the Act as per the ratio of paragraph-34 of the judgment extracted here-in-above and the power exercised is quasi-judicial. Accordingly, as per the principles observed by the Apex Court, the validity of the impugned order dated 9.6.2015 calling upon the parties to get their dispute resolved internally may require a re-consideration in the light of what has been extracted here-in-above."*

36. Finally, the learned counsel for the petitioner has submitted that the question of law discussed above is only academic to the present case since the question to be decided is the action of the Commission which has acted unilaterally on an application under Section 29(4) (d) and had de-registered the original KHNAM party in contravention of its power.

37. It is then prayed that while molding the relief, this Court may keep the question of law open, while making final the interim orders dated 20.03.2019 which restores status quo ante as it existed on February 1st 2018 and April 13th 2018.

38. Dr. N. Mozika, learned Sr. counsel assisted by Ms. T. Sutnga, learned counsel for the respondent No. 1 & 2 has at the outset submitted that there are about 2599 number of political parties in India registered with the

Election Commission of India out of which about 2538 are un-recognized political parties.

39. It was admitted that the KHNAM party is a registered un-recognized political party under section 29A of the Representation of People Act, 1951 with the Election Commission of India with effect from 11.09.2002 with the Constitution of the party mandating the term of office of the Office Bearers being for a period of one year. However, no information was received from the party from 2002 till 2012, when a group headed by Shri. Paul Lyngdoh, the Founding President informed about the merger of the party with the United Democratic Party (UDP) which was opposed by the petitioner and the respondent No. 3 who claimed to be the President and General Secretary respectively, but on being advised to furnish the relevant documents, no communication was received from the petitioner.

40. That it was only till 14.09.2018 that the Election Commission of India received communication from the respondent No. 3 of the election of new office bearers and the change of address of the party and on the basis of the documents submitted, the Election Commission of India had accepted the claim of the respondent No. 3.

41. However, on being made aware of the rival claim by the petitioner herein and once the Election Commission of India was convinced that there is an internal dispute in the party, the letter dated 07.02.2019 was issued requesting the parties to settle the dispute amicably or by order of a competent Court.

42. Again, it was submitted that Section 2(f) of the Representation of People Act, 1951 defines a Political Party, however this Section does not distinguish a recognized from a non-recognized party and only the explanation to Section 52 of the Act makes a distinction between a recognized and a non-recognized party.

43. However, Clause 6 of The Election Symbols (Reservation and Allotment) Order 1968 has made a classification of political parties as either recognized and non-recognized parties, it was submitted.

44. Dr. Mozika has also submitted that as per clause 15 of the said Election Symbols (Reservation and Allotment) Order 1968, the power of the Election Commission to decide disputes or claims and counter claims between two rival factions of a political party is restricted only to recognized political parties.

45. To support his contention, Dr. N. Mozika has referred to the case of ***Chandra Prakash Kaushik (supra)*** at paragraph 10 wherein it was held as:

> ***"10.*** *….. ABHM as aforesaid is not a recognized political party. Though the term "recognized party" is not defined in the Act but the Explanation to Section 52 thereof provides that "recognized political party" means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of the ECI is made binding on all such rival sections or groups. However, the said Clause does not apply to unrecognized political parties as ABHM is. ECI was/is thus not empowered to in the face of rival claims of respondent No. 2 Swami Chakrapani and others take any decision as to whose claim was correct. That being the position, ECI could not have on 11.11.2010 recognized respondent No. 2 Swami Chakrapani as the President/office bearer of ABHM. We are of the view that the decision dated 11.11.2010 of ECI of preferring the claim of respondent No. 2 Swami Chakrapani over that of others was clearly beyond the powers/jurisdiction of ECI….."*

46. The ratio of the said ***Chandra Prakash Kaushik case*** was also followed by the High Court of Madhya Pradesh in W.P. (C) No 26556 of 2018 **(*Swarn Samaj Party v. Election Commission of India*)** wherein the Division Bench of the High Court of Madhya Pradesh has observed as follows:

"... The Swarn Swamaj Party, undisputedly, is a registered but unrecognized political party. It is riddled with internal disputes. One faction is represented by Shri Sheetal Tewari and another by Smti. Archana Shrivastava, both claiming to be President of the party. The Election Commission of India, after due consideration of the claims set up by rival factions, found that neither of them were backed by credible documents, therefore it could not recognize office bearer or allot election symbol to candidates fielded in the election. The Commission drew support from an unreported decision of the Delhi High Court in LPA No 522 of 2011 (Chandra Prakash Kaushik Vs. Election Commission of India) decided on 16.3.2012.

After having heard submissions at length and on a careful study of the materials available on record, we respectfully agree with the view expressed by the Delhi High Court that the Commission does not have necessary wherewithal to decide the internal disputes in the party with regard to its office bearer between rival groups. It can be adjudicated upon by a competent Court after taking relevant evidence. We are of the considered opinion that the impugned decision of the Election Commission of India does not suffer from any infirmity calling for our interference. Thus, we find no merit and substance in the present position; the same is, accordingly dismissed summarily."

47. The learned Sr. counsel for the respondent No. 1 & 2 has also submitted that the decision of the learned Single Judge of the Calcutta High Court in the ***Gorkha Janmukti Morcha case*** is not the correct law, inasmuch as, the provision of Section 29A (9) of the Representation of People Act, 1951 does not empower the Election Commission of India to decide factional disputes of unrecognized political parties. Moreover, an appeal has been preferred against the said judgment before the Division Bench of the same High Court, which appeal is still pending.

48. Further, submitting that the Election Commission of India not being so empowered to decide dispute between rival factions of an un-recognized political party, the letter dated 07.02.2019 directing the parties to resolve their internal differences amicably or else by the orders of a competent Court has been rightly issued and as such, this Court in exercise of its powers under Article 226 cannot decide the disputed question of facts and the proper remedy for the parties is to approach a competent civil Court.

49. Mr. S.C. Chakrawarty, learned Sr. counsel assisted by Ms. E. Slong, learned counsel for the respondent No. 3 while endorsing the submission of the learned Sr. Counsel on behalf of the respondent No. 1 & 2, has reiterated that under Sub-Section 9 of Section 29 A of the Act, the Election Commission was not given adjudicatory powers to decide disputes between factions of a political party, since the said provision is only as regard communication to the Election Commission of India by political parties in case of change in the name, head office, office-bearers and address.

50. Learned Sr. counsel for the respondent No. 3 has also submitted that in the record of the Election Commission of India, the respondent No. 3 still remains the President and as such, the petitioner has no locus standi to prefer this instant writ petition.

51. On careful consideration of the facts and circumstances of the case laid before this Court and the submissions and contentions of the rival parties noted above, what is evident is that the KHNAM is a political party registered with the Election Commission of India under the provisions of Section 29 A of the Representation of People Act, 1951 since 11.09.2002.

52. That in the year 2012, the Election Commission of India received communication from the then President, Shri Paul Lyngdoh of the merger of the KHNAM party with the United Democratic Party (UDP), which was resisted by the petitioner herein together with the respondent No. 3 who claimed themselves to be the President and General Secretary of the party after the departure of Shri Paul Lyngdoh.

53. The respondent No. 1 & 2 has stated that as regard the dispute between Shri Paul Lyngdoh and the petitioner along with the respondent No. 3, the petitioner was advised to furnish the required documents regarding the internal organizational election of the party which was not forthcoming and only on 14.09.2018 and 17.09.2018, the respondent No. 3 has furnished the documents regarding election of new office bearers and change of office address of the party.

54. The petitioner has however refuted this contention in his rejoinder affidavit by stating that it was in the knowledge of the respondent No. 1 & 2 that the petitioner is the President of KHNAM, inasmuch as, the candidature of the respondent No. 3 as a candidate of the KHNAM party during the General Election of the Meghalaya State Legislative Assembly in the year 2018, was endorsed by the petitioner as President when he had signed Forms A and B and that the respondent No. 3 was subsequently elected to the State Legislative Assembly as a candidate of the KHNAM party, to which the Election Commission of India has never questioned the position of the petitioner as the President of the party.

55. To say that the respondent Election Commission of India has no knowledge of the position of the petitioner as the President of KHNAM as in the year 2018 is not factually correct.

56. The respondent No. 3 has also acknowledged the petitioner as the President of the party when he addressed the letter dated 10th July 2018 (Annexure-4 of the writ petition) to the petitioner as the President of KHNAM and conveyed to him his decision to step down from the post of Working President and member of the Central Executive Committee of KHNAM, but insisted that he is still a member of the party. Therefore, the contention of the respondent No. 3 as regard the locus of the petitioner cannot be accepted by this Court.

57. The role of the Election Commission of India as regard the dispute of parties herein is also not clear, on receipt of the communication from the respondent No. 3 in respect of the list of office-bearers and change of address of the party, the Commission has accepted the same on 15.11.2018 (Annexure-5 of the affidavit-in-opposition on behalf of respondent No. 1 & 2). On receipt of complaint by the petitioner, the Election Commission of India issued the impugned letter dated 07.02.2019 advising the rival parties to settle the matter amicably among them or to approach a competent Court for an appropriate order.

58. However, after issue of the said letter dated 07.02.2019, another letter dated 5th March 2019 was sent to the respondent No. 3 seeking comments with authenticated supporting documents in reply to the representations of the petitioner to the Commission dated 07.01.2019, 18.01.2019 and 29.01.2019. The said letter dated 5th March 2019 is in continuation of the letter dated 07.02.2019 (the impugned letter). The respondent No. 3 has also replied to this letter vide his communication dated 18.03.2019 (Annexure-II of the affidavit-in-opposition on behalf of respondent No. 3) to the Election Commission of India. This would imply that the Election Commission of India is still considering the case of the parties in which case, the prayer of the petitioner for quashing the impugned letter dated 07.02.2019 becomes premature.

59. The case cited by the learned counsel for the petitioner, that is, ***Indian National Congress v. Institute of Social Welfare and Ors" (supra)*** would not help the petitioner, inasmuch as, in the said case, the Hon'ble Supreme Court has decided on the issue of the Election Commission of India possessing quasi-judicial powers vis-a vis Section 29A(5) of the Representation of People Act, 1951 and has decided accordingly, while in this instant case, the argument canvassed by the petitioner is with regard to Section 29A(4(d) of the said Act.

60. Similarly, the case of ***Apna Dal (supra)*** has dealt with the issue of power of review by the Election Commission of India when situation arises out of Section 29A (9) of the Act and power exercised was quasi-judicial. This too does not help the petitioner in his case.

61. The case of ***Gorkha Janmukti Morcha (supra)*** as decided by the Hon'ble Single Judge of the Calcutta High Court, as observed above, is under consideration on intra-court appeal by the Division Bench of the same High Court and as such, it would not be safe for this Court to rely on the decision thereof.

62. The case relied upon by the respondents, that is, ***Chandra Prakash Kaushik (supra)*** and ***Swarn Samaj Party (supra),*** wherein it was held that the Election Commission of India is not empowered to decide factional claims in case of an un-recognized political party, according to this Court is the correct proposition of law, however viewed from the facts and circumstances of this case, the same are, in the opinion of this Court, not relevant.

63. The facts as are presented are that the respondent No. 3 has applied to the respondent No. 1 for approval of the list of office-bearers and change of address of the KHNAM party under Section 29A (4) (d) of the Act and not under Section 29 A (9), which could presumably have been the proper provision to be resorted to by the respondent No. 3. Be that as it may, the Election Commission of India (respondent No. 1) have entertained the prayer of the respondent No. 3 and have entered the same on its record, thus implying that a fresh political party was registered as the said Clause d of sub-section 4 of section 29 A read with sub-section 1 of the same section would made out to be. The Election Commission of India is called upon to clarify this aspect of the matter.

64. However, the Election Commission of India, after having issued the impugned letter dated 07.02.2019, the matter would have ended there, but the subsequent letter dated 05.03.2019 which is a continuation of the letter dated 07.02.2019 would imply that the Commission is still seisin of the dispute. This would, in effect again only imply that the petitioner should have waited for the final word from the Commission before approaching this Court.

65. In view of the above, this writ petition is hereby disposed of with the following:

1. That the Election Commission of India is requested to re-consider as to whether the application of the respondent No. 3 dated 14.09.2018 (Annexure-III of the affidavit-in-opposition on behalf

of respondent No. 3) and the subsequent bringing of the contents of the same on its record is proper.

2. That the Election Commission of India is requested to complete the process in continuation of its letter dated 05.03.2019 (Annexure-I of the affidavit-in-opposition on behalf of respondent No. 3) and to inform the parties accordingly.

66. No cost.

Judge

Meghalaya
14.09.2020
"D. Nary, PS"