

Constitutionality of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959:

(i) Constitutionality of the Act:

The District Council is an administrative as well as a legislative body, and the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 (Act no. II of 1959) made under Para 3(1)(g) of the Sixth Schedule is a valid law. — *T. Cajee Vs. Jor Manik Syiem*, (1961) 1 SCR 750: AIR 1961 SC 276: (1961) 2 SCA 1: 1961 (1) LLJ 652.

(ii) Scope

Under paragraph 3(1)(g) of the Sixth Schedule to the Constitution, the District Council has power to make laws with respect to the appointment and succession of Chiefs or Headmen, and this naturally includes the power to remove them, but it does not follow from this that the appointment or removal of a Chief is a legislative act or that no such appointment or removal can be made without there being first a law to that effect. — *U. Prelyshon Lyngdoh Nongum Vs. Executive Committee, District Council, United Khasi-Jaintia Hills, Shillong*, AIR 1969 A&N 139: ILR (1969) 21 Assam 370.

The United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 which was made under paragraph 3(1)(g) of the Sixth Schedule is a valid law and is applicable to the case of removal of a Myntri by the District Council, even though his election took place prior to the commencement of the Act. — *U. Prelyshon Lyngdoh Nongum, Executive Committee, District Council, United Khasi-Jaintia Hills, Shillong*, AIR 1969 A.&N. 139: ILR (1969) 21 Assam 370.

When the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 was passed purporting to codify the customary laws in force, the legislature must be assumed to have given effect to these customary laws by reducing them to a concrete shape in form of a statute, unless the contrary is established by materials placed before the court. — *U. W. Roy Thangkhiew Vs. District Council United Khasi-Jaintia Hills, Shillong*, AIR 1963 Assam 186.

In a matter of administering customary law, it would not be incorrect for the Executive Committee of a District Council to follow on principle and in spirit the pith and substance of an enactment like United Khasi & Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 which might have come into force a little later, as containing the correct law which must have been in existence from the beginning of times, where such Act is not in any way conflicting with the customary laws in force.

.— *U.W. Roy Thangkhiew Vs. District Council, United Khasi-Jaintia Hills, Shillong*, AIR 1963 Assam 186.

The manner of election of the Chiefs and Headmen was governed by the customs prevailing in the concerned Elaka. These customs varied from place to place. No interference with these customs was desired at any point of time when the Britishers had ruled this part of the country. Even the United Khasi-Jaintia Hills Autonomous District (Appointment and succession of Chiefs and Headmen) Act, 1959, when enacted provided that all elections or nominations and appointment of Chiefs or Headmen should be in accordance with the existing custom prevailing in the Elaka concerned. — *Morningstar Khonthiem Vs. District Council, Khasi Hills*, (1983) 1 Gau. LIZ 1(3).

Under the provisions of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 as amended in 1969 and 1971, the power to change the manner of election of the Sirdars in question was vested only in the Chief or Khyrim and his Durbar, and not in the Executive Committee of the District Council. — *Morningstar Khonthiem Vs. District Council, Khasi Hills*, (1983) 1 Gait. LR1.

(iii) Syiemship — Prior to and After the Act:

Syiem means the customary head of the Khasi tribal institution of an administrative area of the United Khasi Jaintia Hills District known as the Khasi State prior to the commencement of the Constitution of

India, and includes a Sirdar, Lyngdoh or Wahadadar. — Vide/Para 1-A of the Khasi Syiemship (Administration of Justice) Order, 1950.

A person holding the office of Syiem of Myllem has to be a tribal belonging to the chief's families in ordinary circumstances.

After the commencement of the Constitution, the United Khasi & Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 was enacted under paragraph 3(1)(g) of the Sixth Schedule to the Constitution, by the United Khasi-Jaintia Hills Autonomous District Council. This Act has not completely destroyed the character of the pre-constitutional chieftainship or Syiemship, but regulates the rights, duties and interest of the Syiems, having regards to the prevailing customs. A Syiem of Myllem in his capacity as a customary head or chief holds an office but does not hold so under the State Government. There being no provision in the Act that the Syiemship or chieftainship is a body corporate, the Syiem of Myllem is to be regarded as a tribal. — *Ka Ivory Shabong Vs. Ka Kheri Synrem, (1990) 1 Gauhati Law Reports 340.*

Unless the result of the election is published and an election petition is filed before it, the Executive Committee has no jurisdiction whatsoever to interfere with the result of the election. The power of appointment of the Syiem has been kept with the District Council itself and the same cannot be exercised by the Executive Committee. — *U. Mesingh Syiem Vs. Secretary, Executive Committee of the District Council of the Autonomous District of Khasi and Jaintia Hills, AIR 1969 A.&N. 94: ILR (1968) 20 Assam 492.*

In view of the provisions laid down in the amended section 4 of the United Khasi & Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, the Executive Committee alone has the power to appoint a chief after he has been nominated by the Electoral College.

And after the appointment of the chief by the Executive Committee, following the election in accordance with the procedure laid down by the District Council, the Executive Committee possesses no power to deal with the matter itself any more, even though such appointment is subject to the approval of the District Council. The Executive Committee will have no more jurisdiction or power to deal with the matter except to place the same before the District Council for approval, and it would be for the District Council to consider and decide whether the appointment should meet with their approval or not. This being the legal position, it has been held that the Executive Committee, far less the Chief Executive Member individually, has no jurisdiction to revoke, stay or suspend the appointment of a chief following his election pending approval of the District Council. Such an appointment by the Executive Committee should be effective for all purposes of administration subject to the approval of the District Council. — *U.G. Koring Singh Lyngdoh Vs. Executive Committee, District Council, United Khasi-Jaintia Hills District, Shillong and others, ALR 1971 A.&N. 196: AIR 1971 A.&N.129 (FB).*

Once the Syiem is elected by the electoral college in consonance with the provision contained in Rule 3 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, the Executive Committee on whom vests the executive functions of the District Council, must publish the election result and place the same before the District Council for approval and appointment under the provisions of the Act, and the Executive Committee has no right to refuse to place the same before the District Council and order for fresh election.

On 6th April, 1962, a Parwana was issued by the Secretary, Executive Committee, District Council of United Khasi and Jaintia Hills to 46 electors asking them to nominate a Syiem in place of U. Jormanik within 20 days from the date of that Parwana. It was alleged that a Durbar was held on 19th April, 1962 and on 24th April, 1962, and in the Durbar some electors nominated U. Franciswell as Syiem of Myllem. All the electors did not attend the Durbar and those electors had also the right to nominate somebody else for the Syiemship within the time fixed. On 23rd April, 1962 i.e. before the time fixed for nomination expired, one U.K. Myntri filed a writ-petition challenging the Parwana and on 24th April, 1962 an interim stay order was issued by the High Court, which was subsequently vacated. However, the nomination of U. Franciswell was approved by the District Council on 14th May, 1963 giving rise to this writ-petition. On the question whether the nomination was

valid or not, it is held that the electors having been misled by the stay-order were deprived of their right to file nominations and the petitioner's right to be nominated had, therefore, been affected, and as such this writ-petition was maintainable. Further held that the impugned nomination was invalid. — *S. Sieni Vs. Rokendro, Executive Member, United Khasi and Jaintia Hills, AIR 1965 A.&N. 83.*

The writ-petitioner having secured the highest number of votes in the election of Syiem under sec. 3 of the Act, filed a writ-petition under Art. 226 on the allegation that the Executive Committee of the District Council failed to exercise or wrongly exercised the jurisdiction vested in them by refusing to place his election before the District Council for approval and appointment and by ordering fresh election. It was held that the petitioner definitely had the right to approach the High Court under Art. 226 of the Constitution. — *U. Mesingh Syiem Vs. Secretary, Executive Committee of the District Council of the Autonomous District of Khasi and Jaintia Hills AIR 1969 A.&N. 94 (97) : ILR (1968) 20 Assam 492.*

(iv) Boundary-disputes as to Elahas:

Since fixation or alteration of boundary of Syiemship will inevitably affect an Elaka and an Elaka is nothing but an administrative unit which may be constituted and declared by the Executive Committee when required under sec. 2(g) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, any dispute regarding the territorial boundary of two contiguous Syiemships is within the exclusive jurisdiction of the Executive Committee of the District Council under the Act. — *U. Lokendra Vs. U. Drizvell Myntri, ALR 1970 A.&N. 242; U. Mar Kharmudai Vs. U. Phlostin Kharbitli, (1999) 2 GLR 115 (119).*

(vi) Chiefs or Lyngdohs — Appointment under the Act:

The elected chief or Lyngdoh who has been duly appointed by the Executive Committee under sec. 4(1) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 is entitled to function under the Act and the Executive Committee has no more jurisdiction to deal with the matter of administration of the Lyngdohship except placing the *same for approval before the District Council and it will be for the District Council to consider and decide whether the appointment meets with their approval or not.* — *U.G. Koring Singh Lyngdoh Vs. Executive Committee, District Council, AIR 1971 A.&N. 129(FB): ALR (1971) Assam 196.*

The words "subject to the approval" in sec. 4(1) of the Act mean that the appointment is valid and effective until disapproved by the District Council. When the appointment is disapproved, the same will cease to have effect, but all actions done by the appointee prior to the disapproval will be valid in absence of any express provisions to the contrary. — *U.G. Koring Singh Lyngdoh Vs. Executive Committee, District Council, AIR 1971 A.&N. 129: ALR (1971) Assam 196.*

A plain reading of section 3 of the Act would make it clear that the nomination or election of a chief or Syiem can be done either in accordance with the existing custom or customary practice as maybe recognised by the Executive Committee to be prevailing in the Elaka concerned, or, in accordance with the *orders of the Executive Committee as may be issued from time to time, or, in accordance with the custom read with the order of the Executive Committee validly issued, in view of the words "and/or" used in section 3 of the Act.* — *U. Lebi Singh Basan Vs. Executive Committee of the Khasi Hills District Council, Shillong, (1989) 1 Gait. LR 59 (62-63).*

When, after hearing the parties concerned, the Executive Committee decided to accept the clan of Lyngdoh Peinland as one of the electors of Mawiang syiemship and issued the order and the notice to that effect, in view of the express provisions under sec. 3 it cannot be said that the impugned order and notice are unreasonable. — *U. Lebi Singh Basan Vs. Executive Committee of the Khasi Hills District Council, Shillong, (1989) 1 Gait. LR 59 (62-63).*

(vii) "Subject to the approval of the District Council" — Implication of:

The words 'subject to the approval' do not mean the same thing as "subject to the permission" or "with the approval". If an appointment is to be made with the approval, the appointment is neither valid nor effective in the absence of the approval. — *U.G. Koring Singh Lyngdoh Vs. Executive Committee, District Council, AIR 1971 A.&N. 129: ALR (1971) Assam 196.*

(viii) Myntri — Appointment under the Act :

The Syiem is an officer under the District Council and a 'Myntri' which is included in the term 'Headmen', is also an officer under the District Council to carry on the administration of the autonomous district. — *U. Prelyshon Lyngdoh Nonguni Vs. Executive Committee, District Council, United Khasi-Jaintia Hills, Shillong, AIR 1969 A.&N, 139: ILR (1969) 21 Assam 370.*

Under para 3(1)(g) of the Sixth Schedule to the Constitution, the District Council has the power to make laws with respect to the appointment or succession of chief or headmen, and this would naturally include the power to remove them, but it does not follow from this that the appointment or removal of chief is a legislative act, or that no appointment or removal could be made without there being first a law to that effect. In this view, prior to Act no. II of 1959 viz. the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959 which came into force in October, 1959, the District Council had jurisdiction to appoint a Myntri and to remove him. — *U. Prelyshon Lyngdoh Nongun Vs. Executive Connnittee, District Council, United Khasi-Jaintia Hills, Shillong, AIR 1969 A&N. 139(142, 143) : ILR (1969) 21 Assam 370.*

For the purposes of section 7 of the Act, there must be first an election of the Myntri, which shall be confirmed by the Syiem and his Durbar and the name of such Myntri shall forthwith be sent by the syiem to the Executive Committee. If any dispute arises regarding the matter of election of the Myntri, it has to be referred by the party or parties concerned to the Syiem and his Durbar for decision, and an appeal against such decision shall lie to the Executive Committee whose decision shall be final. — *U. Prelyshon Lyngdoh Nongnin Vs. Executive Committee, District Council, United Khasi-Jaintia Hills, Shillong, AIR 1969 A.&N. 139: ILR (1969) 21 Assam 370.*

Under the provisions of the Act as they stand, the manner of election of Sirdars i.e. whether by nomination or by election — can be changed only by the chief or Khyrim and his Durbar. Accordingly, the order passed by the Executive Committee of the District Council changing the manner of election of chiefs and Headmen are not legally valid and thus set aside. — *Morningstar Khonttient Vs. District Council, Khasi Hills & Ors., (1983) 1 Gait. LR 1.*

Ux) Reference — Scope of

Two things are essential before reference can be made by a person under sec. 5 to the Executive Committee — firstly, that the dispute must arise regarding any matter relating to or connected with the election of a chief, and secondly, that the person must -be a party concerned. — *S. Syiem Vs. Rokendro, AIR 1965 A.&N. 83.*

The word 'publication in sec.5 necessarily implies some act on the part of the authorities to give publicity to the result of election. The mere knowledge of the petitioner about the result cannot be regarded as 'publication by the authorities concerned. — *S. Syiem Vs. Rokendro, AIR 1965 A.&N. 83.*

The word 'party' has not been defined in the Act. It is, however, of wider import than the word 'candidate', and thus the meaning of the word 'party' cannot be limited so as to confine it to only a person who has been nominated. — *S. Syiem Vs. Rokendro, AIR 1965 A. &N.83.*

W Election Disputes under the Act & Scope of Art. 226.

Persons who come under the scope of section 5 of the Act have undoubtedly locus standi to apply under Art. 226. But there may be cases where persons who are not parties concerned within the meaning of the words in section 5 of the Act may have a right to apply under Art. 226. Held that in the facts and circumstances of the case, the petitioner was a party concerned within the meaning of sec. 5 of the Act. — *S. Syiem Vs. Rokendro, AIR 1965 A.&N. 83.*

The fact remained that the office of Myntri fell vacant and, therefore, the Executive Committee in which the executive functions of the District Council vested, had jurisdiction to direct a fresh election and for this purpose, no appeal is held required to be preferred as contemplated in sec. 7 of the Act. — *U. Prelyshom Lyngdoh Nongum Vs. Executive Connnittee, District Council, United Khasi-laintia Hills, Shillong, & ors. AIR 1969 A.&N. 139 (143-144) : ILR (1969) 21 Assam 370.*

Election proceeding before an Appeal Tribunal constituted under sec. 5 of the Act cannot be interfered with under Art. 226. — *Franciszvell Syiem Vs. The Judge, District Council Court, Shillong, ALR 1970 A.&N. 256: AIR 1971 A.&N. 90.*

While hearing the appeal under sec. 5 of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, the appellate tribunal presided over by one of the judges of the District Council Court formulated its procedure in accordance with the principles of natural justice in absence of any procedure laid down in the Act. It was held that the High Court should not interfere under Art. 226 with the appeal-proceedings on an objection to the procedure adopted by the Tribunal in the midst of the proceeding. — [U.] *Franciszvell Syieni Vs. The Judge, District Council Court, Shillong, AIR 1971 A.&N. 90 : ALR 1970 A.&N. 256.*

When it has been specifically provided that an appeal under section 5(1) of the Act from a decision of the Executive Committee would lie before a Tribunal constituted for the purpose by the District Council, the Chief Executive Member was held not competent to entertain and dismiss the appeal on the ground of limitation. — *Englo Singh Syieni Vs. The Executive Committee, District Council Shillong, 1974 ALR 182 (184).*

Dismissal of the election petition challenging the election of Syiem on the ground of absence of the election-petitioner was held to be violative of the principles of natural justice. — *U. Kristo Syiemlieh Vs. U. Treivell Syiemiong & Ors. (1984) 1 Gait. LR (NOC) 18:1984 Gait. HC 22 (NAD).*

The decision taken by the Executive Committee to order for a referendum is not of such nature as may merit the High Court's interference under Art. 226 of the Constitution. — *U. Bestreal Dhonal Natep Vs. The Khasi Hills District Council, Shillong, (1989) 2 Gait. LR 455 (457).*

(xi) *Executive Committee & Power to hear Appeals under the Act :*

When the Act has conferred a power to a particular specified authority to hear appeals, it is for that authority to exercise that power. In the absence of any other valid law, this power of hearing the appeal assigned to the Executive Committee under the Act cannot be exercised by the Chief Executive Member alone. — *U.F. Lyngdoh Vs. J. Swer, C.E.M., District Council, U.K. & J. Hills, ALR 1972 A.&N. 29.*

The power of hearing appeals under section 7 and 8 of the Act having been specifically conferred by the legislature on the Executive Committee not being an executive function as envisaged under Rule 28(1) or 31(1) of the Assam Autonomous District (Constitution of District Councils) Rules, 1951, it will not be permissible in the absence of any valid provision of law to delegate this authority to the Chief Executive Member or to any other Member of the Executive Committee. — *U.F. Lyngdoh Vs. J. Swer, C.E.M., District Council, U.K. & J. Hills, ALR 1972 A. &N. 29.*

Unless the court is satisfied that the Executive Committee exceeded its limits or powers, or committed any irregularity in arriving at a decision in the matter, it would not be justified in interfering with the same in a writ-petition under Art. 226 of the Constitution. — *U. W. Roy Thangkiew Vs. District Council, United Khasi-Jaintia Hills, Shillong, AIR 1963 Assam 186.*

Held that the election-tribunal committed manifest error of law in holding that the nomination of the petitioner was void for the reason that the electoral college consisted of only three members and did not consist of all the five members at the relevant time. And a writ-petition in such case may well lie. — *U. Lanibard Manick Vs. C. Kharshing, (1989) 1 Gait. LR 108 (112): (1989) 1 Gait. LJ 77*

(xii) *Whether a chief or Syiem holds an office :*

A chief holds a position to which certain duties of public character are attached i.e. a chief is to perform certain duties and discharge certain obligations of a public character. Therefore, it is held that the person who is appointed as the chief holds an office but the chief does not hold under the State Government. — *Ka Ivory Shabong Vs. Ka Kheri Synrem & Another, (1989) 2 Gait. LJ 276 : (1990)*

1 Gait. LR 340.

By virtue of the appointment made under the Act, the Syiem does not lose his character of a tribal. — *Ka Ivory Shabong Vs. Ka Kheri Synrem & Ann*, (1989) 2 Gait. LJ 276: (1990) 1 Gait. LR 340.

In the context of the present case, the Syiem of Myllem has to be regarded as tribal. — *Ka Ivory Shabong Vs. Ka Kheri Synrem & Ann*, (1989) 2 Gait. LJ 276: (1990) 1 Gait. L.R. 340.
