



**Serial No. 01**  
**Daily List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WA No. 36 of 2023

Date of order: 15.10.2025

1. State of Meghalaya represented by the Secretary to the government of Meghalaya, District Council Affairs Department.
2. The Deputy Commissioner, East Khasi Hills District, Meghalaya.
3. The Sub-divisional Officer Sohra (C) Sub Division, Sohra, East Khasi Hills District, Meghalaya.

**...Appellants**

**- versus -**

1. Hima Mawlong Sirdarship, Sohra Civil Sub-Division, East Khasi Hills District, Meghalaya.
2. Shri Stephanson Laloo, son of K. Kharbamon, resident of Nongduh Village, Sirdar of Hima Mawlong Sirdarship, Sohra, Civil Sub-Division, East Khasi Hills District.

**...Respondents.**

**Coram:**

**Hon'ble Mr. Justice Soumen Sen, Chief Justice**  
**Hon'ble Mr. Justice B. Bhattacharjee, Judge**

**Appearance:**

- For the Appellants : Mr A. Kumar, AG with  
Mr S. Sengupta, Addl Sr GA  
Mr A.H. Kharwanlang, Addl Sr GA  
Mrs S. Laloo, GA
- For the Respondents : Mr H.L. Shangreiso, Sr Adv. with  
Mr T. Dkhar, Adv.

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| i)  | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press:           | Yes/No |



**JUDGMENT: (per the Hon’ble, the Chief Justice) (Oral)**

We have heard the learned counsel for the parties extensively.

2. The genesis of the writ petition is an order passed by the Deputy Commissioner, East Khasi Hills District, Shillong on 28.06.2016 whereby a direction was given to the Sub-Divisional Officer to depute a Magistrate for dismantling the toll gate at Itchamati, East Khasi Hills run by the writ petitioner by collecting toll fees at the rate of ₹200/- per truck of coal/limestone/boulder. The said impugned order was issued based on a judgment passed in WP(C) No. 18 of 2016 on 03.05.2016. We have meticulously read the order dated 03.05.2016 which formed the basis of the impugned order dated 28.06.2016. The judgment referred to by the authority concerned is in the matter of *Sdangyoo L. Dkhar v. State of Meghalaya*<sup>1</sup>.

3. In the said writ petition, it was alleged by the writ petitioner that he was appointed as an agent by the Khasi Hills Autonomous District Council (‘the KHADC’ or the ‘Council’ hereafter) for setting up and operating the so called “KHADC’s Mineral Transport Challan Check Point/Royalty Check”.

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<sup>1</sup> 2016 SCC OnLine Megh 78: AIR 2017 Megh 4



4. The case of the petitioner in WP (C) No.18 of 2016 appears to be that he applied under the notification dated 10.12.2015 issued by the KHADC and upon he being found suitable he was appointed as an agent for checking the mineral transport challan/royalty challan from all minerals laden vehicle originating from Council's territory for a period of three years by the order dated 15.01.2016, as issued by the Secretary to the Executive Committee of the KHADC and subsequently a public notice was also issued by the Secretary for information of all the concerned. However, despite his appointment and given a right to set up check posts, the Deputy Commissioner, West Khasi Hills District, Nongstoin has interfered with his work and this interference has caused immense prejudice to the right of the writ petitioner therein to discharge his duties as an agent of KHADC that was approved by the Secretary. The writ petitioner has also averred that he was not collecting the royalty but merely verifying the royalty challans from the coal laden trucks within the territory of the KHADC and when the royalty challan is found correct/genuine, he would simply put counter stamp/seal of the KHADC showing that the coal laden truck concerned has duly paid the royalty to the respondent State.



5. The contesting respondents in the affidavit-in-opposition essentially has questioned the authority of KHADC to appoint and install any such agent like the writ petitioner. According to the contesting respondents, the order issued by the Secretary to the Executive Committee of the KHADC dated 15.01.2016 appointing the writ petitioner as the Council's agent for checking of mineral transport challan/royalty challan from all mineral laden vehicle originating from Council's territory and allowing him to collect the verification fee which is confiscatory in nature was not sanctioned by the provision of the sixth Schedule to the Constitution of India.

6. After considering the relevant provisions as well as the notification, the learned single judge was of the opinion that the District Council like the KHADC has to act within the parameters of the principles forming the basic structure of the Constitution including the fundamental rights in Part-III of the Constitution and in respect of prospecting and mining operation and the matters related thereto are to be governed by the law applicable for the purpose including the Mines and Minerals (Development and Regulation) Act, 1957. It was held that it is difficult to find a direct right with the Council to grant any licence or lease or to prohibit the movement of excavated minerals. Moreover, it



remains trite that any exaction of money in terms of tax or fees could only be under the specific authority of law. It was on the basis of such finding, the writ petition was dismissed. In an appeal preferred by *Sdangyoo L. Dkhar*, an agent appointed for checking of royalty challans under the KHADC, Shillong, the Hon'ble Division Bench affirmed the judgment of the learned single judge. The said judgment was reported in *2016 SCC OnLine Megh 78: AIR 2017 Megh 4*. It appears from the judgment of the Division Bench that the arguments of the appellant that KHADC can appoint the writ petitioner as an agent in terms of Rule 12 of the Assam (and Meghalaya) Autonomous Districts (Constitution of District Councils) Rules, 1951 was not accepted as Rule 12 would clearly show that the Executive Committee of the KHADC can appoint officers and staff for the purpose of regulation and the said rule does not provide for appointment of an agent and that too to recover the verification fees.

7. It would thus appear from the judgments of the learned single judge as well as the Division Bench that the writ petition was dismissed on the ground that KHADC could not appoint an agent to set up a parallel check post over the minerals carrying vehicles and charge verification fees.



8. However, the present writ petition is on a different footing as the writ petitioners have alleged that customary right of the writ petitioner No.2 to collect toll fees has been infringed by the said impugned order. In the instant case the writ petitioner No. 1 claims to be the institution of Hima Mawlong Sirdarship consisting of seven villages and recognised as independent Khasi State prior to the enforcement of the Constitution of India and the writ petitioner No. 2 is the duly elected Sirdar/Chief of the said Hima Mawlong Sirdarship under the provisions of “United Khasi Jaintia Hills Autonomous District (Administration and Election of Sirdar of Mawlong) Act, 1960 [in short “the Act, 1960)”. It is alleged in the writ petition that the administration of the traditional institution of Hima Mawlong Sirdarship has been run and managed by the elected chief and his Durbar with the assistance of the myntris/elders as well as the headman of seven villages exercising both executive, legislative and judicial functions as per the decade old customary practices and social usages bequeathed by the ancestor. After the independence of India, the status of the Hima Mawlong Sirdarship as well as the customary practices and social usages are well recognised and safeguarded under the Sixth Schedule to the Constitution of India.



9. The writ petitioner has referred to an order passed by the Gauhati High Court in WP(C) SH No. 18 of 2013 to contend that in terms of the order passed therein on 19.02.2013, the law enforcing agency was restrained from interfering with the right of the writ petitioner from collecting the customary toll as per the age-old custom and tradition. Moreover, the amount collected is purely for running the administration of the institution discharging both executive and judicial function as per the customary practices and enactment made by the Khasi Hills Autonomous District.

10. It is clearly discernible from the averments made in the present writ petition that the basis of the writ petition is for enforcement of the customary rights which the writ petitioners claim to have been enjoying for decades and protected under the Constitution of India.

11. We have carefully read the writ petition. In the writ petition, the writ petitioner is seeking for recognition and enforcement of the customary rights which according to the writ petitioner would include the writ petitioner No.2 to establish check post and collect toll. The writ petitioner claim to have been enjoying such right for decades and the right to carry on such customary right is protected under the Constitution of India. The subject-matter of challenge in *Sdangyoo L. Dkhar* (supra) is



different from the issue raised in the writ petition. The judgment of *Sdangyoo L. Dkhar* could not have been relied upon and referred to by the authority concerned in directing the appointment of the Magistrate for the purpose of regulating vehicular movement carrying minerals and also for dismantling of the toll plaza. The issue of customary rights to set up check post and collect toll fees was not the issue in *Sdangyoo L. Dkhar* (supra). An attempt was made by the appellants before the learned single judge to supply grounds not mentioned in the impugned order in justification of the action taken by the appellants against the writ petitioner. It is trite law as clearly enunciated in *Mohinder Singh Gill & anr v. The Chief Election Commissioner, New Delhi & ors*<sup>2</sup> that the validity of an impugned order has to be judged on the basis of the reasons mentioned in the said order and it cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. The said view was reiterated in *State of Punjab v. Bandeep Singh & ors*<sup>3</sup> that forming the law laid down in *Mohinder Singh Gill* at paragraph 4 it was held “*There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it*

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<sup>2</sup> (1978) 1 SCC 405

<sup>3</sup> (2016) 1 SCC 724



*should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action...*” In view thereof, we are of the view that the said impugned order issued by the authority based on the said judgment as the basis for denying the right of the writ petitioners to set up check posts and collect tolls on the basis of customary rights claimed to have been enjoying for decades was clearly erroneous.

12. India was described by the great Indologist Vincent Arthur Smith as an “ethnological museum” having regard to existence of diverse cultures and languages and existence of tribes having their cultural identity and aspirations. It was indeed a difficult task for the Constituent Assembly to frame a balanced constitution which were to acknowledge and recognise the aspirations and wishes of the people of India in which the tribes play an important role.

13. The Constituent Assembly was aware of the special status to tribals of the North-Eastern States as would be evident from the Constituent Assembly debates. The Sixth Schedule to the Constitution of India was included upon consideration of the report of the Advisory Committee assisted by the sub-committee in providing a proper



constitutional set up for the tribes of the Northeast. It seems that adequate measure of self-government for the tribals to make them feel that the new emerging nation is not going to interfere with their cultural, ethos and traditions as empathically put forward by Nichols Roy one of the members of the sub-committee constituted for this purpose was debated and considered while finalizing the draft Constitution.

14. The Sixth Schedule after much debate by the Constituent Assembly was adopted in 1950 as would be evident from Articles 244(2) and 275(1) of the Constitution of India. Article 244A was inserted by the Constitution (22<sup>nd</sup> amendment) Act, 1969 which empowers the Parliament to form an autonomous State within the State of Assam comprising of all or any other tribal areas of Assam under the Sixth Schedule and create a body to function as a legislature for the autonomous State or Council of Ministers or both. The State of Meghalaya was constituted as an autonomous State by the Assam Reorganisation (Meghalaya) Act, 1969 enacted in exercise of powers under the said Article. Subsequently, the State of Meghalaya was elevated to the status of a full-fledged State by the North-Eastern Areas (Reorganisation) Act, 1971. The Sixth Schedule of the Constitution deals with the provisions as to the administration of tribal areas in the State of Assam, Meghalaya,



Tripura and Mizoram has undergone amendment on ten occasions. The tribal areas under the Sixth Schedule as in 1960 consists of United Khasi and Jaintia Hills District (Part A Entry I) and Garo Hills District (Part A Entry II). In 1969, the State of Meghalaya was constituted as an autonomous State within the State of Assam comprising the United Khasi-Jaintia Hills District and the Garo Hills District by the Assam Reorganisation (Meghalaya) Act, 1969. The tribal areas under the Sixth Schedule as on 2022 consists of Khasi Hills District, Jaintia Hills District and Garo Hills District under Part II of paragraph 20 of the Sixth Schedule.

15. The claim of the writ petitioners is based on customary rights. The setting up of check posts and collection of tolls according to the writ petitioners have been in existence for a considerable period of time and prior to coming into force of the Constitution of India and by virtue of Article 13(2), this customary right is preserved. The meaning of the word custom appearing in Section 3 was considered by a Division Bench of the Gauhati High Court in *Ewanlangki-E Rymbai v. Jaintia Hills District*



*Council*<sup>4</sup> of the Act. The Division Bench speaking through *Naolakar, CJ.*, (as his Lordship then was) held thus under:

“A custom is a particular rule that has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. A custom to be valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin; and fourthly, it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.”

16. However, at this stage it is neither necessary nor desirable for us to go into such questions as we are of the opinion that the impugned order is not sustainable as it was on a complete misreading of the judgment in *Sdangyoo L. Dkhar* (supra).

17. The said judgment has to be read contextually. Accordingly, the order of the learned single judge does not call for any interference. However, we feel that it was not necessary for us in deciding the matter as to whether the writ petitioners were able to establish a customary right for setting up check posts and collecting tolls. In deciding the writ petition in our view, it was not necessary to go into the question as to whether the petitioner has any customary right to set up check post and collect toll.

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<sup>4</sup> 2003 (3) GLT 66



18. In disposing of the appeal, we make it clear that we affirm the order of the learned single judge on the limited issue that the basis of the impugned order is erroneous and any observation as regards customary right made by the learned single judge in favour of the writ petitioners in setting aside the impugned order shall not operate as res judicata in any future proceedings between the parties and the said questions are left open and may be decided if the practice being followed in this regard by the writ petitioners is sought to be disturbed or interfered with by the appellants. Prima facie they have been enjoying such rights at the time when the impugned order was issued. In the event the appellants decide to interfere with the rights of the writ petitioners in establishing check posts and collecting fees, reasons should be disclosed and sufficient opportunity of hearing should be given to the writ petitioners before taking any punitive measures.

19. The appeal is disposed of with the aforesaid observations.

**(B. Bhattacharjee)**  
**Judge**

**(Soumen Sen)**  
**Chief Justice**