



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 279 of 2023

Date of Decision: 05.12.2023

Shri. Nongtei Singh Syiemiong Vs. Khasi Hills Autonomous District
Council & 5 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Nongbri, Adv.
Mr. A.R. Passah, Adv.

For the Respondent(s) : Mr. T.T. Dienghdoh, Sr. Adv. with
Mr. C.C.T. Sangma, Adv. (For R 1-4)
Mr. H.L. Shangreiso, Sr. Adv. with
Ms. P. Biswakarma, Adv. (For R 5)
Ms. N.G. Shylla, Adv. with
Ms. B. Tariang, Adv. (For R 6)

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

J U D G M E N T

1. The petitioner is said to be the Syiem of Langrin Syiemship appointed thereto under the provisions of the Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Headmen of Langrin Syiemship) Act, 2007.



2. Pursuant to a complaint dated 05.07.2023, lodged by the respondent No. 6, which compliant inter alia refers to misutilization of funds of the Syiemship, the respondent No. 4/Joint Secretary to the Executive Committee, Khasi Hills Autonomous District Council (KHADC) had issued an Order No.DC/XXVII/Genl/124/2023/2 dated 18.07.2023, directing the petitioner to obtain prior approval from the Executive Committee, KHADC before utilization or withdrawal of funds by the petitioner/Syiem and the Durbar Hima above the amount of ₹ 25,000/- (Rupees twenty five thousand) only.

3. The petitioner was also in receipt of a communication No. DC/XXVII/Genl/125/2023/5/439 dated 26.07.2023 calling upon him to furnish a point-by-point clarification on the allegations contained in the said complaint dated 05.07.2023. The show cause reply was to reach the respondent No. 4 within 7 days from the date of receipt of the said Order. The petitioner vide communication dated 31.07.2023 had accordingly filed his reply to the said letter dated 26.07.2023 by filing his statement of account and on 02.08.2023, the show cause to the complaint was filed.

4. On 18.08.2023, vide Notification No. DC/XXVII/Genl/124/2023/12 the respondent No. 4 has issued a Notification whereby it was indicated that on suspension of the petitioner as the Syiem of Langrin by the authority of the Executive Committee, KHADC, the respondent No. 5 has been temporarily appointed as the Acting Syiem of Langrin Syiemship.

5. The petitioner has then filed an additional affidavit on 12.09.2023 to bring on record the actual Order of suspension dated



18.08.2023 wherein it was stated that on receipt of the complaint against him, the petitioner was accordingly placed under suspension pending enquiry and during the pendency of such enquiry, an Acting Syiem is required to be appointed, hence the appointment of respondent No. 5 as the Acting Syiem.

6. Further, the petitioner has also produced copy of communication No. DC/XXVII/Genl/124/2023/14 dated 21.08.2023 whereby the respondent No. 4 has informed Smti Eblincy Lyngdoh Mawnai, Magistrate First Class, KHADC, South West District, Mawkyrwat who was appointed as Inquiry Officer, to look into the allegations/complaint against the petitioner.

7. It is the case of the petitioner that the Order dated 18.07.2023(supra) and Notification dated 18.08.2023(supra) as well as with the Suspension Order dated 18.08.2023 have been passed illegally, arbitrarily and discriminatorily offending the principle of natural justice to the detriment of the petitioner and also the same being issued in violation of the relevant statutes and rules, the petitioner has now approached this Court with this application under Article 226 of the Constitution of India with a prayer to set aside the said impugned Order and Notification respectively and to direct that the petitioner continue in the said post as Syiem of Langrin Syiemship.

8. Heard Mr. P. Nongbri, learned counsel for the petitioner who has submitted that at the outset, it may be pointed out that the petitioner received the Notification dated 18.08.2023 notifying his suspension as the Syiem of Langrin and in the self-same Notification, the appointment of the respondent No. 5 as the Acting Syiem in his place was also



indicated therein. However, nothing in the said Notification is said about the petitioner being suspended pending inquiry and more specifically, no order of his suspension was ever issued upon him at the relevant time.

9. This being the case, the petitioner was never afforded any opportunity of being heard in the matter and therefore, the provision of the second proviso of Section 7 of The Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Headmen of Langrin Syiemship) Act, 2007 has been violated, the principle of natural justice not being followed.

10. The learned counsel has also submitted that there has also been a violation of the provision of Rule 10(2) of the Administration of Langrin Syiemship Rules, 2010 as well as the proviso to Rule 3(2) of The Administration of Langrin Syiemship (First Amendment) Rules, 2015 which provides that any complaint against the Syiem needs to be placed before the Durbar Hima before any action is taken against such Syiem. The respondents 1-4/Khasi Hills Autonomous District Council (KHADC) has instead taken cognizance of the complaint and has directed the petitioner to file his show cause. Upon filing of the show cause, he was accordingly suspended.

11. Yet another infringement of the relevant provisions of the Act and the Rules committed by the respondent/KHADC is the fact that when Section 9(1) of the Langrin Syiemship Act, 2007(supra) mandates that *“If at any time the office of a Syiem becomes vacant as a result of death, resignation, retirement due to old age, removal or suspension, the Executive Committee may by order in writing appoint any adult male belonging to the Syiemiong clan of Langrin Syiemship duly*



recommended by the Syiem clan through the Syiem Seng to function as an Acting Syiem who shall exercise all the powers and functions of the Syiem” and Section 9(2) which provides that “*No Acting Syiem shall be appointed without the recommendation of the Syiem clan through the Syiem Seng*”, the ‘Syiem clan’ as per Rule 2(23) of the 2010 Rules(supra) constitutes of those who are descendants from the womb of Ka Roin Syiemiong, Ka Labon Syiemiong, Ka Siang Syiemiong and Ka Shuna Syiemiong and the Syiemlieh clan, the recommendation issued by those from the womb of Phorphan Syiemiong in favour of the respondent No. 5 to be appointed as the Acting Syiem, such clan not being part of those eligible to be appointed to the office of the Syiem of Langrin, therefore the appointment of the respondent No. 5 is illegal and was done arbitrarily, submits the learned counsel.

12. According to the learned counsel, there was also non-compliance of the provision of Section 9(4) of the Langrin Syiemship Act, 2007 which speaks of proper handing over of charge when there is a change of the incumbent to the office of the Syiem of Langrin. In this case, the respondent No. 5 has asserted that he had assumed charge as the Acting Syiem of Langrin on 21.08.2023, but in effect, the petitioner has not yet handed over charge to him and nothing was placed before this Court to prove that the respondent No. 5 has assumed charge. The contention of the respondent No. 5 is, therefore, baseless and unfounded, submits the learned counsel.

13. The learned counsel has laid stress on the fact that the various statutory provisions of the relevant Act and Rules being given a go by, by the respondent/KHADC, the petitioner’s legal rights have been



violated and therefore, the whole process emanating from the impugned Notification and Order are liable to be set aside and quashed. In this regard, the case of Nassar Syiem Jahnoh v. Khasi Hills Autonomous District Council, Shillong & Ors, (2016) 1 NEJ 608 (Meg.) para 12 was referred to in support of this contention.

14. It is also the petitioner's case that in the year 2010, the 2010 Rules(supra) were framed by the Executive Durbar of Langrin Syiemship and the same was duly approved by the Executive Committee of the KHADC leading to its publication in the Official Gazette. In the year 2015, the said 2010 Rules were amended and the same was also approved and duly published in the Official Gazette.

15. In the year 2019, when the petitioner was suspended as the Syiem of Langrin Syiemship, one Shri. Baldwister Syiemiong was appointed as the Acting Syiem. It was during his tenure that the 2019 Rules were brought about to virtually revised the 2010 and 2015 Rules respectively. The 2019 Rules were however, not made public nor was it published in the Official Gazette.

16. On his being reinstated, the petitioner's Executive Durbar vide letter dated 07.12.2021 conveyed to the District Council the rejection of any changes made by virtue of the 2019 Rules. It is, however, asserted that till date, copy of the said 2019 Rules has not been furnished to the petitioner even while he was the Syiem of Langrin. It was only in this writ proceeding that the same was brought to light by the respondent No. 6 in their affidavit-in-opposition.

17. It is also the submission of the learned counsel that vide the



said 2019 Rules, the provision of Rule 3(2) of the 2015 Rules was amended, though the respondents have contended that since such amendment was made only by the Executive Durbar of the Syiemship, therefore it is not required that the same be published in the Official Gazette, this argument cannot be accepted since it is mandatory that any amendment made in the Act or Rules must be notified in the Official Gazette. Paragraph 11 of the Sixth Schedule to the Constitution clearly provides that all laws, rules and regulation made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law. In fact, all the rules of every Syiemship and Sirdarship are published in the Official Gazette, further submits the learned counsel. The case of Harla v. State of Rajasthan, reported in 1951 AIR 467 wherein the Hon'ble Supreme Court has held that “...*Natural justice requires that before a law become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way. Promulgation or publication of some*



reasonable sort is essential.” and the case of B.K. Srinivasan & Ors v. State of Karnataka (1987) 1 SCC 658, para 15 have also been referred to by the learned counsel in this context.

18. In view of the above, the learned counsel has submitted that the impugned Order dated 18.07.2023, Notification dated 18.08.2023 and Suspension Order dated 18.08.2023 be set aside and quashed and the petitioner be allowed to continue to function as the Syiem of Langrin Syiemship.

19. Mr. T.T. Diengdoh, learned Sr. counsel appearing for the respondents 1-4/KHADC while refuting the submission and contention of the petitioner has submitted that the complaint against the petitioner received by the KHADC contained allegations of financial irregularities within Langrin Syiemship to the tune of almost ₹ 15,00,00,00/- (Rupees Fifteen Crore) only and how the said money was spent by the petitioner inappropriately, mostly by way of donations to various churches within and even outside of Langrin Syiemship territory. This prompted the Executive Committee of KHADC to issue an Order dated 18.07.2023 (impugned herein) calling upon the petitioner to seek prior approval of the Executive Committee before any amount above ₹ 25,000/- (Rupees Twenty-Five Thousand) only is spent or withdrawn.

20. It is also submitted that the reliance of the petitioner on the provision of Section 7, particularly the first proviso which stipulates that any complaint against the Syiem should first be brought to the knowledge of the Durbar Hima is misplaced inasmuch as the said proviso was deleted from the statutes vide an amendment made to the Act of 2007 in the year 2010.



21. It is further submitted that the second proviso of Section 7 of the 2007 Act (as amended) provides that the Syiem shall not be removed from service or punished with suspension unless he is given an opportunity of being heard. However, clause (ii) of this proviso has carved out an exception to this when it says that the said proviso shall not apply in case of an order of suspension pending inquiry, which is what was done in the case of the petitioner herein.

22. To strengthen this contention, the learned Sr. counsel has referred to the case of Khasi Hills Autonomous District Council v. Charlestone Sohtun & Ors wherein in Civil Appeal No. 4882/2002 vide order dated 09.08.2002, the Hon'ble Supreme Court while taking up the case involving suspension pending inquiry of the then Syiem of Myllem under the relevant provisions of sub-clause (ii) of the third proviso to Section 6(1) of the United Khasi-Jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, which provision is similar to that of the second proviso to Section 7 of the 2007 Act (supra) has, upon hearing the parties, allowed the appeal against the High Court's order which has decided that the concerned Syiem has been placed under suspension without reasonable opportunity of being heard the same being statutorily mandatory. The Supreme Court has in effect, held that no hearing is necessary in a case of suspension pending inquiry.

23. The learned Sr. counsel has again countered the reliance of the petitioner on the provision of Section 11 of the 2007 Act wherein it was provided that the Executive Durbar shall have the power to make rules for the day-to-day administration of the Syiemship which rules shall be



submitted to the Executive Committee for approval. These rules are framed by the Executive Durbar, not the Durbar Hima or the Executive Committee and as such, placed in juxtaposition with the provision of Paragraph 11 of the Sixth Schedule to the Constitution, which provides for notification of all laws, rules and regulations made by the District Council to be published in the Official Gazette of the State, can be distinguished in that, the rules made by the Executive Durbar, even though approved by the Executive Committee are not required to be published in the Official Gazette. That some rules made by the Executive Durbar of some Syiemships, as have been pointed out by the petitioner, have been published in the Official Gazette, it will however not make it mandatory that all such rules made by the Executive Durbar be published in the Official Gazette, submits the learned Sr. counsel.

24. The learned Sr. counsel has yet again submitted that the petitioner while relying on the first proviso to Section 7 of the 2007 Act, wherein it is provided that any complaint against the Syiem should first be brought before the Durbar Hima and by extension, on the provision of the revised rules of 2015 wherein there is also a similar rule to that effect, that is Rule 3(2), proviso of which says that complaint against the Syiem be brought before the Durbar Hima, has failed to notice that the said proviso to Section 7 has since been deleted by the amended Act of 2010. What is not present in the Act was sought to be introduced in the rules, which is against the basic norms of interpretation that holds that the rules cannot override the Act. On the other hand, the Executive Committee, KHADC exercising its power under Section 11 of the 2007 Act, has also approved the 'Administration of Langrin Syiemship (Revised) Rules, 2019' on 01.02.2019 by which rules, the proviso to



Rule 3(2) found in the revised Rules of 2015 was deleted. The case of T. Cajee v U Jormanik Siem & Anr., AIR 1961 SC 276, para 12 was cited in support of this contention, wherein the Hon'ble Supreme Court has held that the Executive Committee under relevant rules 28, 29 and 30 of the Assam Autonomous District (Constitution of District Councils) Rules, 1951 has been empowered to act on the direction of the District Council, except in some important issues. However, in case of emergency Rule 30(a) gives power to the Executive Committee to act accordingly.

25. Mr. H.L. Shangreiso, learned Sr. Counsel appearing for the respondent No. 5 has, at the outset endorsed the submission of the learned Sr. counsel for the respondent/KHADC and has also submitted that the appointment of the respondent No. 5 as the Acting Syiem under the circumstances is justified.

26. Referring to the principal Act of 2007, [The Khasi Hills Autonomous District (Nomination and Election of the Syiem, Deputy Syiem and Headmen of Langrin Syiemship) Act, 2007] the learned Sr. counsel has admitted that the first proviso to Section 7 stipulates that any complaint against the Syiem should first be brought to the knowledge of the Durbar Hima. However, by the Second Amendment Act of 2010, the first part of the proviso to Section 7 stands deleted.

27. To give effect to the provision of the 2007 Act, taking recourse to Section 11 of the same, the Executive Durbar of the Syiemship has framed Rules known as The Administration of Langrin Syiemship Rules, 2010. Rule 3(2) of the same has ten sub-rules. The Executive Durbar by way of the Administration of Langrin Syiemship (First Amendment)



Rules, 2015 has amended Rule 3(2) of the 2010 Rules to insert a new sub-Rule, that is, Rule 3(2)(xi), proviso of the same which provides that any complaint against the Syiem or Acting Syiem before any action is taken should first be brought before the Durbar Hima. Again, the said Rules was revised by way of the Administration of Langrin Syiemship (Revised) Rules, 2019 which Rules were approved by the Executive Committee of the KHADC on 01.02.2019 and by which Rules, Sub-Rule 3(xi) found in the 2015 Rules was deleted. The position as it now stands is that any complaint against the Syiem or the Acting Syiem is not required to be first placed before the Durbar Hima, submits the learned Sr. counsel.

28. On the challenge to the eligibility of the respondent No. 5 to be appointed as the Acting Syiem on the ground that he is not a member of the Syiem clan who are eligible to be appointed as Syiem of Langrin Syiemship, as was contended by the learned counsel for the petitioner who has referred to Section 2 clause (n) of the principal Act of 2007 wherein it was stipulated that the Syiem Clan means the Syiemiong clan of Langrin Syiemship who are the descendants from the womb of Ka Roin Syiemiong, Ka Siang Syiemiong and Ka Labon Syiemiong and who has also pointed out that the respondent No. 5 is not a descendant from any of the abovementioned womb, the learned Sr. counsel has submitted that in the Amended Act of 2008 the entire clause (n) of Section 2 of the principal Act has been deleted and was substituted by a new clause wherein the genealogical table of the Syiemiong clan and the Syiem clan of Langrin Syiemship is shown in Appendix-II and Appendix-III respectively. On looking at the genealogical table at Appendix-II, it is seen that the name Ka Iaw Phorphan also figures as



one of whom whose descendant are eligible to be appointed as the Syiem of Langrin Syiemship. The respondent No. 5 being a descendant of Ka Iaw Phorphan is therefore eligible to become either the Syiem or the Acting Syiem as the case may be.

29. The learned Sr. counsel has also contended that the objection to the recommendation of the respondent No. 5 to be appointed as the Acting Syiem cannot be sustained since in compliance with the provision of Section 9(2) of the Act, which provides that recommendation of the Syiem Clan through the Syiem Seng has to be resorted to if an eligible candidate is to be appointed as the Acting Syiem, nothing is said in the statute that such recommendation is to be made prior to or after the death, resignation, retirement, removal or suspension of the incumbent. The recommendation made in this regard is, therefore, valid submits the learned Sr. counsel.

30. On the issue of taking over of the Office of the Syiem of Langrin by the respondent No. 5, the learned Sr. counsel has submitted that Section 9(4) of the Act stipulates that when there is a change of incumbent, there shall be a proper handing and taking over charge of the office properties. Since the petitioner was suspended with immediate effect on 18.08.2023, the respondent No. 5 has assumed charge on 19.08.2023 itself and on request made to the petitioner to hand over the records, he refused to do so. This does not mean that assumption of charge or taking over of charge was not complied with by the respondent No. 5, further submits the learned Sr. counsel.

31. Another contention raised by the learned Sr. counsel is that the rules framed by the Executive Durbar and approved by the Executive



Committee are not rules as contemplated under the statutes. Reference is made to the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules 1951, Rule 72 under chapter VI, wherein it is stipulated that the rule making power is vested upon the District Council itself and not on the Executive Committee of such Council. Therefore, any rule approved by the Executive Committee do not have statutory authority and at best could be termed as executive instructions. In fact, only rules approved by the Governor are required to be published in the Official Gazette. The case of T. Cajee(supra) relied upon by the respondent/KHADC was also cited by the learned Sr. counsel in the same context. It is further submitted that the 2010, 2015 and 2019 Rules (supra) are not statutory rules and more so if provisions of such rules run contrary to the provisions of the related statute, the statute shall prevail over such rules.

32. In support of his submission the learned Sr. counsel has cited the following authorities:

- i. V.P. Gidroniya v. The State of Madhya Pradesh & Anr., 1970 (1) SCC 362, paras 7 and 8;
- ii. State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SCC 126, paras 13 and 14;
- iii. K.A. Nagamani v. Indian Airlines & Ors., (2009) 5 SCC 515, paras 22 and 23;
- iv. Lok Prahari v. State of U.P. & Ors., Writ Petition (Civil) No. 657 of 2004, paras 36 and 41;



33. Ms. N.G. Shylla, learned counsel appearing for the respondent No. 6 has submitted that the respondent No. 6 along with the inhabitants of Langrin Syiemship being aggrieved by the malafide administration within the Syiemship run by the petitioner and noticing that a number of irregularities have been committed by the petitioner, have accordingly filed a complaint before the Deputy Chief Executive Member i/c Elaka Administration, KHADC. In the complaint, it is alleged that the petitioner among others, had mis-utilized a large part of a sum of ₹ 14,00,00,000/- (Rupees Fourteen Crore) only received from the Government as land compensation award and has donated about 77,00,000/- (Rupees Seventy-Seven Lakh) only of the same to religious institutions. The complaint was therefore filed for an inquiry into such acts to be caused. Therefore, it cannot be said that the respondent No. 6 has no locus standi to file the said complaint.

34. This Court on consideration of the respective case of the parties, has noted that the learned counsel for the petitioner has, in course of his submission stressed on the fact that the suspension of the petitioner as the Syiem of Langrin was not in accordance with the statutory provisions of the relevant Act of 2007 and the related rules and as such, the same cannot be sustained.

35. It would but be proper to reproduce the relevant portion of Section 7 of the 2007 Act (as revised) so as to put the points of dispute between the parties in its correct perspective. The said provision reads as follows:

“7. Term of Office:- There shall be only one Syiem to be elected from the whole of Langrin Syiemship and his term of office shall be for life from the date of his appointment provided that he



may be removed from office or suspended by the Executive Committee if :-

(a) *he violates any of the terms and conditions of his appointment;*

Or

(b) *he violates any of the laws, regulations, rules and the resolution passed by the Council;*

Or

(c) *he refuses to carry out the orders and instruction issued by the Executive Committee;*

Or

(d) *he is found to be mentally unfit to carry out his functions;*

Or

(e) *he is found incapable of carrying on the administration to the satisfaction of the Executive Committee due to ill health, old age or habitual drunkenness;*

Or

(f) *he violates any customary rights and practices prevailing in the Elaka and duly recognized by the Executive Committee;*

Or

(g) *he has been convicted of an offences involving moral turpitude;*

Or

(h) *he is found to have oppressed the people of the Elaka and they have just cause for dissatisfaction with his misrule;*

Or

(i) *he has lost the confidence of the majority of his electors or of the people of the Elaka;*

Or

(j) *he is an undischarged insolvent;*

Or

(k) *he is found to have been conducting himself in a manner derogatory to his office or pre-judicial to the interest of the Elaka or part thereof;*

Or

(l) *he has been conducting himself in a manner which may undermine the authority of the Executive Committee;*

Or



(m) *he fails to convene the annual Durbar Hima or Durbar Pyllun.*

Provided further that (i) any complaint against the Syiem should first be brought to the knowledge of the Durbar Hima and (ii) the Syiem shall not be removed from office or punished with suspension unless he is given an opportunity of being heard.

Provided also that the requirement of the second proviso shall not apply –

(i) in the case where the order of removal or suspension is awarded on account of his being convicted of an offence involving moral turpitude;

Or

(ii) in the case of order of suspension pending inquiry.”

36. As could be gathered from the pleadings of the parties and the facts and circumstances of the case against the petitioner, the initiation of the proceedings was on receipt of the complaint by the District Council. Following this, a show cause was called for from the petitioner to explain his side of the story. On the petitioner filing the said show cause and the relevant authorities in the District Council, not being satisfied with the explanation given, the Notification suspending him was issued on 18.08.2023. Though there is no mention in the Notification of the fact that the petitioner was suspended pending inquiry, that a separate order indicating that the petitioner was suspended pending inquiry was also passed on the same day the said notification was issued. This has not gone unnoticed by the petitioner who has brought the same to the records of this case by way of an additional affidavit dated 12.09.2023. Though a bald statement has been made by the petitioner that he first received copy of the Notification and was served with a copy of the Order wherein he was suspended pending inquiry only on a later date, yet there is no proof to confirm the same, perhaps by production of relevant



receipt indicating the date on which such copy was received can such assertion be confirmed which is not the case herein.

37. Be that as it may, it is also seen there is no procedure prescribed in the rules or the Act as to how and in what manner a Notification or an Order of suspension pending inquiry is to be issued. Since as is evident from the records that the two have been issued on the same date, that is, 18.08.2023, this Court is satisfied that there is nothing wrong with the procedure adopted.

38. It is also noticed that vide communication No. DC/XXVII/Genl/124/2023/14 dated 21.08.2023, the appointment of the concerned Magistrate of the KHADC as the Inquiry Officer to look into the complaint against the petitioner, the terms of charges to inquire into also being attached thereto has been conveyed by the respondent No. 4 to the said Inquiry Officer. A copy of such communication has also been issued upon the petitioner. This has further fortified the fact that the petitioner was suspended pending inquiry. His suspension was therefore not a punishment, which would invariably be done so only after giving the delinquent an opportunity of being heard. It is a normal course of action that during the inquiry, the petitioner will certainly be called upon to present his side of the story. The case of V.P. Gidroniya(supra) cited by the respondent No. 5 is found relevant in this regard. Paras 7 and 8 referred thereto is reproduced herein to support this proposition.

“7. The legal position as regards a master’s right to place his servants under suspension is now well settled by the decisions of this Court. In The Management of Hotel Imperial, New Delhi and Others v. Hotel Workers’ Union [(1960) 1 SCR 476], the question whether a master could suspend his servant during the pendency of an enquiry came up for consideration by this



Court. Therein this Court observed that it was well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further observed therein that ordinarily in the absence of such a power either in express terms in the contract or under the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and the servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

8. The same view was reiterated by this Court in T. Cajee v. U. Jormanik Siem and Another [(1961) 1 SCR 750]. The rule laid down in the above decisions was followed by this Court in R. P. Kapur v. Union of India [(1964) 5 SCR 431]. The law of the subject was exhaustively reviewed in Balvantray Ratilal Patel v. State of Maharashtra [(1968) 2 SCR 577]. Therein the legal position was stated thus: The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in



the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which, it could be withheld. The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey.”

39. Again, the contention of the petitioner that he was not given an opportunity of being heard, cannot be accepted since the procedure adopted was not in violation of the provision of Section 7 of the 2007 Act, wherein by virtue of the second provision to the same, when an incumbent Syiem is placed under suspension pending inquiry, opportunity of being heard is not necessary to be given. The case of Charlestone Sohtun(supra) will indeed be applicable as far as the case of the petitioner is concerned.

40. On the contention of the petitioner that the Rules of 2010 and the revised rules of 2015 having the force of law, the same being duly approved by the Executive Committee of the District Council and being notified in the Official Gazette, whereas the Rules of 2019 which has



replaced the said 2010 and 2015 Rules respectively and which rules not having been brought to the knowledge of the petitioner even while he was in office as the Syiem of Langrin and more importantly, not having been published in the Official Gazette, hence, not having the force of law as could be understood from the provision of paragraph 11 of the Sixth Schedule to the Constitution, in the context of the action taken against the petitioner wherein he was suspended without the same not being brought to the knowledge of the Durbar Hima, reliance being placed on the first proviso to Section 7 of the principal Act of 2007, the petitioner has failed to notice that the said proviso has been done away with by virtue of the amendment of the Act in the year 2010. Therefore, the same is no longer in the statute books.

41. What is not there in the Act cannot be imposed or introduced in the related rules as was done in the case of the related provision of the proviso to Rule 3(2) of the 2015 Rules. In this regard, the authority cited in the case of Lok Prahari(supra) at para 41 is relevant wherein the Hon'ble Supreme Court has observed as follows:

“41. There cannot be any dispute that when the rules and regulations or executive institutions are contrary to any statutory provision, the statutory provision would prevail and the rules or executive institutions, so far as they are contrary to the statutory provisions, would fail.”

42. On the objection of the petitioner to the appointment of the respondent No. 5 as the Acting Syiem on the ground that the provision of Section 9(1) and (2) of the 2007 Act was violated inasmuch as the said provision has specified that for a person to function as the Acting Syiem, he must belong to the Syiem clan of Langrin Syiemship and must also be recommended by the Syiem clan. According to the petitioner, the



respondent No. 5 was not recommended by the Syiem clan and the recommendation dated 10.08.2023 issued by the womb of Ka Phorphan Syiemiong in favour of the respondent No. 5 is incompetent as the womb of Ka Phorphan Syiemiong is not the eligible clan as defined under Rule 2(23) of the 2010 Rules and thereby Rule 3(1) of the same Rules was contravened in this respect, the reply of the learned Sr. counsel for the respondent No. 5 as far as this contention is concerned where reference is made to the Amended Act of 2008 wherein with the insertion of a new clause being clause (n) of Section 2 wherein it is indicated that the Syiem clan, members of whom are eligible to be elected as the Syiem of Langrin Syiemship are found in the genealogical table and at Appendix-II of the same the name of Ka Iaw Phorphan is found, which clearly indicates that the respondent No. 5 being recommended by the members of the Phorphan clan is eligible to become a Syiem of the said Langrin Syiemship, is found acceptable to this Court. The objection of the petitioner in this regard cannot be sustained.

43. On the contention of the petitioner that there was no formal handing over and taking over charge of the Syiemship as is required under Section 9 (4) of the said 2007 Act, the aspect of handing over and taking over charge relates only to that of office properties, though violation of this provision is treated to be an act of criminal breach of trust, however, such act cannot be said to be correlated to the actual assumption of office by the successor in whatever capacity.

44. As to the locus of the respondent No. 6 relating to the competency to file the complaint which has actually set the proceedings against the petitioner in motion, the fact that the said complaint has been



taken cognizance of, whether the contents thereof would justify action against the petitioner or not is a matter to be decided in due course. The role of the respondent No. 6 cannot be questioned in this proceeding and the matter is left to be decided before the proper forum, that is, the inquiry proceedings.

45. The reliance of the petitioner on the case of Nassar Syiem Jahnoh(supra) is not found relevant under the facts and circumstances of the case against the petitioner inasmuch as the issue of the complaint being brought before the Durbar Hima at the first instance has been answered hereinabove.

46. In the case of Harla(supra) at para 8, as well as in the case of B.K. Srinivasan(supra) at para 15 the petitioner has drawn reference to the requirement of publication of laws and rules so as to enable the same to be widely made known, which issue has been dealt with in the aforementioned paragraphs. There is no quarrel as far as this proposition of law is concerned, however, what the petitioner has alluded herein is a reference to the non-publication of the 2019 Rules(supra). The contention would be that since the said 2019 Rules have not been published in the Official Gazette, they have no force of law, meaning that the revised 2015 Rules would still hold the field. A reference to the said Rules is only to draw attention to the proviso of Rule 3(2) which provides for a complaint against the Syiem to be placed first before the Durbar Hima. However, as has been observed above, there is no question of the said rule being applicable to the case of the petitioner when there is no corresponding provision for the same in the related Act. The authorities cited would therefore not help the case of the petitioner.



47. In the facts and circumstances of the case as has been depicted above, this Court is of the considered opinion that there is nothing wrong with the procedure and process adopted by the concerned authority, that is, the Executive Committee of the District Council in placing the petitioner under suspension pending inquiry and his rights have not been violated as such. He is still allowed to take part in the inquiry proceedings.

48. Accordingly, this petition is found to be devoid of merits, the same is hereby dismissed.

49. Any interim order passed in this regard is hereby vacated.

50. Petition disposed of. No costs.



Judge

Meghalaya
05.12.2023
"Tiprilynti-PS"