

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 49 of 2020

Date of Decision: 01.07.2022

Shri Kynsaibor Syiemiong

Vs.

K.H.A.D.C. & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangrieso, Sr. Adv. with
Mr. A. Syiem, Adv.

For the Respondent(s) : Mr. V.G.K. Kynta, Sr. Adv. with
Ms. C. Nongkhlaw, Adv. for R 1 & 2.
Mr. P. Nongbri, Adv. for R 4.

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

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

ORDER

1. The petitioners along with 18(eighteen) others have lodged a complaint with the respondents No. 1 and 2, the Khasi Hills Autonomous District Council (KHADC) dated 30.11.2018 against the respondent No. 4, the Syiem of Langrin inter alia, on the ground of maladministration of the Elaka and misuse of official powers for personal gains.

2. Apparently, the respondent No. 4 was placed under suspension while an enquiry was conducted to look into the allegations made in the complaint. The competent authority then framed as many as 9(nine) issues

in the matter.

3. The Enquiry Officer then filed the Enquiry Report before the Executive Committee of the KHADC on 07.05.2019 and on the basis of the said report, the Executive Committee reinstated the respondent No. 4 as the Syiem of Langrin on 01.08.2019.

4. On coming to know of the action taken vide the said order dated 01.08.2019 and being aggrieved thereto, the petitioners then approached this Court with this application under Article 226 of the Constitution with a prayer to set aside and quash the said order and to direct for de novo enquiry.

5. The respondents No. 1 & 2 have filed the counter affidavit to counter the averments made in the petition, while the respondent No. 4 have not filed any counter affidavit.

6. However, on preliminary objection by the respondents herein on the issue of locus standi of the petitioners and on maintainability of this petition, this Court have heard the parties on the said preliminary issue and proposes to deal with the same and subject to the findings and observations to be arrived at, the fate of continuity of these proceedings will be decided.

7. Mr. V.G.K. Kynta, learned Sr. counsel appearing for the respondents No. 1 and 2/Khasi Hills Autonomous District Council (KHADC) along with Ms. C. Nongkhlaw, learned counsel has submitted that the complaint referred to at Annexure-I filed before the Executive Member, In-charge Elaka Administration, KHADC was preferred by twenty persons as signatories thereto including the two petitioners herein.

However, there is no statement or averment made in the writ petition to treat the writ petitioners in a representative capacity and for that matter, there is also no written authorization by all the signatories of the said complaint authorizing the two petitioners herein to take up their cause. Therefore, the petitioners herein have no locus standi to file this petition and the same is liable to be dismissed at the threshold.

8. The second point of argument raised by the learned Sr. counsel is that the impugned order dated 01.08.2019 is an observation of the report of the Enquiry Officer who was apparently directed to inquire into the allegations made by the said complainants and who had also filed his report which has prompted the whole body of the Executive Committee to make its observation as indicated above and which body has also come to a conclusion that there is no concrete evidence against respondent No. 4 following such observation, he was directed to be reinstated as the Syiem of Langrin and his suspension order dated 20.12.2018 was accordingly evoked. In spite of the impugned order being passed on 01.08.2019, the petitioners have approached this Court only on 10.02.2020 without any explanation as to why there has been a delay of six months or so for filing the petition and as such, this petition suffers from the vice of delay and laches and the same is, therefore liable to be dismissed in limine.

9. Mr. P. Nongbri, learned counsel for the respondent No. 4 while defending the cause of this respondent has endorsed the submission made by the learned Sr. counsel for the respondents No. 1 and 2 and has reiterated that the original complaint was filed by twenty persons, however before this

Court, only two of them have filed this petition and without any leave of the Court to file the petition in a representative capacity.

10. It is further submitted that the complaint itself is not maintainable, inasmuch as, under “The Administration of Langrin Syiemship (first amendment) Rules, 2015” in exercise of powers under Section 11 of “The Khasi Hills Autonomous District (Nomination and Election of a Syiem, Deputy Syiem and Headmen of Langrin Syiemship) Act 2007”, Proviso to Rule 3 (2) provides that any complaint against the Syiem or Acting Syiem has to be first brought before the Dorbar Hima for necessary discussion and decision, but this provision was not followed by the petitioners at the time of filing the said complaint before the KHADC.

11. The learned Sr. counsel for the petitioner in reply has submitted that the first objection of the respondents as to the non-violation of any fundamental and legal rights of the petitioners cannot be sustained since the pleaded case of the petitioners is that on the complaint filed, the Executive Committee has framed as many as 9(nine) charges against the respondent No. 4 and which charges have been reproduced at para 7 of this writ petition. On perusal of the said charges, it can be seen that they are very serious charges affecting the rights of the inhabitants of Langrin Syiemship, the petitioners being part thereof, therefore the impugned order has caused violation of the fundamental and legal rights of the petitioners making preference of this petition maintainable.

12. Further, it is submitted that the petitioners in this petition have pointedly stated that the conduct of the Enquiry Officer in course of the

enquiry was not transparent since no opportunity was given to the petitioner to be heard and the same being carried out behind the back of the petitioners, a legal right has accrued upon the petitioner to assail the consequent report thereof.

13. Again, on the contention of the respondents that this petition ought to have been filed by all the signatories of the said complaint dated 30.11.2018 or in the absence of most of them, the same ought to have been filed in a representative capacity, the learned Sr. counsel for the petitioners have submitted that in writ jurisdiction, such proposition in law cannot be found when the assertion of rights is available to any aggrieved person to approach the competent authority or the High Court, as the case may be.

14. On the objection raised by the respondents that the petitioners have approached this Court with this petition after about six months from the date of passing of the impugned order and thereby, there has occurred a delay which has not been explained by the petitioners, the learned Sr. counsel has submitted that the petitioners have filed an application for certified copy of the order on 16.08.2019 which was supplied to them only on 02.09.2019. It is also submitted that in the face of such a serious issue to be considered by the Court, there is no law which says that a writ petition cannot be entertained if it is filed after six months. The petitioners are therefore, not barred by the limitation or otherwise from approaching this Court with this instant petition.

15. In support of their contention, the petitioners has referred to the following authority:

- i) *Automotive Tyre Manufacturers Association v. Designated Authority and Ors: (2011) 2 SCC 258, para 79 to 83.*
- ii) *State of U.P & Ors. v. Raj Bahadur Singh & Anr: (1998) 8 SCC 685, para 2.*
- iii) *Ramchander Sunda and Anr v. Union of India and Ors. (1999) 9 SCC 106, para 1 & 2.*
- iv) *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors. AIR 1962 SC 1044 at para 5.*

16. In support of their contention, the respondents No. 1 and 2 has referred to the following authority:

- i) *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors: (1976) 1 SCC 671 at para 34 & 37.*
- ii) *Jt. Registrar of Co-Operative Societies, Madras & Ors v. P.S. Rajagopal Naidu & Ors: (1970) 1 SCC 753 at para 10.*
- iii) *Shankara Cooperative Housing Society Limited v. M. Prabhakar & Ors: (2011) 5 SCC 607 para 46 and 54.*

17. The learned counsel for respondent No. 4 has also relied on the following authorities in support of his case: -

- i) *Veerayee Ammal v. Seenii Ammal: (2002) 1 SCC 134, para 13.*
- ii) *Hameed Joharan (Dead) & Ors. v. Abdul Salam*

(Dead) by Lrs. & Ors: (2001) 7 SCC 573, para 14.

iii) Nassar Syiem Jahnoh v. Khasi Hills Autonomous District Council, Shillong & Ors. (2016) 1 NEJ 608 (Meg).

18. The contention raised by the parties herein along with the supporting authorities cited have been duly considered. The issue to be decided by this Court is on maintainability of this petition firstly, on the ground that the petitioners have no locus standi and secondly, that this petition was not filed in a representative capacity and lastly, that on account of delay and laches, the same is not maintainable.

19. It is not denied that the respondent No. 4 is a public authority holding public office whose actions in course of performance of his duties are always under public scrutiny, more particularly when such actions or inactions would affect the welfare of those who are subjected to such authority, which would then in turn also include a legal right vested in them, the violation thereof thereby enabling them to seek recourse in a legal forum.

20. Facts as noted in the petition is that a complaint was lodged by the petitioners along with 18(eighteen) others before the Executive Member, In-charge Elaka Administration, KHADC against the respondent No. 4, who is the Syiem of Langrin, a local traditional institution head duly acknowledged by law, as to his alleged misdeeds perpetrated in course of his functions as the Syiem and such complaint being taken cognizance of, the Syiem was placed under suspension and an enquiry launched

whereupon a number of charges were framed seeking his response thereto.

The end result of the said enquiry is that the findings of the Enquiry Officer went in favour of the Syiem and vide the impugned order dated 01.08.2019, the Executive Committee has ordered for his reinstatement as the Syiem.

21. Being aggrieved by the said impugned order, two of the eighteen complainants, that is, the petitioners herein have then approached this Court with this application under Article 226 of the Constitution.

22. Now what can be deduced from the above is that the petitioners who are the complainants, perceiving that their rights have been violated, firstly by the alleged misconduct of the respondent No. 4 in course of his functioning and secondly, that the impugned order was passed in clear violation of the principles of natural justice, inasmuch as, they were not heard by the Enquiry Officer in course of the enquiry have approached this Court for redress of their grievances. On this count, this Court cannot shut the door on them at the threshold, for if the relief asked for is one for enforcement of a legal right, the exercise of the jurisdiction of this Court under Article 226 of the Constitution would be justified. This proposition of law is found in the authority of the case of Calcutta Gas Company (Proprietary) Ltd. (supra) cited by the petitioners, wherein at para 5, the Hon'ble Supreme Court has held that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226.

23. The case of Jasbhai Motibhai Desai (supra) cited by the respondents No. 1 & 2 on the issue of maintainability, in the light of the observations made above, would only strengthen the case of the petitioners

as the Hon'ble Supreme Court at para 34 of the same has held that to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, the same of which has been demonstrated by the petitioners herein as indicated above.

24. The case of Jt. Registrar of Co-Operative Societies, Madras & Ors (supra) at para 10 relied upon by the respondents No. 1 & 2 would not be applicable to the issue under discussion, but would be relevant only at the time when the merits of this case is considered.

25. Another contention raised is that the petitioners have no locus standi as the original complaint was filed by twenty persons, but only two of them, that is, the petitioners herein have approached this Court with this instant petition without any authorization from the other eighteen, thus failing to fulfil the criteria of approaching this Court in a representative capacity, the respondents have cited the provision of Order 1 Rule 8 of the Code of Civil Procedure to contend that the principle is equally applicable in writ jurisdiction.

26. To this, the petitioners have argued that this petition is not filed in a representative capacity as there is no requirement of the same as the petitioners have approached this Court on their rights being violated and if the other eighteen does not share the same view, then there is no bar for the petitioners to approach this Court individually or in their personal capacity. In the case of Ramchandrar Sunda (supra) wherein the Hon'ble Supreme Court has held at para 2 that:

“2. It is for the petitioner to make an application under Order 1 Rule 8. It is not for the court to see at the time of admitting the petition whether it is in a representative capacity or otherwise. Therefore, this writ petition in a representative capacity is not maintainable. It can be proceeded with insofar as the individual substituted petitioner is concerned.”

27. What can be seen is that if a petition is to be filed in a representative capacity, then an application under Order 1 Rule 8 of the Code of Civil Procedure is necessary to be filed. However, even if there is no application for the petition to be filed in a representative capacity, then it is always open for the same to be filed in an individual capacity which is exactly the case herein. Therefore, the contention of the respondents on this score also fails.

28. The argument of the learned counsel for the respondent No. 4 that the complaint filed by the petitioners is not maintainable as the same is hit by the relevant provision of the “Administration of Langrin Syiemship (first amendment) Rules, 2015”, Proviso to Rule 3(2) to be precise, would also not be necessary to be considered here as the merits of the petition has not been gone into. The authority cited in this regard is not relevant for the time being.

29. Now the last point to be considered is the issue of delay and laches. The respondents have also questioned the manner in which the petitioners have approached this Court by way of this petition, inasmuch as, the impugned order was pointed out to say that the same was passed on 01.08.2019 whereas, the petitioners being aggrieved by such impugned order, has approached this Court about six months thereafter and consequentially, delay and laches has been occasioned. The respondents

No. 1 & 2 has cited the case of Shankara Cooperative Housing Society Limited (supra) wherein at para 46 and 54 (2) respectively, the Apex Court has observed that:

“46. Delay and laches is one of the factors that requires to be borne in mind by the High Courts when they exercise their discretionary power under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his rights taken in conjunction with the lapse of time and other circumstances”.

54 (2) The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filing the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioners”.

30. On the same issue, the learned counsel for the respondent No. 4 while endorsing the submission made by the learned Sr. counsel for the respondents No. 1 & 2 has also submitted that the petitioners have not approached this Court within reasonable time, but has come only after six months and that too without any explanation, therefore the petition suffers from delay and laches and is liable to be dismissed at the threshold. On what is reasonable time, the learned counsel has cited the case of *Veerayee Ammal* (supra) wherein at para 13, the Apex Court has observed as follows:

“13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty

requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

31. In reply to this, the learned Sr. counsel for the petitioner relying on the decision of the Apex Court in the case of Raj Bahadur Singh (supra) has submitted that the Court at para 2 of this case has held that “.....*There is no time-limit for filing the writ petition. All that the court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him.....*”

32. To answer the above query, the concept and principle of the law of limitation has to be briefly touched in these proceedings. One of the maxims on which the law of limitation is founded is “*Vigilantibus Non Dormientibus Jura Subveniunt*” which means that the law assists those who are vigilant with their rights and not those that sleep thereupon.

33. The Hon'ble Supreme Court in the case of **Maharashtra State Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors: AIR 1969 SC 329** at para 11 has observed as follows:

“11...Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and

neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

34. In the case of **Smt Sudama Devi v. Commissioner & Ors: (1983)**

2 SCC 1 the Hon'ble Supreme Court has held that ".....*There is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. It is in fact doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances, whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner.....*"

35. Again, in the case of **State of M.P & Ors v. Nandlal Jaiswal & Ors: (1986) 4 SCC 566** at para 24 it was held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the

exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is in-ordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.....”

36. On consideration of the authorities cited and referred to above, what emerged is that there is no period of limitation prescribed by law for filing a writ petition under Section 226, however the High Court exercising its discretionary powers as a Court of equity may consider the facts and circumstances of the case and the conduct of the party, particularly that of the petitioner who is to demonstrate that due diligence and promptness has been exercised when the High Court is approached in this regard. To this effect, the term ‘reasonable time’ would be relevant as a consideration thereto. In the case of Veerayee Ammal (supra) the term ‘reasonable time’ have been explained to convey the meaning that it is to be so much time as is necessary under the circumstances or as the circumstances permits for the party to approach the authority or in this case, this Court.

37. Coming back to the facts of this case, the impugned order was passed on 01.08.2019 and a certified copy of the same was applied by the

petitioners on 16.08.2019 and the same was handed over on 02.09.2019. Thereafter, this petition was filed before this Court on 10.02.2020. If there is any delay, on calculation, the number of days of such delay would be about 5(five) months or so.

38. In the opinion of this Court, looking into the facts and circumstances of this case, as was opined by the Apex Court in the case of Nandlal Jaiswal (supra) at para 24 quoted above, in cases where despite delay and creation of third-party rights, the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner, the petitioners have approached this Court within reasonable time, the alleged delay in filing this petition can be condoned.

39. On consideration of the above including the authorities cited by the parties, irrelevant authorities not being taken into account, this Court finds that this petition is maintainable and what remains is for the merits to be argued by the parties herein.

40. Accordingly, this matter shall proceed in due process till it is finally heard.

41. List this matter on **11.07.2022**.

Judge

Meghalaya
01.07.2022
"D. Nary, PS"