

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH.

WRIT PETITION(C) NO. 82 (AP)/ 2009

Mr. Marrik Dirchi,
S/o Late Gimar Dirchi,
Sector- 'F' & 'G', Itanagar,
District- Papumpare,
Arunachal Pradesh.

.....*Petitioner.*

By Advocates:

Mr. C. Baruah, Sr. Counsel

Mr. P. Sarma,

Mr. UJ Saikia.

-Versus-

1. The State of Arunachal Pradesh represented
by the Chief Secretary,
Itanagar.
2. The Deputy Commissioner,
Papumpare district,
Yupia, A.P.
3. Judicial Magistrate 1st Class,
Naharlagun, Papumpare district,
Arunachal Pradesh.
4. Sri Bamang Taniang,
S/o Sri Bamang Kusuk, Senkipark,
Itanagar, Papumpare district,
Arunachal Pradesh.

.....*Respondents.*

By Advocates:

Ms. G. Deka, Addl. Sr.G.A. for Resp. Nos. 1 to 3.

Mr. M. Batt, for Resp. No. 4.

BEFORE
THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing : 04-03-2010

Date of Judgment & Order : 04-03-2010

JUDGMENT AND ORDER (ORAL)

Heard Mr. C. Baruah, learned senior Counsel assisted by Mr. U.J. Saikia, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Additional Senior Govt. advocate for the respondent Nos. 1 to 3 and Mr. M. Batt, learned counsel appearing on behalf of the private respondent No.4.

2. This application under Article 226 of the Constitution of India has been filed praying for quashing the proceeding initiated in CR Case No.13 / 2007 by the learned Judicial Magistrate, 1st Class, Naharlagun and also for setting aside the decision of the kebeang/yallung dated 28-08-2008 inasmuch as the yallung was conducted without consent of the petitioner and without giving him any opportunity to nominate equal number of members and also an umpire as provided under Section 38(1) (2) of the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as "the Regulation"),

3. The brief fact of the case is that the private respondent No.4, Sri Bamang Taniang lodged a complaint on 28-03-2007 before the Judicial Magistrate 1st Class, Naharlagun and on the same day, the JMFC, Naharlagun registered a case namely, NLG/CR-13/07 against the petitioner under Section 420 IPC and issued a non-bailable warrant of arrest to produce the petitioner before his Court on or before 30-04-2007. The petitioner was arrested by police on the strength of the aforesaid non-bailable warrant of arrest order. While he was in jail, the petitioner's wife and his own younger brother applied for bail of the petitioner before the learned JMFC and the learned Magistrate vide order dated 19-08-2008 granted the bail on certain conditions. One of the conditions imposed was that the accused should attend Yallung/ Kebang as and when called. The other condition was that the yallung should be conducted within 10 days from the date of

bail order. Accordingly, a yallung was held on 28-08-2008 but the petitioner was not aware about it and he came to know about the holding of yallung and its decision only when a copy of its decision was served on him. The petitioner was not present in the said yallung held on 28-08-2008.

4. Having come to know about the yallung/kebang decision, he made an application before the learned Deputy Commissioner, Papumpare district on 15-11-2008 for transfer of the C.R. case No.13 of 2007 from the Court of JMFC, Naharlagun to some other Court but the same was rejected by the learned Deputy Commissioner vide his order dated 15-10-2008 holding that since the said CR case No.13/2007 was remitted to the Kebang it should be deemed to be closed and as such, no order for transfer could be passed. However, the petitioner was advised to file an appeal before the appropriate Court if he is aggrieved by the decision of the kebang/yallung.

5. Mr. Baruah, learned senior Counsel appearing for the petitioner submits that the kebang/yallung was held without due consent of the petitioner. The said kebang/yallung was held only on the basis of conditions imposed in the bail order and no chance was given to nominate equal number of members from both sides. Moreover, no 'umpire' was also appointed as required under Section 38 (1) (2) of the Regulation. The decision of the kebang/yallung is in complete violation of the aforesaid provisions of the Regulation and as such, the same are liable to be quashed and set aside.

6. Countering the above submission, Mr. Batt, learned counsel appearing on behalf of the private respondent No.4 submits that the consent of the petitioner is implied inasmuch as the bail petition was moved by his wife and younger brother and the aforesaid conditions were incorporated in the bail order. As

regard the presence of the petitioner in the kebang/yallung, Mr. Batt has taken me through the original minutes of the proceeding by the kebang/yallung, wherein it has been recorded that as many as 10(ten) persons including the present petitioner and the private respondent No.4 were present with their signatures thereon. According to him, Sl. No. 1, Shri Tabe Gadi, P.I, Itanagar, serial Sl. No.2, Shri Bamang Tato, GB and Sl. No.3, Shri Taro Kena, HGB were appointed as "Umpires" as they are not related to any of the parties. He further submits that Sl. No.4, Shri Boya Potom and Sl. No.5, Shri Haryom Bam are relatives of petitioner while Sl. No.7, Shri Kope Karga and Sl. No.8, Shri Marmo Dirchi are brother-in-law and younger brother respectively of the petitioner. Sl. No.6, Shri Logy Chapa was nominated as member by the private respondent No.4. The further submission of Mr. Batt is that if the petitioner was aggrieved by the decision of the kebang/yallung, he could have preferred an appeal before the Deputy Commissioner under Section 46 of the Regulation but he preferred not to file any appeal just to delay the proceeding.

7. In reply to the above submissions of the private respondent No.4, Mr. Baruah relying on the provisions under Section 38(1) (2) of the Regulation, submits that from the minutes of the meeting (yallung), it is found that parties were not given chance to nominate equal number of members and the kebang/yallung had nominated 3(three) umpires which is in complete violation of the provision of the aforesaid Regulation. As regard the appeal, Mr. Baruah submits that as per the provision under sub-section 6 of the Section 38, the decision of the kebang/yallung is to be treated as final and since the kebang/yallung decision has attained its finality, no appeal could be filed under Section 46 of the Regulation. It is further submitted by Mr. Baruah that the matter involves financial transaction of huge amount to the tune of Rs.51.00 lakhs and such dispute can be effectively adjudicated only by a civil Court and the private

respondent No.4 should approach the civil Court for appropriate relief.

8. I have carefully gone through the decision of the kebang/yallung taken on 28-08-2008. It is found clear from the proceeding of the kebang/yallung that equal number of member was not nominated by the parties. There was only one member nominated by the private respondent No.4 as against the four members nominated by the petitioner and as many as 3(three) umpires were appointed to participate in the deliberation of the kebang/yallung. The provision under relevant section of the Regulation provides nomination of only one umpire and not more than one umpire. Besides, Section 38(1) provides that both the parties must be indigenous to the State of Aruanchal Pradesh and they must be willing to submit to arbitration by a panchyat for the settlement of the dispute. In the present case, an individual willingness of the petitioner to submit himself before the kebang/yallung is found lacking inasmuch as the matter was referred directly to the kebang/yallung in the light of the conditions imposed by the JMFC while releasing the petitioner on bail and that too on the prayer made by petitioner's bailer. There is nothing on record to show that the petitioner ever submitted or expressed his willingness to submit himself before arbitration or yallung. He might have been present in the meeting of the kebang/yallung but his presence alone would not be enough to satisfy the conditions laid down in Section 38 (1) (2) of the Regulation. The emphasis made in Section 38 of the Regulation is that the parties must give consent or must be willing to settle the dispute through Kebang.

9. From the aforesaid discussions, it is abundantly clear that while the decision was taken by the kebang/yallung, the provisions under Section 38 (1) (2) were not complied with and as such, the decision of the kebang/yallung cannot be held as legal and sustainable. It is imperative to quash and set aside the

impugned decision of the kebang/yallung dated 28-08-2008, and accordingly it is quashed.

10. The petition stands allowed. However, the private respondent No.4 is given liberty to approach the appropriate forum for appropriate relief(s). No costs. Let LCR be returned forthwith to the learned court below.


JUDGE

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