



The Primary Courts of Nagaland: A Legal Review

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Abstract: The Village Councils in the State of Nagaland has been the sole organ that has administered the society. The whole village is involved in making policy decisions and its execution is assigned to different age groups of the village. Disputes within the village are settled by the Council in accordance with customs and usages. This customary system continued posts the Indian independence and the state enacted laws prescribing minimum procedures to be followed by the Village Courts. However, the Village Courts and the laws enacted by the State for its regulation are not free from defects. This paper therefore studies the various provisions relating to the establishment, composition, qualifications, disqualifications and removal of members, powers, duties, functions and procedures to be adopted by the Village Courts and Councils in its function of administering justice. Being the primary court, it has a vital role in management of the society and therefore the higher judiciary scrutiny of its functions and orders are indispensable. The paper therefore studies the settlement of disputes by the Village Court and its legality in the light of the High Court and Supreme Court judgements. The paper concludes with the advantages and disadvantages associated the Village Courts suggesting policy and legal reforms.

Key words: Village Council, Village Court, Original Court, Primary Court.

1. Introduction

Before the advent of the colonial administration, there were independent villages in the Naga society managing independently its own defence, government and administration of justice. Each village was governed by a Village Council headed by a Headman or a Chief. The Konyak and the Sema¹ tribes followed the hereditary chieftainship called “Ang” and “Akukao” respectively. The rest of the Naga tribes followed the democratically elected headmanship called Peuma, Puti and Putu Menden in Angami, Lotha and Ao tribes respectively.² The Village Council was composed of wise elderly man from all the clans of the village. Thus, there was equal representation in the Village Council. Customs and usages were the sole law that were applied in both governance and administration of justice. Every adult male member took part in the administration, policy making and defence of the village. Women were by custom not allowed to take part in the administration and policy decision making. The whole

¹ Also called Sumi tribe.

² There are about seventeen major tribes in the state of Nagaland.

population of the village was divided into different age groups and were given different assignments in times of war, festivals and in carrying out community work of the village, like, footpath or village wall constructions, defence, war, etc. All the functions of the government was centered in the Village Council, thus it was the legislature, executive and judiciary. In other words, there was no separation of powers. The guilty were punished by imposing fine like pig, cow, mithun, etc. Capital punishment was not practiced and the highest form of punishment was ostracism from the village. As a deterrence to commit offence, the offender and his kindred were labelled with ignominy. Compensation to the victim was awarded by attaching the property of the offender. In case of a deadlock the parties were asked to take oath by swearing that he would die or misfortune would ensue to him or his family members.

When a dispute was brought before the Village Council, the parties and the witnesses were summoned on an appointed day to hear both the parties. If any party fails to appear on the appointed day without a valid reason, they were fined heavily by the Village Council. The verdict was given on the spot after the parties were heard in length. The verdict so delivered by the Village Council was given after a pragmatic discussion with all the members of the Council and to the satisfaction of all the parties. Unlike the present day's formal court, adjournment of hearing was seldom practiced and the settlement proceedings continued for days in some cases until a consensus settlement could be arrived. The adjudication of disputes was based on simplicity and truthfulness. Describing the village administration, John Butler³ wrote:

“In every village we find a number of headmen or chiefs, termed Peumas, who generally manage to arbitrate between litigants.....The actual authority exercised by these Peumas, who are men noted for their personal powers in war, skill in diplomacy, powers of oratory, or wealth in cattle and land, is, however, all but nominal, and thus their orders were obeyed so far only as they might happen to be in accord with the wishes of the community at large, and even then, the minority would not hold themselves bound in any way by the wishes or acts of the majority. The Naga Peuma is, infact, simply *primus inter pares*, and often that only *pro tem*.”⁴

This rudimentary system of delivering justice was endorsed by passing various enactments and notifications during the British period.⁵ Post the Indian independence, the Constitution of India provided special provision to the state of Nagaland by inserting Article 371A in the Constitution.⁶ The

³Captain Butler was a British Military officer who succumbed to his injuries in 1876 while carrying out military expeditions into Pangti village of the Lotha tribe territory.

⁴ Verrier Elwin, *The Nagas in the Nineteenth Century* (Oxford University Press, Bombay, 1969), pp. 525-526.

⁵ The Regulation X of 1822, the Government of India Act, 1835, the Indian Councils Act, 1886, The Garo Hills Act, 1869, the Scheduled Districts Act, 1874, The Assam Frontier Tracts Regulation, 1884, the Government of India Act, 1919, the Government of India Act, 1935, the Government of India (Excluded and Partially Excluded Areas) Order, 1936 and the Rules for the Administration of Justice and Police in the Naga Hills District, 1937.

⁶ The Constitution (Thirteenth Amendment) Act, 1962.

colonial enactment of the Rules for the Administration of Justice and Police in the Naga Hills District, 1937 was continued. Further, to consolidate the law relating to the Village, Area and Regional Councils in the districts of Mokokchung and Kohima and to regulate their functions and duties the Nagaland Village, Area and Regional Councils Act, 1970 was enacted by the state.⁷

2. Establishment

There are two important state enactments with regard to the administration of justice by village courts. The first one is the the Nagaland Village & Tribal Council Act, 1978 and the second is the Rules for the Administration of Justice and Police in Nagaland, 1937. Numerous amendments have undergone in both the enactments and therefore a brief is summarized in the subsequent lines. The nomenclature of Nagaland Village, Area and Regional Councils Act, 1970 (the Principal Act) by its second amendment in 1990 changed the nomenclature of the Act to the Nagaland Village Councils Act, 1978. Again in 2010,⁸ by the Nagaland Village Councils (Fourth Amendment) Act, 2010 the Nagaland Village Council Act, 1978 was changed to “the Nagaland Village & Tribal Council Act, 1978”⁹ (hereinafter VC Act of 1978). Similarly, the nomenclature of the Rules for Administration of Justice and Police in Nagaland, 1937 (hereinafter the Rules of 1937) was originally called the Rules for the Administration of Justice and Police in Naga Hills District, 1937. The nomenclature was renamed in 1974 by the First Amendment.

The VC Act of 1978 lays down rules of the Village Council while the Rules of 1937 provides for the Village Court. However, despite two different laws, the Village Council and the Village Court are one and the same. In other words, the Village Council is also the Village Court consisting of the same councilors. In *Mhalelie Rio v. Geinuo Sopfi*¹⁰ the petitioner not being satisfied with the order of the Gaonburas approached the Judicial Board of the village. Not satisfied with the order of the Judicial Board, the petitioner appealed to the Village Council. However, the Village Council’s order was also not in his favour and therefore he filed an appeal before the Additional Deputy Commissioner who endorsed the matter to PA to the Deputy Commissioner (DC). Thereafter, petitioner further aggrieved by the order of the PA to DC, finally filed a Revision Petition before the Gauhati High Court. Quashing the order of the PA to DC as well as Judicial Board and the Village Council, the High Court held, “In so far as the Judicial Board and the Village Council decisions are concerned, since the Judicial Board itself comprised of Village Council members and head Gaonbura (GB), the impugned decisions referred by them on cannot be sustained.” The order of the PA to DC was quashed for the simple fact that he cannot try and decide case. Regarding the orders delivered by the Gaonburas, Judicial Board and the Village Council, they are one and the same body. In other words, the Village Council is not an appellate authority of the Judicial Board or the Gaonburas, they all constitute the Village

⁷ It received the assent of the Governor on 23rd January 1971.

⁸ The amendment came into effect on 18th March 2010 by publication in the Nagaland Gazette Extraordinary.

⁹ By virtue of Section 2 of the Nagaland Village Councils (Fourth Amendment) Act, 2009.

¹⁰ MANU/GH/0142/2020.

Council. However, in this case, since none of the parties challenged the order of the Gaonburas, the High Court sustained the order of the Gaonburas and directed to file appeal in accordance with Rule 31 of the Rules of 1937, that is, before the Deputy Commissioner.

Section 3 of the VC Act of 1978 provides that in every recognized village there shall be a Village Council. Clauses (1) and (2) of Rule 40 of the Rules of 1937 lays down that in each village there shall be a Village Court composed of members of the Village Council constituted under the VC Act of 1978 including the Angs¹¹ and Gaonburas¹² of the respective village. The Putu Menden in the Ao areas is also a Village Court.¹³ The explanation to Section 3 of the VC Act, 1978 further provides that a village under the Act means a village recognized by the Government of Nagaland. Thus, in order to be recognized as a village the Act provides two qualifications. Firstly, the area of land where the village is established must belong to the population of the area or given to them by the Government or by a lawful owner of the land.¹⁴ Secondly, the village must be established according to the customary practices of the area.¹⁵ In *Seikholan v. State of Nagaland and Another*¹⁶ the Petitioner who was a pastor in Kuki Baptist Church, Maova Village separated with about twenty nine families and formed a new Church. The Chairman and Gaonbura of the village filed a complaint before the Additional Deputy Commissioner (ADC) who referred the matter to the Extra Assistant Commissioner (EAC) for inquiry. Pending the inquiry some members of the village demolished the Church constructed by the Petitioner and his members. The matter escalated to riots and therefore the Government referred the matter to the ADC for disposal. The ADC after hearing both the parties imposed a fine of Rupees one thousand on each individuals who destroyed the Church. The ADC however held responsible the Petitioner for the cause of the entire problem reasoning that he had violated the customary practice of the tribe by constructing his church without the prior approval or permission of the village authority. The ADC therefore imposed a fine of Rupees five hundred on the Petitioner. Aggrieved by this, the Petitioner appealed before the High Court on the ground that the order of the ADC was illegal as there was no case or charge filed against him. Sustaining the order of the ADC and dismissing the appeal of the Petitioner, the High Court held, "It was his customary duty to obtain prior approvals according to Kuki custom. Customs of the tribes in Nagaland are regarded as unwritten laws and breach of customary duty is regarded as an offence.... The enquiry held by the ADC and the procedure adopted by him was in the spirit of the prescribed law of the land and there was no illegality in it."¹⁷ Thus, a new village cannot establish without the approval of the parent village and the State Government would not recognize a village unless the parent village gives a No Objection Certificate.

¹¹ The Konyak tribe Chief of the village is called 'Ang'.

¹² Gaonburas are elderly men of the village. They are wise old man of the village having profound knowledge of customs, usages and tradition.

¹³ The Rules for the Administration of Justice and Police in Nagaland, 1937, Rule 40(2).

¹⁴ The Nagaland Village & Tribal Council Act, 1978, Sec. 3(a).

¹⁵ *Id.* at Sec. 3(b).

¹⁶ GLR 1986(2) 73.

¹⁷ *Id.* at para 7.

3. Composition

Though neither the VC Act, 1978 nor the Rules of 1937 provides a fixed number of councilors or members in the Village Council and Village Court, the VC Act by virtue of Section 4 lays down that the Village Council shall be composed of members chosen by the villagers according to the customary practices and usages. It also provides that the hereditary Chiefs and Gaonburas shall be ex-officio members of the Council having voting rights. Both the VC Act of 1978 and the Rules of 1937 have prescribed a Chairman and a Secretary to be appointed from amongst the members.¹⁸ Section 5 of the VC Act of 1978 lays down the qualification required to be a member of the Village Council that he should be a citizen of India and should have attained the age of 25 years. Section 6 of the VC Act prescribed the term of the Village Council for five years but can be extended for a period of one year by the Government. However, in the case of the traditional village institution of Putu Menden of the Ao tribe, it shall continue to function as per the Ao custom and usages.¹⁹ Thus, the Village Court and the Village Council being the same and one body, the term of the Village Court is also for five years and should also appoint a Chairman and a Secretary from amongst its members.

Concerning the composition of the Village Council as provided under Section 4 of the VC Act of 1978, in the case of *Neizo Zumu & Ors v. the State of Nagaland & Ors*²⁰ the village custom provided that in order to be represented in the Village Council, a clan must have eight to ten households in the village. The village has six clans out of which Zirru clan has only two households in the village. The Gaonbura therefore submitted only the five clan representatives to the ADC for the formation of the new Village Council. Later, the Extra Assistant Commissioner (EAC) issued a circular summoning the six clans of the village for verification at his office. Subsequently, by an order of the Home Department on the basis of the EAC report the private respondents were appointed as members of the Village Council. The Gauhati High Court framing the issue in this case observed that the disagreement as to whether Zirru clan can have representation is not the issue; however the question is whether the members of the Village Council were chosen and selected in accordance with the mandate laid down by Section 4 of the Act. Quashing the report of the EAC and the Notification of the Home Department and directing the constitution of the Village Council following strictly the mandate provided under Section 4 of the Act, the Gauhati High Court observed that:

“...if there is no unanimity amongst the head of the household of the clan to choose a person to represent the clan in the village council, a fair, transparent and a democratic process has to be adopted to ascertain as to who in the clan commands the majority support of the head of the household to be chosen as the Village Council Member

¹⁸ *Supra* Note 14 at Sec. 7 & 8 and *Supra* Note 13 at Rule 40(3) & (4) respectively.

¹⁹ Putu means generation. One Putu is for 30 years. There are five Sub-Putus in one Putu. Each Putu by rotation governs the village for 30 years (i.e. one Putu).

²⁰ MANU/GH/0034/2022

(VCM)...barring the Zirru clan, the five other clan of the village did not have a consensus candidate to be chosen as the VCM of the clan. It was therefore imperative for the EAC Botsa to have conducted a fair and an impartial verification to ascertain as to which of the rival group had the majority support of the household of the clan to be chosen as the representative of the clan. This process was thrown to the wind and for reasons best known to the EAC Botsa... In the instant case, the private respondents were chosen as the village council member in an unusual manner in contravention of the mandate prescribed by Section 4 of the Act.”²¹

As stated hereinbefore, women are not permitted by custom to participate in the policy and decision making. Thus, they can neither vote nor become a member in the Village Council. In such a matter, the question before the High Court was whether the women representative nominated by the village women society as a Village Council Member and duly forwarded by the Head Gaonbura of the village to the Deputy Commissioner can be validly accepted under Section 4 of the VC Act of 1978. The Gauhati High Court in the case of *Seyievinyu Medom & Ors v. Sabeituo Mechulho & Ors*²² the single judge held that:

“If the respondents sincerely desire to give due representation of woman in the Village Council it could be done only through befitting amendment to the existing 1978 Act. It is the function of the State Legislature but the initiative must be taken by the respondent-authorities. For that there should be a political will of the legislators and the Government. Till such time comes, the Court cannot allow the respondents to give right of representation to woman vis-à-vis right to vote in the Village Council except in accordance with the existing law and procedure.”²³

On appeal before the Division Bench, upholding the single judge order, the Bench held that, “So it is clear that except the members as referred in Section 4 read with Section 7 & 8 of the NVC Act (Act of 1978) and the Ex-Officio members which include the hereditary Village Chiefs, the GBs and the Angs, no other person shall have the right to get elected as the VCMs (Village Council Members) or the voting right to select the Chairman and the Secretary of the Village Council.”²⁴ Answering to the question whether the Village Council can pass a resolution allowing women to become member of the Council and vote in the elections of the Council, the Division Bench held that “since Article 371A of the Constitution of India has provided that unless the Legislative Assembly of Nagaland by a resolutions so decides the Naga customary laws and procedure was prevail over.”²⁵

²¹ *Id.* at para 35.

²² 2013 (3) GLT 187.

²³ *Id.* at para 8.

²⁴ *Id.* at para 10.

²⁵ *Id.* at para 15.

4. Disqualification and Removal of Members

The State Government is empowered by virtue of Section 9(1) of the VC Act of 1978 to remove any member on grounds like, conviction in an offence involving moral turpitude by a court of law, being declared insolvent, being incapable of acting, being found guilty of misconduct, absents himself without valid ground from the majority of the meetings of the Council in a year and become incapable of acting. A person who is removed by the Government on the said grounds shall not be eligible for re-appointment unless permitted by the Government. Section 16 of the Act lays down the disqualifications, some of them are, if he is not a citizen of India, if he found unsound mind by a competent authority, if he is an undischarged insolvent, if he is a salaried Government servant of the area, if he is dismissed from the Government service and if he is a member of another Village Council and if he is convicted of an offence by a court in India and sentenced to imprisonment for not less than two years and five years has elapsed since his release. The Rules of 1937 also provides for the removal of the Chairman and members of the Village Court on the ground of disobedience or refusing to carry out the provisions of the Act or any orders issued by the competent authority or if he cease to reside within the village area continuously for twelve months or he has become incapable or declared insolvent or convicted by a criminal court involving moral turpitude.²⁶ By the Nagaland Village Council (Fourth Amendment) Act of 2009, clause (3) of Section 9 was added to the VC Act of 1978 for removal of Chairman of Village Councils by the State Government on the grounds of no-confidence motion, when he ceases to be a member of the Village Council and when he resigns on his own violation.

In *Sabeituo Mechulho v. the State of Nagaland*²⁷ the petitioners who are the Gaonburas and Village Council members wrote to the District authorities (Deputy Commissioner) complaining against the Chairman of their village and requesting to call for a special session to move a no-confidence motion against the Chairman as per Section 9(3)(c) of the VC Act of 1978. However, instead of summoning a special session, the Deputy Commissioner directed respondent No.6 (the Chairman) to convene the meeting. Quashing the direction of the Deputy Commissioner and allowing the Writ Petition of the petitioners, the High Court observed that when Section 9(3)(c) of the Act mandates the no-confidence motion against the Chairman is to be summoned by the Deputy Commissioner and when more than half of the Village Council members prayed for requisitioning the said special session, the Deputy Commissioner do not have the discretionary power to consider the merit of the no-confidence at his whims.²⁸ Thus, the order of the Deputy Commissioner is without authority or sanction of law. Similarly in *Ammo Gemo v. State of Nagaland*²⁹ directing to convene a special session of the Village Council for no-confidence, the High Court observed that Village Councils are democratic institutions

²⁶ *Supra* Note 13 at Rule 40.

²⁷ 2019 (4) GLT 518.

²⁸ *Id.* at para 14.

²⁹ WP(C) 53(K)/2000.

and its members cannot be rendered helpless in exercising their right to test the confidence in the leadership and to uphold the democratic institution.

5. Powers and Duties of the Village Council

The Village Council has been given the power of an auxiliary to the administration with full powers in the internal administration of the village in maintenance of law and order.³⁰ The Village Council has the power to arrest offenders and hand over to the nearest police station.³¹ It has been assigned with the duty to assist the administration in enforcement of order passed by competent authorities.³² No member of the village can transfer immovable property to an outsider without the consent of the Village Council.³³ This provision protects the land of the village from outsiders. Thus, a perusal of Section 15 of the VC Act of 1978 clearly lay down that the Village Council is a supplemental authority to the State in maintenance of law and order. The protection of the village land from outsiders – be it an indigenous Naga or a person from outside the state is also within the sole authority of the Village Council. Besides the administrative powers and duties, the Village Council has also been given other developmental and welfare duties under Section 12 of the VC Act, some of them are:

- Formulation of developmental schemes of the village, maintenance of power and water supply, forest, sanitation, education and other welfare activities.³⁴
- To assist the departments of the Government in execution of developmental projects and to initiate developmental and welfare works on its own. To implement the welfare and developmental projects, the Village Council can borrow money from banks and financial institutions with or without interest. And for that the Village Council can enter into any agreement with Government, financial institutions or a permanent resident of the village.³⁵
- The Village Council can also lend money to permanent residents of the village from its funds with or without interest. The Village Council can forfeit the security of the borrower and dispose of the attached property in public auction or by private sale where the borrowers fails to repay the loan amount or committed a breach of the terms of the loan agreement.³⁶
- The Village Council can raise funds by passing a resolution for execution of welfare activities and can also realize registration fees from the residents of the village.³⁷

In *T.G. Enterprise v. New Socunoma Village*³⁸ the single judge of the Gauhati High Court refusing to grant the prayers of the appellant held that the stone crushing unit of the appellant in the

³⁰ *Supra* Note 14 at Sec. (15)(a).

³¹ *Id.* at Sec. 15(b).

³² *Id.* at Sec. 15(e).

³³ *Id.* at Sec. 15(g).

³⁴ *Id.* at Sec. 12(1).

³⁵ *Id.* at Sec. 12(2), (3), (4) & (9).

³⁶ *Id.* at Sec. 12(7) & (8).

³⁷ *Id.* at Sec. 12(11) & (10).

³⁸ 2021 (11) FLT 678.

village cannot be permitted to run unless the Village Council grants a No Objection Certificate and the permission of the Nagaland Pollution Control Board is dubious since the Village Council has not granted the permission. The Division Bench of the High Court sustaining the order of the single judge, held that “Village Council is extremely important local body in Nagaland. Nagaland has a distinct system of village administration, with important powers and functions given to a Village Council.... With nearly 75% of people in Nagaland residing in villages, a Village Council has been given these important powers. These powers have to be exercised in accordance with law.”³⁹

In *Tsusola Yimchunger v. the State of Nagaland*⁴⁰ it was contented that the Village Council is conferred with the powers of say in the matters of appointment to Government Services located within the jurisdiction of village and other developmental works by virtue of the VC Act of 1978. Thus, the appointment of the respondents in the health care centre located within the village was done in a clandestine manner without any notice to the land donor and the Village Council. The Division Bench of the High Court recognizing the authority of the Village Council directed the State Government to scrutinized the appointment in consultation with the Village council whether the appellant come within the scheme of providing with the employment for the land as claimed to have been donated by the father-in-law and the husband of the appellant.⁴¹

In times of exigency like outbreak of epidemics the Village Council shall report immediately to the nearest medical officer or the administrative officer.⁴² Similarly, when there is an unnatural death or an accident in the village or when there is a presence of vagabonds in the village, the Village Council should report to the nearest police station or the administrative officer.⁴³

6. Powers, Duties and Procedures of the Village Court

The quorum of the Village Court shall be majority of the total number of members and the Secretary shall record the proceedings of the Court. The jurisdiction will extend to hearing trial of suits and cases arising within the territorial limits of the village. In the absence of any definition being provided for the expression “suits and cases” by the Constitution or the Code of Civil Procedure or the Code of Criminal Procedure, the Supreme Court in *State of Meghalaya v. Melvin Sohlangpiaw*⁴⁴ defined the expression as, “..... in common legal parlance developed over the years, the expression ‘suit’ is used to connote legal proceedings of a purely civil nature, while the term ‘case’ is used to connote either a civil suit or a criminal proceeding.”⁴⁵ Thus, the Village Court can try and decide both civil and criminal cases. The civil jurisdiction is unlimited with no pecuniary suit limits. However, in criminal jurisdiction, the

³⁹ *Id.* at para 14.

⁴⁰ 2013 (2) GLT 565.

⁴¹ *Id.* at para 14.

⁴² *Supra* Note 14 at Sec. 15 (f).

⁴³ *Id.* at Sec. 15 (f) & (d).

⁴⁴ AIR 2020 SC 5204; 2021 CriLJ 1546.

⁴⁵ *Id.* at para 9.1.

Village Court has been given the power of trial falling within the scope of tribal customary laws like, theft, affray, public nuisance, mischief, trespass, assault, wrongful restraint, disorderly brawling, etc.⁴⁶ The Village Court and the Gaonburas has also been given the power of a rural police but they are not regular police officer under the Evidence Act or the Criminal Procedure Code.⁴⁷ The Village Court though have the power of trial in criminal cases falling with the tribal customs, they cannot pass any order of imprisonment and if it is felt that sentencing the offender is necessary, the Village Court should refer the case to the competent court without delay.⁴⁸ In both civil and criminal cases the Village Court can award compensation to the aggrieved party in accordance with customs and usages. The Court also has the power to order attendance of parties and witnesses and power to punish for the contempt of its orders by imposing fine and to realize the fine in a manner as it deems fit in case if the party fails to deposit the fine within the prescribed time.⁴⁹ In both civil and criminal matters the Village Court can attach the property of the guilty party and award compensation to the aggrieved party by distraintment of the offender's property.⁵⁰ However, the Village Court cannot sell the property so attached if the party prefers an appeal within thirty days.⁵¹

In all civil and criminal cases the Village court follows customs and usages and the decision given after hearing both the sides and their witnesses.⁵² The pronouncement of the decision should be forthwith and the majority opinion of the members present should be final.⁵³ In case of a deadlock or tie the Chairman's opinion is final. The Rules of 1937 provides that the proceedings should be recorded in written; however notice to parties can be given in oral.⁵⁴ If the other party remains absent wilfully, the court can decide the case ex-parte.⁵⁵ Rule 64 of the Rules of 1937 provides that an appeal from the Village Court shall lie before the District Customary Court (Dobahshi Court) within sixty days excluding the time taken in obtaining the copy of the order.

The Village Court is the original and primary court where civil disputes are tried in accordance with the customs and usages. Thus, the higher judiciary can only review and scrutinize the legality of the orders of the Village Court but cannot assume the original jurisdiction. In *Tekaba Ao and Anr. v. Sakumeren Ao and Anr.*⁵⁶ The High Court remitted an additional issue to the Additional Deputy Commissioner (Judicial) for recording of evidence and accordingly passed an order on the basis of the additional evidence recorded by the Additional Deputy Commissioner (Judicial). Setting aside the order

⁴⁶ *Supra* Note 13 at Rule 45(b).

⁴⁷ *Id.* at Rules 2(b) & 3A.

⁴⁸ *Id.* at Rules 46(1) & 49.

⁴⁹ *Id.* at Rules 47 & 48.

⁵⁰ *Id.* at Rule 46(3).

⁵¹ *Id.* at Rules 27 & 61.

⁵² *Id.* at Rule 60.

⁵³ *Ibid.*

⁵⁴ *Id.* at Rules 5 & 3.

⁵⁵ *Id.* at Rule 4.

⁵⁶ AIR 2004 SC 3674.

of the High Court on the ground that the High Court has deprived the Customary Court as the primary court, the Supreme Court held that:

“In adopting a course of remitting the issue of ownership of land in which the water source exists, the High Court has deprived the Village Court as the primary court to make an effort to resolve the dispute between the two clans of the two villages amicably and on consensus.”⁵⁷

In a similar case, *Chairman, Kiyekhu Village Council v. Hokiye Zhimomi & Ors.*⁵⁸ the High Court called for the original registers and upon being found that the said original registers bears the fact as claimed by the party directed the lower court not to go into the question disputed on the basis of the said registers. The Supreme Court observing that the High Court do not have the jurisdiction to interfere in the trail jurisdiction held that “We fail to see how the High Court could have interfered under Article 227 at a stage when the appeal is yet to be decided by the Additional Deputy Commissioner.”⁵⁹

7. Conclusion

The Village Council (Village Court) is the oldest organ in the State of Nagaland. It was the only organ of the governmental machinery performing all the functions of the state. As observed by the Supreme Court in *Tekaba Ao and Anr. v. Sakumeren Ao and Anr.*⁶⁰ the Village Court being the primary court should be protected from external influences. It being a rural court manned by elderly man of the village, there is high probability of being manipulated by the official administrators and powerful individuals. The Rules of 1937 provides that the Village Council is to be supervised by the Deputy Commissioner, Additional Deputy Commissioner, Assistant to the Deputy Commissioner and his assistants. However, these bureaucrats are neither legal professionals nor experts of customary law. The State has also not passed any legislation brining the Village Courts under the supervision of the High Court. Thus, it is only the said Rules of 1937 which is an administrative law that regulates the Village Court. Though it performs both judicial and administrative function, the judicial functions and powers are not semi-judicial. Therefore, it may be considered as a judicial organ for the reason that unlike tribunals the Village Court is not constituted to supplement the formal courts, it was in existence before the formal courts and continued to function as the primary court of trail. However, having said that, the Village Council is not free from defects. In *Toulazouma Village Council v. Traonu Poumai*⁶¹ a man attempted rape against a woman in the residential compound of the respondent. The Village Council in

⁵⁷ *Id.* at para 20.

⁵⁸ 1999 (1) GLT (SC) 1.

⁵⁹ *Id.* at para 4.

⁶⁰ *Supra* Note 56.

⁶¹ 1999 (1) GLT (SC) 1.

view of Resolution No.2⁶² cancelled the land patta of the respondent. Aggrieved by the Village Council's order, the respondent appealed to the EAC who endorsed it to the Dobhasi Court (DB Court). The DB Court set aside the order of the Village Council on the ground that the Village Council has acted beyond the Government Rules. On appeal, the Deputy Commissioner sustained the order of the DB Court. Thus, the Village Council filed a Revision Petition before the High Court against the Deputy Commissioner's order. The High Court held that there was no illegality in the Deputy Commissioner and the DB Court order. The High Court however, doubting the said Resolution of the Village Council held that "it is doubtful if such resolution of a village council can be imposed against a villager under the law of the land, because, there are laws under which a person involved in such case can be tried and punished. Moreover, such resolutions and their implementation may also attract the provisions of the Article 21 of the Constitution of India."⁶³ Since the said Resolution was not challenged the High Court only expressed the doubt of its validity and not declared the Resolution *ultra vires* the Constitution. In a similar case⁶⁴ the Mother's Union of the village arrested a lady on the charges of adultery, chopped her hair, slapped and kept naked in open. After which the lady was kept in the store room of the Village Council. The mothers of the Mother's Union upon a complaint were arrested by the regular police and booked under the Indian Penal Code (IPC). The mothers involved in the illegal confinement of the lady pleaded that the action was taken in view of the decision of the Village Council to punish the offenders. Though the mothers were released under the Probation of the Offenders Act considering they have small children who need their mothers, the High Court however observed that "this nature of punishment meted out to certain offenders has been often experienced in our society, citizens taking law into their hands. This is not a healthy practice. Citizens must be guided to respect the rule of law."⁶⁵ Thus, the Village Courts may easily come under the influence of vested interests which may destroy the reputation of the age old institution that maintained the Naga society. Hence, the State should make amend in the appointment of the Village Council members and its supervisory authorities to be guided by legal professionals or by the judicial organ of the State. The Council members should not only be given training but periodic examination should be conducted to evaluate their legal knowledge. The state may also appoint honorary legal advisors who know the dialect and customs of the village to advice and guide the Village Council.

⁶² Resolution No. 2 of the Village Council provided that "If anyone commits sexual abuse/Rape/molestation on women his land patta shall be cancelled."

⁶³ *Supra* Note 61 at para 4.

⁶⁴ *Thringtonla v. the State of Nagaland*, MANU/GH/0305/2021

⁶⁵ *Id.* at para 24.