

Gauhati High Court

A.S. Khongphai vs Stanley D.D. Nichols Roy And Anr. on 26 May, 1965

Equivalent citations: 2008 (1) GLT 180

Author: S Dutta

Bench: G Mehrotra, S Dutta

JUDGMENT S.K. Dutta, J.

1. This appeal arises out of an Election Petition which has been dismissed by the District Judge, Lower Assam Districts, Gauhati constituting an Election Tribunal. The Petitioner's case is as follows:

That except the seat from Shillong, all other seats in the Assam Legislative Assembly from the Autonomous District of the United Khasi and Jaintia Hills, including the seat from Cherrapunji (L.A. 24) constituency are reserved for the members of the Tribes of the said Autonomous District. Cherrapunji (L.A. 24) constituency was called upon to elect a member to the aforesaid Assembly to fill up a casual vacancy caused by the resignation of the sitting member. The Returning Officer of the said constituency by a public notification, dated the 23rd March, 1963 invited nominations of candidates for the said election. In pursuance of the said notification, respondent No. 1 Shri Stanley D.D. Nichols Roy filed nomination papers for the aforesaid seat declaring himself to be a Khasi, that is a member of a Scheduled Tribe inhabiting the United Khasi and Jaintia Hills Autonomous District. Respondent No. 2 Shri Hoover Hynniewta also filed nomination paper and was duly nominated a candidate, but he withdrew from the election within the prescribed time. Respondent No. 1 Sri Nichols Roy was supported by the All Party Hill Leaders Conference. The petitioner who is a Khasi, also filed his nomination paper and was duly nominated as a candidate. On the date fixed for the scrutiny of nominations by the Returning Officer, the petitioner objected to the nomination of respondent No. 1 Sri Nichols Roy on the ground that he was not a member of the Scheduled Tribe of the Autonomous District of United Khasi-Jaintia Hills and as such, was not qualified to be chosen to fill the seat from the Cherrapunji (L.A. 24) constituency. The Returning Officer by his order, dated the 2nd April, 1963 overruled the objection and accepted the nomination paper of respondent No. 1 Sri Nichols Roy. The election then took place on the 27th April, 1963. Respondent No. 1 polled 12,728 votes against the petitioner who polled 3,491 votes and respondent No. 1 Sri Nichols Roy was declared elected. The petitioner then filed a petition before the Election Commission of India challenging the election of respondent No. 1 Sri Nichols Roy on various grounds. This petition was heard by the District and Sessions Judge, Lower Assam Districts at Gauhati with whom the one-man Election Tribunal was constituted. The petition was dismissed as aforesaid. But the parties were directed to bear their own costs.

2. Among the issues framed by the Tribunal there are the following two issues:

(i) Whether the respondent Sri S.D.D. Nichols Roy is a member of the Khasi Scheduled Tribe of the Autonomous District of United Khasi-Jaintia Hills and was qualified to fill the seat of I.A. 24 Cherrapunji Assembly Constituency under the Representation of the People Act and the Constitution of India?

(ii) Whether the respondent Sri S.D.D. Nichols Roy committed corrupt practice by the publication in the Khasi newspapers "U Nongsain Hima" and "Ka Pyrta U Riewtum" dated 16th and 18th April 1963 respectively by himself or his agent or by any other person that the High Court of Judicature in Assam had decided that he is a Khasi, which he knew or believed to be false or does not believe to be true?

3. The Tribunal answered the above first issue in the affirmative and the above second issue in the negative. In the present appeal only these two issues have been taken up. The contention of the petitioner is that respondent No. 1 Sri Nichols Roy is not a Khasi and as such he is not eligible for the seat from the Cherrapunji (L.A. 24) constituency which is reserved for a member of a Scheduled Tribe inhabiting the United Khasi Jaintia Hills Autonomous District. The petitioner puts forward the following arguments in support of his contention. According to the Khasi Customary Law, every Khasi must have a "Jaid" (clan). There cannot be any Khasi without a "Jaid". The Khasi society being matriarchal every "Jaid" springs from a Khasi woman. A Khasi must take the "Jaid" of his mother. He cannot take the "Jaid" of his father. Consequently, the children of a Khasi father and a non-Khasi mother cannot be Khasis. It is not disputed that the father of respondent No. 1 is a Khasi gentleman, but his mother is an American Lady. Therefore, respondent No. 1 Sri Nichols Roy whose mother has no "Jaid" being a non-Khasi, cannot be a Khasi as he is not in a position to take any "Jaid".

4. When the petitioner alleges that respondent No. 1 Shri Nichols Roy is not a Khasi, the burden lies heavily on him to prove the said allegation. In support of the contention of the petitioner as stated above, two theories are thus put forward as the customary law, namely (1) that every Khasi must have a "Jaid" and (2) that a Khasi can only take the "Jaid" of his or her mother and not of his or her father.

5. I may first examine the oral evidence produced to find out how far the same is helpful in establishing the above theories.

RW. 1 A.S. Khongphai is the petitioner. He is by occupation an Advocate. He asserts that one whose mother is not a Khasi cannot be a Khasi. A Khasi must have a "Jaid". He says that he could not but take the "Jaid" of his mother. He, however, admits that one Khongman, an Advocate, is a Khasi. He knows that Khongman's wife is a non-Khasi. But when questioned about their children, he says that he does not know if they are Khasis. He also admits that these children are regarded as Khasi.

P.W. 2 Mowoon Lyngdoh is Lyngdoh of Sohiong. He deposes that according to Khasi custom the issue of a non-Khasi woman by a Khasi husband cannot be a Khasi. He admits that many Khasis have married non-Khasi women but says that their descendants are always treated as non-Khasi even if they live in the Khasi Hills for generations. But P.W. 7 Hadwickton Nongsteng, on the other hand, says that it takes 4 or 5 generations for the descendants of a non-Khasi woman to have a "Jaid". P.W. 8 Keni Nongbsap, deposes; that the descendant of a non-Khasi can never become Khasi at any time. P.W. 9 says that he knows Respondent No. 1 very well and adds--"We take him as a Khasi".

It is admitted by various P.Ws., that the word "Khar" or "Dkhar" means non-Khasi. P.W. 1 Khongphai denies that "Jaid Khars" are descendants of non-Khasi women. He says that he has read Gurdon's book and used to contribute articles on Khasi history and customs but had no occasion to contradict Gurdon's statement that "Jaid Khars" are descendants of non-Khasi women. P.W. 2 Mowoon Lyngdoh admits that "Dkhar" means non-Khasi but adds he cannot explain why some "Jaid" are called "Jaid Dkhars". P.W. 3 goes to deny that the "Jaid Dkhars" are descendants on non-Khasi women.

P.W. 5 says that the children and descendants of a non-Khasi woman cannot be Khasis. He adds that he had not read about this in any book nor has he been told so by anybody. He says "I know it myself. P.W. 10 Norman Singh Syiem cannot say if the ancestress of a "Jaid Dkhar" was a "Dkhar" i.e., a non-Khasi from the plains.

6. I may next refer to the evidence of witnesses produced by Respondent No. 1 R.W. 1 is the respondent No. 1 himself. He practically knows nothing about Khasi customs. R.W. 2 Prof. R.S. Lyngdoh is the Head of the Department of Khasi Language and Culture at the St. Anthony's College. He says that there are people of the War locality who are Khasis, but who have no "Jaid". R.W. 3 Dr. S.R. Laloo also says that the War people have no "Jaid". R.W. 4 Phritson Kharkongor says that his clan is "Jaid Dkhar" and that their ancestress was a non-Khasi women by the name of Mohkhynhong. R.W. 6 Jebuni says that he was a Wahadadar for 27 years and that he knows Respondent No. 1. He also says that Respondent No. 1 is a Khasi of War Sheila and that the Khasis of War Sheila have No. "Jaid". R.W. 8 Hamlet Bareh is a Professor of History at the St. Edmund's College. He was awarded the D. Phill degree by the Gauhati University on his thesis the origin and History of the Khasi People. He says that there cannot be a Khasi without a "Jaid" but adds that now-a-days the matter of taking a "Jaid" has become a matter of choice, i.e., one can have the "Jaid" of the father or of the mother or he may not take any "Jaid" at all.

R.W. 10 Lokendro Syem says that he is the Syiem of Jirang Syiemship. He further says that there are many Khasis in his Syemship whose fathers are Khasi and mothers are non-Khasis. These people take their "Jaid" from their fathers. In cross-Examination he says "Khasis take their Jaid from the mothers". R.W. 11 Oniram Nongrum is a School teacher. He deposes that the ancestresses of "Jaid Dkhars" are non-Khasis and these "Jaid Dkhars" are now treated as Khasis. R.W. 12B. Wellington says that he has been collecting infomiation about Khasi customs, origin, etc., since 1960. One cultural organisation requested him to submit a paper on the above topics and he did so. The Sheila Presbytery has also appointed him to collect information regarding the history of the Church in Sheila. According to this witness; the people of Sheila, Mustoh, Nongwar and the War area have no "Jaid".

7. From the discussion above, one thing is clear that the witnesses of the petitioner have no definite idea about the two customs put forward by the petitioner, viz., that every Khasi must have a "Jaid" and that a Khasi can take the Jaid of his mother only and not of the father. The respondent's witnesses have deposed against those two theories and while doing so have made slips here and there. But to prove a custom the evidence must be precise and conclusive. It cannot be proved by slips made by some antagonistic witnesses. A custom must have the attributes not only of antiquity

and certainty but also of uniformity. If exceptions to a custom are found, any theory based on it must be rejected.

8. When the oral evidence adduced is not clear and ambiguous we must rely on treatises on the subject. The following books, viz., "The Khasis" by Major P.R.T. Gurdon published in 1907 and "Notes on Khasi Law" by Keith Cantlie of the Indian Civil Service, published in 1934 are standard books on Khasi laws and customs and have always been acknowledged as authorities. In the present case, both the parties have referred to these books.

9. Now, I may first examine the theory that every Khasi must have a "Jaid" in the light of what is said in Cantlie's Notes on Khasi Law". The following passage appears at page 56:

The customs of Khasi War villages such as Umniuh and Nongjri Mawthang Sohkhylung and Sohbar resemble those of Sheila. Not people who live in the War country observe War customs. The War people came from the highlands and some families preserve the highland customs. The main test is whether they keep their clan (Jaid) name. The Wars have no Jaid.

10. The petitioner seems to know that Khasis of War area have no "Jaid". He is very reluctant to admit that the father of respondent No. 1, viz., late Rev. Nichols Roy was a man of War Sheila. He has to admit that late Rev. Nichols Roy was born there and lived there. Yet he denies that he was a man of War Sheila. On the other hand, P.W. 5 H. Cotton categorically says that Late Rev. Nichols Roy was a man of War Sheila. R.W. 3 Dr. S.R. Laloo says that he has met some War people who have got no jaid. P.W. 11 Wollington says that the people of War Sheila, Mustoh and Nongwar have no Jaid. In the above circumstances, the contention of the petitioner that every Khasi must have a jaid remains unproved.

11. Next we may consider the contention that a Khasi must take the jaid of his mother and that he cannot take the jaid of his father. According to the Note on the Khasis by Mr. Hari Blah, Extra Assistant Commissioner which is Appendix B(VII) to the Census Report 1931, Vol. III Assam, the Khasis are divided into the following groups, viz., Khasis, Syntengs or Pnars, Wars, Bhois and Lynngams. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, the Scheduled Tribes are specified and there also the Khasi and Jaintia Tribe includes Khasis, Syntengs or Pnars, Wars, Bhois, Lynngams. It will thus appear that certain groups like Syntengs, Wars, Bhois and Lynngams became merged with the original Khasis. As already stated R.W. 2 R.S. Lyngdoh is the Head of the Department of Khasi Language and Culture at the St. Anthony's College at Shillong. He says that the Lynngams are Khasis and that they are a mixture of Khasis and Garos mostly the issues of Khasi males and Garo females. Gurdon in his book "The Khasis" says that the Lynngams intermarry with the Garos. "It appears that sometimes the parents of girls' exact bride-money, and marriages by capture have been heard of (vide page 196)". It will thus appear that the defendants of Khasi fathers and Garo mothers became absorbed in the Khasi community. About the Bhois, Gurdon in his book at page 2 says as follows:

The people known as Bhois in these hills, who are many of them really Mikirs, live in the low hills to the north and north-east of the district, the term 'Bhoi' being a territorial name rather than tribal.

Secondly it appears that the primary ancestress of a jaid was not always a Khasi woman. It is not disputed that the word 'Dkhar' or 'Khar' means non-Khasi. Several witnesses have deposed that the ancestress of a 'Jaid dkhar' is a non-Khasi woman. In this connection Gurdon writes as follows in his book (vide page 66):

If the lists of the Khyrim and Cherra clans are examined, it will be seen what a large number bear the name of Dkhar or its abbreviation 'Khar'. The word Dkhar is that applied by a Khasi to an inhabitant of the plains. We come across names such as 'khar-mukhi, khar sowali, the first word being an abbreviation of dkhar, and mukhi being the common Bengali name which occurs in Chandra Mukhi, Surjya Mukhi, and C Sowali (chowali) is the common Assamese word for a girl. The ancestresses of these tribes were plains women, carried off, no doubt, in the raids made by the Khasis over the border into Assam and Sylhet.

Gurdon also mentions (vide page 90) three clans which are descended from three men and goes on to say "it being remarkable that in this case descent is traced originally from male ancestors and not from females".

12. What has actually happened seems to me to be as follows:

As pointed out above, not only the original Khasis but also various groups like Syntengs, Wars, Bhois and Lynngams became merged with the Khasis. But in spite of such merger these groups retain some of their customs which are different from the customs of the original Khasis. In this connection the following passage from Gurdon's book (page 82) regarding inheritance is apposite:

The Khasi and Synteng laws of inheritance are practically the same, although in some of the doloiships in the Jaintia Hills there are some slight differences. The War law of inheritance differs greatly from that of the Khasis and the customs of the Bhois or Mikirs, who inhabit the Bhoi doloiship of the Jaintia Hills, are totally different from those of the Khasis, thereby supplying another link in the chain of evidence in support of the conclusion that the Bhois, or, more correctly speaking, the Mikirs, are of Bodo origin, and not Khasi or Mon-Anam. The Lynngams follow the Khasi law of inheritance.

13. It appears, therefore, that although it may be true that so far as the original Khasis are concerned, every Khasi must have a Jaid and he or she can take only the Jaid of his or her mother, this does not appear to be so in the case of some other tribes like the Wars, Lynngams or Bhois. When the witnesses depose about the Khasi custom of having a jaid and taking of a jaid from the mother only, it is not clear whether they mean the Khasis only or also the other tribes like Wars, Bhois, Lynngams and Syntengs who are reckoned as Khasis but are different from them. In the result therefore the contention that every Khasi must take the Jaid of his or her mother only is not proved and cannot be accepted.

14. As regards the next issue, it is contended that the publication of Exhibits 3 and 4 which relate to a previous election petition, constitute corrupt practice. It may be mentioned here that Respondent No. 1 Sri Nichols Roy was elected in the General election from the same Constituency but he

resigned. Thus a casual vacancy occurred but in the election held to fill it up, Sri Nichols Roy stood again. The present petition relates to the election for the casual vacancy. Against the previous election also, there was an election petition. Exhibit 3 simply states the fact that the Election Tribunal decided that Bah Stanley was a Khasi and that an appeal was filed before the High Court by Bah Clifford and that the said appeal was dismissed. All these are facts and there is nothing false in it.

15. In Exhibit 4 it is said that the High Court declared Bah Nichols Roy as a Khasi. It is contended that this is false as the High Court dismissed the aforesaid appeal not on merit but as it became infructuous Sri Nichols Roy having resigned. It is submitted that publication of Exhibit 4 constitutes a corrupt practice under Section 124(4) of the Representation of the People Act, 1951. But the statement is with regard to the candidature of Shri Nichols Roy himself. It is not a false statement regarding the candidature of the petitioner which might prejudice the petitioner's candidature. As such it does not come under the mischief of the above provision. There is thus no force in the contention on issue No. 2 either.

16. In the result, this appeal fails and it is dismissed with cost which is fixed at Rs. 200. Mehrotra, C.J.-

I have had the advantage of reading the judgment of my brother Dutta J. and I agree with the order proposed. As the question raised is one of some importance and I had the occasion earlier to express my views in the case of *Wilson Reade v. C.S. Booth and Ors.* reported in AIR 1958 Assam 128, would like to give my own reasons.

17. The appeal arises out of an election petition. By a public notification dated the 23rd March 1963 nominations were invited for the by-election of Cherrapunji (L.A. 24) constituency, as a vacancy was caused by the resignation of the sitting member. Respondent No. 1 Sri Stanley D.D. Nichols Roy filed his nomination and Sri Hoover Hynniewta respondent No. 2 also filed his nomination but he subsequently withdrew. The appellant Ajra Singh Khongphai also filed his nomination. On the date of scrutiny, the appellant objected to the nomination of Sri Nichols Roy on the ground that he was not a member of the Scheduled Tribe of the Autonomous District of United Khasi and Jaintia Hills and as such, was not qualified to be chosen to fill the seat from the Cherrapunji (L.A. 24) Constituency. This objection was over-ruled. The election took place and Sri Nichols Roy polled 12,728 votes against the respondent No. 1 Sri Nichols Roy was declared elected. Thereafter the present petition was filed challenging the election of Sri Nichols Roy on various grounds. The main ground taken was that his nomination was wrongfully accepted.

18. Article 342(1) of the Constitution provides that the President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

19. In the exercise of powers conferred under Article 342(1) of the Constitution the President after consultation with the Governors and Rajpramukhs of the States concerned, made the Constitution (Scheduled Tribes) Order, 1950. Under this Order the tribes or tribal communities or parts of or groups within tribes, or tribal communities specified in Parts I to XII of the Schedule to this Order shall, in relation to the States to which those parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule. 'Schedule' Part II--Assam' under the heading '1. In the autonomous Districts' item 6 of this Order mentions 'Khasi and Jaintia including Khasi, Synteng or Pnar, War, Bhoi or Lyngnam)'. Thus for the purpose of the Cherrapunji (L.A. 24) constituency Khasi and Jaintia include Khasi, Synteng or Pnar, War, Bhoi or Lyngnam. For determining as to who belongs to the Khasi tribes it is not necessary that a person should be Khasi by blood. In the case of Wilson Reade v. C.S. Booth and Ors. AIR 1958 Assam 128 at page 132 this Court observed as follows:

The question whether an individual who is seeking election for the reserved seat is or is not member of the Khasi tribe will have to be determined by the Courts when they are required to adjudicate upon that question and in the absence of any definition of the word 'Khasi-tribe' in the Constitution or in the law, the test which will determine the membership of that individual will not be only the purity of blood, but his own conduct in following the customs and the way of life of the tribe, the way in which he was treated by the community and the practice amongst the tribal people in the matter of dealing with persons whose mother was a Khasi and father was an European.

The whole object of reserving a seat for the Khasi tribe is to afford the community as a whole a right of representation and to give the community as a whole a protection. The question therefore of the membership of a particular individual of that community cannot be considered divorced from the very object of the legislation.

The conduct of the community which has been given a right of special representation, the manner and how the community regarded the particular individual and whether the community as a whole intended to take the individual within its fold are all matters which will be relevant for consideration of the question as to whether within the meaning of the Constitution, the appellant could or could not be regarded as a member of the Khasi clan.

20. Thus for determining the question whether a person belongs to the Khasi community or not for the purposes of special representation, it is not only the purity of blood which will be the criterion but all the surrounding circumstances will have to be looked into. The argument of the appellant was that according to the Khasi custom no person other than the one born of a Khasi female can be ever regarded as a member of that tribe and further that no individual can be a Khasi unless he has a 'Jaid' (clan). According to the appellant a Khasi takes the 'Jaid' of his mother. The father has no independent 'Jaid'. Thus unless a person's mother is Khasi, he can never be regarded as a member of the Khasi tribe. The evidence in the case has already been dealt with by my brother in details and I do not find anything in the evidence to show that the membership of the Khasi tribe is still confined to the descendants of the original Khasis, that is to say, the Khasi community from a Khasi women. The contention is that sometimes the Khasis brought non-Khasi women from the plains and those

women were assimilated among the Khasi community and their descendents were recognized as Khasis. But it is urged that any one born of a non-Khasi woman cannot be a member of the community, although after some time if he himself marries a Khasi woman, his children may become Khasis. Admittedly in the present case the father of the respondent was a Khasi. There has been evidence produced on his behalf to the effect that he has been recognized by the community as a Khasi.

21. Wilson Reade witness No. 9 for the petitioner appellant has stated in crossexamination as follows:

I know the respondent No. 1 very well. We take him as a Khasi.

22. The respondent No. 1 has said that he was elected as the General Secretary of the All Party Hill Leaders' Conference in 1960 and is re-elected in that capacity every year. He was a member in each delegation of the Hill leaders who went to meet the Prime Minister demanding Separate Hill State. In the last General Election in 1962 he stood as a candidate from Cherrapunji Constituency from the All Party Hill Leaders' Conference and was returned.

23. Evanton Reade who is a witness for the respondent and is the Headmaster of the Evening Section of Mawkhair Christian High School, has said that he knew the respondent and met him in the United States of America when they were students. He (the respondent) conducted himself as a Khasi and associated with the Khasi Students as California at that time. In cross-examination he says that they spoke in Khasi Language amongst them selves while in America.

24. The respondent got a scholarship from the Government for his studies. Thus from the evidence it is clear that the respondent represented the Khasi community whenever there was any case for representation of such community. He was recognized as a Khasi amongst the Khasi community.

25. There are two judgments marked Exts. F and G Ext. F is a judgment in the Election Case No. 1/60, dated the 15th December 1960 passed by the Commissioner of Election Cases, Shillong. Ext. G is a judgment in Election petition No. 43/62, dated the 1st October 1962 passed by the Election Tribunal at Gauhati. In both these judgments objection was raised that the respondent is not a Khasi and the contention was repelled.

26. Ext. 6 is the proceedings of the Khasi National Durbar, dated 25th and 26th March 1925. The opening sentence of this proceeding is as follows:

Since the immemorial, there has been law or principle of acquiring 'sonship' (Citizenship) of the State in the Khasi States of Khasi Hills.

This is to confirm and make permanent in writing that law which has existed and which should exist:

Clause III(d) of this exhibit reads as follows:

III. In this law unless the words used clearly mean otherwise:

* * * *

(d) The word 'a person' includes (1) a Khasi whose father and mother are Khasis, (2) him

27. This proceeding which is a record of proceedings, shows that a person having a Khasi father could also acquire the citizenship of the Khasi State. All this evidence clearly establishes that the respondent was recognized as a Khasi. The other two aspects, namely, Whether there can be a Khasi without a 'Jaid' or whether a Khasi can acquire the 'Jaid' only of his mother are matters which have been dealt with by my brother Dutta J. and I need not refer to the evidence on that point. I fully endorse his opinion.

28. In these circumstances in my opinion the court below was right in coming to the conclusion that the respondent was entitled to seek election from the constituency as he was a member of the Khasi community within the meaning of the Constitution (Scheduled Tribes) Order, 1950.

Cross Objection in F.A. 29 of 1964:

This is a cross objection filed in First Appeal No. 29 of 1964 (Election). The said first appeal arose out of an election petition which was dismissed by the District Judge, Lower Assam Districts at Gauhati constituting an Election Tribunal. This Court has already dismissed that appeal. While dismissing the petitioner's case, the Election Tribunal did not grant any cost, but asked the parties to bear their own costs. Hence this cross-objection.

29. It is submitted that under the relevant provisions of the Representation of the People Act, 1951, the respondent in the election case, namely Shri Stanley D.D. Nichols Roy, is entitled to cost. Section 98 of the aforesaid Act reads as follows-

Decision of the Tribunal--At the conclusion of the trial of an election petition the Tribunal shall make an order-

(a) Dismissing the election petition; or

(b) Declaring the election of (all or any of the returned candidates) to be void; or

(c) Declaring the election of (all or any of the returned candidates) to be void; and the petitioner or any other candidate to have been duly elected, Then Section 120 reads as follows:

(1) Costs including pleader's fees shall be in the discretion of the Tribunal:

Provided that where a petition is dismissed under Clause (a) of Section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly the Tribunal shall make an order for costs in favour of the returned candidate.

30. It will appear from the above provisions it is obligatory for the Tribunal to make an order as to costs in favour of the returned candidate if the petition against him is dismissed. In the present case, Shri Stanley D.D. Nichols Roy was the successful candidate against whom the petition was dismissed by the Election Tribunal. Therefore, Shri Stanley D.D. Nichols Roy is entitled to costs and it was not correct on the part of the Tribunal not to award it. We, therefore, order that Shri Stanley D.D. Nichols Roy will get his costs in the Election Case. Pleader's fee is fixed at Rs. 200. Appeal Dismissed.