



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/126/2019

DR. MIGO RIBA

S/O LT. NYAMI RIBA, A PERMANENT RESIDENT OF KADI VILLAGE, PO/PS
BASAR, LEPA RADA DIST. AP. PHONE NO. 08729905504

VERSUS

THE STATE OF A.P. AND 2 ORS.

REPRESENTED BY THE SECRETARY, ANIMAL HUSBANDRY, VETERINARY
7 DAIRY DEVELOPMENT, AHV and DD, GOVT. OF AP, NIRJULI 2:THE
DIRECTOR

Age: 0

Occupation :

3:DR. D. LONGRI

Age: 0

Occupation :

4:THE CHAIRMAN

Age: 0

Occupation

Advocate for the Petitioner : MR.K Eshi

Advocate for the Respondent :

Linked Case : WP(C)/138/2019

DR. MIGO RIBA

Age: 0

Occupation :
Address:S/O LT. NYAMI RIBA
A PERMANENT RESIDENT OF KADI VILLAE
PO/PS BASAR
LEPARADA DISTRICT
ARUNACHAL PRADESH. PHONE NO. 08729905504

VERSUS

THE STATE OF A.P. AND 2 ORS.

Age: 0

Occupation :

Address:REPRESENTED BY THE CHIEF SECREARY
GOVT. OF A P
ITANAGAR.

2:THE SECRETARY

Age: 0

Occupation :

Address:ANIMAL HUSBANDARY
VETERINARY and DAIRY DEVELOPMENT AHV and DD
GOVT. OF AP
NIRJULI.

3:SHRI MICHI GOMBU

Age: 0

Occupation :

Address:DEPUTY REGISTRAR COOPERATIVE SOCIETY
O/O REGISTRAR COOPERATIVE SOCIETY
GOVT. OF AP
NAHARLAGUN.

Advocate for : MrD Kamduk

Advocate for : GA (AP) appearing for THE STATE OF A.P. AND 2 ORS.: Advocate ,

, appearing for 2,

3, respectively.

Linked Case : WP(C)/391/2022

Migo Riba

Age: 55

Occupation :

Address:S/o Late Nyami Riba

a Permanent Resident of Kadi Village

PO and PS Basar

Leparada District

Arunachal Pradesh.
Phone No. 08729905504

VERSUS

THE STATE OF AP and 2 Ors.

Age: 0

Occupation :

Address:Represented by the Secretary

Animal Husbandry

Veterinary and Dairy Development (AHV and DD)

Govt. of Arunachal Pradesh

Nirjuli.

2:The Director

Age: 0

Occupation :

Address:Animal Husbandry

Veterinary and Dairy Development (AHV and DD)

Govt. of Arunachal Pradesh

Nirjuli.

3:The Inquiry Officer um Joint Director (CLF)

Age: 0

Occupation :

Address:Nirjuli

Advocate for : T T Tara

Advocate for : GA (AP) appearing for THE STATE OF AP and 2 Ors.: Advocate ,

, appearing for 2,

3, respectively.

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. T. T. Tara, Advocate.

For the Respondent : Mr. I. Chowdhury,
Advocate General, Arunachal Pradesh assisted by
: Mr. S. Tapin, Senior Govt. Adv.
Arunachal Pradesh

Date of hearing : 09.11.2023

Date of judgment : 16.11.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. T. T. Tara, learned counsel for the petitioner. Also heard Mr. I. Chowdhury, learned Advocate General assisted by Mr. S. Tapin, learned Senior Government Advocate for the State of Arunachal Pradesh.
2. As agreed to by the learned counsel for the parties, these three writ petitions are taken up for final disposal together inasmuch as the issues involved in the present writ petitions are stated to be inter connected.
3. The writ petition being WP(C)/126(AP)/2019 is filed challenging an order dated 05.03.2019, issued by the Secretary, Department of AH&V, Government of Arunachal Pradesh, whereby, the petitioner has been directed to handover all the charges and responsibilities in respect

of the post of Managing Director, Arunachal Pradesh Co-operative Milk Producer Union Limited (for short APCMPUL) to the respondent No. 3. The further challenge is an order dated 06.03.2019, issued by the said Secretary, whereby, the petitioner has been suspended from the post of Managing Director (for short MD) of APCMPUL. The yet another challenge made is to the order dated 07.03.2019, issued by the same authority, whereby, the petitioner has been relieved from the charges of MD of APCMPUL. This court, while issuing notice of motion on 08.04.2019, stayed the order dated 05.03.2019, to the extent the same relates to handing over all the charges and responsibilities of Md, APCMPUL to the respondent No. 3.

4. During pendency of the writ petition, on 22.03.2019 (signed on 16.04.2019) the Chief Secretary to the Government of Arunachal Pradesh, ordered for an enquiry regarding the functioning and activities of the APCMPUL including mismanagement of the Union and misuse of fund. Altogether seven point of reference for enquiry were made, which shall be dealt at the appropriate stage. Such order is being challenged in WP(C)/138(AP)/2022.
5. The third writ petition i.e. WP(C)/391(AP)/2022, is being filed assailing an order dated 06.03.2019, whereby, a departmental enquiry was directed against the petitioner and the further challenge made is to the Enquiry Report dated 15.06.2020, submitted by the Enquiry Officer pursuant to such enquiry.
6. Mr. T. T. Tara, learned counsel for the petitioner argues that the case of the petitioner is that while the petitioner has been substantively working as DVO, he was appointed as MD, APCMPUL, on 12.08.2016, by a resolution taken by the Board of Directors (BoD, for short), of the

APCMPUL, in terms of Clause 17.3 of the Bye-Laws of the said society, which was also ratified by the 3rd BoD meeting of the society held on 25.05.2012 in the office Chamber of the Commissioner (AHV) and Chairman of APCMPUL, whereby the petitioner's appointment as the MD, APCMPUL, was further extended for a period of 5 years with effect from the month of June, 2012. The last appointment order of the petitioner as the MD, APCMPUL, was issued in pursuance of the 3rd BoD meeting held on 17th & 18th of December, 2016, whereby the appointment of the petitioner as the MD, APCMPUL, was extended for a further period of 5 years with effect from June, 2017.

7. Mr. Tara, learned counsel for the petitioner submits that the APCMPUL is a registered society under the Societies Registration Act and it is purely a private organization which has nothing to do with the Government of Arunachal Pradesh or for that matter with any other Government. He further submits that the MD of the said society is appointed by the BoD of the society on the recommendation of the expert panel prescribed under Clause 17.3 and 17.4 of the Bye-Laws of the APCMPUL.
8. Mr. Tara, learned counsel for the petitioner also submits that once the MD, APCMPUL, is appointed, the service condition of the MD would be governed by the Bye-Laws of the society and the Central Civil Services (Classification, Control & Appeal) Rules, 1965, (in short CCS (CCA), Rules, 1965), which is applicable to the Government servant, would not govern the employees of the society including the MD, APCMPUL, and therefore, the impugned orders, dated 05.03.2019, 06.03.2019, as well as 07.03.2019, having been issued by the Secretary, Department of Animal Husbandry & Veterinary, Government

of Arunachal Pradesh, is illegal and without jurisdiction.

9. Mr. Tara, learned counsel for the petitioner further argues that in terms of Rules 15 (2) of the CCS (CCA) Rules, 1965, though the petitioner substantively appointed as DVO, he cannot be barred to be a Managing Director of a Co-operative Society. That being the position, the petitioner, in the given facts of the present case, could not have either been removed from the post of MD nor he could have been put under suspension and therefore, the orders impugned in WP(C)/126(AP)/2019 are liable to be set aside and quashed.
10. Mr. Tara, learned counsel while assailing the order impugned in WP(C)/138(AP)/2022, argues that the Government is not having any sanction and authority under law to direct an enquiry into the affairs of a private Co-operative Society, having no control of the Government over such Co-operative Society and therefore, such enquiry is a nullity and the same is liable to be interfered with being without jurisdiction and the petitioner is having every locus to assail such action of the Government being the MD of the aggrieved Co-operative Society.
11. While assailing the order of disciplinary enquiry initiated against the present petitioner and the resultant enquiry report, Mr. Tara, learned counsel submits that the enquiry proceeding is nothing but an offshoot of the petitioner holding the post of the MD in question, and therefore, such enquiry cannot be allowed to be initiated, the petitioner having the right to be a MD of a Co-operative Society under the Rule 15 (c) of CCS (CCA) Rules, 1965, and being appointed by BoD is having all right to challenge such action of the Government.
12. Mr. Tara, learned counsel while summing up his argument, has urged that the respondents have not filed any affidavit denying the

contentions and allegations made against them by the petitioner in the writ petitions and that being the position, the pleadings made in the writ petitions are required to be treated as admitted by the State authority.

13. Per contra, Mr. I. Chowdhury, learned Advocate General for the State of Arunachal Pradesh while referring to the documents annexed to the writ petition submits that the formation of the Co-operative Society was initiated from the side of the Government and the petitioner was appointed as MD by virtue of his office and till a Co-operative Society is duly formed. The petitioner got appointed as MD after the formation of the Bye-Law in derogation of the Bye-Law, which mandates appointment of the MD by a Specific Selection Committee having Government appointed members and therefore, the subsequent extension/continuation of the petitioner being MD is void-ab-initio not being selected by the Special Selection Committee.
14. Mr. Chowdhury, learned Advocate General, further contends that the record annexed to the writ petitions also clearly reveal that the Government was having a control over the APMPUL inasmuch as the same was financed by the Government with an intention to advance the cause of milk producers in the State and therefore, the State is having every right, in the given facts of the present case, to initiate the enquiry as directed by the order dated 22.03.2019, impugned in the WP(C)/138(AP)/2022. The petitioner being a Government employee and being appointed as MD by virtue of his substantive post and not by virtue of he being a share holder of the Co-operative Society and also not being selected, he is having no locus to challenge such enquiry.
15. As regards the challenge to the departmental proceeding, Mr.

Chowdhury, learned Advocate General for the State of Assam submits that the departmental proceeding was initiated and article of charges were issued and the petitioner has also participated in such departmental proceeding and after completion of such enquiry, the Enquiry Officer has submitted the Enquiry Report and the employer has not proceeded further. Therefore, such challenge is premature. The petitioner shall have every right to avail his remedy under the CCS (CCA) Rules, 1965 and a writ Court is not the appropriate forum at this stage of the proceeding, concludes Mr. Chowdhury, learned Advocate General.

16. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the pleadings made in the writ petition and annexures annexed thereto.

17. From the pleadings and the document annexed to the writ petitions as aforesaid, the following facts are discernible:-

- I. The petitioner was holding a substantive post of DVO (District Veterinary Officer), at the relevant point of time, when he was asked to discharge the responsibility of the post of MD of APMPUL by virtue of his holding the charge of the office of the MD, Integrated Dairy Development Project (IDDP).
- II. The appointment of the petitioner as aforesaid was issued pursuant to a decision taken in a meeting held on 12.08.2006 at the office chamber of the MD, IDDP, Department.
- III. The minutes of said meeting which is annexed to the writ petition clearly reveals that the dairy plant and chilling centre at Itanagar, Pasighat and Along were sponsored under a scheme approved by Government of India and under such scheme all dairy Co-operative Societies are to be formed under IDDP where

the petitioner was the MD. It is further revealed that a decision was taken to the effect that till the activities of the District Co-operative Societies (in short DCS) are formed, it is not right to give full autonomy to the Unions and therefore, the Unions are to be managed by the Government. It was further decided that since, there was no DCS in the State, the cost of running dairy plant and chilling centre including the salaries of the staff cannot be borne by the Unions and accordingly, such expertise shall be landed by the department of AH&V and Dairy Development Department. Accordingly, it was resolved to form an adhoc committee to be headed by the Secretary of the Department as Chief Promoter, with Chairman's of two Co-operative Societies as Members and one Managing Director. In the said meeting, it was further resolved to appoint the petitioner as the Managing Director, who was at that point of time holding the post of MD, IDDP.

- IV. The Bye-Laws of the Union defines "Managing Director" as the Managing Director appointed as per provisions of the By-Laws.
- V. The powers responsibilities and functions of the Board is enumerated in Bye-Law-17.
- VI. Bye-Laws-17.3 and 17.4 provide that Managing Director shall be appointed by the Board of Director's on the recommendation of expert panel consisting of the Secretary to the Government of Arunachal Pradesh in the Department of AH&V, the Chairman of the Union, the Director of the Department of AH&V, the representative of National Dairy Development Board.
- VII. The Bye-Law-15.8, provides that after registration of the Union, the first Board Members including the Chairman is to be

nominated by the State Government for a period of two years and such period is mandated not to exceed more than three years in all.

18. In view of the aforesaid materials on record and which are part of the writ petitions, this Court is of the firm view that the engagement of the petitioner as MD was by virtue of his holding the office of Managing Director of IDDP and such engagement was pursuant to the decision in the meeting held on 12.08.2006. This Court is of further view that the Co-operative movement relating to milk production was set into motion under a scheme of the Union Government and accordingly, it was resolved that at the transitional stage, in absence of District Co-operative Societies, the Government of Arunachal Pradesh shall not give the absolute control to the Unions and it will finance the plant too, which was accordingly done. Thus, the State Government had a control over the Union inasmuch as it is the state under whose initiation the APMPUL was formed. Therefore, the contention of the petitioner that it is a private Co-operative Society, do not find favour of this Court more particularly in the peculiar facts of the present case.
19. The resolution taken in the meeting held on 12.08.2006, as well as the Bye-Law-15.8 read with Bye-Laws-17.3 & 17.4, leaves no room of doubt in the mind of the Court that the petitioner was appointed as Managing Director for a period which cannot exceed for more than three years. Further, a Managing Director, after formation of the Co-operative Society is to be appointed in terms of Bye-Laws-17.3. & 17.4. In the case in hand, admittedly, neither any Selection Committee as mandated under Bye-Law-17.4 has been formed nor the petitioner has been selected and appointed any such Committee. That being the position, after registration of

APMPUL, the petitioner cannot be appointed as Managing Director by the Board of Directors de hors the provision of Bye-Law-15.8 and neither the Chairman nor the Board shall have any power to appoint the petitioner as Managing Director without following the mandate of Bye-Law-17.3 and Bye-Law-17.4. In view of such unhesitant conclusion, this Court donot find any infirmity in the orders impugned in the first writ petition i.e. WP(c)/126(AP)/2019, inasmuch as the employer should have a right to withdraw the engagement of the petitioner as MD, as such engagement itself is by virtue of the office of the petitioner and accordingly, same stands dismissed. The fact also remains that admittedly, period of last extension has also in the meantime expired.

20. Coming to the challenge made to the initiation of enquiry, this Court is of the view that in the backdrop of the determination made hereinabove, the petitioner shall have no locus standi to challenge such enquiry/state action, inasmuch as the relation of the petitioner with the APMPUL is by virtue of his substantive office not either as a shareholder of APMPUL or being a selected Managing Director. Accordingly, the said writ petition being WP(C)/138(AP)/2022 also stands dismissed.
21. Coming to the third petition i.e. WP(C)/391(AP)/2022, the enquiry report annexed to the writ petition discloses that the petitioner has participated in the enquiry proceeding and already the report has been submitted. As per procedure laid down under in Parts VI, VII & VIII of the CCS (CCS) Rules, 1965, the petitioner shall have ample opportunity to raise his grievances in respect of such enquiry report inasmuch as, if any adverse action is taken on the basis of such enquiry report, the petitioner shall have remedy of appeal etc., under the aforesaid provision of CCS (CCA) Rules, 1965. That being the position, this Court is not inclined to

enter into merit of such enquiry and enquiry report and interfere with the finding made in the enquiry report at this stage. Accordingly, the writ petition stands dismissed with a liberty to the petitioner to avail the remedies available to him under the CCS (CCA) Rules, 1965.

22. The non filing of affidavit-in-opposition cannot be a ground to allow these writ petitions inasmuch the annexures annexed to the writ petitions by the petitioner, have landed support in arriving at the conclusion as detailed hereinabove.
23. With the aforesaid determination, these three writ petitions being WP(C)/126(AP)/2019, WP(C)/138(AP)/2022 and WP(C)/391(AP)/2022 stands dismissed. The parties to bear their own cost.

JUDGE

Comparing Assistant