

GAHC040016362023



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

Case No. : WP(C)/571/2023

Nabam Tadik

S/o Shri Nabam Ratung, R/o Rupung village, P.O and P.S Leporiang Circle, Sagalee,
Papum Pare District, Arunachal Pradesh. Mobile No. 7085697282

VERSUS

The State of AP and 4 Others
represented by the Secretary, Land management Department, Govt. of Arunachal
Pradesh, Itanagar. 2:The Director

Age: 0

Occupation :

Land Management Department

Govt. of Arunachal Pradesh

Itanagar.

3:The Additional Deputy Commissioner

Age: 0

Occupation :

Balijan

Papum Pare District

Arunachal Pradesh

4:The Additional Deputy Commissioner (In-Charge)

Age: 0

Occupation :

Balijan

P.O and P.S Balijan

Papum Pare District

Arunachal Pradesh.

5:Miss Nabam Apung

Age: 0

Occupation :

D/o Lt. Nabam Tata
C/o Chief Medical Superintendent
TRIMS
Naharlagun
P.O and P.S Naharlagun
Papum Pare District
Arunachal pradesh

Advocate for the Petitioner : N Singye

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 06.12.2023

Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Mr. M. Ete, learned counsel appearing on behalf of Mr. D. Kamduk, learned standing counsel for the Land Management Department, representing respondent nos. 1 and 2, Ms. G. Ete, learned Govt. advocate appearing for respondent nos. 3 and 4 and Mr. T. Tagum, learned appearing on behalf of respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned order no. ADC/BJN/MISC-01/VOL-II/2014/242 dated 17th May, 2023 passed by the Addl. Deputy Commissioner, Balijan (respondent no.4) by which the two LPCs, viz., (1) LPC: No. ADC/BJN/LPC-03/2014 dated Balijan 14.11.2017 at Hollongi measuring 34200 Sqm., and (2) LPC: No. ADC/BJN/LPC-03/2014 dated Balijain 14.11.2017 at Kokila measuring 48219 Sqm., issued in favour of the petitioner was cancelled.

3. The learned counsel for the petitioner has challenged the said order

on the ground that the said order was passed by the In-charge ADC. In support of his submission that except doing day-to-day work, and in-charge official cannot perform any statutory duty, the learned counsel for the petitioner has relied on the case of (1) *H.S. Gotla Vs. State of Karnataka*, ILR 2001 KAR 2843, (2) *B.N. Dhotrad Vs. The Board of Directors/ cum-Appellate Authority & Ors.*, ILR 2006 KAR 3163 and (3) *Smti Prey Khyora Riyang Vs. The State of A.P. & 5 Ors.*, WP(C) 611/2016 decided on 26.06.2023.

4. The second ground raised by the learned counsel for the petitioner is that on notice of the proceeding being served on the petitioner, he had appeared pursuant to notice dated 12.12.2022, and on 19.12.2022, the petitioner had prayed for providing him with the written complaint filed by the complainant. However, by the said application, he had also requested to allowing him to settle the matter amicably within the family. However, a "mel order" was passed by the Addl. Deputy Commissioner, Papum Pare on 10.01.2023 and on 24.01.2023, but the dispute could not be settled. Once again on 08.05.2023, the petitioner had again prayed before the Addl. Deputy Commissioner (In-charge) for a copy of the complaint and other information as mentioned therein. However, it is projected that the copy of the written complaint was not provided on the petitioner.

5. The third ground of challenge is that the inquiry was ordered allegedly behind the back of the petitioner, which is projected from impugned cancellation order dated 17.05.2023 and it is submitted that without any application of judicial mind only on the basis of the *ex parte* inquiry report, the two LPCs of the petitioner was cancelled.

6. Per contra, the learned Govt. advocate has submitted that pursuant to order dated 05.12.2023, she had made an endeavor to obtain instructions, but

she has been only provided with a copy of a page containing signature of petitioner on 04.05.2023 to show that the petitioner had participated in the proceedings and she prays for some more time to obtain relevant records.

7. Per contra, the learned counsel for the respondent no.5 has submitted that the issues raised in this writ petition are disputed questions of fact which cannot be adjudicated by a writ Court. It is also submitted that there is justifiable ground for cancellation of two LPCs issued to the petitioner as NOCs entitling the petitioner to the LPCs were obtained by misrepresentation and fraud and it is also submitted that at the relevant point of time when the LPCs were issued in favour of the petitioner, the respondent no.5 and all her other siblings were minors. It is claimed that the petitioner took advantage of their minority to usurp their father's property. It is further submitted that against order that is passed in exercise of original jurisdiction under the Arunachal Pradesh (Land Settlement and Records) Act, 2000, Section 83 thereof provides for appeal against all original orders and that the period of limitation is prescribed under Section 84 of the said Act. Accordingly, it is submitted that the writ petition should not be entertained by this Court. In support of the submission that disputed questions of fact ought not to be adjudicated under Article 226 of the Constitution of India, reliance is placed on the cases of (1) *New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti*, (2006) 9 SCC 524, (2) *Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement*, (2010) 4 SCC 772 and (3) *A.V. Papayya Sastry Vs. Govt. of Arunachal Pradesh*, (2007) 4 SCC 221.

8. In respect of the first point raised that an In-charge Officer can only do the day-to-day work and cannot undertake activities which are otherwise statutory duties, with all respect to the citations provided by the learned counsel

for the petitioner, this Court is unable to accept the said legal proposition for reasons which are assigned hereunder.

9. From the text of the decision rendered in the case of *B.N. Dhotrad (supra)*, we find that there is a reference made to the provision of 32 and 68 of the Karnataka Civil Services Rules. The copy of the said rules as available in the internet refers to notification issued under No. FD 53-C.O.D. 58 dated 01.03.1958 and the said rules has been made in exercise of power under proviso to Article 309 of the Constitution of India. Rule 32 and 68 based on which the said judgment was rendered are extracted below:

“32. Instead of appointing a Government servant to officiate, it is also permissible to appoint him to be in charge of the current duties of a vacant post. In such a case a ‘charge allowance’ (additional pay) is payable as specified in Rule 68.

Note 1,- A Government servant can be appointed under this Rule to be in-charge of the current duties of a vacant post only if he is eligible to be promoted to officiate in that post according to the Cadre and Recruitment Rules applicable to that post or if he is holding a post in an equivalent or higher grade.

Note 2 - The provisions of this Rule apply also to cases where a Government servant being relieved of his own appointment is appointed to be in independent charge of a higher appointment as a temporary measure.

[Instructions:- The following delegation of powers to the Secretaries to the Administrative Departments of the Government is hereby ordered to be given effect to from 1st November 1977.”

Nature of power	Further financial powers delegated to Secretaries to Government
Continuation of independent charge arrangements beyond six months and payment of charge allowance (Rule 32 of Karnataka Civil Services Rules)	Full Powers]

Note 3:- The Authority competent to make incharge arrangements specified in column (1) of the table below, may

make incharge arrangements for vacant posts in respect of subordinate Government servants holding the posts in the scales of pay specified in column (2) thereof to the maximum duration specified therein.

Authority competent to make in charge arrangements	Posts in the scale of pay of		
(1)	(2)		
	Rs.7400-13120 and above	Rs.5575-10620 and above but below Rs.7400-13120	Rs.2500-3850 and above but below Rs.5575-10620
Heads of Departments. Divisional level officers District level officers Sub divisional officers Taluk level officers	4 months 3 months 2 months - -	6 months 4 months 3 months - -	Full Powers Full Powers Full Powers Full Powers Full Powers

“68. When a Government servant is appointed to be in charge of the current duties of an office in addition to his own duties and the charge entails a substantial increase of responsibility and some additional work, he is entitled to additional pay (charge allowance) to be fixed by the authority competent to appoint him as such, not exceeding [Five percent] of the pay of the office (minimum pay of the post)

Sanction of Government should be obtained where the incharge arrangement is proposed to be continued beyond] [six months.]

Note 1 - A Government servant can be appointed under this Rule to be incharge of the current duties of an office or post in addition to his own duties only if he is eligible to be promoted to officiate in that post according to the Cadre and Recruitment Rules applicable to that post or if he is holding a post in an equivalent or higher grade.]

Note 2 - No charge allowance is admissible unless the incumbent has actually given over charge of the office under the orders of the competent authority 5[and is absent on leave or deputation or is permitted to avail himself of vacation or is under suspension.] For instance, no charge allowance is admissible to a subordinate officer empowered to dispose of routine business while his superior is on tour.

Note 3 - The minimum period required for claiming charge allowance under this Rule shall be one month.

[Explanation - In cases where a period of additional charge is interrupted by leave with allowances and the total period of additional charge immediately before and after such leave (excluding the period of leave) together exceed one month, charge allowance may be paid for the period of such additional charge even though each of the two spells of additional charge does not by itself exceed one month provided it is certified by the competent authority granting leave that but for the Government servant proceeding on leave, he would have continued to hold additional charge of the post which he held immediately before proceeding on leave.]

[Exception 1 - Taluk Sheristedars or other officials placed in additional charge of the duties of Sub-Registrars of the Registration Department in leave and other vacancies (other than casual leave) may be allowed charge allowance of Rs.10 per month provided the vacancies last for a period of not less than 14 days.]

[Exception 2 - The officials of the Treasury Department placed in additional charge of the duties of other officials of the same Department or the officials of the Revenue Department placed in additional charge of the posts in the Treasury Department in leave or other vacancies (other than casual leave) may be allowed charge allowance provided such in-charge arrangement lasts for a period of not less than 14 days and subject to the fulfilment of other conditions laid down in this Rule.]

Note 4 - The Director of Treasuries is empowered to sanction charge allowance under this Rule for a period of twelve months.]

Note 5 - Government servants when deputed to places outside the State to attend conferences and technical committee meetings, for training, etc. treated as on duty and whenever sub-ordinate officers replaced in-charge of the current duties of such officers no charge allowance is admissible to the officers so placed in charge except in cases where the period of deputation, training etc. is not less than one month and the officer on deputation or training actually gives over charge before proceeding on deputation or training.]

[Note 6 - No charge allowance is admissible under this rule to a Government servant who is placed in additional charge of the duties of a dalayat, daffedar, jamedar or a watchman.]

Note 7 - The amount of charge allowance resulting in a fraction of a rupee shall be rounded off to the next rupee.]

Note 8 :- The Authority competent to make incharge arrangements specified in column (1) of the table below, may make incharge arrangements for vacant posts in respect of sub-ordinate Government servants holding the posts in the scales of pay specified in column (2) thereof to the maximum duration specified therein."

Authority competent to make incharge arrangements	Posts in the scale of pay of
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(1)	(2)

Rs.7400- 13120 and above	Rs.5575- 10620 and above but below Rs.7400 -13120	Rs.2500-3850 and above but below Rs.5575- 10620
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Heads of Department	4 months	6 months	Full powers	
Divisional Level officers	3 months	4 months	Full powers	
District level Officers	2 months	3 months	Full powers	
Sub - Divisional Officers	2 months	-	Full powers	
Taluk level Officers				
Instruction 1.- Charge allowance in respect of only one additional post is admissible even though a Government servant is placed in additional charge of the duties of more than one post concurrently.				

(Letter No.FD 9654/S-1/58 dated 29th January 1959)

2. It is not clear whether the clarification issued in letter dated 29th January 1959 is applicable to cases where a Government servant appointed to be in independent charge of a post under rule 32 Karnataka Civil Services Rules is placed in additional charge of duties of another post under rule 68 of Karnataka Civil Service Rules concurrently.

An actual case is given below.

A Senior Superintendent of the State Accounts Department has been placed in independent charge of the duties of one of the post of Assistant

Accounts Officers in the Chief Accounts Office, Sharavathi Project, and is being paid charge allowance at 1/10th of the minimum pay of the post in accordance with rule 68 of Karnataka Civil Services Rules with effect from 3rd July 1961. He has been placed in additional charge of the duties of another Accounts Officer who has proceeded on leave.

(Letter No. TM/VI 2/61-62/D/371 dated 7th September, 1961 from the Accountant General, Karnataka, Bangalore to the Secretary to Government of Karnataka, Finance Department, Bangalore.)

Charge allowance is admissible in the type of cases cited by you as the Government servant holds another post in addition to the post of which he is placed in independent charge.

(Letter No. FD 6111/S-I/61, dated 4th October 1961 from the Finance Secretary, to the Accountant General, Karnataka, Bangalore.)

Instructions:

[The following delegation of powers to the Secretaries to the Administrative Departments of the Government is hereby ordered to be given effect to from 1st December 1974.

Nature of Power	Further financial powers delegated to Secretaries to Govt.
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Continuation of incharge arrangements beyond six months and payment of charge allowance (Rule 68, KCSRs)	Full powers
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10. From the hereinbefore referred provisions of the said Rules, it is apparent that Rule 32 permits the Government to appoint a person to be In-charge of the "current duties" of a vacant post which is in lieu of appointing a government servant to officiate. Therefore, Rule 32 of the Karnataka Rules allows persons to be appointed as In-charge only for the "current duties" of a vacant post. The tenure of powers commencing from below two months, two months, three months and four months permit the officer to be appointed with "full powers".

11. Rule 68 of the said rules also refers to appointment of a person as In-charge "of the current duties" in office in addition to his own duties and it is also provided that sanction of the Government should be obtained when the In-charge is willing and proposed to be continued beyond six months. Nothing is placed on record before this Court to show that the State of Arunachal Pradesh has a *para materia* provision which limits an In-charge to render service limited to the work of "current duties". The learned counsel for the petitioner has not been able to show any notification by which the Govt. of Arunachal Pradesh had adopted the provisions of Rules 32 and 68 of the Karnataka Civil Services Rules. Therefore, the Court is of the considered opinion that when the High Court of Judicature at Karnataka is referring to In-charge of "current duties", the Karnataka High Court was perhaps correct in its interpretation of the "current duties" so as to exclude discharge of "statutory duties and functions". Therefore, when the provision of the Karnataka Civil Service Rules, specifically Rule 32 and 68, were interpreted to exclude "statutory function" from that of "current duties", the said Court was interpreting provisions of the Rules and gave its interpretation to the extent of the said Rule 32 and 68. However, this Court has not been shown any material to the effect that in the State of Arunachal Pradesh, an In-charge ADC has not power to adjudicate the dispute which was placed before him in accordance with law. Therefore, for the reason assigned above, the Court is of the considered opinion that the cases on which reliance has been placed by the learned counsel for the petitioner are distinguishable with the facts of this case. The fact that the decision in the case of *B.N. Dhotrad (supra)*, was limited to interpretation of the Karnataka Rules, was perhaps not placed before this Court when the case of *Smti Prey Khyora Riyang (surpra)* was decided.

12. Nonetheless, under the principles of *stare decisis*, this Court would otherwise be bound by the decision of the learned Single Judge rendered in the case of *Smti Prey Khyora Riyang (surpra)*. However, as this Court has assigned reason for not accepting the said ratio in the context of the State of Arunachal Pradesh, it is deemed appropriate that the question as to whether any In-charge Officer in the State of Arunachal Pradesh can limit its function to “current duties” and cannot discharge “statutory duty”, is perhaps an issue which requires to be decided by a larger Bench. Accordingly, the said issue may be placed before the Hon’ble the Chief Justice to examine the matter and if it is deemed appropriate, the matter be referred to a larger Bench for a decision on the issue.

13. Be that as it may, for the reasons assigned above, as *para materia* provision of Rule 32 and 68 of the Karnataka Rules are not found applicable in the present case, the Court is of the further consideration that by disturbing the order impugned herein only on the ground that the Officer passing the order was only an “In-charge” would lead to a ripple effect, which would may have a cascading effect on all orders that were or would be passed in exercise of statutory provisions, this Court with all respect to the decision of this Court in the case of *Smti Prey Khyora Riyang (surpra)*, disagrees with the said proposition and therefore, is not applied in the present case in hand as condition precedent i.e. *para materia* provision of Rules 32 and 68 of the Karnataka Rules is not applicable in this State.

14. Insofar as the case of *H.S. Gotla (supra)* is concerned, the same relates to the power of investigation by an Officer not below the rank of Superintendent of Police in cases under Prevention of Corruption Act, 1947. It is in the said context of empowering investigation, that the learned Single Judge of the

Karnataka High Court had interpreted that Superintendent of Police who was In-charge Superintendent of Police was merely being placed as an In-charge and he continued to have his rank of Deputy Superintendent of Police and it is in the said context, it was held that the Deputy Superintendent of Police is below the rank of Superintendent of Police. The said ratio cannot be interpreted to mean that in discharge of civil duties, the Officer who is made an In-charge, would loose his authority to pass appropriate orders which law otherwise empowers him to pass. Therefore, the case of *H.S. Gotla (supra)* is also not found to help the petitioner in this case.

15. On the second point formulated by this Court, it is seen that on initially appearing before the Court of ADC, Balijan, the petitioner vide petition dated 19.12.2022 made a request for supplying him with a copy of written complain. The said prayer is found to have reiterated by the petitioner before the Addl. Deputy Commissioner (In-charge), Balijan vide petition filed on 08.05.2023. Therefore, the Court is inclined to take an *ex facie* view that from the initial date of appearance on 19.12.2022 till 08.05.2023, the petitioner was not served with a copy of written complaint. Nonetheless, it appears from the impugned order dated 17.05.2023 that the ADC (In-charge), Balijan had appointed an Inquiry Officer and on the basis of the said report, the respondent no.4 had cancelled the LPCs. For the sake of convenience, the cancellation order is extracted below:

“In view of the request for cancellation of LPCs by Miss Nabam Apung and her sisters, the semi-orphaned children of Lt Nobam Tara alleging Shri Naban Tadi, brother of Lt Nabun Tata for illegally obtaining three nos of LPCs of which, one LPC in the name of Nabam Kanama has been previously cancelled vide order no. ADC/BIN/LPC-03/2014 dated Balijan the 24 April 2023.

And, further Shri Rome Mele CO Balijan/Tarasso who was appointed as enquiry offices to conduct enquiry and take statements from the boundary owners for the

same, and the report being submitted to undersigned as on today wherein it has been found that,

Case I: NO. ADC/BJN/LPC-03/2014 Dated Balijan, 14th Nov 2017 at Hollongi measuring 34200 Sqm

Mr. Kumar Waii, one of the boundary owners, has provided a statement declaring that his signature was forged and fabricated by Mr. Nabam Tadik. Mr. Nabam Tuki, another boundary owner, has clarified that he never signed or gave consent for the LPC application form submitted by Mr. Nabam Tadik.

Case II: NO. ADC/BJN/LPC-03/2014 Dated Balijan, 14th Nov 2017 at Kokila measuring 48219 5qm.

Mr. Taba Taki, one of the boundary owners, has provided a statement claiming that his signature on the LPC was fraudulently obtained by Mr. Nabam Tadik. He had only agreed to sign under the belief that the LPC was being obtained for the son of the late Mr. Nabam Tata, as the land primarily belonged to the late Mr. Nabam Tata. Mr. Taba Taki has verified that Mr. Nabam Tadik does not own any land in the specified location.

Mr. Nabam Kanam (or Nabam Kanama), as mentioned in the LPC application form, who is also the son of the late Mr. Nabam Tata, has written to the Office of ADC Balijan stating that he never applied for an LPC nor signed to confirm Mr. Nabam Tadik's ownership of the mentioned plot. He has requested the cancellation of Mr. Nabam Tadik's LPC for this case.

As per the findings and recommendation by Shri Rome Mele CO Balijan Tarasso, enquiry officer and as frequent notices served to Shri Nabam Tadik on 06.05.2023, 17 April 2023, 24 April 2023 and further opportunity served of being heard, I Dr (Mrs) Marchina Boria, Ve ADC Balijan hereby cancel the LPCs of Shri Nabam Tadik bearing no.,

1.LPC: NO ADC/BJN/LPC-03/2014 Dated Balijan, 14th Nov 2017 at Hollongi measuring 34200 Sqm.

2.LPC: NO.ADC/BJN/LPC-03/2014 Dated Balijan, 14th Nov 2017 at Kokila measuring 48210 Sqm."

16. From above, it appears that the respondent no.4 merely referred to the inquiry report and had cancelled the LPCs without applying its judicial mind. There is nothing discernible from the said impugned cancellation order as to what was the basis on which the LPCs were cancelled. Therefore, *ex facie* the

order of cancellation of the LPCs is found to be quite questionable.

17. In respect of third point urged by the learned counsel for the petitioner, the Court is of the considered opinion that if at the instance of the Court, a report is made by an Inquiry Officer, it would partake a character of report of the Commissioner as provided under Rule 9 and 10 of Order XVI of the CPC, and as per the CPC, the said report becomes a part of evidence. Therefore, in the present case in hand, it *ex facie* appears that the inquiry report has come into record without even a copy of the written complain being served on the petitioner. Therefore, an evidence is created before granting opportunity to the petitioner to rebut allegation.

18. In view of above and on consideration that the concerned respondent no.5 had entered appearance in this case and heard, the Court is of the considered opinion that as provisions for appeal has been provided for against order passed by the Addl. Deputy Commissioner under Section 83 of the Arunachal Pradesh (Land Settlement and Records) Act, 2000 and there is no dispute at the bar by the learned Govt. Advocate as well as the learned counsel for respondent no.5 that power to cancel LPC emanates from the said Act, the Court is of the considered opinion that instead of keeping the matter pending for adjudication before this Court, it would be appropriate to relegate the parties to the appropriate forum as provided under the said Act. Nonetheless, as by the time the petitioner approaches the appropriate appellate forum, there would be some delay. Therefore, having noted that the said Act does not provide for period of extension of limitation and it cannot be said that Section 5 of Limitation Act would have application in such cases or appeals, the Court is of the considered opinion that without treating this order to be a precedent, it would meet the ends of justice to relegate the petitioner to approach the

appropriate appellate forum and on an appeal being filed, the appellate forum shall entertain the appeal without dismissing it on the ground of barred by limitation and give opportunity of hearing to the aggrieved petitioner as well as respondent no.5 herein or any other person on whose instance the two LPCs of the petitioner has been cancelled.

19. The only point which remains to be addressed is whether the impugned order is liable to be interfered with. In this regard, the Court finds that *ex facie* the petitioner has been able to make out the case that he has not been given an opportunity of hearing as copy of complaint was not provided to him. Therefore, the Court is inclined to provide that the order of cancellation of the LPCs vide impugned order dated 17.05.2023 passed by the ADC (In-charge), Balijan, the said order shall be subject to any order that may be passed in the appellate proceeding. Therefore, not only the petitioner, but the respondent no.5 is also restrained from creating any third-party rights or to dispose of any part of the land involved in the LPCs referred in the impugned order dated 17.05.2023 without leave of the concerned appellate Court. This restraining order shall be operative for a period of 21 days from today to enable the petitioner to approach the appellate forum/ Court and on such appeal be filed, it would be open to the appellate forum/ Court to pass such appropriate order as it deem fit and proper under the facts and circumstances of the case. In the event a copy of the complaint is not served on the petitioner's learned counsel within next 5(five) days, the petitioner would have a right to pray for a copy and to amend his appeal memo, if so advised.

20. Before parting with the record, it would be appropriate to mention here that this Court has not embarked on their adjudication of any disputed question of facts, the only dispute raised before the Court was that the order under

challenge was passed without giving an opportunity to the petitioner of being heard by providing him with a copy of complaint petition and that evidence in form of report was created without his participation in the proceeding by filing a written objection. Therefore, the cases cited by the learned counsel for the respondent no.5 would have no application under the facts and circumstances of the case. Moreso, when this Court has accepted the contention of the respondent no.5 and has relegated the petitioner to approach the appellate authority to agitate his grievance against the order dated 17.05.2023 impugned herein.

21. Accordingly, with the observation as indicated hereinabove, this writ petition stands closed with liberty to the petitioner to approach appropriate appellate forum within the time as indicate above to challenge the order impugned in this writ petition.

22. Thus, this writ petition is disposed of at the motion stage without issuance of the notice on the respondents.

JUDGE

Comparing Assistant