

GAHC020000202017



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

Case No. : WP(C)/302/2017

L.TSUKJEMWAPANG
S/O LT. R. LONGRITEMSU,DILONG WARD,MOKOKCHUNG

VERSUS

STATE OF NAGALAND AND 2 ORS.
KOHIMA 2:SECRETARY
DEPT. OF JUSTICE AND LAW
N/L

3:IMLIKAB

Advocate for the petitioner : Mr. Imti Longjem,
Ms. Esther,
Ms. Vinitoli
Ms. Lhousino, Advs.

Advocate for the State respondents : Mr. V. Zhimomi, Govt. Adv.

Advocate for the private respondent No. 3 : Mr. C.T Jamir, Sr. Adv.
Mr. I. Imchen,
Mr. Aliba Ozukum,
Ms M. Rutsa, Advs.

BEFORE
HON'BLE MR. JUSTICE KAKHETO SEMA
JUDGMENT & ORDER (ORAL)

Date : 20-03-2023

Heard Mr. Imti. Longjem, learned counsel for the petitioner, Mr. V. Zhimomi, learned Government Advocate for the State respondent No. 1 & 2 and Mr. C. T. Jamir, learned Sr. counsel for the respondent No. 3 assisted by Mr. I. Imchen, learned counsel.

2. The present writ petition has been filed seeking for the following relief;

“A. Quash and set aside Order No. LAW/JE-42/2012 dated 10/08/2017 (Annexure-6) and Order No. LAW/JE-42/012 dated 11/08/2017 (Annexure-7) in so far as the respondent No.3 is concerned.

B. Direct the State respondents to appoint the petitioner to the post of Peon in the Office of the Principal District & Sessions Judge, Mokokchung on the basis of landownership in place of the respondent No.3.”

3. The case of the petitioner in a nutshell is that the respondent No. 3 who is not the land owner cannot be appointed as a peon in the Office of the Principal District & Sessions Judge, Mokokchung, by depriving the landowner(s). The case in brief is as follows;

i) That by the letter dated Nil address to the Commissioner & Secretary, Department of Justice & Law, Nagaland, Kohima, the petitioner applied for the post of Peon in the Office of the District & Sessions Judge, Mokokchung, Nagaland, on landownership basis against the resultant vacancy caused due to the death of one Shikaba Sangtam, the incumbent. The said letter was followed by the representation dated 29/06/2017 supported by the certificate dated 21/04/2017 issued by the Chairman, Mokokchung Village Council and the certificate dated 17/04/2019 issued by the landowners of Kichu clan (Descendants of

Terasangba).

ii) That when the matter was thus situated, the petitioner came across the circular dated 04/08/2017 issued by the department of Justice & Law, Kohima, informing that the Departmental Screening Committee will conduct a screening test on 09/08/2017 in the Office Chamber of the Secretary (J&L) for recruitment to Grade-IV post. All committee members were therefore requested to make it convenient to positively attend the meeting. All the applicants were also asked to report at the venue at 10:30 A.M along with their supporting documents. The circular was displayed in the notice board of the department of Justice & Law. Since the petitioner had earlier applied for the post, he appeared before the screening committee.

iii) That by the impugned order No. LAW/JE-42/2012 dated 10/08/2017 issued by the department of Justice & Law, the persons selected for the Grade-IV post was notified. The private respondent was selected for the post of peon in the Office of the Principal District & Sessions Judge, Mokokchung. Thereafter, by the impugned order No. LAW/JE-42/2012 dated 11/08/2017, the private respondent was appointed to the said post, by the department, in the Office of the Principal District & Sessions Judge, Mokokchung.

iv) The landowners i.e. Kichu clan (descendants of Terasangba) accordingly submitted the application dated 23/08/2017 objecting to the appointment of the private respondent and to issue the appointment in favour of the petitioner.

4. Mr. Imti Longjem, the learned counsel for the petitioner submits that the land on which the Court of the District & Sessions Judge Court, Mokokchung, is located originally belongs to the family/clan of the petitioner. The land was acquired by the State Government without paying any compensation to the land owners and therefore as per the prevailing practice, the petitioner and his clan

members have a right to be appointed to the Grade-IV post in the said establishment. Mr. Imti Longjem submits that there are several Government establishments in Mokokchung located on the land which has been occupied in similar manner without paying any land compensation but where the Grade-IV appointment has been extended to the land owners and to substantiate his submission, the learned counsel has taken this Court to the various orders issued by the different departments appointing the land owners to Grade-IV post.

5. The learned counsel has also taken this Court to the judgment & order dated 03/08/2005 passed in W.P.(C) No. 198(K)/2005 and also to the judgment & order dated 28/04/2008 passed in W.P.(C)No.43(K)/2007 to contend that this Court has given judicial recognition to the rights of the landowners to be considered for appointment to Grade-IV post and therefore the petitioner has the right to be considered for appointment to the said post in place of the respondent No.3.

6. Mr. C.T. Jamir, the learned Sr. counsel for the respondent No.3 at the outset submits that the petitioner may be the landowner/donor however without there being any valid agreement to support that the Government had agreed to provide Grade-IV employment to the petitioner for acquiring the land, no appointment can be given to the petitioner.

7. The learned Sr. counsel submits that the Government of Nagaland, Department of P&AR (Administrative Reforms Branch) had issued the O.M No. AR-3/Gen-174/2007(Pt) dated 07/12/2016 laying down the procedures for filling up Grade-III & IV post in the department. The O.M provides that the appointment to Grade-III & IV post is to be made on the recommendation of the Departmental Screening Committee. The department of Justice & Law in order to fill up various vacancies to Grade-III & IV post constituted a Screening Committee vide O.M dated 23/06/2017 and the committee in its meeting held on 09/08/2017 recommended the respondent No. 3 for appointment to the post of peon in the Office of the Principal District & Sessions Judge, Mokokchung after undergoing the selection process. Consequent to the recommendation of the committee, the respondent authorities vide the impugned order dated

11/08/2017 appointed the respondent No.3 to the said post. The learned Sr. counsel submits that the petitioner also participated in the said interview along with respondent No. 3 and having failed to qualify now cannot turn around and question the appointment of the respondent No.3 on the ground that the landowner was denied appointment. In support of his submission, the learned Sr. counsel has relied in the case of **D. Sarojakumari -versus- R. Helen Thilakom & Others**, reported in **(2017) 9 SCC 478** and also in the case of **Ranjan Kumar & Others -versus- State of Bihar & Others**, reported in **(2014) 16 SCC 187** and submits that it is now well settled that if a candidate takes a calculated chance and appears at the interview, then only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the interview was unfair or the selection committee was not properly constituted.

8. The learned Sr. counsel then submits that the Government of Nagaland in order to do away with the practice of appointment of landowners to Grade-IV post has issued the notification dated 26/07/2005 wherein it is made clear that no land shall be acquired free of cost and all land shall be acquired on payment of full compensation as determined by law and no further condition for employment in service or contractual work shall be entertained. The Government has thereafter issued the notification dated 05/03/2018 re-affirming the notification dated 26/07/2005 and formulating the policies with regard to the appointment of landowners to Grade-IV post. The learned Sr. counsel however submits that even if assuming that the petitioner is a landowner, he does not fall under any of the conditions of the said notification dated 05/03/2018 to be appointed to a Grade-IV post.

9. The learned Sr. counsel also submits that vide order dated 31/03/2017 the department has appointed one Smti. Imkonglemla as Chowkidar in the establishment of Public Prosecutor, Mokokchung on landownership basis and therefore submits that there is no more room for other landowners like the petitioner to be appointed to Grade-IV post. With regard to the orders passed by this Court in the two writ petitions, the learned Sr. counsel submits that the issues involved in those cases is different from the present writ petition and

therefore not applicable to the instant case.

10. Mr. V. Zhimomi, the learned Government Advocate for the State respondents adopts the same line of submission made by the learned Sr. counsel and submits that a perusal of the letter dated 21/11/2007 written by the Office of the Deputy Commissioner, Mokokchung to the Secretary, department of Justice & Law reveals that there is no agreement for acquiring the land. Moreover, one Smti. Imkonglemla has already been appointed by the department as Chowkidar in the establishment of the Addl. P.P. Mokokchung on landownership basis and therefore the petitioner even assuming to be the land owner cannot be appointed under the notification dated 05/03/2018 issued by the Government.

11. In the affidavit-in-reply filed by the petitioner to the affidavit-in-opposition filed by the respondents, the petitioner while reaffirming the averment made in the writ petition has stated that the O.M dated 23/06/2017 constituting the Screening Committee for recruitment to Grade-III & IV post under the Justice & Law department was not constituted as per the O.M dated 07/12/2016 issued by the department of P&AR (Administrative Reforms Branch). The O.M dated 07/12/2016 prescribes for four members in the Departmental Screening Committee but the Screening Committee constituted by the O.M dated 23/06/2017 had five members. Furthermore, it is averred that no advertisement was issued inviting applications for the post and there was no assessment of merit of the candidates who had appeared for the interview. It has also been averred that the notification dated 05/03/2018 which formulates the policy for appointment of landowner is only prospective but not retrospective and therefore has no application to the present case and lastly, it is averred that Smti. T. Imkonglemla who was appointed as the Chowkidar in the establishment of the office of the Addl. P.P. is not the descendant of Teresangba of Kichu clan who had donated the land.

12. The law is well settled that once a person takes part in the selection process and is not found fit for appointment, the said person is precluded from challenging the process of selection. In the instant case, the department of Justice & Law had issued the circular dated 04/08/2017 informing that the

Departmental Screening Committee will conduct the screening test for recruitment of Grade-IV post on 09/08/2017 at 11:00 A.M in the office chamber of the Secretary (J&L). All the applicants were accordingly asked to report at the venue at 10:30 A.M along with all supporting documents. Though the circular dated 04/08/2017 was only displayed in the notice board of the department of Justice & Law, the petitioner having knowledge of the same applied for the post and appeared before the screening committee. Thereafter, the order dated 10/08/2017 was issued recommending the appointment of the respondent No.3 as peon in the office of Principal District & Sessions Judge, Mokokchung and consequent to which the order dated 11/08/2012 was issued by the department appointing the respondent No. 3 in the said post. It is only thereafter that the petitioner has instituted the present case challenging the order dated 10/08/2017 recommending the selection of the respondent No. 3 to the post of peon in the office of the Principal District & Sessions Judge, Mokokchung and the order dated 11/08/2017 appointing the respondent No. 3 to the said post by asserting his right to be appointed on the basis of landownership. The petitioner while assailing the impugned order(s) has also questioned the constitution of the 5(five) members Departmental Screening Committee by the O.M dated 26/03/2017 on the ground that it is in violation of the O.M dated 07/12/2016 issued by the department of P&AR(Administrative Reforms Branch) which prescribes that the Departmental Screening Committee should consist only of 4(four) members. The petitioner has also questioned the manner in which the interview was conducted without advertisement and without inviting applications and also the non disclosure of assessment of merit of the candidates who appeared the interview.

13. It is ironic that the petitioner without any demur has appeared for the interview conducted by the Departmental Screening Committee on 09/08/2017 and it is only after the petitioner was not selected in the interview that the present writ petition has been filed challenging the orders by which the respondent No.3 was appointed. The question which therefore arises for the consideration of this Court is whether the petitioner after having consciously participated in the interview without any objection and being unsuccessful can

now challenge the appointment of the respondent No.3 by questioning the constitution of the Screening Committee and the selection process. The answer is an emphatic 'No'. The circular dated 04/08/2017 for the recruitment to the Grade-IV post though not advertised in the newspaper was displayed in the notice board of the department and the petitioner having notice of the same appeared for the interview. No prejudice is therefore caused to the petitioner in not advertising the post and inviting applications. Secondly, the petitioner himself on 09/08/2017 appeared for the interview before the Departmental Screening Committee comprising of 5(five) members, the petitioner therefore cannot now question the constitution of the committee by stating that it violated the Memorandum dated 07/12/2016 issued by the Department of P&AR (Administrative reforms Branch). Lastly, as the petitioner had voluntarily appeared before the interview board without raising any objection it cannot now question the selection process.

14. The Hon'ble Supreme Court in a catena of decision has held that once a person voluntarily and without any objection takes part in a recruitment process and is not found fit for appointment the said person is estopped from challenging the process of selection.

15. In the case of Ranjan Kumar (supra), the Hon'ble Supreme Court has held that;

14. The next submission which has been presented before us is that when the respondents had appeared in the interview knowing fully well the process, they could not have resiled later on or taken a somersault saying that the procedure as adopted by the department was vitiated. In this connection, it is apt to refer to the principle stated in [Om Prakash Shukla v. Akhilesh Kumar Shukla](#)¹⁵. In the said case a three-Judge Bench, taking note of the fact that the petitioner in the writ petition had appeared for the examination without protest and filed the petition only after he realized that he would not succeed in the examination, held that the writ petitioner should not have been granted any relief by the High Court.

15. In this context, we may quote a passage from [Madan Lal v. State of J & K](#)¹⁶ with profit: (SCC p. 493, para 9)

“9.....It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only

because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla*¹⁵ it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

16. In *Chandra Prakash Tiwari v. Shakuntala Shukla*¹⁷, the Court observed as follows: (SCC p.149, para 34)

“34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not ‘palatable’ to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”

17. In *Union of India v. S. Vinod Kumar*¹⁸, the Court reiterated the principle that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. “

16. In the case of **Ashok Kumar & Another -versus- State of Bihar & Others**, reported in **(2017) 4 SCC 357**, the Hon’ble Supreme Court held that;

“13. The law on the subject has been crystallised in several decisions of this Court. In *Chandra Prakash Tiwari v. Shahkuntala Shukla*⁶, this court laid down the principle that when a candidate appears at an examination without objection and is subsequently found not to be successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was lacuna therein, merely because the result is not palatable. In *Union of India v. Vinodh Kumar*⁷, this Court held that: (SCC p.107, para 18)

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil*⁸ and *Rashmi Mishra v. M.P. Public Service Commission*⁹.)”

17. In *Ramesh Chandra Shah v. Anil Joshi*¹⁵, candidates

who were competing for the post of Physiotherapist in the State of Uttarakhand participated in the written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p.318, para 18)

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In Chandigarh Admn. v. Jasmine Kaur¹⁶, it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In Pradeep Kumar Rai V. Dinesh Kumar Pandey¹⁷, this Court held that: (SCC p.500, para 17)

“17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.”

This principle has been reiterated in a recent judgment in Madras Institute of Development Studies v. K.Sivasubramaniyan¹⁸.”

17. In regard to the claim of the petitioner that he has a right to be considered for appointment as peon in the office of the Principal District & Sessions Judge, Mokokchung, on landownership basis, being the descendant of Teresangba of Kichu clan who had donated the land where the office is located, the official respondents have contended that one Smti T. Imkonglemla has already been appointed as a Chowkidar by the department in the establishment of the Addl. Public Prosecutor, Mokokchung on landownership basis against the

retirement vacancy of Shri. Imliwapang. The controversy as to whether it is the petitioner or the said Smti. T. Imkonglemla who has the right to be appointed to the Grade-IV post on landownership basis cannot be a subject for this Court to decide in the present writ petition. Even otherwise, clause-3(C) of the notification dated 05/03/2018 provides that "it is not the policy of the Government to provide employment to landowner in perpetuity. The employment of landowners, if permitted by a verifiable and valid agreement, is limited to a person first appointed as landowner in government service and does not entitle his descendants for further employment on his retirement from service." The intent of the Government under the Policy is therefore to appoint only one eligible landowner to a Grade-IV post irrespective of the number of persons as landowners/land donors.

18. This Court has also perused the order dated 03/08/2005 passed in W.P. (C) No. 198(K)/2005 and the order dated 28/04/2008 passed in W.P.(C) No. 43(K)/2007 which has been relied upon by the petitioner in support of his case. The facts and issues involved in the two writ petitions referred to above is completely different from the present case and therefore the decisions in the earlier writ petitions has no relevance and cannot be applied to the present case. Moreover, the notification dated 05/03/2018 which also covers old cases of land acquired by the State was not in existence when the two writ petitions were decided.

19. In view of the discussion made above, there is no merit in the case. The writ petition is accordingly dismissed. No cost.

Sd/-

JUDGE

Comparing Assistant