



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

Case No. : WP(C) 172/2019

1:THRONGPENTHSI SANGTAM
W/O SHRI. LICHOSE SANGTAM,
THANGTHURE VILLAGE,KIPHIRE, N/L

VERSUS

1:THE STATE OF NAGALAND AND 11 ORS
THROUGH THE CHIEF SECRETARY TO THE GOVT. OF N/L, KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L
PERSONNEL AND ADMINISTRATIVE REFORMS DEPT.
N/L
KOHIMA

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L
HEALTH AND FAMILY WELFARE DEPT.
N/L
KOHIMA

4:THE PRINCIPAL DIRECTOR
DIRECTORATE OF HEALTH AND FAMILY WELFARE
N/L
KOHIMA

5:THE CHIEF MEDICAL OFFICER
KIPHIRE
N/L

6:THE DEPUTY COMMISSIONER/DISTRICT COLLECTOR
KIPHIRE
N/L

7:THE ADDITIONAL DEPUTY COMMISSIONER
SEYOCHUNG
KIPHIRE
N/L

8:THANGTHURE VILLAGE COUNCIL
THROUGH ITS CHAIRMAN
SEYOCHUNG
KIPHIRE
N/L

9:VILLAGE HEALTH COMMITTEE LONGYA
THROUGH ITS CHAIRMAN
SEYOCHUNG
KIPHIRE
N/L

10:YINGPHIRE VILLAGE COUNCIL
THROUGH ITS CHAIRMAN
SEYOCHUNG
KIPHIRE
N/L

11:YINGPHIRE AND THANGTHURE JOINT COUNCIL
THROUGH TS CHAIRMAN
SEYOCHUNG
KIPHIRE
N/L

12:A. ZIOSELA SANGTAM
MEDICAL ATTENDANT
LONGYA SUB-CENTRE
KIPHIRE

N/

Advocate for the Petitioner : I. IMTI LONGCHAR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO**

JUDGEMENT & ORDER (CAV)

Date : 20-01-2023

The petitioner is aggrieved by the Office Letter No. HFW(A)-8/53/2018/239 dated 22.10.2018, of the Under Secretary to the Government of Nagaland, Health & Family Welfare Department giving approval for appointment of the private respondent (respondent No. 12) and the consequential office Order No. DHFW-3/VACANCY/GR-IV/KPE/2017-18/7271-75 dated 25.10.2018 of the Principal Director, Directorate of Health & Family Welfare appointing the same respondent to the post of Medical Attendant at Longya Sub-center under the establishment of the Chief Medical Officer, Kiphire ignoring her application for appointment to the same post on land-ownership basis. Therefore, she is before this Court challenging the two documents and praying for quashing and setting them aside and to appoint her in place of the private respondent No. 12.

2. Heard Mr. I. Imti Longchar, learned counsel appearing for the petitioner, Ms. Anungla Lkr, learned counsel appearing for respondent Nos. 8 to 11, Ms. Apila Sangtam, learned counsel

appearing for respondent No. 12, and Ms. Suponglemla, learned Government Advocate appearing for the State respondents.

3. The facts and circumstances which led to the filing of the writ petition briefly stated are as follows: In 1980, due to the need for a plot of land for establishment of a Dispensary and construction of Departmental quarters at Yingphire and Thangthure Village, the Government of Nagaland, represented by the Circle Officer of Seyochung, and the land owners who are from the two villages signed an agreement on 18.11.1980, for a plot of land measuring about 24,255 Sq. Metres. In that written agreement, the land owners agreed to donate their land measuring as stated above and also agreed to give more lands if necessary. Following the agreement signed by the parties, the Dispensary was established and the quarters were constructed on the land donated by the land-owners of the two villages. After many years, one of the medical attendants of Longya Sub-Center namely, P. Tsalise Sangtam, retired from service on superannuation and he was released by Office Order No. DHFW-3/520/KPE/2009/Pt-1/459-66 dated 10.04.2018, issued by the Principal Director, Directorate of Health & Family Welfare, Nagaland, Kohima. Following issuance of the above stated order, the petitioner submitted an application to the Principal Director, Directorate of Health & Family Welfare, praying for appointment to the same post on land-ownership basis. The application was supported with the following documents as mentioned in the writ petition:

"(i) "Affidavit of Declaration of Land Donation" made in presence of Chief Medical Officer, Kiphire, Nagaland, and Head GB of Thangthure village, sworn before First Class Magistrate, Kiphire, Nagaland with Regd. No. DC/KPE-09 dated 17.04.2018 **(Annexure-4)** to the effect that the Deponent Shri Holishe, S/o Shri Pilonse, is the sole owner of the land measuring approximately 200X200 sq.ft. for upgradation of Primary Health Center (PHC) at Longya under Thangthure and Yangphire village jurisdiction.

(ii) "No Objection Certificate" dated 12.04.2018 **(Annexure-5)** issued by the Chairman, Village Health Committee, Longya certifying that Shri Holishe Sangtam, S/o Shri Pilonse is the sole owner of the land occupied by Public Health Center (PHC), Longya and recommended the petitioner Shmt. Throngpentsi Sangtam, daughter-in-law of Shri Holishe Sangtam for appointment to the post of Medical Attendant, Grade-IV at Longya Sub-center, Kiphire, Nagaland.

(iii) Recommendation Certificate dated 17.04.2018 (sic 27.04.2018) **(Annexure-6)** from the Office of the Thangthure Village Council Court, B.P.O. Seyochung, District, Kiphire, Nagaland, signed by the Chairman, stating that Shri Holishe Sangtam S/o Shri. Pilonse Sangtam has donated a plot of land for upgradation of PHC at Longya under Thangthure and Yingphire jurisdiction hence recommending Smti. Throngpentsi Sangtam, daughter-in-law of Shri Holishe Sangtam for the post of Medical Attendant under PHC, Longya on the basis of land-ownership against the retirement vacancy of Shri P. Tsalise, Medical Attendant.

(iv) Recommendation Certificate dated nil **(Annexure-7)** by the Office of Yingphire and Thangthure Joint Council, Seyochung, Kiphire under signature of the Chairman and Secretary that Smti. Throngpentsi Sangtam, daughter-in-law of Shri Holishe Sangtam of Thangthure village as the sole land owner of Public Health Center (PHC), Longya Sub-center. The Joint Council further recommended Smti. Throngpentsi Sangtam for appointment to the post of Medical Attendant at Longya Sub-Center against the retirement of Shri P. Tsalise Sangtam, Medical Attendant who retired on 31.03.2018.

(v) HSLC Admit Card and Marksheet **(Annexure-8 and 9)** of the Nagaland Board of School Education (NBSE).

(vi) Employment Exchange Identity Card vide Registration No. 232/2018 **(Annexure-10)** under General Vacancy by the Technical Assistant, Rural Employment Bureau, Kiphire, Nagaland.

(vii) Indigenous Inhabitant Certificate dated 09.05.05

(Annexure-11) signed and sealed by the Deputy Commissioner, Kiphire, Nagaland.

(viii) Scheduled Caste/Tribe Certificate dated 09.05.05 **(Annexure-12)** signed and sealed by the Deputy Commissioner, Kiphire, Nagaland.

(ix) Backward Tribe Certificate, dated 09.05.05. **(Annexure-13)** signed and sealed by the Deputy Commissioner, Kiphire, Nagaland.

The petitioner's application was forwarded by the Chief Medical Officer, Kiphire, Nagaland, by Office letter dated 17-04-2018 **(Annexure-14)**, to the Principal Director, Health and Family Welfare, Nagaland, Kohima."

4. At the same time, the respondent No. 12 also applied for the same post. As per the answer to the RTI of the petitioner, the application of the respondent No. 12 was also submitted along with the following documents:

"(i) Application of R-12, dated nil **(Annexure-17)** praying for appointment to the post of Medical Attendant against the vacancy caused by retirement of her father-in-law Shri. P. Tsalise Sangtam enclosed with:

(ii) D.O. letter No. M (SWC&GM)9/MIN/2018, dated 04.05.2018 **(Annexure-18)**, written by the Minister, Soil & Water Conservation & Geology & Mining, Nagaland, Kohima.

(iii) Office Letter NO.CMO-1/PEN/2016-17/2001, dated 05.03.2018**(Annexure-19)**, written by the Chief Medical Officer, Kiphire, Nagaland to the Principal Director, Health and Family Welfare Department, Nagaland.

(iv) Office Order NO. DHFW-3/520/KPE/2009/Pt-I/459-66, dated 10-04.2018 **(Annexure-20)**, passed by the Principal Director, Directorate of Health & Family Welfare Nagaland, Kohima, releasing Shri. Tsalise Sangtam, Medical Attendant, Longya Sub-Centre from service on completion of 35 years of service w.e.f. 31.03.2018.

(v) Recommendation for landownership certificate dated 13.10.2017 **(Annexure-21)** from the Office of Thangthure Village Council Court, Seyochung, Kiphire, Nagaland, signed by the Chairman, certifying Smti. Ziosela Sangtam daughter-in-law of Shri.

Tsalise Sangtam to be a land owner and recommending her for appointment against the retirement vacancy of Shri. P. Tsalise Sangtam (Medical Attendant), (allegedly forged according to the petitioner).

*(vi) Recommendation for Landownership Certificate dated 13.10.2017 **(Annexure-22)** issued by the Chairman, Village Heath Committee, Longya, certifying that Smti. Ziosela Sangtam, daughter-in-law of Shri. Tsalise Sangtam to be a land owner and recommending her for appointment against the retirement vacancy of Shri. P. Tsalise Sangtam (Medical Attendant), (allegedly forged according to the petitioner).*

*(vii) Residential certificate dated 18.03.2018 **(Annexure-23)**, issued by the Head G.B., Thangthure Village certifying that Smti. A. Ziosela Sangtam is a permanent resident of Thangthure Village under Kiphire District.*

*(viii) Birth Certificate dated 03.10.2013**(Annexure-24)**, issued by the Government of Nagaland, Department of Economics & Statistics.*

*(ix) Employment Exchange Identity Card Vide Registration No.72/2018 **(Annexure-25)**, issued by the Technical Assistant, Rural Employment Bureau, Kiphire.*

*(x) HSSLC Admit Card, Provisional Certificate, Mark sheet **(Annexure-26,27&28)** of the Nagaland Board of School Education(NBSE).*

*(xi) HSLC Provisional Certificate, Admit Card, Mark sheet**(Annexure-29,30 &31)** of the Nagaland Board of School Education(NBSE).*

*(xii) Indigenous Inhabitant Certificate dated 20.05.2004**(Annexure-32)** signed and sealed by the Deputy Commissioner, Kiphire, Nagaland.*

*(xiii) Backward tribe certificate dated 20.05.2004, **(Annexure-33)** signed and sealed by the Deputy Commissioner, Kiphire, Nagaland.*

*(xiv) Scheduled Tribe Certificate dated 20.05.2004 **(Annexure-34)** signed and sealed by the Deputy Commissioner, Kiphire, Nagaland."*

5. The applications of both the petitioner and the respondent No. 12 were forwarded by the Principal Director,

Directorate of Health & Family Welfare, to the Commissioner & Secretary, Department of Health & Family welfare, Government of Nagaland, *vide* his letter dated 10.08.2018, for consideration and approval for appointment.

6. On coming to know that, the document at (v) and (vi) were forged, the Village Council and the Village Health Committee of Thangthure Village issued a certificate each on the same day, i.e. on 09.11.2018, stating that they have not issued such certificates and the same were forwarded to the Principal Secretary, Health & Family Welfare, Nagaland. Thereafter, through a letter No. CMO-1/31/CORRS-NHP/KPE/2017-18/486-90 dated 17.10.2018, the Chief Medical Officer, Kiphire, Nagaland wrote to the Addl. Deputy Commissioner, Seyochung to designate one Dobashi from the Administrative Division to be a witness in ascertaining ownership of the land on which the medical facilities have been established. Soon thereafter, the Chief Medical Officer, Kiphire, *vide* his letter No. CMO-1/9/GRADE-IV/2017-18/215 dated 24.10.2018 informed the Principal Director of Health & Family Welfare that on 20.10.2018, officials along with the Joint Council of Yingphire and Thangthure Village had held a joint meeting at Longya Sub-center to confirm as to who and who had donated the land in 1980 and in that meeting, it has been confirmed that the land-owners were: 1) Piongse Sangtam, 2) Shikali, 3) Vinito, 4) Throngtsali, 5) Tsalongtsi, 6) Sakhuto, and 7) Tsatongkyu. On the same day, by another letter No. CMO1/9/GRADE-IV/2017-18/215 dated 24.10.2018, he also

forwarded the name of one Mr. Lizi P Sangtam, grandson of Lt. Tsatongkyu and Smti. Throngpentsi (the writ petitioner), wife of Shri Lichose Sangtam, grandson of Shri. Pilonse Sangtam, who were descendants of land-owners, for appointment to the post of Medical Attendants, at Longya Sub-Center against the vacancies which arose due to the retirement of one Shri Chotsae Sangtam and P. Tsalise Sangtam, on 31.03.2018. Their applications were recommended by the CMO and they were supported by a certificate issued by the Joint Council of Yangphire and Thangthure Village dated 18.11.2018 on the basis of land ownership. However, by the impugned letter No. HFW(A)-8/53/2018/239 dated 22.10.2018, the Under Secretary to the Government of Nagaland conveyed the approval of the Government to the Principal Director, to appoint the respondent No. 12 to the post of Medical Attendant which became vacant due to the retirement of P. Tsalise Sangtam who is none other than her own father-in-law. On coming to know the approval of the Government, the writ petitioner submitted a representation to the Principal Secretary, Department of Health and Family Welfare stating that, she being one of the owners of the land occupied by the Longya, Sub-centre and not having been given any benefit in lieu of the same, she should be considered for appointment to the post of medical attendant stated above. However, the Principal Director, vide order No. THFW-3/VACANCY/GR-IV/KPE/2017-18/7271-75 dated 25.10.2018 (one of the impugned orders) appointed the

respondent No. 12 to the post of Medical attendant at Longya Sub-centre. Therefore, as stated above, the petitioner has come before this Court by filing the writ petition.

7. The case of the petitioner is that one of the owners of the land on which the dispensary and Department quarters of Medical Staffs were constructed is one Mr. Pilonse Sangtam who is the maternal grandfather of her husband and since no compensation in any form including employment in the Department has ever been given to members of their family in lieu of the land donated by them, it was rightfully her turn to be appointed to the post of Medical Attendant which vacancy arose on the retirement of P. Tsalise Sangtam. But the fact that the respondent No. 12, whose family name is not in the list of land-owners who donated the land was appointed and that too without conducting any interview is both illegal and in disregard of the agreement made between the Government and the land-owners. Therefore, the impugned orders should be quashed and set aside and, she should be appointed to the post.

8. Mr. I Imti Longchar, by referring to Annexure 2 of the hand written agreement signed by the land-owners and the Circle Officer, and the witnesses submitted that, the name of one of the land-owners, i.e., Mr. Pilonse Sangtam, paternal grand-father of the petitioner's husband is given at Serial No. 1 of the agreement but none of the names of the family members of the respondent No. 12 are there, and it was mainly based on this that all the

other documents supporting the case of the petitioner were given by the concerned authorities, therefore, the issuance of the appointment order in favour of the respondent no. 12 by ignoring all those documentary evidences of land-ownership, the State respondents have not only failed to keep their promise but also committed illegality in as much as no advertisement was issued and no interview was held before the appointment order was issued. Further, the learned counsel, by referring to the documents submitted before the concerned authorities along with the application of the petitioner submitted that all the documents show that the petitioner's application was supported by all the authorities in the Village and in the District.

9. Mr. Imti Longchar also submitted that the two documents submitted by the respondents which are; (i) "Recommendation for land-ownership certificate" dated 13.10.2017 purportedly given by the Office of the Thangthure Village Council Court, Seyochung signed by the Chairman and, (ii) "Recommendation for land-ownership certificate" which is also dated 13.10.2017 and purportedly issued by the Chairman Village Health Committee, Longya, are forged documents because the words in the certificates were typed on the blank letter heads given by the two Chairmans at the request of the respondent No. 12, on the pretext of pursuing the pension of her father-in-law, P. Tsalise Sangtam. This fact though was brought to the notice of the respondent authorities, was conveniently ignored in order to favour the respondent No. 12 who was also

supported by the Minister of Soil and Water Conservation through his D.O. letter dated 04.05.2018. Therefore, the appointment of the respondent No. 12 is based on fraud and favoritism. As such, the same deserves to be quashed and set aside.

10. Ms. Apila, learned counsel appearing for the respondent No. 12 submitted that the document at Annexure-7 of the writ petition which certifies that the writ petitioner is the sole owner of the land occupied by the Health Centre at Longya, Sub-division centre and the Joint Council of Yingphire and Thangthure Villages was signed by one Mr. Chorise as Secretary of the Joint Council, but the fact is that at that relevant time, the Secretary of the Joint Council was one Mr. Atsacho and not Mr. Chorise. The learned counsel also submitted that the fact that Shri. Atsacho was the Secretary of the Joint Council is proved by another certificate of that nature issued in favour of Mr. Lizi P Sangtam to support his candidature for appointment to one of the post of Medical Attendant by the same Council which was also signed by Mr. Atsacho. Therefore, the claim of the petitioner that her case was supported by the Yingphire and Thangthure Joint Council is false.

11. The learned counsel, also submitted that the two land-ownership certificates issued on the same day, i.e., 13.10.2017 by the Thangthure Village Council Court and the Village Health Committee respectively, which are alleged by the petitioner as forged documents have been reaffirmed as genuine documents

by the Thangthure Village Council through a letter dated 22.01.2022. Therefore, the allegation of the petitioner is baseless, and as such, it should not to be given any weightage.

12. Respondent No. 1 to 7 who are Government respondents, both through their joint affidavit and the learned Government Advocate, Ms. Suponglemla has submitted that, as per the direction given, the Chief Medical Officer, Kiphire, vide his letter dated 11.11.2019 had furnished a copy of the agreement between the land owners and the Government representative regarding the donation of the land in question and it has also been made clear that there is no record of compensation and employment having been given to any of them. However, the dispute over the land ownership has lingered on so the same can only be decided by appropriate Court. The respondents also submitted that the petitioner has no *locus standi* to file the writ petition since no legal right of his has been violated.

13. Respondent No. 8 to 11 had also filed a joint affidavit. Both through their affidavit and their learned counsel Ms. Anungla Lkr, they have submitted that the Thangthure Village Council Court did not issue any certificate to the effect that the respondent No. 12 is the land owner/donor of the land occupied by the Department of Health and Family Welfare at Longya Sub-centre nor did they give any recommendation for her appointment to the post of Medical Attendant. They also submitted that this fact was conveyed to the Principal Secretary,

Health and Family Welfare through a letter dated 09.11.2018. However, even thereafter, the same Chairman issued another certificate dated 22.06.2020 supporting the claim of the respondent No. 12 that she is a genuine land-owner. Therefore, the Chairman was impeached by the Joint Council of Yingphire and Thangthure vide order dated 09.07.2020 of the Joint Council.

14. In supplementing the submission of the respondent Nos. 8 to 11, the petitioner's learned counsel submitted that for the wrongful act committed, the then Chairman of Thangthure Village Council, Mr. Atsacho was impeached on 09.07.2020. Thereafter, the learned counsel referred to a document filed with the reply affidavit of the respondent No. 12 which he submitted was an agreement between land owners of Thangthure Village and the Extra Assistant Commissioner, Seyochung, regarding the Longya dispensary on 27.01.1984. The contents of the agreement are as follows:

"During the meeting in pursuan(sic) of A.D.C. Kiphire's letter NO. LR-3/A3/100 dated Kiphire the 13th December'83. The E.A.C. Seyochung convened a meeting in his office and the matter was settled in the presence of both the land owner party (complainant) and both the village G.B's of Thangthure and Yingphire and have unanimously agreed on the following points:-

1. The landowner Shri. Pilonse Sangtam and party being deprived of constract(sic) works/employment service in the first opportunity from government side, it is herby agreed that at the first instance of any post falling vacant/created against Longya Dispensary, the

above mentioned party shall be given the chance of employment (Provided they fulfill the requisite qualification) for the post falling vacant/created without any interference from any party within this Thangthure and Yingphire Villages.

2. *The other terms and conditions executed on the day of 18th November 1980 remains unchanged.*

Today the 27th January'84. We the land owners hereby transfer our rights of ownership as per agreement made during 18th November 1980 to the Government and bind ourselves to this agreement and shall not disturb/obstruct the functioning of dispensary at Longya."

15. I have perused the record and considered the submissions of the learned counsels. At the very outset it would be appropriate to see and examine the contents of the impugned approval letter and the appointment order so that a conclusion can be drawn as to whether they are legal or illegal or can stand the test of law. Therefore the contents of the two impugned documents are reproduced here below one after the other;

*"GOVERNMENT OF NAGALAND
HEALTH & FAMILY WELFARE DEPARTMENT
No. HFW (A)-8/53/2018/239 Dated Kohima the th Oct,2018*

To

*The Principal Director,
Directorate of Health & Family Welfare
Nagaland:Kohima.*

Sub: Government approval thereof:

Sir,

In supercession to this department letter no. HFW (A)-8/53/2018/387 and No. HFW(A)-8/53/2018/388 dated 29/6/18 and in inviting a reference to your letter No. DHFW-3/Vacancy/Grace-

IV/KPE/2017-18/4171 dated 10/8/18, I am directed to convey the approval of the Government for appointment against each name and post indicated as at Annexure:

This has the approval of Hon'ble Minister, Health & Family Welfare Department dated 25/9/18. Formal necessary order may be issued from your end under intimation to this department.

*Yours
faithfully,
(NOUNE-U
KIRE)*

Under Secretary to the Government of

Nagaland

<i>Sl. NO</i>	<i>Name of the applicant approved for appointment</i>	<i>Fathers Name</i>	<i>Name of the post</i>	<i>Retired Employees</i>	<i>Resultant Vacancy</i>
<i>1.</i>	<i>Miss A. Ziosela Sangtam</i>	<i>Alumba Sangtam</i>	<i>M/Attendant</i>	<i>Shri. P Tsalisa Sangtam</i>	<i>Sub Centre Longya</i>

(NOUNE-U KIRE)

Under Secretary to the Government of Nagaland"

**GOVERNMENT OF NAGALAND
DIRECTORATE OF HEALTH & FAMILY WELFARE
NAGALAND: KOHIMA**

NO. DHFW-3/VACANCY/GR-IV/KPE/2017-18 Dated, Kohima the Oct, 2018

O R D E R

In pursuance of the Government of Nagaland, Department of Health & Family Welfare, Nagaland, Kohima. Approval Letter No. HFW(A)-8/53/2018/239 dated Kohima the 22nd October 2018, Smti. A. Ziosela Sangtam is hereby temporarily appointed to the post of Medical Attendant at Longya S/C under the establishment of the Chief Medical Officer, Kiphire against the vacancy created due to the retirement of Shri. P. Tsalise Sangtam at Longya S/C retired on 31.03.2018 at level 1 of New Pay Matrix of Rs. 15,500/- P.M. (pre-revised Pay Band of Rs. 4400-17200/- PM with Grade Pay of Rs. 1300/- P.M) plus all other allowances as are admissible under rules from time to time in Nagaland with effect from the date of joining. This appointment comes under the purview of new Defined Contribution Pension Scheme

The appointment is purely temporary and may be terminated by one

month's notice given by either side at any time without assigning any reason and will be governed by the terms and conditions of Nagaland Government Service Rules and regulations.

The appointment will be further subject to:-

- 1. The appointment carries with it the liabilities to serve in any part of Nagaland*
- 2. The production of Medical fitness certificate from the competent Medical Authority.*
- 3. A favourable police verification report on his/her character and antecedent.*
- 4. Character certificate from two gazette officers.*

If the incumbent fails to report for duty within 30 days from date of issue of this order the appointment order will automatically be treated as cancelled.

(DR. VIKEYIE LOSU)
Principal Director
Directorate of Health & Family Welfare
Nagaland: Kohima"

On perusal of the impugned approval letter and appointment order one cannot see anything which would show that the respondent No. 12 was recommended and appointed on land ownership basis or in lieu of the land claimed to have been donated by her or her family members. Further, the two documents and the pleadings of the parties does not show that advertisement was issued for the post in question and interview was conducted before the appointment order was issued. So what can be gathered is that the approval letter and the appointment order were issued based on the recommendation of a Minister only. Therefore, the equality clause of the Constitution of India more specifically Article 16 was totally ignored or given a go by when the impugned orders were issued. Article 16 guarantees equal opportunity to all citizens when it comes to appointment to Government services. As such, when no advertisement was issued

for the post and no interview was conducted before the appointment order was issued in favour of the respondent No. 12, the guarantee given in this Article was violated. Such practice or orders have been not only deprecated by the Apex Court but have also been quashed and set aside in catena of cases and, Courts all over the country has followed the same. Therefore, both the approval and the appointment order which are impugned in the writ petition cannot be allowed to stand. As such, they are both quashed and set aside.

16. Before I go any further, it would also be appropriate to reproduce the contents of the first agreement which was signed between the owners of the land on which the Dispensary and the Medical Personnel quarters were constructed at Longya and the representative of the Government:

"On the day of 18th November, 1980 before the Circle Officer, Seyochung. We the elders and land owners of both Yingphire and Thangthure Villages donated the site measuring 24,255 Sq. Metres free of cost to the government (Medical Dept) for opening Dispensary and construction of departmental quarters. Agreed that more lands will be freely given as much as necessary whenever required by the Govt.

Signature of the land owners:-

1.	Shri. Pilonse Sangtam.	Thangthure Vill.	Sd/-
2.	Shri. Shikali.	Thangthure Vill.	Sd/-
3.	Shri. Vinito	Yingphire Vill.	Sd/-
4.	Shri. Throngtsali	Yingphire Vill.	Sd/-
5.	Shri Tsalongtsi.	Yingphire Vill.	Sd/-
6.	Shri. Sakuto.	Yingphire Vill.	Sd/-
7.	Shri. Tsatongkyu	Yingphire Vill.	Sd/-

Signature of the elders of the Villages:-

1.	Shri Aseba Sangtam, Hd.GB.	Yingphire Village.	Sd/-
2.	Shri. Tsarito Sangtam, GB.	Yingphire Village.	Sd/-
3.	Shri. Tsatongo Sangtam, GB.	Yingphire Village.	Sd/-

- | | | |
|------------------------------------|---------------------|------|
| 4. Shri. Pitovi Sangtam, GB. | Yingphire Village. | Sd/- |
| 5. Shri. Tsatotsi Sangtam, Hd, GB. | Thangthure Village | Sd/- |
| 6. Shri. Setsao Sangtam, GB | Thangthure Village. | Sd/- |
| 7. Shri. Pilise Sangtam, GB | Thangthure Village. | Sd/- |
| 8. Shri. Pitsase Sangtam, GB | Thangthure Village. | Sd/- |
| 9. Shri. Yangtsase Sangtam, GB | Thangthure Village. | Sd/- |
| 10. Shri. Lishoti Sangtam, GB. | Thangthure Village. | Sd/- |
| 11. Shri. Tsapikyu Sangtam, GB. | Thangthure Village. | Sd/- |

Witness

- | | | | |
|--------------------------------|--------------|-------------|------|
| 1. Shri. Tsatotsi Sangtam, | A.C.M | Thangthure. | Sd/- |
| 2. Shri. Tsarito Sangtam, | V.C Chairman | Yingphire | Sd/- |
| 3. Shri. A(sic)kyu Sangtam, | | Thangthure. | Sd/- |
| 4. Shri. Tsitoth(sic) Sangtam, | | Yingphire. | Sd/- |
| 5. Shri. Tsithrongto Sangtam, | DB | Seyochung | Sd/- |
| 6. Shri. Sapikyu Sangtam, | | Yingphire. | Sd/- |
| 7. Shri. Lithrongtsi Sangtam, | | Thangthure. | Sd/- |
| 8. Shri. Chotsase Sangtam, | | Yingphire. | Sd/- |
| 9. Shri. Tsalito Sangtam, | Mohorir | Seyochung. | Sd/- |

(Sd/-)

CIRCLE OFFICER

Seyochung,
Nagaland."

This agreement on which the petitioner basically relies upon for her claim to the post of Medical Attendant (the post in question) only shows that the land owners of both Yingphire and Thangthure Villages donated a land measuring 24,255 sq meters, free of cost to the Government (Medical Department) for opening a Dispensary and for construction of Departmental Quarters and they also agreed to give more lands whenever it is required. Nothing is mentioned therein about giving of employment to the land owners. Therefore, the claim of the petitioner cannot be accepted right away. However, considering the common practice in Nagaland that is, whenever a land is donated for public purpose, the land owner(s) are promised Government

employment or some contract works either through a written or oral agreement; therefore, one cannot rule out existence of such agreement in this case also. But such agreement, if any, as per the practice has to be inquired upon by the Deputy Commissioner of the District, which has not been done in this case. Further, the claim of the petitioner that she is one of the land owners is contested strongly by the respondent No. 12. And the contentions of both the parties cannot be determined based on the documents filed by them. They will have to be proved orally also but this Court is not the right forum for the same. Therefore, I am of the view that the Deputy Commissioner concerned should inquire as to whether there was any agreement in any form between the land owners and the Government representatives for giving employment to the land owners in lieu of the land donated by them, and if there was such agreement determine as to which of the parties, i.e., the writ petitioner or the respondent No. 12 is the real or genuine land owner, and thereafter send his findings to the appointing authority of the post.

17. In view of what has been stated above, the Department concerned shall refer to the Deputy Commissioner of the District concerned to determine as stated above and thereafter based on the findings of the Deputy Commissioner issue the appointment order to either of the parties, i.e, the petitioner or respondent No. 12 to the post in question. But in case it is found that there was no agreement for giving employment to the land owners, appointment to the post should

be done through a recruitment process preceded by advertisement.

The writ petition is disposed in terms of what has been stated above.

Sd/-
JUDGE

Comparing Assistant