



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

Case No. : PIL/7/2021

1. Sonem Tayang aged about 41 years
S/O LT. T.TAYANG, RESIDENT OF KHUPA, PO HAYLIANG, PS KHUPA, DIST.
ANJAW, AP.
- 2: SHRI KHASA GAM, aged about 41 years
Goan Burah of Tafraliang village, S/o Sri Tablum Gam, resident of Tafraliang village,
PO HAYLIANG, PS KHUPA, DIST. ANJAW, AP.
Occupation :
- 3: SHRI GRINGRESO AMA aged about 44 years
S/o Lt. Lajum Ama, resident of Tafraliang, PO HAYLIANG, PS KHUPA, DIST.
ANJAW, AP.
Occupation :
- 4: MS. MUNULA TAYANG aged about 23 years
GPM D/o Sri Solum Tayang resident of Hayuliang, PO HAYLIANG, PS KHUPA,
DIST. ANJAW, AP.
Occupation :
- 5: SHRI MAYAM KAHAK Age: 26 years Occupation :
S/O SHRI TILALUM KATHAK RESIDENT OF TAFRALIANG VILLAGE PO/PS
HAYULIANG PS KHUPA DIST. ANJAW AP.
- 6: SMTI YATANGLU TAYANG Age: 58 years Occupation : W/O SHRI SONEM
TAYANG RESIDENT OF KHUPA VILLAGE PO/PS HAYULIANG PS KHUPA
DIST. ANJAW AP.
- 7: SHRI AJIMSO AMA Age: 58 years Occupation : S/O SHRI BASUMLU AMA
RESIDENT OF MAHIKONG VILLAGE PO/PS HAYULIANG PS KHUPA DIST.
ANJAW AP.
- 8: SMTI BAPENGLU MAWIN Age: 43 years Occupation : W/O JAMSO MAWIN
RESIDENT OF HAYULIANG VILLAGE PO/PS HAYULIANG PS KHUPA DIST.
ANJAW AP.
- 9: SHRI ACHEMSO TAYANG Age: 18 years Occupation : S/O SHRI SOPRING

TAYANG RESIDENT OF AMLIANG VILLAGE PO/PS HAYULIANG PS KHUPA
DIST. ANJAW AP.

10: SHRI BAPEN KATHAK Age: 27 years Occupation : S/O SHRI YILAMSO
KATHAK RESIDENT OF HAYULIANG VILLAGE PO/PS HAYULIANG PS
KHUPA DIST. ANJAW AP

VERSUS

The State of AP and 2 Others
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF AP, ITANAGAR.

2:THE SECRETARY, Health & Family Welfare, Govt. of AP, Itanagar.
Age: 0 Occupation :

3:THE DEPUTY COMMISSIONER, Hawai, Anjaw District, Arunachal Pradesh.
Age: 0 Occupation

Advocate for the Petitioner : T T Tara Mr. Adam Tatak Mr. Terji Kamchi
Mr. Jungam Jini Mr. A. T. Tara, Mr. Gamken Bam
Advocate for the Respondent : Mr. I. Riram, Addl. Sr. Government Advocate
Mr. T. Tagum, SC(H & FW)

:::BEFORE:::

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 29-05-2024

Date of Judgment & Order : 29-05-2024

JUDGMENT & ORDER (ORAL)

(N. Unni Krishnan Nair, J.)

Heard Mr. T.T. Tara, learned counsel for the petitioners. Also heard Mr. I. Riram, learned Govt. Advocate, representing respondent nos. 1 and 3 and Mr. T. Tagum, learned standing counsel for the Health and Family Welfare Department, representing respondent no.2.

2) The 9 (nine) petitioners herein are residents of 5 (five) different villages falling under P.O. Hayuliang under P.S. Khupa in the Anjaw District of the State of Arunachal Pradesh. This Public Interest Litigation (PIL for short) is claimed to be filed in public interest, and for the benefit of several villages of Hayuliang

area, who contend that the Office of the District Medical Officer, Anjaw should not be shifted from its present location at Swamy Camp, Hayuliang to District Headquarter of Anjaw District at Hawai, as proposed by the Government. The petitioners claim that the District Headquarter at Hawai happens to be far away from most of the administrative blocks of Anjaw District, viz., Chaglagam, Goilang, Manchal and Hayuliang, where nearly 70% (seventy percent) population of Anjaw District are residing. Accordingly, the petitioners have prayed for quashing the impugned order dated 04.11.2019, issued by the Deputy Commissioner, Anjaw District, Hawai (respondent no.3), by which it was decided to shift, amongst others, the Office of the District Medical Officer, Anjaw from its present location at Swamy Camp, Hayuliang to District Headquarter of Anjaw District at Hawai.

3) The learned counsel for the petitioners has made extensive submissions to justify the continuance of the said office at the present location by submitting that the local people of the area had been demanding that a District Hospital be set up in Hayuliang area. Accordingly, a 50 (fifty) bedded District Hospital, known as Kalikho Pul Memorial Hospital has been constructed in the year 2014 and inaugurated in the year 2017 by the then Chief Minister, and since then, the said Hospital is catering to public from its location at Swamy Camp, Hayuliang. Hence, it is submitted that it would be in best interest of the public that the Office of the District Medical Officer, Anjaw be retained at the present location. Moreover, it has been submitted that the present location is well connected in terms of road communication and telecommunication.

4) It was further submitted that the State Cabinet had also taken a decision to retain the District Medical Officer, Anjaw at its present location at Swamy Camp, Hayuliang. Thus, it was submitted that the Deputy Commissioner, Anjaw did not have any power and authority to take a decision that is contrary to the

Cabinet decision of the Govt. of Arunachal Pradesh. It was also submitted that there is historically a rivalry between the residents of Hayuliang and adjoining locality regarding setting up of District Headquarter of Anjaw District at Hawaii and due to political pressure, except for the Office of the District Medical Officer, Anjaw, most of the other Government offices have been shifted to Hawaii. It was submitted that due to bitterness amongst residents of two Hauyliang and Hawaii in the District, the matter was came to be agitated before this Court. However, due to intervention of the then Minister of Finance, Govt. of Arunachal Pradesh, the matter was resolved through a mutual agreement wherein it was agreed that the District Hospital and Office of the District Medical Officer would be set up at Hayuliang. Accordingly, it has been submitted that the move to shift the Office of the District Medical Officer was in utter violation of a mutual agreement between the public and the Deputy Commissioner, Anjaw. It was submitted that if the said office was shifted, connected offices of Programme Officer, Medical Officer, DRCHO, DSO, DVBDSCO, etc. would also have to be shifted, which will have an adverse effect and impact on the health issues of about 70% of the public of Anjaw District. It was also submitted that the decision to shift the Office of the District Medical Officer from Swamy Camp, Hayuliang to Hawaii was not taken in a transparent and fair manner.

5) It was further submitted that the representations submitted by the people of the locality against such shifting were not attended to. Moreover, the District Medical Officer had also submitted representations dated 24.11.2019 and 10.08.2020, to reconsider the decision to shift their office and similar representation was also made by the Superintendent of the Kalikho Pul Memorial Hospital on 09.03.2021 and the Anjaw National Health Mission Employees' Union had also submitted their representation dated 11.03.2021. But, none of these representations were disposed of and hence, this PIL has

been filed.

6) To support his submissions on the power of judicial review, the learned counsel for the petitioner has made reference to the case of *Marbury v. Madison*, decided by the US Supreme Court, and reported in *5 U.S. 137 (1803)*. However, the copy of the said judgment has not been produced.

7) The learned Government counsel and the learned Departmental counsel have both submitted that the Kalikho Pul Memorial Hospital and the Office of the District Medical Officer, Anjaw are two separate establishments, having two separate Drawing and Disbursing Officers. It is also submitted that the Office of the District Medical Officer, Anjaw does not have relationship with treatment of patient either practically or physically. It is submitted that the Office of the District Medical Officer does not manage the affairs of the District Hospital. Hence, it is submitted that which office will be situated where was purely a policy decision of the Government. It was specifically denied that that there was any Cabinet decision that was being violated to shift the Office of the District Medical Officer, Anjaw. It was also denied that there was any agreement between the public and the Deputy Commissioner, Anjaw for continuance of the said office at Hayuliang.

8) It was also submitted that the Deputy Commissioner, Anjaw (respondent no.3) in his affidavit in opposition has specifically stated that the Office of the District Medical Officer, Anjaw is meant for administration of the Health Department of the Anjaw District. Accordingly, it is submitted that for administrative convenience, the Office of the District Medical Officer, Anjaw is required to be operated from Hawaii, which is the District Headquarter which would be in greater public interest because there are 326 villages in the district of Anjaw and that the nine petitioners herein belong to only five villages of the district.

9) It is also submitted that the Deputy Commissioner, Anjaw/ Chairman of the District Health Society have to face practical difficulty to visit the Office of the District Medical Officer, Anjaw to attend physical meetings or to virtually hold video conference meetings with the Chief Minister, Health Minister, Chief Secretary, Secretary (Health Department) and authorities of the Govt. of India, Ministry of Health and Family Welfare from the present location of the Office of the District Medical Officer, Anjaw at Hayuliang. It was also submitted that there is no record of any Cabinet decision against shifting of the said office to District Headquarter at Hawai and that there is also no record of any agreement by the respondent no.3 for not shifting the Office of the District Medical Officer, Anjaw from Hayuliang to Hawai. In this connection, by referring to the order dated 10.05.2024 passed by this Court, the learned Govt. advocate has produced the copy of written instructions dated 10.04.2024 from the Deputy Commissioner, Anjaw district to the effect that his office has neither received any copy of the Cabinet decision on retaining the Office of the District Medical Officer, Anjaw at Hayuliang instead of Hawai. A copy of the said communication has been handed over to the Court Master to be retained on record.

10) The learned standing counsel for the respondent nos. 1 and 2, by referring to the order of this Court dated 12.04.2024, has submitted upon instructions that although an affidavit in opposition was filed on behalf of respondent no.2 by one Shri Pesen Yomcha, who is serving as Junior Statistical Assistant under the Directorate of Health Service, but it was informed to this Court that there was no authorization on record from the Secretary to the Govt. of Arunachal Pradesh, Health and Family Welfare Department (respondent no.2) and accordingly, this Court had recorded in its order dated 12.04.2024 that on perusal of the affidavit, it was noticed that the stand taken appears to be contrary to the policy decision of the State, which would be impermissible as the

State has to be represented by an authority not below the rank of Secretary. It is also submitted that although this Court had directed the Secretary to the Govt. of Arunachal Pradesh, Health and Family Welfare Department to file an affidavit within 2(two) weeks, but such affidavit could not be filed.

11) We have considered the statement made in the writ petition and also perused the contents of the documents annexed thereto and we have also given our careful consideration to the submissions made by the learned counsel representing the parties.

12) In view of the submissions made by the learned standing counsel for the respondent nos. 1 and 2 and on considering the order passed by this Court on 12.04.2024, we are inclined to respectfully agree with the said order dated 12.04.2024 to the effect that the stand taken in the affidavit in opposition filed by the respondent no.2 on 24.08.2022 appears to be contrary to the policy decision of the State. We also respectfully agree with the further observations made therein that the State has to be represented by an authority not below the rank of Secretary to the Govt. of Arunachal Pradesh.

13) Hence, the Court is inclined to hold that the affidavit in opposition filed on behalf of respondent no.2 by a "Junior Statistical Assistant" is not acceptable as nothing has been brought on record that the person swearing the said affidavit on behalf of the respondent no. 2 had any power, authority or competence to swear the affidavit on behalf of respondent no.2. The respondent no.2 may be well advised to be careful in future while allowing incompetent persons to swear and file affidavit in opposition before this Court and if the said authority repeats this, the Secretary to the Govt. of Arunachal Pradesh, Health and Family Welfare Department would be doing so at his own risk as to cost and consequences arising therefrom.

14) On a query of the Court, which is based on order dated 10.04.2024,

whereby the learned counsel for the parties were directed to apprise this Court about Cabinet decision, if any, the learned counsel for the petitioners has submitted that the petitioners could not lay their hands on the copy of the Cabinet decisions. On a further query of the Court as to whether any notification has published in the official gazette of the State of Arunachal Pradesh, based on Cabinet decision not to shift the Office of the District Medical Officer, Anjaw from Hayuliang to Hawaii, the learned counsel for the petitioners has submitted that the petitioners could not lay their hands on any such gazette notification. On a further query of the Court as to whether the petitioners had a copy of any agreement between the public and the Deputy Commissioner, Anjaw against such shifting, the learned counsel for the petitioners has again submitted that the petitioners could not lay their hands on any such agreement.

15) We notice from the order dated 20.06.2023 that the learned counsel for the petitioners had prayed for further time to bring on record the decision of the State Government i.e., the Cabinet decision to establish the Office of the District Medical Officer, Anjaw at Hayuliang along with the District Hospital and thereafter, this Court had passed an order dated 10.04.2024 directing the counsel for the parties to apprise the Court about Cabinet decision, if any. In this regard, we have carefully perused the statement made in the writ petition and we are surprised to see that there is no statement made in the writ petition that there was a Cabinet decision for the aforesaid purpose. Hence, we are constrained to hold that the submissions of the learned counsel for the petitioners regarding Cabinet decision was a submission made out of the cuff which is not based on any pleadings in the writ petition. It is no longer *res integra* that a Cabinet decision, to have a course of law, has to be followed by a gazette notification. Accordingly, we are constrained to hold that on failure of the petitioners to make any pleadings about any Cabinet decision, but the said

plea having been introduced by the learned counsel for the petitioners, which is recorded in the order dated 20.06.2023 leads to an un-reverted presumption that no such Cabinet decision exists.

16) In light of the Constitutional provisions, the Court is unable to accept that any lawful agreement could have been made between the State/District administration and some members of the public not to shift a Government office from one locality to another.

17) Therefore, we are unable to accept the contention of the petitioners that while the District Headquarter of Anjaw district is located at Hawaii, the Office of the District Medical Officer, Anjaw can be permitted to be operated from Hayuliang. In absence of anything to be contrary, the Court is inclined to accept the stand of the Deputy Commissioner, Anjaw (respondent no.3), made in his affidavit in opposition that the Deputy Commissioner/Chairman of District Health Society is/ are facing a difficult situation with the functioning of the Office of the District Medical Officer, Anjaw.

18) We are of the further considered opinion that even if the concerned authorities had set up the Office of the District Medical Officer, Anjaw at Hayuliang, yet the appropriate Government and the District Administration would both have unfettered power to take a policy decision to again shift such establishment to another place of locality. In respect of those policy decisions, the Court has no mechanism to find out as to which place would be more suitable for a Government office. Moreover, a Government official or government servant cannot be permitted to raise any objection about difficulty in rendering service from a different location because transfer is an incidence of service.

19) We have perused the decision of the US Supreme Court in the case of *Marbury (supra)*. We do not find that the said decision can be considered as an authority on the point that the Constitutional Courts in India have the power of

judicial review against a policy decision of the State Government to shift the Office of the District Medical Officer, Anjaw from Hayuliang to Hawaii on the ground that Hawaii is the District Headquarter.

20) The Court is unable to find fault with the impugned order no. AE/ORD-143/19-20 dated 04.11.2019, issued by the Deputy Commissioner, Anjaw District, Hawaii (respondent no.3), wherein it is referred that the Members attending the meeting had decided to shift, amongst others, the Office of the District Medical Officer, Anjaw be shifted from Swamy Camp, Hayuliang to District Headquarter at Hawaii.

21) It would be apposite to refer to the decision of the Supreme Court of India in the case of *Union of India & Ors. Vs. Kannadapara Sanghatanegala Okkuta & Kannadigara & Ors., (2002) 10 SCC 226*. Paragraph 6 thereof is quoted below:

“6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction could under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with law, then the only direction which could have been issued by the court was to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the situs of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect.”

22) In the present case in hand as the location of the Anjaw District Headquarter is at Hawaii, the Court is unable to record its satisfaction that the shifting of the Office of the District Medical Officer, Anjaw from Swamy Camp, Hayuliang to District Headquarter at Hawaii is not required or warranted. Rather, the Court is of the considered opinion that such shifting would be for more administrative convenience of the State Government and the District Administration.

23) In view of the discussions above, the Court is of the view that the petitioners have failed to make out any case for interference with the administrative decision of the Deputy Commissioner, Anjaw vide impugned order no. AE/ORD-143/19-20 dated 04.11.2019. The said order does not warrant any interference as regards its implementation is concerned.

24) Resultantly, this Public Interest Litigation (PIL) is devoid of any merit and the same is dismissed.

25) However, the Court refrains from imposing exemplary cost on the petitioners for this frivolous PIL.

JUDGE

JUDGE

Comparing Assistant