



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

Case No. : WP(C)/372/2023

Tagam Mibang
S/o Late Tatok Mibang,
Village Rampa, Jomlo Mobuk Circle, PO Pessing, PS Rumgong, Siang District,
Arunachal Pradesh.
Phone No. 7628057329

VERSUS

THE STATE OF AP and 2 Ors.
Represented through Secretary (Personnel),
Govt of Arunachal Pradesh, Civil Secretariat,
Itanagar, PIN 791111

2:the Deputy Commissioner
Age: 0
Occupation :
Boleng
District Siang
Govt. of Arunachal Pradesh.

3:the Additional Deputy Commissioner
Age: 0
Occupation :
Rumgong
District Siang
Govt. of Arunachal Pradesh

Advocate for the petitioner : Mr. T. T. Tara

Mr. T. Gadi
Mr. J. Jini
Mr. G. Bam
Mr. K. Apa
Mr. T. Kamchi

Mr. T. Tokur
Mr. Kirmani L.

Advocate for the respondents : Mr. N. Ratan, AAG (AP)

- B E F O R E -

Hon'ble MR. JUSTICE KARDAK ETE

DATE OF HEARING : 02.04.2024

DATE OF JUDGMENT: 12.04.2024

JUDGMENT & ORDER(CAV)

Heard Mr. T. T. Tara, learned counsel for the petitioner. And also heard Mr. N. Ratan, learned Additional Advocate General appearing for the State respondents.

2. By filing this writ petition, the petitioner has prayed for a direction to the Deputy Commissioner, Siang District, Boleng to issue No Objection Certificate (hereinafter referred to as NOC in short) so as to enable the petitioner to submit the same to the Department of Personnel, Government of Arunachal Pradesh for consideration for promotion to Arunachal Pradesh Civil Service (Selection Grade), for a direction to include the name of the petitioner as and when the DPC is held with or without NOC being issued by the Deputy Commissioner, Siang District and for a direction to the respondent authorities to consider and act upon the various representations submitted by the petitioner.

3. The case projected by the petitioner, in brief, is that, he being serving Arunachal Pradesh Civil Service (Senior Grade) Officer, pursuant to the letter, dated 08.06.2023, being Memo No. PERS-12/9/2021, issued by the Under Secretary (Personnel), Government of Arunachal Pradesh requesting 28 (twenty-eight) serving Arunachal Pradesh Civil Service (APCS) (Senior Grade) including the petitioner to submit NOC and APAR/IPR, if any, for the last five years so as

to enable the Department of Personnel to fill the anticipated resultant vacancies in APCS (Selection Grade), the petitioner has submitted a letter dated 12.06.2023 to the Deputy Commissioner, Siang District, for issuance of NOC. The Deputy Commissioner, Siang District, endorsed the same to the concerned Addl. Deputy Commissioner, Rumgong, for verification before issuance of NOC.

4. The Addl. Deputy Commissioner, Rumgong, by an order No. RMG/LAND/2023-24, dated 13.06.2023, directed the Circle Officer, Jomlo-Mobuk, to submit report for onward submission to the Deputy Commissioner, Siang District. The Circle Officer, Jumlo-Mobuk, submitted a verification report dated 16.06.2023. In the verification report, the EAC, Rumgong in-charge Circle Officer, Jomlo-Mobuk, reported that three numbers of provisional land allotment orders for three different plots which fall within the government land have been issued by the petitioner in the name of his mother, wife and himself. It is found that all the plots are fenced with barbed wire and wood posts on the day of the submission of the report.

5. The Addl. Deputy Commissioner-cum-Estate Officer, Rumgong, Siang District intimated the Deputy Commissioner, Siang District, indicating that the plots of land occupied by the relatives of the petitioner and himself have been re-encroached by erecting re-fenced with barbed wire under the influence of the petitioner with an intention to occupy the land permanently. The Addl. Deputy Commissioner has also suggested to review the report before the issuance of the NOC to the petitioner on the ground that the petitioner must remove/ demolish all the re-constructed structures from the evicted plot of land and the original provisional land allotment orders issued by him be surrendered and the petitioner must produce a clearance certificate of non-encroachment of government land by him and his family members, duly counter signed by the Circle Officer, Jomlo-Mobuk, and the case filed against the Deputy Commissioner

and Addl. Deputy Commissioner, Rumgong, be withdrawn under any circumstances.

6. On the receipt of above report from the Addl. Deputy Commissioner, the Deputy Commissioner, Siang District, has communicated a letter dated 27.06.2023, to the petitioner to take necessary corrective measures wherever applicable. In response, the petitioner submitted a reply to the Addl. Deputy Commissioner, Rumgong, denying all the allegations which was forwarded to the Deputy Commissioner, Siang District vide letter dated 29.06.2023. It is contended by the petitioner that since then the Deputy Commissioner is not issuing NOC to the petitioner even after submission of reminder letter dated 18.07.2023 which has deprived the petitioner from consideration for promotion to APCS (Selection Grade). Hence this present writ petition.

7. Mr. T. T. Tara, learned counsel for the petitioner, submits that on the perusal of the objection letter, dated 19.06.2023, issued by the Addl. Deputy Commissioner, Rumgong, the petitioner came to know that the Addl. Deputy Commissioner has quoted a distorted version of the spot verification report of the Circle Officer, Jomlo-Mobuk by levelling false and unfounded allegations, that the petitioner had masterminded/influenced his mother and wife for re-encroachment and re-fencing of the plot of land of the Government land. The Addl. Deputy Commissioner has also illegally put conditions to be followed before issuance of NOC to the petitioner. The petitioner having filed a detail reply to the Addl. Deputy Commissioner denying all the allegations by clarifying that none of his family members have indulged in any illegal encroachment over the Government land and since the reply submitted by the petitioner has been forwarded to the Deputy Commissioner, Siang District, the Deputy Commissioner is duty bound to issue NOC to the petitioner, though, the forwarding letter indicated certain action has to be initiated against the petitioner before issuance

of NOC. He submits that the petitioner, having come to know about certain allegations by the Addl. Deputy Commissioner, he had to file a written complaint to the Deputy Commissioner, Siang District, for cancellation of NOC for DPC which was issued in favour of the Addl. Deputy Commissioner, Rumgong, and for initiation of appropriate disciplinary proceedings against the Addl. Deputy Commissioner, Rumgong for certain misconduct on his part.

8. Mr. Tara, learned counsel, submits that the petitioner has also made complaint to the Secretary (Personnel), Government of Arunachal Pradesh vide letter, dated 28.06.2023, for rejection of the NOC for DPC issued in favour of the Addl. Deputy Commissioner, Rumgong, *inter alia* stating that the Deputy Commissioner, Siang District has issued NOC to the Addl. Deputy Commissioner, Rumgong, dehors the Rule to an extent that the Addl. Deputy Commissioner has also issued provisional land allotment to his close family relatives, however, the respondent authorities have not initiated any enquiry. The petitioner has also submitted a representation, dated 04.08.2023, before the Secretary (Personnel), Government of Arunachal Pradesh placing his detail grievances with a request to place the case of the petitioner with or without NOC issued by the Deputy Commissioner, Siang District, as and when the DPC is conducted for filling up of vacant post in APCS (Selection Grade).

9. Mr. Tara, learned counsel, submits that the Deputy Commissioner, Siang District had issued NOC to the ADC, Rumgong, despite several complaints against him without any verification thereby facilitated the respondent No. 3 to get his promotions from the APCS (Selection Grade) to APCS (Admin Grade). Therefore, he submits that similar treatment should be extended to the petitioner by issuing the NOC to the petitioner. Mr. Tara, learned counsel further submits that the action of the Deputy Commissioner in not issuing NOC to the petitioner without any justified reason is biased, arbitrary, abuse of power and

discrimination towards the petitioner which has caused irreparable damage to the career prospect of the petitioner as the DPC could not consider the case of the petitioner for want of NOC. Therefore, the Deputy Commissioner, may be directed to issue NOC in favour of the petitioner. Mr. Tara, learned counsel, alternatively, submits that since the petitioner has filed a representation on 04.08.2023 before the Secretary (Personnel), Government of Arunachal Pradesh with a request to include the name of the petitioner in the next DPC with or without NOC by the Deputy Commissioner while filling up various vacant post in the APCS (Selection Grade) and same not been considered, the respondent authorities may be directed to include the name of the petitioner as and when the DPC is held.

10. Mr. Tara, learned counsel made an attempt to show that discrimination has been meted out to the petitioner in granting NOC inasmuch as the similarly situated officers have been granted NOC while denying the NOC to the petitioner by giving a different treatment to the similarly situated persons which is antithetical to the Article 14 of the Constitution of India.

11. Mr. Tara, learned counsel, at the time of hearing has sought to argue that the requirement of NOC for consideration of the petitioner for promotion through DPC by executive orders of the State Government is de hors Article 154 and 166 of the Constitution of India as the basis of requirement of NOC to be obtain from the Deputy Commissioner is the executive orders issued from time to time which has not been issued in the name of the Hon'ble Governor. To such submission, this Court has made a pointed query to the petitioner as to whether any plea has been taken in the present petition, to which Mr. Tara, learned counsel fairly submits that there is no such pleading in the present petition. However, he has made a vain attempt to justify that the question of law need not be specifically pleaded in the petition.

12. Mr. N. Ratan, learned Additional Advocate General appearing for the State respondents, submits that the Addl. Deputy Commissioner, Rumgong, never had any objection without any valid reason. In fact, the objection for issuance of NOC to the petitioner is based on the verification report, dated 16.06.2022, submitted by the EAC, Rumgong, in-charge of Circle Officer, Jomlo-Mobuk, which clearly reflects that the petitioner has provisionally issued three land allotment orders in the name of his mother, wife and himself in most illegal manner without following any norms/Rules in the Government notified land. The entire exercise was done while the petitioner was holding the post of in-charge Addl. Deputy Commissioner, Rumgong. He further submits that from the record it reveals that the petitioner while holding in-charge Addl. Deputy Commissioner, Rumgong, had written application for issuance of LPC to himself and his relatives in the plain handwritten paper, signed himself for issuance of LPC for his relatives without following any codal formality on his own sign and seal illegally. The petitioner was never authorized to issue any LPC as the in-charge Addl. Deputy Commissioner was an internal arrangement for administrative exigencies. In fact, the petitioner has totally misused his official power for personal and selfish benefits which is not expected from an officer like the petitioner.

13. Mr. Ratan, learned Additional Advocate General, further submits that in fact the concerned authority has requested the petitioner to take corrective measures but he is so adamant and never cared about the public interest and therefore, the respondents are not in a position to issue NOC unless corrective measures are taken inasmuch as it is clearly established that the petitioner has issued three provisional land allotment orders in favour of his mother, wife and himself over the government land illegally.

14. Mr. Tara, learned counsel for the petitioner by referring to the rejoinder

affidavit filed by the petitioner submits that whatsoever may be, the provisional land allotment orders issued by the petitioner vide dated 15.02.2023 stands cancelled by now vide No. SD/LM/MISC-80/17-18, dated 10.03.2023. Therefore, he argues that the respondents may be directed to issue NOC, if not, direction may be issued to the respondent authorities to include the name of the petitioner in the DPC that may be held for filling up of post of APCS (Selection Grade).

15. Due consideration has been extended to the submissions of the learned counsel appearing for the parties and also considered the materials available on record.

16. It reveals from the record that the petitioner has sought for NOC from the Deputy Commissioner, Siang District, vide his letter dated 12.06.2023 pursuant to the letter dated 08.06.2023, being Memo No. PERS-12/9/2021, issued by the Under Secretary (Personnel), Government of Arunachal Pradesh, Itanagar for issuance of NOC for filling up of anticipated resultant vacancies in APCS (Selection Grade). In the said letter all together 28 (twenty eight) officers including the petitioner were requested to submit NOC and APAR/IPR, if any, for the last five years to the office at the earliest. The Deputy Commissioner, endorsed the matter to the Addl. Deputy Commissioner, Rumgong, for necessary actions. The Addl. Deputy Commissioner, in his turn, directed the Circle Officer, Jomlo-Mobuk for ground verification as to whether any encroachment over the Government land or damages to government properties has taken place in respect of the petitioner and to submit the ground report for further necessary action.

17. The EAC, Rumgong, in-charge Circle Officer, Jomlo-Mobuk has submitted the verification report on dated 16.06.2024, which is reproduced herein below:-

*OFFICE OF THE CIRCLE OFFICER: JOMLO MOBUK
SIANG DISTRICT*

No. JML/LR-24/2023

Date 16.06.2023

VERIFICATION REPORT

In pursuance of Order No. RMG/LAND/2023-24 Dated 13th June 2023 the undersigned has carried out spot verification as well as verification of office records to ascertain the factual position.

Findings:

- 1. A Provisional Land Allotment for a plot of land measuring 420 Sqmtrs has been issued in favour of Smt. Yater Taga W/o Lt Tayor Taga vide Order No. RMG/LM- 44/PLA/2015-16 Dated 15th Feb 2023 by Shri Tagam Mibang, APCS the then i/c ADC Rumgong while he was posted as EAC, Rumgong. The said plot is located adjacent to the Circle Office at Jomlo Mobuk and falls within the Govt. notified area of the Circle HQ*

Smt. Yater Taga is the mother of Shri Tagam Mibang, APCS.

- 2. A Provisional Land Allotment a plot land 401 Sqmtrs has been issued in favour of Smt. Miti Perme D/o Shri Baru Perme vide Order No. RMG/LM-44/PLA/2015-16 Dated 15th Feb' 2023 by Shri Tagam Mibang, APCS the then i/c ADC Rumgong while he was posted as EAC, Rumgong. The said plot is located adjacent to the Circle Office at Jomlo Mobuk and falls within the Govt. notified area of the Circle HQ.*

Smt. Miti Perme is the wife of Shri Tagam Mibang, APCS.

- 3. A Provisional Land Allotment for a plot of land measuring 961.93 Sqmtrs has been issued by Shri Tagam Mibang, APCS in his own name as the then i/c ADC Rumgong while he was posted as EAC, Rumgong. The said plot falls within the Govt, notified area of the Horticulture Orange Farm near Pangkeng village Road at Jomlo Mobuk-Pangkeng village area.*

All plots mentioned above were found fenced barbed wire & wood post on the day of submission of this Report.

Submitted for favour of your kind information & further necessary action please

Enclo: 1. Provisional Land Allotment orders issued by the Officer.

2. Sketch map of the plots.

*(Dakli Gara) APCS
EAC Rumgong 16
i/c CO Jomlo Mobuk"*

18. On perusal of the verification report it clearly reveals that the petitioner had issued three provisional land allotment orders, dated 15.02.2023, in favour of his mother, wife and himself in a different areas/plots of government land at Jomlo-Mobuk. It is also found that all the plots are fenced with barbed wire and wood posts. It is noticed that on receipt of the above report, the Addl. Deputy Commissioner, Rumgong, vide letter, dated 19.06.2023, forwarded a copy of the verification report along with two other documents addressing to the Deputy Commissioner, Siang District and has suggested that the Deputy Commissioner, Siang District may like to review the report before issuing NOC to the petitioner and may kept in abeyance until and unless the petitioner fulfils the terms and conditions as per the provisions of Arunachal Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 2003 stating that the petitioner must remove/demolish all the re-constructed structures from the evicted plot of land in front of the C.O. Office, original provisional land allotment papers issued by him will have to be surrendered and petitioner shall produce a clearance certificate of non-encroachment of government land by him or his family members, duly counter signed by C.O. Jomlo-Mobuk and the case filed against the Deputy Commissioner and ADC, Rumgong be withdrawn under any circumstances. It is noted that, obviously irked by the letter of the Addl. Deputy Commissioner, the petitioner appears to have filed various complaints against the Addl. Deputy Commissioner, Rumgong.

19. The Deputy Commissioner, vide his letter dated 27.06.2023, addressing to the petitioner, directed to take necessary corrective action wherever is

applicable on the objections raised by the Addl. Deputy Commissioner, Rumgong and after taking corrective action and compliance, the same may be intimated to the Addl. Deputy Commissioner, Rumgong for further necessary action and a copy of the verification report was also enclosed in the said letter. It is noticed that the petitioner has filed a reply to the said verification report before the Addl. Deputy Commissioner, Rumgong denying the allegations and attempted to justify his actions. Vide letter dated 29.06.2023, the Addl. Deputy Commissioner, Rumgong again forwarded the reply of the petitioner to the Deputy Commissioner, Siang District, stating that the petitioner has refused compliance of the order of the Deputy Commissioner, Siang District, instead filed a written reply stating his reasons of non-compliance and the reference has also been made to the provisional land allotment orders issued by the Addl. Deputy Commissioner and his predecessors which were issued with all codal formalities.

20. It transpires that the petitioner has made an attempt to justify his act of issuance of provisional land allotment orders to his relatives and himself instead of corrective measures as suggested by the Deputy Commissioner for issuance of NOC as sought for by him from the Deputy Commissioner, Siang District.

21. On careful consideration of the matter, it transpires that the petitioner admittedly had issued three provisional land allotment orders in favour of his mother, wife and himself over the Government land while he was allowed to hold the in-charge of the Addl. Deputy Commissioner, Rumgong which appears to be misuse of his official power. It is also noticed that despite several chances to take corrective measure so as to enable him to obtain the NOC for the purpose of filling up of the post of APCS (Selection Grade) to which the petitioner is entitled to be considered, in terms of the relevant office memorandums or the executive orders issued from time to time, the petitioner has not taken any corrective measure which shows his reluctance and

22. Regard being had to the submission of learned counsel for the petitioner that the requirement of NOC for consideration of the petitioner for promotion by executive orders of the State Government is dehors Article 154 and 166 of the Constitution of India as the basis of requirement of NOC to be obtain from the Deputy Commissioner is the executive orders issued from time to time which has not been issued in the name of the Hon'ble Governor, I am of the view that such submission is unacceptable inasmuch as a pleading has to be made in the petition if the party wish to argue and rely the particular point, else, same would cause prejudice to other party. That apart, the prayer or the grievances raised in the present proceedings is for direction to issue NOC to the petitioner and to include his name for consideration in the DPC and there is no whisper in the pleading even seemingly challenge the basis of requirement of issuance of NOC from the Deputy Commissioner. Thus, the issue attempted to be raised by the learned counsel for the petitioner is rejected as this Court is of the view that such argument cannot be considered in the facts and circumstances of the present matter in view of the specific prayers and the nature of grievance raised by the petitioner. It is not at all a case of the petitioner in the present proceedings that the requirement of NOC is dehors the Rules or the Act. It is only the vain attempt of the learned counsel for the petitioner that the basis of which the NOC is required to be submitted for consideration promotion is in the teeth of Articles 154 and 166 of the constitution of India which according to the learned counsel for the petitioner, as the same are not issued in the name of the Governor. As noted above, this Court is of the considered view that such contention is beyond consideration given the fact and circumstances of the present case and also the nature of grievance raised by the petitioner in the present case. There is no whisper to the point attempted to be raised by the

learned counsel for the petitioner. Thus, I am of the view that no determination is required much less consideration of the submissions of the learned counsel for the petitioner. Even, otherwise also, such submission of referring to Article 154 and 166 of Constitution of India appears misconceived and fallacious. Having considered the submission of learned counsel for the petitioner on discrimination, it is suffice to observed that there is no concept of negative equality and it is only positive one under Article 14 of the constitution of India.

23. Having considered the facts and circumstances and the materials available on record, I am of the view that no relief can be granted to the petitioner at this stage inasmuch as it is revealed from the record that the petitioner had issued three numbers of provisional land allotment orders in favour of his mother, wife and himself while serving as in-charge Addl. Deputy Commissioner, Rumgong over the government land. It is not only impermissible but unbecoming of a government servant and the petitioner despite opportunity provided to him to take a corrective measure, he has refused to avail such chance of corrective measures but adamant to justify his action as if it is permissible under the law. It is also reveals from the record that three plots have been under re-encroachment at the influence of the petitioner which needs to be deprecated. Having viewed as above, this Court takes serious note of the act of the petitioner as it is unacceptable of an officer like petitioner who is holding the high State civil service post in the State.

24. In the light of the above view which this Court has taken, the cancellation of the provisional land allotment orders issued by the petitioner in favour of his mother, wife and himself, admittedly without following due procedure or norms over the government land, is inconsequential.

25. In view of the discussions and conclusion arrived at herein above, this Court is of the considered view that since the petitioner has acted contrary to

the norms and procedures in issuance of provisional land allotment orders over the government land that too in favour of his mother, wife and himself at Jomlo Mobuk while serving as in-charge Addl. Deputy Commissioner, Rumgong and found to be again encroached the government land after the eviction drive by the competent authority and in spite of opportunity to take corrective measures, no direction can be given to the respondent authorities to issue NOC to the petitioner much less a direction to include the name of the petitioner in the DPC that may be convened for filling up of vacancies of APCS (Selection Grade) though the petitioner may have a right to be considered for promotion but such consideration has to be in terms of the applicable Rules and procedure under the law.

26. Consequently, I find no merit in the writ petition and the prayers of the writ petitioner stands rejected, accordingly.

27. However, the respondent authorities may consider the case of the petitioner in the event the petitioner takes a corrective measure.

28. Writ petition stands dismissed. No order as to costs.

JUDGE

Comparing Assistant