

GAHC040015192022



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

Case No. : WP(C)/484/2022

Dacha Bagang
S/o Lt. Changrang Bagang, Village Laching Bagang, PO and PS Chayang Tajo,
Seppa, East Kameng District, Arunachal Pradesh.
Presently residing at Polo Colony, PO and PS Naharlagun, Papum Pare District,
Arunachal Pradesh.

VERSUS

The State of AP and 5 Ors.
To be represented through the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
2:The Secretary

Age: 0
Occupation :
Personnel and Training
Govt. of Arunachal Pradesh
Itanagar.

3:The Secretary
Age: 0
Occupation :
Town Planning and Urban Local Bodies (ULBs) and Urban Development and
Housing
Govt. of Arunachal Pradesh
Itanagar.

4:The Director
Age: 0
Occupation :
Urban Local Bodies
Govt. of Arunachal Pradesh
Itanagar.

5:The Director

Age: 0
Occupation :
Town Planning Govt. of Arunachal Pradesh
Itanagar

Advocate for the Petitioner : M Nibo,

Advocate for the Respondent : GA (AP), Tapi Omo, SC (ULB)

-BEFORE-

HON'BLE MR. JUSTICE KALYAN RAI SURANA

17.09.2024

Heard Mr. M. Nibo, learned counsel for the petitioner and Mr. T. Omo, learned counsel for respondent No. 4 as well as Ms. P. Pangu, learned State for respondent Nos. 1 & 2.

2. There is no representation on behalf of respondent No.6.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner who is presently holding the post of Town Planner in Town Planning Department, Govt. of Arunachal Pradesh has prayed for following reliefs:-

(1) to established present new/another department of Urban Local Bodies under proper policy and guidelines of the Govt. of Arunachal Pradesh;

(2) to stay the posting and function of Directors of the new/another department of Urban Local Bodies till such proper policy, guideline are being made by the Govt. of Arunachal Pradesh by fulfilling all the necessary criteria/ formalities; and

(3) for allow to retain all the power and function of Urban Local Bodies only to the present Director, Town Planning as per the government gazette notification dated 18th June, 2010.

4. Notice in this writ petition was issued by order dated 15.12.2022. The respondent Nos. 2 & 4 have filed their respective affidavits.

5. The learned counsel for the petitioner has submitted that the petitioner has challenged the legality and validity of the posting of Directors in other departments of Urban Local Bodies without proper approval/guidelines and recruitment rules.

6. It is submitted that the act of posting of Directors of Urban Local Bodies where such post already exists is unauthorized. In this regard, reference is made to one of such order dated 09.06.2022 issued by the Chief Secretary to the Government of Arunachal Pradesh, by which one Shri M. Rajo (IAS) was proposed to be posted as Secretary, Skill Development and Entrepreneurship; Shri Remo Kamki (IAS) is presently posted as Secretary, Cultural Affairs and State Lotteries is proposed to be transferred as Secretary, Science and Technology and State Lotteries. Similarly, 4 (four) other officers are transferred from one post to other.

7. In connection with the power of authorities to transfer, the petitioner has projected that he has filed an RTI application seeking details and copies of the Govt. notification of Policies and creation of separate and independent Department/ the Directorate of Urban Local Bodies; copy of those creation orders by the Government of Arunachal Pradesh; copy of recruitment rules for appointment to the post of Director of Urban Local Bodies; procedures, Rules, orders, Policy, Act and Regulations involved to review the decision of the State Cabinet; and to be furnished with the copy of Legislation, Acts, Rules, Orders, Policy under which decision of State Cabinet can be reviewed by the Chief Minister. On non-receipt of such information, the present writ petition has been filed.

8. We have heard the submission made by the learned counsel for the petitioner.

9. The Court is of the considered opinion that the nature of the prayer made in this writ petition as extracted hereinbefore are purely policy decision of the State and it is a trite law that in matters relating to policy decision of a State, Constitutional Courts would be slow to interfere.

10. To issue a direction to the State respondents to establish new Department and to frame a Policy and guidelines is purely a legislative function which cannot be usurped by this Court. The prayer to stay the posting and function of the Director is an essential function of the executive. The Court will have no power to pass a general order to stay all the transfers, which is otherwise always held in judicial pronouncements to be the prerogative of the State. The third prayer to allow to retain all the power and functions of Urban Local Bodies to the present Director appears to be a motivated prayer in the interest of the person who is presently occupying the post of Director of Town Planning. In this regard, the Court is of the unhesitant view that the petitioner is holding the post of Town Planner is nobody to ask the Government to allow all power and functions of the Urban Local Bodies to be hold by the present Director. The petitioner does not want such powers to be divested to others but to one person, as such it appears that the prayer is motivated and in favour of one particular individual, who is not before the Court. Hence, the said relief is not for himself but he is praying for consolidation of more administrative powers to a third party, for which this writ petition is not maintainable.

11. Therefore, having held that the petitioner has no *locus standi* to

make prayer No. 3, the Court is of the view that the petitioner has filed this writ petition with an ulterior motive and as the Court has already held that the prayer Nos. 1 and 2 are policy matters of the State and fall within the domain of the legislature and the executive, the Court is inclined to dismiss this writ petition. However, on the earnest prayer made by the learned counsel for the petitioner, we refrain from imposing exemplary cost upon the petitioner.

JUDGE

Comparing Assistant