

GAHC040015572024



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (YUPIA)

PIL.22(AP)2024

Shri Kesang Wangdi,
S/O Phuntso Norbu,
Resident of Kungba village, Lumla,
P.O./P.S. – Lumla, Tawang District,
Arunachal Pradesh.

Petitioner.

– VERSUS –

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Govt. of Arunachal Pradesh, 5th Floor, Block-II, Civil Secretariat, Itanagar, Arunachal Pradesh.
2. The Secretary, Rural Works Department, Govt. of Arunachal Pradesh, Civil Secretariat, Itanagar, Arunachal Pradesh.
3. The Chief Engineer, PMGSY, Rural Works Department, Govt. of Arunachal Pradesh, Itanagar, Arunachal Pradesh.

4. The Superintending Engineer, Rural Works Circle, Rural Works Department, Rupa, Govt. of Arunachal Pradesh, West Kameng District, Arunachal Pradesh.
5. The Executive Engineer, Rural Works Department, Lumla Division, Govt. of Arunachal Pradesh, Tawang District, Arunachal Pradesh.
6. The Additional Deputy Commissioner, Lungla Sub-Division, Lungla, Govt. of Arunachal Pradesh, Tawang District, Arunachal Pradesh.
7. M/s Yeshe Thinley, represented by its proprietor Shri Yeshe Thinley, having its registered Office at Palikhar, P.O.- Bomdir Supply and P.S.- Tawang, Tawang District, Arunachal Pradesh.

..... Respondents.

Advocate for the Petitioner : Mr. G. Taloh

Advocate for the Respondents : Mr. N. Ratan, Addl. A.G.

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT AND ORDER (ORAL)

19.12.2024

(Kardak Ete, J.)

Heard Mr. G. Taloh, learned counsel for the petitioner. Also heard Mr. N. Ratan, learned Additional Advocate General for the State respondents.

2. This petition, styled as Public Interest Litigation (PIL) is filed by the petitioner challenging the Notice Inviting Tender (NIT) dated 06.01.2023, vide No. EE/RWD/Lumla/NIT/PMGSY-III/41/2023-2024,-Package No.AR08/02/009, for construction of road from *LT Road to Gomshing via Kungba upgradation (PMGSY-III)*, issued by the Executive Engineer/PIU, RWD, Lumla Division, Tawang District and the consequential award of contract, letter of acceptance and the detailed project report in respect of the said work.

3. It is the contention of the petitioner that the tender for construction of road from *LT Road to Gomshing via Kungba upgradation (PMGSY-III)* is being undertaken under PMGSY-III, although the selected road does not fulfill the eligibility criteria for selection of a road under PMGSY-III. The project is being undertaken as a Major Rural Link(MRL) road under PMGSY-III, however, if the selection of a road under PMGSY-III is based on the utility value of the eligible road computed on the basis of population served by the road and market, educational, medical and transport infrastructure facilities connected by the concerned road, then, according to the petitioner,the Gomshing village does not qualify for construction of such road even for one criteria as no people are residing nor there is any infrastructure in the said village.

4. Petitioner contends that population of 282 shown for construction of the said road are the residents of Kungba village as no one resides at Gomshing village. In fact, the Gomshing cannot be categorized as village as no one resides at Gomshing nor there is any infrastructure. According to the petitioner, therefore, there is no requirement of any connectivity for the Gomshing village under PMGSY-III, which seeks connectivity of Gramin Agricultural Market,School or Hospital.

5. Mr. G. Taloh, learned counsel for the petitioner, while referring to the objective of PMGSY-III submits that PMGSY-III provides for consolidation of the existing Rural road network by upgradation of existing through routes and Major Rural Links connecting habitations to gramin agricultural markets, Higher Secondary Schools and hospitals. The selection of road under PMGSY-III is based on the utility value of the eligible road computed on the basis of the population served by the road and market, education, medical and transport infrastructure facilities connected by the concerned road. He submits that the detailed project report of the project in question reveals that two villages, viz., Kungba and Gomshing falling under Lumla-Zemithang CD-Block in Tawang District will be the beneficiary of the proposed road. It has been projected that two habitations having population of over 282 population would be connected directly and further, it will further connect them to the marketing center at Lumla, the ADC Administrative Headquarter, which are totally false.

6. Mr. Taloh, learned counsel, submits that there is not even a proper road *per se*, which can be characterized as a Through Route (TR) or a Major Rural Link (MRL), between Kungba village & Gomshing. Therefore, there is no question of upgradation of a non-existing road. The construction project is being undertaken as a Major Rural Link (MRL) road under PMGSY-III, however, if the selection of a road under PMGSY-III is based on the utility value of the eligible road computed on the basis of the population served by the road and market, educational, medical and transport infrastructure facilities connected by the concerned road then Gomshing does not qualify in even one of the criteria as there are neither people residing nor it has any of the aforementioned infrastructures. He further submits that the 282 (two hundred eighty-two) population are residents of Kungba village and no one resides at Gomshing.

Gomshing is already connected to the Lumla- Tashigang Road via Khartang by a PMGSY-I road constructed years back. Thus, it being already connected to the Lumla-Tashigang Road via a PMGSY-I road, there was no requirement to undertake a new project for connecting it to the Lumla-Tashigang Road via Kungba village. Therefore, he submits that project in question is a blatant example of misuse of government fund and its continuation would only cause loss of fund which can be utilized for areas which are really in dire needs of attention.

7. We have considered the submissions of the learned counsel for the parties and also perused the materials placed on record.

8. This Court on 18.11.2024, when the matter was taken-up, having reservation on the entertainability of the present petition, has directed the learned counsel for the respondents to obtain instructions.

9. Today, Mr. N. Ratan, learned Additional Advocate General of the State, has placed the instructions from the Additional Deputy Commissioner, Lungla, Tawang.

10. Perusal of the instructions as placed, goes to show that the petitioner with some persons have made a complaint against the Executive Engineer, Junior Engineer of Rural Works Department and the brother of the present MLA alleging them of misusing their position by sending proposal without fulfilling the required criteria. Thereafter, on 03.07.2024, the office of the Additional Deputy Commissioner, Lungla, Tawang has received a complaint that the petitioner along with two other persons were obstructing the PMGSY works. The Additional Deputy Commissioner, forwarded the said complaint to the Officer-in-Charge, Lungla with a direction to initiate legal action against them.

11. We noticed that the Additional Deputy Commissioner held a meeting on 08.08.2024 at Kungba Govt. Primary School having considered the matter is of purely political in nature. The complaints of the petitioner were heard and all possible measures were taken to make them understand the importance of the project. To our aghast, the instruction indicates that the demand of the petitioner is for compensation or commission or else no work would be allowed. Thereafter, on 30.08.2024, an order under Section 152 of the BNSS, 2023 was promulgated by the Additional Deputy Commissioner. It also indicates that the matter is of purely political in nature and driven by personal greed of the complainants and is an outcome of the recently concluded General Election where the people are still divided on political lines in Kungba village which is stated to be adversely affecting the pace of development in the area.

12. We take note that by filing this PIL, the petitioner, essentially, challenges the detailed project report and issuance of NIT for construction of road from LT Road to Gomshing via Kungba upgradation (PMGSY-III), which has been awarded to the respondent No.7 pursuant to the NIT dated 06.01.2023. The primary grounds as projected by the petitioner is to the effect that since the PMGSY-III is based on utility value of the eligible road computed on the basis of population served by the road and market, educational, medical and transport infrastructure facilities connected by the concerned road, the construction of road for connectivity with the Gomshing village does not qualify as 282 (two hundred and eighty two) population shown for approval of the road in the DPR are residents of Kungba village and no one resides at Gomshing village. We find the same to be bald assertion of the petitioner and find no legal wrongs and legal injuries to the public.

13. On consideration of submissions and the materials, we find that the detailed project report (DPR) has been prepared in terms of the guidelines of PMGSY wherein it is clearly shown that population of the village to be connected by the project in question is consist of 282 (two hundred eighty two) households. We noticed that the NIT has been issued on 06.01.2023 pursuant to which the work has been awarded to the respondent No.7. On perusal of instructions placed on behalf of the Additional Deputy Commissioner, Lungla, Tawang District, as noted above, it appears that there was a complaint by the petitioner along with some other persons against the present dispensation which appears to be purely out of a political rivalry.

14. Having considered above, we are of the unhesitant view that the present PIL has been filed by the petitioner to further his personal cause or to satisfy his personal grudge and can be termed as private/political interest litigation rather than a public interest litigation as PIL should be aimed at redressal of genuine public wrong or public injury and not founded on personal grudge or vendetta. The petitioner, in our view, has made an attempt to abuse the judicial process for oblique considerations. The stream of justice, as held by the Hon'ble Supreme Court, should not be allowed to be polluted by such unscrupulous litigant. Under the guise of redressing a public grievance the PIL should not encroach upon the sphere reserved to executive and the legislature.

15. In this context, it is apposite to refer to the case of **Dattaraj Natuji Thaware Vs. State of Maharashtra**, reported in **(2005) 1 SCC 590**, wherein the Hon'ble Supreme Court has held that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is

to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

16. In the case of **Holicow Pictures (P) Ltd Vs. Prem Chandra Mishra**, reported in **(2007) 14 SCC 281**, the Hon'ble Supreme Court has cautioned by observing that it is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth

hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

17. In the case of **State of Uttaranchal Vs. Balwant Singh Chaufal**, reported in **(2010) 3 SCC 402**, the Hon'ble Supreme Court after examination of earlier decisions and law declared, to preserve the purity of and sanctity of the PIL, has issued the following directions:-

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High

Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

18. In view of what has been discussed hereinabove and the law laid down by the Hon'ble Supreme Court, we are of the view that the present PIL cannot be

entertained as the same is nothing but a camouflage to foster personal grudge which is an abuse of PIL jurisdiction and if such petition styled as PIL is entertained, same would be abuse of the jurisdiction and misuse of judicial process.

19. Consequently, the present PIL stands dismissed being devoid of merit. However, we refrained from imposing cost(s).

JUDGE

JUDGE

Comparing Assistant