

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

WP (C) No. 620 (AP) 2017

Sri Toko Onuj,
S/o Late Toko Togur,
R/o Village :- Talo,
P.O./ P.S. -Ziro,
Dist.-Lower Subansiri,
Arunachal Pradesh.

.....**Petitioner**

-Versus-

1. The State of Arunachal Pradesh, represented by the Commissioner and Secretary, Department of Hydro Power Development, Itanagar.
2. The Department of Power, represented by the Commissioner, Govt. of Arunachal Pradesh, 2nd Block, 3rd Floor, Itanagar.
3. The Secretary, Department of Power, Govt. of Arunachal Pradesh, Itanagar.
4. The Deputy Secretary, Department of Power, 3rd Floor, Civil Section, Govt. of Arunachal Pradesh, Itanagar.
5. The Joint Secretary, Department of Power, Govt. of Arunachal Pradesh, Itanagar.
6. Sri Atek Meyu, General Manager (Technical), Hydro Power Development Corporation of Arunachal Pradesh Limited, Niti Vihar, Itanagar.

.....**Respondents**

-BEFORE-
THE HON'BLE MR. JUSTICE S.SERTO

For the Petitioner	: Mr. V. K. Nair, Sr. Adv., : Mr. R. Singha, : Mr. N. Taje, Adv.
For the State Respondents	: Mr. R. H. Nabam, Addl. Adv. General, A.P
For the respondent No. 6	: Mr. J. Hussain, Adv.
Date of hearing	: 21-08-2017
Date of judgment	: 28-08-2017

JUDGMENT & ORDER (CAV)

This is a writ petition challenging the legality and validity of the order No. PWRS-/w-1413/2006, dated 27.07.2017 issued by the Deputy Secretary (Power), Govt. of Arunachal Pradesh wherein the respondent No. 6 was given charge of Managing Director of Hydro Power Development Corporation of Arunachal Pradesh Limited (HPDCAPL), in addition to his own duties, without any extra remuneration till further order.

2]. Heard Mr. V. K. Nair, learned sr. Counsel assisted by Mr. R. Singha, learned counsel for the petitioner. Also heard Mr. R. H. Nabam, learned Addl. Advocate General assisted by Ms. P. Pangu, learned Junior Govt. Advocate appearing for the State respondents and Mr. J. Hussain, learned counsel appearing for the private respondent No. 6.

3]. The brief facts and circumstances which led to the filing of this writ petition are as follows;

The petitioner was appointed as Assistant Manager in the Hydro Power Development Corporation Ltd. (which shall hereafter be referred to as HPDCAPL or corporation) vide order No. HPDC/MD/Est-04//2007/129-133, dated 03.09.2007 and his service was regularized in the year 2010 vide order No. HPDC/MD/Est-04/2007/445-448, dated 31.03.2010. Thereafter, in the year 2012, he was promoted to the post of General Manager (HRD) in HPDCAPL vide order No. HPDC/MD/Est-04/2011-12/466-72, dated 24.01.2012. In the same year, he was also given the additional charge of Managing Director of the same Corporation vide order No. PWRS/W-1413/2006, dated 23.07.2012. While the petitioner was serving as such, in the month of February this year the respondent No. 6 Shri Atek Meyu who is a B. Tech in Civil Engineering was brought on deputation to the post of General Manager (Technical) in the Corporation, vide order No. PWRS/W-1413/2006 (pt-II), dated 08.02.2017 issued by the Commissioner (Power), Govt. of Arunachal Pradesh. Thereafter, in the month of July, 2017, by the impugned order i.e. order No. PWRS-/w-1413/2006, dated 27.07.201, he was given the charge of Managing Director of the Corporation(HPDCAPL), in addition to his own duties, without any extra remuneration till further order. Being aggrieved by this order, the petitioner has come before this Court by filing the instant writ petition challenging the same.

4]. Mr. V. K. Nair, learned Sr. Counsel for the petitioner submitted that whereas, by virtue of being the only regular General Manager and the most experienced and, qualified person in the Corporation, the petitioner was given the charge of Managing Director but his replacement by the respondent No. 6 who is brought into the Corporation on deputation, that too recently and therefore, is junior to the petitioner, and without any experience of running a Corporation which is quite different from running a government department could not have been in the interest of the Corporation. Therefore, the impugned order that took away the charge of Managing Director of the Corporation from the petitioner and at the same time giving the same to the respondent No.6 can never be term as a reasonable and valid action. Mr. V. K. Nair, further submitted that the U.O. Letter/ Note of the Parliamentary Secretary and Deputy Speaker addressed to the Chairman HPDCAPL proposing transfer of the charge of Managing Director of the corporation from the petitioner to the respondent No.6 did not mention anything negative against the petitioner by which one could have concluded that the petitioner is no longer suitable for the responsibility therefore, his continuance in that position would be detrimental to the growth and development of the Corporation and that has perhaps necessitated his replacement. The Id senior counsel went on to submit that the only reason given for removing the charge of Managing Director from the petitioner and giving the same to the respondent No. 6 was that the respondent No. 6 has more experience in the field of Hydro Power, however, this is not supported by the facts such as, the educational qualifications, trainings and the work experiences the two contenders to the post have earned. Therefore, there is no reasonable basis in the impugned order by which it can be upheld or sustained. The learned counsel also submitted that it is true that the petitioner was given the charge of Managing Director only as a temporary arrangement, however, the same cannot be replaced by another temporary arrangement.

5]. In support of his above stated submissions, the learned counsel has cited the following judgments of the Hon'ble Supreme Court in the cases given below:-

(i) In the case of ***Kranti Associates Private Limited and Another-vs-Masood Ahmed Khan and Others.,*** reported in ***(2010) 9 SCC 496***. The relevant portions of the judgment referred to are given here below :-

"12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially, this Court recognized a sort of demarcation between administrative orders and quasi-judicial

orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in *A.K. Kraipak-vs-Union of India*.

“23. *Union of India-vs-Mohan Lal Capoor*, this Court while dealing with the question of selection under the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations held that the expression “reasons for the proposed supersession” should not be mere rubber-stamp reasons. Such reasons must disclose how mind was applied for the subject-matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. This Court held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two.

“23. In *Gurdial Singh Fijji-vs-State of Punjab*, this Court dealing with a service matter, relying on the ratio in *Capoor*, held that “rubber stamp reason” is not enough and virtually quoted the observation in *Capoor* to the extent that: Reasons are the links between the materials on which certain conclusions are based and the actual conclusions”.

(ii) In the case of ***State of Punjab-vs-Bandeep Singh and Others.***, reported in **(2016) 1 SCC 724**. The relevant portion of the judgment referred to are given as follows:-

“4. There can be no gainsaying that every decision of an administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. If precedent is required for this proposition, it can be found in the celebrated decision titled *Mohinder Singh Gill-vs-Chief Election Commissioner*.

“7 The same principle was upheld more recently in *Ram Kishun-vs-State of U.P.* However, we must hasten to clarify that the Government does not have a *carte blanche* to take any decision it chooses to, it cannot take capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons”.

(iii) In the case of ***Mohinder Singh Gill and Another-vs- The Chief Election Commissioner New Delhi and Others.***, reported in **(1978) 1 SCC 405**. The relevant portion of the judgment referred to given here below:-

“8 The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In *Gordhandas Bhanji*.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or

of what was in his mind, or what he intended and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

(iv) In the case of ***A.P. Aggarwal-vs-Govt. of NCT of Delhi and Another,*** reported in ***(2000) 1 SCC 600***, wherein it has been held as under:-

“11. In our opinion, this is a case of conferment of power together with a discretion which goes with it to enable proper exercise of the power and therefore it is coupled with a duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. Even, if it is to be said that the instructions contained in the office memorandum dated 14-5-1987 are discretionary and not mandatory, such discretion is coupled with the duty to act in a manner which will promote the object for which the power is conferred and also satisfy the mandatory requirement of the Statute. It is not therefore open to the Government to ignore the panel which was already approved and accepted by it and resort to a fresh selection process without giving any proper reason for resorting to the same. It is not the case of the Government at any state that the appellant is not fit to occupy the post. No attempt was made before the Tribunal or before this Court to place any valid reason for ignoring the appellant and launching a fresh process of selection”.

(v) In the case of ***State of Haryana and Others-vs- Piara Singh and Others,*** reported in ***(1992) 4 SCC 118***. The relevant portion of the judgment referred to are given here below:-

“46. Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employees. This is necessary to avoid arbitrary action on the part of the appointing authority”.

6]. Mr. Nair, learned Sr. Counsel further submitted that being a Corporation everything has to be decided by the Board of Directors. However, in this case, there is nothing to show that the Board of Directors have even discussed about the replacement of the petitioner by the respondent No. 6, therefore, the decision making process itself was in violation of the articles/memorandum of the corporation.

7]. The learned Addl. Advocate General, Mr. R. H. Nabam submitted that the petitioner was given charge of Managing Director of the Corporation only as temporary or interim arrangement and the respondent No. 6 was also given in the same manner as the Corporation is yet to frame Rules for recruitment/ appointment of Managing Director on regular basis. Therefore, if the matter is sent back to the Government the Rules can be framed and Managing Director can be appointed on regular basis. Both the learned counsels representing the petitioner and the respondent No.6 agreed to the proposal of the learned Addl. Advocate General but

they deferred when it comes to as who should remain in-charge of the Managing Director till it is filled up on regular basis.

8]. The learned counsel for respondent No. 6, Mr. J. Hussain as stated above submitted that he is agreeable to the submission of the learned Addl. Advocate General but with the condition that the respondent No. 6 should be allowed to continue till regular appointment of Managing Director is made. The learned counsel further submitted that the respondent No. 6 was given the charge of Managing Director as he had the required qualification and experience for robust running of the Corporation in the interest of Public, therefore, the same cannot be questioned by the petitioner who has no right over the post. The learned counsel also submitted that there is nothing wrong in the note initiated by the Parliamentary Secretary and Deputy Secretary as it was done for bonafide reason and on reasonable ground.

9]. After having considered the submissions of the learned counsels of the parties and keeping in view the public interest for which the Corporation was established I am of the considered view that what is most important and imperative for the Corporation at this point of time is to have a regularly appointed Managing Director, who is not only qualified academically but having vast experience in the field. It appears from the history of the Corporation that though it was established for a noble cause with so much foresight, vision and goals till today its affairs are being managed by a person who is given temporary charge of the Managing Director which is supposed to be the post of Chief Executive of the Corporation. This certainly will not be in the interest of the Corporation, therefore, should not be continued any longer if the corporation has to achieve the vision and goals for which it was incorporated or established. Therefore, there is urgent need for the Board of Directors or the concerned authorities of the Corporation to take positive action for appointment of a regular Managing Director.

10]. In view of the above, this writ petition is disposed of with the following directions:-

- (i)** The Board of Directors or all the authorities concerned of the HPDCAPL (including all the respondents except respondent No. 6) shall frame the required Rules for appointment of regular Managing Director of the Corporation and appoint a qualified and suitable person in the post within a period of 3 (three) months from the date of receipt of a certified copy of this order in the interest of the public.

And

(ii) Till such time, a new Managing Director is appointed, status quo ante be maintained. To make it clear, the petitioner should be allowed to continue as in-charge Managing Director till a person is appointed as regular Managing Director.

Accordingly, the impugned order is quashed and set aside.

JUDGE

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