

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

ITANAGAR PERMANENT BENCH: NAHARLAGUN

WP(C)165(AP) OF 2018

1. Tarasso Tribal Care Self-Help Group Society,
Gaiporang, represented through its Chairman, Sri
Laji Panye, S/o Tapu Panye, Permanent resident
of Tarasso, P.O.- Tarasso, P.S.- Balijan, District
Papumpare, Arunachal Pradesh.
2. Shri Laji Panye, Chairman, Tarasso Tribal Care
Self-Help Group Society, S/o Tapu Panye,
Permanent resident of Tarasso, P.O.- Tarasso,
P.S.- Balijan, District Papumpare, Arunachal
Pradesh.

... PETITIONERS

-VERSUS-

1. The State of Arunachal Pradesh through the Chief
Secretary, Government of Arunachal Pradesh,
Itanagar.
2. The Chief Secretary, Government of Arunachal
Pradesh, Itanagar.
3. The Principal Chief Conservator of Forest &
Principal Secretary (Environment & Forest) &
Chairman Executive Committee State CAMPA,
Government of Arunachal Pradesh, Itanagar.
4. The Additional Principal Chief Conservator of
Forest (Wildlife Protection & Conservation),
Government of Arunachal Pradesh, Itanagar.
5. The Additional Principal Chief Conservator of
Forest (Wildlife Protection & IT) & Nodal Officer,
State CAMPA, Government of Arunachal Pradesh,
Itanagar.

6. Shri Sikka Gapak, Chairman, Eco Friendly Society
Dapority, Upper Subansiri District, P.O. Daporijo,
Arunachal Pradesh.

... RESPONDENTS

Counsels for the Petitioner: Mr. D. Panging,
G. Basar, D. Tamuk, O Tayeng,
E. Perme, M. Doji, M. Gibi.

Counsels for the Respondents No. 1 to 5:
Ms. R. Basar, Junior Govt. Advocate.

Counsels for the Respondent No.6:
Mr. N. Ratan,
K. Loya, M. Ete, T. Taggu,
R. Ngomle, M. Nenu, B. Tajik.

Date of Hearing: 11.05.2018

Date of Judgment: 18.05.2018

::BEFORE::

THE HON'BLE MR JUSTICE KALYAN RAI SURANA

JUDGMENT & ORDER (CAV)

Heard Mr. D. Panging, learned counsel appearing for the petitioner and Ms. R. Basar, learned Jr. Govt. Advocate appearing for respondent Nos. 1 to 5 as well as Mr. N. Ratan, learned counsel appearing for respondent No. 6.

2. The brief back ground of the present litigation is that on the basis of recommendation made by the Central Empowered Committee, the Hon'ble Supreme Court of India by order dated 29.10.2002, passed by in the Case of *T. N. Godavarma Thirumulpad, (2008) 12 SCC 337*, constituted a body for management of the Compensatory Afforestation Funds. In course of time,

the Ministry of Environment and Forest, Govt. of India had issued a notification dated 23.04.2004 constituting a "Compensatory Afforestation Fund Management and Planning Authority" ("CAMPA" for short) as an authority under Section 3(iii) of the Environment (Protection) Act 1986. It was brought to the notice of the Hon'ble Supreme Court that although the above referred notification was issued, but the CAMPA had not been made functional by the said Ministry. Thereafter, by order dated 05.05.2006, passed in the Case of *T. N. Godavarman Thirumulpad, (2006) 5 SCC 59*, the Hon'ble Supreme Court had accepted the suggestions made by the CEC for constituting an Ad-hoc body till CAMPA became operational. Accordingly, for utilization of said fund for Compensatory Afforestation, all the State Government/Union Territory were directed to account for and pay to the Ad-hoc CAMPA the amount collected with effect from 30.10.2002, from the user agencies to whom permission were granted for using forest land for non-forest purpose in conformity with the order dated 29.10.2002.

3. Thereafter, the Ministry of Environment and Forest ("MoEF" for short) issued "the guidelines of State Compensatory Afforestation Fund Management and Planning Authority" (State CAMPA) and the same was placed before the Hon'ble Supreme for its approval. Consequently, vide order dated 10.07.2009, in the Case of *T. N. Godavarman Thirumulpad, (2009) 16 SCC 481*, the Hon'ble Supreme Court had directed that the guidelines and structure of the State CAMPA as prepared by the MoEF should be notified and implemented by the State Governments.

4. The Government of Arunachal Pradesh had issued a notification No. FOR 01-65/Cons/09/27095-195 dated 06.10.2009, constituting the State CAMPA, which was intended as an instrument to accelerate the activity of Compensatory Afforestation, Forest Resource Management, Preservation of Natural Forest, Management of Wild Life, Infrastructure Development and allied work.

5. As per the scheme of State CAMPA, the Steering Committee of the State CAMPA was required to be constituted of the members, amongst which, two eminent NGO's were to be nominated by the State Government as the members of Steering Committee for State CAMPA for a period of 2 (two) years at a time who would be eligible for re-nomination. The aforesaid 2 (two) members were appointed as per the Central Guidelines, as accepted by the Hon'ble Apex Court and was notified by the herein before referred State notification dated 06.10.2009. Consequently, the State Government, by a notification under File No. FOR-01-65/Cons/09/Pt-ii/1531-46 dated 24.06.2016, *inter-alia*, appointed the petitioner herein, namely, Sri Laji Panye, the Chairman, Tarasso Tribal Care Self-Help Group Society as the second member of the Steering Committee.

6. The learned counsel for the petitioner submits that before the expiry of the term and/or tenure of appointment of the petitioner as one of Member of the Steering Committee, the respondent No. 3, PCCF & Principal Secretary (E & F) & Chairman Executive Committee, State CAMPA, by an order under No. FOR.01-65/Cons/09/Pt.IV/2200-15 dated 19.02.2018, had terminated the appointment of the petitioner and the private respondent No.5 had been appointed as the Member of the Steering Committee until further orders or till the Steering Committee would be reconstituted.

7. The learned counsel for the petitioner submits that the term and/or the fixed 2 (two) year tenure of the petitioner as one the Non-Official Members of Steering Committee of the State CAMPA would end on 23.06.2018, with a right to be considered for re-nomination. Hence, the premature termination of the petitioner from holding the said post is not sustainable. It is submitted that the State CAMPA was constituted on approval of the guidelines by the Hon'ble Supreme Court and, as such, the said guidelines as approved by the Hon'ble Supreme Court would take effect as a binding law under Article 142 of the Constitution of India, and that the notification issued in respect of State CAMPA by the State of Arunachal

Pradesh was in consonance with the scheme as approved by the Hon'ble Supreme Court.

8. It is submitted that no one had challenged either the validity of the notification constituting State CAMPA or the selection of the petitioner to the post of Non- Official Member of Steering Committee of the State CAMPA. Therefore, according to the petitioner, the selection of the respondent No.6 by terminating the appointment of the petitioner is not sustainable, as such, there was no bar for the petitioner to challenge such selection before his term and/or tenure was over.

9. It is submitted that the petitioner was appointed as Non- Official Member of Steering Committee of the State CAMPA for a term of 2 years, but the respondent No.6, being a blue eyed person of the State Respondents has not only been appointed without any upper limit of tenure in the said office, but the said appointment was for an indefinite period of time till the Steering Committee was reconstituted, which might never happen for years together.

10. Per contra, the learned Junior Govt. Advocate appearing for the respondent No.1 to 5 as well as the learned counsel for the respondent No.6 have both submitted that the post of Member of Steering Committee in State CAMPA, which the petitioner is holding is not a statutory post and no salary or any other emoluments are attached to the said post. Hence, while the appointment of the petitioner was made at the pleasure of the State Government, no wrong was committed to appoint the respondent No.6 as one of the Non- Official Members of the Steering Committee of State CAMPA from the category of NGOs, as provided in the herein before mentioned notifications issued in this regard.

11. It is further submitted that there are no guidelines for laying down the criteria for selection for appointment of a non- official member of State CAMPA. Hence, having been selected without following any guidelines, the

petitioner is stopped from raising any grievance on the selection and appointment of the respondent No.6 as the Non- Official Member of Steering Committee of the State CAMPA vide the impugned notification dated 15.02.2018. It is further submitted that there was no violation of any legal or fundamental right of the petitioner to continue to hold the post of Non- Official Member of Steering Committee of the State CAMPA.

12. The learned State Counsel as well as the learned counsel for the respondent No.6 has submitted that once the petitioner has not undergone any selection process, the doctrine of pleasure would come into play and the State respondents would be competent to select and appoint the respondent No.6 in public interest. Moreover, the removal of the petitioner as Non- Official Member of Steering Committee of the State CAMPA was not accompanied by any stigma, malice or mala fide, or as a measure of punishment, as such, the doctrine of pleasure squarely applies and the petitioner, having not lost any legal or fundamental right to hold such office, no case for interference by this Court has been made out by the petitioner, because such decision of the State Govt. is not subject to judicial review.

13. Moreover, by referring to clause 7.2(ix) of the guidelines of MoEF, as approved by the Hon'ble Supreme Court and as notified by the State Govt., relating to tenure of 2 years for Non- Official Members of Steering Committee of the State CAMPA as claimed by the petitioner, the learned counsel for the respondent No.6 has submitted that the said clause could also be interpreted to mean that nomination of such member cannot exceed a term and/or tenure of 2 years at a stretch, but it does not prohibit removal of a Non- Official Member of State CAMPA and replace it by the respondent No.6 as one of such non- official member.

14. In support of his contentions, the learned counsel for the respondent No.6 has relied on the following case citations:-

- (a) *Uttam Kumar Sarkar Vs. Ratan Kumar Barman, 2005 (2) GLT 168.*
- (b) *Mahesh Doley & Ors Vs. State of Assam & Ors, 2006 (3) GLT 832.*

(c) *Mahadev Panging Vs. State of Assam & Ors. (2016) 2 GLT 1109.*

15. In reply, the learned Counsel for the petitioner has submitted that the decision rendered by this Court in *Mahadev Panging (Supra)* has been explained by this Court in the case of *Sub Divisional Welfare Board for Scheduled Tribe and Ors Vs. State of Assam, (2017) 2 GLT 437.*

16. From the various orders passed by the Hon'ble Supreme Court in the Case of *T. N. Godavarman Thirumulpad (supra)*, it is seen that from time to time various directions have been issued, *inter alia*, for protection of environment, etc. as well as for "Collection and use of Compensatory Afforestation Funds". Therefore, it appears that vital public interest are involved in the smooth functioning of the State CAMPA.

17. It is seen that the "post"/"office" of member of the State CAMPA is not a purely contractual service. No material has been placed before this Court to show that the petitioner was receiving any salary or other monuments attached to the said post. Nevertheless, having observed that the State CAMPA was created pursuant to the various orders passed by the Hon'ble Apex Court in the Case of *T.N. Godavarman Thirumulpad (supra)* and that the said appointment relates to the issue of environment and compensatory afforestation, as such, this Court is inclined to held that there is a public element attached to the said "office" or "post".

18. In this case it is seen that the notification dated 06.10.2009 was issued for constituting the State CAMPA. As already indicated above, this State CAMPA was intended as an instrument to accelerate the activity of Compensatory Afforestation, Forest Resource Management, Preservation of Natural Forest, Management of Wild Life, Infrastructure Development and allied works. The notification dated 24.06.2016, whereby, the petitioner was appointed as Second member of the Steering Committee, reserved by NGO's, the said notification is quoted below:-

GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF ENVIRONMENT & FORESTS
ITANAGAR

File No. FOR 01-05/Cons/09/pt-ii/153-46 Dated. Itanagar 24.06.2016

NOTIFICATION

The Government of Arunachal Pradesh is pleased to nominate the following persons as Non-official Member (NGOs) of the Steering Committee and Executive Committee of the State Compensatory Afforestation Fund Management and Planning Authority (State CAMPA) constituted vide Govt. of Arunachal Pradesh Notification No. FOR 01-65/Cons/27095-195 dtd 06.10.2009 for a period of 2 years from the date of issue of this notification as per detail below

A) STEERING COMMITTEE

- (i) Shri Madang Sonam, Chairman, Kessar Valley Welfare Organization, Seppa
- (ii) Shri Laji Panye, Chairman, Tarasso Tribal Care Self Help Group Society

B) EXECUTIVE COMMITTEE

- (i) Shri Chow Sujanta Mansai, Arunachal Pali Vidyapith Society, Chongkham
- (ii) Shri Nyakar Raksap, Chairman LODU Society, West Siang

Perks and facilities

The above NGOs are entitled to get TA/DA for attending the meeting only. No other facilities will be available.

Sd/- Omkar Singh
PCCF & Principal Secretary (E & F)
& Chairman, Executive Committee
State CAMPA

19. On a plain reading of the said notification dated 24.06.2016, it appears that the said notification does not provide for termination of the Steering Committee member at the pleasure of the competent authority before lapse of the notified tenure of two years. In this connection, the learned counsel for the respondent No. 6 had relied on the case of *Uttam Kr. Sarkar (supra)* and *Mahesh Doley (supra)*. In the case of *Uttam Kr. Sarkar (supra)*, the petitioner was appointed as Chairman of Sub Divisional Scheduled Caste Development Board and in the case of *Mahesh Doley (supra)*, the petitioner therein was appointed as a member of the Joint Public Executive Counsel of the Missing Autonomous General Counsel and Missing

Autonomous Executive Counsel. In both the cases this Court had held that the appointments were made on the pleasure of the Government and the petitioner had no vested rights to the said post. Therefore, as the notification terminating the petitioner therein did not suggest or carried any stigma attached to such termination, the petitioner was not entitled to any relief. By referring to the case of *Mahadev Panging (supra)*, the learned counsel for the respondent No. 6 had submitted that this Court has held that though the petitioners therein were appointed as members of the Integrated Tribal Development Project Committee for a tenure of 5 years, the "doctrine of pleasure" applied, coupled with the nature of selection and appointment, it was held, it was within the domain of the Govt. to constitute and re-constitute the Board and that the existence of a tenure was not seen as a bar for the Govt. for re-constituting the Board.

20. In the present case, it is seen that the State CAMPA was created and constituted as per the direction of the Hon'ble Supreme Court when the State had failed to do its public duty of carrying out Compensatory Afforestation, as such, in the opinion of this Court, the appointment to Steering Committee of State CAMPA cannot be equated with the appointment of a person as the member of various Boards or Committees constituted by the Government at the "pleasure" of the Govt. In the present case the notification issued for constituting State CAMPA was in accordance with scheme approved by the Hon'ble Supreme Court, therefore, the 2 (two) year tenure of appointment of member of the Steering Committee was also approved by the Hon'ble Supreme Court. Hence, this Court is inclined to hold that notwithstanding that the appointments to Steering Committee of State CAMPA are being made by the competent authority by exercise the doctrine of pleasure, yet having seen that said State CAMPA was created by the orders passed by the Hon'ble Supreme Court for carrying out Compensatory Afforestation and to carry out other duty under the Environment (Protection) Act, such a body, as approved by the Hon'ble Apex Court should be allowed

to maintain its autonomous structure by non-interference by the State Government by changing the constitution of the Executive Committee at its whims and fancies, which would affect the desired autonomy and in the opinion of this Court, the adherence to tenure is to ensure the dignity of the institution i.e. State CAMPA and to ensure competent administration so that once a member is appointed for a particular tenure he could work during his notified tenure without fear of any interference from the Executive. In this, of course, the State could show valid reason to terminate such members on well established ground, which may not be gone into at this stage. In this connection it would be relevant to refer to the observation made by the Hon'ble Apex Court in paragraph 23, 27, 28, 32, 35, 36, 44 & 48 of the case of *Kumari Shrelekha Vidhyarthi and Anr. Vs. State of U.P. and Ors., (1991) 1 SSC 212*, wherein the Hon'ble Supreme Court had, *inter-alia*, held that the "office" or "post" was purely contractual but a public element was attached to it and, as such, any unreasonable or irrational State action in terminating the appointment without any reason would attract vitiating of such action which would be in violation of the principles enshrined in Article 14 of the Constitution of India.

21. The learned counsel for the respondent No. 6 has relied on the case of *Mahadev Panging (supra)*. By referring to the said judgment, the Hon'ble Division Bench of this Court in the case of *Sub Divisional Welfare Boards for Scheduled Tribe and Ors Vs. State of Assam and Ors, 2017 (2) GLT 437*, has held that the said case doctrine of pleasure was not applicable because by notification referred therein, the Chairman and Vice-Chairman were not nominated but appointed by the Government and that too, on the recommendation made by the selection committee specially constituted for this purpose. In the present case in hand also, the principles "doctrine of pleasure" is found not applicable because in the notification dated 24.06.2016, it has not been mentioned therein that the term of the members of the Steering Committee was at the pleasure of the Government.

Rather, the term of office of the members of the Steering Committee was prescribed to be 2 (two) years from the date of the issue of said notification. No material has been placed before this Court by the State Respondents to show that termination of appointment of the petitioner was in public interest or that the petitioner had to be terminated before the prescribed tenure as second member of the Steering Committee on some valid ground. Moreover, in the said notification, the State Govt. had not reserved powers to itself for substituting one member with the other at its pleasure. In the case of *Sub Divisional Welfare Board for Scheduled Tribe (supra)*, this Court had categorically held – “also in our Country – it is governed by the rule of law – no authority could exercise any absolute doctrine or power and could exercise of power of bridge of express or empowered condition will be illegal if the condition read as mandatory. Moreover, it is well said that the authority against act in a manner in which it is empowered to do so”. This Court has further held that in the case of *Mahadev Panging (supra)* by holding that the maximum term of the members had been fixed upto 3 to 5 years, but the Govt. notification permitted that the dissolution of the Board could be done by a notification if the authorities were of the opinion that the orderly conduct of business of the Board was not possible.

22. In the present case in hand, no opportunity was given to the petitioner of being heard and there is no material to show that the smooth functioning of the State CAMPA was being hampered if the petitioner continued as member of the Steering Committee of the State CAMPA. Moreover, on the perusal of the notification dated 24.06.2016, as the tenure of the petitioner was to expire on 23.06.2016, the termination of the appointment of the petitioner vide notification dated 19.02.2018 is not justified.

23. Although the notification dated 24.06.2016, appointing the petitioner as one of the two members of State CAMPA was the administrative nature, but the notification constituting State CAMPA, which had laid down

the 2 (two) year tenure of a Member of the Steering Committee, cannot be said to have no force of law. Therefore, the State Government could not at its own sweet will depart from it without rational justification and appoint the respondent No.6 as the Member of Steering Committee of the State CAMPA without the prescribed tenure of the petitioner having expired and without arriving at any finding that the membership of the petitioner was causing any impediment in the smooth functioning of Steering Committee of State CAMPA. Thus, the action of the State is found to be clearly violative of Articles 14 and 16 of the Constitution of India. It is no longer *res integra* that sweep of Articles 14 and 16 of the Constitution of India is wide and pervasive. These two articles embody the principles of rationality and they are intended to strike against arbitrary and discriminatory action taken by the 'State'. Where the State Government departs from a principle laid down in its notification, albeit by administrative instructions, and the departure is without reason and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16.

24. Therefore, as a result of the discussion made above, this Court is of the opinion that the notification No. FOR 01-65/Cons/09/pt.iv/2200-15 dated 14.02.2018 is illegal because of exercise of power not vested on the concerned authority to terminate the appointment of the petitioner as a second member of the Steering Committee of the State CAMPA prior to the expiry of his tenure on 23.06.2018. Hence, the said notification stands set aside and quashed. Consequently, the appointment of petitioner as second member of the Steering Committee of the State CAMPA stands restored with immediate effect.

25. The writ petition stands allowed, but there shall be no order as to cost.

JUDGE