

**IN THE GAUHATI HIGH COURT
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND
ARUNACHAL PRADESH]**

Itanagar Permanent Bench

Cont. Case No. 32(AP)2014

1. Sri Tadar Rachey
Secretary BCC(I) Nyapin
Resident of Village Pagi
P.O. Nyapin, District Kurung Kumey
Arunachal Pradesh.
2. Sri Gangate Tallum
President BCC(I) Nyapin-Sangram
Resident of Village Leel
P.O. Sangram, District Kurung Kumey
Arunachal Pradesh.
3. Smt. Gyamar Yakum
Resident of Village Tabiang
P.O. Nyapin, District Kurung Kumey
Arunachal Pradesh.

.....Petitioners.

By Advocates:
Mr. Tayum Son
Mr. T. Shiva
Mr. B. Ganga

-vs-

1. Sri Pige Ligu
Deputy Commissioner, Kurung Kumey District
Koloriang, P.O. Koloriang, presently posted at Aalo
as Deputy Commissioner, West Siang District, P.O.
Aalo, Arunachal Pradesh.
2. Sri Deepak Shinde, IAS
I/c Deputy Commissioner, Kurung Kumey District,
Koloriang, Arunachal Pradesh.

.....Respondents.

By Advocates:
For respondent contemnor No. 1 : Mr. Rintu Saikia
Ms. Hage Laxmi
Mr. L. Nochi

For respondent contemnor No. 2 : Ms. Geeta Deka, Sr. Govt. Advocate

B E F O R E
HON'BLE JUSTICE (MRS.) RUMI KUMARI PHUKAN

Date of hearing : 20.05.2015
Date of Judgment & Order : 20.05.2015

JUDGMENT AND ORDER(ORAL)

Heard Mr. Tayum Son, learned counsel for the contempt petitioners. Also heard Mr. Rintu Saikia, learned counsel for respondent No. 1 and Ms. Geeta Deka, learned Senior Government Advocate, for respondent No. 2.

2. This is an application under Article 215 of the Constitution of India and under Sections 11 and 12 of the Contempt of Court Act, 1971, read with the provisions of Contempt of Gauhati High Court Rules, 1977, moved by the private respondent Nos. 4, 5 and 6 in WP(c) 489(AP)2013, alleging willful and deliberate violation of this Court's order dated 30.01.2014 passed in WP(c)489(AP)2013, by the respondent contemnor Deputy Commissioner, Kurung Kumey District, Koloriang, who, instead of passing appropriate order of disqualification against the 9(nine) writ petitioners in the said writ petition, as per the provisions of Arunachal Pradesh Local Authority(Prohibition of Defection) Act, 2003 and Amendment 2006, intentionally, issued fresh notices to the said writ petitioners for hearing with regard to their disqualification as Gram Panchayat Members and Anchal Samiti Members, and the said writ petitioners did not submit any written reply in response to such show cause notice.

3. The instant contempt petitioners i.e. respondent Nos. 4, 5, and 6, in the said writ petition, assailed the disqualification order passed by the Deputy Commissioner, Kurung Kumey District, Koloriang, in Case No. KK/PR-72/2008/353 on 31.10.2013, for indulging in anti-party activities by the writ petitioners, namely, (1). Sri Tadar Nillo, ASM, 73-Langthloth-II; (2). Sri Tame Logu, ASM, 68-Hiya-II; (3). Sri Tadar Chachung, ASM, 77-Lower Nyapin; (4). Smti. Gyamar Kioch, ASM, 76-Upper Nyapin; (5). Smt. Gyamar Yamin, ASM, 75-Gyamar; (6). Sri Gyamar Sima, GPM, 276-Gyamar;

(7). Sri Tadar Powak, GPM, 261-Ayer Labajariang; (8). Smti. Yangbiu Yaha, GPM, 254-Tapuk Colony; and (9). Sri Tadar Tagi, GPM, 269-Kumayar.

4. The above mentioned writ petitioners who were aggrieved by the said order of disqualification, approached this Court, by way of WP(c) 489(AP)2013, challenging the disqualification order(s) passed by the said Deputy Commissioner, Kurung Kumey District, Koloriang. This Court, after hearing the matter, disposed of the same, at the motion stage itself directing the petitioners to appear before the Deputy Commissioner, Kurung Kumey District, Koloriang, on or before 15th of February, 2014, by submitting a certified copy of this order, and on their appearance, the said Deputy Commissioner shall issue necessary show-cause notices to them in terms of the complaint lodged by the Member Secretary, 6th Nyapin Anchal Samiti, and to file their replies within a specified time as prescribed by the Arunachal Pradesh Local Authority (Prohibition of Defection) Act, 2003 and Amendment 2006 and the said Deputy Commissioner, Koloriang, upon receipt of their replies and hearing them along with other necessary parties like complainants and others, shall take a fresh decision and dispose of the complaint lodged by the said Member Secretary on or before 30th of April, 2014; and in case of non-filing of their replies, the Deputy Commissioner, Kurung Kumey District, Koloriang, shall pass appropriate order(s) in accordance with law and as per the provisions of Arunachal Pradesh Local Authority(Prohibition of Defection) Act, 2003 and Amendment 2006.

5. Now, the submission of the contempt petitioners that the respondent contemnors though issued show cause notices to all the 9 petitioners who were disqualified fixing a date of hearing on 15.02.2014 but the said 9 petitioners deliberately did not turn to submit their replies to the said notices issued by the Deputy Commissioner, Kurung Kumey District, Koloriang. On the other hand, the respondent contemnor No. 1 i.e. the Deputy Commissioner viz. Pige Ligu, Kurung Kumey District, Koloriang; failed to pass the disqualification order(s) and remained absent till date. In the meantime, he was transferred to another district namely West Siang, Aalo, and deliberately kept the matter pending for adjudication as directed by this Court earlier, with a lackadaisical attitude on their part. However, after a lapse of 10 months, respondent contemnor No. 2 viz. Dipak Shinde being i/c Deputy Commissioner, Kurung Kumey District, Koloriang, issued show cause notices to those petitioners by order dated 18.11.2014, fixing 03.12.2014. But due to deliberate and

willful disobedience to the direction so made by this Court has rendered the contemnors liable to be punished for violating this Court's order dated 30.01.2014.

6. In response to the show cause notices issued to both the respondent contemnors No. 1 and 2, abovementioned, they appeared before this Court and submitted their counter affidavits. Denying the allegation about willful violation of this Court's direction, the contention raised by the respondent contemnor No. 1 is that he took all the procedural steps in terms of the order so passed by this Court but he same could not fully comply with due to hectic election duty and his early transfer from West Siang District to Kurung Kumey District vide order dated 10.03.2014 issued under Order No. PERS/AIS-102/2009 and accordingly, he was engaged in the election duty till 28.05.2014. In the meantime, he had to go on Earned Leave on medical ground, twice, from 19.05.2014 to 17.06.2014; and from 18.06.2014 to 07.07.2014. Thereafter, he was again transferred from Kurung Kumey District, Koloriang, as the Deputy Commissioner, West Siang District, Aalo, vide Order dated 25.06.2014 issued under Memo. No. PERS/AIS-25/2012.

7. So it has been submitted by the respondent contemnor No. 1 that there was no deliberate and willful violation of this Court's order dated 30.01.2014, on his part. However, he seeks unconditional apology for such intentional delay in disposing of the matter and presently, final hearing in the matter has been fixed on 25.03.2015 which will be disposed of accordingly. The copy of the transfer order; election duty assignment order and earned leave sanctioned letter, have been annexed with the counter affidavit.

8. Similar is the stand of respondent contemnor No. 2 who has submitted in his counter affidavit that he was functioning some times as in-charge, Deputy Commissioner, Kurung Kumey District, Koloriang, whereas he has joined as an Additional Deputy Commissioner in the said District, as on 16.09.2014 i.e. after 5 months of time frame given by this Court, in the matter. As the regular Deputy Commissioner was absent so he was carrying out the works as in-charge, Deputy Commissioner, Kurung Kumey District, Koloriang, and holds charge till 03.11.2014 when the regular Deputy Commissioner joined the said District. However, he performed the routine duties of the Deputy Commissioner, Kurung Kumey District, Koloriang, whenever the regular Deputy Commissioner was out-of-station and he has

also issued show cause notices to the parties concerned on 31.10.2014, fixing the date of hearing of the matter on 14.11.2014. But due to inability of the said opposite parties who asked for the copy of the documents to file their replies and ultimately on 17.12.2014, they submitted their replies and the matter was heard. In the meantime, he was assigned to Study Tour in Kerala and thereafter, he was on leave. It has been submitted by the said respondent contemnor No. 2 that there has been no lapse on his part to comply with this Court's order but because of absence of the regular Deputy Commissioner, Kurung Kumey District, Koloriang, and other reasons assigned, the order of this Court, could not be complied within the stipulated time frame but there was no deliberate disobedience on their part. However, the present incumbent Deputy Commissioner viz. Smt. Mamata Riba took up the matter on final hearing on 25.03.2015 and incidentally, she has again went on child care leave since 12.03.2015. The copy of the above show cause notice dated 21.10.2014 and 18.11.2014, have been annexed with the counter affidavit, wherefrom, it reflects that the parties concerned were repeatedly asked to appear before the Deputy Commissioner, Kurung Kumey District, Koloriang, on 13.09.2013, 21.10.2013, and 25.02.2014. The final show cause notice was given on 10.03.2015 fixing 25.03.2015 by the present Deputy Commissioner, Kurung Kumey District, Koloriang.

9. I have heard the learned counsel for both the parties at length. At the time of hearing the matter, at hand, the learned counsel for the respondent contemnor No. 1 has produced the concerned report as has been called for earlier and has also submitted that the matter has been finally disposed of by the Deputy Commissioner, Kurung Kumey District, Koloriang, on 26.05.2014, whereby the claim of the present petitioners have been finally disposed of. The copy of which has been furnished to the Court wherein it has been held vide paragraph No. 20 ***"that in absence of positive evidence to establish the allegation set out in the complaint, this complaint petition for disqualification of the respondent No. 1 to 9 as per the Arunachal Pradesh Local Authority(Prohibition of Defection) Act, 2003, is hereby dismissed."***

10. After going through the averment made in the counter affidavits coupled with various documents annexed, it is to be noted that vide direction, this Court while issued on 30.01.2014, with a direction to dispose of the matter, on or before 30.04.2014. Now it appears from the notices annexed to the record, that the

petitioners under impugned order, themselves did not appear before the authority inspite of repeated notice and thereafter, on their appearance, they sought for time, for hearing, for which hearing of the matter could not be completed at the earliest.

11. On the other hand, the respondent contemnor No. 1 was transferred on 10.03.2014 and posted as District Election Officer for the ensuing election and he had to remain busy with the election duty and thereafter, he availed earned leave on medical ground till month of July, 2014. The respondent contemnor No. 2 also remained as the in-charge Deputy Commissioner, Kurung Kumey District, Koloriang, in most of the time, has also taken steps for issuance of show cause notice to the persons concerned from time to time but the hearing of the matter could not be completed as those persons themselves took time for hearing of the matter.

12. In view of the matters on record, it can be found that there was no deliberate disobedience to comply with this Court's order on the part of both the respondent contemnors and it is because of ensuing election in the State and the transfer of the officer concerned in the month of March, 2014, the affairs of the regular official duty has been hampered and the respondent contemnor No. 2 who was not the Deputy Commissioner at that relevant point of time, so he can not be held responsible for contempt of this Court's order. In the circumstances so appeared, this Court take a lenient view as regards the conduct of the respondent contemnors No. 1 and 2. On the other hand, in view of the final adjudication of the complaint petition, vide order dated 26.03.2015 by the contemnor authority, the matter has come to an end without further proceeding. The matter is closed after considering the records so produced by the respondent contemnors and other facts and circumstances as mentioned above.

13. The contempt petition stands disposed of accordingly.

14. Return the record to Ms. Deka, learned Senior Government Advocate, forthwith, who produced the same, today.

JUDGE