

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

**Itanagar Permanent Bench**

**1. WP(c) 124(AP)2016**

**Sri Tungri Effa**

Resident of Chimpu  
Itanagar, PO/PS - Itanagar  
Papum Pare District  
Arunachal Pradesh.  
M +91 9402042110

*.....Petitioner*

**- Versus -**

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
2. The Commissioner, Department of Power, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
3. The Secretary, Department of Hydropower Development, Government of Arunachal Pradesh, Itanagar.

*.....Respondents*

Advocate for the Petitioner : Mr. Jakir Hussain

Advocates for the Respondents: Mr. T. T. Tara, Additional Advocate General, Arunachal Pradesh

Ms. Geeta Deka, Senior Government Advocate

**2. WP(c) 139(AP)2016**

**Sri Yura Tagung**

Son of Late Yura Bochu  
Resident of Nirjuli  
PO/PS - Nirjuli  
Papum Pare District  
Arunachal Pradesh.  
Mobile No. 9856027226

*.....Petitioner*

**- Versus -**

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
2. The Principal Secretary, Department of Environment & Forest, Government of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
3. Dr. Rabindra Kumar, PCCF(P&D), Chairman, Arunachal Pradesh Bamboo Research & Development Agency, Government of Arunachal Pradesh, Itanagar.
4. The Commissioner and Joint Secretary to the Cabinet, Government of Arunachal Pradesh, Itanagar.

**.....Respondents**

Advocate for the Petitioner : Mr. Jakir Hussain

Advocates for the Respondents: Mr. T. T. Tara, Additional Advocate General, Arunachal Pradesh

Ms. Geeta Deka, Senior Government Advocate

**:::BEFORE:::****HON'BLE MRS.(DR.) JUSTICE INDIRA SHAH**

Date of hearing : 01.06.2016

Date of Judgment & Order : 10.08.2016

**JUDGMENT & ORDER (CAV)**

Heard Mr. Jakir Hussain, learned counsel, appearing on behalf of the petitioners, in both these writ petitions.

Also heard Mr. T. T. Tara, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Geeta Deka, learned Senior Government Advocate, for all the respondents.

2. The petitioner, Sri Tungri Effa, of WP(c)124(AP)2016, was appointed as Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd.(HPDCAPL, for short) vide order dated 16.11.2015. Subsequently, another order dated 18.01.2016 was issued in continuation of the earlier order dated 16.11.2015, by which, the tenure of the petitioner, herein, was fixed for a period of 3 years.

The petitioner's grievance is that the respondent Commissioner, Department of Power, Government of Arunachal Pradesh, Itanagar, vide impugned order dated 17.02.2016 terminated the appointment of the petitioner as Chairman of HDPCAPL, with immediate effect, in contravention of Article 41(1) of the Articles of Association.

The contention of the petitioner is that the respondent authorities cannot exercise the power beyond the Articles of Association and cannot terminate the petitioner's service in the manner in which he has been terminated vide impugned order dated 17.02.2016.

It has been averred by learned counsel for the petitioner Mr. Hussain that the post of Chairman, HPDCAPL, has not been filled-up till date as no incumbent has been appointed to the said post and it is lying vacant as such, since then.

**3.** The contention of the respondent authorities is that the petitioner who was appointed, illegally, as the Chairman of the said Corporation in violation of laid down norms, and therefore, the said petitioner cannot assail the decision of the State Government for withdrawing the pleasure of his appointment. The said petitioner was appointed on political considerations and he has, thus, no legal right to enforce the fundamental rights as illegality cannot be perpetuated.

The appointment/termination of the petitioner comes within the principle of doctrine of pleasure and hence, after the change of guard in the Government, the Chairman of the said Corporation can be removed under the provisions of Articles 75/76 of the Constitution of India. The petitioner did not hold any statutory post and therefore, extra-ordinary jurisdiction under Article 226 of the Constitution of India, is not maintainable.

**4.** Sub-clauses(1), (6) and (7) of Clause 40; as well as Sub-clause (1) of Clause 41, of the Articles of Association of HPDCAPL, reads as under:

**"Appointment of Directors:**

**40.(1) Subject to the provisions of the Companies Act, 1956 so long as the entire paid up share capital in the company is held by the government of Arunachal Pradesh or by a subsidiary or a wholly owned Government company. The Chairman-cum-Managing Director shall be appointed subject to such terms and conditions as may be determined by the Governor.**

**(6) In case any Director is an official of the State/Central Government and occupies such office by virtue of being in such official capacity, services of such Director on the Board of Directors will be co-terminus with his tenure in such office of the Government.**

**(7) The Governor may from time to time or anytime remove any part time Director except the Nominee Director from office at his absolute discretion and appoint another person in his place and re-constitute the Board of Directors. The Chairman-cum-Managing Director and other whole-time Directors may be removed from office in accordance with the terms of appointment or if no such terms are specified on the expiry of three months notice issued in writing by the Governor with immediate effect on payment of the pay in lieu of the notice period.**

**Appointment of Chairman-cum-Managing Director:**

**41.(1) The Governor may from time to time appoint the Chairman-cum-Managing Director or any of the Directors to the office of Chairman-cum-Managing Director of the Company for such term and such remuneration (whether by way of salary or otherwise as he may think fit, and may from time to time remove or dismiss him or them from office and appoint another or others in his or their place or places in accordance with the provisions of Article 40. Any such Director appointed to any such office, if he ceases to hold the office of Chairman-cum-Managing Director/Director from any cause ipso facto, immediately ceases to be the Director as the case may be."**

**5.** In other writ petition viz. WP(c)139(AP)2016, petitioner Sri Yura Tagung, has challenged the legality and validity of the impugned order dated 15.02.2016 issued by the Chief Secretary, Government of Arunachal Pradesh, Itanagar, whereby the appointment of the petitioner as Chairman of Arunachal Pradesh Bamboo Research and Development Agency, has been terminated without issuing any Show-Cause Notice and before the fixed term of tenure as prescribed in the memorandum and bye-laws of the said Agency.

6. Sub-clauses 7 and 8 of the Memorandum & Bye-laws of the said Agency, are detailed, hereinbelow:

**"7. Manner of selection and appointment of the Chairman and Vice Chairman:**

- *The Chairman and Vice Chairman of the Agency will be appointed/nominated by the State Government having adequate knowledge and experience in the field of bamboo and its development. The Vice Chairman will assist the Chairman in performing the objectives of Agency.*
- *The Vice Chairman of the Agency will be appointed/nominated by the State Government having adequate knowledge and experience in the field of bamboo and its development. He will assist the Chairman in performing the objectives of Agency.*

**8. Terms of the Chairman and Vice Chairman:**

- *The Chairman and Vice Chairman of the Agency shall hold the office for a period for 5(five) years and may be eligible for reappointment.*
- *The Chairman and Vice Chairman may resign from his office by giving at least one month notice in writing to the State Government."*

7. In the case of *Union of India v. Shardinu*, reported in *(2007) 6 SCC 276*, the principle of doctrine of pleasure as envisaged under Article 310 of the Constitution of India, was discussed and it was observed by the Apex Court in *Paragraph No. 17*, as under:

**"17. Learned Additional Solicitor General tried to support his submission on pleasure doctrine under Article 310 of the Constitution and submitted that the respondent has been appointed by the Central Government and therefore, it is the pleasure of the President to cut short his appointment. In this connection, learned ASG invited our attention to a decision of this Court in *Union of India V. Tulsiram Patel* especially to paras 34 and 44. The distinction between statutory appointment and pleasure appointment has to be kept in mind. The pleasure of the President, like Governors, etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Governor appointed under the Constitution is purely pleasure appointment or appointment of such nature which the incumbent holds at the pleasure of the President or the Governors as the case may be. Such appointments may be cut short. Their Lordships in the aforesaid case have dealt with the distinction between the pleasure appointment and appointment under the civil services. Their Lordships held that in India the doctrine of pleasure appointment received constitutional sanction under Article 310 but unlike in the United Kingdom in India it is not subject to any law**

*made by parliament but is subject to only whatever expressly provided by the Constitution. Therefore, the distinction has to be borne in mind, the doctrine of pleasure appointment as it existed in feudal set-up and in the democratic set-up. Their Lordships discussed the doctrine of pleasure appointment in UK where the incumbent was appointed at the pleasure of the King but in India this concept has been adopted under Article 310 of the Constitution and how it is to be exercised has also been laid down in the Constitution. Therefore, the concept of pleasure doctrine cannot be invoked in the present case. Every appointment made by the Central Government is in the name of the President but by that it does not mean that all the appointments are pleasure appointments de hors the Constitution or statutory rules bearing on the subject. In the present case, the appointment made was of statutory appointment and the service conditions of the chairperson and members have been laid down, likewise their removal has also been laid down on incurring certain disqualifications. Therefore, the submissions of learned Additional Solicitor General have no legs to stand."*

8. In the case of *Moti Ram Deka v. G.M., North East Frontier Railways*, reported in *AIR 1964 SC 600*, it was observed that the pleasure of the President or the Governor mentioned in Article 310(1), can be exercised by such person as the President or the Governor may respectively direct in that behalf and the pleasure thus exercised, has to be exercised in accordance with rules made in that behalf. These rules, and indeed, the exercise of powers conferred on the delegate, must be subject to article 310 and so article 309 of the Constitution of India cannot impair or affect the pleasure of the President or the Governor therein, specified. Article 309 of the Constitution of India has to be read subject to Articles 310 and 311, and Article 310 has to be read subject to Article 311.

Article 311(2) reads as under:

*"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in that regard to him."*

9. In the cited case of *Mysore Paper Mills Ltd. v. Mysore Paper Mills Officers' Association & anr.*, reported in *(2002) 2 SCC 167*, the question was raised whether a Government Company was the "State" within the meaning

of Article 12 of the Constitution of India and it was held in **Paragraph No. 11**, as under:

**"11. A careful consideration of the principles of law noticed supra and the factual details not only found illustrated from the memorandum as well as articles of association of the appellant but enumerated from the day-to-day running of the business and administration of the Company being "other authority" and consequently "the State" within the meaning of Article 12 of the Constitution of India. The said definition has a specific purpose and that is Part III of the Constitution, and not for making it a Government or department of the Government itself. This is the inevitable consequence of the "other authorities" being entities with independent status distinct from the State and this fact alone does not militate against such entities or institutions being agencies or instrumentalities to come under the net of Article 12 of the Constitution. The concept of instrumentality or agency of the Government is not to be confined to entities created under or which owes its origin to any particular statute or order but would really depend upon a combination of one or more of relevant factors, depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be, piercing the corporate veil of the entity concerned."**

**10.** Relying on the case of **State of Bihar & ors. v. Chandreshwar Pathak**, reported in **(2014) 13 SCC 232**, it has been submitted by Mr. Tara, learned Additional Advocate General, Arunachal Pradesh, that no person can be appointed even on temporary or adhoc basis without inviting applications from all eligible candidates and in case of backdoor appointment, there is no remedy under the Constitution.

**11.** In the cited case of **B. P. Singhal v. Union of India & anr.** reported in **(2010) 6 SCC 331**, it has been observed by the Apex Court in **Paragraph No. 83**, as under:

**"83. We summarise our conclusions as under:**

**(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.**

**(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will**

*have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.*

*(iii) A Governor cannot be removed on the grounds that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in government at the Centre is not a ground for removal of Governors holding office to make way for others favoured by the new Government.*

*(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, mala fide, capricious or whimsical, the Court will call upon the Union Government to disclose to the Court, the material upon which the President has taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or mala fide, the Court will interfere. However, the Court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient."*

12. Again, in the cases of *Uttam Kr. Sarkar v. Ratan Kr. Barman* reported in *2005(2) GLT 168*; and *Mahesh Doley v. State of Assam*, reported in *2006(3) GLT 832*, wherein a Show-Cause Notice was issued to the appellants before termination of their service, it was observed by this Court that the nomination was not for any particular period. The appellants held the office during the pleasure of the State Government and if the appointments are made initially by nomination and are based on political considerations, there can be no violation of any provisions of constitution in case, the legislature authorizes the State Government to nominate such appointment at its pleasure and to nominate new members in their place. Once doctrine of pleasure is pressed into service, the scope of granting opportunity of hearing does not come. In the case of application of doctrine of pleasure, the principle of adoption of natural justice will be a mere formality.

**13.** Article 361 of the Constitution of India, protects the Governor and states that he shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in exercise and performance of those powers and duties.

**14.** For better appreciation of the matter, at hand, Article 361 of the Constitution of India, is quoted, hereunder:

**"361. Protection of President and Governors and Rajpramukhs.**

**(1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:**

***Provided that the conduct of the President may be brought under review by any Court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61:***

***Provided further that nothing in this Clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Govt. of India or the Government of a State.***

**(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any Court during his term of office.**

**(3) No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any Court during his term of office.**

**(4) No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating that the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief, which he claims."**

**15.** In the case of *Kamal Ch. 1981 Ghy 4*, it was held by this Court that if appointments are made initially by nomination and the same are based on political considerations, there can be no violation of any provision of the Constitution, in case the legislature authorizes the State Government to terminate such appointment at its pleasure and to nominate new members in their place.

**16.** Though sub-clause 6 to Clause 14 of Articles of Association says that the services of Director on the Board of Directors, will be co-terminus with such office of the Government, there is exception in sub-clause 7 which prescribes the procedure for removal of the Chairman-cum-Managing Director and other whole-time-Directors. As per this Clause, a whole-time-Director may be removed from the office in accordance with the terms of appointment or if no such terms are specified, on the expiry of 3 months notice issued, in writing, by the Governor with immediate effect on payment of the pay in lieu of the notice period.

**17.** Indisputably, in this case, there was a fixed term of appointment vide subsequent appointment letter dated 18.01.2016 issued by the State Government in favour of the petitioner Sri Tungri Effa of WP(c) 124(AP)2016, and it was a term of 3 years with effect from the date of the order. It is also not disputed that no notice was issued by the Governor before termination of the service of the said petitioner. Thus, there was a violation of terms of Articles of Association.

**18.** In pursuance to proclamation issued by the President of India on 26.01.2016, imposing President's Rule in the State of Arunachal Pradesh, under Article 356 of the Constitution of India; the Governor of Arunachal Pradesh, vide OM No. GOV-AP/2015 dated 26.01.2016, dismissed all political appointees, appointed by the Chief Minister, other Ministers, Parliamentary Secretaries, etc., whose term of office is said to be co-terminus with that of the Chief Minister, concerned Ministers, Parliamentary Secretaries, etc..

**19.** Article 359 of the Constitution, creates a bar for enforcement of fundamental rights during proclamation of President's Rule except Articles 20 and 21 of the Constitution of India. However, the fundamental rights can be enforced after the proclamation is lifted.

**20.** As discussed earlier, the post of the petitioner Sri Tungri Effa [WP(c)124(AP)2016], to which post, he was appointed by the State Government, was a tenure post and immediately after his appointment as Chairman to the said tenure post of 3 years, his service was terminated because of a blanket order issued by the Governor at the time of the proclamation of President's Rule.

**21.** The removal of the said petitioner from the post of Chairman, in terms of the Articles of Association, as discussed earlier, is in violation of principles of natural justice as neither any notice as stipulated in Sub-clause 7 of Clause 14 of the Articles of Association, was issued to him, nor, anything in lieu of his removal from the post of Chairman, was paid to the said petitioner.

**22.** As the appointment of the petitioner Sri Effa was for a fixed tenure/term of 3 years from the date of his appointment vide letter dated 18.01.2016, therefore, as per the provisions of the Articles of Association, such appointment cannot be termed as appointment at the pleasure of the Governor.

**23.** The appointment of the said petitioner to the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., was also not co-terminus as has been persistently argued by Mr. Tara, learned Additional Advocate General, Arunachal Pradesh.

**24.** The said petitioner of WP(c) 124(AP)2016 was removed from the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., without following the rules and procedures as stipulated in the Articles of Association, and he was removed arbitrarily against the principles of

natural justice. No reasons, whatsoever, have been assigned by the State Government, while terminating the petitioner Sri Tungri Effa's services, from the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., and situated thus, in the attending facts and circumstances of the case, the impugned termination order dated 17.02.2016 is liable to be set aside and quashed.

**25.** In view of the foregoing discussions and reasons cited above, the impugned order dated 17.02.2016, issued by the Commissioner, Department of Power, Government of Arunachal Pradesh, Itanagar; terminating the services of the petitioner Sri Tungri Effa, from the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd., is hereby set aside and quashed. The petitioner Sri Effa, shall, thus, continue to hold the post of Chairman, Hydro Power Development Corporation of Arunachal Pradesh Ltd.. The petitioner shall be paid the monthly emoluments and other financial benefits/arrears, as per his entitlement, if not yet paid to him, without further delay.

**26.** Sofaras termination of the services of the petitioner Sri Yura Tagung, of WP(c) 139(AP)2016, as Chairman of Arunachal Pradesh Bamboo Research and Development Agency(ABRDA), is concerned, it is seen that there is no such provisions/rules that have been framed with regard to termination of the services of the Chairman or Vice-Chairman of the said Agency. In fact, as per Article 8 of the 'Memorandum of Association' of Arunachal Pradesh Bamboo Resources and Development Agency(APBRDA), it has been categorically stipulated that the ***Chairman and Vice Chairman of the Agency shall hold the office, for a period of 5(five) years and may be eligible for reappointment.***

**27.** Situated thus, in view of the attending facts and circumstances of the case, at hand, the impugned order dated 15.02.2016, issued by the Chief Secretary to the Government of Arunachal Pradesh, terminating the appointment of Sri Yura Tagung, writ petitioner of WP(c) 139(AP)2016, as

Chairman, of APBRDA, is hereby set aside and quashed. He shall, thus, continue to hold the post of Chairman of Arunachal Pradesh Bamboo Research and Development Agency(ABRDA). The petitioner Sri Tagung shall be paid the monthly emoluments and other financial benefits/arrears, as per his entitlement, if not yet paid to him, without further delay.

**28.** With the above direction, both these writ petitions stand allowed and disposed of, accordingly. However, parties shall bear their own costs.

**JUDGE**

*Bikash*