

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH

Writ Petition (C) 40 (AP) of 2011

- 1.** Marto Ete, ASM-Kugi,
R/o Hikar Gumin, Aalo,
West Siang District,
Arunachal Pradesh.
- 2.** Tagum Tali, ASM-Bogne-I,
R/o Bogne, West Siang District,
Arunachal Pradesh.
- 3.** Tagom Tabi, ASM-Bogne-I,
R/o Bogne, West Siang District,
Arunachal Pradesh.
- 4.** Yapung Tatin, ASM-Pangkeng,
West Siang District,
Arunachal Pradesh.
- 5.** Yalek Tatak, ASM-Mori,
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 6.** Takong Yosung, ASM-Jomlo Mongku,
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 7.** Tamu Jerang, ASM Bari,
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 8.** Yapang Tali, ASM Deku,
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 9.** Takir Jerang,
ASM Ralung,
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 10.** Yabur Jerang GPC,

Pessing, P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh .

- 11.** Taner Tamut, GPC,
Pankeng Mori
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 12.** Yamur Tatak, GPC
Pankeng Mongku
P.O. & P.S. Jomlo Mobuk,
West Siang District,
Arunachal Pradesh.
- 13.** Yaming Pabin, ASM
Bogne , P.O. & P.S. Kaying
West Siang District,
Arunachal Pradesh.
- 14.** Tatong Pado, ASM Kerang II,
P.O. & P.S. Kaying,
West Siang District,
Arunachal Pradesh.
- 15.** Dadu Yabu, ASM Serum Sampong Tuying,
P.O. & P.S. Kaying
West Siang District,
Arunachal Pradesh.
- 16.** Takom Palong,
ASM Kaying, P.O. & P.S. Kaying
West Siang District,
Arunachal Pradesh.
- 17.** Tajom Pabi, GPC Bogne I,
P.O. & P.S. Kaying,
West Siang District,
Arunachal Pradesh.
- 18.** Tagom Tamut, GPC Bogne II,
P.O. & P.S. Kaying West Siang District,
Arunachal Pradesh.
- 19.** Yayong Tasing, GPC Bogne III,
P.O. & P.S. Kaying,
West Siang District,
Arunachal Pradesh.
- 20.** Takang Jomyang, GPC Kerang I,
P.O. & P.S. Kaying,

West Siang District,
Arunachal Pradesh .

- 21.**Yapung Tali, GPC Tumbig Rigong,
P.O. & P.S. Kaying,
West Siang District,
Arunachal Pradesh.
- 22.** Geyir Ori, GPC Yigikaum II,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 23.**Yide Tassar,ASC Tirbin,
P.O.& P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 24.**Yajum Taluk, ASM Tayi,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 25.**Kenjum Jillen, ASM Yegni-Rite,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 26.**Dagyo Amo, ASM Yiga Bodak,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 27.**Tuken Taba, ASM Lepe Kando,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 28.**Sibom Gamlin, ASM Ratak Gamlin,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 29.**Nyape Doke, ASM Moba Doke,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 30.**Limar Doke, ASM Rige Doke,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.

- 31.**Bayi Jillen, ASM Bege,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 32.**Bido Lombi, ASM Lutak Tiri,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 33.**Petem Lombi, ASM Kekon Pina,
P.O. & P.S. Tirbin,
West Siang District,
Arunachal Pradesh.
- 34.**Tai Pabi, GPC Kerang II,
P.O. & P.S. Keying,
West Siang District,
Arunachal Pradesh.
- 35.**Kenli Bagra, ASM Lipu Bagra II,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 36.**Dagbi Bagra, ASM Jeyi Bagra,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 37.**Tummo Bagra, ASM Lipu Bagra I,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 38.**Yito Angu, ASM Angu I,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 39.**Toli Angu, ASM Angu II,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 40.**Bayi Bagra, ASM Takpu Bagra,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 41.**Kartum Ete. ASM Paya,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.

- 42.**Jummo Ete, GPC Paya,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 43.**Yade Kiri, ASM Hirgo Menchuka,
P.O. & P.S. Menchuka,
West Siang District,
Arunachal Pradesh.
- 44.**Irik Ori, GPC Yigi Kaum I,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 45.**Geyi Ori, GPC Nikte,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 46.**Renya Sona, GPC Dasi,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 47.**Marken Nyorak, GPC Pusi Nyorak,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 48.**Likom Nyorak, GPC Nyorak,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 49.**Pebom Rime, GPC Rime,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 50.**Toyin Nyorak, ASM,
Pusi Nyorak,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 51.**Tumto Sona, GPC Taba Sona,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh.
- 52.**Doli Ori, ASM Yogi Kaum I,
P.O. & P.S. Aalo,
West Siang District,

Arunachal Pradesh.

53.Mijum Ori, ASM Nikte,
P.O. & P.S. Aalo,
West Siang District,
Arunachal Pradesh

... .. **Petitioners**

Versus

1. The State of Arunachal Pradesh.
Represented by the Chief Secretary,
Govt. of Arunachal Pradesh,
Itanagar.
2. The Commissioner,
Department of Panchayati Raj,
Govt. of Arunachal Pradesh,
Itanagar.
3. The Director, Panchayati Raj,
Govt. of Arunachal Pradesh,
Itanagar.
4. The Deputy Commissioner,
West Siang District,
Aalo.
5. District Planning Committee,
West Siang District, Aalo through
its Chairperson.
6. Zilla Parishad Chairperson, West Siang
District, Aalo, Office of the Zilla Parishad
Chairperson, Aalo, near Deputy Commissioner's
Office, P.O. Aalo, West Siang District,Aalo.
7. Shri Jarsa Gamlin,
Office of the Zilla Parishad Chairperson,
Aalo, near Deputy Commissioner's Office,
P.O. Aalo, West Siang District, Aalo.
8. The Executive Engineer (PHE & WS) Division,
Aalo, West Siang District,
Arunachal Pradesh.

... .. **Respondents.**

BEFORE
THE HON'BLE MR.JUSTICE S.C. DAS

For the petitioner : Mr. D. Panging, Mr. K. Riba,
Ms. S.V.Darang and Mr.D.Soki.
Advocates.

For the respondents : Mrs. G.Deka, Addl. G.A.

Date of hearing : **21.08.2012**

Date of delivery of
Judgment & order : **21.08.2012**

JUDGMENT & ORDER (ORAL)

The Constitution, 73rd and 74th amendment, envisaged 3(three) tier Panchayat system with a view to set up local self-government and to endow them with such powers and authority, as may be necessary, to enable them to function as units of self-government.

By filing this writ petition, 53 elected members of Gram Panchayats (for short, GPs) and Anchal Samities (for short, ASs) (Intermediate Panchayat) of West Siang District alleged arbitrary and unconstitutional action of the Chairperson, Zilla Parishad (for short , ZP) of West Siang District, inter alia, prayed for quashing the sanction orders dated 22-06-2010 (Annexure 5 series to the writ petition), issued by the Chairperson, West Siang ZP and also for quashing the minutes of

District Planning Committee (for short, DPC) dated 13-09-2010 (Annexure 15 to the writ petition).

The contention of the petitioners is that, West Siang District consists of 214 GPs , 20 ASs and 1(one) ZP. The 13th Finance Commission (for short, TFC), awarded specific fund for the Panchayats of the State and an amount of Rs.15051400/- was allotted for the Panchayats of West Siang District (Annexure 3 to the writ petition). According to the constitutional provision and the guidelines issued by the State Govt., the amount was to be spent for the development of the GPs based on a consolidated development plan prepared by the DPC taking into consideration the development plans of GPs and Intermediate Panchayats. The plan preparation should start at GP level and each GP shall finalise its plan based on priorities and give the suggestion to the AS (Intermediate Panchayat) and Intermediate Panchayat based on the plans received from the GP should finalise its plan and send it to the ZP which shall prepare a District Panchayat plan taking into consideration the feedback received from the GP and AS. It is alleged that the Chairperson of ZP without inviting any development plan either from the GP or from AS, made administrative approval and expenditure sanction, by way of issuing sanction orders dated 22-06-2010. The petitioners and others filed written complaint to the Chairperson of ZP and also to the Deputy Commissioner of West Siang District and held several meetings to restrain the Chairperson of the ZP from taking unilateral action in respect of expenditure of the TFC grant amount for the development of the Panchayats. It is

alleged that respondent No.7, the Chairperson of the ZP issued annexure 5 series orders concentrating all development works in 29 Liromova Assembly constituency which is represented by his elder brother with a political motive and thereby taken attempt to deprive the other Panchayats throughout the District. Considering the complaint filed by the elected members of the GPs and Ass, the Deputy Commissioner by order dated 08-09-2010(Annexure 14 to the writ petition) freezed implementation of all schemes under the TFC grants.

A High Level Committee headed by the Chief Secretary by a decision taken on 09-11-2009 (Annexure 4 to the writ petition) decided to spend the grants through Public Health Engineering Department(for short, PHED) of the Govt. and directed that the project proposal should be initiated through Panchayat bodies to the ZP/DPC. The Chairperson of the ZP defying that decision and also defying the guidelines made by the State Govt., issued administrative approval and expenditure sanction orders and thereby violated the basic norms of implementation of the development scheme. Under compelling situation, A DPC meeting was called on 13-09-2010 and it was resolved to spend the amount as per the impugned orders dated 22-06-2010 through PHED but while deciding so, the DPC did not take into consideration any recommendation of the GPs or ASs and therefore, the decision of the DPC was vitiated. It is further held by the petitioners that order dated 08-09-2010 freezing the works and account by the Deputy Commissioner has not yet

been lifted and that no work order has been issued as yet, in respect of the works against TFC grants for the District.

2. Except respondent Nos. 4 and 5, other respondents have chosen to remain absent. It has been contended by the respondent Nos. 4 and 5 that a High Level Committee constituted by the State Govt. headed by the Chief Secretary decided to spend the amount through PHED and the minutes of that meeting has been annexed as Annexure-4. According to that decision, the Chairperson of ZP issued administrative approval and expenditure sanction orders dated 22-06-2010(Annexure 5 series) and those orders have been approved by the DPC meeting, held on 13-09-2010 (Annexure 15 to the writ petition). The works are under execution by PHED and there was nothing wrong in the decision taken towards execution of the development plans as approved by the DPC.

3. Heard learned counsel, Mr. D.Panging for the petitioners and learned Sr. Addl. G.A., Mrs. G.Deka for the State respondents.

4. It is an undisputed fact that all the petitioners are members of GPs and ASs. The petitioners simply prayed for executing development works in the GPs according to the constitutional scheme. It is also an undisputed fact that there are GPs and ASs and ZP constituted according to law. In course of argument, learned counsel of both side, admitted the fact that the amount so allotted by TFC for the District, ought to be spent through a District Plan to be finalized by the DPC, taking into

consideration the plans received from the GPs and ASs as per the govt. scheme.

5. Article 243 ZD of the Constitution prescribes that the DPC should consolidate the plans prepared by the Panchayats and Municipalities in the District and shall prepare a draft development plan for the District as a whole. Annexure-2 is the Manual for DPC prepared by the Department of Panchayati Raj of Govt. of Arunachal Pradesh. Para 6, at page 9 and 10 of the Manual, prescribes the procedure to be followed for preparation of a development plan by the DPC which reads thus:-

"6. Based on the vision document/s and following the same participatory process, the needs may be prioritized and goals set for a five-year period for a draft five year plan in the manner indicated below:-

a) The draft preparation should start at the Gram Sabha level. The Gram Panchayat may finalize its Plan based on priorities emerging from the Gram Sabha and give suggestions for the Intermediate Panchayat. Projects and activities which can be implemented at the Gram Panchayat Level should be included as "Gram Panchayat Plan". Those projects and activities which can be implemented only in more than one Gram Panchayat, will be forwarded to the Intermediate Panchayats to be considered for inclusion into the "Intermediate Panchayat Plan". The Gram Panchayat Plans should also provide an estimate of the community contribution that

can be mobilized for the purpose of implementing the development plan.

b) Based on these suggestions received from Gram Panchayats and its own priorities the Intermediate Panchayat should finalize its Plan. Projects and activities which can be implemented at the Intermediate Panchayat Level should be included as "Intermediate Panchayat Plan". Those projects and activities which need to be implemented in more than one Intermediate Panchayat will be forwarded to the District Panchayat to be considered for inclusion into the "District Panchayat Plan".

c) Based on the Gram Panchayat Plans, the Intermediate Panchayat Plans and District Panchayat Plans, the District Planning Committee shall finalize the District Plan for the District.

d) A similar exercise may be undertaken in Urban Local Governments. Each local government may be asked to give separate suggestions for inclusion in the Departmental components of the District Plan."

6. The High Level Committee in its minutes of meeting dated 09-11-2009 (Annexure 4 to the writ petition), inter alia, held thus:-

....."(f) The project proposal has to have resolution of the Panchayat bodies at best upto Zilla Parishad/DPC.

*.....
.....*

(i) The PRIs at 3 levels need to send/forward respective resolutions for the plan for implementing the works."

7. The constitution of DPC has been made as per Annexure 1 and there is no doubt about the constitution of the DPC. The allegation is that, the DPC meeting was not called before issuing the administrative approval and expenditure sanction orders dated 22-06-2010 and a purported DPC meeting was held on 13-09-2010 with a view to give ex-post-facto approval of orders issued on 22-06-2010 by the Chairperson of ZP without taking into consideration of any development plan of the GPs and ASs. A conjoint reading of Article 243 ZD, Annexure-2 and Annexure-4 makes it abundantly clear that the DPC would prepare the development plan taking into consideration the plans prepared by the Panchayats i.e. the GPs and ASs. The DPC or the ZP has not been vested with an unfettered power to prepare a development plan of its own without taking into consideration the development plans suggested by the ground level Panchayats i.e. Panchayati Raj Institutions(PRIs). The allegations made against respondent No.7, that he has purposely concentrated all the development works in one Assembly Constituency which is represented by his elder brother by issuing orders dated 22-06-2010, has not been controverted in any manner.

8. It is brought on record that in view of the objections raised by the public representatives, Deputy Commissioner of Siang District issued order dated 08-09-2010 which reads thus:-

"MOST IMMEDIATE

GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DEPUTY COMMISSIONER
WEST SIANG DISTRICT :: AALO

No.WS/TFC/2008-09

Dated,Aalo the 8th
September,2010

O R D E R

Whereas, on perusal of complaint letters received from PRI members in connection with placement of TFC funds to PHED Department , it observed that proper procedure have not been followed in selection of schemes.

And, whereas, due to the reasons stated above the undersigned has withdrawn the administrative approval for the same.

It is, therefore, ordered that the funds released to the Executive Engineer(PHED), Aalo Division for implementation of schemes under TFC vide letter No. WS/TFC/2008-09 dated 14/7/2010 is hereby freeze immediately.No expenditure should be incurred from the said fund till a clear instruction in this regard is received from the Government.

Executive Engineer(PHED) should ensure compliance of above order.

(Amjad Tak) IAS,
Deputy Commissioner,
West Siang District, Aalo.

To

The Executive Engineer(PHED),
Aalo Division,
Aalo.

Copy for information to:-

- 1) The Commissioner(Panchayati Raj), Govt. of Arunachal Pradesh, Itanagar.
- 2) The Secretary(PHED), Govt. of Arunachal Pradesh, Itanagar.
- 3) The Director(Panchayati Raj), Govt. of Arunachal Pradesh, Itanagar.
- 4) The Chief Engineer(PHED), Govt. of Arunachal Pradesh, Itanagar.

5) *The Chairperson,8- West Siang Zilla Parishad, Aalo."*

9. It is contended by the petitioners that the said order is in force and has not been vacated till today. The respondents failed to controvert this contention of the petitioners, meaning thereby no works in the West Siang District has yet been taken up towards implementation of any development scheme under TFC grants. The petitioners also filed an additional affidavit on 08-05-2012 contending that no work order has yet been issued by the appropriate authority in respect of the execution of works pursuant to the impugned orders dated 22-06-2010.

10. Learned Sr. Additional Govt. Advocate has submitted that she received no response from the respondents in respect of the averments made in the additional affidavit. It is , therefore, abundantly clear that no work has yet been taken up pursuant to the orders dated 22-06-2010 issued by the respondent No.7.

11. Under such circumstances, while it is evident that the constitutional mandate and the guidelines issued by the State Government that the DPC should take into consideration the development plans of GPs and ASs and consolidate a district plan,that has not been done in the present case and the Chairperson of the ZP unilaterally issued the orders dated 22-06-2010 which was subsequently approved by the DPC meeting again without consideration of any plan proposal from the Panchayati Raj Insitutions, I find sufficient force in the case of the petitioners to allow the writ petition and to quash the orders impugned as well as the DPC resolution dated 13-09-2010.

12. Accordingly, the orders dated 22-06-2010 (Annexure 5 series to the writ petition) and the resolutions of the DPC meeting dated 13-09-2010 (Annexure 15 to the writ petition) are quashed.

13. The Chairperson of the ZP/DPC is directed to invite all GPs of West Siang District to submit their plans, giving priority to development works, to be taken up and to submit the same to the ASs and the ASs to submit the development plans to the DPC and thereafter, the DPC should sit to finalise the district plan in respect of development works of the Panchayats towards 13 TFC grant.

The entire process should be completed within 30 days from the date of receipt of this order by the Chairperson of ZP/DPC. After the district plan is consolidated and finalized, it should be sent to the implementing agency as per the decision of the High Level Committee, for the implementation of the development schemes. Keeping in mind the time constraints regarding the TFC grants, the time bound order is issued.

14. With the above direction, the writ petition stands disposed of.

JUDGE

sanjay