

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

ITANAGAR PERMANENT BENCH
NAHARLAGUN

WP(C)154(AP)2010

1. **Shri Sepi Bagang,**
Son of Late Gungnya Bagang, Chairman,
Zilla Parishad, 3-East Kameng District, residing at Shantipur Colony, Seppa,
East Kameng - District, Arunachal Pradesh.
2. **Smti. Meku Yangfo,**
Wife of Shri Tawa Yangfo, Zilla Parishad,
4-Sawa, presently residing at Bebo Colony, Seppa,
District – East Kameng, Arunachal Pradesh.
3. **Smti. Yaro Yangfo,**
Wife of Shri Apo Yangfo,
Presently residing at Type-I Colony, Seppa, District - East Kameng, Arunachal
Pradesh.

..... *Petitioners*

- *Versus* -

1. The Union of India represented by the Secretary, Ministry of Home Affairs, Department of Border Management, Government of India, North Block, New Delhi-1.
2. The State of Arunachal Pradesh represented by the Secretary, Planning, Government of Arunachal Pradesh, Itanagar.
3. The Deputy Commissioner, East Kameng District, Seppa, Arunachal Pradesh.

..... *Respondents*

Advocates for the petitioners :- Mr. P. Taffo
Ms. N. Danggen
Mr. R.C. Tok
Mr. B. Tapa
Mr. T. Nikam
Mr. T. Topu

Advocate for the respondents :- Ms. A. Mize, Government Advocate

P R E S E N T
THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing :- **22.09.2010**

Date of Judgment & order :- 22.09.2010

JUDGMENT AND ORDER(ORAL)

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Heard Ms. N. Danggen, learned counsel for the petitioners. Also heard Mr. Anima Mize, learned Government Advocate for the State respondents.

2. The petitioners' case is that they are elected panchayat members of Chayang Tajo CD Block and they are concerned with the implementation of developmental schemes in their respective areas.

3. The central government sponsors developmental programmes for border areas called Border Area Development Programme ('BADP' in short). There are guidelines issued by the central government, Ministry of Home Affairs, Department of Border Management, for planning and implementation of the schemes thereunder. The guidelines envisage that in the planning and implementation of BADP schemes, the PRIs should be involved. But in the instant case, the Deputy Commissioner, East Kameng District, Seppa, has taken some other steps towards implementation of the schemes without involving the petitioners and even without placing the proposals of the PRI members before the District Planning Committee ('D.P.C.' in short), for discussion and finalization and thereby, violating the guidelines issued by the central government.

4. Ms. Danggen, learned counsel for the petitioners, has placed the guidelines aforesaid, which are available in Annexure-I to the writ petition. Clause 4.2(i) and (vii) are relevant for the purpose of deciding this case.

Clause 4.2 reads as under :

“4.2 The border area plan i.e. village/block level plan should be a part of the comprehensive District plan based on the following cardinal principles:

(i) Planning and implementation on participatory basis by Panchayati Raj Institutions/Autonomous Councils/Other local bodies.

- (ii)
- (iii)
- (iv)
- (v)
- (vi)
- (vii) ***Development of Schemes through consultation with the community PRIs, district councils, traditional councils and district planning committees(DPCs) and giving due priority to the needs of population living closest to the border.”***

5. The annual action plan of BADP for the year 2010-11 have been prepared in respect of Chayang Tajo CD Block which has been appended as Annexure-III to the writ petition. Items No. 16 and 17 under the sub-head: infrastructure sector namely construction of porter track from Jamoh to Pangia(19 km) and construction of porter track from Jokhio to Marjingla for many villages (12 km) are concerned with the areas of the writ petitioners. According to the petitioners, as PRI members, they submitted proposals from their side to the respondent Deputy Commissioner but the same having not been placed before the D.P.C., has created an apprehension in the minds of the writ petitioners that the respondent Deputy Commissioner may, without taking them and the members of the D.P.C. into confidence, approve and send the same to the State Government for approval in utter violation of the statutory guidelines. Under such circumstances, the learned counsel for the petitioners submits that a direction may be issued to the respondent No. 3 to take-up the plan and implement the BADP schemes strictly in accordance with the guidelines issued by the central government by involving the members of PRIs.

6. The State respondents No. 2 and 3, have filed a joint affidavit-in-opposition, stating, inter alia, that proposals were sought for from the panchayat members concerned and the MLAs of the border blocks and those proposals are finalized subject to fulfillment of guidelines and therefore, question of taking decision without involving the panchayat members does not arise. It is further stated that finalization of BADP schemes is done by the Deputy Commissioner concerned after due scrutiny of the proposals submitted from various quarters like administrative officers, panchayats, MLAs, etc., and the

selection of the scheme is based on fulfillment of the criteria as laid down in the BADP guidelines. In the said counter affidavit, it has further been stated by the respondent authorities concerned that there is no provision in the BADP guidelines providing that the D.P.C. should be convened to finalize the BADP schemes and there is no overlapping of the schemes as alleged by the writ petitioners. At the same time, it is stated that proposals were finalized after due consultation with Smti. Karya Bagang, local MLA of 9-Chayang Tajo Assembly Constituency and Sri Sepi Bagang, Chairperson, Zilla Parishad.

7. Ms. Mize, learned Government Advocate, submits that there is no violation of the BADP guidelines inasmuch as, processing the schemes through the respondent Deputy Commissioner was done after due consultation with the writ petitioners and the schemes were selected and recommended as per the terms and conditions of the BADP guidelines. The learned Government Advocate, however, submits that the annual action plans of BADP for the year 2010-11 (Annexure-III to the writ petition) do not tally with the annual action plans maintained by the Deputy Commissioner, East Kameng District, Seppa (Annexure-C to the affidavit-in-opposition). The learned Government Advocate further points out that the names of the Deputy Commissioner, East Kameng District, Seppa, as appearing in the annual action plans of BADP for the year 2010-11 in Annexure-III to the writ petition and Annexure-C to the affidavit-in-opposition, are differing. That apart, the annual action plan of BADP for the year 2010-11 (Annexure-III to the writ petition) does not bear the signature of the then Deputy Commissioner Sri Pige Ligu and as such, the authenticity of the said annual action plans is doubtful. There is, however, no averments in the said affidavit-in-opposition as to whether the incumbent Deputy Commissioner has forwarded the proposals so recommended by the then Deputy Commissioner, East Kameng District, Seppa, to the State Government for approval.

8. I have gone through the materials placed by both the parties before this court and also considered the submissions of the learned counsel appearing for the parties. It is observed that as per the guidelines issued by the Government of India, the main objective of BADP schemes is to meet the special developmental needs of the people

living in the remote and inaccessible areas situated near the international border and to bridge the divide in the physical and social infrastructure of such areas. The aim is to transform the border areas by ensuring multifaceted development and to saturate the border areas with all the efficient infrastructures through convergence of schemes and participatory approach. As stated earlier, the participation of PRIs, autonomous councils and other local bodies in the implementation of the said schemes has been emphasized for which the consultation with the community PRIs, etc., has been made compulsory. There is no dispute that the present petitioners are elected members of the PRIs and they have a major say and role in the implementation of BADP schemes. They are even basically concerned with the preparation and submission of proposals on priority basis to the Deputy Commissioner concerned who in his turn is required to place the proposals before the D.P.C..

9. From the affidavit-in-opposition filed by the State respondents No. 2 and 3, it has been found that all the schemes have been selected after having a meeting with the PRI members and the local MLA as claimed by them in communication dated 17.06.2010(Annexure-C to the affidavit-in-opposition) addressed to the Secretary, Planning, Government of Arunachal Pradesh, Itanagar, but the respondents have not annexed a copy of the minutes of the meeting in support of such averments so as to verify the presence and participation of the PRI members including the present petitioners. The relevant records have not been made available before this court for such verification at the time of hearing. The affidavit-in-opposition also could not satisfy the query of the court as to whether the BADP schemes recommended by the D.P.C. and forwarded by the respondent Deputy Commissioner, East Kameng District, Seppa, to the Secretary, Planning, Government of Arunachal Pradesh, Itanagar, has been approved so far by the Government or authorities concerned.

10. From the correspondences made between the respondent Deputy Commissioner and the Secretary concerned, it transpires that the approval sought for from the State Government or authorities concerned by the respondent Deputy Commissioner, is still awaited. The respondent Deputy Commissioner also could not establish that the members of the

PRI including the petitioners were given chance to participate in the proceeding of the D.P.C. for selection of the BADP schemes. Moreover, the respondent Deputy Commissioner also could not satisfy the court that the local MLA is to be associated with the D.P.C. and selection of the BADP schemes concerned. In any case, the selection of proposals/schemes cannot be done at the instance of the local MLA only.

11. In view of the foregoing facts and circumstances of the case and materials placed before this court, I come to a conclusion that the action of the respondent authorities in the matter of selection of the proposals/schemes for the year 2010-11, has not been done in accordance with the existing guidelines issued by the Ministry of Home Affairs, Government of India, New Delhi. The interest of the petitioners would be served if the proposals/schemes submitted by the members of the PRI concerned are placed again before the D.P.C. for fresh consideration in accordance with the terms and conditions of the guidelines issued by the Central Government and take appropriate decision in the matter provided the revised list of schemes/ proposals as submitted by the respondent Deputy Commissioner vide his letter dated 17.06.2010(Annexure-C to the affidavit-in-opposition) is not yet approved by the State Government. The respondent Deputy Commissioner, East Kameng District, Seppa, is directed to take necessary steps to convene a meeting of the D.P.C. for the aforesaid purpose within a period of 30(thirty) days from the date of receipt of a certified copy of this order.

12. With the above observations and directions, this writ petition stands disposed of.

13. No costs.

JUDGE

