

(2016) 05 GAU CK 0005

In the Gauhati High Court

Case No : WA No. 401 of 2015 with I.A. No. 1264 of 2016

Dolang Akom

APPELLANT

Vs

State of Arunachal Pradesh and Ors.

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Citation : (2016) 4 GauLJ 678 : (2016) 4 GauLR 677 : (2016) 3 GauLT 404 : (2016) 4 NEJ 405

Hon'ble Judges : T. Vaiphei and Manojit Bhuyan, JJ.

Bench : Division Bench

Advocate : Mr. K.N. Choudhury, Mr. J. Patowari, Mr. A. Dhar and Mr. K.K. Das, Advocates, for the Appellant; Mr. D. Mozumder, Ms. P. Borah, Mrs. H. Sarma and Ms. J. Kakoti, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.—The facts arising for consideration are that the respondent no. 3 herein/writ petitioner Sri Likha Tejji was appointed to function as Administrator-cum-Managing Director of Arunachal Pradesh Consumer Co-operative Federation Limited (in short APCCFL), Naharlagun in addition to his normal duties in the substantive post as Under Secretary(Education), Government of Arunachal Pradesh, Itanagar. The said appointment was made by Order dated 22.10.2013 issued under the hand of the Registrar, Cooperative Societies, Government of Arunachal Pradesh, Itanagar. After having discharged duties as such for about 1 year 10 months, an order was passed by the same authority on 20.08.2015 replacing Likha Tejji by one Sri Dolang Akom i.e. the appellant herein/respondent no. 3 in the writ petition. The said Order dated 20.08.2015 appointing Sri Dolang Akom and the consequential dislodgement of Likha Tejji was the subject matter in WP(C) 362(AP)/2015.

2. Admittedly, both Likha Tejji and Dolang Akom were appointed in exercise of powers conferred under Section 79(4) of the Arunachal Pradesh Cooperative Societies Act, 1978 and under the hand of the competent authority i.e. the

Registrar of Co-operative Societies, Government of Arunachal Pradesh. The primary ground of challenge made by Likha Tejji is that he is entitled to serve for four years in the capacity of Administrator-cum-Managing Director of APCCF Limited by virtue of Rule 27(4) of the bye-laws of the Federation. As such the action of the said authorities to remove him after having worked for only 1 year 10 months is altogether illegal and contrary to the provisions under the aforesaid bye-laws. Further ground assigned is that the appointment of Dolang Akom was purely on political consideration and not in exigency of service or in public interest. In support thereof Likha Tejji brought on record the Note of the Minister, PHE&WS, addressed to the Minister, Co-operation and Panchayat Raj requesting that approval be accorded for appointment of Dolang Akom in the post of Administrator in the Federation. The ground that had been assigned by the Minister, PHE&WS for bringing in Dolang Akom in place of Likha Tejji can be had from the Note itself, which is reproduced here under:

Arunachal Pradesh

Sub: Appointment of Shri Dolang Akom ADO (Marketing) For The Post of Administrator Consumer Co-Operative Federation Limited (APCCF) On Deputation Basis.

It is learned that the post of Administrator in consumer-operative Federation Limited is being looked after by an officer on additional charge who actually is holding the post of Under Secretary (Education & Civil Supply), since these two departments are of major department having heavy burdens of works, the present incumbent may not be possible to take care of the consumer Co-operative federations work effectively as it would require full time and independent officer for smooth running of the federation works.

Shri Dolang Akom, ADO (Marketing) entry grade Group-A Officer (APPCS, 2004 Batch) is an energetic and efficient officer serving in his department for last 11 (eleven) years and he has gathered lots of knowledge through practical experiences in dealing with public relation works and is competent/capable of shouldering any assignment/responsibility with full dedication.

Moreover, the incumbent Shri Dolang Akom, ADO (Marketing) who has been graduated from Agriculture Science has acquired vast knowledge about the relevant subject "Agriculture Cooperation and Marketing" which is a major subject taught under the discipline of study in his background and is very much related to the nature of works being carried out day to day life in the management of consumer co-operative federation limited in Arunachal Pradesh.

In view of above and for betterment of the consumer co-operative Federation works, it would be appropriate to appoint an independent officer who would give full time to discharge the services of consumers effectively.

Therefore, Hon"ble Minister Cooperation and Panchayat Raj is requested to accord an approval for appointment of Shri Dolang Akom, ADO (Marketing) entry

grade Group-A Officer, APPSC, 2004 Batch) in the post of Administrator in Consumer Co-operative Federation Limited with immediate effect.

To Hon"ble Minister Cooperation and Panchayat Raj, Itanagar UN.No HM(PHE&WS)-07/14-15/426.

(Takam Pario)

Minister PHE & WS

According to Likha Tejji the views expressed by the Minister, PHE&WS was the basis for the replacement and the said views are unfounded and do not hold any water. Reference was made to the Note of the Secretary (Cooperation) which demonstrated that the proposal for appointment of Dolang Akom as the Administrator of the Consumer Co-operative Federation on deputation cannot be considered for reasons stated in the said Note. The said Note of the Secretary (Co-operation) which assumes significance, is also reproduced here under:

In the year 2008, due to irregularities and mismanagement of affairs of the Consumer Cooperative Federation Ltd. Naharlagun the board of Director was suspended as per Cooperative Societies Act, 1978 and a departmental officer Shri Thanga Bage, DRCS was appointed as Administrator-cum-Managing Director by the RCS. In October, 2013 the said Administrator-cum-Managing Director resigned on account of his domestic problem and a new incumbent was required to be appointed for day to day running of affairs of the Societies. Accordingly, one Shri Likha Tejji, Under Secretary, Education who is an APCS Officer was appointed for the post of

Administrative-cum-Managing Director of the Societies which was approved by HCM himself.

Since then the incumbent Administrator, shri Likha Tejji has been holding the charge and looking after the affairs of the Consumer Societies. The department of Cooperation has not received any adverse report so far against the incumbent Administrator nor have we received any intimation from the present incumbent of his intention to be relieved of his charge as Administrator-cum-Managing Director. So, currently, there is no any vacancy for the post of Administrator-cum-Managing Director in the Society. Since the Society is not in the best of its health as far as its financial affairs is concerned for which there is no much extra activities are being carried out by the Society. The Society in its present status cannot afford one group "A" officer to be appointed as its Administrator on deputation and pay salary. The present incumbent is drawing his parent cadre's salary from his own department and not from the Society in the event of vacancy falling at any moment the department will consider appointment of officials from Department of Cooperation to avoid unnecessary financial burden on the Society in the form of salary.

Therefore, the proposal for appointment of one Shri Dolang Akom, ADO(Marketing) the post of Administrative in Consumer Cooperative Federation

Limited on deputation cannot be considered at this stage especially in view of copy of a note received from the present incumbent through CS.

Submitted for perusal and information please.

Nani mali, IAS

Secretary (Cooperation)

HM(Cooperation)

3. Per-contra, the State and Sri Dolang Akom had contended that Likha Tejji cannot derive support from the bye-laws and continue for four long years. It was also contended that Likha Tejji had also been appointed on political considerations.

4. The writ petition was disposed of by Judgment and Order dated 08.12.2015. The learned Single Judge after considering the Note of the Minister, PHE&WS vis-a-vis the Note of the Secretary (Co-operation) arrived at a finding that the impugned actions was not made in public interest nor in exigency of service. Interference was made with the Order dated 20.08.2015 by concluding that the same had been made arbitrarily, whimsically and in malafide exercise of power. The writ petition was allowed and the Order in question was set aside.

5. On appeal, Dolang Akom now contends that the learned Single Judge while rendering the judgment failed to consider the provisions under Section 79 of the Arunachal Pradesh Co-operative Societies Act, 1978, inasmuch as, the appointment of Administrator, in case of supersession of a Board, is only for the purpose of arranging conduct of election within the period prescribed, not exceeding 6 months, and thereafter the Administrator is required to handover the Management to the elected Board. According to the appellant no steps, whatsoever, had been taken by the Administrator for arranging conduct of election for the entire duration of his tenure spanning 1 year 10 months. The further ground of challenge made in this appeal is that the learned Single Judge had also failed to appreciate that Rule 27(b) of the bye-laws of the Federation had no application in a case where the appointment is in respect of an interim Administrator-cum-Managing Director. According to the appellant, Rule 27(b) of the bye-laws cannot override the provisions under Section 79 of the Arunachal Pradesh Co-operative Societies Act, 1978. The third ground of challenge is that the learned Single Judge ought not to have decided the case simply on the basis of the Note of the Minister, PHE&WS. According to the appellant, the recommendation of a politician by itself cannot vitiate an Order, more so when the said Order had been approved by the Chief Minister himself. Taking it further, the appellant have also contended that the Note of the Secretary (Co-operation) is in the domain of a personal opinion and it was not the decision of the Government. As such, the Note of the Secretary (Co-operation) did not have any bearing in the adjudication of the writ petition. Lastly, the appellant urged that Likha Tejji had no indefeasible right to continue as the Administrator-cum-

Managing Director, more so, when he failed to hold/arrange conduct of election as per the provisions under Section 79 of the Arunachal Pradesh Cooperative Societies Act, 1978.

6. We have heard Mr. K.N. Choudhury, learned senior counsel representing the appellant Dolang Akom, assisted by Mr. J. Patwory, Advocate as well as Mr. D. Mozumder, learned senior counsel representing Likha Tejji, assisted by Ms. P. Bora. Mr. Mozumder reiterates the stand taken in the writ petition and harps upon the Note of Minister, PHE&WS to say that the entire impugned action have been orchestrated by the said Minister, PHE&WS and the competent authority i.e. the Registrar of the Co-operative Societies did not apply his independent mind. Mr. Mozumder also contends that having regard to the available materials on record, the decision of the learned Single Judge do not warrant any interference.

7. Having heard the learned counsels on either side, we find that this matter stands in a narrow compass. The basic point is as to whether or not the Order dated 20.08.2015 appointing Dolang Akom in place of Likha Tejji can stand the scrutiny of law in view of the attending circumstances. It is nobody's case as regards violation of Section 79 of the Arunachal Pradesh Co-operative Societies Act, 1978 and that Likha Tejji had failed to discharge his duties as contemplated under Section 79(2) thereof. At least, there are no proceedings initiated either by Dolang Akom or any other interested person challenging the continuation of Likha Tejji as Administrator-cum-Managing Director on grounds of violating the provisions under the aforesaid Act of 1978.

8. For the purpose of deciding this appeal, the applicability of Rule 27(b) of the bye-laws do not assume greater significance then the interference that had been made by the Minister, PHE&WS, who is also not the departmental minister. Apparently, the recommendation of a politician may not stand to vitiate a consequential order, but it is another thing to say to what extent the recommendation and the opinion of the Minister can have effect and/or play a role in the passing of an order. The views of the Minister, PHE&WS do not require further elaboration as the same has been reproduced herein above. Suffice to say that the Minister, PHE&WS categorically observed that Likha Tejji may not be able to work effectively in order to take care of the Consumer Co-operation Federation and having regard to the heavy burden of work, the Federation would require a full time and independent officer for smooth running of the works. Not to stop here, the Minister PHE&WS also expressed that Dolang Akom is energetic, efficient, knowledgeable and competent to shoulder any assignment/responsibility with full dedication. Opinion was expressed that for betterment of the Consumer Co-operation Federation, it would be appropriate to appoint an independent officer who would give full time in the discharge of his duty.

9. The Note of the Minister, PHE&WS is more than a Certificate in favour of Dolang Akom. It is also a recognition for according approval for appointment of Dolang Akom as the Administrator-cum-Managing Director of the Consumer Co-operation Federation. In this context it would be pertinent to notice that Dolang

Akom is also an Officer like Likha Tejj. He is not an independent officer but has been allowed to function as Administrator-cum-Managing Director in addition to his substantive post as the Agriculture Development Officer (Marketing), Department of Agriculture, Government of Arunachal Pradesh, Yupia.

10. The Note of the Minister, PHE&WS and the observation made therein do not stand vindicated in view of the Note of the Departmental Secretary, which has also been reproduced herein above. There is no gain-saying that there has been interference made by the Minister, PHE&WS resulting in the passing of the Order dated 20.08.2015.

11. Having regard to the above, the moot point for decision is whether the Order dated 20.08.2015 stood vitiated by interference made by the Minister, PHE&WS. In this context, reference is made to the case of *The Purtabpore Co. Ltd. v. Cane Commissioner of Bihar and Others*, reported in 1969 (1) SCC 308 wherein a situation arose where the Chief Minister had interfered in a matter where the Cane Commissioners alone was conferred with the power. The conclusion in the said case was that the Chief Minister had imposed his opinion on the Cane Commissioner, which power was a statutory power exercisable by the Cane Commissioner. The Apex Court held that the Cane Commissioner while exercising that power cannot abdicate his responsibility in favour of any one, not even in favour of the State Government or the Chief Minister. Therefore, it was not proper for the Chief Minister to have interfered with the function of the Cane Commissioner. In the instant case the power is vested with the Registrar of Co-operative Societies but the materials available on record demonstrates that the Minister, PHE&WS imposed his opinion on the Registrar and the Registrar only carried-out the request of the said Minister. The order dated 20.08.2015 do not disclose any independent application of mind on the part of the Registrar of the Co-operative Societies. He should not have abdicated his statutory responsibilities in favour of any one, either the Minister, PHE&WS or any other Minister. Such authorities are not recognised under the provisions of the Arunachal Pradesh Co-operative Societies Act, 1978. In other words, the Registrar could not have absolved himself from his duty to exercise his personal judgment unless there are explicit statutory provisions which operates as binding instructions of a superior. There is none under the said Act.

12. Having regard to the manner in which the Order dated 20.08.2015 had been issued and the role played by the Minister, PHE&WS and also having regard to the fact that the Registrar of Co-operative Societies had merely passed the order without exercising independent judgment, we do not find any infirmity in the judgment and order of the learned Single Judge. We affirm the same and dismiss the present appeal. No costs.