

(2014) 08 GAU CK 0044
In the Gauhati High Court
Case No : W.P. (C) No. 150 (K) of 2010

Lepdensangba

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Constitution of India, 1950 — Article 371A

Citation : (2014) 5 GLT 188

Hon'ble Judges : M.R. Pathak, J

Bench : Single Bench

Advocate : Imti Longchar, V. Soukhrie, Anungla, S. Longkumer and Aien, Advocates for the Appellant; Lucy, G.A., C.T. Jamir, Sr. Advocate, Wati Jamir, N. Longkumer, Akum Jamir, Wati Walling, Imkong Jamir and Temsu Walling, Advocates for the Respondent

Judgement

M.R. Pathak, J.—Heard Mr. Imti Longchar and Mr. Renpemo, learned counsel for the petitioner. Also heard Mrs. Lucy, learned State counsel appearing for the State respondent Nos. 1 to 4 and Mr. C.T. Jamir, learned senior counsel assisted by Mr. Imkong Jamir, learned counsel for the respondent No. 5. The Primary Health Centre (PHC, in short) at Chuchuyimlang, Mokokchung District under the establishment of the Chief Medical Officer (CMO, in short) Mokokchung was established over the land of three land owners, namely, (i) Shri Latongmeren (ii) Shri Aowati and (iii) Late Sunukenkaba's descendent, represented by Shri Takoku-msang.

2. Earlier a dispute arose between the aforesaid three land owners with regard to the appointment to the Grade-IV post at Chuchuyimlang PHC as land donors and as such they on 19.09.2001 resolved that the appointment order dated 31.07.2000 be given to the land owner Mr. Ladongmeren; the next first vacant posts shall be given in favour of Aowati, the 2nd land owner and thereafter, the other two successive vacant posts shall be given to Mr. Takukumsang, the 3rd land owner. Accordingly, the then Civil Surgeon, Assistant Civil Surgeon, Sub-

Divisional Medical Officer, Head Assistant of Civil Surgeon's Office and the UDA of the Civil Surgeon's Office of Mokokchung and the aforesaid three land owners, Mr. Ladong-meren, Mr. Aowati & Mr. Takukumsang signed the said resolution dated 19.09.2001 (Annexure-1 to the petition).

3. The petitioner, namely, Shri Lepden-sangba, son of late Lanulemba claims to be the brother of land owner Shri Takukumsang and to that extent petitioner has annexed a certificate issued by the Chairman of Chuchuyimlang Village Council, Mokok-chung, Nagaland (Annexure-4 to the writ petition).

4. As Smti. Imaktula, Medical Attendant of Chuchuyimlang PHC was to retire on 01.11.2009 on attaining superannuation, the petitioner on 06.11.2009 applied before the respondent No. 3, the Principal Director, Health & Family Welfare Department, Government of Nagaland for the said post of Medical Attendant at Chuchuyimlang PHC under the CMO, Mokokchung claiming as land owner and as per the aforesaid resolution dated 19.09.2001 made between the concerned department and the land owners in the office chamber of the then Civil Surgeon, Mokokchung.

5. The petitioner has also annexed, a declaration dated 05.05.2010 signed and issued by the aforesaid three land owners stating that they do not have any objection with regard to the candidature of the petitioner for the post of Medical Attendant at Chuchuyimlang PHC, since he is the land owner of the said land (Annexure-5 to the writ petition). The petitioner subsequently on 01.06.2010 submitted a representation before the respondent No. 3, i.e. the Principal Director, Directorate of Health & Family Welfare Department to consider his case as land owner and to appoint him against the post felt vacant due to retirement of Smti. Imaktula

6. However, the respondent No. 3, the Principal Director, Directorate of Health & Family Welfare Department, Government of Nagaland by his order No. DHFW-3/117/GR-IV/Mkg/2010 dated 27.08.2010 appointed the private respondent No. 5, Smti Susunungla to the post of Medical Attendant in the PHC at Chuchuyimlang under the establishment of CMO, Mokokchung vice Smti. Imaktula, retired from service on superannuation (Annexure-9 to the writ petition).

7. Being aggrieved with the same, petitioner, Shri Lepdensangba has filed this writ petition praying to set aside & quash the said appointment order dated 27.08.2010 of the respondent No. 5 Smti Susunungla as a Medical Attendant in the PHC at Chuchuyimlang and to consider his case for appointment in the said post as land owner and as per the aforementioned resolution dated 19.09.2001.

8. The main contention of the petitioner is that the respondent No. 5, Smti Susunungla applied for the post of Laboratory Attendant only that fell vacant on 31.10.2009 due to superannuation of one Mr. Supongnukla who was working in the PHC at Chuchuyimlang and she did not apply for the said post of Medical Attendant in the PHC at Chuchuyimlang that was held by Smti. Imaktula. The

petitioner submitted that it is he, who applied before the respondent No. 3, the Principal Director in the Directorate of Health & Family Welfare Department for the said post on 06.11.2009 as a land owner. Petitioner is also aggrieved by the action of the said respondent No. 3, in not giving him appointment to the post of Medical Attendant in the PHC, Chuchuyimlang as land owner by failing to consider the resolution dated 19.09.2001 to which the authorities of the District Medical personnel of the Mokok-chung District and the land owners were the signatories.

9. The respondents contested the matter and filed their affidavits in the case. The State respondent Nos. 1 to 4 in their affidavit submitted that the resolution dated 19.09.2001 (Annexure-1 to the writ petition) was only between the district level personnel of the department concerned and the three land owners only and the same cannot be treated and/or accepted as a resolution or agreement between the land owners and the Government, as the concerned district administration officials are not signatories to it.

10. The State respondents submitted that it is the district administration officer, who has the authority to represent the Government in the concerned district and not the district level departmental officers. It is further submitted that the head of the department concerned as well as the administrative head of the district and others were not aware of the said resolution dated 19.09.2001 annexed to the writ petition by the petitioner as in the said resolution the local officers of the district administration did not represent the Government and as such, the said resolution dated 19.09.2001 cannot be treated as a valid agreement between the land owners and the Government and accordingly it was denied. The State respondents also stated that all the Grade-IV post cannot be allotted to the land owners and the State respondents cannot act upon the alleged agreement dated 19.09.2001 as the same was not made in accordance with the procedure and as per normal practice prevailing in the State wherein the district administration represents the Government and not the district level officer of the concerned department. The State respondents further submitted that the appointment of the respondent No. 5 as Medical Attendant in the PHC at Chuchuyimlang was issued as per the laid down norms in force in the State as she has applied for Grade IV post.

11. The private respondent No. 5 in her affidavit stated that the petitioner cannot claim the post of Medical Attendant in the PHC at Chuchuyimlang on the sole claim as land owner on the basis of the resolution dated 19.09.2001 entered between the district level officers of the department concerned and some land owners including petitioner's alleged uncle one Shri Takukumsang, since neither writ petitioner nor his father was a signatory to the said alleged agreement dated 19.09.2001.

12. The respondent No. 5 further submitted that the certificate issued by the Chairman of the Chuchuyimlang Village Council (Annexure-3 to the writ petition) clearly shows that the petitioner is the son of late Lanulemba, brother of Shri

Takukumsang and as such, the petitioner failed to prove his case for consideration for appointment on the ground of land ownership. The said respondent also stated that the petitioner is only a nephew of the land owner and as such he cannot claim for appointment as land owner.

13. The respondent No. 5 contended that in the year 2003 petitioner's husband purchased a portion of land in which the present PHC at Chuchuyimlang was established from one Shri Korenokdang for a consideration of Rs. 28,500/- who was the original land owner and thereafter an agreement dated 28.09.2003 was executed between the petitioner's husband and said Shri Korenokdang and as such after purchase of said parcel of land by her husband, she has also become one of the land owner of the PHC, Chuchuyimlang. The said respondent No. 5 further contended that though she has applied for the post of Laboratory Assistant the respondent-authorities on consideration of her candidature and educational qualification as well as the land ownership, considered and appointed her to the post of Medical Attendant as she read up to class-VIII, where as the petitioner read only up to class-IV. According to the respondent No. 5 the petitioner has failed to make out any case and as such the writ petition preferred by him is liable to be rejected.

14. The respondent No. 5 submitted that the petitioner does not have any valid claim for consideration of his appointment as a Medical Attendant in the PHC at Chuchuyimlang on the basis of the alleged agreement dated 19.09.2001 as the same cannot be considered as a valid agreement between the Government and the land owners and secondly the petitioner is not the land owner.

15. In the affidavit-in-reply filed by the petitioner submitted that unlike the other States in India, the individual land ownership and its resources are protected by Article 371A of the Constitution of India in the State of Nagaland. The petitioner further submitted that the land wherein the PHC, Chuchuyimlang was established was allowed to be utilized by the department concerned on the basis of the said resolution dated 19.09.2001 and accordingly on the basis of the said resolution, the official respondents already appointed two persons, namely, Shri Sowamongba as Chowkidar and Shri J. Onen as Mali in the department from the side of Mr. Aowati, one of the three land owners and now when the term of landowner Shri Takukumsang came, the State respondents cannot backtrack from its commitment as per resolution dated 19.09.2001 which is binding on both the sides. As such the State respondents is bound to comply with the terms of said resolution dated 19.09.2001. With regard to the application of respondent No. 5, the petitioner submitted that it is clear from the application of the respondent No. 5 itself (Annexure-8 to the petition) that she applied to the post of Laboratory Attendant against the post of held by one Supongnukla, Laboratory Attendant under PHC Chuchuyimlang, who retired from service on 31.10.2009 and without applying for the post of Medical Attendant, the State respondents of its own cannot appoint the respondent No. 5 as a Medical Attendant in the PHC at Chuchuyimlang, which is illegal and clear violation of law.

16. Perused the record placed by the State counsel with regard to the appointment of respondent No. 5. It is seen that the application of the respondent No. 5 and four others were forwarded by the Chairman NIDC & NH Limited and DPDB Mokokchung, the local MLA on 18.10.2009 for the post of LDA, Malaria Inspector, Medical Attendant and Laboratory Attendant that fell vacant under the Health and Family Welfare Department of the State Government owing to retirement of incumbents on completion of 35 years. As per the decision of the Government, a Screening Board was constituted for appointment against the resultant retired vacancies of Grade-IV under the Department of Health and Family Welfare and the said Screening Board consisting of Principal Director, Director (Health), Director (Family Welfare), Joint Director (Administration) and Deputy Director, Department of Health and Family Welfare on 12.08.2010 after scrutinizing the documents of all the applicants recommended 57 persons in the ten districts in the State of Nagaland and in the Directorate including the respondent No. 5 out of nine such Grade-IV persons appointed in the Mokokchung district. Said decision of the Screening Board of the department of Health & Family Welfare dated 12.08.2010 was approved by the Government and thereafter the respondent No. 5 and others were appointed by the impugned order 27.08.2010.

17. On perusal of the resolution dated 19.09.2001, it can be seen that it was signed by the three persons who are alleged to be the land owners where the PHC, Chuchuyimlang was established and officers & personnel from the office of the Civil Surgeon, Mokokchung, wherein the representatives or the State Government & the district administration were not the signatories. Further, the petitioner though stated that the Article 371A protects the individual land ownership and its resources in the State of Nagaland, but he failed to show as to how he is related to the land owner Shri Takokumsang as his direct and clear descendant to claim his appointment on the basis of land ownership. The petitioner has also not denied the allegation of the respondent No. 5 that he is the nephew of the land owner Shri Takokumsang. With regard to the appointment of the respondent No. 5, the respondent authorities through the Screening Board found her eligible along with 56 others for appointment to the Grade-IV post in the department of Health and Family Welfare Department, State of Nagaland and accordingly appointed her as a Medical Attendant in the vacant sectioned post vice Smti. Imaktula retired on superannuation from the PHC, Chuchuyimlang. From the records placed by the Government it is seen that, in the first phase only 57 vacant Grade-IV posts in the department of Health and Family Welfare Department, State of Nagaland have been filled up and accordingly appointments were issued on 27.08.2010.

18. After considering the entire aspect of the matter and hearing the learned counsel for the parties, this Court did not find any illegality with the impugned order dated 27.08.2010 and the Court is of the view that the petitioner has failed to make out any case to interfere with the said impugned order dated 27.08.2010 (annexure-9 to the petition) by which the Respondent No. 3, the

Principal Director, Directorate of Health & Family Welfare Department, Government of Nagaland vide order No. DHFW-3/117/GR-IV/Mkg/2010 appointed the respondent No. 5, Smti Susunungla as a Medical Attendant in the PHC at Chuchuyimlang, Mokokchung.

19. However, petitioner is at liberty to approach the department concerned for consideration of his appointment, if so advised. With the aforesaid observation, this writ petition stands disposed of.