

**(1997) 02 GAU CK 0023**

**In the Gauhati High Court**

**Case No :** Writ Appeal No's. 79, 80, 81, 82, 83, 84, 85 and 86 of 1997 in Civil Rule No's. 188 (K) , 192 (K) , 195 (K) , 197 (K) , 199 (K) , 200 (K) , 201 (K) and 217 (K) of 1996

State of Nagaland and Others

APPELLANT

Vs

Huska Sumi

RESPONDENT

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**Date of Decision :** 05-02-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1997) 3 GLR 131

**Hon'ble Judges :** V. Dutta Gyani, Acting C.J.; D.N. Chowdhury, J

**Bench :** Division Bench

**Advocate :** A.R. Borthakur, A.G., P. Borthakur, P. Khataniar, C.T. Jamir and T. Khro, for the Appellant; D.K. Misra, H. Roy and N. Sinha, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.N. Chowdhury, J.—All the eight appeals were heard together since common question of facts and law were involved. The constitutional role of judicial review is the nub of the matter.

2. The bare bones are outlined below. All the Respondents in this appeal are elected member of the legislative Assembly of Nagaland and moved this High Court mounting its challenge on the respective minutes of the District Planning and Development Boards proceedings. According to the Petitioners (Respondents herein) an economic policy was introduced by the State Government of Nagaland in the year 1992 by way of District Planning Fund Development Scheme. As per the scheme, it was stated inter-alia that an amount of Rs. 50 lakhs were allocated to each constituency in the State of Nagaland for development in the Constituency. The Petitioners in the writ petitions represented some of those constituencies. Pursuance to the aforesaid policy the State Government formulated a guideline for equitable distribution of development funds in the State with sixty Assembly Constituencies as the base units. Decentralised

planning, selection and execution of schemes, mass participation of the people in the Development work, decentralised devolution of funds and need based development at quick pace without involving middlemen are the objectives of the scheme. As per the scheme the District/Sub-Divisional Planning Board was to be re-constituted in each district consisting of M.L.As. Advisers, Nominated members, Heads of Departments with Deputy Commissioner as the Chairman in the District and Additional Deputy Commissioner in the Sub-Divisions; and the District Planning Board was to act as the Nodal Agency to supervise and co-ordinate the district plans. The plans, those prepared at the District Planning Board were to be submitted to the State Planning Board for clearance keeping in mind the need to dovetail the working schemes with the State level plans. The various schemes prepared and approved by the District Planning Board/Sub-Divisional Level Planning Board were to be submitted to the Government at specified time for approval of the State Planning Board and finance concurrence.

The writ Petitioners (Respondents here-in) mounted its attack on the respective minutes of the District Planning Board held on different dates in the month of November, 1996 as arbitrary and discriminatory. According to the writ Petitioners the Scheme submitted by the members of the Legislative Assembly belonging to the ruling party/Government nominees were approved, whereas the scheme submitted by the Members of the Legislative Assembly, other than the ruling party, were not approved. According to the Petitioners there was a hostile discrimination in allocating the State munificence on the footing of the party affiliations. The Respondents submitted its respective affidavits. The Respondents disputed the allegation of discrimination. All the eight writ petitions were taken up together for consideration and upon hearing the respective parties and on perusal of the records the learned Single Judge set aside and quashed the minutes of District Planning Board held on 5.11.96 in Civil Rule No. 188 (K) 1996, Minutes of District Planning Board held on 13.11.96 in Civil Rule No. 195 (K) 1996, minutes of District Planning Board held on 15.11.96 in Civil Rule No. 197 (K) 1996; minutes of District Planning Board held on 5.11.96 in Civil Rule No. 192 (K) 1996; and the minutes of the District Planning Board held 19.11.96 in Civil Rule No. 217 (K) 1996 with regard to 70% of the sanctioned amount was set aside and quashed and remitted to the respective District Planning Board for examination of the schemes afresh in accordance with the guidelines. Hence the appeals.

3. Mr. A.R. Borthakur, learned Advocate General of the State of Nagaland, assisted by Sri P. Borthakur, Sri P. Khatoniar, Sri C.I. Jamir and Miss T. Khro, impugned the decision of the learned Single Judge mainly on the grounds set out below:

Mr. Borthakur, learned Advocate General, firstly submitted that the scope of judicial review under Article 226 of the Constitution of India was limited and such powers can only be exercised against unlawful actions and not otherwise. High Court while exercising the powers under Article 226 of the Constitution of India

exceeded its jurisdiction into the reasonableness of the merits of the decisions submitted Mr. Borthakur. The learned Counsel further urged that the subject matter involved in the writ proceeding were relating to an area requiring indepth examination of the factual matrix for administrative judgment, leaving wide choices on the authorities when the choices of the executive was within the confines of reasonableness, it was not left to the Court to prove further into the merits, submitted the learned Advocate General.

Mr. D.K. Misra, learned Counsel for the Respondents in these appeal petitions, (sic)sted by Mr. H. Roy and Mr. N. Sinha, on the other hand, supported the judgment of the learned single judge. The learned Single Judge on evaluation of the facts situation passed the direction in the public interest and thereof the appellate Court (sic)ht not to readily interfere in this matter, urged Mr. D.K. Misra. The learned Counsel further submitted that the exercise of discretion by the Governmental agency were to be performed lawfully and reasonably.

4. The Constitutional role of judicial review is mainly confined on the decision making process. It is not to be concerned with the merits of the case or with the justice or injustice of the rules. It mainly pertains with the manner in which decisions are taken. The enquiry is limited to the extent as to whether the decision making authority acted within the limits of its power. The purpose of judicial review is to ensure that the statutory or discretionary powers are lawfully exercised by the competent authority. "Judicial review is not an appeal from a decision but a review of manner in which the decision was made," recalled Lord Brightman in *Chief Constable of North Wales Police v. Evans* reported in 1982 3 All ER 141 Article 226 of the Constitution of India conferred upon the High Courts to exercise supervisory jurisdiction over the proceedings and actions of the subordinate Courts, Tribunals or authorities, who are charged with any performance of public action duties. In the words of Lord Hailshman of St. Marleybone LC in *Chief Constable of North Wales Police v. Evans* (supra). "The purpose of judicial review is to ensure that the individual receives a fair treatment and not to ensure that the authority after fair treatment reaches on a matter which it is authorised or enjoined by law to decide for uself a conclusion which is correct in the eyes of the Court."

The respective wings of the democratic set up are free to exercise its corresponding jurisdiction within its own domain. The administrative bodies while thus exercise its administrative functions possesses a certain measure "fair play in the joints" and unless the decision is seemingly arbitrary and discriminatory it is not for the Court to usurp its discretion. The administrative authority ought to be allowed to exercise its power within its domain. The extent and contour of Judicial review was examined in *Tata Cellular v. Union of India* reported in *Tata Cellular Vs. Union of India*, Some of the relevant principles laid down therein are culled down below:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

5. We have given our careful consideration on the matter. The learned Single Judge, upon consideration of the deliberation of the Board, found arbitrariness in the "division of 50/50 of fund allotted under the scheme between the elected representatives and the Government nominees not only dehors the guidelines but also on the directive of Adviser." We have also given our ardent consideration on the guidelines. The guidelines are meant for distribution of the public money to the people in general but those guidelines do not provide any distribution of funds to the members of the Legislative Assembly as such. The Public money is to be distributed to the beneficiaries of the scheme and under no circumstances it confer any right to the Members of the Legislative Assembly. The Government largesse is required to percolate to the beneficiaries for which the public money is earmarked and whether the funds in fact reach the beneficiaries can be taken care of in an appropriate proceedings. The framing of policies, including state economic policy, are matters primarily rest on the political judgment. The decisions which shape these as well as the decision making process for implementing its policy depends on political sagacity, administrative expertise and other impendable issues. On perusal of the materials on record those are made available, the distribution of the fund is yet to take its final shape. The decisions as regards the distribution of funds can also be effectively raised, debated, approved or disapproved on their merits in the floor of the Legislative Assembly. The Court does not possess the expertise as well as the resources to evaluate the merits of such decision. On examination of all the aspects of the matter we could not persuade ourselves to hold that the discretion exercised by the authority is demonstratively unreasonable in the public law sense.

The guidelines, in our considered opinion, are directory in nature and every breach of guidelines cannot invalidate an executive action. The writ Court is not concerned with each and every technical breach. Within the area of the legal bounds there is scope for profound dissimilarity of point of view. It is worthwhile to rehearse the following passage of Prof. Wade from his "Administrative Law" (6th Edn, page 409)- "There is ample room, within the legal boundaries, for radical differences of opinion in which neither side is unreasonable. A number of statements to this effect were made in the Court of Appeal and the House of Lords in the case of Tameside schools, discussed below. Lord Denning MR pointed out the error of confusing differences of opinion, however strong, with unreasonableness on the part of one side or the other. One party may call the other "quite unreasonable" when he is well within the legal limits of

reasonableness. This was the distinction which the Secretary of State failed to make, as the House of Lords emphatically confirmed. Lord Diplock said:

The very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred.

In the same vein Lord Hailsham LC has said that "not every reasonable exercise of judgment is right, and not every mistaken exercise of judgment is unreasonable." We have examined ourselves the materials on record, as were made available in the writ proceeding and on consideration of the materials on record we could not discern any arbitrariness in the impugned action and that the public funds were doled out according to the political hues. As the matters are yet to be finally scrutinised by the State Planning Board it would be appropriate for us not to make any further comment at this stage.

We have recorded the statements submitted by the learned Advocate General Mr. A.R. Borthakur that the entire matter would be submitted before the State Planning Board and Finance and which shall make in depth evaluation of the matter and see that funds under the scheme reaches the beneficiaries without any discrimination.

Upon considering the facts situation, we, therefore, set aside the orders and directions in paragraph 14 of the judgment passed by the learned Single Judge on 29.1.97. We are however, in full agreement with the learned Single Judge that the beneficiaries of the State largesse which are meant for the needy people should reach the community at large. We also associate ourself with the observation of the learned Single Judge that the salubrious advantage of the scheme should percolate to the genuine persons. Hope springs eternal in the human breast. With the learned Single Judge, we hope and trust that the Appellant State and each of those who are associated with disbursement of the public largesse shall take appropriate care for the right use of the public money and thereby discharge its trust and obligation that they owe to the natural and straightforward people of Nagaland who are unfamiliar with the art of duplicity and craftiness.

The Writ Appeals are allowed to the extent indicated. All the eight Writ petitions stands dismissed but under the circumstances without costs.