

(1996) 05 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeal No"s. 8247 with 8248 of 1996, (arising out of SLP (Civil) No"s. 2904 with 3293 of 1995)

Tagin Litin

APPELLANT

Vs

State of Arunachal Pradesh and another

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Citation : (1996) 5 AD 180 : AIR 1996 SC 2121 : (1996) 5 JT 673 : (1996) LabIC 1812 : (1996) 4 SCALE 548 : (1996) 5 SCC 83 : (1996) 2 SCR 745 Supp : (1996) 3 SLJ 57

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Advocate : Shahid Rizvi and Sudhanshu Atreya, for the Appellant; K.K. Vevugopal, N. Saibia, Pratibha Jain Advs., for the Respondent

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—Leave granted.

2. These appeals arise out Writ Petition (Civil) No. 2035 of 1994 filed by Ojom Libang (hereinafter referred to as 'the petitioner') which was disposed of by the Gauhati High Court by judgment dated September 27, 1994. They relate to appointment on the post of Head Gaonburah of Simong village in the East Siang district of Arunachal Pradesh.

3. In the North East Frontier Tract, which was earlier administered by the North East Frontier Agency, and is now known as State of Arunachal Pradesh, there is a two tier system of administration of justice governed by the Assam Frontier (Administration of Justice) Regulation, 1945 (hereinafter referred to as 'the Regulation') whereunder the executive and the judiciary have been rolled into one. The Deputy Commissioner and the Assistant Commissioner form the upper tier and the village authority the lower tier. The status of village authority is conferred on the Gaonburah who has the power to apprehend culprits who

committed heinous offences and try persons committing non-heinous crimes. Each village had at least two Gaonburahs but in big villages the number may go up. One of them is designated as the Head Gaonburah. Under Clause 5(1) of the Regulation the Deputy Commissioner has been conferred the power to appoint members of the village authority and in exercise of the said power he appoints the Gaonburahs.

4. The village authority of Simong village consists of 24 Gaonburahs. There is a Head Gaonburah and a Second Head Gaonburah. On account of the death of the Head Gaonburah in 1993 and Second head Gaonburah in 1990, the posts of the Head Gaonburah and Second Head Gaonburah fell vacant. On January 17, 1994, a representation signed by 5 members of Gaon Panchayat, 2 members of Anchal Samity and 8 Gaonburahs of the Simong village was submitted to the Deputy Commissioner, Pasighat recommending the name of the petitioner for the post of Head Gaonburah and Shri Atteng Sitek for the post of Second Head Gaonburah of village Simong on the basis of their seniority in age and experience. On the basis of the said representation a note dated January 27, 1994 was put up before the Deputy Commissioner for approval of the names of the petitioner as Head Gaonburah and Shri Atteng Sitek as Second Head Gaonburah. On January 31, 1994, the Deputy Commissioner approved the said proposal and passed an order for issuing appointment orders. On the basis of the said order a W.T. message was sent to the Additional Deputy Commissioner, Yingkiong, on February 15, 1994 directing him to inform the petitioner and Shri Atteng Sitek of the approval of their names for Head Gaonburah and Second Head Gaonburah of Simong village from January 31, 1994. In the meantime, another representation dated January 27, 1994 was submitted by 16 Gaonburahs of village Simong and 4 members of the Panchayat recommending the name of Tagin Litin for appointment on the post of Head Gaonburah of the village on the basis of his knowledge in customary law and recognition of his outstanding social services. Other representations were also made by a number of Gaonburahs and Head Gaonburahs of adjoining villages and other prominent members of Yingkiong circle recommending the name of Tegin Litin for the post of Head Gaonburah of village Simong. These representations were received by the Deputy Commissioner on January 31, 1994. After considering the said representations, the Deputy Commissioner sent a WT message dated March 8, 1994 to the additional Deputy Commissioner, Yingkiong where in it was stated that no formal appointment orders for the petitioner and Shri Atteng Sitek had been issued from his office since no such order was issued earlier in other cases also and that the only correspondence in this regard was the WT message of February 15, 1994. In the said WT message dated March 8 1994, it was stated :

HENCE AS SAID BY YOU THEIR APPOINTMENT BE KEPT IN ABEYANCE FOR THE BEING.

5. Thereafter, the Additional Deputy Commissioner, Yingkiong, after making the necessary enquiries and after assessing the relative merits of the candidates

submitted a report dated April 8, 1994, where in he recommended the name of Tagin Litin for appointment as Head Gaonburah and the petitioner as Section Head Gaonburah of village Simong. The said recommendation of the Additional Deputy Commissioner was accepted by the Deputy Commissioner and by WT message dated April 19, 1994, the Additional Deputy Commissioner, Yingkiong, was informed that Tagin Litin and the petitioner had been appointed as Head Gaonburah and Second head Gaonburah respectively of Simong village and that concerned persons may be informed. A copy of the said WT message dated April 19, 1994 was also sent to Tagin Litin and the petitioner and at the Gaonburahs of Simong village by the Additional Deputy Commissioner, Yingkiong. Feeling aggrieved by the said order dated April 19, 1994 which was communicated on April 22, 1994, the petitioner filed the writ petition, which has given rise to these appeals, wherein he assailed the order as contained in WT message dated April 19, 1994 regarding appointment of Tagin Litin as Head Gaonburah of Simong village and has prayed that the petitioner may be allowed to continue to function as Head Gaonburah of Simong village. The said writ petition filed by the petitioner has been allowed by the High Court by the impugned judgment.

6. The High Court has held that on January 31, 1994 an order had been passed by the Deputy Commissioner for the issuance of appointment order regarding the appointment of the petitioner as Head Gaonburah of Simong village and that, in fact, appointment order was issued appointing the petitioner as Head Gaonburah of Simong village by issuing the WT message dated February 15, 1994 under Clause 5 of the Regulation. The High Court has further held that the petitioner was holding a civil post and he could not be removed from the same without affording an opportunity and that the order of appointment of Tagin Litin as Head Gaonburah and the petitioner as Second Head Gaonburah amounts to removing the petitioner from the post of Head Gaonburah which he was holding and, therefore, the order contained in the WT message dated April 19, 1994 regarding appointment of Tagin Litin as Head Gaonburah was liable to be quashed and the petitioner would be entitled to act as Head Gaonburah of Simong village as per earlier the WT message dated February 15, 1994.

7. The question that falls for consideration is whether by order dated February 15, 1994 the petitioner has been appointed as Head Gaonburah and by order dated April 19, 1994 he has been removed from the said post. The original records were placed before the High Court and on consideration of the same the High Court has found that on January 31, 1994 a note was put up before the Deputy Commissioner that the name of petitioner may be approved for Head Gaonburah and of Shri Atteng Sitek for Second Head Gaonburah since vacancies had arisen due to demise of the Head Gaonburah and Second Head Gaonburah of Simong village and that on January 31, 1994 the Deputy Commissioner had approved the said proposal and had passed an order "Issue appointment order". This was followed by WT message dated February 15, 1994 from the office of the Deputy Commissioner to the Additional Deputy Commissioner, Yingkiong. The said WT message is as follows :

NO. HT-(J)-14/PT-II DTD 15/2 (.) PLEASE INFORM SHRI OJOM LIBANG AND SHRI ATTENG SITEK FOR APPROVE OF HEAD GB AND 2ND GB OF SIMONG VILLAGE FROM 31.1.94. SHRI OJOM LIBANG H/GAM, ATTENG SITEK 2ND GAM.

8. Subsequently, the representations for appointment of Tagin Litin were considered and WT message dated March 8, 1994 was sent from the office of the Deputy Commissioner to the Additional Deputy Commissioner. The said WT message is as follows :

NO. HT(J) 14/PT-II 8/3 (.) I AM DIRECTED TO INFORM YOU THAT NO FORMAL APPOINTMENT ORDERS FOR SRI OJOM LIBANG AND SRI ATTENG SITEK HAVE BEEN ISSUED FROM THIS OFFICE (.) SINCE NO SUCH ORDER WAS ISSUED EARLIER IN OTHER CASES ALSO (.) THE ONLY CORRESPONDENCE REG THE SAM WAS THE W/T MESSAGE OF 15.2.94 ADDRESSED TO YOU (.) HENCE AS SAID BY YOU THEIR APPOINTMENT BE KEPT IN ABEYANCE THE TIME BEING.

9. This was followed by WT message April 19, 1994 from the office of the Deputy Commissioner to the Additional Deputy Commissioner which is as under :

NO. HT(J)-14/PT-II DTD 19.4 (.) SHRI TAGIN LITIN AND SHRI OJOM LIBANG APPOINTED AS HEAD GAM AND SECOND HEAD GB OF SIMONG VILLAGE (.) INFORM THE CONCERNED PERSONS (.)

10. The case of the petitioner is that he had been appointed as Head Gaonburah by the Deputy Commissioner when he passed the order on January 31, 1994 approving the proposal for such appointment and directing that appointment orders be issued and that the WT message dated February 15, 1994 sent from the office of the Deputy Commissioner to the Additional Deputy Commissioner was the order of appointment of the petitioner as Head Gaonburah.

11. It is settled law that, in order to be effective, an order passed by the State or its functionaries must be communicated to the person who would be affected by that order and until the order is so communicated the said order is only provisional in character and it would be open to the concerned authority to reconsider the matter and alter or rescind the order. (See : Bachhiltar Singh v. The State of Punjab [1962] Supp. 3 SCR 713).

12. Here we are concerned with appointment to a post. An appointment to a post or office postulates-

- (a) a decision by the competent authority to appoint a particular person;
- (b) incorporation of the said decision in an order of appointment; and
- (c) communication of the order of appointment to the person who is being appointed.

13. All the three requirements must be fulfilled for an appointment to be effective.

14. As noticed earlier, in the instant case the Deputy Commissioner, who was the

competent authority under the Regulation, had passed an order on January 31, 1994 approving the appointment of the petitioner and Shri Atteng Sitek as Head Gaonburah and Second Head Gaonburah of Simong village and had directed that appointment order be issued. Thereafter the WT message dated February 15, 1994 was sent to the Additional Deputy Commissioner to inform the petitioner and Shri Atteng Sitek about the approval of their appointment as Head Gaonburah and Second Head Gaonburah of Simong village from January 31, 1994. WT message dated March 8, 1994, which was subsequently sent from the office of the Deputy Commissioner to the Additional Deputy Commissioner records that no formal order for appointment of the petitioner and Shri Atteng Sitek had been issued from the office since no such order was issued earlier in other cases also and that the only correspondence regarding the same was the WT message dated February 15, 1994 addressed by the Deputy Commissioner to the Additional Deputy Commissioner. In view of the said statement in WT message March 8, 1994 the WT message dated February 15, 1994 has to be treated as the order regarding appointment of the petitioner as Head Gaonburah of Simong village. Conditions (a) and (b) aforementioned for appointment on a post or office were, therefore, satisfied in the present case. The only question is whether condition (c) had been satisfied before the passing of the order dated April, 19, 1994 whereby Tagin Litin was appointed as Head Gaonburah and the petitioner was appointed as Second Head Gaonburah of Simong village. In this context, it may be stated that by the WT message dated March 8, 1994 it was directed that the appointment of the petitioner and Shri Atteng Sitek as per WT message dated February 15, 1994 "be kept in abeyance for the time being".

15. It is, therefore, necessary to determine whether the said order of appointment as contained in the WT message dated February 15, 1994 had become effective by having been communicated to the petitioner prior to March 8, 1994. It is no doubt true that by WT message dated February 15, 1994 the Additional Deputy Commissioner was directed to inform the petitioner about approval of his appointment as Head Gaonburah from January 31, 1994. There is, however, nothing to show that the said order was actually communicated by the Additional Deputy Commissioner to the petitioner. In paragraph 13 of the Writ Petition filed before the High Court the petitioner had asserted that the petitioner was informed about the said appointment by WT message dated February 15, 1994. But in the affidavit-in-opposition of Shri Rakhal Chandra Deb Nath filed on behalf of the State of Arunachal Pradesh, the Deputy Commissioner and the Additional Deputy Commissioner, in reply to the said assertion in paragraph 13 of the writ petition it has been denied that the petitioner was informed about his appointment as Head Gaonburah. In the said affidavit-in-opposition, it is stated that on February 5, 1994 the Extra Assistant Commissioner, Viang Kiong had addressed a letter to the Deputy Commissioner stating the relevant facts and also indicating the rival claims of the petitioner and Tagin Litin for the post of Head Gaonburah and sought for necessary advice for a fair selection for the post of Head Gaonburah and that on the receipt of the

above letter the Deputy Commissioner decided to keep in abeyance the process of consideration of the case of Tagin Litin and to review the issue of a free and fair selection for appointment to the post of Head Gaonburah and thereafter WT message dated March 8, 1994 was sent by the Deputy Commissioner to the Additional Deputy Commissioner to keep in abeyance the appointment of the petitioner and Shri Atteng Sitek. The WT message dated March 8, 1994 also lends support to the said assertion in the said affidavit-in-opposition filed in the High Court because the said message makes a mention of the fact that the Additional Deputy Commissioner had given a suggestion for keeping the appointment of the petitioner and Shri Atteng Sitek in abeyance for the time being and the said suggestion and had been accepted by the Deputy Commissioner. This would indicate that prior to issuance of WT message dated March 8, 1994 the information regarding appointment of the petitioner as Head Gaonburah as contained in WT message dated February 15, 1994 was not communicated to the petitioner. There is no question of any such communication being made to him after March 8, 1994 because in WT message dated March 3, 1994 there was a clear direction that the said appointment be kept in abeyance. In these circumstances it must be held that prior to the issuance of the order dated April 19, 1994, there was no communication of the order dated February 15, 1994 to the petitioner with regard to his appointment as Head Gaonburah of Simong village. In the absence of any such communication, the said order of appointment had not come into effect and the order dated April 19, 1994, whereby Tagin Litin was appointed as Head Gaonburah and the petitioner was appointed as Second Head Gaonburah cannot be regarded as an order for removal of the petitioner as Head Gaonburah. The impugned judgment of the High Court setting aside the order dated April 19, 1994 regarding appointment of Tagin Litin as Head Gaonburah and the petitioner as Second Head Gaonburah and directing that the petitioner should be treated as Head Gaonburah by virtue of WT message dated February 15, 1994 cannot, therefore, be upheld and has to be set aside.

16. In the result, the appeals are allowed, the impugned judgment of the High Court dated September 27, 1994 is set aside and Civil Rule No. 2035 of 1994 filed by the petitioner before the Gauhati High Court is dismissed. In the circumstances there is no order as to costs.