
(2004) 03 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (C) No. 267 (AP) of 2003

Takam Sanjay

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLT 392

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : T. Michi, for the Appellant; C.K. Sarma Baruah, A.G.A.P., for the Respondent

Final Decision : Dismissed

Judgement

B. Lamare, J.—Heard Mr. T. Michi, learned Counsel for the Petitioner and Mr. C.K. Sarma Baruah, learned Advocate General, Arunachal Pradesh assisted by Mr. B.L. Singh for the Respondents.

2. The State Government of Arunachal Pradesh in exercise of power under the Arunachal Pradesh (Re-organisation of Districts) (Amendment) Act, 2000 issued a notification dated 28.6.2000 whereby a new district of Kurung Kumey was constituted. On constitution of the new district, the Cabinet in its meeting dated 2.3.2000 decided that Koloriang will function as the temporary headquarter for the new district till the full-fledged district headquarter comes up at Laaying-Yangte. The notification dated 3.5.01 was also issued declaring Laaying-Yangte as twin-District Headquarter of Kurung Kumey district with immediate effect.

3. However, contrary to the said Cabinet decision and the notification issued thereunder, the Respondent No. 2 the Chief Secretary, Govt of Arunachal Pradesh, Itanagar issued a notification dated 20.11.02 whereby it was directed for temporary establishment of Kurung Kumey District headquarters at Palin, till all the infrastructures are made available at Laaying-Yangte permanent District

Headquarters of Kurung Kumey district. Subsequently, the notification dated 20.11.02 was modified by notification dated 12.8.03 whereby the temporary headquarter of the district was transferred from Palin to Koloriang.

4. The present Petitioner who is a Member of the Legislative Assembly of the State has approached this Court by this petition for quashing the said impugned notification dated 12.8.2003 shifting the temporary District Headquarter (HQ) from Palin to Koloriang. The question to be seen is therefore whether the said impugned notification is as per the Govt, policy or not.

5. Mr. Michi, learned Counsel for the Petitioner submitted that the Petitioner as a representative of the district in the Assembly has taken the cause of the people by approaching this Court in this writ petition. It is also submitted that after the notification dated 20.11.02 was issued making Palin as temporary district Headquarter, all the infrastructures and arrangements were made available to the establishment of temporary district headquarter at Palin and consequently, the orders dated 2.7.03, and the plan allocation dated 16.12.02 and the order dated 18.12.02 for transferring the staff were issued. However, after all the arrangements were made the impugned notification was issued directing the transfer of district headquarter from Palin to Koloriang. Therefore, according to the counsel huge loss has been caused to the public exchequer and as such the impugned order was issued against the public interest and at the political instance.

6. Mr. Sarma Buruah, learned Advocate General on the other hand contended that after the Cabinet decision dated 2.3.2000 was made, a temporary district headquarter was supposed to be established at Koloriang. However, contrary to the Cabinet decision, the notification dated 20.11.02 was issued making Palin as temporary district headquarter instead of Koloriang. Therefore, the learned Counsel contended that issuance of the notification dated 20.11.02 is contrary to the Cabinet decision so also the subsequent orders issued for making Palin a temporary district Headquarter were also issued not in accordance with the Cabinet decision. It is also contended that the impugned notification dated 12.8.03 transferring the temporary headquarter from Palin to Koloriang was issued in accordance with the Cabinet decision.

7. It is no doubt that the Petitioner is a Member of the Legislative Assembly and the grievance of the Petitioner in this petition is stated in paragraph 7 of the writ petition which reads as follows:

7. That the Petitioner submits herewith that in pursuance of the Govt, order DAD-30/98 dated 20.11.2002 issued by the Chief Secretary to the Govt, of Arunachal Pradesh, Itanagar, the Deputy Commissioner, Kurung Kumey District vide his office order No. 7844/95 dated 2.7.2003 order for shifting of temporary District Head quarter Kurung Kumey District to Palin with all the posted office staffs, office materials and filed. Accordingly and in terms of the order dated 2.7.03, temporary Headquarter of Kurung Kumey District was shifted and

established at Palin with rank file which is now smoothly functioning at Palin. However, the Respondent authority without the knowledge of the people of Palin and other area most sarcastically issued the impugned office notification No. DAD-30/ 98 dated 12.8.03, transferring the temporary establishment of Kurung Kumey District Headquarter from Palin to Koloriang at the behest of some political leaders which is most arbitrary and without interest of public service which needs to be set aside and quashed.

8. From the above statement made by the Petitioner it only reveals that the Petitioner is concerned that after the order dated 20.11.02 was issued by the Chief Secretary, Govt, of Arunachal Pradesh, the Deputy Commissioner, Kurung Kumey has issued orders for making Palin as temporary district headquarter with all the building, staff and materials and accordingly the temporary district Headquarter started functioning at Palin. However, by transferring the district headquarter from Palin to Koloriang, the people of Palin and other areas would suffer. From the statement made by the Petitioner it is also seen that the decision to shift the temporary headquarter from Palin to Koloriang is at the behest of the political leaders. From the above statement it is seen that no legal or fundamental rights of the Petitioner has been affected to call for a direction from this Court to exercise its power under Article 226 of the Constitution. Moreover, the Petitioner in this case has sought for issue of writ of Mandamus or Certiorari from this Court. In the writ petition the Petitioner has never mentioned that he had made representation to the Government nor he has made any demand to the State Government to retain the temporary headquarter at Palin. The writ petition is also silent about the Petitioner approaching the authority in this regard and the authorities have failed to meet the demands of the Petitioner so as to enable this Court to exercise the power of writ jurisdiction for issue of Mandamus or Certiorari. The Petitioner therefore has no legal or fundamental right to approach this Court for exercise of power under Article 226 of the Constitution.

9. The next point to be seen is that the transfer of the temporary headquarter from Palin to Koloriang as per the impugned notification dated 12.8.03 is in accordance with the Govt, policy. The Cabinet decision taken on 2.3.2000 clearly shows that the temporary district HQ is to be at Koloriang till a full-fledged district HQ at Laaying-Yangte is established. The notification dated 20.11.02 making Palin as temporary HQ was not issued in accordance with the said Cabinet decision. On the other hand the same was issued only on report of the Deputy Commissioner, Kurung Kumey submitted to the Chief Secretary, Govt, of Arunachal Pradesh. The Chief Secretary cannot supersede the Cabinet decision as the State Cabinet decision is still in force till date. Therefore, issuance of the notification dated 12.8.03 is as per the Cabinet decision and which is also as per the policy of the Govt, till permanent HQ is established at Laaying-Yangte.

10. The Apex Court in the case of G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, in paragraphs 23 and 26 of the judgment has held

as follows:

23. In regard to courts and policy we might recall the following words of a learned author. "The courts are kept out of the lush field of administrative policy except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, "something overwhelming" must appear before the court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The courts are not very good at formulating or evaluating policy. Sometimes when the courts have intervened on policy grounds, the court's view of the range of policies open under the statute or of what is unreasonable policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the court's opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected government or of expert administrators....

26. In the ever increasing of tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the state should be held permissible. Referring to the "Role of the Judge in Public Law Litigation" a learned author says:

Administrative law is, in essence, a search for a theory of how public policy should be made. Two powerful traditions mark the boundaries of that search. On one side, we leave the choice among competing values to a largely unstructured process of pulling and hauling by individuals directly accountable to the citizenry. On the other side, we demand a highly structured process of party-controlled proof and argument before a neutral arbiter to resolve disputes over the application or rules to specific facts. Between these extremes is that vast landscape we call policy making-the reconciliation and elaboration of lofty values into operational guidelines for the daily conduct of society's business.

It appears to us that in the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The contention that the project is ultravires of the powers of the Municipal Council does not appeal to us.

11. Similarly in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, in paragraphs 45 and 46 of the judgment held as follows:

45. In Narmada Bachao Andolan v. Union of India there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p. 762 as follows: (SCC para 229) "229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policymaking process and the courts are ill-equipped to adjudicate on the policy decision so

undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."

46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

12. The State Govt, is empowered under the Act to constitute the districts within the State. This power therefore flows to the extent that the State Govt, may make a policy decision to constitute a new district and to determine the area, population and the headquarter of the newly constituted district. The constitution of a district is in accordance with the administrative convenience in the State and for bringing the administration to the close door of the populace. Thus the matter is purely within the policy decision of the Govt. in power. An elected Govt. in a democracy is the sole authority in the matter and it is well within the domain and wisdom of the Govt, to decide the matter in this regard. The interference by the Court in the matter is therefore very limited and the Court will interfere only if the action is against the mandate of Constitutional provisions.

13. In the instant case, the decision to create a new district was done by the Respondents in terms of the Act framed by the State. After creation of the new district the Cabinet has taken a decision to have temporary district HQ at Koloriang and thereafter after completing of the infrastructures at Laaying Yangte, the permanent district HQ shall be shifted to Laaying-Yangte. There is no other Cabinet decision to change the temporary headquarter of the newly created district of Kurung Kumey. The notification dated 20.11.02 was issued in contravention of the Cabinet decision and therefore this notification cannot hold the field as the Chief Secretary in issuing the said notification cannot over ride the said Cabinet decision. The Notification which has been issued in accordance with the Cabinet decision is the notification dated 12.8.03 transferring the district HQ from Palin to Koloriang. Therefore, the issuance of notification dated 12.8.03 is proper and it is made in accordance with the policy decision of the Government.

14. For the aforesaid reasons I find no merit in this petition and accordingly it is dismissed. However, considering the facts and circumstances of the case there is no order as to costs.