

(2002) 08 GAU CK 0021

Gauhati High Court (Itanagar Bench)

Case No: WP (C) No. 252 (AP) of 2002

Jidam Hiri

APPELLANT

Vs

State of Arunachal Pradesh and
Others

RESPONDENT

Date of Decision: Aug. 8, 2002

Citation: (2003) 1 GLR 286 : (2003) 1 GLT 358

Hon'ble Judges: Iqbal Ahmed Ansari, J

Bench: Single Bench

Advocate: Licha Sera, for the Appellant; G.A., for the Respondent

Judgement

I.A. Ansari, J.

By this application made under Article 226 of the Constitution of India, the petitioner, a Junior Inspector of Co-operative Societies (in short, "JICs") in the office of the Assistant Registrar, Co-operative Societies, Daporijo, P.O. and P.S. Daporijo, District Upper Subansiri, Arunachal Pradesh, has approached this Court with prayer to set aside and quash the order No. COOP(GEN)2/2001, dated 15.1.2002 (Annexure II to the writ petition) issued by the respondent No. 2, namely. Registrar, Co-operative Societies, Govt. of Arunachal Pradesh, whereby Shri L. Rigia, JICs has been appointed to function as Managing Director of Dapo Lamp Ltd., Daporijo, Upper Subansiri District Arunachal Pradesh, in place of the present petitioner.

2. In a nutshell, petitioner"s case runs thus : The petitioner was appointed in the year 1996, as a Junior Inspector of Co-operative Societies (JICs), whereas the private respondent No. 4 joined as JICs in the year 1997. The private respondent No. 4 is, thus junior to the petitioner. The societies registered under the Societies Registration Act, 1978 (as extended to the State of Arunachal Pradesh) are managed and run by Senior Inspector of Co-operative Societies (in short, "SICs"), JICs or Assistant Registrar of Co-operative Societies (in short "ARCS"). The petitioner has been functioning as Managing Director of Lapo Lamp Ltd., Daporijo, Upper Subansiri District, Arunachal Pradesh (hereinafter referred to as "the said Society")

since the month of May, 1999, upon having received, charge thereof from a SICS. The petitioner's father is an active member of Arunachal Congress and in that view of the matter, Shri Nyato Rigia, a member of Legislative Assembly (MLA) of Arunachal Pradesh, requested the Registrar, Co-operative Societies, to issue/pass an order handing over the post of Managing Director of the said Society to one Shri L. Rigia, a cousin of Shri Nyato Rigia aforementioned. As this request was not acted upon, Shri Nyato Rigia wrote a letter, on his personal pad, to the Chief Minister of Arunachal Pradesh, on 24.12.2001, repeating his request to remove the petitioner from the said post. This letter was endorsed to the Minister of Co-operative Societies and the same, eventually, reached the office of the Registrar, Cooperative Societies. In this letter, Shri Nyato Rigia has alleged that the petitioner is a strong supporter of Arunachal Congress, his father is also a Central Executive member and, thus, making such vague allegation, with the object of harassing the petitioner and to get the petitioner relieved of his said post of Managing Director, suggested that the petitioner should be transferred, though the petitioner never took any active part in politics and he is a dedicated Govt. employee having no adverse remark in his service career. Under resistant request and pressure of Shri Nyato Rigia, respondent No. 2, namely. Registrar of the Co-operative Societies had to pass the order No. COOP(GEN)2/2002, dated 15.1.2002 (Annexure II to the Writ Petition) directing the petitioner to hand over charge of the post of Managing Director of the said Society to Sri L. Rigia, aforementioned, who is junior to the petitioner in the same cadre. The removal of the petitioner from the said post of Managing Director was, thus, arbitrary, mala fide and on wholly extraneous considerations. Subsequently, on the strength of W.T. Message No. COOP(GEN)2/ 2001, dated 20.2.2002 (Annexure III to the writ petition) issued by the office of the respondent No. 2, the petitioner was allowed to continue as Managing Director of the said Society. However, Sri Nyato Rigia aforementioned wrote another letter, on 10.4.2002, to the Chief Minister of Arunachal Pradesh, which was endorsed to the respondent No. 2, alleging to the effect that the petitioner had manipulated and managed to remain as the Managing Director of the said Society. In consequence of this letter, another Fax Message, dated 27.5.2002, (Annexure V to the writ petition) has been issued to the-respondent No. 3, namely, the Assistant Registrar, Co-operative Societies, by the respondent No. 2 asking the respondent No. 3 to direct the petitioner to hand over the charge of the post of Managing Director of the said Society to Sri L. Rigia aforementioned. The petitioner has accordingly approached this Court for setting aside and quashing the order, dated 15.1.2002, aforementioned, whereby Sri L. Rigia was appointed as Managing Director of the said Society and the petitioner was directed to hand over the charge to Sri L. Rigia aforementioned.

3. The State respondents have not contested this case, but the private respondent No. 4, viz., Sri L. Rigia has filed an application for modification/vacation of the interim direction passed in this case suspending the impugned order, dated 15.1.2002, aforementioned and this application has been treated, with the consent

of the parties concerned, as the affidavit-in-opposition of the respondent No. 4 in the main writ petition and as agreed to by learned counsel for the parties, this writ petition is disposed of on merit.

4. I have carefully perused the materials on record. I have heard Mr. L. Sera, learned counsel for the petitioner, and Mr. R.H. Nabam, learned Additional Senior Government Advocate appearing on behalf of State respondents. I have also heard Mr. T. Michi, learned counsel appearing for the private respondent No. 4.

5. It has been submitted, on behalf of the petitioner, that the appointment of the private respondent No. 4 as Managing Director of the said Society and removal of the petitioner from the said post was not in public interest but actuated by malice on political considerations inasmuch as it is on the basis of repeated/insistent requests of Sri Nyato Rigia. M.L.A., aforementioned, that the petitioner has been removed from the said post of Managing Director. Such action, based entirely on extraneous considerations, will, if allowed to stand good on record, contends Mr. Sera, be negation of rule of law. Reference in this regard is made by Mr. Sera to Ishaque Ali Barbhuyav. State of Assam and Ors. 1997 (1) GLT 620.

6. Controverting the above submissions made on behalf of the petitioner, Mr. Michi has submitted that under Clause 30 of the by laws of the said Society, any of the JICS may be appointed to function as Managing Director of any of the co-operative societies in exercise of the powers vested in the Registrar of Co-operative Societies. The impugned order thus, submits Mr. Michi, in accordance with law and may not be interfered with inasmuch as the petitioner has been manipulating to continue to hold on to the post of the Managing Director and working against the interest of the general public. It is further submitted by Mr. Michi that for appointment as Managing Director of a co-operative society, seniority of the JICS is not a relevant factor inasmuch as any JICS may be made Managing Director of the said Society.

7. As far as Mr. R.H. Nabam is concerned, his submission is that the petitioner has been functioning as Managing Director of the said Society since May, 1999, and he should not grudge if any other JICS is made Managing Director of the said society. Mr. Nabam has also submitted that since the order, impugned in this writ petition, has been passed by a competent authority in exercise of powers lawfully vested in him, the impugned order may not be interfered with.

8. Before proceeding any further and without commenting on the merit of the writ petition, it needs to be mentioned that in this writ petition, the petitioner has not challenged the authority of the respondent No. 2 to pass the order appointing Sri L. Rigia as Managing Director of the said Society in place of the petitioner. It is not in dispute before me that it is the respondent No. 2, who is the competent authority to appoint Managing Director not only for the said Society, but for all such co-operative societies, which¹ are registered under the Societies Registration Act, 1978. What is, however, questioned is the bona fide of the action of the respondents in appointing

Sri L. Rigia as Managing Director of the said Society. If the appointment of Sri L. Rigia is bona fide, without any extraneous consideration and in public interest, the impugned order cannot be interfered with. However, it needs to be emphasised that public interest does not necessarily mean interest of any particular political party or of persons in power, but public interest means the interest of the public, in general, which may or may not be in the interest of political person or political party in power.

9. In the case at hand, there is no dispute before me that Sri Nyato Rigia, M.L.A., did write to the Chief Minister of Arunachal Pradesh requesting the latter to direct the respondent No. 2 to appoint Sri L. Rigia as Managing Director of the said Society on the ground that the petitioner was a strong supporter of Arunachal Congress and that petitioner's father was an Executive Member of Arunachal Pradesh. There is also no dispute before me that the respondent No. 4, who has been appointed, vide the impugned order, as Managing Director of the said Society is a cousin of Sri Nyato Rigia aforementioned nor is it in dispute before me that the letter aforementioned addressed to the Chief Minister was sent to the respondent No. 2 for taking action.

10. From a bare reading of the above letter, it becomes clear that the removal of the petitioner from the post of the Managing Director of the said Society was not on account of any public interest, but on consideration of the fact that the petitioner was allegedly a supporter of the Arunachal Congress and his father- was also a Central Executive Member, of the said Political Party.

11. It is apposite to point out that if the petitioner is a supporter of any political party, action may be initiated against him, but if any action is taken for his removal from any post on such a ground without affording him opportunity of hearing, such removal will be against the principles of natural justice inasmuch as such removal will be stigmatic and penal in nature.

12. It is also not in dispute before me that Sri Nyato Rigia, M.L.A, aforementioned, again, wrote a letter to the Chief Minister of Arunachal Pradesh on 10.4.2002 and it was, thereafter, that the Fax Message (Annexure V to the writ petition) was issued directing the petitioner to hand over the charge to Sri L. Rigia within five days from the date of receipt of the message.

13. What, thus, crystallises from the above discussion is that the petitioner's removal from the post of Managing Director of the said Society was passed on extraneous considerations and not on the basis of his utility or otherwise in remaining in the said post. Such removal on extraneous considerations shakes confidence of the general public in the fairness of administration. Reference made by Mr. Sera to the case of Ishaque Ali Borbhuyan (supra) is not, therefore, misplaced.

14. In the result and for the reasons discussed above, the impugned order, dated 15.1.2002 (Annexure II to the writ petition) is set aside and quashed. This does not

mean. I must hasten to add, that the petitioner may never be removed from the post of Managing Director of the said Society if such removal is essential in the interest of public, I may also add here that though any JICS may hold the post of Managing Director of a Co-operative Society, yet the fact remains that if more than one JICS is available, normally and except in compelling and justifiable circumstances, it is the senior one, amongst the JICS, who shall be allowed to hold such a post.

15. With the above observations and directions, this writ petition stands disposed of.

16. No order as to costs.