

(1993) 10 GAU CK 0007

Gauhati High Court

Case No: Civil Rule No. 81 (K) of 1993

Vikeduolie

APPELLANT

Vs

State of Nagaland and Ors.

RESPONDENT

Date of Decision: Oct. 14, 1993**Citation:** (1994) 1 GLJ 116**Hon'ble Judges:** H.K.Sema, J**Bench:** Single Bench**Advocate:** L.S.Jamir, I.Jamir, Achung, C.Jajo, Advocates appearing for Parties

Judgement

1. Material facts given rise to filing of the present writ petition, summarily stated, are these. Petitioner obtained a degree in Civil Engineer from the Regional Engineering College, Rourkela sometime in September, 1993.

2. The Nagaland Public Service Commission (NPSC) advertised for the post of three vacancies of Sub Divisional Officer, Public Health Engineering Department (PHED) Class I Gazetted, published under Memorandum No. NPSC/ADVT1/9192 dated 6th November, 1992. Subsequently, four vacancies in the post of Sub Divisional Officer, PHED had arisen, raising the total number of vacancies to seven for which an addendum was issued vide No. NPSC/G11/76 dated 30.11.92. In the said advertisement, it was stipulated that 80% of the vacancies are reserved for the candidates belonging to: (a) Any Naga tribe, (b) Kuki, (c) Kachari, (d) Garo and (e) Mikir, provided such persons are indigenous inhabitants of the State of Nagaland.

3. Pursuant to the aforesaid advertisement, the petitioner applied for the post claiming himself as a candidate as one of the indigenous inhabitants of the State of Nagaland. In other words, applied for the post within the quota of 80% reservation. Along with an application form, the petitioner submitted a Certificate of Indigenous inhabitants of Nagaland for the purpose of employment issued by the Additional Deputy Commissioner, Kohima on 11.6.84 (Annexure 6). This certificate has an important bearing and I shall be dealing with this in detail at appropriate time.

4. On the basis of petition submitted by the petitioner along with the documents, the petitioner was provisionally allowed to appear in the written test to be held on 3.4.93 by a letter dated 10th March, 1993. He was assigned Roll No. 48. Petitioner was successful in the written test. He was called to appear before the Interview Board to be held on 29th July, 1993. He appeared before the Interview Board. Thereafter, by an order dated 24th August, 1993, the second respondent published the result recommending the seven candidates in order of merit for appointment to the seven vacancies of Sub Divisional Officer (PHE) Class 1 Gazetted under the Public Health Engineering Department. He is aggrieved by the recommendation of the respondent No. 4 Shri Vihoto. Roll No. 16 in serial No. 6 and respondent No. 5 Shri Iintiakum Roll No. 32 in serial No.7. His grievances are that, the respondent Nos. 4 and 5 secured a total marks of 131 and 128 respectively, whereas the petitioner secured total marks of 135, yet his name was not included in the merit list recommended by NPSC. On the basis of this statement, this Court by an order dated 27.8.93 suspended the recommendation of respondent Nos. 4 and 5 until further orders.

5. On 20.9.93, petitioner had filed additional application incorporating several facts subsequently came to the knowledge of the petitioner which forms the basis for passing the impugned notification dated 24.8.93, and this Court allowed the petition.

6. I have heard Miss C. Jajo, learned counsel for the petitioner as well as Mr. I. Jamir, learned Senior Government Advocate and Mr. Iralu for respondents 4 and 5.

7. It is submitted by Miss C. Jajo that Indigenous Certificate issued to the petitioner by the competent authority should be presumed valid and binding still it is cancelled in accordance with law. Even if assuming the Indigenous Certificate is invalid it cannot be cancelled without affording a reasonable opportunity of being heard to the petitioner and therefore, the impugned order dated 19.8.93 (Annexure 2 of the additional application) treating the Indigenous Certificate issued on 11.6.84 as invalid is bad in law. It is further submitted by counsel for the petitioner that Indigenous Certificate dated 11.6.84 conferred some rights to the petitioner and it cannot be taken away without giving a reasonable opportunity to the petitioner.

8. The sole question that arises for determination in this writ petition is that, whether the case of the petitioner is entitled to be considered within the reservation quota of 80% in terms of Government of Nagaland policy laid down from time to time in this regard.

9. It is an admitted facts that the petitioner is the son of one Mr. PS Pillai, an employee under the Government of Nagaland, married to an Angami tribal lady. Petitioner is an off shoot of their wedlock. His name was given as Vikoduolie (an Angmi tribal name).

10. By an order dated 6th July 1973, the Government of Nagaland has been pleased to make provision for reservation of 100% for appointment to nontechnical Grade III and IV Grade posts, and 80% of all other appointments or posts under the Government to be filled up direct recruitment for categories of person mentioned in the said order. Since the Notification has an important bearing the some is extracted :

"No. APPT18/6/67 In supersession of Government Order No. APPT18/6/67 dated 26.6.1969, the Governor of Nagaland has been pleased to make provision for the reservation of 100% for appointment to nontechnical Grade III and IV posts and 80% of all other appointments or posts under the Government that are to be filled in by direct recruitment for persons belonging to the tribes mentioned below :

(1) Any Naga tribe (2) Kuki (3) Kachari

(4) Garo (5) Mikir.

Provided such persons are indigenous inhabitants of the State of Nagaland.
(emphasis supplied)

Sd/M. Zopianga,

Chief Secretary to the Government of Nagaland."

11. By another notification dated 28th April, 1977, the Governor of Nagaland was pleased to decide, in order to qualify as an "Indigenous Inhabitants" of the State laid down certain criteria for determining a person to have had a permanent settlement in the State prior to 1.12.63. The criteria laid down are as under :

"(1) His/her name of parents or legitimate guardians, in case the person was then a minor, should have been entered in the Electoral Roll published on 5.12.1963. OR

(2) The person or his/her parent or legitimate guardian should have been paying house tax prior to 1.12.1963.

OR

(3) The person or his/her parents or legitimate guardian should have acquired property and patta on it prior to 1.12.1963."

12. By another office memorandum dated 19th April, 1983, in continuation to Government order dated 6.7.73, and the Government Notification dated 28.4.73, the Governor of Nagaland has brought out elaborate memorandum stating in clear and categorically term with regard to the employment under the Government of Nagaland against 80% reservation quota for the category of persons mentioned in the order dated 6.7.73 and Notification dated 28.4.77. The office memorandum dated 19th April 1983 is extracted :

"No. AR8/8/76 Dated Kohima, the 19th April/83.

Office Memorandum : The undersigned is directed to say that the Government through an order No. APPT18/6/67 dated 6.7.1973 had reserved 100 PC for direct appointment to nontechnical grade III and IV posts and 80% of all gazetted and technical posts for the persons belonging to the following tribes :

1. Any Naga tribes 2. Kuki 3. Kachari

4. Garo 5. Mikir.

Provided such persons are indigenous inhabitants of the State of Nagaland. The above 5 tribes must possess, in addition, one of the following qualifications in order to become an indigenous inhabitant for the purpose of employment vide Notification No. AR8/4/76 dated 28.4.1977.

(1) His/her name or name of parents or legitimate guardians, incase the person was than a minor, should have been entered in the Electoral Roll published on 5.12.1963

OR

(2) The person or his/her parents or legitimate guardian should have been paying house tax prior to 1.12.1963.

OR

(3) The person or his/her parents or legitimate guardian should have acquired property and patta on it prior to 1.12.1963.

The Notification is a continuation of the order No. APPT18/6/67 dated 6.7.73 referred to earlier and the eligibility conditions for employment given above apply only to the 5 tribes and not to any other tribe or nonlocal.

There are Naga/Kuki/Kachari/Garo/Mikir living outside the geographical boundary of Nagaland without possessing any of the above 3 qualifications. They are not eligible for employment under the State. On the other hand, they are eligible for employment provided they are permanent residents in the State and possess one of the qualifications. Certificate to the effect that a person belongs to one of the above 5 tribes and that he or she possesses one of the above 3 qualifications shall be issued only either by a Deputy Commissioner or an Additional Deputy Commissioner, as per the notification noted above. Such certificate should be issued with utmost care after verifying all available facts, (emphasis supplied)

It has been observed that Heads of Deptts/Officers mistakenly appoint nonlocal who possesses the above qualification to the post reserved for the locals under the State Govt. This should be stopped forthwith.

Under the present policy decision of the Government nonlocals are not eligible for employment against the reservation made for the indigenous inhabitants of the State. They are, however, eligible for appointment against 20 p.c. of the vacancy relating to gazetted, technical posts.

It has therefore requested that this may kindly be brought again to the notice of all concerned for strict compliance.

I. Longkumer,

Chief Secretary to the Government of Nagaland."

13. In this writ petition we are concerned with 80% reservation quota. From the reading of the aforesaid orders and notifications, it is clear that for the purpose of employment within 80% reservation quota, he or she must fulfill the following criteria :

(a) Firstly, must be a member of :

1. Any Naga tribe 2. Kuki 3. Kachari
4. Garo 5. Mikir.

(b) Secondly, must be indigenous inhabitants of the State of Nagaland, and

(c) Thirdly, in order to qualify as indigenous inhabitants of the State, must possess one of the qualifications;

(1) His/her name or name of parents or legitimate guardians, in case the person was then a minor, should have been entered in the Electoral Roll published on 5.12.1963.

OR

(2) The person or his/her parents or legitimate guardian should have been paying house tax prior to 1.12.1963.

OR

(3) The person or his/her parents or legitimate guardian should have acquired property and patta on it prior to 1.12.1963."

14. It is thus amply clear from the aforesaid Notifications and orders issued from time to time by the Government of Nagaland, the case of the petitioner does not come within the purview of the category of persons mentioned in those notifications, in ordinary circumstances.

15. It is however submitted by Miss C. Jajo, that the petitioner had been adopted by his maternal uncle since 1978 as per Angami customary law, and accordingly, petitioner has become an Angami Naga for all practical purposes including the employment opportunity and on the basis of which an Indigenous Certificate dated 11.6.84 (Annexure 6 to the additional application has been validly issued. "

16. At this stage it would be pertinent to refer to another office memorandum dated 19th January, 1979 reads as under :

"Office Memorandum: The undersigned is directed to say that the procedure for issue of indigenous inhabitants certificate to nonlocal adopted sons/ daughters has been under consideration of the Government for some time. It has been decided that officers authorised for issue of indigenous inhabitant certificate should not issue such certificate to nonlocal adopted sons/ daughters without the prior approval of the Government. All such cases should be referred to Personnel and Administrative Reforms Department for decision, (emphasis supplied)

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Special Secretary to the Govt. of Nagaland."

17. It is in the backdrop of this background, I now refer to the Indigenous Certificate dated 11.6.84, issued in favour of the petitioner, it is extracted : "Notification No. AR8/8/76 dated 28th April, 1977 : Certificate of indigenous inhabitant of Nagaland for the purpose of employment under the State Government as envisaged in the Govt. order No. APPT16/6/67 dated 6.7.1973.

(This certificate should be issued by a Deputy Commissioner or an Additional Deputy Commissioner only)

This is to certify that Shn/Smti/Kumari Vikeduolie son/daughter/wife of PS Piilai of Village/Town L. Khel of Kohima Village of Kohima District of the State of Nagaland belongs to Angami Tribe which is recognised as a Schedule Tribe under the Constitution (Nagaland) Schedule Tribes Order, 1970 and that the said Shri/Smti/Kumari Vikednolie and his/her family ordinarily resides in L. Khel of Kohima Village village/town of Kohima District of the State of Nagaland and his/her name or parent's name or legitimate guardian's name has been entered in the Electoral Roll published on 5.12.1963 the family as paying house tax prior to 1.12.1963 the family has acquired property and patta on its prior to 1.12.1963 vide Gazettee No Date :11.6.84

Place:Kohima Name C. Sangtam ADC Kohima.

Office seal. Designation of the issuing authority."

17A. From the reading of the Indigenous Certificate as quoted above, it clearly appeared that no mention has been made with regard to the approval of the Government for issue of indigenous inhabitants certificate to the petitioner alleged to have been adopted, as envisages under office memorandum dated 19th January 1979. On the other hand, the Indigenous Certificate issued in favour of the petitioner is in the form of an ordinary form annexed to the Notification dated 28th April 1977. This shows that the Indigenous Certificate dated 11.6.84 issued in favour of the petitioner was in violation of an office memorandum dated 19th January, 1979. When the Indigenous Certificate dated 11.6.84 was issued to the petitioner, the office memorandum dated 19th January, 1979 prohibiting the Deputy Commissioner and Additional Deputy Commissioner to issue such certificate to

nonlocal adopted sons/daughters without prior approval of the Government was in existence. Therefore, the Indigenous Certificate dated 11.6.84 issued in favour of the petitioner was in violation of the office memorandum dated 19th January 1979. The petitioner, by virtue of his being son of one Mr. PS Pillai is a nonlocal. Therefore, the procedure adopted by 19th January, 1979 office memorandum has to be scrupulously followed in issuing Indigenous Certificate in his favour.

18. It is not the case of the petitioner that the prior approval of the Government was taken before the Indigenous Certificate dated 11.6.84 was issued to the petitioner. Further, respondent Nos. 4 and 5 filed counter to the additional application filed by the petitioner, in para 4 of the counter, the respondent Nos.4 and 5 stated that the Indigenous Certificate issued in favour of the petitioner is illegal, invalid and void ab initio because of the fact that, prior approval of the Government was not taken in compliance with the office memorandum dated 19th January. This statement taken in para 4 of counter has not been replied by the petitioner in his Affidavit in reply to the counter filed by the respondent Nos. 4 and 5. This statement, therefore, stands uncontroverted.

19. The submission of the learned counsel of the petitioner that the impugned order treating the Indigenous Certificate dated 11.6.84 as invalid has been passed without reasonable opportunity to the petitioner, and that the Indigenous Certificate dated 11.6.84 confer some rights to the petitioner and the same has been taken away without hearing him has no substance. Because when an order on the face of it is illegal being passed without jurisdiction it operates as void ab initio, and therefore, there is no question of conferring any rights by that order or predecisional hearing is called for before canceling such order.

20. By an order dated 19.8.93 (Annexure 2 to the additional application), the sixth respondent simply corrected the order dated 11.6.84 and the letter dated 6.8.93 issued on the basis of mistaken view. The competent authority (Deputy Commissioner, Kohima), in my view is within its domain to make a necessary correction or rectification which was passed in violation of relevant orders or guidelines. In absence of Rules to the contrary, the executive instruction issued by the competent authority from time to time is valid. And therefore the public authority exercising power must strictly adhere to the executive instruction issued from time to time in this regard.

21. There is yet another submission of learned counsel for the petitioner which needs disposal. It is submitted by Miss C. Jajo that the Nagaland Public Service Commission has exceeded its jurisdiction in making roving enquiry as to the genuineness of the Indigenous Certificate issued in favour of the petitioner. She further submits that under the relevant Rule and procedure, the duty of Nagaland Public Service Commission is to prepare a merit list and recommended to the competent authority for approval. In this connection, she referred to a decision of the Apex Court rendered in Miss Neelima Shangia vs. State of Haryana & others, AIR

1987 SC 169. It has been observed by the Apex Court that the Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidate. It has also been observed that the duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates arranged in order of merit. The facts of the case (supra) is distinguishable with the facts of the case in hand.

22. In that case, the Apex Court had made observation because the Public Service Commission did not publish the whole result but sent only the names of the 17 candidates belonging to general category to the Government, although many more had qualified. On the other hand, from the call letter dated 5th July, 1992 (Annexure 2 to the main writ petition) it is stipulated in para 3 of the said letter that admission to interview or personality test is strictly provisional and subject to final clearance by the Commission. It further stated, till the candidature is formally confirmed by the Commission, it is continuous to be provisional and if subsequent to the issue of Admission Certificate ineligibility is detected at any stage he will not be recommended even if he had appeared at the interview for personality test. The aforesaid condition in para 3 of the call letter stipulates that admission in the written test or personality test, no indefeasible rights had been accrued to the candidate. It is still open to the Nagaland Public Service Commission to enquire into the genuineness of documents submitted by the appellants in support of his candidature. Therefore, the Nagaland Public Service Commission is definitely within its domain to make further enquiry as to the genuineness of the Indigenous Certificate issued in favour of the petitioner.

23. In this writ petition, neither reservation policy nor the criteria laid down from time to time by the competent authority to appoint the category of persons from reservation quota has been assailed. As said earlier, the grievance of the petitioner is that he has not been treated as one of the indigenous inhabitants of the State under the criteria laid down from time to time by the executive instruction.

24. In view of what has been stated above, there is no merit in this writ petition and the same is accordingly dismissed. The interim order passed by this Court on 27.8.93 stands vacated.

25. Before I part with the record, I am constrained to observe that ordinarily wife followed the domicile of husband. Necessary corollary is that, their off shoots would follow the domicile of their father. So also, serving long spell of years in a particular place does not give one the title of indigenous inhabitants of the State nor settled permanently. According to Oxford Universal Dictionary, the words indigenous means, born or produced naturally in a land or region, native to (the soil or region etc). Therefore, one cannot claim indigenous inhabitants of the State by virtue of he being under the employment of the State for a long spell of time, in absence of provision to the contrary.

26. This case also illustrates a classical example as to how the concerned authority invested with the power, in issuing a rampant Indigenous Certificate to nonlocal for the purpose of employment without the application of mind and in utter violation of the office memorandum dated 19th April, 1983 and 19th January, 1979. At the best, this can be termed as one of the processes of exploitation of tribal interest with regard to employment.

With the aforesaid observation, this writ petition is dismissed, however, without costs.