

BEFORE

THE HON'BLE MR. JUSTICE I. A. ANSARI

(1) This case is a sad revelation of the insensitiveness of one human being towards preserving the dignity of another human being and it was ultimately with the help of a Public Interest litigation (hereinafter as \the PIL\)that the age old wrong done by one human being towards another human being was stopped by Court, but the wrong done has not yet been completely undone.

(2) This case has a history and the history starts with a PIL, which was filed in 1985 in madras High Court on behalf of the thousands of bonded labourers. The Apex Court, eventually, passed an order, on 13. 05. 94, in this pil, known as Union of Civil Liberties vs. State of Tamil Nadu and others, reported in (1994) 5 SCC 116 directing the States to inter alia, identify bonded labourers and to identify the villages, where the practice of bonded labour was prevalent and to provide them employment and ensure rehabilitation of victims of ageold bonded labour system.

(3) In the above backdrop, we need to understand the case of the petitioner, which, briefly stated, runs as follows: (i) The petitioner, who is a permanent resident of village, Dongko Circle-Lada, District east Kameng. Arunachal Pradesh, belongs to puroik (Sullung) Tribe, which is a notified scheduled Tribe Community. This is a community, which used to be a tribe of bonded labours. A survey conducted by the Deputy commissioner, East Kameng District, Seppa, in pursuance of the PIL aforementioned, revealed the existence of about 700 bonded labourers locally called Sullung and they were accordingly treated as bonded labourers within the meaning of Bonded Labour System (Abolition) Act, 1976. The Puroik tribe is a compact social group, which is economically weak and live in inaccessible high hills of East Kameng district. They have been slaves to the Bangnies, a major tribe of the area, who forced the Puroik to work in the houses and Fields of Bangnies without any right to claim wages. The Puroik were also found working as slaves under Nichis. On passing higher Secondary Examination and on being, admittedly, qualified for receiving appointment, the petitioner was, in consequence of a due selection process, appointed as UDC at the Arunachal Secretariat in the year 1993, where he still works in the same capacity. While so working, the petitioner continued to pursue his studies and obtained graduation in Arts in the year 1997 from the Government college, Itanagar, he being the first graduate from the Puroik tribe, which consists of about 1,000 members. In pursuance of the direction of the Apex Court, Govt. of Arunachal Pradesh constituted a High Power Committee for making recommendations for the purpose of rehabilitation and settlement of bonded labour (Sullung). The Committee submitted its report under seven different heads, namely, (i) Relief of Sullung and other, (ii) Land for re-settlement of Sullung; (iii) Housing facilities, (iv) Employment opportunities; (v) Educational facilities; (vi) Political pressure and participation and (vii) Other assistance/benefits. The recommendations were placed before the Government and after the Cabinet approved the same, the government sent instructions to the concerned departments for implementation. (ii) As per the recommendations of the High power Committee vide Clause D - Employment opportunities, a Sullung graduate should be directly considered for appointment as Extra Assistant Commissioner (EAC in short) or identical post in the Government or semi-Government department and a class XII passed sullung person shall be considered for the post of Circle Officer or for some equivalent post. The department of Labour vide their office communication, dated 23. 12. 98, issued under memo No. LAB (W)-22/97, sent the copy of the recommendations to the Secretary, Home, personnel, Land Record, Rural Development, education, Agriculture, Horticulture, Power, pwd, RWD and the Deputy Commissioner, east Kameng, for necessary action. Thereafter, the Deputy Commissioner, East Kameng, being empowered under Section 11 of the bonded Labour System (Abolition) Act, 1976 issued, an order, dated 17. 02. 99 contained in memo No. PD (S W)-7/98-99, prohibiting engagement of bonded labour. Accordingly the authority concerned issued a release certificate discharging the petitioner from the obliga

tion of rendering service as a bonded labour. (iii) Being entitled to be appointed as EAC by virtue of the recommendations made by the High Power Committee in consonance with the spirit of the directions given by the Supreme court, on the subject of bonded labour, the petitioner submitted, a representation, on 26. 05. 99, addressed to the Chief Minister, Arunachal Pradesh, seeking direct appointment as EAC, but nothing concrete has resulted so far. The Deputy Commissioner, Seppa, who is chairman of the Monitoring Cell on Abolition of Bonded Labour vide his communication, dated 16. 07. 99, contained in Memo No PA/ misc/1/1999, addressed to the Commissioner (Personnel, Administration Reforms and training) made a request for doing the needful for appointment of eligible Sullung Tribe candidates as EAC and Circle Officer. The petitioner claims that the respondents ought to have appointed him in the post of EAC as he is the first Sullung graduate of Arunachal Pradesh.

(4) With the help of the present application made under Article 226 of the Constitution of India, the petitioner has sought issuance of appropriate writ/writs commanding the respondents to appoint the petitioner to the post of EAC or in the equivalent post as per recommendations contained in notification, dated 23. 12. 98 (Annexure B to the writ petition) aforementioned.

(5) The State respondents have filed their affidavit-in-opposition, their case being, in brief, thus: The Personnel Department had received, through the Deputy Commissioner, Seppa, applications from the petitioner and from one Shri Namo Sullong Pajee, a pre-University candidate, both hailing from the Sullong Community of East Kameng District, praying for appointment to the post of EAC and Circle Officer respectively. The cases of the petitioner along with other candidates have been processed by the Department of Personnel and Administrative Reforms and Training. During such processing, it was found that as per existing norms, direct requirement to Arunachal Pradesh Civil Service could be made at the level of Circle Officer only in the scale of pay Rs. 8000/- 275-13,500/- pm, but there was no provision for direct recruitment to the post of EAC. It was also found that in this regard, certain clarifications and clear cut modalities in the matter of providing employment avenues are to be adopted to avoid future complications. Considering all these aspects, the Government had decided that all the relevant documents pertaining to the issue be forwarded to the Labour Department, Government of Arunachal Pradesh, being the nodal department for a review and for submission of cabinet brief for a decision to ensure transparency and fair play. The case is now, with the Labour Department. The case of the petitioner would be considered after finalization of modalities by the Government.

(6) I have carefully perused the materials on record. I have heard Mr. R. P. Sharma, learned counsel for the petitioner, and Mr. B. L. Singh, learned Sr. Govt. Advocate, appearing on behalf of the respondents.

(7) It has been submitted by Mr. Sharma that despite the fact that the Apex Court directed the State Governments and Government of India as far back on 13. 05. 1994 to formulate a scheme for bonded labourers and the High Power Committee constituted in the State of Arunachal Pradesh, in consequence of the directions so given by the Apex Court, made their recommendations, which were also, according to the affidavit filed by the respondent No. 6, approved by the State Cabinet, yet no concrete scheme has been formulated so far by the State Government, in consonance with the recommendations of the High Power Committee, to directly appoint a Sullung graduate to the post of EAC. This is, in effect, contends Mr. Sharma, violation of the directions of the Apex Court. Mr. Sharma also submits that appropriate direction be issued by this Court for appointment of the petitioner as EAC inasmuch as he is the first and till today, perhaps, the only graduate in the entire the Puroik tribe.

(8) Reacting to the above submissions made on behalf of the petitioner, learned Senior Government Advocate submits that the petitioner could not be appointed

as EAC inasmuch as relevant recruitment rules do not perceive making of any direct recruitment without due selection process in which other eligible candidates will also be entitled to participate. Mr. Singh also submits that the matter of appointment of a graduate from Puroik Tribe to the post of eac has already been the Labour department of the Government for formalizing the policy for providing employment to the candidates of this community in various government departments and for this purpose, some time may be necessary.

(9) Having heard both sides and upon perusal of the materials on record, I find that recommendations of the High Power Committee for appointment of one Sullung graduate to the post of EAC stood approved by the Cabinet long time back, but no concrete scheme has been formulated so far for making such recruitment inasmuch as the arunachal Pradesh Public Service Combined competitive Examination Rules do not provide for direct appointment of any one to the post of EAC. Rule 36 of these Rules does, however, I notice, vest the State Government with the power of relaxation rule 36, in fact, reads, \where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons or posts

(10) Situated thus, it is clear that apart from formulating scheme, the Government may also, by invoking the provisions of Rule 36, make necessary arrangements for recruitment of one graduate from Sullung community to the post of eac.

(11) In view of the above, it is, to my mind, in the fitness of things to direct the State Government to formulate a concrete scheme for appointment of the educated members of the sullung community in terms of the High Power committee's recommendations mentioned hereinbefore within a given time-frame and pending finalization of the scheme, the Government may, if necessary, consider relaxing of rule 36 of the said recruitment rules for the purpose of doing the needful in this regard.

(12) In the result and for the reasons discussed above, this writ petition succeeds. Considering the matter in its entirety and in the interest of justice, the State respondents are hereby directed to formulate necessary schemes, within a period of six months from today, for appointment of one graduate from Sullung tribe as EAC and for this purpose, the Government may, if need be take resort to Rule 36 of the relevant recruitment rules and under the scheme, which may be so formulated, the petitioner shall be considered alongwith similarly situated persons, if any, for appointment to the post of EAC.

(13) With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.