



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : PIL 9/2021

1:NNAGA DAO AND ANR
NETWORK OF NAGALAND DRUGS AND AIDS ORGANISATION,
HAVING ITS OFFICE IN RED CROSS BUILDING, KOHIMA,
NAGALAND, REPRESENTED BY ITS PRESIDENT MR. ABOU MERE

2: NNP (NETWORK OF NAGA PEOPLE LIVING WITH HIV)

M.K MARKET
KOHIMA
NAGALAND

REPRESENTED BY ITS PRESIDENT MR. LAN

VERSUS

1:THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE CHIEF SECRETARY,
CIVIL SECRETARIAT,
KOHIMA 797004, NAGALAND

2:PRINCIPAL SECRETARY
DEPARTMENT OF HEALTH AND FAMILY WELFARE

CIVIL SECRETARIAT

KOHIMA
NAGALAND

3:SECRETARY
DEPARTMENT OF LAW AND JUSTICE

GOVERNMENT OF NAGALAND

CIVIL SECRETARIAT KOHIMA 797001
NAGALAN

Advocate for the Petitioner : NEITEO KOZA

Advocate for the Respondent : GOVT ADV NL

BEFORE
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO
HON'BLE MR. JUSTICE KAKHETO SEMA

ORDER

Date : 18-10-2021
(S. Serto, J)

Heard Ms. N. Koza, learned counsel for the petitioners, Mr. N. Mozhui, learned counsel appearing for the respondent No. 2 and Ms. Supongla Chang, learned Government Advocate appearing for the respondent No. 1 & 3.

This is a PIL praying for issuance of appropriate writ or order or direction directing the State respondents to appoint an Ombudsman as required under section 23 of the Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

At the very outset, Mr. N. Mozhui submitted that the Government of Nagaland had designated one Shri. Ajit Kumar Ranjan, IAS, Joint Secretary, Health & Family Welfare Department, Government of Nagaland as Ombudsman as required under section 23 of the Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, vide notification dated 08.09.2021. We have seen the notification and perused the same. However, we find that the notification is not as per the provisions of Nagaland Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceeding) Rule, 2019 framed and notified by the State Government.

Rule-4 of the said Rule, 2019 provides as follows;

“4. Qualification and experience of Ombudsman

Any person who is a retired district or sessions judge, or who has minimum ten years working experience or extensive knowledge in matters relating to

public health or health delivery systems, or is a qualified healthcare provider who is a physician with a minimum of ten years work experience, or is a person working in an non-governmental organization with similar experience and knowledge.

Provided that where a person other than a retired district or session's judge is appointed as an Ombudsman, the State Government shall provide him with assistance from the Department of Justice and Law on legal issues that may arise in the course of the his work, if so requested."

Going by the provision of this rule, we are of the view that the Joint Secretary, Health & Family Welfare Department could not have been designated as Ombudsman because of the obvious reason that he does not meet the requirements given therein. There is no other provision in the Rule of 2019 or in the Act providing the qualification and experience of Ombudsman except the one given herein above. Therefore, the State Government has no choice but to follow the same while appointing/designating a person as an Ombudsman under the Act of 2017.

This PIL is disposed of with a direction that the State Government should appoint or designate a person qualified to be appointed or designated as per the rule i.e. Rule-4 of the Nagaland Human Immuno Deficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceeding) Rules, 2019 within a period of 45 days from today.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant