

**IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**

**1. WP(c) 57(AP)2016**

**Shri Takam Tatung**

s/o Shri Takam Hare  
Village Palin, PO-Palin, PS-Sangram  
District - Kra Dadi, Arunachal Pradesh.  
Mob. : 9436054675

**..... Petitioner**

**By Advocates:**

Mr. Michi Nibo  
Mr. N. Kago

**-Versus-**

1. The State of Arunachal Pradesh to be represented by Chief Secretary, Itanagar, Government of Arunachal Pradesh.
2. The Commissioner(Finance), Government of Arunachal Pradesh, Itanagar.
3. The Secretary(Forests), PCCF, Government of Arunachal Pradesh, Itanagar.
4. The Commissioner, Industry, Government of Arunachal Pradesh, Itanagar.
5. The Secretary, Education, Government of Arunachal Pradesh, Itanagar.
6. The Secretary, Rural Development(RD), Government of Arunachal Pradesh, Itanagar.
7. The Secretary, Science & Technology, Government of Arunachal Pradesh, Itanagar.
8. The Secretary of Power & NRE, Government of Arunachal Pradesh, Itanagar.
9. The Chief Engineer(Power), WEZ, DOP, Government of Arunachal Pradesh, Itanagar.
10. The Chairman, APEDA, Government of Arunachal Pradesh, Itanagar.
11. The Director, APEDA, Government of Arunachal Pradesh, Itanagar.

**.....Respondents**

**By Advocates:**

Mr. Duge Soki, Addl. Senior Government Advocate  
Mr. Tagum Jamoh, standing counsel, Education, Govt. of Arunachal Pradesh.

**2. WP(c) 506(AP)2016**

**Shri Takam Tatung**

S/o Shri Takam Hare  
Village Palin, PO-Palin, PS-Sangram  
District - Kra Dadi, Arunachal Pradesh.  
Mob. : 9436054675

..... **Petitioner**

**By Advocates:**

Mr. Michi Nibo  
Mr. N. Kago

**-Versus-**

1. The State of Arunachal Pradesh to be represented by Chief Secretary, Itanagar, Government of Arunachal Pradesh.
2. The Commissioner(Finance), Government of Arunachal Pradesh, Itanagar.
3. The Secretary(Forests), PCCF, Government of Arunachal Pradesh, Itanagar.
4. The Commissioner, Industry, Government of Arunachal Pradesh, Itanagar.
5. The Secretary, Education, Government of Arunachal Pradesh, Itanagar.
6. The Secretary, Rural Development(RD), Government of Arunachal Pradesh, Itanagar.
7. The Secretary, Science & Technology, Government of Arunachal Pradesh, Itanagar.
8. The Secretary of Power & NRE, Government of Arunachal Pradesh, Itanagar.
9. The Chief Engineer(Power), WEZ, DOP, Government of Arunachal Pradesh, Itanagar.
10. The Chairman, APEDA, Government of Arunachal Pradesh, Itanagar.
11. The Director, APEDA, Government of Arunachal Pradesh, Itanagar.

.....**Respondents**

**By Advocates:**

Mr. Duge Soki, Addl. Senior Government Advocate  
Mr. Tagum Jamoh, standing counsel, Education, Govt. of Arunachal Pradesh.

...BEFORE...

**HON'BLE MR. JUSTICE AJIT BORTHAKUR**

**Date of hearing : 13-12-2016**

**Date of Judgment & Order: 05-01-2017**

**JUDGMENT & ORDER(CAV)**

Heard Mr. Michi Nibo, learned counsel for the petitioner. Also heard Mr. Duge Soki, learned Addl. Senior Government Advocate, for all the official Respondents whereas Mr. Tagum Jamoh, learned standing counsel, appeared on behalf of Respondent No. 5.

2. Since the above two writ petitions involve common issues, hence, both are taken-up together for disposal by this common judgment & order.

3. In WP(c)57(AP)2016, the petitioner has sought for a direction to the respondent authorities for execution of agreement of lease in respect of Energy Awareness Park, Itanagar, between the petitioner, who is proprietor of M/s T.T. Enterprises, and the State Respondents.

In WP(c)506(AP)2016, the petitioner has challenged the illegal invitation of Expression of Invitation(EoI) for leasing out of Cafeteria inside the Energy Awareness Park, Itanagar, to some private individuals when process of lease has already been made allegedly in favour of the petitioner, while WP(c)57(AP)2016, is pending disposal before the Court.

4. The present petitioner had approached this Court earlier by filing WP(c)528(AP)2015, praying for issuance of a writ of certiorari and/or mandamus, and raising grievances for non-execution of the lease agreement by the respondent authorities in connection with Energy Awareness Park at Itanagar to the petitioner's Firm viz. M/s T. T. Enterprises, Itanagar; as per File No. APEDA/W-425/Lease of AP/2013-14 which is pending for more than a year.

The Court disposed of the said writ petition with the following direction, vide order, dated 03.12.2015: ***"Considering the matter in its entirety and for securing the ends of justice, this writ petition is hereby disposed of at the motion stage itself with a direction to the respondent authorities more particularly Respondent No. 10 viz. Director, Arunachal Pradesh Energy Development Agency(APEDA), Government of Arunachal Pradesh, Itanagar; to consider and dispose of the petitioner's representation dated 28.10.2015 as expeditiously as possible most preferably within a period of 2(two) months from the date of receipt of a certified copy of this order."***

**5.** By going through the contents of WP(c)57(AP)2016, it is seen that the petitioner, hereinbefore, is the proprietor of M/s T. T. Enterprises, Itanagar, to whom the respondent authorities have leased-out the Energy Awareness Park at Itanagar, after completing all the necessary codal formalities and at this stage, only the execution part of the said lease agreement is left but the same is kept pending by the authorities concerned for unknown reasons and which is stated to be against the principles of natural justice and transparent administrative fair play.

As stated above, the petitioner earlier approached this Court in WP(c)528(AP)2015 which had been disposed of by the Court, vide the above mentioned order, dated 03.12.2015.

The case of the petitioner is that vide order dated 14.01.2016, passed by the Director, Arunachal Pradesh Energy Development Agency(APEDA), Itanagar, the petitioner's representation dated 28.10.2015, had been disposed of by the authority concerned on flimsy grounds in order to avoid the pending execution of lease agreement between the petitioner and the State Respondents.

Being aggrieved, the petitioner has approached this Court, by way of filing WP(c)57(AP)2016.

**6.** It is seen that WP(c)506(AP)2016 is an off-shoot of WP(c)57 (AP)2016. This Court, vide order, dated 19.09.2016, had stayed the Invitation of Expression of Interest(EoI) dated 23.08.2016 and Extension of Expression of Interest(EoI) dated 09.09.2016.

**7.** It is noticed that the petitioner submitted an application on, 02.04.2013 expressing his interest to run the Energy Awareness Park, Itanagar on lease, to the respondent No. 11, the Director, APEDA, Govt. of Arunachal Pradesh, and accordingly, a file was opened by the respondent No. 10, the Chairman, APEDA, Govt. of Arunachal Pradesh so as to make it convenient to take a decision thereon by the Governing body of APEDA, as the matter involved a policy decision. The said application of the petitioner was not supported by any DPR or investment plan. Mr. Duge Soki, learned Addl. Sr. Govt. Advocate appearing for the Govt. respondents submitted that the APEDA neither floated a Notice Inviting Tender (NIT, in short) nor floated a Notice

Inviting Quotation (NIQ, in short) or a notice expressing its willingness to lease out the Energy Awareness Park, as per prescribed procedures and guidelines under the Arunachal Pradesh Public Private Partnership (APPP),2011. Mr. M. Nibo, learned counsel for the petitioner, on the other hand, submitted that in view of approval of the resolution adopted in the 26<sup>th</sup> GB meeting of APEDA by the Chief Minister of Arunachal Pradesh on 04.03.2014 and preparation of the draft agreement which was submitted to the Chairman of APEDA, the contract between APEDA and the petitioner was, in fact, almost concluded and therefore, the APEDA is estopped from refusing to execute the contract agreement with the petitioner and further, taking the course of guidelines of the PPP in the matter of leasing out the Energy Awareness Park, Itanagar.

**8.** The matter of leasing out of the Energy Awareness Park was deliberated in the 25<sup>th</sup> & 26<sup>th</sup> GB meetings of APEDA held on 29.08.2013 and 03.03.2014 respectively. The GB resolutions show that finally it was decided to lease out the Energy Awareness Park following the codal formalities prescribed in PPP mode as per the Govt. policy which was already notified. However, the 26<sup>th</sup> GB meeting of APEDA, held on 03.03.2014, approved the proposal of the Chairman, APEDA for leasing out the park on PPP mode to the petitioner on file and accordingly, a draft lease agreement was prepared and submitted to the respondent No. 8, the Secretary, Power and NRE, Govt. of Arunachal Pradesh for necessary advice, but in view of the model code of conduct in force due to declaration of general election in the state, the matter remained unattended and thus, the draft lease agreement remained at its draft stage without execution. The draft minutes of the 26<sup>th</sup> GB meeting of APEDA were approved by its outgoing Chairman on 04.03.2014 on the Office note. Thereafter, the matter was placed before the Minister, Power and NRE and the Chief Minister for an appropriate decision on 30.07.2014 and accordingly, they directed to examine the matter for reconsideration.

**9.** The above matter of lease also came up before the Advisor, Finance, Govt. of Arunachal Pradesh on 30.09.2014, and he held the opinion that in order to maintain transparency in leasing out the aforesaid park, the codal formalities in selection of agencies through NIT/Bid process was required to be followed by the State Government with further opinion that as advised by the Chief Minister, the petitioner's firm which is formed by unemployed youths and social workers may be selected to

handle the Energy Park on lease on PPP mode, after observing all the codal formalities and also on due consultation with the Finance Department (FD) and Law Department of the State. It is, therefore, seen that the Govt. of Arunachal Pradesh had not finally accepted the voluntary offer of the petitioner to settle the lease of the Energy Awareness Park, Itanagar in his favour rather it was decided to observe the necessary formalities for selection of the lessee through competitive biddings invited through NIT/NIQ on the basis of PPP mode. The respondent No. 11, the Director, APEDA, Govt. of Arunachal Pradesh in his reply, dated 14.01.2016, to the representation, dated 28.10.2015 submitted by the petitioner declined to execute the lease agreement, *inter alia*, for the aforesaid reasons iterating on the existing govt. policy, guidelines and Rules framed thereunder.

**10.** In view of the aforesaid position, the respondent No. 11, the Director, APEDA issued invitation of Expression of Interest, dated 23.08.2016 and extension of Expression of Interest, dated 09.09.2016, from private individuals for leasing out of the Cafeteria situated inside the Energy Awareness Park, Itanagar, Arunachal Pradesh, by publishing in Local Newspapers and Website, which are impugned by the petitioner in WP (C) 506 (AP) 2016. It is noticed that both the writ petitions, aforementioned, are on different causes of action for adjudication as in WP (C) 57 (AP) 2016, the petitioner has prayed for a direction to the respondents authority to execute the agreement of lease in respect of the Energy Awareness Park, Itanagar, whereas in WP (C) 506 (AP) 2016, the petitioner has challenged the publication of an advertisement for leasing out of the Cafeteria, situated inside the said Energy Awareness Park.

**11.** The Apex Court in *Mahavir Auto Stores & Others-vs-IOC & Others* (AIR 1990 SC 1031) held that exercise of State's power to enter into or not to enter into contract with individuals must be governed by rule of law and must be informed by reasons. The petitioner's, case, in hand, manifests clear deviation from the prescribed methods provided in the PPP guidelines which the respondent authority decided in public interest, for adherence before leasing out the said Energy Awareness Park and the reasons for rejecting the petitioner's voluntary offer was duly communicated by the respondent No. 11, the Director, APEDA, Govt. of Arunachal Pradesh.

**12.** The Apex Court in another case of Sathi Auto Service Station & Another-vs-DDA & Others, (2009) Vol-I SCC 180, held that the notings in the Departmental files do not have sanction of law to be effective order as it is no more than an opinion by an Officer for internal use and consideration of other officials of the Department and for the benefit of the final decision making authorities. The Apex Court made it clear that notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision making authorities in the Department, gets his approval and the final order is communicated to the person concerned. In the instant proceeding, as stated above, the petitioner, on his own, offered his proposal for taking the Energy Awareness Park, without any biddings being called for by the Department/respondents and his said proposal got moved in file in the Department with various notings of the Officers concerned without ultimately reaching a final decision in favour of the petitioner and on his representation, the reasons for none approval of his proposal was duly communicated to him, as stated earlier. Thus, there was clearly no offer and acceptance of proposal forming an effective contract between the parties, which can be enforceable in law. In this view of the matter, this Court is of the considered opinion that the aforesaid entire unauthorized act of the petitioner cannot be protected under the law.

**13.** For the reasons stated above, the writ petitions being WP (C) 57 (AP) 2016 & WP (C) 506 (AP) 2016 are dismissed. No order as to costs.

**14.** The interim order, dated 19.09.2016, passed in WP (C) No. 506 (AP) 2016 stands vacated.

**15.** Accordingly, the above writ petitions stand disposed of.

**JUDGE**