

GAHC010092182006



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

Case No. : WP(C) 5873/2006

1:REGISTRAR GENERAL OF GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL, GUWAHATI, ASSAM.

VERSUS

1:THE UNION OF INDIA and ORS
REP. BY THE SECY, MINISTRY OF LAW, JUSTICE and COMPANY AFFAIRS,
DEPARTMENT OF JUSTICE, JAISALMER HOUSE, 26, MANSINGH ROAD,
NEW DELHI- 110 011.

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECY
DISPUR
GUWAHATI
ASSAM

Advocate for the Petitioner : S S DEY

Advocate for the Respondent : K N BALGOPAL

Linked Case : WP(C) 2865/2016

1:KANGGONG APANG
S/O- LT SOPUR APANG
R/O- MOYING VILLAGE GASANG
P.O./P.S.- JENGGINH
UPPER SIANG DIST.
ARUNACHAL PRADESH.

VERSUS

1:THE STATE OF ARUNACHAL PRADESH AND 3 ORS
REP. BY THE SECY.
GENERAL ADMINISTRATION
GOVT. OF ARUNACHAL PRADESH
ITANAGAR.

2:THE DY. COMMISSIONER
UPPER SIANG DIST.
YINGKIONG
ARUNACHAL PRADESH.

3:THE CIRCLE OFFICER
UPPER SIANG DIST.
JENGGING
ARUNACHAL PRADESH.

4:KAJAM APANG
S/O- LT. GOGOM APANG
R/O- MOYING VILLAGE GOSANG P.O./P.S.- JENGGING
UPPER SIANG DIST.
ARUNACHAL PRADESH.

Advocate for the Petitioner : MR.K DARANG
Advocate for the Respondent : MR.T TATAKR4

Linked Case : PIL 31/2011

1:SHRI TADAR NYAKUM and ANR
S/O LT. TADAR KECHAK VILL- GAGNEE
P.O. and P.S. NYAPIN KURUNG
KUMEY DISTRICT
ARUNACHAL PRADESH.

2: SHRI TADAR POKINAG
S/O LT. TADAR MANGHA
VILL- YUBA
P.O. and P.S. NYAPIN
KURUNG KUMEY DISTRICT
ARUNACHAL PRADESH.
VERSUS

1:THE STATE OF ARUNACHAL PRADESH AND ORS
REP. BY CHIEF SECY
GOVT. OF A.P.

ITANAGAR

2:THE SECRETARY PLANNING
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR.

3:THE SECY
WRD GOVT. OF A.P.
ITANAGAR.

4:THE CHIEF ENGINEER
WRD WESTERN ZONE
ITANAGAR.

5:THE SUPERINTENDENT ENGINEER
WRD
ITANAGAR.

6:THE EXECUTIVE ENGINEER WRD
ZIRO DIVISION
LOWER SUBANSIRI DIST. AP.

7:THE DEPUTY COMMISSIONER
KURUNG KUMEY DISTRICT
A.P.
KOLORIANG.

8:MR. L LEGO
THE EXECUTIVE ENGINEER WRD ZIRO DIVISION
P.O. ZIRO
DIST. LOWER SUBANSIRIAP.

9:MR. BAMANG FALIX
MLA
19- NYAPIN ST
ASSEMBLY CONSTITUENCY
KURUNG KUMEY DIST. A.P..

Advocate for the Petitioner : T TAGUM
Advocate for the Respondent : MR.D K MISHRA

Linked Case : WP(C) 6424/2011

1:SHRI GAUTAM BORAH
ADVOCATE

C/O COL. P K BORAH NEAR ASAM NETRALAYA JAIL ROAD
JORHAT-1
ASSAM.

VERSUS

1:THE STATE OF ASSAM AND ORS
REP. BY THE CHIEF SECY
DISPUR
GHY
ASSAM.

Advocate for the Petitioner : AMICUS CURIE
Advocate for the Respondent :

Linked Case : WP(C) 4489/2007

1:XXX

VERSUS

1:IN RE - THE STATE OF ASSAM and ORS
REP. BY THE CHIEF SECY
DISPUR
GHY
ASSAM.

2:THE COMMISSIONER and SECY
P.W.D
. DISPUR
ASSAM.

3:THE CHIEF ENGINEER
P.W.D. BUILDING
ASSAM
CHANDMARI
GHY-3.

4:THE SECY
GOVT. OF ASSAM JUDICIAL DEPARTMENT
DISPUR

GHY-6.

5:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GHY
ASSAM.

6:THE PRINCIPAL JUDGE
FAMILY COURT
GHY
ASSAM.

7:THE EXECUTIVE ENGINEER
P.W.D. BUILDING DIVISION
CHANDMARI
GHY.

Advocate for the Petitioner : -DO-
Advocate for the Respondent : SC
PWD

Linked Case : WP(C) 4273/2007

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VERSUS

1:IN RE - THE STATE OF ASSAM and ORS
REP. BY THE CHIEF SECY
DISPUR
GHY
ASSAM.

2:THE COMMISSIONER and SECY
FINANCE
GOVT. OF ASSAM
DISPUR
GHY.

3:THE COMMISSIONER and SECY
LABOUR and EMPLOYMENT DEPARTMENT
DISPUR
ASSAM.

4:THE SECY
GOVT. OF ASSAM
JUDICIAL DEPARTMENT
DISPUR
GHY-6.

5:THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI
ASSAM.

6:THE PRESIDING OFFICER
LABOUR COURT
GUWAHATI
ASSAM.

Advocate for the Petitioner : MR S S DEY
Advocate for the Respondent : GA
ASSAM

Linked Case : PIL 62/2011

1:MAHINDRA HAZARIKA
GENERAL SECRETARY
ALL ASSAM JUDICIAL EMPLOYEES ASSOCIATION
CENTRAL OFFICE
GUWAHATI
C/O DISTRICT JUDGES OFFICE
GUWAHATI.

VERSUS

1:THE STATE OF ASSAM and ANR.
REP. BY THE CHIEF SECRETARY
DISPUR
GUWAHATI
ASSAM.

2:THE L.R. and SECY. TO THE GOVT. OF ASSAM
JUDICIAL DEPTT
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR.U K NAIR
Advocate for the Respondent : MRS.B GOYAL

Linked Case : CRP 165/2016

1:SHRI KOMDUK LOYA and ANR.
S/O SHRI HIKOM LOYA R/O VILL- KABU
AALO WEST SIANG DISTRICT
ARUNACHAL PRDESH

2: SMT. RENYAK LOYA
W/O SHRI
HIKOM LOYA
R/O VILL- KABU
AALO
WEST SIANG DISTRICT
ARUNACHAL PRADESH
PH. NO. 8132012623
VERSUS

1:SHRI HIKOM LOYA and 2 ORS.
A RESIDENT OF VILL- KABU AALO
WEST SIANG DISTRICT
ARUNACHAL PRADESH.

2:SHRI KOMAR LOYA
S/O SHRI HIKOM LOYA
R/O VILL- KABU
AALO
WEST SIANG DISTRICT
ARUNACHAL PRADESH.

3:SHRI KOMSI LOYA
S/O SHRI HIKOM LOYA R/O VILL- KABU
AALO
WEST SIANG DISTRICT
ARUNACHAL PRADESH.

Advocate for the Petitioner : MR.K JINI
Advocate for the Respondent : MR.D PANGING

Linked Case : WP(C) 5373/2006

1:IN RE - THE GOVERNMENT OF ASSAM and ORS
REP. BY THE CHIEF SECRETRY
DISPUR

GUWAHATI
ASSAM.

VERSUS

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Advocate for the Petitioner : -DO-
Advocate for the Respondent : S S DEY

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE SUMAN SHYAM

ORDER

19.10.2020

[N. Kotiswar Singh, CJ(Acting)]

Heard Mr. H.K. Das, learned standing counsel for the Gauhati High Court. Also heard Mr. N. Dutta, Mr. D.K. Mishra and Ms. R.S. Choudhury, learned amicus curiae; Mr. B.D. Goswami, learned Additional Advocate General, Arunachal Pradesh assisted by Mr. A. Chandran, learned Sr. Govt. Advocate, Arunachal Pradesh; Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Mr. R. Dhar, learned Sr. Govt. Advocate, Assam; Mr. A.D. Choudhury, learned Additional Advocate General, Mizoram and Ms. M. Kechii, learned Government Advocate, Nagaland for the respondents.

2. This Bench has been reconvened today to deal with certain important infrastructural issues which perhaps require urgent attention of this Court. This relates to the awfully inadequate official residential accommodation for the Judicial Officers in the States of Assam, Nagaland, Mizoram and Arunachal Pradesh.

3. Learned standing counsel for the High Court, Mr. H.K. Das has furnished the relevant information/data regarding the availability and shortfall of official residential quarters in these

States as follows:-

Sl. No.	Name of the State	Number of residential quarters available	Shortfall of residential quarters
1	Assam	268	194
2	Nagaland	20	9
3	Mizoram	36	2
4	Arunachal Pradesh	20	7

The District wise figure of the Judicial Officers of the State of Assam who hare staying in rented accommodation is as follows:-

Sl. No.	Name of the District	No of Judicial Officers staying in rented accommodation
1	Kamrup(M)	6
2	Kamrup (Amingaon)	7
3	Barpeta	1 *(under repair)
4	Nalbari	5
5	Sonitpur, Tezpur	8
6	Darrang, Mangaldoi	1
7	Tinsukia	5
8	Lakhimpur, North Lakhimpur	None
9	Dhemaji	None
10	Dibrugarh	5
11	Sivasagar	6
12	Jorhat	3
13	Golaghat	2
14	Nagaon	3
15	Morigaon	None
16	Cachar, Silchar	8
17	Karimganj	9
18	Hailakandi	6

Sl. No.	Name of the District	No of Judicial Officers staying in rented accommodation
19	Dhubri	Total: 11(eleven) nos. District HQ: 6 Bilasipara Sub-Division: 4 Hatsingimari Sub-Division: 1
20	Goalpara	None
21	Kokrajhar	None
22	Bongaigaon	1
23	Udalguri	3
24	Chirang	9
25	Karbi Anglong	4
26	Dima Hasao	None However, 3 will be required on completion of training of the Judges.
27	Baksa	None

From the above, it is clearly evident that the situation in the state of Assam is quite alarming to say the least inasmuch as more than 72% of the judicial officers have not been provided with official residential accommodation.

Though the aforesaid figure may vary a little from time to time because of transfer or such other reasons, it cannot be denied that many Judicial Officers in many districts of Assam have not yet been provided with official residential accommodation.

4. The requirement of providing official residential accommodation to the judicial officers has been already highlighted by the highest Court of the land as early as in 1991 in the case of ***All India Judges Association (I) Vs. Union of India***¹, wherein the Hon'ble Supreme Court made the following observations:-

"34. Provision of an official residence for every judicial officer should be made mandatory. A judicial officer to work in a manner expected of him has to free himself from undue obligations of others, particularly owners of buildings within his jurisdiction who ordinarily may have litigations before him. This is mostly the case in rural areas where outstation judicial courts are located. We are aware of cases where a rural court is located in the building belonging to a

¹ (1992) 1 SCC 119

lawyer or a client. Even the residential accommodation of the judicial officer belongs to people of that category. Such a situation often gives occasion to personal embarrassment to the judicial officer and it has to be avoided.”

5. The Hon’ble Supreme Court in again in ***All India Judges' Assn. (II) v. Union of India***², emphasised the importance of providing separate and exclusive office room in the official accommodation of the judicial officers.

6. Subsequently, when the issue relating to residential accommodation of the Judicial Officers was not satisfactorily addressed by the State Governments, the Hon’ble Supreme Court in ***All India Judges' Assn. v. Union of India***³, issued the following directions:-

“1. By our judgment in review petitions rendered on 24-8-1993 [All India Judges' Assn. v. Union of India, (1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818] the date of compliance of certain directions issued earlier by the judgment of 13-11-1991 [All India Judges' Assn. v. Union of India, (1992) 1 SCC 119 : 1992 SCC (L&S) 9 : (1992) 19 ATC 42] came to be extended up to 31-3-1994 [see(1993) 4 SCC at p. 317] More than a year has since passed. We find that the directions have not been complied with fully by most of the States. That is presumably because it has not been possible for the State Governments to construct sufficient houses for judicial officers even though some of the State Governments have granted administrative approvals and sanctioned funds for grant thereof. However, that may take some time but in the meantime some arrangement ought to be made because the question of residential accommodation to judicial officers is a first priority requirement. What the interim arrangement should be is a matter in regard to which we have heard counsel for the respective State Governments. In the case of the State of Gujarat we had on an earlier occasion, i.e., on 19-8-1994, passed an order to the effect that the judicial officer should be granted residential accommodation of the standard to which they are entitled having regard to their status from the general pool on priority basis. It should be made clear that when we state that the quarters should be allotted to judicial officers on priority basis, the direction should be complied with in letter and spirit and not by permitting special category allotments by passing allotment to judicial officers. If despite the same, sufficient quarters are not available from the common pool and it becomes necessary to requisition or hire private accommodation the State Government should direct the respective Collectorates to locate accommodation of the prescribed standard

2 (1993) 4 SCC 288

3 (1998) 9 SCC 245

and allot the same to the judicial officers. In cases where that is not done or is not possible for want of accommodation or even though the judicial officer is able to point out accommodation but for some valid reason it is not possible for the State Government to requisition or hire the same and the judicial officer is compelled to hire accommodation for himself, the rental in excess of what the judicial officer is entitled to by way of HRA must be borne by the State Government provided the judicial officer intimates the State Government that on account of its default he has selected a house at a particular rental and would be occupying the same. If after such intimation the State Government/Collectorates does not provide accommodation to the judicial officer within a month's time the judicial officer will be entitled to hire the house and the State Government will pay the rental in excess of the HRA admissible to the judicial officer for the accommodation. In the case of judicial officers already in occupation of private accommodation the same benefit should be extended to them also, namely, of payment of the excess amount for the accommodation. In order that the State Government may have reasonable time to comply with this direction we direct that this order should be worked out as early as possible and will become effective from 1-8-1995. It is needless to impress upon the State Governments that we expect scrupulous implementation of this order because by the date 1-8-1995 more than reasonable time would have elapsed since the making of the order in the review application. A copy of this order will be sent to the Chief Secretary of every State Government who shall be personally responsible for the implementation of the order; failure, if any, will invite drastic action."

7. Subsequently, considering the importance of providing residential accommodation to the Judicial Officers, the **Shetty Commission** also in its report submitted in 1999 made the following, inter alia, recommendations:-

1. **All Judicial Officers, irrespective of their cadre, should be provided with Government quarters according to their entitlement. If adequate Government quarters are not available at a time, the Government shall requisition the proper houses and make available to the Judicial Officers.**
2. The Government quarters/requisitioned house provided to Judicial Officers must have separate space for "Home Library" and necessary books and furniture of the Home Library shall be at the cost of the High Court/State which shall be administered

and managed by the Principal District Judge of the district.

3. The Drawing Room of each such quarters/houses shall be reasonably furnished with a sofa set, carpet, teapoy, and one or two side tables and chairs at the cost of the High Court/State which shall be administered and managed by the Principal District Judge. The upholstery of every sofa set should be changed once in three years.

4. The regular maintenance and repairs of Government quarters allotted to Judicial Officers shall be obligatory duty of the Public Works Department, since it is not possible for the High Court to maintain a separate department for this purpose.

8. It may be also noted that the Hon'ble Supreme Court in ***All India Judges' Assn. (3) v. Union of India***⁴, had accepted the above recommendations of the Shetty Commission and also held that free government accommodation should be made available to the Judicial Officers.

9. In the light of the above, we are of the view that this shortfall in the official accommodation and deficiency in providing alternative arrangement needs to be addressed without any further delay. We are also aware that in some districts of Assam, constructions are already underway for providing residential accommodation for the judicial officers, but these are likely to take some time. We are also made to understand that in some districts, there are some official quarters/accommodation available which can be temporarily allotted to the judicial officers.

10. We are also made to understand that in some districts like Karbi Anglong, Dima Hasao, Kokrajhar, Baksa, Udalguri and Chirang, the District Councils have jurisdiction over allotment of government quarters. Accordingly, we direct that all the District Councils in the State of Assam, through their respective Chief Executive Members be made party respondents in this proceeding.

11. Registry to make necessary corrections in the cause title and notice be issued to the newly impleaded respondents through their respective standing counsel.

12. Considering the above, we, accordingly, direct that the Deputy Commissioners of all

4 (2002) 4 SCC 247

the Districts and the Chief Executive Members of all the District Councils in the State of Assam, shall in consultation and coordination with the District Judges concerned, explore all possibilities for providing accommodation to the Judicial Officers. The Deputy Commissioners of all the districts and Chief Executive Members of all the District Councils then shall submit reports individually of the steps taken and proposals, if any, to deal with this issue of lack of official accommodation for the Judicial Officers in their respective districts. However, this direction will not apply in respect of the districts of Lakhimpur, North Lakhimpur, Dhemaji, Morigaon, Goalpara, Kokrajhar and Baksa, as there is no shortage of official accommodation for Judicial Officers in these districts at this juncture.

It is also directed the Chief Secretary, Assam will himself monitor the actions taken by the Deputy Commissioners in the districts and the Chief Executive Members in the District Councils and submit an affidavit in this regard by the next date.

13. As far as the States of Nagaland, Mizoram and Arunachal Pradesh are concerned, each of the Registrars of the respective Benches are directed to furnish a detail report reflecting the present status of availability of official accommodation for the Judicial Officers and steps taken so far. Appropriate orders will be passed in the matter on receiving reports from the respective Registrars.

The Registrar General to inform the Registrars of all the Outlying Benches accordingly.

14. Copies of this order be furnished to the learned counsel for all the parties and to all the learned District Judges of Assam who will coordinate with the Deputy Commissioners and the Chief Executive Members as directed above.

15. List these matters again on 23.11.2020.

Sd/- Suman Shyam
JUDGE

Sd/- M.R. Pathak
JUDGE

Sd/- N. Kotiswar Singh
CHIEF JUSTICE (ACTING)

Comparing Assistant