

GAHC010174972015



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

Case No. : WP(C)/1694/2015

ASSAM PETROCHEMICALS LTD.
A GOVT. COMPANY WITHIN THE MEANING OF THE COMPANIES ACT
HAVING ITS REGISTERED OFFICE AT 4TH FLOOR
ORION PLACE
NEAR IDBI BUILDING
BHANGAGARH
G.S. ROAD
GUWAHATI-5
REP. BY ITS MANAGING DIRECTOR.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM

URBAN DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR OF MUNICIPAL ADMINISTRATION

ASSAM
DISPUR
GUWAHATI-06.

4:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM.

5:THE CIRCLE OFFICER

NAHARKATIA REVENUE CIRCLE
NAHARKATA
DIBRUGARH
ASSAM.
6:THE NAMRUP TOWN COMMITTEE
NAMRUP TOWN
NAMRUP
DIBRUGARH
ASSAM.

Advocate for : MR.M GOGOI
Advocate for : appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 16.07.2024

Heard Mr. N. Deka, learned counsel for the petitioner. Also heard Mr. N. Goswami, learned Government Advocate for the State respondents.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner is assailing the notification dated 01.03.2014 issued by the Secretary to the Government of Assam, Urban Development Department (Annexure-3) whereby residential township of the petitioner has been declared as a notified area of Namrup Town Committee in the district of Dibrugarh.

3. The case of the petitioner is that the petitioner is a Government company having its industry and township over its land measuring 326 Bighas at Namrup in the district of Dibrugarh.

4. The Government of Assam issued a notification dated 09.01.2014

under Section 334 (1) of the Assam Municipal Act, 1956 (hereinafter referred to as "the Act, 1956"), expressing its intention to constitute a town committee at Namrup, in the district of Dibrugarh providing improved amenities within the limits of the boundaries specified in the scheduled appended below, wherein the land of the petitioner is also included, upon which municipal fund is proposed to be expanded with respect to all matters mentioned under Section 60 of the said Act,1956.

5. Pursuant to such intent notification, the petitioner filed its objection to exclude its land from the purview of the aforesaid intention.

6. However, without considering the representation of the petitioner, the Government of Assam vide notification dated 01.03.2014 issued the impugned notification under Section 334 (4) of the Act, 1956 declaring, inter-alia the land of the petitioner as a notified area under the said Namrup Town Committee.

7. Aggrieved by such inclusion of the petitioner's land, the present writ petition has been filed.

8. Mr. N. Deka, learned counsel for the petitioner submits the impugned inclusion order dated 01.03.2014 is absolutely illegal, null and void in as much as the same has been issued without considering the objection filed by the petitioner within the prescribed time.

9. In this regard, he further draws the attention of this Court to sub-Section 3 of Section 334 of the said Act, 1956, whereunder it is

imperative for the State Government to consider the objection filed by the aggrieved inhabitant within the prescribed time.

10. Mr. N. Goswami, learned Government Advocate fairly submits that the respondent No. 4 in the affidavit-in-opposition filed on 18.06.2020 have averred that the objection of the petitioner was received in the office of Circle Officer, Naharkatia Revenue Circle within the prescribed time.

11. Heard the parties and perused the materials available on record.

12. Before advertng to the facts of the case, pertinent to refer to the relevant provision of the said Act, 1956, Section 334 of the said Act, 1956 is reproduced hereunder for ready reference:

“334. Constitution of notified areas. (1) The State Government may by notification signify its intention to declare that with respect to some or all of the matters upon which a municipal fund may be expended under Section 60, improved arrangements as required within a specified area, which nevertheless, it is not expedient to constitute as a municipality.

(2) A copy of the notification under sub-section (1) shall be published in such places as the State Government may be general or special order direct.

(3) Should any inhabitant of the specified area aforesaid desire to object to the notification issued under sub-section (1) he may within six weeks from the date of its publication, submit his objection in writing to the State Government through the Deputy Commissioner, and the State Government shall take his objection into consideration.

(4) When six weeks from date of publication have expired and the State

Government has considered and passed orders on such objections as may have been submitted to it, the State Government may by notification declare the specified area aforesaid or any portion thereof to be a notified area to be termed as Small Town.”

13. A bare perusal of Section 334 of the said Act, 1956 indicates that in case the State Government intends to declare an area as a notified area under the jurisdictional Municipal Town Committee, a notification has to be first published indicating such intention, whereupon the inhabitant of that specified area if desires may within 6(six) weeks from the date of such publication, submit his objection in writing to the State Government through the Deputy Commissioner and the State Government shall take such objection into consideration and thereafter shall declare such specified area or any portion thereof to be a notified area to be termed as small town.

14. In the present case, the State Government on 09.01.2014, notified under Section 334 (1) of the said Act, 1956 its intention to constitute a town committee at Namrup in the district of Dibrugarh wherein the land of the petitioner along with others were also included.

15. It further appears that the petitioner within 6(six) weeks in terms of sub-Section 3 of Section 334 of the said Act, 1956 i.e. on 24.01.2014 submitted its objection to the jurisdictional Additional Deputy Commissioner.

16. It further appears that the State Government without taking the said objection into consideration, in a most mechanical manner, on

01.03.2014 notified the area of the petitioner as Namrup Town Committee.

17. It is most surprising to note that it is stated in the aforesaid notification that despite expiry of the time stipulated under the Act, no objection was received from the petitioner. In fact this is wholly contrary to the records of the case in as much as the petitioner before the expiry of 6(six) weeks, i.e. 20.02.2014 from the date of publication of the intent notification, submitted its objection on 24.01.2014.

18. The relevant portion of the impugned notification dated 01.03.2014 is reproduced hereunder for ready reference:-

“UDD (M) 233/2013/12 Whereas 42 (Forty Two) days from the date of publication of the notification issued vide no. UDD (M) 233/2013/ 11 dated 9th January, 2014 under sub-section (1) of section 334 of the Assam Municipal Act, 1956 have expired and no objection pursuant thereto have been received.

Therefore, the Governor of Assam in exercise of the power conferred under sub-section (4) of section 334 of the said Act, is pleased to declare the area specified under the aforesaid notification to be notified area of Namrup Town Committee in the District of Dibrugarh.”

19. As stated earlier, the petitioner had filed its objection within the stipulated time and the said fact is also admitted by the State Government in their affidavit filed on 18.06.2020.

20. Paragraph 6 of the said affidavit is reproduced hereunder for ready reference:-

“6.That with regard the statements made in paragraph 4 of the writ petition, the deponent begs to state that it is a fact that Assam Petro-

Chemicals authorities had submitted a request vide letter No. APL/Admn/gen 37/ 110 dated 24.01.2014, regarding exclusion of some Dags within the ambit of proposed Namrup Town Committee Area a copy of which was also received in the office of Circle Officer, Naharkatia Revenue Circle."

21. Thus admittedly the impugned notification has been issued without considering the objection filed by the petitioner. It is imperative under the said provision of law for the State respondents to consider the objection filed by the petitioner within the prescribed time. Thus the impugned notification is issued in gross contravention of the aforesaid provision of law.

22. Therefore, the impugned order dated 01.03.2014 so far as the petitioner's land is concerned is totally illegal, null and void.

23. Accordingly the writ petition succeeds.

24. Resultantly, the notification dated 01.03.2014 as far as it concerns the petitioner's land is set aside and quashed.

25. It is needless to clarify that the respondents however are at liberty to proceed in accordance with law.

26. With above observations and directions, this writ petition stands disposed of.

JUDGE

Comparing Assistant