

GAHC020000072025



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

Case No. : PIL/1/2025

SHRI VIKATO SHIKHU AND ANR
S/O SH. H. KHUWOTO SHIKU
R/O B.P.O NIULAND HOVUKHU, NUILAND, DIMAPUR,
NAGALAND-797112
2: SHRI LHIKHRO KREO
S/O KEDUZO KREO
R/O H. NO. 34
VILLAGE- BADE
DIMAPUR
NAGALAND -79711

VERSUS

STATE OF NAGALAND AND ANR
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND
2: COMMISSIONER AND SECRETARY
P AND AR DEPT.
NAGALAND KOHIM

Advocate for the Petitioner : S BORGOHAIN, TONGPOK
PONGENER, BAPLU CHAKMA

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MR. JUSTICE BUDI HABUNG
ORDER**

Date : 02-04-2025
(D.Baruah,J)

Heard Mr. S. Borgohain, learned counsel appearing

on behalf of the petitioners and also heard Mr. K. N. Balgopal, learned Advocate General assisted by Ms. Nitya Nambiar, Mr. Vetso Rio, learned counsels and Mr. Imti Imsong, learned Additional AG appearing for the respondent nos. 1 and 2.

2. It is seen from the records that on 22.01.2025, this Court had issued notice and till date, no affidavit has been filed on behalf of the State. The learned Advocate General submits that the affidavit has already been prepared and would be filed within a week or so.

3. Mr. S. Borgohain, learned counsel for the petitioners submits that an interim order was passed, which is required to be extended. He, therefore, submits that this Court should extend the interim order.

4. We have heard the learned counsels appearing on behalf of the parties on the question of extension of the interim order. We take note of that the challenge made in the instant proceedings is to the Nagaland Lokayukta (First Amendment) Act, 2019, (for short the Amending Act of 2019) whereby the Nagaland Lokayukta Act, 2017 was amended. The challenge made to the said Amending Act of 2019 is to the composition of the Search Committee. The petitioners have also assailed the Nagaland Lokayukta (Second Amendment) Act, 2022 (for short the Amending Act of 2022) whereby the persons eligible to be appointed as Lokayukta has been put to challenge.

5. The learned counsel appearing on behalf of the petitioners submitted that challenge made to the

Amending Act of 2019, as well as the Amending Act of 2022, are on the ground that the said Amending Acts are in conflict with The Lokpal and Lokayukta Act, 2013 (for short the Act of 2013). He submitted that the Act of 2013, was enacted by the Parliament by exercising the powers conferred in Entry 12 of List I of Seventh Schedule of the Constitution, and this very aspect of the matter can be very well seen from the Statements of Objects and Reasons of the Act of 2013, as well as from the very Preamble of the Act of 2013. The learned counsel further submitted that by virtue of Section 63 of the Act of 2013, the State legislature have been empowered to make legislations for the State, and it is on the basis thereof, the Nagaland Lokayukta Act, 2017 was enacted. He, therefore, submitted that as the power which have been conferred upon the State legislature is on the basis of Section 63 of the Act of 2013, the Nagaland Lokayukta Act, 2017 cannot be in conflict with the provisions of the Act of 2013. He submitted that the constitution of the Search Committee as well as eligibility of the person to be appointed as Lokayukta are in conflict with the Act of 2013.

6. Per contra, the learned Advocate General, Mr. K. N. Balgopal, submitted that the detailed affidavit is in the process of being filed. He, however, challenged the very maintainability of the instant petition on the ground that the instant petition which is filed in the form of Public Interest Litigation is not maintainable. The learned

Advocate General further submitted that these amendments were made in the year 2019, as well as in the year 2022, on account of non-availability of Judges of Supreme Court, Chief Justices of the High Court as well as the Judges of the High Court in the State of Nagaland. He further submitted that the Act of 2013, is silent as regards the eligibility of a Lokayukta. In addition to that, he also submitted that the Search Committee to select the names which are to be referred to the Selection Committee is also not in conflict with the Act of 2013, as the Act of 2013 mandates the Search Committee only for the post of Lokpal.

7. The learned Advocate General also submitted that taking into account the separation of powers between the Executive, the Legislative and the Judiciary, an act of the Legislature, be it the Principal enactment or the Amending act, ought not to be stayed till a finality is reached that the act in question is in violation to Article 13 of the Constitution, *ultra vires* to the Central law, the State legislature does not have the competence, as well as the said legislative enactment was not made in accordance with the procedure established. The learned Advocate General submitted that under such circumstances, this Court ought not to extend the interim order.

8. We have given our anxious consideration to the submissions. The law as regards the stay of an enactment of legislature or its amendments is very clear. The power under Article 226 of the Constitution can be exercised

when this Court is of the opinion that the impugned enactment is *ultra vires* to the Constitution, or *ultra vires* the Central act, or the State does not have the legislative competence. This finding can only be arrived at the culmination of the instant proceedings. Taking into account the doctrine of separation of powers between the Executive, the Legislative as well as the Judiciary, in our opinion it would not be proper to stay the Amending Acts of 2019 and 2022. This Court however observes that if any appointment is made on the basis of the Amending Act of 2019, as well as the Amending Act of 2022, the same shall be subject to the outcome of the present proceedings.

9. The affidavit be filed by the State on or before 25.04.2025. The petitioner herein, if so advised would be at liberty to file reply-affidavit.

10. List the matter on 07.05.2025.

11. Before parting, we observe that taking into account that this Court has not extended the interim order, the respondents shall file their affidavits on the next date so fixed without fail.

Sd/-
JUDGE

Sd/-
JUDGE

Comparing Assistant