

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.655 OF 2021**

Shri Prasenjit Acharjee,
S/o Sri Parimal Acharjee,
Resident of Ramnagar Road No.8, last,
P.O.- Ramnagar, P.S.- West Agartala,
Sub-Division- Agartala, District- West Tripura,
Aged 31 years

..... **Petitioner(s)**

Vs.

1. **ONGC, Tripura Power Company Ltd.,**
(a Joint Venture company of ONGC, IL & FS, IIF-II &
Government of Tripura) Udaipur- Kakraban Road,
P.O.- Palatana, District- Gomati, Tripura, PIN-799105,
represented by its Managing Director.
2. **Managing Director,** ONGC Tripura, Power Company,
Ltd., (Joint Venture Company of ONGC, IL & FS, IIF-II &
Government of Tripura) Udaipur-Kakraban Road,
P.O.- Palatana, District- Gomati Tripura,
PIN-799105(Appellate Authority).
3. **AGM & HEAD(HR & A) ONGC,** Tripura, Power Company
Ltd.,(Joint Venture Company of ONGC, IL & FS, IIF-II &
Government of Tripura) Udaipur-Kakraban Road, P.O.-
Palatana, District- Gomati, Tripura, PIN -799105;
4. **Sri Sanjay Agarwal,** EX-CJM(HR), ONGC, C-1506 D.B.,
Woods, Krishna Vatika Marg, GokulDham, Goregaon(E),
Mumbai, 400063, (Enquiry Officer).

..... **Respondent(s)**

For the Petitioner(s)	: Mr. S. Lodh, Advocate. Ms. A. Saha, Advocate.
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For the Respondent(s)	: Mr. A. Puri, Advocate. Mrs. V. Poddar, Advocate.
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Date of hearing and delivery of

Judgment & Order : 26/04/2023.

Whether fit for reporting : YES.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present writ petition has been filed under Article 226 of the Constitution of India. The brief fact of this case is that vide order dated 27.10.2020, the petitioner was suspended on the ground that a criminal case is pending against him. Thereafter respondent No.3 issued a charge sheet framing 4(four) articles of charges. The petitioner made representation to engage an Advocate during the course of the proceeding. Respondent No.3 appointed respondent No.4 as inquiry officer, and Mr. V. Siddharth, Advocate, was appointed as presenting officer of the Disciplinary Proceeding. Thereafter the proceeding ended, and the punishment of dismissal from the service was imposed upon the petitioner. Challenging the same, the petitioner filed an appeal before the Appellate Authority, and the said appeal was also dismissed. Challenging the same, the petitioner has filed this instant writ petition seeking the following reliefs:-

" i. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a writ of certiorari and/or in the nature thereof, shall not be issued, for calling for the records, lying with the respondents, for rendering substantial and conscionable justice to the petitioner, and for quashing/setting aside impugned Enquiry Report dated 20.02.2021(Annexure-10 supra), Order No.OTPC/HR/Disciplinary/2021-

22/003, dated 26.04.2021(Annexure-12 supra) and order dated 29.07.2021(Annexure-15 supra).

ii. Issue Rule, calling upon the respondents and each one of them, to show cause as to why a writ of mandamus and/or in the nature thereof, shall not be issued, for mandating/directing them, to revoke/rescind the impugned Enquiry Report dated 20.02.2021(Annexure-10 supra), Order No.OTPC/HR/Disciplinary/2021-22/003, dated 26.04.2021 (Annexure-12 supra) and Order No.OTPC/MD/Disciplinary/2021-22/014, dated 29.07.2021(Annexure-15 supra).

iii. Call for the records, appertaining to this petition.

iv. After hearing the parties, be pleased to make the Rule Absolute in term of i. & ii. above.

v. Costs of an incidental to this proceeding;

vi. Any other relief(s) as to this Hon'ble High Court may deem fit and proper."

2. Heard Mr. S. Lodh, learned counsel assisted by Ms.

A. Saha, learned counsel appearing for the petitioner as well as Mr. A. Puri, learned counsel assisted by Ms. V. Poddar, learned counsel appearing for the respondents.

3. At the very outset, while Mr. Lodh, learned counsel appearing for the petitioner was advancing his argument, the respondent-counsel raised an objection on the point of maintainability of the writ petition and in view of the same, since the preliminary objection has been raised, this Court has framed the following issue:-

i) *Whether the writ petition lies under Article 226 of the Constitution of India against the respondents or not?*

ii) *Whether the respondent is state as defined under Article 12 of the Constitution of India?*

4. To properly adjudicate the matter we may reproduce Articles 12 and 226 of the Constitution of India:-

12. Definition In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

"226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

5. Further the meaning of mandamus as defined is given herein under "*Whenever a public officer or government has done some act which violates the fundamental right of a person, the Court would issue a writ of mandamus, restraining the public officer*

or government from enforcing that order or doing that act against the person whose fundamental right has been violated”.

6. Thereafter, Mr. Lodh, learned counsel appearing for the petitioner on the point of maintainability of the writ petition submits that in the General Election of Tripura held in 2023, the 4(four) staff of the respondent-Company were appointed as Micro observers to look after the Election proceeding. Micro observers are appointed from the employees who are from an organization/department/company of Central Government undertaking not below the rank of Group-C. So this action of the Election Commission proves that the respondent-Company is a Government entity in itself. Learned counsel further submitted that Government Company means any company in which not less than fifty-one percent of the [paid-up share capital] is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined. Learned counsel further submits that the respondent company is a subsidiary company in terms of Section 2(87) Subsidiary Company. In terms of annexure-19 of the writ petition, learned counsel further submits that the share of ONGC is 50%, the share of IL & FS is 26% and the share of GOT is 0.5% in the

said Company. Further, the Board consists of not less than 8 and not more than 10 directors, and ONGC has the right to nominate at least 4(four) Directors to the Board of the Company till it continues to hold at least 50% of the shareholding of the Company, IL & FS have the right to nominate 2(two) Directors to the Board of Companies and GOT have the right to nominate 1(one) Director to the Board of Company, ONGC and IL & FS each have the right to nominate 1(one) Director to the Board of Company and ONGC have the right to appoint the chairman of the Board from amongst its nominee. As such ONGC has the control of the Board as such the said Company is the subsidiary company of ONGC so it comes under the preview of the Government Company. So the objection of the respondents' side that the said Company is not a Government Company prior to January 2022 is totally wrong. Stating thus learned counsel submits that the present writ petition is maintainable.

7. On the other side, Mr. A. Puri, learned counsel appearing for the respondents submits that the writ petition filed by the petitioner is not maintainable. The respondent No.1 Company at the relevant time was not a Government Company in terms of Section 2(45) of the Companies Act, 2013. It is further submitted that respondent No.1 cannot be considered as an instrumentality of the State as the entire shareholding was

neither with the Central nor the State Government. Further respondent No.1 does not get financial assistance from State, to the extent of meeting the expenditure of the Company. Respondent No.1 does not enjoy monopoly status, nor there is any evidence of pervasive State control. The activities of respondent No.1 is in the power generation business and do not constitute Government Function. Accordingly, respondent No.1 Company cannot be considered as 'State' within the meaning under Article 12 of the Constitution of India at the relevant point of time. Learned counsel further submitted that under Section 2(45) of the Companies Act, 2013, respondent No.1 is not a Government Company. The respondent No.1 Company operated as any other private Sector Companies. In terms of Section 2(87) of the Companies Act 2013, the said Company is also not a subsidiary Company. Learned counsel further submits that the Registrar of Companies issued a certificate saying that his client is a non-governmental company and at no point of time they were more than half the directors. They were not having more than 50% share also and they were not managing the company, as on the date prior to 4th January 2022, the company is private concerned, and shares were not taken over. Vide order dated 26.04.2021, the petitioner was terminated. The appeal against the impugned order of dismissal was filed on 17.05.2021. The

appellate order was also given 29.07.2021. All these dates fall prior to 4th January, 2022 and it on that date and the company was holding its private identity, it was not a state

8. Heard both sides and perused the evidence on record.

9. To come to a conclusion on the point of maintainability of this writ petition, let us first reproduce Section 2(45) and Section 2(87) of the Companies Act, 2013:-

" 2(45). "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

2(87). subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies

10. This Court finds force in the argument of the learned counsel appearing for the respondents. Moreover it, is revealed from the record that at the relevant point of time, the respondent-company herein was not holding 51% percent share as per Section 2(45) of the Companies Act. Further, the respondent-Company does not control the composition of the Board of Directors or exercise or control more than one-half of the total voting power either on its own or together with one

more of its subsidiary companies. So it evident from the above observation that the respondent Company cannot be termed as 'State' in terms of Article 12 of the Constitution of India. Vide order dated 26.04.2021, the petitioner was terminated. The appeal against the impugned order of dismissal was made on 17.05.2021. The appellate order was also given 29.07.2021. At that relevant point of time, the respondent-Company was holding its private entity.

11. In view of the above discussion, this Court is of the view that the present writ petition is not maintainable. Accordingly, without going to the merits of the order of termination by the appellate authority, this present writ petition is dismissed as not maintainable. However, the petitioner is at liberty to avail the remedies under the law if so advised in adjudicating the order of termination.

12. With the above observation and directions, this present petition is dismissed. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE