

GAHC010259742013



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

Case No. : WP(C)/5245/2013

DR. BHABENDRA DEKA
S/O LT. RUPARAM DEKA, R/O H/NO.2, BHUTNATH, MILANPATH,
GUWAHATI, DIST- KAMRUP METRO, ASSAM, GHY-9

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, HOME DEPARTMENT, DISPUR, GHY-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUARTER
ULUBARI
GHY-7

3:THE SUPERINTENDENT OF POLICE
GUWAHATI CITY
GHY-01

4:THE OFFICER IN CHARGE
BHARALUMUKH P.S.
BHARALUMUKH
GHY-9

5:THE OFFICER IN CHARGE
PALTANBAZAR P.S.
PALTANBAZAR
GHY-8

6:NARENDRA NATH BORA
CHAIRPERSON OF NORTH EAST EDUCATIONAL and CHARITABLE TRUST
RAJGARH ROAD

GHY-7
PERMANENT R/O NORTH LAKHIMPUR
OPPOSITE TO NORTH LAKHIMPUR GIRLS H. SCHOOL

7:METHEW SHALVI
CHAIRPERSON 1 ALLEYMMA CHCOKU
CHAIRPERSON-II OF CHIRST EDUCATION AND CHARITABLE TRUST
REGD BANGALORE OFFICE NO.35
80 FEET ROAD HALL-III STAGE

8:ALLEYAMMA CHACOKU
CHAIRPERSON-II OF CHIRST EDUCATION AND CHARITABLE TRUST
REGD BANGALORE OFFICE NO.35
80 FEET ROAD HALL-III STAG

Advocate for the Petitioner : MR.M KALITA

Advocate for the Respondent : MS. D L DEKA (R6)

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

Date : 15-09-2023

The writ petition has been filed by the petitioner seeking a direction upon the respondents more particularly the respondents no. 2, 3, 4 and 5 to make an investigation of the case and to do the needful by arresting the respondents no. 6, 7 and 8.

2. The facts involved in the instant case as can be discerned from the writ petition is that an advertisement was published in the newspaper '*Dainik Asomiya Pratidin*' on 05.08.2007 by the Respondent No. 6 wherein few seats of MBBS course in Dr. B.R. Ambedkar Medical College at Bangalore was advertised. The Petitioner accordingly approached the Respondent No. 6 who was the

Chairperson of North East Educational & Charitable Trust and upon his advise the petitioner sent a bank draft bearing No. 256295 dated 16.08.2007 issued by the SBI, Maligaon Branch of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) to the respondents no. 7 and 8 to be drawn on SBI, Indira Nagar Branch. It was alleged in the writ petition that the said amount was sent as per the advice of the Respondent No. 6 for the purpose of admission of the petitioner's son, wherein the respondents no. 7 and 8 acted as agents for the purpose of admission at Dr. B.R. Ambedkar Medical College at Bangalore. Thereupon, the petitioner along with his son went to Bangalore on 30.08.2007 for the purpose of admission and met the respondents No. 7 and 8 who assured the petitioner that the admission would be completed on 03.09.2007 and the total expenses would be Rs.16,00,000/- (Rupees Sixteen Lakhs) for the whole course of MBBS and the remaining amount @Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand) in every year has to be paid in due course of time. It was alleged that on 03.09.2007, the respondents No. 7 and 8 told the petitioner that the admission could not take place due to some anomalies. However, they asked the petitioner to meet them on 17.09.2007 for admission of the petitioner's son in MBBS course. Further to that the petitioner claims that he was demanded another amount of Rs.5,00,000/- (Rupees Five Lakhs) by the Respondents No. 7 and 8 as a donation and the admission certificate of the son of the petitioner would be issued. The petitioner informed the respondents no. 7 and 8 that he was not in a position to pay the said amount of Rs.5,00,000/- (Rupees Five Lakhs) and requested the respondents no. 7 and 8 to return back the amount of Rs.5,00,000/- (Rupees Five Lakhs) which the petitioner had already paid. At this, the respondents no. 7 and 8 had issued three numbers of cheques, one bearing No. 007156 amounting to Rs.2,00,000/- (Rupees Two Lakhs) to be

drawn on IDBI bank payable to all branches throughout India and another cheque bearing No. 231383 dated 10.10.2007 amounting to Rs.1,00,000/- (Rupees One Lakh) to be drawn on ICICI Bank throughout India. The said cheques were duly presented by the petitioner on various dates but were returned either on the ground of insufficient funds or on the ground of drawers signature differs.

3. Thereupon, the petitioner issued a communication of 16.08.2008 to the Respondent No. 7 to pay the amount to the petitioner as mentioned in the said cheques but the said amount was not paid. Under such circumstance, the petitioner filed a complaint case before the Court of Chief Judicial Magistrate, Kamrup, Guwahati which was claimed to be registered and numbered as Complaint Case No. 5116/2008. This Court finds it relevant at this stage to mention that no order whatsoever have been enclosed in the writ petition as regards the complaint case No. 5116/2008 but a statement has been made in paragraph 15 that the learned Magistrate had directed the Bharalumukh Police Station to register a case and investigate the matter. The petitioner subsequently on enquiry, came to learn that the Bharalumukh Police Station had sent the said case to the Paltanbazar Police Station on the ground that the Respondent No. 6 resides within the jurisdiction of Paltanbazar Police Station. It is also alleged in the writ petition that the Paltanbazar Police Station further did not carry forward the investigation in the manner provided under the law, for which the petitioner has approached this Court seeking reliefs as abovementioned. This Court further finds it relevant to take note of that the petitioner on 22.07.2013 had issued a communication to the Superintendent of Police, Guwahati city as well as a copy of the same was also served upon the

D.G.P., Assam.

4. Upon the instant writ petition being filed, this Court issued notice on 12.09.2013. It further reveals from the records that there is an order dated 28.11.2018 whereby the service and notice upon the respondents no. 7 and 8 was dispensed with by this Court taking account that the petitioner could not serve the notice upon the respondents no. 7 and 8 inspite of elapse of five years. The records further show an affidavit-in-opposition was filed on behalf of the Respondent No. 3 in the month of February, 2020 wherein it has been mentioned that on the basis of the complaint, Paltanbazar Police Station Case No. 285/2009 was registered. It was mentioned that as per the approval of the Police Headquarter, Assam, a police team under the leadership of SI Pankaj Paratim Mahanta, Investigating Officer of the case visited Indiranagar, Bangalore on 27.11.2019 to arrest the respondents no. 7 and 8 who were the Chairpersons of Christ Educational and Charitable Trust, Indiranagar, Bangalore. However, the said search under the jurisdiction of Jeevan Bhimanagar Police Station, Bangalore on 27.11.2019 beared no fruitful result and the respondents no. 7 and 8 could not be traced. The police team found available one restaurant in the name of M/S Le Burger Seigneur in that location instead of Christ Educational and Charitable Trust. It was further mentioned that in course of investigation, it was learnt that the respondents no. 7 and 8 had left that place more than ten years ago. The Investigating Officer further examined some local people but nobody knew the whereabouts of the respondents no. 7 and 8. Under such circumstance, the search list had been prepared by the Investigating Officer in presence of the witnesses in connection with the above referred case.

5. Further to that it was also mentioned that the Investigating Officer had also

examined owner of H/No. 35, 80 Feet Road, HAL-3rd stage, Bangalore namely, Mathai Cyriac, 59 and recorded his statement. The said person stated in writing that the respondents no. 7 and 8 of Christ Educational and Charitable Trust were his tenants in his building but vacated his premises since ten years ago. Further to that it is also stated that the Investigating Officer has submitted one requisition to SHO, Jeevan Bhimanagar Police Station, Bangalore for the arrest of the respondents no. 7 and 8. On the next date i.e. on 28.11.2019, the police team had visited Dr. B.R. Ambedkar Medical College located at R.T. Nagar, Bangalore in connection with the police case and submitted one prayer to the Director of Dr. B.R. Ambedkar Medical College, Bangalore, requesting to furnish information against the respondents no. 7 and 8. On receipt of the prayer, on the same date, the authority of Dr. B.R. Ambedkar Medical College, provided the required information in writing vide ref. letter No. AMC.PRI/285.2019-20 dated 28.11.2019 that they had no connection with the persons i.e. the respondents no. 7 and 8. They also stated that the complainant had not met any of the college authorities for seeking admission of his son in Dr. B.R. Ambedkar Medical College at Bangalore.

6. This Court finds it relevant that pursuant to the said affidavit-in-opposition, the petitioner did not file any reply. Be that as it may, from time to time this Court was provided status report of the case involved. This Court finds it relevant to take note of that on 30.05.2022, the Deputy Commissioner of Police (Crime), Guwahati had informed this Court through an instruction that the charge-sheet in Paltanbazar Police Station Case No. 285/2009 had been filed before the Trial Court against the arrested persons Sri Narendra Nath Bora, who is the Respondent No. 6 herein under Sections 406/409/420 of Indian Penal

Code. It was stated that the investigation of the case would continue and the additional charge-sheet would be filed after collection of more evidences against the other alleged accused persons.

7. Today when the matter is taken up, the learned counsel Ms. U Das appearing on behalf of the State of Assam has placed on record an instruction issued by the Deputy Commissioner of Police, Central Guwahati Police District wherein apart from what has been stated in the affidavit-in-opposition by the Respondent No. 3 as well as the instruction dated 30.05.2022, it was mentioned that investigation are still going on to trace out the two accused persons i.e. respondents No. 7 and 8 and to submit final form of the case accordingly. Further to that, this Court finds it relevant to take note of the submission of Mr. RC Saikia, learned counsel for the petitioner wherein he has submitted that it is not understandable as to why the police authorities had not been able to trace out the respondents no. 7 and 8 although they have certain Phone Numbers. During the course of hearing, the learned counsel for the petitioner has submitted that the two Phone Numbers of the Respondent No. 7 are *9844260767 and 9740410000* and as regards the Respondent No. 8, the Phone Number is *9845336832*.

8. This Court upon hearing the learned counsel for the parties is of the opinion that when the charge sheet no. 87/2022 has already been submitted on 13.05.2022, the continuation of a simultaneous proceedings before this Court would not be proper, taking into account that the petitioner can avail his remedies before the Court where the charge-sheet CS bearing No. 87/2022 in connection with Paltanbazar Police Station Case NO. 285/2009 has been submitted. The petitioner is given the liberty to file appropriate application

before the Court seeking further investigation if deemed necessary. It is further made clear that the said Court shall consider such application without being influenced by the observation made herein.

9. It is also seen from the instructions, so submitted by the police authorities that the investigation in respect of Paltanbazar Police Station Case No. 285/2009 is yet to be completed, although almost fourteen years have passed by. This Court accordingly directs the Commissioner of Police, Guwahati city to take effective steps so that the said investigation in respect to the Paltanbazar Police Station Case No. 285/2009 is brought to a logical conclusion at the earliest. In that regard, the Investigating Officer of Paltanbazar Police Station Case No. 285/2009 may also take note of the various Phone Numbers mentioned hereinabove which the learned counsel for the petitioner furnished during the course of the hearing.

10. With the above observation and direction, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant