



Serial No.01
Supp. List

**HIGH COURT OF MEGHALAYA
AT SHILLONG**

WP(C). No. 354 of 2023

Date of Order :30.07.2024

1. Shri. Monirul Islam,
S/o: Shri. Saidur Rahman,
Resident of Kasharipara,
Post Office: Hallidayganj,
Police Station: Hallidayganj,
District: West Garo Hills District,
Meghalaya.
2. Shri. Ruhul Amin Sk,
S/o: Shri Abu Taleb Sk
Resident of Kasharipara,
Post Office: Hallidayganj,
Police Station: Hallidayganj,
District: West Garo Hills District,
Meghalaya.

... Petitioners.

Vs.

1. The Meghalaya Lokayukta,
represented by the Secretary,
Matti Building, Shillong,
East Khasi Hills District, Meghalaya.
2. The Chairperson,
Meghalaya Lokayukta,
Matti Building, Shillong,
East Khasi Hills District, Meghalaya.
3. Shri. Eddris Mondal,
S/o: (L) Foziar Rahman,
President of Kasharipara VEC,
R/o: Kasharipara,



P.O. and P.S.: Hallidayganj,
District: West Garo Hills, Meghalaya.

4. Shri. Jakir Hussain,
S/o: (L) Nur Hussain,
Ex-Secretary of Kasharipara VEC
R/o: Kasharipara,
P.O. + P.S: Hallidayganj,
District: West Garo Hills, Meghalaya.

5. Shri. Jude Rangku T. Sangma,
Ex-Block Development Officer,
MNREGS, Selsella C&RD Block,
Selsella, West Garo Hills District,
Meghalaya.

...Respondents

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. S.K.Hassan, Adv.
Ms. M.Rahman, Adv.

For the Respondent(s) : Mr. S.Jindal, Adv. with for R 1 & 2.
Mr. S.A.Sheikh, Adv. for R 3 & 4.

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:_	Yes/No

JUDGMENT & ORDER



1. The petitioners are before this Court by way of the instant writ petition with the following prayer:

“In the premises aforesaid, it is therefore prayed that Your Lordship would be graciously pleased to admit this instant Writ Petition, Call for Records, issue Notice/Rule calling upon the Respondent to show cause as to why a Writ in the nature of Mandamus and/or Certiorari and/or any appropriate Writ, Order or Direction should not be issued directing the Respondents particularly to Chairperson of Meghalaya Lokayukta, Shillong, refer the matter to any Investigating Agency as per Section 20 (5) of the Meghalaya Lokayukta Act’ 2014 for investigation into the allegation and to file Charge Sheet before the Special Court and/or as to why the Impugned Order passed vide Memo. No. MEGH Lok. Case No. 4/2022/Ex-9-A dated 10-05-2023, in Complaint Case No. 4 of 2022 should not be set aside and quash and/or as to why the direction should not be issued to the chairperson, Meghalaya Lokayukta, Shillong, to refer the matter for investigation as being sufficient materials existed in the Preliminary Investigation and show cause if any, being filed and after hearing the parties make the rule absolute, and/or may pass Such other or further orders or orders or direction as Your Lordship may deem fit and proper.”

2. Briefly put, the petitioners had filed a complaint before the Meghalaya Lokayukta, Shillong which was registered as Complaint Case No. 4 of 2022, whereafter, the learned Chairperson was pleased to



pass orders directing the Police to conduct a preliminary inquiry into the matter. Thereafter, on completion of the preliminary inquiry, a report was submitted along with findings on 13-02-2023, and the writ petitioners thereafter on receipt of the inquiry report, submitted their written arguments, and the learned Chairperson of Meghalaya Lokayukta was pleased to pass the order dated 10-05-2023 which has been impugned herein.

3. Mr. S.K.Hassan, learned counsel for the petitioners has submitted that the Meghalaya Lokayukta, Shillong did not find any prima facie case of corruption established against the public servants whereas, in the preliminary inquiry report dated 13-02-2023 (Annexure-3 to the writ petition) in its findings, has clearly indicated in allegation No. 1, (c), (e) and (f) that for the project work that is yet to be started, the job card holders have already been paid. The learned counsel has taken this Court to the impugned order dated 10-05-2023, and submits that the learned Chairperson (Respondent No. 2), though holding that no prima facie case of corruption had been established, had recorded that certain works detailed therein were yet to start, but the wages amount had been already credited to the Bank Account of the job card holders, and had then directed the Community & Rural Development Department, to cause an



inquiry regarding the payment of wages, when the work had not yet started.

4. The learned counsel contends that the impugned order has been passed in violation of Section 20 of the Meghalaya Lokayukta Act, 2014, inasmuch as, as per the said Section, the respondent No. 2 after deciding as to whether a prima facie case exists, may make recommendations for investigation, initiation of departmental proceedings or other appropriate action against the concerned public servants or order closure thereof of the proceedings. In the instant proceedings, it is submitted, though the respondent No. 2 had found no prima facie case made out, however, in the same order itself had directed for an inquiry to be conducted as to the payment given to the job card holders before the work had even commenced. The impugned order therefore, he submits, is violative of Section 20 and had been passed without jurisdiction as the Act does not contemplate such a conditional order. It is further argued that the findings of the preliminary inquiry clearly indicating the existence of corruption in the action of the concerned officials, and the learned Chairperson having duly taken note of the same and ordered an inquiry, the matter should have been taken to its logical conclusion by ordering for appropriate action against the concerned public servants by the competent authority.



5. On the point as to whether a writ petition praying for a writ of certiorari for quashing the order passed by the Meghalaya Lokayukta would be maintainable, the learned counsel has placed reliance on the following judgments to show that a writ of certiorari would be maintainable to correct errors of jurisdictions committed by inferior Courts or Tribunals and these cases are as follows:

- (i) ***Arvind Kumari Vrs. State of Jharkhand & Ors. 2022 SCC Online Jhar 1709.***
- (ii) ***South Indian Bank Ltd. & Ors. Vrs. Naveen Mathew Philip & Anr. 2023 SCC online 435.***

The learned counsel then concludes his submissions by praying that the impugned order be set aside and quashed and the matter be remanded back to the Meghalaya Lokayukta for reconsideration.

6. Mr. S.Jindal, learned counsel on behalf of the respondents No. 1 & 2 has submitted that the writ petitioners are seeking to overturn a finding of fact arrived at by the respondent No. 2, and in its place substitute the same by another finding from this Court. This he submits, is impermissible as in the exercise of writ jurisdiction, this Court is not sitting in appeal over the order of the Lokayukta. In this context, the learned counsel has placed the decision of ***Central Council for Research in Ayurvedic Sciences & Anr. Vrs. Bikartan Das & Ors. 2023 SCC Online SC 996*** wherein he submits, the Supreme Court has placed



a clear embargo against converting writ jurisdiction into appellate jurisdiction and that, if a right of appeal against an order is not provided, a superior court is not empowered to re-examine the evidence and substitute its own findings. In the same vein, the learned counsel has relied upon the case of ***Hari Vishnu Kamath Vrs. Ahmed Ishaque, AIR 1955 SC 233***, and has further submitted that a conclusion of facts cannot be interfered with under writ jurisdiction.

7. On the merits of the case, the learned counsel has submitted that the contention of the petitioners that after finding no prima facie case of corruption and disposing the complaint, the respondent No. 2 had no jurisdiction to direct the Community & Rural Development Department to cause an inquiry, infact works in their favour, inasmuch as, on finding no prima facie case, no further inquiry or action is called for. The fact that the respondent No. 2 has ordered the inquiry he submits, has given the petitioners limited relief. He further submits that the petitioners therefore, have no locus to challenge this portion of the impugned order. He then lastly submits that the writ petition not being maintainable and devoid of any merit is liable to not be entertained by this Court and dismissed.

8. Mr. S.A.Sheikh, learned counsel for the respondents No. 3 & 4, while endorsing the submission made by the counsel for respondents



No. 1 & 2, has briefly submitted that the respondent No. 2 infact, inspite of not finding any prima facie case made out, had directed for an inquiry which amounted to relief being granted to the writ petitioners, and therefore, if any interference is called for, it should be to the extent of quashing this portion of the impugned order, to make it in line with Section 20 (3) (c) of the Act.

9. Upon hearing learned counsel for the parties, to the mind of this Court, the first question to be examined is whether a writ of certiorari can issue in such matters and the writ petition be maintainable in this regard. The Meghalaya Lokayukta Act, 2014 provides for an authority to inquire into allegations of corruption against certain public functionaries and is a self contained Act. In the proceedings for which a preliminary inquiry was directed to be gone into and findings generated therefrom, the impugned order was then passed by the respondent No. 2 whereby, no prima facie case of corruption was found to be made out against the respondents and the matter was disposed of however, with a direction that an inquiry be conducted regarding payment of wages to job card holders when the work had not started and for action to be taken accordingly. This impugned order as per the submissions of the petitioners is without jurisdiction which needs correction. At this juncture, it would be apposite to refer to the case of



Arvind Kumari Vrs. State of Jharkhand & Ors. (supra) relied upon by the petitioners. Paras 38 and 39 thereof which are relevant are reproduced herein below:

“38. *This Court is well conscious of the settled position of law regarding the issuance of writ of certiorari which is having limited scope, as has been held by Hon'ble Apex Court in the case of Syed Yakoob v. Radhakrishnan reported in AIR 1964 SC 477 wherein at paragraph no. 7 their Lordships have held as follows:—*

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of



law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.”

39. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Hari Vishnu v. Ahmad Ishaque reported in 1955 Supreme Court 233 wherein at Paragraph-21, which is quoted hereinbelow:—

“With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without



jurisdiction or in excess of it, or fails to exercise it. (2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari.”

(Emphasis supplied)

A perusal of the above noted case clearly lays down that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not to act as an Appellate Court and further that finding of fact cannot be reopened or questioned in writ proceedings. However, another aspect that is also present that allows issuance of writ of certiorari is when inferior Courts or Tribunals act without jurisdiction or in excess of it, or when Courts find that the process does not conform to law or statute. In this context, the case of ***South Indian Bank Ltd. & Ors. Vrs. Naveen Mathew Philip & Anr. (supra)*** as cited by the



petitioner has some relevance, as in para 14 the Supreme Court has held as follows:

“14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104,

“Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. v. Commercial Employees' Association, Madras [(1952) 1 SCC 449 : 1952 SCR 519], Veerappa Pillai v. Raman and Raman Ltd. [(1952) 1 SCC 334 : 1952 SCR 583], Ibrahim Aboobaker v. Custodian General [(1952) 1 SCC 798 : 1952 SCR 696] and quite recently in T.C. Basappa v. T. Nagappa [1955 SCR 250]. On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails



to exercise it. (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

(4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in law. This question came up for consideration in *Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw* [[1951] 1 K.B. 711], and it was held that when a Tribunal made a “speaking order” and the reasons given in that order in support of the decision were bad in law, certiorari could be granted. It was pointed out by Lord Goddard, C.J. that that had always been understood to be the true scope of the power. *Walsall Overseers v. London and North Western Ry. Co.* [[L.R.] 4 App. Cas. 30] and *Rex v. Nat Bell Liquors Ltd.* [[1922] 2 A.C. 128] were quoted in support of this view. In *Walsall Overseers v. London and North Western Ry.*



Co. [[L.R.] 4 App. Cas. 30] Lord Cairns, L.C. observed as follows:

“If there was upon the face of the order of the court of quarter sessions anything which showed that order was erroneous, the Court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it.”

In Rex v. Nat Bell Liquors Ltd. [[1922] 2 A.C. 128] Lord Sumner said:

“That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise.”

The decision in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw [[1951] 1 K.B. 711] was taken in appeal, and was affirmed by the Court of Appeal in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw [[1952] 1 K.B. 338]. In laying down that an error of law was a ground for granting certiorari, the learned Judges emphasised that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed:

“It will have been seen that throughout all the cases there is one governing rule : certiorari is only available to quash a decision for error of law if the error appears on the face of the record.”

The position was thus summed up by Morris, L.J.

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not



lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown”.

In Veerappa Pillai v. Raman & Raman Ltd. [1952 SCR 583], it was observed by this Court that under article 226 the writ should be issued “in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record”. In T.C. Basappa v. T. Nagappa [1955 SCR 250] the law was thus stated:

“An error in the decision or determination itself may also be amenable to a writ of ‘certiorari’ but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by ‘certiorari’ but not a mere wrong decision.”

10. Another vital question in such exercise of jurisdiction under Article 226 is answered by the Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences & Anr. Vrs. Bikartan Das & Ors. (supra)*** where though a sort of embargo has been placed on the exercise of writ jurisdiction, at para 51 thereof, however, has laid down



the first cardinal principle of law governing such exercise of jurisdiction. The same is reproduced herein below:

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.”

(Emphasis supplied)

11. From the discussions above, wherein the parameters have been set as regards the exercise of writ jurisdiction, from the facts of the present case and the impugned order, what can be perceived is that in exercise of powers under Section 20 (3) of the Meghalaya Lokayukta Act, 2014, the respondent No. 2, while issuing the impugned order, has brought into play two situations which are not contemplated in the Act. For the sake of convenience before progressing with the analysis, Section 20 (3) is reproduced herein below:



“20. (3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a prima facie case, and make recommendations to proceed with one or more of the following actions, namely:—

(a) investigation by any agency (including any special investigation agency);

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under section 47.”

12. The above noted provision stipulates two situations, firstly, when there exists a prima facie case and the recommended action to be taken thereon is provided in 20 (3) (a) (b) and when no prima facie case is made out, to close the proceedings as provided in Section 20 (3) (c). Without touching the findings on fact, or reappreciating the case on its merits, or for that matter seeking to substitute the findings of the respondent No. 2, in the considered view of this Court, the statute being clear as to the course of action to be taken on any eventuality based on the finding of fact, the impugned order suffers from an error in law, which can be corrected by the exercise of supervisory jurisdiction.



13. The impugned order having recorded the fact that no prima facie case had been made out, should as per the mandate of the Act at Section 20 (3) (c) closed the matter, but instead, in the same order directed for an inquiry against the concerned officials. This order therefore, being in excess of jurisdiction vested in the respondent No. 2 is bad in law and is accordingly set aside and quashed.

14. Consequently, the instant matter shall stand remanded back to the respondent No. 2 for fresh reconsideration.

15. Writ petition accordingly stands allowed and is disposed of.

Judge