

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) NO.306 of 2008

Sri Akhil Chandra Bhowmik,
Son of Late Aditya Bhowmik,
resident of village - Gajaria,
P.O. Arundhutinagar, P.S. Amtali,
District - West.

..... *Petitioner.*

- Vs -

1. The State of Tripura, (to be served upon
the Chief Secretary to the Government of Tripura, Agartala.),
2. The Director General of Police,
Government of Tripura, Agartala.
3. The Superintendent of Police,
West Tripura, Agartala.

..... *Respondents.*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S C DAS

For the petitioner : Mr. A Lodh, Advocate.
For the respondents : Mr. S Chakraborty, Addl. Govt. Adv.
Date of hearing and
delivery of judgment : 10.03.2015.
Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

By means of this petition, the petitioner has challenged the provisional order, dated 17th August, 2008 by which it was proposed that the petitioner should be visited with the penalty of dismissal from service.

2. This is an unfortunate case which clearly depicts how proceedings in our country, both at the administrative level and at the judicial level, can continue indefinitely. In the year 1994 two disciplinary proceedings were initiated against the petitioner. There were two separate charges with two separate inquiries. One charge was that the delinquent official had furnished a false and forged '*school leaving certificate*' and the second charge was that he had entered into a second marriage while his first marriage was subsisting and had thus violated the conduct rules. Two separate inquiries were conducted and the inquiry proceedings continued for 14 long years where after this provisional order was passed.

3. Mr. Arindam Lodh has basically raised two issues. His first grievance is that though the department permitted the petitioner to have one Mr. Sudip Nath of some other department as the defence assistant but the Inquiry Officer or the police department did not assist the delinquent official in procuring the presence of the defence assistant. In this regard it is alleged that the defence assistant was never given leave by his parent department and, therefore, on the days when inquiries were held the petitioner was without his defence assistant.

4. The second grievance is that certain documents were not supplied to the petitioner. In this regard we may make reference to the letters (Annexure - C & E) sent by the petitioner wherein he had

asked for certain documents including the statements of certain witnesses which were on the record of the Inquiry Officer. These requests have been refused in the following terms :

“ Please refer to your letter dated 01.08.2005 in connection the the above subject.

It appears that the statement of two of the prosecution witnesses were recorded by Shri D B Majumder, DYSP, the then EO of the instant DP in course of enquiry conducted by him on 12.08.1994 when the charged constable did not co-operate the EO by attending on the date of enquiry though he was properly informed to do so.

As such the statement of the PWS once recorded by the EO in absence of the charged constable cannot be relevant document for defence and natural justice.

As per the verdict of the hon’ble High Court you are given the opportunity of engaging defence assistant to defend the case. Statement of the same PWS will be recorded on the date of enquiry fixed bide R/G No.1982-84, dt.23.07.2005 copy of which has already been given to you.”

5. We are wholly unable to agree with this approach of the Inquiry Officer. Even assuming for the sake of argument that the petitioner had been absent without any reason and had not shown any ground for being absent on a particular date but that does not disentitle a delinquent official to get the copies of the statements of the witnesses which may have been recorded on that day. In this view of the matter, we are of the considered view that the order under challenge cannot be sustained.

6. At this stage we may note that Mr. S Chakraborty, learned Additional Government Advocate, has raised a preliminary submission that the writ petition has been filed against the provisional order and should be rejected on this ground. There is merit in this argument but we cannot lose sight of the fact that this

petition has been pending in this Court for 7 years and if we send back the matter it will just be delaying the inevitable and no purpose will be served. Therefore, this objection is not applicable in the facts and circumstances of the present case.

7. There are many lacunae in the proceedings. We, therefore, dispose of the writ petition with the following directions :

- (i) That the government, if it so desires, may appoint a new Inquiry Officer within 15 days of receipt of the order of this Court.
- (ii) This Inquiry Officer can simultaneously conduct inquiry with regard to both the disciplinary proceedings by holding one disciplinary proceeding which will be analogous in nature and evidence with regard to both the charges and proceedings can be recorded in one proceeding.
- (iii) The Inquiry Officer shall permit the delinquent official to have a defence assistant of his choice. However, the defence assistant must be chosen as per the Police Regulations of Bengal, 1943 as applicable to the State of Tripura. It is for the Inquiry Officer to decide who has to be permitted to serve as the defence assistant but once such an official is permitted to serve as defence assistant it is the duty of the Inquiry Officer and the department to ensure that the defence assistant is available to the delinquent official on each and every date on which the inquiry is held. The delinquent official shall be supplied with all the statements of the witnesses already recorded and

all other documents on which the department relies upon. This entire process be completed by 20th May, 2015.

- (iv) The Inquiry Officer shall proceed from the stage of recording evidence and all the statements of the witnesses may be recorded again in the presence of the accused and he will be permitted to cross-examine the said witnesses.
- (v) The inquiry is a very old one and it shall be continued on day to day basis w.e.f 1st June, 2015. No date shall be given and it is made clear that if the petitioner-delinquent official does not co-operate with the Inquiry Officer or in any manner tries to delay the proceedings the Inquiry Officer shall be fully within his rights to proceed against the delinquent official *ex-parte* and no sympathy shall be shown to the delinquent official in this regard.
- (vi) The inquiry proceedings be completed latest by 15th July, 2015. Thereafter a copy of the inquiry report be sent to the delinquent official and in case the inquiry report is against the delinquent official, the disciplinary authority may take further action in the matter and shall ensure that final order is passed latest by **31st August, 2015**.

8. The Writ Petition is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE