

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 9493 of 2023

Bikash Bhowmik

Vs.

The State of West Bengal & Ors.

For the petitioner	:	Mr. Tarunjyoti Tewari.	
			Advocate
For the State	:	Mr. Wasim Ahmed, Sk. Md. Masud.	
			Advocates
For the respondent no.6	:	Mr. Anirban Gupta, Mr. Anirban Tarafder, Mr. Sahel Tudu, Mr. Daniel Sarkar.	
			Advocates
For the respondent no.7	:	Mr. Chapalesh Bandyopadhyay, Ms. Gargy Basu, Ms. Atmaja Bandyopadhyay, Ms. Anandamayee Dutta.	
			Advocates
Heard lastly on	:	22.05.2024	
Judgment on	:	16.08.2024	

Jay Sengupta, J:

1. This is an application under Article 226 of the Constitution of India being WPA No. 9493 of 2023 alleging inaction of Balurghat Police Station in investigation of Balurghat Police Station Case No. 174 of 2022 dated 28.02.2022 U/s 406/418/420/423/425 of Indian Penal Code and praying for an order directing CID, West Bengal to take up the investigation and an order of mandatory injunction restraining the George Telegraph Training Institute (hereinafter referred to as GTTI) from admitting any student in any unaffiliated course.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. From the police report dated 10.03.2024 submitted before this Court, it was clear that they were sitting tight over the matter. It was learnt from the report that on 20.04.2022, the authority tried to collect certain information from NSDC, but till date they did not receive any information. Lastly, such attempt was made on 24.09.2022. It was clear that they contacted Netaji Subhas Open University and NSOU clearly informed that University did not offer any paramedical course. GTTI was committing fraud upon thousands of students every year by claiming that their paramedical courses were affiliated to Netaji Subhas Open University. The petitioner was defrauded and every year thousands of students were being defrauded by the GTTI. During course of the hearing the respondent no.6 GTTI filed a report and in that report they could not produce any scrap of document which showed that they had affiliation from Netaji Subhas Open University for their paramedical courses. Till date they had been publishing

advertisement in different Newspapers claiming that they had affiliation of NSOU. NSOU, the respondent no.7 had filed their affidavit in opposition and in the paragraph no.11 of the affidavit, it was clearly stated that NSOU did not have any study center with GTTI for certificate of paramedical courses. In paragraph 15 of the said affidavit, NSOU clearly stated that they had not given any affiliation to GTTI for running paramedical courses. GTTI was claiming that they had affiliation of NSOU in paramedical courses, but NSOU was clearly stating that they never gave affiliation to GTTI for paramedical courses. Every year after seeing advertisement, thousands of students were getting admission at the GTTI for paramedical courses and they were practically getting fake certificates as the courses were not affiliated.

3. Learned counsel appearing on behalf of the respondent no.7 submitted as follows. No specific allegation had been made against the respondent no.7 in the instant writ petition by the writ petitioner in order to clarify the relationship between the respondent no.6 and respondent no.7. In reply, the statement of the University that NSOU had no study center with George Telegraph Training Institute for conducting certificate of paramedical courses was a matter of record. It was unequivocal that the Netaji Subhas Open University did not run the said paramedical course with the respondent no.6. The statement in the same paragraph was enough to prove that George Telegraph Training Institute was committing fraud upon students.

4. Learned counsel representing the respondent no.6 submitted as follows. The instant case owed its genesis to a Franchise Agreement dated 20th September, 2019. Throughout the entire length and breadth of the agreement, there was no promise that the 12 courses referred to in the said agreement were affiliated to or recognised by NSDC. The writ petitioner failed and/or neglected to act in terms of the said agreement and hence, the said agreement was terminated by George Telegraph Training Institute vide letter dated 02.08.2021. As a counterblast to the said termination, letter of complaint was lodged by the petitioner herein on 21.09.2021. Entire allegation in the said letter of complaint and application under Section 156(3) of the Code of Criminal Procedure centres around NSDC. In the writ petition all of sudden the petitioner involved NSOU, which he could not be permitted to do as he could not go beyond the periphery of his complaint. The petitioner had himself admitted in his complaint that out of the 12 courses referred to in the Franchise Agreement, two courses were duly affiliated to NSDC. To drive home the allegation that the petitioner was promised that all the said 12 courses referred to in the said agreement were affiliated to NSDC, the petitioner relied upon multiple documents in the writ petition and from the said document it became very clear that the allegation of the petitioner did not match with the contents of the document. The writ petition clearly indicated that George Telegraph Training Institute was a training partner of NSDC and nowhere it had been stated that its courses were affiliated to NSDC. An out and out civil dispute had been given a criminal outfit, out of private vendetta/oblique motive to harass the

respondent no.6. The RTI reply annexed to the writ petition by the petitioner had no connection with his alleged complaint and its contents. Moreover, the specific queries posed by the petitioner before NSOU for getting the said reply had been deliberately suppressed and hence, nothing could be made out of such reply in isolation. The complaint of the writ petitioner was no way related to NSOU. Even the documents annexed to the writ petition did not show that the respondent no.6 had ever made any claim that NSOU had study centre with George Telegraph Training Institute for Certificate of Paramedical Courses. Rather, the documents highlighted that George Telegraph Training Institute was affiliated to NSOU (Recognised by UGC). There was a distinction between affiliation of a course, and affiliation to a body like NSOU and NSOU having study centre with GTTI. These were completely different aspects and have no connection with each other. Official connection/attachment of George Telegraph Training Institute to a body like NSOU did not necessarily mean that individual courses were also affiliated. The asterix in the said advertisement made it amply clear which courses were run by GTTI jointly with NSOU. Besides the paramedical courses there were no such asterix. As such this was a clear case where the writ petitioner had come up with a coloured version to harass and humiliate a reputed Institute out of personal grudge and/or private vendetta. NSOU, who had been made party to the instant writ application, came out with an assertion in their Affidavit in Opposition that “the Netaji Subhas Open University did not run the said paramedical course” – In the instant writ petition the issue was not whether NSOU ran paramedical courses or not. The case made in

the writ petition, in complete contravention to the story made out in the letter of complaint and application under Section 156(3) of the Code of Criminal Procedure, 1973, was that the paramedical courses run by the writ petitioner, in its capacity as the Franchisee of GTTI, was not recognised by/affiliated to NSOU. None of the documents produced by the respondent no.6 along with his affidavit affirmed on 6th October, 2023 were controverted by NSOU. The Account Statement produced along with the Affidavit in Opposition by the respondent no.6 and which was affirmed on 10.01.2024 showed payment being made to NSOU by GTTI, and the same stood unrefuted/uncotroverted by NSOU till date. NSOU running a course and NSOU giving recognition or affiliation to a course, were two different things altogether. Not a single student of the said Franchisee had come forward and given statement to the Investigating Agency till date alleging that they had been duped by the GTTI with so called false promises/claims of affiliation. Not a single farthing was illegally demanded from the petitioner or paid by the petitioner to GTTI beyond the scope and ambit of the Agreement governing the parties thereto and hence, the question of squeezing money from the petitioner or anyway wrongfully gaining from the petitioner could and did not arise at all.

5. Learned counsel appearing on behalf of the State denying the allegations and submitted that a thorough investigation has been done by the police in accordance with law. Statements were collected and documents were ceased. Finally, a charge sheet being Balurghat P.S. charge sheet no.122 dated 29.02.2024 was submitted against the accused.

6. I heard the learned counsels for the parties and perused the writ petitioner, the affidavits and the written notes of submissions.

7. It may or may not be a mere coincidence that it was only after the GTTI terminated the Franchise Agreement of the petitioner that the petitioner chose to lodge a complaint against them. However, that does not necessarily imply that if a cognizable case is made out from the allegations levelled, a criminal case would not be started.

8. In fact, a specific criminal case was started on the allegations made by the petitioner being Balurghat P.S. FIR No.174 dated 28.02.2022 under Sections 406, 418, 420,423 and 425 of the Penal Code.

9. It further appears that in the course of the investigation the investigating agency recorded statements of witnesses, seized relevant documents and finally, was able to file a charge sheet dated 29.02.2024 against the accused.

10. Although in an earlier report the police authorities had averred that inquiries had been made with different authorities, but reports had not been received, especially as regards the affiliation of courses. The same should not be a problem anymore in view of the specific stands taken by the respondents herein.

11. The crux of the criminal case about whether GTTI was only a training partner of the NSDC and nowhere had it claimed that its courses were affiliated to the NSDC is a matter to be decided by the trial court. The relevance of NSOU may also be established there. Any comment on the same would be premature and therefore, not warranted.

12. It is also a fact that none of the students seems to have come up with any grievance against the GTTI alleging that the courses were being run upon fraudulent mis-representation. Afterall, they are supposed to be the real victims, if at all.

13. Be that as it may, as relevant documents have already been collected by the investigating agency and statements taken, this Court does not find a need to direct further investigation.

14. However, it shall be open to the investigating agency to file any supplementary charge sheet if some other or further material is unearthed in the mean time, in accordance with law.

15. As the charge sheet has been filed during pendency of the writ petition, the de facto complainant shall also be at liberty to file a protest petition if he is aggrieved with the outcome of investigation.

16. Otherwise, the trial court shall conclude the proceeding at the earliest and in accordance with law.

17. With these observations the writ petitioners are disposed of.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)