

GAHC010098092019



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

Case No. : PIL(Suo Moto)/2/2019

XXXX
GUWAHATI, ASSAM

VERSUS

IN RE - STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY, JANATA BHAWAN, DISPUR,
GUWAHATI - 781006

2:STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY
NAGALAND CIVIL SECRETARIAT
KOHIMA - 797004

3:STATE OF MIZORAM
REPRESENTED BY THE CHIEF SECRETARY
MIZORAM SECRETARIAT
AIZWAL - 796001

4:STATE OF ARUNACHAL PRADESH
REPRESENTED BY THE CHIEF SECRETARY
CIVIL SECRETARIAT
ITANAGAR - 791111

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
POLICE HEADQUARTERS
ULUBARI
GUWAHATI - 781001

6:THE DIRECTOR GENERAL OF POLICE
NAGALAND

POLICE HEADQUARTERS
P.R. HILL
KOHIMA - 797001

7:THE DIRECTOR GENERAL OF POLICE
MIZORAM
POLICE HEADQUARTERS
KHATLA
AIZWAL - 796001

8:THE DIRECTOR GENERAL OF POLICE
ARUNACHAL PRADESH
POLICE HEADQUARTERS
CHANDRANAGAR
ITANAGAR - 79111

Advocate for the Petitioner : MR S S DEY, SR ADV

Advocate for the Respondent : MR. T C CHUTIA, (R-1 AND 5)

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.02.2023

(AM Bujor Barua, J)

Heard Mr. HK Das, learned counsel for the Gauhati High Court. Also heard Ms. M Bhattacharjee, learned Additional Senior Government Advocate for the State of Assam, Mr. BD Goswami, learned Additional Advocate General, for the State of Arunachal Pradesh, Mr. A Kalita, learned Additional Advocate General, State of Mizoram, Ms. M Kechi, learned Government Advocate, State of Nagaland, Mr. B Sharma, learned CGC and Mr. M Phukan, learned Public Prosecutor, Assam.

2. This PIL (Suo Moto) is registered as per the order dated 11.03.2019 of the Hon'ble Supreme Court in WP(C) No.183/2013 in Manish Kumar Vs. Union of India and Others. In the said writ petition, an interlocutory application No.02/2013 was filed with the following prayers:

A. Direction to all the States & Union Territories to constitute Police Commission to deal with allegation of police action, redressal of grievances of police and to make recommendations for the welfare of the police force.

B. Directions to the States to formulate and implement the guidelines for prevention and control of violent mass agitations and destruction of life & property, in terms of the guidelines suggested by this Hon'ble Court in the decision reported as 2009(5) SCC 212.

C. Directions to the States and Union Territories to fill up the vacant posts in the Police and State Armed forces so that the police forces does not remain overburdened.

D. Directions to all the States and Union Territories to provide for periodic training and upgradation of police force and to fix the working hours for the police personnel.

E. Direction to the Union of India to prescribe guidelines for the Media Reporting of the violent mass agitation and police action for prevention and control thereof.

F. Order or Direction restraining the States from drawing a presumption against the action of police acting under the constitutional and statutory obligations.

3. The Hon'ble Supreme Court having felt that the issues are State specific, accordingly required the respective High Courts to register Suo Moto Public Interest Litigation and to monitor the prayers as indicated above from time to time.

4. With regard to the prayer No. A for a direction to the State and Union Territories to constitute Police Commission to deal with allegation of police action, redressal of grievances of police and to make recommendations for the welfare of police force, we take note of that in respect of the State of Assam, a Police Commission is already in existence and functioning. In respect of the State of Arunachal Pradesh, a direction has been issued in the order dated 23.08.2022 in PIL 09(AP)/2022 for constituting a Police Commission. It is stated that in respect of the States of Nagaland and Mizoram a Police Commission is yet to be constituted.

5. The Home Secretaries of the States of Arunachal Pradesh, Mizoram and Nagaland to file individual affidavits stating in detail and also providing the time line within which a Police Commission in the respective States would be constituted. If the respective States feel that there is any impediment in constitution of the Police Commission, the same be also stated in the affidavits to be filed. The affidavits for the aforesaid prayer be filed within a period of two weeks and the matter would be considered accordingly.

6. In respect of prayer No. B for issuing a direction to the States to formulate and implement the guidelines for prevention and control of violent mass

agitations and destruction of life & property, in terms of the guidelines as suggested by the Hon'ble Supreme Court in its judgment in *Destruction of Public and Private Properties, In RE Vs. State of Andhra Pradesh and Others* reported in (2009) 5 SCC 212, we have noticed that certain guidelines in paragraph 32 of the said judgment have been laid down by providing in paragraph 33 that the suggestions are extremely important and they constitute sufficient guidelines that need to be adopted. The respective State Governments of the State of Assam, State of Arunachal Pradesh, State of Mizoram and State of Nagaland through their Home Secretaries to file their individual affidavits stating as to what action had been taken for implementing the guidelines as provided by the Supreme Court in *Destruction of Public and Private Properties* (supra) and whether there is any impediment in implementing the guidelines. The said affidavit be also filed within two weeks.

7. In respect of the prayer No.C for a direction to the States and Union of Territories to fill up the vacant posts in the Police and State Armed Forces so that the Police forces do not remain overburdened, the Secretaries of the respective Governments in the Home Department to file separate affidavits stating in detail the present number of vacancies of sanctioned posts of personnel in the Police force and the State Armed forces that are available and as to why the vacancies are yet to be filled up and whether there is any legal impediment in doing so and also to further provide the time line and the road map under which the aforesaid vacancies would be filled up. The affidavits be also filed within a period of two weeks.

8. In respect of the prayer No. D for a direction to all the States and Union

Territories to provide for periodic training and upgradation of Police forces and to fix the working hours for the Police personnel, we take note that in respect of the State of Assam, a judgment dated 31.01.2020 in Crl.Appeal (J) No.111/2016 had already been rendered for separating the investigation wings of the Police force from the general duty by identifying certain personnel within the Police force which would be more suitable for the purpose of investigation. Similar judgment had also been passed in respect of the State of Arunachal Pradesh vide order dated 23.08.2022 in PIL 09(AP)/2022.

9. Separation of the investigation wings of the Police is of paramount importance in public interest as well as for the security of the State and also for effective implementation of the criminal justice system. A judicial notice can also be taken that many number of criminal trials ultimately acquittals are resulted because of defective or shortcomings in the investigation and a specialized training of the investigation wings would do a lot towards public interest to mitigate such situation. As there is no such judgment presently available in respect of the State of Mizoram and the State of Nagaland, we request a very Senior Officer in the Police force in the State of Mizoram and the State of Nagaland to remain personally present before the Court for a deliberation as to how separation of the investigation wings can be given its effect and be implemented.

10. To facilitate the process, a high ranking officer in the Police force of the State of Assam as well as in respect of the State of Arunachal Pradesh may also remain personally present.

11. For the presence of the Senior Police Officers of the respective State of Assam, State of Arunachal Pradesh, State of Mizoram and State of Nagaland before the Court for further deliberation, list the matter on 10.02.2023.

12. With regard to the prayer E, the Union of India through the Secretary to the Government of India, in the Home Department is impleaded as respondent No. 9 in the present PIL (Suo Moto) petition and Mr. B Sharma, learned CGC accepts notice on behalf of the said respondent. Extra copies of the PIL Petition be served upon him. The Union of India to respond in respect of Prayer No. E for prescribing guidelines for the Media Reporting of the violent mass agitation and Police action for prevention and control thereof.

13. As regards the requirement of prayer No. F for a direction restraining the States from drawing a presumption against the action of Police acting under the constitutional and statutory obligations, the matter would be deliberated on the subsequent hearing of the PIL (Suo Moto) petition.

14. A copy of this order be furnished to all the learned Government Advocates appearing on behalf of the States of Assam, Arunachal Pradesh, Mizoram and Nagaland as well as the learned CGC appearing on behalf of the Union of India and the learned Public Prosecutor, Assam for further deliberation to be made in presence of the Senior Police Officers of the respective States.

JUDGE

JUDGE

Comparing Assistant