

(2001) 06 GAU CK 0017

Gauhati High Court (Agartala Bench)

Case No: WP (C) No. 565 of 1999

Indian Forest Service
Association, Tripura Unit

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: June 11, 2001

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 108
- Constitution of India, 1950 - Article 14, 226

Citation: (2001) 2 GLT 240

Hon'ble Judges: B.B. Deb, J

Bench: Single Bench

Advocate: K.N. Bhattacharjee and S.B. Dutta, for the Appellant; S. Deb and S. Chakraborty, for the Respondent

Judgement

1. Notice of motion was issued vide order dated 6.12.1999 and vide order dated 28.1.2000 it was ordered that attempt would be made to dispose of the petition at the admission stage and as such the matter is taken up for final disposal at admission stage.

2. By this writ petition under Article 226 of the Constitution of India, Indian Forest Service Association, Tripura Unit represented by its General Secretary challenged the following impugned notifications issued by the State Government, first two pertaining to the use of red light in the vehicles of officials/dignitaries, third one pertaining to availability of accommodation in Tripura Bhavans and last one pertaining to allotment of Indian Airlines ticket on priority basis. The notifications are:-

(i) No. 3235-3310/SP(T)/RSV-44/98 dated 11.3.1999 by which the Government identified the high dignitaries authorising the use of red light in their vehicles pursuant to Rule 108(iii) of "the Central Motor Vehicles Rules, 1989" (hereinafter

referred to as "the Rules of 1989");

(ii) No. F.8(2)-TRANS/83(L) dated 12.4.1999 by which the earlier notification stands modified/amended allowing the dignitaries enlisted thereunder to use red light in their vehicles;

(iii) No. F.26(12)-SA/76(P) dated 30.1.1999 regarding entitlement of accommodation in Tripura Bhavans;

(iv) No. F. 13(2)-TRNAS/94 dated 27.11.1998 regarding allotment of priority seats in Indian Airlines Flights from Agartala to Calcutta;

3. The petitioner's grievance is that the members of the petitioner Association being the incumbents holding All India Services viz. All India Forest Services are no way inferior to the service status of the Secretary to the Government of Tripura/Superintendent of Police/ District Magistrate and as such the exclusion of their status from the aforesaid notifications is hostile discrimination having no nexus with any reasonable object to be achieved, rather according to the petitioners, some of the posts that have been included in the aforesaid notifications allowing the benefit of use of the red light appears to be inferior to the posts the members of the petitioner Association are holding and as such the petitioners seek for cancellation of the impugned notifications being discriminatory and violative of Article 14 of the Constitution of India and in the alternative the posts of Conservator of Forests onwards. Department of Forest and Environment being the members of Indian Forest Services be directed to be included in the notification treating them at par with I.A.S. officers.

4. According to the petitioners, the incumbents holding the posts of All India Services like Indian Administrative Service (IAS), Indian Police Services (IPS) and Indian Forest Services (IFS) should be treated equally for all purposes including the entitlement and concession covered by the aforesaid impugned notifications.

5. The Government respondents having filed affidavit-in-opposition Contested the claims of the petitioners contending, inter alia, that having regard to the dignitaries holding constitutional posts, considering the positions in the administrative hierarchy and having regard to the nature of duties to be performed and having taken into consideration the practical needs, the first two notifications allowing the use of red light in the vehicles have been issued in conformity with the statutory provisions of the Rules of 1989. In the same manner, having regard to the stature of the dignitaries holding the constitutional posts and the incumbents holding top posts in the administrative hierarchy and other officers and political personalities are allowed to avail the accommodation facilities in Tripura Bhawans outside the State for temporary stay. So far the priority quota in Indian Airlines Flights from Agartala to Calcutta is concerned, the benefit has been extended to the constitutional functionaries and the officials holding the important administrative portfolios in the administrative hierarchy having regard to the necessity of their

frequent movement outside the State. That apart, the real requirement and necessity of the people representatives have also been taken into consideration in extending the aforesaid benefit to them and as such in issuing the aforementioned notifications, the respondent Government committed no illegality nor has any statutory provision been violated, rather on consideration of the necessities of the circumstances and having considered the adorn stature of the constitutional functionaries, the aforesaid notifications have been issued bearing no hostility against the members of the petitioner Association as alleged and the classification done in issuing the aforesaid notifications is reasonable having nexus with the object to be achieved.

6. I have heard Mr. K.N. Bhattacharjee, learned senior counsel, assisted by Mr. S.B. Dutta, learned counsel for the petitioners and Mr. S. Deb, learned senior counsel, assisted by Mr. S. Chakraborty, learned counsel for the respondents.

7. Mr. Bhattacharjee, learned senior counsel appearing on behalf of the petitioners having referred Rule 108(iii) of the Rules of 1989 submits that in issuing the aforementioned first two notifications the State Government totally ignored the said provision and as such the said two notifications pertaining to use of red light in the vehicles are ultra vires of the statutory rules and as such those are liable to be struck down.

8. A bare perusal of the first two notifications dated 11.3.1999 and 12.4.1999, it reveals that the notification dated 11.3.1999 stood superseded by the subsequent notification dated 12.4.1999 and as such the notification mentioned in (i) above dated 11.3.1999 has lost its enforceability and now we are concerned with the notification dated 12.4.1999 (serial No. (ii)).

9. The relevant provision of Rule 108 of the Rules of 1989 is reproduced below:-

"108. Use of red or white light.-No motor vehicle shall show a red light to the front or light other than red to the rear:

Provided that the provision of this rule shall not apply -

(i) *****

(ii) *****

(iii) a vehicle carrying high dignitaries as specified by the Central Government or the State Government from time to time or a vehicle escorting such vehicle;"

10. Mr. Bhattacharjee, learned senior counsel for the petitioners submits that Rule 108 of the Rules of 1989 regulates the use of red light in the vehicles and the Government has been authorised to identify the "high dignitaries", but the impugned notification dated 12.4.1999 only specified the "dignitaries" instead of "high dignitaries" and as such the same demonstrates the carelessness and non-application of mind by the State authority in issuing the impugned notification

dated 12.4.1999. For convenience sake the said notification is re-produced below:-

"No. F.8(2) -TRANS/83(L)

GOVERNMENT OF TRIPURA

TRANSPORT DEPARTMENT

Dated, Agartala, the 12th April, 1999.

NOTIFICATION

In exercise of the powers conferred by Sub-rule (iii) of rule 108 of the Central Motor Vehicles Rules, 1989, the State Government hereby authorises the vehicles carrying dignitaries as specified below or a vehicle escorting such vehicles to use red light to the from:-

1. Governor

2. Chief Minister

3. Speaker

4. All Ministers/Leader of Opposition/Vice Chairman, State Planning Board/Chairman, TTAADC/CEM, TTAADC.

5. High Court Judges.

6. Deputy Speaker/Executive Member, TTAADC.

7. Chief Secretary/Principal Secretary/Commissioner/Secretary/ Police Officers of the rank of DIG of Police and above/Advocate General/Vice Chancellor, Tripura University/Registrar, Gauhati High Court, Agartala/Chairman, TPSC/Chairperson, Tripura Women's Commission/Sabhadhipati, Zilla Parishad/ Chairman, Agartala Municipal Council.

8. District and Sessions Judge/District Magistrate & Collector/ District Superintendent of Police in their respective District.

9. Officers in the rank of Brigadier or equivalent in Military and Para Military forces.

2. This is in supersession of all existing notifications issued in this regard.

By order of the Governor,

Sd/-

(B.K. Roy)

Joint Secretary

to the Government of Tripura,"

11. The learned senior counsel for the petitioners made an attempt to assail the aforesaid notification dated 12.4.1999 on the following ground: -

Instead of identifying "high dignitaries" the Government identified the "dignitaries" only allowing them to use red light in their vehicles, in serial No. 7 of the said notification, beside Chief Secretary the notification includes the posts of Principal Secretary, Commissioner, Secretary and in serial No. 8, the notification includes the posts of District & Sessions Judge, District Magistrate & Collector and District Superintendent of Police in their respective District, though according to the petitioners those posts are no way superior to the post of Conservator of Forest and the other higher posts under Indian Forest Services and as such inclusion of the posts as mentioned above having deliberately excluded the post of Conservator of Forest and upwards under Indian Forest Services exposed hostile discrimination and as such the classification reveals ex facie unreasonable and violative of Article 14 of the Constitution of India.

12. The learned senior counsel for the petitioners also invited my attention to the order dated 7.8.2000 passed by this court and submits that admittedly the different State Governments have identified the "high dignitaries" in different manners.

13. The order dated 7.8.2000 reveals that the State Government has collected information from the neighbouring States regarding the entitlement of using the red light in the vehicles of the dignitaries. In Assam the constitutional functionaries viz. the Governor, Chief Minister, Ministers, State Ministers, Deputy Ministers, Speaker, Deputy Speaker, Judges of the High Court and dignitaries like the Chief Secretary, Director General of Police and Pilot Cars accompanying the cars of the aforesaid dignitaries are allowed to use red light besides the Fire Brigade vehicles and the vehicle of the Lokayukata.

In West Bengal, the Government identified the "high dignitaries" for the purpose of using red light and they are - the Governor, the Chief Minister, Ministers, Ministers of State, Deputy Ministers, the Chairman and the Deputy Chairman of Legislative Council, the Speaker and the Deputy Speaker of Legislative Assembly, the Judges of the High Court, the Chief Secretary and the Advocate General.

In Manipur the following dignitaries are allowed to use red light in their vehicles:-

The Governor, the Chief Minister, the Deputy Chief Minister, the Speaker, all Ministers, the Chairman, Hill Areas Committee, Leader of the opposition, the Deputy Speaker, the Judges of the High Court, the Chief Secretary, the Additional Chief Secretary, the Advocate General, the Chairman and the Members of the MPSC, the Chairman and the Vice-Chairman of the Central Administrative Tribunal, the Director General of Police, Inspector General of Police, Additional Director General of Police, Deputy Inspector General of Police, the Superintendent of Police (within the District), the Deputy Commissioner, District Magistrate, the vehicles of Fire Brigade and the Ambulances.

14. Mr. S. Deb, learned senior counsel appearing on behalf of the respondents vehemently submits that it is the prerogative of the State Government to identify

the "high dignitaries" for the purpose of Rule 108 of the Rules of 1989 and unless any apparent hostility is revealed, the judicial interference in exercise of power under Article 226 of the Constitution of India should conveniently be avoided.

15. Upon hearing the learned counsel for the parties and on perusal of the materials available, I am of the considered opinion that undoubtedly the matter is within the domain of the State Government to identify the "high dignitaries" for the purpose of allowing the red light to be used in their vehicles, but at the same time I am constrained to hold that exercising the discretionary power vested by the statutory provisions of Rule 108 of the Rules of 1989, in case it is found that the State Government caused unreasonable discrimination among the dignitaries or the officials without having any reasonable nexus with any valid object to be achieved, the court must come forward to interfere with such decision of the Government. On perusal of the impugned notification dated 12.4.1999 and having regard to the prevailing practice following by the neighbouring States in identifying the "high dignitaries"/"officials" for allowing the red light to be used in their vehicles (as available from order dated 7.8.2000), I am convinced that so far the constitutional functionaries are concerned, there is no quarrel and all the neighbouring State Governments have adopted uniform prescription as permissible under Rule 108 of the Rules of 1989, that is so far the high dignitaries like the Governor, the Chief Minister, Deputy Chief Minister, Ministers including Ministers of State and Deputy Ministers, Speaker, Deputy Speaker, Chairman, Deputy Chairman (in case the State having bicameral legislative house), the High Court Judges, Chairman, Public Service Commission, Advocate General are concerned they are holding the constitutional posts and it is needless to say that they are "high dignitaries" by virtue of their constitutional position within the meaning of Rule 108(iii) of the Rules of 1989.

That apart, there are some functionaries working in the State who have been/are declared to be equivalent to the post of Minister/ Minister of State for one or other purposes. They are leader of opposition, Chairman /Vice Chairman of State Planning Commission/ Board and as such they are also to be treated as "high dignitaries" for the aforesaid purpose. The Chairperson of Municipal Council/ Corporation also deserves to be treated as high dignitary.

That apart, the Chief Secretary being in the helm of the administrative affairs topping the bureaucratic hierarchy and the DPG being the Chief of the Police Organisation of the State deserve to be included being high dignitaries for the purpose of Rule 108 of the Rules of 1989.

In the same manner, the Principal Chief Conservator of Forests being the incumbent holding the top post of Forest and Environment Department belonging to All India Services also deserves to be included in the list.

So far the posts of District Magistrate & Collector and District Superintendent of Police in their respective District are concerned, the nature of their duties and

functions deserve them to be included in the list allowing red light to be used in their vehicles, but on their movement within the District and for official purpose only.

The State has a District Council under Sixth Schedule of the Constitution of India and as such the Chairman, the Chief Executive Member and the Executive Members of the Tripura Tribal Areas Autonomous District Council are also entitled to use red light in their vehicles.

So far other posts included in the impugned notification dated 12.4.1999 are concerned, I find no reason to support the inclusion of their posts in the list of high dignitaries. The nature of duties performed by them also do not justify the inclusion of their posts in the list. The State Government in their affidavit-in-opposition has not spelt out with any definite and intelligible term Justifying the inclusion of other posts in the impugned list and as such I am constrained to hold that the impugned notification dated 12.4.1999 cannot be held to be valid having applied the doctrine of reasonableness enshrined under Article 14 of the Constitution of India and as such the high dignitaries holding the constitutional posts/positions as enumerated above and few other posts mentioned above are only includable in the list of high dignitaries" under the provision of Rule 108(iii) of the Rules of 1989.

16. The impugned notification dated 12.4.1999 (Sl. (ii) above) is hereby quashed directing the authorities concerned to issue the appropriate notification under Rule 108(iii) of the Rules of 1989 and till notification is issued, the high dignitaries holding the post and position mentioned above in para 15 are entitled to use the red light in their official vehicles. However, the Govt. may come with a fresh notification including the names of other dignitaries or officials, but that must be done having cogent reasons justifying the inclusion thereof.

17. So far the third notification dated 30.1.1999 is concerned pertaining to entitlement of accommodation in Tripura Bhawans outside the State, the learned senior counsel for the petitioners submits that so far IFS officers are concerned, the said notification exposes hostile discrimination.

18. There is no statutory provision to regulate the accommodation provision in Tripura Bhawans outside the State and the Government issued the impugned administrative notification having regard to the availability of accommodation and the dire necessities of the officers concerned and they are divided mainly in two groups - one who are entitled to accommodation in suite and another who are entitled to accommodation in VIP rooms. For convenient sake, the dignitaries, functionaries and officers entitled to suite and VIP rooms as per the notification dated 30.1.1999 are reproduced below: -

"A1 SUITE:

(i) Governor/Chief Minister/Ministers/Vice Chairman, State Planning Board/Speaker/Deputy Speaker, Leader of Opposition in the TLA/MP/MLA/Chief Executive, ADC/High Court Judge/ Chairman. ADC/Executive Member. ADC/Member District Council/Sabhadhipati of ZPs/Chief Secretary/Principal Secretary/Director General of Police/Principal Conservator of Forests/Advocate General/Officers in rank of Secretary and above/Additional DGP/Vice-Chancellor, TU and family accompanying these dignitaries.

(ii) Former Governor/Former Chief Minister/Former Minister/ Retired High Court Judges/Retired Officer of the rank of Chief Secretary, on payment of non-official rate of rent.

A2 VIP Room:

(i) State/Central Government officials/senior officials of State PSUs/Boards/ADC while on duty.

(ii) Ex. MP/Ex. MLA/Ex. Executive Member, ADC/Ex. ADC Member/ Retired State Government officers, on payment of non-official rate of rent.

(iii) Officials of other State Governments/Central and other State PSUs/Boards on payment of non-officials rate, except those posted in Tripura and while on duty.

(iv) Family of State Government officials when not accompanied by the official on payment of non-official rate of rent.

(v) Govt. Advocate/Public Prosecutor/Other Advocates when in transit/travel in connection with affairs of the State.

(vi) Freedom Fighters in receipt of Freedom Fighters' Pension on payment of 50% of non-official rate of rent.

(vii) President only of State units of recognised National and State political parties which are presidential in form/Secretary only of State units of recognised National and State political parties which are having State secretariat, on payment of non-official rate of rent."

19. Having anxious look to the dignitaries included in the above quoted list showing their entitlement to be accommodated in suite in Tripura Bhawans, in my considered opinion the incumbent holding the post of Chief Conservator of Forest ought to have been included in the said category. The State Government in their affidavit-in-opposition has totally failed to justify why the post of Chief Conservator of Forest has been excluded from the list and as such in my considered opinion, the post of Chief Conservator of Forests needs to be included in the list allowing the incumbent the equal privilege to get suite in Tripura Bhawans.

20. All members of Indian Forest Services while proceed on official tour outside the State, they should be accommodated in VIP rooms of Tripura Bhawans, of course

subject to availability of accommodation.

21. So far the last notification dated 27.11.1998 pertaining to allotment priority seats in Indian Airlines flights from Agartala to Kolkata is concerned, it appears to be a very sensitive and complicated issue. The people of the State having no alternative conveyance through surface transportation compulsorily adopt to fly through Indian Airlines Flights from Agartala to attend the urgent need outside like, for treatment, higher education etc. and thus the Government has correctly come with a notification regulating the allotment of priority seats in Indian Airlines Flights from Agartala to Kolkata. The notification classified the dignitaries and officials enlisted thereon for giving priority quotas and they are -

"(1) Chief Minister/Ministers/Chief Executive Member. TTAADC/ Leader of opposition/Speaker/Dy. Speaker/High Court Judges/Vice-Chairman. State Planning Board/MP/Chief Secretary/State Guests.

(2) Principal Secretary/DGP/PCCF/Advocate General/Commissioner/Secretary/Addl. Secretary/Joint Secretary/Head of Deptts/Government Guests/Government Advocate/Central, other States, Public Sector Undertaking officials visiting Tripura in State interests.

(3) MLA/Executive Member, TTAADC/Commissioner or Chairman of Boards constituted by the State Government.

(4) Other State Government officers (which are not mentioned in category No. 2)/officials on official duty.

(5) Patient referred by the State Medical Board/Medical checkup.

(6) Ex-Minister/Ex-MP/Ex-MLA/Ex-Member TTAADC.

(7) Students sponsored for higher studies outside the State/ Students appearing for interview/students joining new service on completion of study.

(8) Others on special ground."

22. So far dignitaries and top officials enlisted in serial No. 1 is concerned, I find no objectionable inclusion and it appears to be reasonable having regard to the constitutional status and bureaucratic hierarchy of the dignitaries and officials enlisted thereunder, but unfortunately it is noticed that the post of Advocate General instead of inclusion in serial No. 1, has been inserted at serial no.2 which is apparently highly objectionable. The post of Advocate General is undoubtedly a constitutional post and as such the same should have been Included at serial No. 1. The Govt. guests paying visit to the State of Tripura are also deserved to be allotted priority seats for their return from the State and should have been included at serial No. 1. The other officials enlisted at serial Nos. 2, 3 and 4 should not be allowed to get priority quota seats save and except their journey pertaining to official programme or national level party programme. Therefore, so far the entitlement of

the officials and personalities included in serial Nos. 2, 3 and 4 are concerned, they will be entitled to allotment of priority seats only on their official tour (including national level party programme for the MLAs).

23. The Govt. respondents are directed to re-issue the aforesaid notifications and till the fresh notification is issued, the present notifications pertaining to accommodation in Tripura Bhawans (Notification dated 30.1.1999) and priority quota seat (Notification dated 27.11.1998) would continue for a period of one month from this day and thereafter, the same would cease to hold the field.

24. With these observations and directions, the writ petition is disposed of. No costs.