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**(2014) 08 GAU CK 0014**

**Gauhati High Court**

**Case No:** WP(C) NO. 4030/2014

Dalim Das

APPELLANT

Vs

The State of Assam

RESPONDENT

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**Date of Decision:** Aug. 26, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** Biplab Kumar Sharma, J

**Bench:** Single Bench

**Advocate:** B.D. Konwar, Sr. Advocate and R. Kalita, Advocate for the Appellant; P. Roy, AAG, and B. Hazarika, Advocate for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Biplab Kumar Sharma, J.

This writ petition is directed against the Annexure-10, preliminary enquiry report dated 28.03.2014; Annexure-13 communication dated 23.07.2014 of the Government of Assam in the Political (Vigilance Cell) Department conveying the approval to initiate a regular enquiry against the petitioners both forest officials posted at B.I. (E.O.), Assam, Guwahati and the Annexure-14 communication of the same date i.e. 23.07.2014 of the same authority requiring the Additional Director General of Police, B.I. (E.O.), Assam to release both the petitioners from the B.I. (E.O.), Assam to facilitate proper enquiry with immediate effect. As indicated in the said communication, there is approval of the Chief Minister in the matter.

2. Referring to the aforesaid preliminary enquiry report dated 28.03.2014, it is the case of the petitioners that on a mere reading of the same, it is evident that there is no material against the petitioners to proceed with a regular enquiry and also requiring their shifting from the B.I. (E.O.), Assam. It will be pertinent to mention here that both the petitioners are forest officials working in the capacity of Forest Ranger and Forester, respectively. Before issuance of the impugned

communications, they were posted in the office of the B.I. (E.O.), Assam.

3. As stated in the writ petition, the petitioner No. 1 while was serving as in-charge Forest Ranger of Barpeta Road Range under North Kamrup Division, an enquiry was conducted in respect of his activities on the basis of which the Annexure-1 report dated 03.11.2002 was submitted. It appears that there were public allegations against the petitioner No. 1 and the matter was enquired into by the Additional Deputy Commissioner, Barpeta. The action taken in the matter was recorded. The said enquiry was followed by further enquiry and a consolidated final P.R. dated 03.08.2005 in reference to RE No. 82(6)/2003 was submitted. By the report, it was conveyed that the assets acquired by the petitioner No. 1 and his wife were proportionate to their known source of income. It was also recorded in the report that the persons who submitted the complaint did not furnish their address and thus could not be examined. Finally, it was recorded in the report that the petitioner No. 1 did not inform the Government from time to time in respect of movable/immovable properties earned by him or his wife and thus violated the provisions of Assam Civil Services Conduct Rules, 1965 [Rule 11(2)]. Thus, it was held that he was liable for departmental action as public servant.

4. After the aforesaid report, the petitioner No. 1 was warned to be careful in future and to refrain from violation of Government Rules and Procedures. The warning was communicated vide Annexure-3 letter dated 20.07.2006.

5. It appears that subsequent to the aforesaid developments, both the petitioners had been posted to B.I. (E.O.), Assam. While they were functioning in the said establishment, allegations were made against them. In this connection, the petitioners have referred to Annexure-9(T) complaint, on which there is endorsement of the authority dated 11.08.2013. As per the allegations made against the petitioners, both of them are engaged in sort of extortion in collecting money from the traders under threat. Along with the complaint, as many as 27 names from whom the petitioners allegedly and illegally collected money had been given.

6. It appears that based on the allegations made against the petitioners, an enquiry was conducted in the form of preliminary enquiry. Copy of the report thereof has been enclosed to the writ petition as Annexure-10 dated 28.03.2014. The enquiry was conducted by the Additional Superintendent of Police (Law), Vigilance and Anti Corruption, Assam. According to the report, both the petitioners have acquired huge immovable/movable properties. It has also been recorded that they have also shown misconduct while discharging their duties by taking illegal gratification. By the said enquiry report, a suggestion was made for conducting an open enquiry against both the petitioners.

7. Accepting the said preliminary report, the Government in the Political (Vigilance Cell) Department by its communication dated 23.07.2014 accorded approval to initiate a regular enquiry against both the officers. By the 2nd communication of the

same date i.e. 23.07.2014 (Annexure-14), the same department conveyed the approval towards release of the petitioners from the office of the B.I. (E.O.), Assam to facilitate a proper enquiry.

8. I have heard Mr. B.D. Konwar, learned Senior Counsel assisted by Mr. R. Kalita, learned counsel for the petitioners and Mr. P. Roy, learned Additional Advocate General, Assam along with Ms. B. Hazarika, learned counsel representing the respondents. I have also considered the entire materials on record.

9. It appears that the petitioners had earlier approached this Court by filing a writ petition being WP(C) No. 3678/2014 raising the same grievance. However, the same was withdrawn on 08.08.2014 with liberty to approach again. Mr. Konwar, learned senior counsel for the petitioners submits that the writ petition was withdrawn in view of collection of some more documents, which have now been annexed to the present writ petition.

10. Mr. Konwar, learned senior counsel for the petitioners referring to the earlier enquiry report referred to above and also the present enquiry report submits that earlier the enquiry having been concluded against the petitioner No. 1 without any adverse report, there could not have been any further occasion for the authority to conduct a further preliminary enquiry pertaining to the same matter. He further submits that even on the basis of the purported enquiry report dated 28.03.2014 (Annexure-10), there could not have been formation of an opinion to proceed against the petitioners with a regular enquiry with their shifting from the B.I. (E.O.). He also submits that as per Annexure-18 Office Memorandum dated 16.06.2004 of the Government of Assam in the Political (A) Department (Vigilance Cell), the copy of the preliminary enquiry report ought to have been provided to the petitioners enabling them to submit explanation. According to him, the said procedure having not been followed before issuance of the impugned Annexure-13 and 14 communications dated 23.07.2014, they are not sustainable in law.

11. Mr. P. Roy, learned Additional Advocate General, Assam, on the other hand submits that the aforesaid pleas advanced on behalf of the petitioners are not sustainable in law. He submits that the Annexure-18 Office Memorandum dated 16.06.2004 having been partially modified by the subsequent Office Memorandum dated 19.04.2008 (Annexure-19), now there is no requirement of furnishing the copy of the preliminary enquiry report to the petitioners enabling them to submit explanation against the same. He further submits that as per the said Office Memorandum dated 19.04.2008, the matter is now not required to be routed through the Administrative Department.

12. As regards the plea of the petitioners that there are no materials against them to proceed with a regular departmental proceeding, Mr. Roy, learned Additional Advocate General of Assam submits that it is not for the petitioners to judge the preliminary enquiry report and that it is for the authority to decide as to whether the

same could lead to a regular departmental enquiry or not. As regards the shifting of the petitioners from the Office of the B.I. (E.O.), Assam, he submits that the same is required to be done to facilitate the regular enquiry.

13. Mr. Roy, learned Additional Advocate General, Assam has also placed reliance on two decisions of this Court reported in [Divine Retreat Centre Vs. State of Kerala and Others](#), and [Subhamoy Gupta and 2 Others Vs. The State of Assam](#), .

14. As regards the posting of the petitioners in the Office of the B.I. (E.O.), suffice is to say that they being forest officials and their parent cadre being in the forest department, they cannot claim that they should remain posted in the B.I. (E.O.). However, as submitted by Mr. Konwar, learned senior counsel for the petitioners that they have been shifted from the office of the B.I. (E.O.) to facilitate the regular enquiry as has been approved and conveyed vide the Annexure-13 communication dated 23.07.2014. In the preliminary enquiry report dated 28.03.2014, certain findings have been recorded against the petitioners. However, it is the submission of the learned counsel for the petitioners that such findings could not have been recorded dehorse the evidence on record and also ignoring the earlier enquiry reports referred to above.

15. However, on perusal of the enquiry report, it appears that irrespective of the earlier two enquiry reports, there are independent materials against the petitioners on the basis of which the enquiry officer formed the opinion that the real state of affairs are required to be unearthed through a regular enquiry. Mr. P. Roy, learned AAG, Assam has produced the file in which the decision making process took place with the final approval. On perusal of the said file, it appears that the matter was processed at different level and eventually with the approval of the Chief Minister a decision was arrived at to proceed against the petitioners with a regular enquiry based on the preliminary enquiry that was conducted against them. For the purpose of holding the regular enquiry, their shifting from the Office of the B.I. (E.O.) was felt necessary.

16. Apart from the fact that the petitioners are not borne in the cadre of B.I. (E.O.), but are borne in the cadre of Forest Department, their shifting would be required to facilitate the regular enquiry as has been contemplated by the authorities.

17. In Divine retreat Centre (Supra), the Apex Court dealing with the question of interference with investigation, exercising writ jurisdiction under Article 226 of the Constitution of India held that the High Court in exercise of said jurisdiction can interfere with investigation only in the rarest of the rare cases where a case of abuse of power of investigation is clearly made out. But even in such cases, the High Court cannot direct the police as to how the investigation is to be carried out, but can always insist for the observant of process as provided for in the Cr.P.C.

18. Mr. Konwar, learned senior counsel for the petitioners submits that said case is not applicable to the present facts and circumstances inasmuch as the petitioners

have not questioned the investigation in any criminal proceeding. On the other hand, Mr. Roy, learned AAG, Assam has emphasized on the ambit and scope of power to be exercised by this Court under Article 226 of the Constitution of India in such matters.

19. In the instant case, the sanction for regular enquiry has already been accorded by the concerned department. The decision in Subhamoy Gupta and others (Supra) has been pressed into service so as to contend that the authority having derived the satisfaction to grant the sanction to proceed against the petitioners, this Court exercising writ jurisdiction cannot sit on appeal over such decision.

20. From the above, it is seen that pursuant to a preliminary enquiry, a decision has been arrived at to proceed with a regular enquiry against the petitioners. Necessary approval for the same has also been accorded with further approval towards shifting of the petitioners from the Office of the B.I. (E.O.). No opinion is expressed regarding merit of the case of the either parties. It will always remain open for the petitioners to agitate their points or grievance in respect of the enquiry that might be initiated pursuant to the impugned enquiry report and the communications.

21. With the above observations, the writ petition stands dismissed, without, however, any order as to costs.