
(1995) 02 GAU CK 0035
In the Gauhati High Court
Case No : Writ Appeal (T) No. 107 of 1995

Banajit Bagchi

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 17-02-1995

Acts Referred:

Citation : (1995) 3 GLR 116

Hon'ble Judges : V.K. Khanna, C.J.; Anup Deb, J

Bench : Division Bench

Advocate : A.M Lodh, A. Lodh and M. Dutta, for the Appellant; A. Chakraborty, A.G., B.P. Katakya, Standing Counsel, Govt. and P.K. Paul, for the Respondent

Judgement

V.K. Khanna, C.J.—These two writ appeals have been filed against the judgments of the learned single Judge dated 1.2.95 passed in Civil Rules No. 72/95 and 73/95 (Agartala Bench).

2. Civil Rule No. 72/95 (Agartala Bench) was filed by Sri Chandan Sur challenging the validity of the order of his transfer dated 10.10.94 on the ground that there is an Association constituted by the Physical Education Employees under the name "Tripura Physical Education Employees" Association" which was formed in the year 1982 with its Head Office at Office Lane, Agartala, Tripura. It was alleged that he was elected as the President of the Sadar Sub-Divisional Committee of the said Association in the annual conference held on 22.5.94. Reliance was placed on the decision of the Division Bench in Misc. Case No. 251/94 arising out of Civil Rule No. 58/94 decided on 20.6.94 for the purposes that till the matter of recognition is decided by the State of Tripura in accordance with the directions given in the aforesaid judgment, the impugned transfer order dated 10.10.94 should not be given effect to.

3. Practically on the same facts Sri Banajit Bagchi who claims to be the Secretary of the aforesaid Sadar Sub-Divisional Committee filed Civil Rule No. 73/95 (Agartala Bench) claiming same relief and challenging his transfer order dated

10.10.94.

4. These two Civil Rules were decided by the learned single Judge by two separate judgments delivered on 1.2.95.

5. We have heard Mr. A.M. Lodh, assisted by Mr. A. Lodh and M. Dutta, learned Counsel appearing for the Appellants/Petitioners. At the admission stage, the State of Tripura had put in appearance and we have also heard Mr. A. Chakraborty, Advocate General, assisted by Mr. B.P. Kataki, Standing Counsel and Mr. P.K. Paul, Advocate appearing for the State of Tripura.

6. At the very out-set, it may be mentioned that the learned Counsel appearing for both the parties have stated before us that as the controversy involved in the two writ appeals is exactly the same and the two appeals may be disposed of by a common judgment. It is in these circumstances that we have heard the two appeals together and they are being disposed of by a common judgment.

7. The brief admitted facts for the purpose of adjudicating the controversy raised in these two appeals are that some of the office bearers at the apex level and the sub-divisional levels of the Associations which are recognized by the State of Tripura are entitled to protection of transfer. At the apex level, the President, the Secretary and the Treasurer, according to the existing policy of the State of Tripura, are not normally transferred and at the sub-divisional levels, the President and the Secretary are entitled to same benefits.

8. Before this Court several Associations had approached on the ground that the State of Tripura was transferring the President and other Office Bearers entitled to the benefit, as stated above even though they were entitled to get protection. This Court in Misc. Case No. 251/94 arising out of Civil Rule No. 58/94 by a detailed judgment required the State of Tripura to spell the guidelines on the basis of which recognition to the various Associations would be granted and thereafter also issued certain directions to be followed after the guidelines are spelt-out.

9. The present appeals were heard on 15th February, 1995 and we had passed the following order:

Heard Mr. A.M. Lodh, assisted by Mr. A. Lodh, counsel appearing for the Appellant and Mr. A. Chakraborty, learned Advocate General, assisted by Mr. B.P. Kataki and Mr. P.K. Paul, Government Advocates, appearing for the State of Tripura.

After hearing the learned Counsel for the parties at some length, we are of the opinion that the learned Advocate General will inform this Court the number of applications which have been received for recognising the applicants as Association in pursuance of the Guidelines which have been spelt out by State of Tripura and likely time which would be taken to adjudicate those applications.

The case will be listed along with Writ Appeal (T) No. 108/95 on 17th February/95 as fixed item and fixed case.

10. It may also be noticed that Mr. Chakraborty, learned Advocate General appearing for the State of Tripura has made a statement that the guidelines have been spell and that by notification in the official Gazette applications have been invited from the Associations seeking recognition from the State Government on or before 9.2.95. It has also been stated that these applications are being processed in conformity with the guidelines laid down by the State of Tripura. Mr. Lodh, Counsel appearing for the Appellants in the two writ appeals, has made a statement before us that in the writ appeals he has not challenged the guidelines laid down by the State of Tripura. If that be so, it is clear from the stand of State of Tripura at the present moment that in case any Association which is entitled to get recognition in accordance with the guidelines spelt out by them, according to the present policy which is being followed, certain office bearers will be entitled to the benefit which is being accorded to other Associations which have already been recognised. It is admitted that the Appellants' Association has yet to be recognized by the State of Tripura and in case an application has been filed the process is on for determination as to whether the applicant should be recognized by the State of Tripura or not in consonance with the guidelines which have been spelt out. We are thus of the opinion that the controversy raised on merits is purely academic at the present stage inasmuch as according to the Appellants their Association has in fact made an application and if that is correct the State of Tripura is going to take a decision regarding recognition of their Association.

11. Learned single Judge in his judgment has however held that the impugned transfer order may not be given effect to for a period of one month from the date of delivery of judgment during which time the learned single Judge has expressed an opinion that the Association will change the office bearers meaning thereby that the Petitioners/Appellants will no longer remain President and Secretary of their Association and somebody else would be Chosen in their place. We are, however, of the opinion that this Court cannot give such direction to an Association to choose a particular person as President or Secretary as the choice of choosing President or Secretary lies with the members of the Association and that function has to be discharged by them. The Petitioner/Appellants are entitled to remain the President and the Secretary of their Association till they enjoy the confidence and faith of the members of their Association and in our opinion they can only be removed from the post of President and Secretary by the members of the Association alone. In our opinion, to the extent indicated above, the judgment of the learned single Judge is liable to be modified.

12. The other important question which falls for determination in this case is as to whether by merely making an application before the State Government, a person automatically gets a right of getting his transfer order stayed. We are of the opinion that the benefit which is being extended at the present moment by the State of Tripura becomes available to the Office Bearers only after the Association is recognized and not before that. In case it is laid down as a matter of law that by merely making an application the alleged office bearers of the Association which makes an application becomes immune from transfer will be

laying down law which may at times amount to frivolous application only for the purpose of avoiding transfer. However, when a particular case comes before the Court, it will be on the facts and circumstances of that case that it will be adjudicated as to whether the person approaching the Court is entitled to stay or not.

13. Coming to the present case, the learned single Judge has given one month's time from the date of judgement for non-implementation of the impugned transfer order in respect of the two Appellants. From the facts which have been placed before us by Mr. Chakravorty, learned Advocate General appearing for State of Tripura, we hope and expect that the application moved by the Association of the Appellants/Petitioners will be finally adjudicated on or before 15th March, 1995. As according to the learned single Judge the transfer order is not going to be implemented before 1st March" 95, We are of the opinion that the aforesaid date be extended till 15th March. 1995. It is being made clear that in case the decision on the alleged application moved by the Association of the Appellants is communicated to the Appellants/Petitioners earlier to 15th March, 1995, the stay order will be limited only until that date and the State Government will act in accordance with the policy which they are following in this connection.

14. Subject to the aforesaid observations, the present two writ appeals are disposed of finally and the order dated 1.2.95 passed by the learned single Judge stands modified to the extent indicated above. Looking to the entire facts and circumstances of the case, the parties shall bear their own costs,

Certified copy of this judgment will be given to the learned Counsel appearing for the parties on payment of usual charges within 24 hours.