

(2014) 03 GAU CK 0036
In the Gauhati High Court
Case No : WP (C) 7177/2013

Sri Rajesh Prasad Gupta

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120(B), 409, 420, 465, 468

Citation : (2014) 03 GAU CK 0036

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : P.K. Goswami, Sr. Adv., Mr. M. Bhuyan, Adv., Mr. J. Deka, Adv., Mr. T.K. Bhuyan, Advocate for the Appellant; B.J. Talukdar, GA, Assam, Mr. M.K. Choudhury, Sr. Adv., Mr. M. Khan, Adv, Mr. A.M. Buzarbaruah, Adv., Mr. P.K. Talukdar, Advocate and Mr. J. Rahman, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—The petitioner is aggrieved by his removal as the Chairman of Lakhipur Town Committee, Goalpara as per the provisions of Section 28 of the Assam Municipal Act, 1956. Such removal vide Annexure-22 notification dated 03/1/2013 of the Government of Assam in the Urban Development (T) Department under the signature of the Additional Chief Secretary was preceded by the Annexure-20 show cause notice dated 06/09/2013. For a ready reference, the show cause notice and the order of removal, both impugned in the writ petition are reproduced below:-

GOVERNMENT OF ASSAM URBAN DEVELOPMENT DEPARTMENT DISPUR ::
GUWAHATI-6

No. UDD(T)210/2012/66 Dated Dispur the 6th September, 2013.

From: Sri S.K. Das, Under Secretary to the Govt. of Assam, Urban Development Department.

To: The Chairman, Lakhipur Town Committee, Goalpara, Assam-783129.

Sub: Show cause under the provision of subsection (3) of section 28 of the Assam Municipal Act, 1956.

Ref: Enquiry in connection with Anomalies in Lakhipur Town Committee.

Sir,

With reference to above, you are given an opportunity to explain as to why action shall not be initiated against you under subsection (3) of Section 28 of Assam Municipal Act, 1956 for the following charges.

1. You did not advertise the advertisement for the NLCPR project for an amount of Rs. 14.15 crore in two local daily newspaper which was required to be published under the guidelines. You tried to manipulate the advertisement by collecting one copy with the alleged advertisement in two news papers, namely, Assam Post and Dainik Agradoot.
2. It is found that the Lakhipur Town Committee executes works without following the Govt. guidelines of paper advertisement and website advertisement.
3. As you did not advertise the tenders in the News paper, therefore you have violated the Govt. Guidelines.
4. It is also found that you are not executing schemes as per Govt. guidelines and that too without proper supervision of schemes.

Hence you are charged with persistently omitting or refusing to carry out or disobeying the provisions of the Act and the Rules thereunder or lawful orders.

You are hereby asked to show cause as to why you should not be removed from the office of the Chairmanship of Lakhipur Town Committee under the circumstances mentioned above.

You should submit reply to the undersigned within 15 days from the date of receipt of the letter.

Yours faithfully, Sd/- Illegible Under Secretary to the Govt. of Assam, Urban Development Department.

GOVERNMENT OF ASSAM URBAN DEVELOPMENT DEPARTMENT DISPUR ::
GUWAHATI-6

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated, Dispur the 3rd December, 2013

No. UDD(T)210/2012/104: On the basis of an enquiry conducted by Dr. U.N. Bora, IAS, Secretary to the Govt. of Assam, Urban Development Department regarding anomalies in advertisement for tender process of NLCPR project at

Lakhipur, Goalpara, a show cause notice was issued to Chairman, Lakhipur Town Committee vide this Department's letter No. UDD(T)210/2012/66 dtd. 6.09.2013. The reply to the show cause was received from Chairman, Lakhipur Town Committee vide letter No. LTC. 26/2013/2 dtd. 18.10.2013, but the reply was not found to be satisfactory. Hence, the Governor of Assam is pleased to remove Sri Rajesh Prasad Gupta, Chairman, Lakhipur Town Committee from the post of Chairman, Lakhipur Town Committee as per Section 28 of the Assam Municipal Act, 1956.

The Deputy Commissioner, Goalpara is asked to give charge of Executive Officer to Circle Officer, Lakhipur Circle (Goalpara).

This order will come into force with immediate effect.

Sd/- (V.B. Pyarelal) Additional Chief Secretary to the Govt. of Assam, Urban Development Department.

According to the petitioner, the aforesaid action on the part of the respondents is arbitrary, illegal, irrational and un-constitutional. The petitioner has alleged violation of Principles of Natural justice as the copy of the enquiry report on the basis of which the impugned action has been taken was not furnished to him. It is the further case of the petitioner that the allegations made against him in the show cause notice are all ill-founded and not based on records.

2. The petitioner is the elected Chairman of Lakhipur Town Committee, Goalpara, he was elected as such in his capacity as elected Commissioner of the said Town Committee consisting of 4 (four) Wards. Earlier, the respondent no. 14 was elected as the Chairman of the Committee on 24/09/2009 but subsequently he was removed from his office by a resolution of the Board. Thereafter the petitioner was elected as the Chairman vide resolution dated 06/03/2012.

3. In paragraph 4 of the writ petition, the petitioner has stated about the Central Govt. projects, namely, Construction of 4 Nos. road including box culverts and pukka drainage in Lakhipur town for which financial assistance is to be given by the Central Government under Non Lapsable Central Pool of Resources (hereinafter for short NLCPR) and the same is required to be implemented by the State Government. The cost involved in the said project is Rs. 1424.77 lakhs. After observing the due formalities towards implementation of the project, as claimed in the writ petition, the Executive Committee of the Town Committee in its meeting held on 11/04/2013 authorized the petitioner in his capacity as the Chairman to float tenders and also to do other consequential administrative acts as per departmental rules and regulations.

4. As stated in the writ petition, in terms of the aforesaid resolution, the petitioner vide order dated 16/05/2013 ordered the Head Assistant/Assistant Engineer to prepare the tender following the instructions. Accordingly, press notice inviting tender dated 16/05/2013 was issued by the petitioner and the copies of the same were forwarded to various authorities including the Director of

Information and Public Relation (herein after for short DIPR), Government of Assam, requesting to arrange publication of the press notice in one widely circulated English daily and another in Assamese Daily.

5. Referring to the Annexure-8 letter dated 18/05/2013, it is the case of the petitioner that pursuant to the said request made to the Director, IPR, requested the Advertisement Manager to publish the enclosed advertisement/notification in the newspaper. It is the claim of the petitioner that the NIT was published on the issue of the English Daily newspaper "The Assam Post" on 19/05/2013 and also in the issue of Assamese Daily newspaper "Dainik Agradoot" on 19/05/2013. In paragraph 11 of the writ petition, the petitioner has stated-"The copies of the aforesaid newspapers collected by the petitioner from a vendor substantiate publication of the advertisement". The petitioner has also referred to the certificate dated 28/05/2013 issued by the Liaison Officer, Advertisement Section of DIPR certifying publication of the NIT in the newspaper.

6. As disclosed in the writ petition, one Anisur Rahman lodged an FIR with the Lakhipur Police Station and pursuant to the same, the Police personnel conducted an enquiry relating to the said NIT and in presence of a Magistrate, copies of the tender documents including the said two newspapers containing the NIT had been seized from the office of the petitioner on 27/05/2013. According to the petitioner he has cooperated with the investigation of the case.

7. In paragraph 14 of the writ petition, the petitioner has stated that "Due to such un-expected development, the petitioner vide notice dated 27/05/2013 postponed the tender process for the aforesaid NLCPR scheme". In paragraph 15, 16 and 17 of the writ petition, the petitioner has referred to the Writ Petition being WP(C) No. 2964/2013 filed by 3 (three) petitioners against the NIT dated 16/05/2013 referred to above with the prayer to hold a fresh tender process. In the said writ petition, an interim order was passed on 28/05/2013 staying the NIT process. Seeking vacation of the said interim order, the petitioner filed an application under Article 226(3) of the Constitution of India. The Town Committee also filed its affidavit-in-opposition controverting the allegations made in the writ petition. The writ petition was disposed of on 27/06/2013 in view of the stand of the Town Committee that fresh tender process would be initiated abandoning the earlier tender process. For a ready reference, the said paragraphs 15, 16 and 17 are reproduced below:-

15. That, three persons, namely, Rajib Ahmed, Muslim Ali and Mir Nasiruddin Ahmed as Petitioners filed a writ petition before the Hon'ble Gauhati High Court being WP(C) No. 2964/2013 praying for setting aside and quashing the Press NIT dated 16/05/13 and to hold a tender process as per guideline along with an interim prayer for stay. In the said case, apart from the State of Assam and Union of Assam, the Principal Secretary, Govt. of Assam, Planning and Development Department; the Director, Town and Country Planning, Assam; the Director, Municipal Administration Department, Assam; the Deputy Director, Town and Country Planning, Goalpara; the Director, Information and Public Relation

Department, Assam, Dispur; the Deputy Commissioner, Goalpara; and the Chairman, Lakhipur Town Committee, Goalpara were made parties as the Respondents. The Hon'ble Court vide Order dated 28/05/13 was pleased to pass an interim order and vide Order dated 07.06.13 was pleased to extend the interim order dated 28.05.13.

16. That, the petitioner has filed an application under Article 226(3) of the Constitution of India for vacation, modification, cancellation and/or alteration of the interim order dated 28.05.13 and extension of interim order vide order dated 07.06.13 passed in WP(C) No. 1964/2013 by the Hon'ble High Court, which was registered as Misc. Case No. 1807/2013. On the same day, i.e. on 26.06.13, the Lakhipur Town Committee, Goalpara has also filed an Affidavit-in-opposition controverting the allegations made in the aforesaid writ petition. The petitioner craves leave of the Hon'ble Court to call for the record of WP(C) No. 2964/2013 as and when requires.

17. That, thereafter, the Hon'ble Court after hearing the counsel for the parties, vide order dated 27.06.13 was pleased to dispose of the aforesaid writ petition. It is pertinent to mention herein that in the said order dated 27.06.13, the Hon'ble High Court has not recorded any anomalies on inviting tender by the Chairman, Lakhipur Town Committee, Goalpara, though some allegations were leveled in the said writ petition. Rather, the Hon'ble High Court has observed that the fresh tender shall be undertaken by the Lakhipur Town Committee, Goalpara through laid down procedure such as publication in the newspaper, etc.

8. In paragraph 19 of the writ petition, the petitioner has stated about the telephonic information received by him from the Secretary, Urban Development Department about the enquiry to be conducted on 23/07/2013 at Lakhipur asking him to be present at Goalpara Circuit House. As per the said direction, the petitioner presented himself in the enquiry on 23/07/2013 and also answered the queries made to him relating the aforesaid advertisement for NLCPR project. When the matter rested thus, the petitioner was issued with the Annexure-20 show cause notice referred to above followed by the impugned notification dated 03/12/2013. Responding to the show cause notice the petitioner submitted his annexure-21 reply. In the reply, the petitioner contended that he was prejudiced because of non-furnishing of the enquiry report. However, he denied the charges. As regards the publication of the NIT in the newspaper, as in the writ petition in the reply also he maintained the stand that the NIT was published in the aforesaid two newspapers and that the copies of the same were collected by him.

9. From the above narration of fact, the plea of the petitioner is that the NIT was published in the newspapers and he had initiated the tender process as per law and the guidelines hold the field and thus there could not have been any allegation of non-publication of the advertisement involving the work of Rs. 14.15 crores. However, as regards the allegation of non-publication of the NIT in the Website, the petitioner did not furnish any satisfactory reply.

10. Referring to the aforesaid facts, it is the case of the petitioner that since he proceeded with the matter relating to the tender process upon authorization and no illegality was committed by him in the affairs of the Town Committee, as he followed the Government guidelines, the impugned action on the part of the respondents is illegal. As noted above, he has also raised the plea of violation of the principles of natural justice as he was not furnished with the copy of the enquiry report.

11. The writ petition has been resisted by the respondents, both official and private. In the affidavit-in-opposition filed by the official respondents, it has been contended that the enquiry that was conducted against the petitioner revealed that contrary to the stand of the petitioner that the NIT was published in 2 newspapers, the same was never published in any newspaper. The NIT was found inserted in 2 (two) copies of the newspapers produced by the petitioner. It has also been stated that the petitioner was responsible for violation of Govt. guidelines in implementing the Govt. schemes. In paragraph 5 of the counter affidavit it is the categorical stand of the official respondents that the petitioner with the aid of the officials of the DIPR manipulated the advertisement in respect of the NIT for the aforesaid NLCPR project, which in fact, were not published in the regular issues of the two newspapers. As regards the prejudice in the enquiry and/or non-furnishing of the copy of the enquiry report, the stand of the official respondents is that due opportunity was given to the petitioner to place his case in the enquiry. Along with the affidavit, the report of the enquiry under the signature of the Secretary to the Government of Assam in the Urban Development Department dated 07/08/2013 has been enclosed.

12. In the reply affidavit filed by the petitioner against the said counter affidavit he has reiterated the stand in the writ petition. Along with the said reply affidavit the petitioner has also enclosed the copy of the WP(C) No. 2964/2013 referred to above and also the affidavit-in-opposition that was filed by the petitioner. In the affidavit-in-opposition filed by the respondent No. 10, Extra Assistant Commissioner, Goalpara, the stand of the official respondents has been reiterated.

13. I have heard Mr. P.K. Goswami, learned Senior counsel assisted by Mr. M. Bhuyan, Mr. J. Deka, Mr. T.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. B.J. Talukdar, learned State Counsel representing the official respondents. Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M. Khan, Mr. A.M. Buzarbaruah, Mr. P.K. Talukdar, Mr. J. Rahman, learned counsel argued on behalf of the private respondents. I have also considered the entire materials including the records produced by Shri Nripendra Nath Das, SI of Police, Lakhipur Police Station and my findings and conclusions are as follows.

14. As to what are the allegations against the petitioner and what is the stand of the petitioner against the same have been noted above. Mr. P.K. Goswami, learned counsel for the petitioner placing reliance on the decisions of the Apex Court reported in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, ; *Erusian*

Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; Juwarsingh and Others Vs. State of Madhya Pradesh, ; Swadeshi Cotton Mills Vs. Union of India (UOI), ; State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta, and (1963) 14 C.B. (NS) 180 (Cooper V. The Wandsworth Board of Works), emphasized on the need for providing adequate opportunity of being heard before passing any adverse order. According to him, the materials that were used against the petitioner having not been disclosed to him enabling him to meet the same, there has been gross violation of the principles of natural justice towards taking the impugned action against the petitioner. The decisions on which he has placed reliance and referred to above are all on the principles whirling around the principles relating to natural justice.

15. Countering the above argument, both Mr. M.K. Choudhury and Mr. A.M. Buzarbaruah, learned counsel representing the private respondents submitted that while there is no quarrel relating to the law laid down by the Apex Court in respect of the principles of natural justice, but the same is not a straight jacket formula. According to them the petitioner having been given due participation in the enquiry to project his version of the case, there was substantial compliance of the right to be heard. As regards the alleged non-furnishing of the copy of the enquiry report, they have contended that when the petitioner could furnish an affective reply to the show cause notice without the copy of the said enquiry report, no prejudice was caused to his defence.

16. While Mr. Choudhury, learned counsel for the private respondent has specifically referred to the above quoted statement made in paragraphs 15, 16 and 17 of the writ petition with the argument that there is suppression of material fact on the part of the petitioner in not disclosing the police case that has been registered against him in respect of the NIT in question, Mr. Buzarbaruah, referring to the decision in the Juwarsingh and Others Vs. State of Madhya Pradesh, submitted that considering the nature of the enquiry that was conducted against the petitioner, non-furnishing of the copy of the enquiry report did not result in any violation of the principles of natural justice. In paragraph 11 of the said judgment, the Apex Court has made the following observation:-

11. Another submission of the learned Attorney General was that Sec. 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamitous situations gloomily foreboded by the learned Attorney General where there would not be enough breathing time to observe natural justice, at least in a rudimentary way. A Municipal Committee under the Punjab Municipal Act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity, in the

shortest time, may serve. The authority acting under Sec. 238(1) is the master of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the Committee: broad grounds sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise under Sec. 238(1). If indeed such grave situations arise, the public interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act. We guard ourselves against being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle *audi alteram partem*. All that we say is that Sec. 238(1) of the Punjab Municipal Act does not.

17. What the petitioner has not disclosed in the writ petition filed on 06/12/2013 is vital fact of registration of a police case against him and others vide Lakhipur PS Case No. 265/2013. On perusal of the case records produced by Shri Nripendra Nath Das, SI of Police of Lakhipur PS, it appears that the petitioner was arrested in connection with the said case and eventually on the basis of bail application being BA No. 9/2013 made u/s 439 Cr.P.C., the petitioner was allowed to go on bail in connection with the said Lakhipur PS Case No. 265/2013 u/s 120(B)/465/468/471/420/409 IPC. While granting the bail on 06/01/2014, the petitioner's custody since 31/12/2013 was referred to and the bail was granted considering the fact that the case against the petitioner is based on documents which are in custody of the Police. The petitioner has not even obliquely stated about the said fact of registration of the FIR against him and also the subsequent developments in his reply affidavit filed on 21/02/2014, although he has referred to the earlier writ petition being WP(C) No. 28643/2013, filed by the 3 petitioners against the NIT in question.

18. All throughout the proceeding including the proceeding in the said writ petition being WP(C) No. 2964/2013, the petitioner has justified his action in respect of the NIT in question. The fact of the matter is that both the newspapers have denied issuance of any NIT in their issues published on 19/05/2013. In the writ petition the petitioner has annexed the copies of the newspapers i.e. the Assam Post and Dainik Agradoot, both dated 19/05/2013 to justify that the same were published in the said two newspapers. When the matter was taken up on 04/03/2014, the following order was passed.

4/3/2014

Heard-in-part. Further hearing on 13.3.2014.

the meantime, Mr. B.J. Talukdar, learned State Counsel shall obtain the present status report in respect of Lakhipur P.S. Case No. 265/2013. As per the averments made in the writ petition (paragraph-13), on the basis of the FIR lodged before the O/C, Lakhipur Police Station, the police personnel enquired into

the matter and in presence of a Magistrate, copies of the tender document and related papers along with copy of the newspapers dated 19.5.2013 have been seized from the office of the petitioner on 27.5.2013. The said two newspapers are Assam Post and Dainik Agradoot, both dated 19.5.2013. As per the assertion made by the petitioner, the tender notice annexed to the writ petition were published in the said two issues of Dainik Agradoot and Assam Post on 19.5.2013, in fact, he has annexed the photocopies of the same certifying the same to be the true copies as Annexure-9 and 10. On the other hand, the authorities of both the newspaper have clarified that no such NIT was issued on the issues dated 19.5.2013. Mr. Talukdar, the learned State Counsel may also get the records of the aforesaid P.S. Case along with the above referred documents. It will be appropriate for the Lakhimpur Police Station to depute one responsible officer along with the records

Let a copy of this order be furnished to Mr. B.J. Talukdar, learned State Counsel for his communication with the Lakhimpur Police State.

next date fixed, the Government of Assam in the Urban Development Department shall apprise this Court as to what action they have been taken against the Director of DIPR and the Liaison Officer, against whom there is adverse remarks in the enquiry report.

List again on 13.3.2014.

(Emphasis added)

19. As recorded in the said order dated 04/03/2014, the authorities of both the newspaper having clarified that the NIT said to have been published in their newspapers, was in fact not published on the issue dated 19/05/2013 and for that in no other issues. It was in such circumstances, Mr. B.J. Talukdar, learned State Counsel was directed to produce the records of Lakhimpur PS Case NO. 265/2013. As per the enquiry report enclosed to the counter affidavit filed by the official respondents also, no newspaper advertisement was issued for the NIT. Further, as per the enquiry report also, the NIT was not advertised in the newspaper. In the enquiry, the statement of the petitioner was recorded. As per the statement he had received the newspapers containing the NIT advertisement from a Howker whom he did not know.

20. The enquiry was conducted in public in presence of the petitioner and other members. As many as 7 (seven) organizations submitted complaints against the petitioner with the following allegations:-

1. Misappropriation of Government/public money without publishing any advertisement in newspaper.
2. Construction of the same road in Lakhimpur (Basic LP school road) under the head Finance Commission and also under SJSRY.
3. Misappropriation of Rs. 10.50 lacs (ten lacs fifty thousand) for earth filling

works of Lakhipur market area. The scheme was executed under TFC 06-07 and SJSRY 10-11.

4. Pocket tendering for the work Khogan Bose House to Ex. MLA house at a cost of Rs. 26 lacs.

5. Misappropriation of money in the construction of Mozzid ali road and Bamunpara public tank Rs. 20 lacs.

6. Pocket tender of 4th Finance Commission grant work for an amount of Rs. 19467000/-.

7. Misappropriation of money in Water Supply and Drainage schemes and cover slabs were not done fully.

8. Change of contractor in the UIDSSMT schemes for an amount of Rs. 26418000/-.

9. Misappropriation of Rs. 5 lacs under DRGF 9-10-Haluapara Gadang Rava Chariali to Kajai Shaheb house.

10. Non publication of advertisement for the NLCPR 2012-2013 project for an amount of Rs. 1415.17 lacs.

21. On conclusion of the enquiry the following findings have been recorded.

1. News paper advertisement for the NLCPR project for an amount of Rs. 14 crore 15 lacs was not published in the Assam Post and Dainik Agradut, one copy of each was collected in the office of the Town Committee and DIPR which was seized by police for forensic examination. The Chairman, the DIPR and the Liaison Officer are responsible for the same and necessary action may be initiated against them.

2. It was also found that the Lakhipur Town Committee executes works not following the government guidelines of paper advertisement and website advertisement.

3. It was also found that the schemes were not executed as per Government guidelines and the Chairman, Jr. Engineer and Asstt. Engineer of Lakhipur Town Committee along with the Asstt. Engineer from head office (DMA, Shri S. Das) who is to supervise the schemes are responsible for these lapses.

22. From the above and not denied by the petitioner, the shocking revelation is that although, in fact, the NIT advertisement was not published in two newspapers, but it was shown published in the copies which came into possession of the petitioner. In the records produced by the said SI of Police, there are 4 (four) copies of newspapers, 2 (two) each of the Assamese Daily Dainik Agradoot and the English Daily The Assam Post. Be it stated here that although as per the requisition made, the NIT was to be published in the much circulated English daily newspaper The Assam Tribune but was shown published in the lesser known (virtually not known) English daily newspaper The Assam

Post.

23. In the English newspaper of the issue of 19/05/2013 seized from the petitioner, the NIT advertisement finds place at page 8. When compared with the real one, no such advertisement is found. Same is the case with the Assamese newspaper, when in the copy seized from the petitioner, the advertisement is found at page 8 but in the actual copy, there is no such advertisement. The records have revealed that the matter was referred to the Forensic Science Laboratory and in the opinion rendered by it on 27/11/2013, it has been stated thus:-

GOVERNMENT OF ASSAM DIRECTORATE OF FORENSIC SCIENCE :: ASSAM
KAHILIPARA: GUWAHATI

To The Superintendent of Police, Goalpara, Assam.

OPINION

DFS/QDS: DFS/ODS-143/2013 DATED 27/11/2013

The documents in connection with Lakhipur PS Case No. 265/13 U/S. 120(B)/465/468/471/420/40 IPC have been carefully and thoroughly examined with the help of scientific instruments such as Documenter 3000, VSC 5000, VSC 6000 etc. under different lighting system.

2. The contents of the News item heading "France opposes Syria conference" appearing in the News paper "The Assam Post" at page No. 8 bearing marking A1 dated 19/5/2013 when compared with the corresponding News item heading "France opposes Syria conference" and Press Notice Inviting Tender appearing in the News paper "The Assam Post" bearing marking Q1 and Q2 dated 19/5/2013 reveals the following features:-

i) In the blue enclosed part Marked A1 only the news item head "France opposes Syria conference" as published in the available space.

ii) In the red enclosed part marked Q1 and Q2, two news items namely "France opposes Syria conference" and a Press Notice Inviting Tender were published in the same available space.

iii) On rational comparison of above two news items bearing the markings A1 and Q1 and Q2 it has been found that some positions of the original news items bearing marking A1 (originally marked M.R. 57/13) deleted and recomposed to accommodate the news item press notice inviting tender bearing the marking Q2 which was not published in the news paper originally marked MR No. 61/13.

3. The news items marked A2 to A4 of MR No. 58/13 and A5 to A7 of MR No. 76/13 appearing in the Assamese Agradoot News paper dated 19/5/2013 at page No. 8 which are similar to each other when compared with the news items marked Q3 and Q4 of MR No. 57/13 reveals the following features:

i) In the blue enclosed part marked A 2 to A4 or A5 to A7, the news items

heading "Aji Badla Atar Janma utsab", "Oinor namot parikha" (in Assamese language) and "corrigendum" respectively were published in the available space.

ii) In the red enclosed part marked Q3 and Q4 two news items, one regarding press notice inviting tender and another one corrigendum were published in the same available space.

iii) On rational comparison of the two sets of news items it has been observed that the news items in the blue enclosed marked A2 and A4 or A5 and A6 have been replaced by the news item Q3 and subsequently the news items marked A2, A3 or A5, A6 have been shifted to other place on the same page by recomposition.

Sd/- 27/11/2013 DR. (MS) TILAKA DAS, M.Sc. Ph.D. Deputy Director, Questioned Documents Division, Directorate of Forensic Science Assam, Kahilipara, Guwahati-19.

24. From the above, there is absolutely no manner of doubt that there has been manipulations in the respective pages of the two newspapers so as to show publication of the same only on the issues found in possession of the petitioner. Although the petitioner has denied his hand in such manipulation but in the normal circumstances, a presumption can be drawn against him. While it is true that the matter is under investigation of the Police and as submitted during the course of hearing by the SI of Police, who was present in the Court, charge sheet is likely to be submitted without much delay. No opinion is expressed in this regard lest the same would cause prejudice to the likely defence of the petitioner.

25. As regards the allegation of non-publication of the NIT in the website, a feeble submission was made during the course of hearing that in absence of infrastructure and irregular electricity supply, the advertisement could not be published in the website but neither in the show cause reply nor in the writ petition, no such defence is found. Even if such a defence is advanced, same is hardly tenable for two reasons, firstly, in case of any difficulty the petitioner ought to have informed the authority about the same and secondly he could have arranged up-loading of the same through other arrangement and the same is not a difficult task.

26. This now leads us to the whole basis of the claim of the petitioner that he was deprived of the reasonable opportunity of being heard as he was not provided with the hearing and not furnished with the copy of the enquiry report. As is evident from the enquiry report annexed to the counter affidavit, the petitioner was provided with the opportunity of being heard with due association in the enquiry proceeding and his statement was also recorded as follows to which there is no denial on the part of the petitioner.

1) Shri Rajesh Prasad Gupta, Chairman Lakhipur Town Committee deposed that he sent a letter to Director of Public Relation for advertisement in the news paper. He also informed that he received a copy of the newspaper where the

advertisement was shown as published. The certificate of advertisement was received from Liaison Officer DIPR office. When he was asked about where from the copy of the news paper showing the advertisement was found. He informed that it was seized by Lakhipur Police. When he was asked about how he received copy of news paper for the advertisement whereas the general public did not get, Shri Gupta informed that it was received from a hoker whom he did not know. On query he informed that he did not checkup other news papers. He informed that he was new in his job and did not know that it had to be checked up. From the above its appears that the news was not published in the newspapers, which was also informed by the office of the news paper. Hence the Chairman must be involved in the process of manipulating the advertisement. Website advertisement was also not done.

27. As per the aforesaid statement the petitioner received a copy of the newspaper containing the copy of the NIT advertisement from a Howker but both in the writ petition as well as in the show cause reply he has stated that copies of the newspapers had been collected by him from a Vendor. Be that as it may, the petitioner ought to have disclosed in the writ petition filed on 06/12/2013 about the state of affairs relating to the NIT in question. The fact that an FIR was lodged involving the petitioner and there was police investigation pursuant to registration of case against him and he was also arrested with eventual granting of bail, has not been disclosed in the writ petition or in the reply affidavit.

28. In the challenge to the NIT IN WP(C) No. 2694/2013, the specific allegation was about non-publication of the NIT advertisement in the newspapers. The petitioner tried to justify the fictitious newspapers containing the NIT advertisement in the affidavit-in-opposition filed against the said writ petition. Not only that, he also tried to vacate the interim order operating in the said proceeding by filling an application under Article 226(3) of the Constitution of India. Merely because fresh tender process was initiated abandoning the earlier NIT in question and taking note of the same the writ petition was disposed of, the same cannot absolve the petitioner from the allegations made against him.

29. The plea of violation of the principles of natural justice will have to be considered in the light of the revelation of facts which were known to the petitioner but not disclosed in the writ petition. The copy of the enquiry report is very much a part of the counter affidavit filed by the respondents. In the reply affidavit filed by the petitioner to the said counter affidavit, apart from harping on the point of non-furnishing of the copy of the enquiry report, the petitioner has not denied the stand of the respondents in the said counter affidavit nor the findings recorded in the said enquiry report including his recorded statement in the said enquiry report.

30. The test of prejudice in the context of violation of the principles of natural justice will have to be considered keeping in mind that the principles of natural justice are but the means to achieve the ends of justice and that they cannot be perverted to achieve the very opposite end. That would a counter-productive

exercise. In *All Mehdaui V. Secy of State for the Home Deptt.* reported in (1990) 1 AC 876, the House of Lords (Par Lord Bridge) observed thus:-

A party to the dispute who has lost the opportunity to have his case heard through the default of his own advisers to whom he has entrusted the conduct of the dispute on his behalf cannot complain that he has been the victim of the procedural impropriety or that natural justice has been denied to him.

31. In *Malloch Vs. Aberdeen Corpn.* reported in (1971) 2 ALL ER 1278, the House of Lords (Par Lord Reid) observed thus:-

...it was argued that to have afforded a hearing to the appellant before dismissing him would have been a useless formality because whatever he might have said could have made no difference. If that could be clearly demonstrated it might be a good answer.

(Emphasis supplied)

32. Lord Guest not only agreed with the above observation but also applied the test of prejudice with the following observation:-

A great many arguments might have been put forward but if none of them had any chance of success then I can see no good reason why the respondents should have given the appellant a hearing, nor can I see that he was prejudiced in any way.

33. Lord Wilberforce II stated the principle in the following words:-

The appellant has first to show that his position was such that he had, in principle, a right to make representations before a decision against him was taken. But to show this is not necessarily enough, unless he can also show that if admitted to state his case he had a case of substance to make. A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.

34. In *K.L. Tripathi Vs. State Bank of India and Others*, , the Apex Court observed thus:-

The basic concept is fair play in action administrative, judicial or quasi judicial. The concept of fair play in action must depend upon the particular facts, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not

invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts.

35. Principles of natural justice cannot be reduced to any hard and fast formula. As said in *Russel Vs. Duke of Norfolk* reported in (1949) 1 ALL ER 109, this principles cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances to each case.

36. In *Aligarh Muslim University and Others Vs. Mansoor Ali Khan*, , in reference to the facts involved in the case it was held that in absence of a notice to show cause did not make any difference and that the case would fall with the exception noted in *S.L. Kapoor* (Supra).

37. Apart from the fact that it is not a case of removal from office or post pursuant to any departmental proceeding, the petitioner has also failed to establish any prejudice caused to him because of non-furnishing of the copy of the enquiry report. In any case, the report was very much made available to the petitioner along with the counter affidavit to which he also submitted his reply affidavit. The petitioner has not specifically pleaded anything as to how non-furnishing of the said report caused any prejudice to his defence. He has been removed from the office of the Chairman as per the provisions of Section 229 of the Assam Municipal Act, 1956, which reads as follows:-

28. Removal of Chairman and Vice-Chairman-(3) The Statement Government after giving an opportunity to explain, may remove the Chairman or Vice-Chairman from his office if he is persistently omitting or refusing to carry out or disobeying the provisions of this Act and the rules thereunder or any lawful

orders issued thereunder or he becomes incapable of so acting or is declared insolvent or is convicted by a criminal Court for any offence involving moral turpitude.

38. In the show cause notice he was very much apprised of the illegality committed in issuing the NIT in question and execution of the works without following the Govt. guidelines of newspaper advertisement and website advertisement. It was alleged that he had persistently or refused to carry out or disobeyed the provisions of the Act and the Rules there-under or lawful orders. In response to the said show cause notice the petitioner submitted his detailed reply and as noted above, all-along maintained that there was paper publication of the NIT. Contrary to such stand of the petitioner, there was no newspaper publication of the NIT rather there was forgery in incorporating the NIT advertisement only in the issues of both the newspaper found in possession of the petitioner. There is also no explanation as to why the petitioner could not upload the NIT advertisement in the website.

39. Keeping in mind the above position, the much emphasized plea of violation of the principles of natural justice will have to be appreciated. Needless to say that the Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

40. As has been held by the Apex Court in *Canara Bank and Others Vs. Shri Debasis Das and Others*, Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. The expression "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication.

41. What is known as "Useless Formality Theory" has received consideration of the Apex Court in *M.C. Mehta Vs. Union of India (UOI) and Others*, . Without going into the said aspect of the matter where it is found that no prejudice could be shown by the petitioner, there was no failure of justice occasioning interference with public interest.

42. In case of a Government employee, he is normally placed under suspension if

he is involved in a criminal case. In the instant case when he petitioner claims protection from the impugned order on the ground of violation of principles of natural justice like a public servant but at the same he does not volunteer to demit office because of his involvement in the criminal case. He is holding a responsible position of Chairman of a Town Committee. Having regard to the seriousness of the allegation and the public interest involved, if the authorities decided to remove him from the office of the Chairman after providing him an opportunity of being heard, in my considered opinion, this Court exercising its powers of Judicial review under Article 226 of the Constitution of India cannot sit on appeal over the said decision so as to substitute another decision and that too on the feeble and flimsy ground of alleged violation of the principles of natural justice.

43. For all the aforesaid reasons I do not find any merit in the writ petition and accordingly it is dismissed. The interim order passed on 09/12/2013 stands vacated.

44. There shall be no order as to costs. Before parting with the case records, I place on record the displeasure of the Court in not taking any departmental action against the erring officials indicated in the enquiry report referred to above (para 21). It is also shocking as to how the NIT could be shown published only in one copy of the news papers so as to avoid participation in tender process and to confine the same to a few favoured ones. Direction is hereby issued to take immediate steps to unearth the racket and also to take departmental action against the erring officials.