

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 19th SEPTEMBER, 2017

**DIVISION BENCH : THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

WP(PIL) No.04 of 2015

- Petitioners** :
1. Shri Bishnu Rai,
General Secretary of Ravangla Astha Organisation,
A Non-Government Organisation,
Registered under the Societies Registration Act, 1860,
Having Office at Ravangla, Sikkim.
 2. Ravangla Astha Organisation,
A Non-Government Organisation,
Registered under the Societies Registration Act, 1860,
Having Office at Ravangla, Sikkim.

versus

- Respondents** :
1. Union of India
through the Secretary,
Ministry of Law and Justice,
Having Office at 4th Floor,
'A' Wing, Shastri Bhawan,
New Delhi - 110 001.
 2. The Ministry of Human Resource Development,
Government of India
through the Secretary,
Having Office at 1, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001.
 3. The Sikkim University,
Established and Incorporated under
the Sikkim Universities Act, 2006,
6th Mile, Samdur,
P.O. Tadong,
Gangtok,
East Sikkim.
 4. Prof. Mahendra P. Lama,
S/o Shri R. P. Lama,
House No.1327,
Poorvbanchal, NSC Delhi,
Pin - 110 067.

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5. Mr. Jyotiprakash Tamang,
DEAN of Micro-Biology,
The Sikkim University,
Established and incorporated under
the Sikkim Universities Act, 2006,
6th Mile, Samdur,
P.O. Tadong,
Gangtok,
East Sikkim.
6. State of Sikkim
through the Chief Secretary
Government of Sikkim,
Having Office at Community Centre,
Jeewan Theeng Marg,
Sikkim – 737 101.

Petition under Article 226
of the Constitution of India

Appearance

Mr. Suman Sengupta, Ms. Prarthana Ghataney and Ms. Ranjeeta Kumari, Advocates for the Petitioners.

Mr. Karma Thinlay, Central Government Counsel for Respondents No.1 and 2.

Mr. Umesh Gurung, Advocate for Respondents No.3 and 5.

Mr. Nikhil Pillai and Ms. Rachhitta Rai, Advocates for the Respondent No.4.

Mr. J. B. Pradhan, Additional Advocate General with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for Respondent No.6.

Mr. Hemant Shukla, Special Public Prosecutor, CBI/ACR/Kolkata.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

- 1.** Pointing out gross irregularities including financial irregularities and illegalities committed by the Respondents No.3, 4 and 5, the Petitioners had earlier filed a Writ Petition, being WP(PIL) No.18 of 2000, seeking a direction to the State or the concerned Ministry, to carry out thorough investigation as to the allegations

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raised. Disposing of the Petition on 23-06-2014, the Division Bench of this High Court ordered as follows;

- “(i) The petitioners will file a representation with all the allegations, which have been alleged in the present writ petition against respondents No. 1 to 3, before respondent No. 4, i.e. Ministry of Human Resource Department, Government of India, New Delhi, with all necessary facts and documents in support of their allegations, within a period of six weeks from today.
- (ii) If such a representation is filed by the petitioners, the respondent No. 4 is directed to consider/examine the allegations alleged by the petitioners, to make an enquiry in case there is any necessity and in case the allegations are, *prima facie*, found to be proved then to initiate appropriate actions/proceedings against the University, the then Vice Chancellor, the then Registrar (respondents No. 1 to 3) or any other officer, who is found guilty, in accordance with law. The needful will be done by respondent No. 4 within a period of six months from the date of receipt of representation.
- (iii) It will be open for the petitioners to approach this Court again in case they feel aggrieved with the action of respondent No. 4.
- (iv) In case the petitioners want a personal hearing, then the respondent No. 4 will afford an opportunity of personal hearing to them.
- (v) It is needless to mention that in case any action is taken or proceedings are initiated, by respondent No. 4, against respondent No. 1 Sikkim University, respondent No. 2 Prof. Mahendra P. Lama, former Vice Chancellor, Sikkim University, respondent No. 3 Shri Jyotiprakash Tamang, Registrar, Sikkim University or any other Officer, then an opportunity of being heard or to defend themselves will be given to them.
- (vi) Parties shall bear their own costs.”

2. In compliance thereto, the Petitioner filed a representation dated 28-07-2014 before the Respondent No.2, who on being satisfied *prima facie* about the allegations, constituted a Fact Finding Committee (for short “FFC”) to enquire thereto. A prayer for extension of time to dispose of the representation dated 28-07-2014 was made by the Respondent No.2 before this Court

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and allowed. Despite such extension, the Report of the Committee was not made available to the Petitioner, giving rise to the instant Writ Petition, seeking disclosure of the Report of the FFC to the Petitioners, by furnishing it before this Court with a prayer to the Court to direct any Law Enforcing Agency to take up legal proceedings against the Respondents No.4, 5 and 6.

3. The Respondents No.3 and 5 filed their respective Counter-Affidavit disputing and denying the allegations levelled as baseless. Respondent No.4 in his Affidavit also resisted the allegations levelled by the Petitioners as false and vexatious and made with the malicious intention of damaging the Respondent's reputation.

4. The Respondent No.2 for their part filed the Report of the FFC, which was placed before this Court in CM Appl. No.258 of 2015 and taken on record on 21-09-2015. It was submitted that the Report of FFC was under active consideration of the Government for further course of action.

5. On 09-07-2016 by filing I.A. No.03 of 2016, the Respondent No.2, informed that, based on the Report of the FFC, the Ministry had issued a Notice to the Respondent No.4 seeking recovery of an amount of Rs.2,20,671/- (Rupees two lakhs, twenty thousand, six hundred and seventy one), only, on account of irregular payment of electricity bill made by the Respondent No.3, purportedly for the second residence of the Respondent No.4. An Audit Team had also been constituted to complete the process of

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auditing/examining the allegations of irregularity in submission of Utilization Certificate for the year 2010-11 and irregularity in appointment of a Caretaker for Siliguri Guest House.

6. The Respondent No.2 by filing I.A. No.05 of 2016, on 03-10-2016, informed that after examining the aforesaid issues, Report had been submitted by the Audit Team and was under consideration of the University Grants Commission (UGC). By the same I.A., two letters, i.e., one dated 12-09-2016 addressed to Respondent No.4 by the Deputy Secretary of the Respondent No.2 and another letter dated 13-04-2016 addressed to the Secretary, UGC, by the Deputy Secretary of the Respondent No.2, were also placed on record. The first letter allowed the request of the Respondent No.4 to pay the amount of Rs.2,20,671/- (Rupees two lakhs, twenty thousand, six hundred and seventy one), only, in twenty equal monthly instalments, while the second letter pertained to constitution of a Team, for examining the aforesaid two allegations. So far as the Fact Finding Report (FFR) was concerned, it was canvassed by Respondent No.2 that some allegations were found to be true, some unfounded and in respect of some allegations the matter was to be enquired further.

7. On 03-11-2016, as no response was forthcoming from the Respondent No.2 with regard to proposed action against the concerned Respondents, despite the observations in order dated 14-10-2016, this Court ordered that an Independent Agency, namely, the Central Bureau of Investigation (CBI), be directed to examine

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the alleged irregularities in the functioning of the University and appropriate action be taken, as advised, as per Law. Consequently, Notice was issued to the Additional Director, CBI (In-Charge, N/E States), who put in his appearance through Additional Superintendent of Police, Anti-Corruption Branch, CBI, Kolkata, W.B., on 10-11-2016 and was directed to examine the matter and submit a Preliminary Report, within a period of four weeks.

8. In the interim, the Respondent No.3 filed I.A. No.06 of 2016 seeking modification of the Order passed by this Court on 03-11-2016 and contended that the FFC had examined all allegations levelled against the Respondents No.3, 4 and 5 and found the same to be incorrect, hence, the CBI was not required to further investigate into the matter. This Court observed that no further order is required in this Application at that stage.

9. The CBI thereafter submitted a Preliminary Status Report to the effect that it was examining a large number of financial transactions pertaining to Sikkim University for the financial years 2009-10 and 2010-11 and sought time for detailed enquiry and report. On 19-06-2017, the CBI filed a Report under sealed cover, with copy made over to the Central Government Counsel appearing for Respondents No.1 and 2.

10. Now, the Respondent No.2 has filed an Affidavit on 07-09-2017 submitting therein that on perusal of the Report of the CBI, it is found that some *prima facie* evidence existed against the Respondent No.4, towards which, the CBI proposed to register a

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Regular Case against the Respondent No.4 and some other suspects. In view of the said circumstances, the Respondent No.2 submits that the Affidavit dated 26-10-2016, being I.A. No.11 of 2016, and an application for modification of Orders dated 03-11-2016 and 10-11-2016, being I.A. No.12 of 2016 may be treated as withdrawn. That, the Respondent has no objection to the CBI proceeding on the basis of their findings.

11. In view of the said Affidavit and the aforesaid submissions, we are of the considered opinion that the CBI take necessary steps, without being prejudiced by any of the observations made by this Court. During the process, the CBI shall afford fair and sufficient opportunity to the Respondent No.4 to place his matter, before the Agency, with no reservations.

12. Writ Petition stands disposed of accordingly.

Sd/-
(**Meenakshi Madan Rai**)
Judge
19-09-2017

Sd/-
(**Satish K. Agnihotri**)
Chief Justice
19-09-2017

Approved for reporting : **Yes**

Internet : **Yes**