

GAHC010098092019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL(Suo Moto)/2/2019

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GUWAHATI, ASSAM

VERSUS

IN RE - STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY, JANATA BHAWAN, DISPUR,
GUWAHATI - 781006

2:STATE OF NAGALAND
REPRESENTED BY THE CHIEF SECRETARY
NAGALAND CIVIL SECRETARIAT
KOHIMA - 797004

3:STATE OF MIZORAM
REPRESENTED BY THE CHIEF SECRETARY
MIZORAM SECRETARIAT
AIZWAL - 796001

4:STATE OF ARUNACHAL PRADESH
REPRESENTED BY THE CHIEF SECRETARY
CIVIL SECRETARIAT
ITANAGAR - 791111

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
POLICE HEADQUARTERS
ULUBARI
GUWAHATI - 781001

6:THE DIRECTOR GENERAL OF POLICE
NAGALAND

POLICE HEADQUARTERS
P.R. HILL
KOHIMA - 797001

7:THE DIRECTOR GENERAL OF POLICE
MIZORAM
POLICE HEADQUARTERS
KHATLA
AIZWAL - 796001

8:THE DIRECTOR GENERAL OF POLICE
ARUNACHAL PRADESH
POLICE HEADQUARTERS
CHANDRANAGAR
ITANAGAR - 791111

9:UNION OF INDIA
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA
HOME DEPARTMEN

Advocate for the Petitioner : MR S S DEY, SR ADV

Advocate for the Respondent : MR. T C CHUTIA, (R-1 AND 5)

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 10.02.2023
(A.M. Bujor Barua, J)

Heard Mr. D. Nath, learned Senior Government Advocate for the State of Assam, Mr. B.D. Goswami, learned Addl. Advocate General for the State of Arunachal Pradesh, Mr. A. Kalita, learned Addl. Advocate General for the State of Mizoram, Ms. M. Kechii, learned Senior Government Advocate for the State of Nagaland, Mr. M. Phukan, learned Public Prosecutor for the State of Assam and Mr. H.K. Das, learned standing counsel for the Gauhati High Court.

2. Pursuant to our earlier order dated 07.02.2023, Mr. Nitul Gogoi, IPS,

Inspector General of Police (Administration), Assam; Mr. D. Upadhaya, IPS, Inspector General of Police (CID), Assam; Mr. Michi Paku, Inspector General of Police (Operation and Training), Arunachal Pradesh; Mr. Thomas Zodingliona, IPS, Director General of Police (Eastern Range), Mizoram and Mr. Joseph Hesso, IPS, Inspector General of Police (Headquarter), Nagaland are personally present before the Court.

3. For the purpose of separation of investigation from the general duties of the police personnel in respect of the State of Assam, there is already a judgment and order dated 31.01.2020 in Crl.Appeal (J) No. 111/2016, whereby there is a requirement to bring in a separation of the investigating wing from that of the other duties of the police and in course of such proceedings certain developments have already taken place and we are taking judicial notice of such developments as recorded in various orders in Crl.Appeal (J) No. 111/2016.

4. Mr. Nitul Gogoi, IPS, Inspector General of Police (Administration), Assam has stated that in respect of the Assam Police, a tentative list of the persons who would be more suitable for investigation had already been identified and certain preliminary training had also been imparted at the level of the police training institutes and in the Judicial Academy of Assam. However, there is also a requirement that a Cabinet decision be taken for the purpose to implement the separation of the investigating wing and for the purpose a draft of the Cabinet memorandum had already been prepared which had been placed before the Government.

5. Mr. D. Nath, learned Senior Government Advocate seeks for an adjournment to provide further update on the matter being placed before the Cabinet. Upon deliberation, we can also observe that separating the investigating wing may not incur any additional financial implication, other than

for certain marginal financial implications and further creating of the wing would be within the existing police force. On the next date, the State of Assam may respond with a specific road map and timeline on the implementation of the requirement of separating the investigating wing.

6. In respect of the State of Arunachal Pradesh, we take note of the judgment and order dated 23.08.2022 in PIL No. 09(AP)/2022 for separation of the investigating wing within the existing police force. The State of Arunachal Pradesh to also file an affidavit stating in detail providing for the road map and the timeline that would be required for implementing the separation and what steps had been taken in the meantime for implementing the same, including the preparation of the list of persons to be included in the investigating wing.

7. In respect of the State of Mizoram, although the matter of separation of the investigating wing from the general police force was not taken up in any judicial proceeding, however the genesis of the two judgments in respect of the State of Assam as well as the State of Arunachal Pradesh are also applicable for the State of Mizoram, meaning thereby that there is a public interest requiring the separation of the investigating wing and there is also a judgment by the Hon'ble Supreme Court requiring such separation which again would have to be understood to be the law of the land.

8. An encouraging statement has been made by Mr. Thomas Zodingliona, IPS, Director General of Police (Eastern Range), Mizoram, that as per certain reports the rate of conviction in Mizoram is very high. The statement is encouraging but at the same time we also feel that there is a requirement to separate the investigating wing and if it had been done and the investigation is more professionally done, the rate of conviction may even be higher. Accordingly, the State of Mizoram to also file an affidavit placing on record the

road map and the timeline to separate the investigating wing and what immediate steps had been taken for implementing the same, meaning thereby the identification of the police personnel who may be more suitable for the purpose of investigation.

9. The provisions indicated in respect of the State of Mizoram would also be applicable to the State of Nagaland and accordingly the State of Nagaland to also file an affidavit placing on record the road map and the timeline to separate the investigating wing and what immediate steps had been taken for implementing the same. We have been told that the Assembly Election in the State of Nagaland would take place on 27.02.2023 and the results thereof would be declared on 02.03.2023.

10. In view of the above, the respective affidavits of the States of Assam, Arunachal Pradesh and Mizoram be filed before the next date i.e. 28.02.2023. However, for the State of Nagaland because of their ensuing Assembly Election the affidavit be filed within 14.03.2023. For the purpose of the issue of separating the investigating wing in respect the States of Assam, Arunachal Pradesh and Mizoram, the matter to be listed for further hearing on 28.02.2023 and in respect of the State of Nagaland, the matter to be listed on 14.03.2023.

11. Personal appearance of all the aforesaid police officials with the exception of Mr. Joseph Hesso, IPS, Inspector General of Police (Headquarter), Nagaland shall continue on the next date.

12. A copy of this order be furnished to Mr. D. Nath, learned Senior Government Advocate for the State of Assam, Mr. B.D. Goswami, learned Addl. Advocate General for the State of Arunachal Pradesh, Mr. A. Kalita, learned Addl. Advocate General for the State of Mizoram, Ms. M. Kechii, learned Senior Government Advocate for the State of Nagaland and Mr. M. Phukan, learned

Public Prosecutor for the State of Assam.

13. List again on 28.02.2023 and 14.03.2023 as part heard.

J U D G E

J U D G E

Comparing Assistant