

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.562 of 2020

Shri Uttam Das Baishnab, S/o. Lt. Harekrishna Baishnab, resident of South Palace Compound, Agartala, P.O. Agartala Head Post Office, P.S. West Agartala, West Tripura, Pin-799001.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by the Chief Secretary in the Department of General Administration (Personnel & Training), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O. New Secretariat, Sub Division- Sadar, District- West Tripura, Pin Code-799010.

2. The Secretary, Department of General Administration (Personnel & Training), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O. New Secretariat, Sub Division- Sadar, District- West Tripura, Pin Code-799010.

3. The District Magistrate and Collector, South Tripura, Government of Tripura, having his office at DM Office Complex, Belonia, P.O. Belonia, Sub Division- Belonia, District- South Tripura, Pin Code-799155.

4. The Under Secretary, Department of General Administration (Personnel & Training), Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O. New Secretariat, Sub Division- Sadar, District- West Tripura, Pin Code-799010.

सत्यमेव जयतेRespondent(s)

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HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. A. Pal, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

Judgment & Order
delivered on : **29th January, 2021.**

Whether fit for reporting : YES.

JUDGMENT & ORDER (ORAL)

The petitioner has challenged an order dated 14.05.2020 by which he was placed under suspension and a further order dated 20th August, 2020 by which the order of suspension was extended for a period of 180 days.

[2] Brief facts are as under :

The petitioner is a member of Tripura Civil Service, Grade-II. In the year 2020, he was posted as Deputy Collector & Magistrate, Subroom when the Government of Tripura passed the order of suspension dated 14th May, 2020 in exercise of powers under sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the ground that disciplinary proceeding against him was contemplated. As per the rules his order of suspension required review within 90 days. Since after expiry of 90 days on 11th August, 2020 there was no communication to the petitioner by the department of review and extension of the suspension order, the petitioner wrote to the Under Secretary, Government of Tripura on 21.08.2020 pointing out that upon completion of the period of 90 days from the initial order of suspension, in terms of sub-rules (6) and (7) of Rule 10 of CCS(CCA) Rules his suspension would be rendered invalid. He therefore requested

that the suspension may be formally revoked. It appears that in the meantime the department had initiated the steps for consideration of the question of extending the petitioner's suspension which culminated into passing of the order dated 20th August, 2020 by which, the suspension of the petitioner was extended by a further period of 180 days *with effect from* 12th August, 2020.

[3] This petition is based on simple facts namely that since the department did not extend the suspension of the petitioner within 90 days of the order, in view of sub-rules (6) and (7) of CCS(CCA) Rules such suspension would become invalid and any subsequent extension of the suspension would not validate such order.

[4] The respondents have appeared and filed reply in which it has been pointed out that the petitioner was placed under suspension in view of allegations made by the inhabitants of Subroom that the petitioner was engaged in unlawful recoding of Government land in favour of private individuals. The Government therefore approved placing the petitioner under suspension in contemplation of disciplinary proceedings. Accordingly, the order of suspension was passed on 14th May, 2020. With respect to the reason for not reviewing the suspension

within 90 days, in the said affidavit following averments have been made.

“8. That, in regard to averment made in Para-4 of the writ petition it is submitted that a Committee was constituted to review the suspension order of Shri Uttam Das Baishnab, TCS Gr-II, Ex. DCM, Sabroom vide Notification No.F.35 (38) GA (P&T)/2011 dated 6th August, 2020 under the Chairmanship of Shri L.H. Darlong, IAS, Principal Secretary, GA (P&T) Department prior to expiry of 90(ninety) days of suspension period. Notification No.F.35(38) GA(P&T)/2011 dated 6th August, 2020 is annexed herewith and marked as Annexure-I.

But, meeting of the Committee could not be convened because Shri L.H. Darlong, Chairman of the Review Committee is also Chairman of working group to sort out the issue of Tripura people stranded outside the State and people of other States stranded in Tripura due to COVID-19 pandemic. A copy of the Order No.F.2(1)/CS/REV/2020 dated 27th March, 2020 regarding constitution of working group is annexed herewith and marked as Annexure-II.

Apart from this Shri L.H. Darlong Chairman of the Review Committee is also badly engaged with the COVID-19 pandemic cases in connection with Financial assistance etc., to persons stranded outside the State.

Copy of order No.2(1)/CS/REV/2020 dated 2nd April, 2020, Order No.F.2(1)-CS/HOME/2020 dated 30th April, 2020 and Order No.F.2(1)-CS/REV/2020 dated 4th May, 2020 is annexed herewith and marked as Annexure-III, Annexure-IV and Annexure-V respectively.”

[5] In background of such facts, learned counsel for the petitioner drew my attention to Rule 10 of the CCS(CCA) Rules and in particular sub-rules (6) and (7) thereof and contended that once within 90 days of initial order of suspension the same was not reviewed and extended, the same would be rendered invalid and any subsequent order

of extension would not revive the order which had lost its efficacy. In this context, he relied on a decision of Supreme Court in case of *Union of India and others versus Dipak Mali* reported in (2010) 2 SCC 222 and a decision of the learned Single Judge of Gauhati High Court in case of *Shri Amoy Morang versus The State of Arunachal Pradesh* dated 04.06.2019.

[6] On the other hand, learned Additional Government Advocate opposed the petition contending that a committee for reviewing the petitioner's suspension was formed well in time, however, due to extraordinary circumstances pointed out in the affidavit the process of reviewing and extending the suspension of the petitioner took some time. Under such circumstances, there would be no automatic invalidation of the order of suspension as contended by the counsel for the petitioner.

[7] Rule 10 of CCS(CCA) Rules pertains to suspension. Relevant portion of which reads as under :

“SUSPENSION

(1) The Appointing Authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

- (aa) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or*
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:*

Provided that, except in case of an order of suspension made by the Comptroller and Auditor - General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant General or equivalent (other than a regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority -

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;*
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(5)(a) Subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in

writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

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[8] Sub-rule (1) of Rule 10 of CCS(CCA) Rules empowers a competent authority to place the Government servant under suspension where disciplinary proceedings against him is contemplated or pending or where the authority is of the opinion that the Government servant has engaged himself in activities prejudicial to the interest of the security of

the State or where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Sub-rule (2) of Rule 10 refers to deemed suspension of an official if he is detained in custody for a period exceeding forty-eight hours or where he is convicted for a term of imprisonment exceeding forty-eight hours. Clause (a) of sub-rule (5) of Rule 10 of CCS(CCA) Rules provides that subject to the provisions contained in sub-rule (7), any order of suspension made or deemed to have been made under the said Rule shall continue to remain in force until it is modified or revoked by the authority competent to do so. Sub-rule (6) of Rule 10 requires the competent authority to review the order of suspension before expiry of 90 days from the effective date of suspension on recommendation of the review committee constituted for such purpose and he would pass order either extending or revoking the suspension. Such extension would not be beyond 180 days at a time. Sub-rule (7) of Rule 10 provides that an order of suspension made or deemed to have been made under sub-rule (1) or (2) shall not be valid after a period of 90 days unless it is extended after review before expiry of such period of 90 days.

[9] On the face of it, counsel for the petitioner is correct in pointing out that ordinarily by virtue of the operation of the said Rule,

an order of suspension which is not reviewed and extended within the period of 90 days from the initial order of suspension, would be invalid. The Supreme Court in case of *Dipak Mali* (supra) in the context of the said Rule had made following observations.

“10. Having carefully considered the submissions made on behalf of the parties and having also considered the relevant dates relating to suspension of the respondent and when the petitioner's case came up for review on 20th October, 2004, we are inclined to agree with the views expressed by the Central Administrative Tribunal, as confirmed by the High Court, that having regard to the amended provisions of Sub- rules (6) and (7) of Rule 10, the review for modification or revocation of the order of suspension was required to be done before the expiry of 90 days from the date of order of suspension and as categorically provided under Sub- rule (7), the order of suspension made or deemed would not be valid after a period of 90 days unless it was extended after review for a further period of 90 days.

11. The case sought to be made out on behalf of the petitioner, Union of India as to the cause of delay in reviewing the respondent's case, is not very convincing. Section 19(4) of the Administrative Tribunals Act, 1985, speaks of abatement of proceedings once an original application under the said Act was admitted. In this case, what is important is that by operation of Sub-rule (6) of Rule 10 of the 1965 Rules, the order of suspension would not survive after the period of 90 days unless it was extended after review. Since admittedly the review had not been conducted within 90 days from the date of suspension, it became invalid after 90 days, since neither was there any review nor extension within the said period of 90 days. Subsequent review and extension, in our view, could not revive the order which had already become invalid after the expiry of 90 days from the date of suspension.”

[10] This was also reiterated by the learned Single Judge of the Gauhati High Court in case of *Shri Amoy Morang* (supra). Ordinarily

the said Rule position and the interpretation of the said Rule by the Supreme Court would complete our inquiry. However, the fact situation of the present case is rather extraordinary which would require further scrutiny to be made. The question is, would the consequence of an order of suspension being rendered invalid if not reviewed and extended within 90 days of its operation follow in all cases irrespective of the impossibility of carrying out such exercise?

[11] In this context, we may refer to the Limitation Act, 1963. As is well known, this Act makes provisions for limitation for filing suit, appeal and applications. While laying down period of limitation for filing suits, appeals, and applications, Section 4 of the Limitation Act provides that where the prescribed period for filing any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Section 6 of the Limitation Act extends the period of limitation for filing suit or making an application for execution of a decree if at the time when such period is to be reckoned, the person entitled to institute such proceedings is under legal disability being a minor or insane or an idiot. Section 14 of the Limitation Act pertains to

exclusion of time consumed in pursuing *bona fide* remedy before a court which has no jurisdiction.

[12] I am conscious that the Limitation Act has no applicability in the present case. However, I have referred to these provisions only to demonstrate that even in the said Act where period of limitation is to apply as a bar for instituting a suit or a proceeding, provisions have been made to ensure that in cases where it is impossible for a litigant to adhere to these limitation provisions redress is inbuilt in the Act.

[13] In case of *M.P. Steel Corporation versus Commissioner of Central Excise* reported in (2015) 7 SCC 58 the Supreme Court considered the question whether the provisions of Section 14 of the Limitation Act would apply to an appeal before the Commissioner of Customs under Section 128 of the Customs Act. While holding that Section 14 of the Limitation Act would apply to judicial proceedings and the appeal before the Commissioner of Customs not being a judicial proceeding Section 14 *per se* would not apply, the Supreme Court held that the principle underlying Section 14 of the Act would be made applicable to the appeal before the Commissioner under Section 128 of the Customs Act.

[14] It is well settled that the law does not expect a person to perform an impossible task. Requirements under Sub-rules (6) and (7) of CCS(CCA) Rules, would not stand on a different footing. These sub-rules thus when require the competent authority to review an order of suspension within time frame, the authority cannot be expected to perform such task if it is otherwise impossible to do. I am not applying the principles of Section 5 of the Limitation Act of sufficient cause being shown for delay in performing the exercise. I am testing whether on the enveil of impossibility to carry out the review exercise within the time, the action of the department can be tested and if it is found that the departmental action passes this test, should the consequence of the suspension being rendered invalid must still follow.

[15] In this context, let us revert back to the facts on record. One can take judicial notice of the fact that the spread of coronavirus across the country and the whole world is perhaps the most disruptive event of the century. The nationwide lockdown resulted into disruption of normal life and human activities at an unimaginable scale. The movement of people and the goods, the businesses private as well as public, all came to a standstill for months on end. The lockdown guidelines were relaxed from time to time after initial period of imposition of harsh restrictions,

nevertheless, the life was slowly limping back to normalcy. During this period the administration was facing enormous challenges of controlling the virus, treating those who were already infected, keeping the medical and paramedical force healthy and motivated and parallelly also ensuring that essential supplies to citizens like food, water, medicines etc. are not disturbed. One of the major tasks before the administration was of transporting large number of stranded citizens to their home towns. Number of people of the State would be stranded across the country and conversely large number of people who may have been on a temporary visit to the State, would be stranded away from their home towns or work places. With discontinuation of public transport such as buses and trains, and for some time also the airlines, this became even more difficult task to perform. It was under such circumstances, the respondents point out that the exercise of reviewing the petitioner's suspension could not be completed within 90 days, though the same was initiated within time. The respondents have pointed out that the review committee was constituted on 6th August, 2020 which was well within the period of 90 days of the initial order of suspension. The Chairman of the Committee was Shri L.H. Darlong, IAS, Principal Secretary, GA (P&T) Department who it appears was also looking after the transport department. The meeting of the committee could not be convened since

the Chairman was engaged in the task of sorting out the issues of transporting people of the State stranded outside and vice versa. The respondents have also produced a copy of an order dated 27th March, 2020 under which the Government had constituted a working group to sort out the issues of such stranded people of which said Shri L.H. Darlong was the Chairman. As per this affidavit, meeting of the review committee was convened on 14th August, 2020 in which the committee recommended extension of the suspension of the petitioner for a further period of 180 days. On such recommendations the competent authority passed the said order dated 20th August, 2020 extending the petitioner's suspension for further period of 180 days.

[16] The facts of the present case can be viewed from two standpoints. Firstly, as noted, the situation under which the administration was working and particularly the Chairman of the review committee was placed in, was extraordinary and unprecedented. To expect the review committee to meet within the currency of the suspension order and to make its recommendations even though it may amount to ignoring the requirements of large number of people of the State who may have been stranded in other regions of the country and conversely large number of people of other States who may have been

stranded within the State, is to expect an impossible task to be performed by the administration. Secondly, the constitution of the review committee on 6th August, 2020, its meeting held on 14th August, 2020 recommending the extension of the suspension of the petitioner which culminated into final order of suspension being passed on 20th August, 2020 must be seen as one integrated exercise so as to save the suspension being rendered invalid on the stroke of midnight of 11th August, 2020.

[17] I may also record that the High Court had initiated *suo motu* public interest petition to obviate the difficulties of litigants where interim orders having limited validity, not being extended on account of spread of coronavirus and resultant lockdown directives issued by the Government of India. A detailed order was passed on 27.03.2020 in WP(C)(PIL) No.05 of 2020 in which all interim orders passed by the High Court as well as subordinate courts in exercise of civil as well as criminal jurisdiction would stand automatically extended up to 30th April, 2020. This was extended from time to time till the coronavirus situation improved and the courts could function more freely. Following observations made in the said order may be noted:

“This special Bench was constituted to deal with interim orders which are ordered to operate till a particular date. In wake of the threat of spread of Corona virus, High Court of Tripura had issued notifications dated 20th March, 2020, 20th March, 2020 and 24th March, 2020 reducing the Court work and making arrangement for taking up only urgent cases in the High Court and in the subordinate Courts. Subsequently, entire country has been placed under lockdown till 14th April, 2020 by the Central Government.

In number of cases the Courts may have passed interim orders before 20th March, 2020 which would operate till a particular date. If such orders are not extended, the same would automatically stand vacated. This would result into great hardship to the litigants since for want of hearing the interim order would stand automatically vacated. He may also be seek permission to move the concerned Court for extension of interim order, thereby increasing the number of urgent cases which the Courts may have to deal with.

To obviate such difficulties which have arisen on account of unprecedented situation, in this public interest petition (suo Motu) instituted by the High Court, in exercise of powers under Articles 226 and 227 of the Constitution of India and Section 482 of the Cr.P.C, it is provided as under :

(1) All interim orders passed by the High Court, subordinate Courts including Family Courts, and Tribunals functioning in the State under the supervision of the High Court under Article 227 of the Constitution of India which were subsisting on 20th March, 2020 and which were to inure till a particular date, shall automatically stand extended till 30th April, 2020, unless vacated or modified by a judicial order already passed or may be passed hereafter.

[18] It can thus be seen that the situation was so emergent and extraordinary that the High Court in exercise of *suo motu* jurisdiction, had provided for automatic extension of interim orders including interim

bail orders passed by various courts which may otherwise have expiry date. This aspect is referred to demonstrate the enormity of the impact of the corona virus spread on normal lives and activities of the people and the state administration.

[19] I am not oblivion to the judgment of the Supreme Court in case of *S. Kasi vs. State* reported in **2020 SCC OnLine SC 529** in which it was held that, no such extension, including one granted by the Supreme Court would enable the investigating agency to oppose a default bail of an accused under Section 167(2) of Cr.P.C if the investigation is not completed within 60/90 days. However, this was a case where the question of life and liberty of the citizen were at stake.

[20] Learned counsel for the petitioner had also argued that in any case there was no justification for extension of suspension. Whatever materials the department needed, would have been collected by now. No useful purpose would be served in continuing the petitioner under suspension. This however, to my mind is purely a factual contention which I am not inclined to accept without further materials on record. Firstly, the charge-sheet has not yet been issued. Even after issuance of the charge-sheet, the delinquent Government servant not been in a position to temper with the records and evidence is only one

ground for continuing him under suspension. Whether the continued suspension is needed or not are primarily the issues for the administration to consider at the first level. Particularly at a stage where the departmental inquiry is not yet instituted by issuance of the charge-sheet, it would be too premature to argue that the continuation of suspension is unwarranted.

[21] In the result, petition is dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI, CJ)

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