

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.1/2021

Date of Order: 28.01.2021

Meghalaya Public Service Commission & ors Vs. Millon Ch. Momin & ors

Coram:

Hon'ble Mr. Justice Biswanath Somadder, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. S Thapa, Adv
For the Respondent(s)	: Mr. SP Mahanta, Sr.Adv with Ms. J Rymbai, Adv for R/1 Mr. ND Chullai, AAG with Ms. R Colney, GA for R/2-4 Mr. AS Siddiqui, Adv for R/5-8

i) Whether approved for reporting in Law journals etc.:	Yes/No
ii) Whether approved for publication in press:	Yes/No

The instant appeal preferred by Meghalaya Public Service Commission and three others arises in respect of an order passed by the learned Single Judge dated 9th December, 2020 in WP (C) No.18 of 2015 “*Millon Ch. Momin v. State of Meghalaya & ors*”. According to the learned advocate representing the appellants, the directions and observations made by the Division Bench of this Court in WA No.67 of 2016 was not considered by the learned Single Judge while issuing a mandatory order to break open the seal of the envelope containing the CBI report in the presence of the parties to the lis.

For convenience, the impugned order dated 9th December, 2020 passed by the learned Single Judge is reproduced hereinbelow in its entirety:-

“1. This matter has come up before this Court today to consider the aspect of the enquiry report conducted by the CBI, which stems from the order dated 16.06.2016 passed by this Court, but which order was subsequently challenged in appeal before the Division Bench of this Court in WA No. 67 of 2016.

2. It is to be noted that the Division Bench had observed as follows:-

“.....we are of the view that interest of justice shall be served if the entire material with the record of the writ petition is placed before the learned Single Judge, who may examine such material as deemed necessary and take a considered decision in the matter in accordance with law.

Obviously, after returning final or at least prima facie finding on the contentious issues, the aspects relating to CBI report may also be examined by the learned Single Judge and appropriate decision thereupon could be taken in accordance with law.”

3. It is also to be observed that the hearing on the merits of this instant writ petition has already been concluded and the judgment was reserved.

4. However, in the light of the observations of the Division Bench as noted above, this Court deems it fit and proper to break open the seal in the presence of the parties to the lis.

5. Mr. S.P. Mahanta, learned Sr. counsel for the petitioner as well as Mr. N.D. Chullai, learned AAG for the State respondent No. 1-3 and Mr. A.S. Siddiqui, learned counsel for the respondent No. 8-11 are present.

6. However, Mr. K. Paul, learned counsel for the respondent No. 4-7 (MPSC) is reported to be unwell and could not appear before this Court today.

7. As submitted by the learned AAG, it would be fit and proper if the sealed cover as indicated above, be opened in the presence of the learned counsel for the respondent No. 4-7, for which prayer is made that the matter be taken up on the next date.

8. Learned Sr. counsel for the petitioner has no objection to the prayer made by the learned AAG.

9. Accordingly, for ends of justice, this matter is now kept as part heard and the sealed cover shall be opened on the next date in the presence of all the parties concerned.

10. In the meantime, Court Master is directed to hand over the said sealed cover to the learned Registrar General for safe keeping in the custody of the Registry.

11. As agreed to by the learned counsels for the respective parties, list this matter on **29.01.2021.**”

A plain reading of the impugned order – as quoted above – reveals that the relevant portion of the order of the Division Bench, rendered in WA No.67 of 2016, has been quoted by the learned Single Judge. From the quotation it appears that it has been clearly observed by the Division Bench to the effect that the aspects relating to the CBI report may also be examined by the learned Single Judge and appropriate decision thereupon could be taken in accordance with law only ***after returning final or at least prima facie finding on the contentious issues.***

It is palpably evident that the learned Single Judge has not returned any final or even a prima facie finding on the contentious issues. As such, we are of the view that the directions of the learned Single Judge to break open the seal in the presence of the parties to the lis is not in accordance with the observations made by the Division Bench in WA No.67 of 2016. As such, the impugned order dated 9th December, 2020 cannot be sustained and is liable to be set aside and is accordingly set aside.

We, however, make it clear that the observations made by us in this judgment and order shall not affect the rights and contentions of the parties before the learned Single Judge in any manner.

(H.S. Thangkhiew)
Judge

(Biswanath Somadder)
Chief Justice

Meghalaya
28.01.2021
“*Lam* AR-PS”