



GAHC010047642021

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

Case No. : WP(C)/3109/2020

GAUTAM CHAKRABORTY
S/O LT. SURENDRA KUMAR CHAKRABORTY
C/O JAIL SUPERINTENDENT
DISTRICT JAIL TUENSANG
TUENSANG
NAGALAND

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI-110011

2:THE DIRECTOR GENERAL OF ASSAM RIFLES
DIRECTORATE GENERAL OF ASSAM RIFLES
LAIKOR
SHILLONG-10
MEGHALAYA

3:THE INSPECTOR GENERAL OF ASSAM RIFLES (NORTH)
C/O 99 APO
PIN-932554

4:THE INSPECTOR GENERAL OF ASSAM RIFLES (EAST)
C/O 99 APO

5:THE SECTOR COMMANDER
HQ 7 SECTOR ASSAM RIFLES
C/O 99 APO



6:THE SECTOR COMMANDER
HQ 6 SECTOR ASSAM RIFLES
C/O 99 APO

7:THE COL. OPS AND CORD.
EX OFFICIO COMMANDANT
HQ 7 SECTOR
ASSAM RIFLES
C/O 99 APO

8:IC 65988M MAJ. DEEPAK BAYALA
RECORDING OFFICER SOE
HQ 7 SECTOR
ASSAM RIFLES
C/O 99 APO

9:IC 73434H MAJ. GOURAV VERMA
LAW OFFICER
GARC
HQ 7 SECTOR
ASSAM RIFLES
C/O 99 APO

10:THE COMMANDER
HA 9 SECTOR
ASSAM RIFLES
C/O 99 APO
PIN-934829

Advocate for : MR. K N CHOUDHURY
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 8 ORS.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 04-10-2021

JUDGMENT & ORDER (ORAL)

Heard Mr. KN Choudhury, learned senior counsel for the petitioner and Mr. K Gogoi, learned counsel for the respondents.

2. The petitioner is a Junior Commissioned Officer in the respondent Assam



Rifles. A court martial proceeding was initiated against the petitioner by the Director General of Assam Rifles (North), in which the order dated 18.08.2016 was passed, whereby he was convicted and sentenced to an imprisonment of five years as well as dismissal from service. The offences for which the court martial was conducted against the petitioner also included an offence under the Prevention of Corruption Act, 1988.

3. The petitioner assailed the order of conviction and sentence dated 18.08.2016 in WP(C) No.181(K)/2017. By the judgment dated 21.02.2018, the conviction and sentence against the petitioner was set aside. The judgment dated 21.02.2018 in WP(C) No.181(K)/2017 interfering with the conviction and sentence was passed on the premises that in a judgment of the Division Bench of this Court dated 15.02.2018 in WA 51/2017, a conclusion was arrived that an offence under the Prevention of Corruption Act, 1988 cannot be the subject matter of a court martial proceeding. The judgment dated 21.02.2018 in WP(C) No.181(K)/2017 in the meantime, otherwise, had attained its finality. But the judgment of the Division Bench dated 15.02.2018 in WA 51/2017, which was relied upon to arrive at the judgment dated 21.02.2018 in WP(C) No.181(K)/2017 was carried in an appeal before the Supreme Court in Civil Appeal No.5136/2019. The Supreme Court by its judgment dated 01.07.2019 had reversed the judgment of the Division Bench in WA 51/2017. The conclusion of the judgment of the Supreme Court would be that even an offence under the Prevention of Corruption Act, 1988 can also be a subject matter of a court martial proceeding under the Assam Rifles.

4. Upon the reversal of the judgment of the Division Bench by the Supreme Court, the order impugned in this writ petition dated 10.12.2019 had been passed by the respondent authorities, by which the petitioner was dismissed



from service as well as was required to undergo the balance period of the rigorous imprisonment, which was earlier passed in the order dated 18.08.2016. The subsequent order of conviction and sentence by the Inspector General of Assam Rifles in a court martial proceeding dated 10.12.2019 has been assailed in this writ petition.

5. The core ground on which the order dated 10.12.2019 has been challenged is that even though the judgment of the Division Bench dated 15.02.2019 in WA 51/2017 had been reversed by the Supreme Court by the judgment dated 01.07.2019 in Civil Appeal No.5136/2019, and although, the judgment dated 21.02.2018 in WP(C) No.181(K)/2017 was passed by following the judgment of the Division Bench dated 15.02.2019, but still the order dated 21.02.2018 in WP(C) No.181(K)/2017 has not been reversed by any appropriate Court and it has attained its finality on its own. Therefore, although the judgment of the Division Bench which was relied upon to arrive at the judgment dated 21.02.2018 has been reversed in the meantime, but the judgment of 21.02.2018 having attained its finality is binding between the parties and therefore, the earlier order of 18.08.2016 which stood interfered by the judgment dated 21.02.2018 does not on its own stand revived nor any other order of same nature can be passed by the authorities as long as the judgment dated 21.02.2018 in WP(C) No.181(K)/2018 remains on record and binding on the parties.

6. In order to substantiate his contention, Mr. KN Choudhury, learned senior counsel for the petitioner relies upon the proposition laid down by the Supreme Court in paragraph 2 of *Authorised Officer (Land Reforms) vs- M.M Krishnamurthy Chetty*, reported in (1998) 9 SCC 139, wherein it is stated as follows:-

“2. According to the appellant once the judgment on the basis of which the High Court had directed to dispose of the dispute relating to the excess land had been reversed by this Court, the Authorised Officer was justified in following the judgment of this Court instead of the judgment of the High Court. It need not be pointed out that the order passed by the High Court attained finality as it was not challenged before the Supreme Court. The order passed by the High Court directing the Authorised Officer to examine the dispute in the light of the judgment of the High Court in the case of Naganatha Ayyar v. Authorised Officer [84 LW 69] became final although the judgment on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed. No costs.”

7. A reading of the proposition laid down by the Supreme Court in Authorised Officer (Land Reforms) (supra) goes to show that when a judgment between the parties had attained its finality, the same remains binding between the parties, even if a different view had been taken by the Supreme Court on the same issue in some other writ petition. The very aspect that the Supreme Court in another writ petition had taken a contrary view, would be a good one for the respondent authorities to assail the judgment dated 21.02.2018 in WP(C) No.181(K)/2017, but merely because the Supreme Court had taken a different view in another writ petition that by itself will not nullify the judgment dated 21.02.2018 in WP(C) No.181(K)/2017 and the same would continue to remain binding on the parties till it is reversed by the appropriate Court in the appropriate manner.

8. In view of the aforesaid proposition, even though the Supreme Court may have taken a different view in the judgment dated 01.07.2019 in Civil Appeal No.5136/2019, but till the judgment dated 21.02.2018 in WP(C) No.181(K)/2017 is assailed in the appropriate manner, the same would remain binding upon the authorities and till it remains binding upon the parties, it would not be open for the respondent authorities to pass a subsequent order which would be in



conformity with the earlier order dated 18.08.2016, which in-fact was interfered in the judgment dated 21.02.2018 in WP(C) No.181(K)/2017.

9. By following the aforesaid proposition, the order impugned dated 21.10.2019 of the Inspector General, Assam Rifles as well as the consequential order being the warrant dated 13.07.2020 and the resultant taking into custody of the petitioner was stayed by this Court by the interim order dated 04.09.2020 in WP(C) No. 3109/2020 (in the present writ petition). The interim order dated 04.09.2020 was assailed by the respondents in WA 214/2020 and by the judgment dated 01.03.2021, the writ appeal stood dismissed and the interim order dated 04.09.2020 was not interfered. However, the Division Bench also agreed upon the view taken in the interim order dated 04.09.2020 that in view of the contrary conclusion of the Supreme Court in its judgment dated 01.07.2019 in Civil Appeal No.5136/2019, it would always remain open for the respondents to assail the judgment dated 21.02.2018 in WP(C) No.181(K)/2017.

10. We have been informed that subsequently the respondents had instituted WA 03/2021 before the Kohima Bench of this Court against the judgment dated 21.02.2018 in WP(C) No.181(K)/2017. It is stated that the said appeal is still pending.

11. In view of the above, by following the proposition laid down by the Supreme Court in *Authorised Officer (Land Reforms) (supra)*, we interfere with the order impugned dated 10.12.2019 of the Inspector General of Assam Rifles. The consequence of such interference will be that all other consequential actions that had been taken or contemplated to have been taken against the petitioner pursuant to the order dated 10.12.2019 shall also remain interfered.

12. However, we also provide that an interference with the order dated



10.12.2019 shall not preclude the respondents to pass any order as may be available under the law after the decision of the Division Bench in WA 03/2021.

13. Writ petition is allowed as indicated above.

JUDGE

Comparing Assistant