



GAHC010210372021

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

Case No. : WP(C)/6672/2021

SITARAM MISHRA
S/O LT. GHURAN MISHRA, R/O HOUSE NO. 89, NRIPEN BORA PATH,
FATASHIL AMBARI, P.S. FATASHIL AMBARI, P.O. FATASHIL AMBARI,
GUWAHATI-781025, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
TRANSPORT DEPTT. HAVING ITS OFFICE AT DISPUR, GUWAHATI-781006
DIST. KAMRUP (M) ASSAM

2:THE COMMISSIONER OF TRANSPORT
HAVING ITS OFFICE AT PARIVAHAN BHAWAN KHANAPARA
GUWAHATI-781022
ASSAM

3:THE DISTRICT TRANSPORT OFFICER
KAMRUP (M)
HAVING ITS OFFICE AT BETKUCHI
GUWAHATI-781040
ASSAM

4:THE EASTERN CARGO MOVERS
A PARTNERSHIP FIRM
REP BY ITS PARTNER SRI NATWAR LAL MISHRA
HAVING ITS REGISTERED OFFICE AT PITTAL KARKHANA COMPOUND
BISHNUPUR
MAIN ROAD
GUWAHATI



5:NATWAR LAL MISHRA
S/O SITARAM MISHRA
R/O FLAT NO. D6
LAKE VIEW APARTMENT DHARAPUR CHARIALI
GUWAHATI-78101

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : SC, TRANSPORT

Linked Case : WP(C)/1115/2022

M/S EASTERN CARGO MOVERS AND ANR.
H.O. PITTAL KARKHANA COMPOUND
BISHNUPUR MAIN ROAD
GUWAHATI-781016 DIST. KAMRUP (M) ASSAM

2: NATWAR LAL MISHRA
S/O SITARAM MISHRA
R/O FLAT NO. D-6 LAKEVIEW APARTMENT DHARAPUR CHARIALI
GUWAHATI-781017 DIST. KAMRUO (M) ASSAM AND MANAGING PARTNER
OF EASTERN CARGO MOVERS
VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP BY COMMISSIONER OF TRANSPORT PARIVAHAN BHAWAN
KHANAPARA
GUWAHATI-781022

2:DISTRICT TRANSPORT OFFICER
BETKUCHI

KAMRUP (M) GUWAHATI-781035

3:RAJ KUMAR MISHRA
S/O SRI SITARAM MISHRA
R/O HOUSE NO. 89
DREAM HOUSE 2ND FLOOR
NRIPEN BORA PATH
FATASIL AMBARI
P.O. AND P.S. FATASIL AMBARI
GUWAHATI-781025 DIST. KAMRUP (M) ASSAM
4:RAJESH KUMAR MISHRA
S/O SRI SITARAM MISHRA



R/O C/O M/S ON TRACK SOLUTION ABOVE BANK OF BORODA
FATASIL AMBARI BRANCH AMBARI TINIALI P.O. AND P.S. FATASIL AMBARI
GUWAHATI-781025 DIST. KAMRUP (M) ASSAM

5:ANIL KUMAR MISHRA

S/O SRI SITARAM MISHRA R/O C/O M/S ON TRACK SOLUTION ABOVE
BANK OF BORODA

FATASIL AMBARI BRANCH AMBARI TINIALI
P.O. AND P.S. FATASIL AMBARI
GUWAHATI-781025 DIST. KAMRUP (M) ASSAM

6:SITARAM MISHRA

S/O LT. GHURAN MISHRA

R/O C/O M/S ON TRACK SOLUTION ABOVE BANK OF BORODA
FATASIL AMBARI BRANCH AMBARI TINIALI
P.O. AND P.S. FATASIL AMBARI
GUWAHATI-781025 DIST. KAMRUP (M) ASSAM

Advocate for : MR P SHARMAH

Advocate for : SC. TRANSPORT DEPTT. appearing for THE STATE OF ASSAM AND
5 ORS.

Linked Case : WP(C)/6674/2021

RAJESH KUMAR MISHRA AND ANR
S/O SITARAM MISHRA
R/O ASHIRBAD KUTIR FLAT NO. 1 (B)
HOUSE NO. 1
BISHNUJYOTI PATH
FATASHIL AMBARI
P.S. FATASHIL AMBARI
P.O. FATASHIL AMBARI
GUWAHATI-781025
ASSAM

2: RAJ KUMAR MISHRA
S/O SITARAM MISHRA R/O HOUSE NO. 89
NRIPEN BORA PATH
FATASHIL AMBARI
P.S. FATASHIL AMBARI
P.O. FATASHIL AMBARI
GUWAHATI-781025
ASSAM PH. NO. 9435732988
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM



TRANSPORT DEPTT. HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006 DIST. KAMRUP (M) ASSAM

2:THE COMMISSONER OF TRANSPORT
HAVING ITS OFFICE AT PARIVAHAN BHAWAN KHANAPARA
GUWAHATI-781022
ASSAM

3:THE DISTRICT TRANSPORT OFFICER
KAMRUP (M)
HAVING ITS OFFICE AT BETKUCHI
GUWAHATI-781040
ASSAM

4:THE EASTERN CARGO MOVERS
A PARTNERSHIP FIRM
REP BY ITS PARTNER SRI NATWAR LAL MISHRA
HAVING ITS REGISTERED OFFICE AT PITTAL KARKHANA COMPOUND
BISHNUPUR
MAIN ROAD
GUWAHATI-781016
5:NATWAR LAL MISHRA
S/O SITARAM MISHRA
R/O FLAT NO. D6
LAKE VIEW APARTMENT DHARAPUR CHARIALI
GUWAHATI-781017

Advocate for : MR. H. BURAGOHAIN
Advocate for : SC
TRANSPORT appearing for THE STATE OF ASSAM AND 4 ORS

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri H. Buragohain

Advocates for the respondents : Shri P. Sarmah
Ms. MD Borah, SC, Transport Deptt.

Date of hearing & Judgment : **16.08.2022**

JUDGMENT & ORDER

Heard Shri H. Buragohain, learned counsel for the petitioners in WP(C)/6672/2021 & 6674/2021, who also represents the respondent nos. 3 to 6 in WP(C)/1115/2022. Also heard Shri P. Sarmah, learned counsel for the petitioners in WP(C)/1115/2022 and also for the respondent nos. 4 and 5 in WP(C)/6672/2021 & 6674/2021. The Transport Department is represented by Ms. MD Borah, learned Standing Counsel.

2. As all the three writ petitions are connected, the same are heard together and disposed of by this common judgment and order.

3. Before coming to the issue involved, the brief facts of the case can be culled out as follows.

4. Shri Sitaram Mishra, one of the petitioners, was the proprietor of a transport business. The said business was converted into a partnership in the year 2011 in the name and style M/S Eastern Cargo Movers with nine members namely, the said Shri Sitaram Mishra and his eight sons. As per the case projected by the petitioners in WP(C)/6672/2021 & 6674/2021, in the year 2015, two members of the partnership had retired and accordingly the firm was reconstituted. Subsequently, in the year 2020, four more of the partners including Shri Sitaram Mishra had retired and vide resolution dated 26.07.2020 the four numbers of retiring partners were required to pay Rs.70(Seventy) Lakhs each and another Rs.78(Seventy Eight) Lakhs in lieu of which 10 numbers of vehicles of various make were to be given to the retiring partners whose value has been worked out as Rs.64(Sixty Four) Lakhs. The value of a plot of land at Boragoan has also been worked out as Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs) and therefore the balance to be paid by the retiring partners came to Rs.1,74,00,000/- (Rupees One Crore and Seventy Four Lakhs). A Deed of



Retirement was accordingly executed wherein the condition of payment of the aforesaid amount was stipulated and a payment schedule was also made a part of the same.

5. As per the arrangement, the 10 numbers of the vehicles were handed over to the retiring partners. However, the corresponding duties to be performed by way of making payments as per the schedule was not done which led to institution of Title Suit being TS No. 285/2020 by Shri Natwar Lal Mishra and another, the respondent nos. 4 & 5 in WP(C)/6672/2021 & 6674/2021. The petitioners contend that the said Suit was however withdrawn on 18.07.2022 without any liberty and on 01.11.2020, the said Natwar Lal Mishra had lodged an FIR making allegations of cheating and breach of trust. The said FIR was registered as Bharalumukh PS Case No. 672/2020 under Sections 406/420/421/34 IPC. As stated above, it was alleged in the FIR that though the vehicles were taken away as per the agreement the petitioners had violated the condition to pay.

6. After investigation however, the police had submitted a Final Report on 30.11.2020. The petitioners projected that the harassment did not stop there and having failed in the attempt to lodge a false criminal case and not having taken the legal recourse against acceptance of the Final Report, the respondents had again issued a communication dated 02.07.2021 to the Deputy Commissioner of Police and also another such communication dated 05.07.2021 to the Commissioner of Police with the same allegation by suppression of material facts.

7. It also appears that vide communication dated 02.09.2021, the respondents wrote to the District Transport Officer (DTO), Kamrup (M) regarding the transactions and by making false and incorrect assertions, had made a prayer to blacklist the vehicles. It was specifically written that the six numbers of vehicles with registration nos. AS-01-JC-7329, AS-01-JC-7338, AS-01-JC-7374, AS-01-JC-7509, AS-01-JC-7545 & AS-01-FC-0426, which were in the name of M/S Eastern Cargo Movers were

unauthorisedly used by the petitioners against whom Bharalumukh PS Case No. 623/2020 was also pending. On the aforesaid request and on the prime consideration that the vehicles were still registered in the name of M/S Eastern Cargo Movers, the DTO, Kamrup (M) has blacklisted the aforesaid six numbers of vehicles. The reason for such blacklisting has been assigned as complaint by the owner with Bharalumukh PS Case No. 623/2020. On being informed of such blacklisting, the petitioners had approached the authority who vide communication dated 22.09.2021 had written to the respondent with a view to reconcile the matter.

8. On the other hand, the respondents had filed a writ petition being WP(C)/5139/2021 in this Court challenging the communication dated 22.09.2021. This Court vide order dated 28.09.2021 had directed listing of the case on 04.10.2021 and till then to maintain *status-quo*. Subsequently, on the next date i.e. 04.10.2021 when the instructions were placed before this Court by the learned Standing Counsel of the Transport Department that the police case in question had culminated in a Final Report being FR No. 512/2020 dated 30.11.2020, this Court came to a conclusion that there was nothing left to adjudicate. It was further observed that if the respondents were aggrieved by Final Report they may approach the appropriate authority for redressal of their grievances.

9. Shri Buragohian, learned counsel for the petitioners submits that the basis of the blacklisting being the police case as would appear from the communication issued by the DTO, Kamrup (M), such police case having ended up in a Final Report, the blacklisting cannot subsists and is liable to be interfered with. Drawing the attention of this Court to the additional affidavit, the learned counsel for the petitioners has also submitted that the Final Report has been duly accepted by the learned Magistrate vide order dated 29.10.2021 which has attained finality. Shri Buragohain, learned counsel for the petitioners further submits that the dispute, if any, is absolutely a civil one which would involve respective duties and responsibilities to be discharged with regard

to the deed of retirement and there was no criminal element involved at all and rightly the criminal case had ended up in a Final Report.

10. Shri P. Sarmah, learned counsel for the respondent nos. 4 & 5 however raises a preliminary objection on the maintainability of this writ petition. He submits that the partnership in question is an unregistered one and therefore, a writ petition is not maintainable. By referring to the affidavit-in-opposition filed on 03.06.2022, Shri Sarmah, learned counsel submits that even though a Final Report has been given by the police, the same does not mean that the criminal case has come to an end as the acceptance of the same can still be challenged by the aggrieved party. As regards the withdrawal of the Title Suit, Shri Sarmah, learned counsel has submitted that in the meantime, the respondents have filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned Additional District Judge (FTC) No. 3, Kamrup (M) being Misc. Arb. Case No. 08/2022 and vide order dated 03.02.2022, there is a direction for maintenance of *status-quo* with regard to the six numbers of vehicles.

11. Shri Sarmah, learned counsel further submits that against the aforesaid order dated 03.02.2022, an appeal has been preferred in this Court registered as Arb.A./4/2022 and this Court vide an order dated 28.02.2022 had admitted the appeal. However, by an order of the same date, the IA(Civil)/446/2022 for staying the order dated 03.02.2022 passed by the Additional District Judge No. 3 (FTC), Kamrup (M), Guwahati in Misc. Arb. Case No. 08/2022 stands dismissed. The learned counsel accordingly submits that even if the order of blacklisting is found to be infirm due to closure of the police case, the order of *status-quo* passed in the arbitration proceeding would still keep on operating.

12. In support of his submission on the affects of non-registration of a partnership deed, Shri Sarmah, learned counsel relies upon the decision of the Calcutta High Court in the case of **Ashutosh Chakraborty Vs. Union of India** reported in **2009 SCC**

OnLine Cal 2354 dated 19.11.2009. In the said case, after quoting Section 69 of the Partnership Act, the Hon'ble High Court had held as follows:

“ No doubt, Section 69 of the Act bars partner(s) of an unregistered firm to initiate proceedings for enforcing a right arising from a contract or a right conferred by the Act. Though the present dispute may seem to be relatable to the contract between the parties but factually it is not so, if one considers the grounds on which the writ petition is based. Here, the petitioners do not seek to impeach contractual obligations. The impugned action of demanding enhanced licence fees is based on certain policy decision taken by the respondents. The petitioners, being partners and collectively carrying on business, have challenged the policy decision and the consequent demands because the same have been affecting their business interests by urging that the same are utterly arbitrary and unreasonable and in the teeth of Article 14 of the Constitution, which forbids arbitrariness and unreasonableness in State action. Challenge to a policy decision on the ground of affectation of a right guaranteed under Part III of the Constitution and invocation of writ jurisdiction seeking remedy therefore, in the present fact situation, cannot be eschewed by referring to Section 69 of the Act. This proceeding is not one for enforcement any right arising out of a contract, particularly in the absence of a valid subsisting contract. Whether or not the petitioners would ultimately succeed in such a situation is altogether a different aspect. Section 69 of the Act would not bar the partners of an unregistered firm to seek remedy by way of a writ petition for enforcement of their fundamental rights dehors the contract, which once upon a time subsisted between the parties, if such remedy is legally available to them. The genesis of the dispute in the present case is the so-called arbitrary and unreasonable policy decision, which the petitioners seek to be quashed by invoking the writ jurisdiction in their

capacity as partners. Question of enforcement of a contractual right not being an issue here, this Court holds the preliminary objection to be not well-founded and overrules the same.'

13. Ms. MD Borah, learned Standing Counsel, Transport Department vehemently defended the action of the Transport Department by submitting that the information of blacklisting was duly uploaded by the Office of the DTO, Kamrup (M) as the complaint lodged by the registered owner, who had also informed about lodging of the police case. The learned Standing Counsel however fairly concedes that while obtaining instructions in the earlier round of litigations, the fact that the Bharalumukh PS Case No. 623/2020 had culminated in the FR dated 30.11.2020 was also informed to this Hon'ble Court. The learned Standing Counsel accordingly submits that the Department would abide by any orders that may be passed in these proceedings.

14. At this stage, a reference has to be made to the facts and prayers made in WP(C)/1115/2022. The grievance raised is non-consideration of an application dated 05.02.2022 which was submitted by the petitioners for cancellation of the permit issued by the Transport Department in respect of the said six numbers of vehicles stating that the petitioners had not applied for the same and the vehicles were not used by the petitioners as of now. A similar direction was also sought for directing the DTO not to receive the road tax for the said vehicles and also for cancellation / suspension of the permit.

15. After hearing the learned counsel for the parties and on perusal of the materials on record, the issue for adjudication has boiled down to a minor one. This is because of the fact that in the earlier round of litigation, this Court has already taken note of the developments.

16. The basis of blacklisting of the six numbers of vehicles which is the subject matter of adjudication is the complaint by the registered owner supported by lodging

of an FIR being Bharalumukh PS Case No. 623/2020. Though the request for blacklisting was done on 02.09.2021, it clearly appears that the fact of culmination of the police case by submission of the Final Report being FR No. 512/2020 dated 30.11.2020 was intentionally suppressed. This fact was already noticed by this Court while adjudicating WP(C)/5139/2021 which was instituted by the present respondents against the communication dated 22.09.2021 by the DTO in an attempt to reconcile. The petitioners have also brought on record an order dated 29.10.2021 of the learned Magistrate by which the Final Report has been accepted and there is nothing on record or even any submission made regarding any steps taken against such acceptance of Final Report.

17. In that view of the matter, this Court is of the considered view that the blacklisting which is based on the police case cannot be sustained.

18. However, having held that, this Court cannot be oblivious of the fact that an order of restraint is operating in the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 which has also been upheld by this Court while dismissing the prayer for interim order vide order dated 28.02.2022.

19. Though a submission has been made that acceptance of a Final Report may not automatically mean that the police case has come to an end, as avenues in law are still open even to the extent of availing the remedy under Section 482 of the CrPC, unless such remedy is actually taken into recourse, this Court will not go on the speculation. In fact, this Court deprecates the rigid attitude of the respondents, which is reflected by their action of even filing a writ petition against the communication dated 22.09.2021 issued by the DTO to reconcile the matter. As noted above, the respondents had also suppressed material facts in their application praying for blacklisting on the basis of Bharalaumukh PS Case No. 623/2020 vide the application dated 02.09.2021 whereas the Final Report was submitted way back on 30.11.2020.



20. Therefore taking all the facts and circumstances on consideration, while interfering with the impugned action of blacklisting of six numbers of vehicles by the DTO, Kamrup (M), this Court observes that the right of use of the vehicles would finally be decided in the arbitration proceeding which has already been initiated by filing of an application under Section 9 of the Arbitration and Conciliation Act, 1996 in which an order of restraint is in operation.

21. In view of the aforesaid finding, the issues raised in WP(C)/1115/2022 is not required to be answered as the same would be the subject matter of the arbitration proceeding. All the writ petitions are accordingly disposed of.

22. No order as to cost.

JUDGE

Comparing Assistant