GAHC030001542022

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

Case No. : PIL/5/2022

Smt Vanramchhuangi
Aizawl

VERSUS

Union of India r/b the Secy. to the Govt. of India, Ministry of Home Affairs and 38 Ors.
New Delhi 2:The Central Board of Indirect Tax and Customs r/b the Chairman
Govt. of India

3:The Commissioner (RI and I) Anti-Smuggling CBIT and C
Deptt. of Revenue
Ministry of Finance

4:Secretary to the Govt.of India
Ministry of Environment

5:The State of Mizoram r/b The Chief Secretary
Govt. of Mizoram

6:Secy to the Govt. of Mizoram
Home Deptt.

7:Secy to the Govt. of Mizoram
Agriculture Deptt.

8:The Director General of Police
Govt. of Mizoram

9:The Director General of Assam Rifles
Shillong

10:The Deputy Inspector General
23 Sector
Assam Rifles

11:The Deputy Commissioner
Aizawl District

12:The Deputy Commissioner
Lunglei District

13:The Deputy Commissioner
Saiha District

14:The Deputy Commissioner
Champhai District

15:The Deputy Commissioner
Kolasib District

16:The Deputy Commissioner
Serchhip District

17:The Deputy Commissioner
Lawngtlai District

18:The Deputy Commissioner
Mamit District

19:The Deputy Commissioner
Saitual District.

20:The Deputy Commissioner

Khawzawl District.

21:The Deputy Commissioner
Hnahthial District.

22:The Superintendent of Police
Aizawl District.

23:The Superintendent of Police
Lunglei District.

24:The Superintendent of Police
Saiha District.

25:The Superintendent of Police
Champhai District.

26:The Superintendent of Police
Kolasib District.

27:The Superintendent of Police
Serchhip District.

28:The Superintendent of Police
Lawngtlai District.

29:The Superintendent of Police
Mamit District.

30:The Superintendent of Police
Saitual District.

31:The Superintendent of Police
Khawzawl District.

32:The Superintendent of Police

Hnahthial District.

33:The Managing Director
Mizoram Agriculture Marketing Corporation (MAMCO)

34:The Commissioner
GST (Central)

35:The Deputy Commissioner
Customs Division
Aizawl
Ministry of Finance
Department of Mizoram.

36:The Secretary
Taxation Department
Government of Mizoram.

37:The Central Bureau of Investigation (CBI)
Represented by the Director.

38:Secretary to the Government of Mizoram
Environment
Forest and Climate Change Department

39:The Karnataka State Arecanut Marketing Federatio

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Addl. AG/GA, Mizoram for R5, R8, R11 - R33

ORDER

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

16.07.2024

(Michael Zothankhuma, J)

Heard Mr. C. Lalfakzuala, learned counsel for the petitioner. Also heard Mrs. Linda L. Fambawl, learned Addl. AG for the State of Mizoram. Mr. Johny L. Tochhawng, learned counsel appears for the respondent Nos. 2, 3, 34 & 35 and Ms. Baby Laldinzuali, learned counsel appears on behalf of Ms. Zairemsangpuii, CGC for the respondent Nos. 1, 4, 9, 10 & 37. No one appears for the respondent No. 39.

2. This PIL has been filed regarding the smuggling of dry arecanuts from Myanmar to the State of Mizoram and the subsequent transportation of the same out of the State of Mizoram.

3. The allegations made by the petitioner is that the State Government has not taken any steps to curb the smuggling of dry arecanuts and that fake/forged e-way bills have been issued by the State G.S.T and Central G.S.T authorities.

4. The prayer of the petitioner is that appropriate orders should be passed directing the Central Bureau of Investigation (CBI) to take up the matter, as the State Government is playing a passive role to curb the menace of smuggling of dry arecanuts from Myanmar, through Champhai District.

5. The learned counsel for the petitioner submits that due to the rampant smuggling of dry arecanuts from Myanmar into India, the local growers of arecanuts in the State of Mizoram and in other parts of India are also suffering a huge loss. The smugglers are not paying the import duty on the smuggled arecanuts and are thus selling their smuggled items at a lesser rate, compared to the rates offered by the local growers. Thus, to protect the interest of the local growers of arecanuts, the international smuggling of arecanuts has to be stopped.

6. Various affidavits have been filed by the different respondents.

7. The affidavit dated 13.07.2022 filed by the Assistant Commissioner of Customs, Customs (Preventive) Division, on behalf of the respondent No. 35, who is the Deputy Commissioner, Custom Division, Aizawl, at paragraph 5(3), is to the effect that as per the data provided by the Directorate of Horticulture, Government of Mizoram, vide letter No. B-14015/1/2020-DTE(HORT-STAT)/23 dated 27.01.2021, the total production of arecanuts in Mizoram was 33,540 MT in 2019-2020. The production of arecanuts in Champhai District was Nil. However, as per the data available in the website of Directorate of Arecanut & Spices Development (DASD), Government of India, Ministry of Agriculture and Farmers Welfare (Development of Agriculture Co-operation & Farmers Welfare), the arecanut production in Mizoram in 2019-2020 was only 10,840 MT and there was no arecanut production in Manipur. As per the study carried out by DRI, Guwahati Regional Unit, there is no arecanut drying/processing unit in Mizoram and the locally produced arecanuts of Mizoram are sold as freshly harvested raw arecanuts.

8. The additional affidavit dated 17.01.2023 submitted by the Under Secretary to the Government of Mizoram, Home Department, on behalf of the Secretary to the Government of Mizoram, Home Department, at paragraph 2, is to the effect that the arecanut plantations which started in the years 2021 & 2022 in both Champhai and Khawzawl Districts, are not yielding arecanuts. The additional affidavit of the respondent No. 6 further states that the owners of the arecanut plantations in both the Districts are not registered under G.S.T.

9. The Assistant Commissioner, CGST (Central), Khatla, MG Road, Aizawl, Mizoram has submitted an additional affidavit on behalf of the respondent No. 34 on 18.01.2024. The respondent No. 34 is the Commissioner, CGST (Central), Khatla, MG Road, Aizawl.

10. A perusal of the additional affidavit dated 18.01.2024 and it's annexures shows that e-way bills have been issued by the State Government and the respondent No. 34, for transportation of arecanut from Champhai District to outside Champhai. Accordingly, C.G.S.T and S.G.S.T had been collected. Annexure-2 of the additional affidavit submitted by the respondent No. 34 clearly shows that for the year 2021 - 2022, the State Government had issued e-way bills for transportation of arecanuts from Champhai to outside Champhai, for the assessable value of Rs.1,028,105,030/-. The respondent No. 34 had issued e-way bills on the assessable value of arecanuts for the same year amounting to Rs. 3,78,583,260/-. In respect of the period from 2022-2023, the assessable value of arecanuts for which e-way bills was issued by the State Government was Rs. 1,347,852,630/- and by the respondent No. 34, it was Rs. 3,22,793,124/-. In respect of the period from 2023 – 2024, the assessable value of arecanuts for which e-way bills was issued by the State Government was Rs.1,36,041,994/- and for respondent No. 34, it was Rs. 1,61,158,793/-.

11. It is surprising to note that while the Home Department, Government of Mizoram have clearly stated in their additional affidavit dated 17.01.2023 that arecanut plantations in Champhai and Khawzawl were not yielding arecanuts as on 17.01.2023, the figures shown in annexure 2 of the additional affidavit filed by the respondent No. 34 shows that e-way bills have been issued by the State Government and by the respondent No. 34, in respect of the assessable values of the arecanuts, as mentioned in the foregoing paragraph. The above facts prima facie shows that e-way bills have been generated and issued to persons, despite no arecanut plantations yielding any arecanuts till 17.01.2023 in Champhai District. Similarly, it is not known as to how e-way bills could have been issued for the year 2023 – 2024, unless the plantations have suddenly started yielding arecanuts. The above being said, a perusal of the form used by the persons, requesting issuance of e-way bills for transportation of arecanut from Champhai, shows that only their first names are given in the forms. There is nothing to show as to who is their father, husband etc. No address is given in the forms used for issuance of e-way bills for transportation of the arecanut. The very identity of the applicants seems to be doubtful, given the above facts. The persons could be from anywhere. Despite the e-way bills being applied by individuals, annexure-2 of the respondent No. 34's additional affidavit shows that e-way bills were issued to firms and not individuals. Whether the firms are registered firms is a disputed question of fact, given the averment made in the additional affidavit dated 17.01.2023 submitted on behalf of the Home Secretary, that the owners of the arecanut plantations in Champhai are not registered under G.S.T.

12. A perusal of the affidavit filed by the respondent No. 37, i.e., Superintendent & Head of Branch, CBI, ACB, Imphal is to the effect that as the CBI is not privy to the details of the incidents/circumstances described in the PIL, the CBI is not making any submissions in respect of the averments. The CBI affidavit thus states that the respondent No. 37 (CBI) would comply with any directions passed by this Court.

13. The learned Addl. AG submits that the present Government has taken deep interest in ensuring that the smuggling of arecanuts should be investigated thoroughly, which includes having the investigation undertaken by the CBI. In this regard, the learned Addl. AG has relied upon the affidavit filed by the Chief Secretary dated 12.06.2024, wherein it has been categorically stated that the State Government does not oppose the prayer of the petitioner, for an order to be issued directing the respondent No. 37, i.e., CBI to register an FIR and carry out the investigation with respect to illegal smuggling of arecanuts into Mizoram and also to verify the authenticity of e-way bills, transit permits, phytosanitary certificate allegedly issued by Mizoram Agriculture Marketing Corporation and any other authority. The learned Addl. AG thus submits that a direction should be issued to the CBI to register a case and investigate the illegal smuggling of arecanuts from Myanmar into Mizoram.

14. The learned Addl. Advocate General, Mizoram also submitted that cases have been registered in relation to seizure of the smuggled arecanuts by the State Police and investigation of the same should also be taken up by the CBI. She also submits that the Bawngkawn, Sairang and Vaivakawn Police Stations have seized trucks carrying arecanuts on various occasions.

15. Mr. Johny L. Tochhawng, learned counsel for the respondent Nos. 2, 3, 34 and 35 submits that the Customs Division, Aizawl has made seizure of 305 cases of smuggled arecanuts from the year 2017-2018 upto June 2022. Thereafter, a number of other seizures of smuggled arecanuts have been made.

16. Mr. Johny L. Tochhawng further submits that e-way bills are generated online by either the consignor, consignee or the transporter of the goods, without any requirement for prior intimation to, or prior approval of the Department.

17. We have heard the learned counsels for the parties.

18. The petitioner had initially submitted a complaint/FIR dated 29.12.2021 with the Officer-in-Charge, Champhai Police Station with regard to the allegation that there was rampant smuggling of arecanuts from Myanmar to India through Mizoram. The Police have however not registered the FIR/complaint, on the ground that the nature of the case showed that it was a cognizable offence and as such, could not be mandatorily registered.

19. The affidavit of the Chief Secretary, Government of Mizoram is to the effect that the Superintendent of Police, Champhai has written a letter dated 29.02.2024 to the Asst. Inspector General of Police (Legal), Mizoram, Aizawl stating that since the case relates to G.S.T fraud, GST Investigation Wing, Central Board of Indirect Taxes and Customs may be requested to take up the matter of investigation of the case.

20. The Annexure-1 of the affidavit filed by the Chief Secretary is the preliminary inquiry report, apparently made by Inspector of Police, who was the Inquiry Officer, which states that on studying the complaint/FIR submitted by the petitioner, there seemed to be violation of law in respect of trade, fake G.S.T, incorrect taxes, fake documents as per the complainant suspicion. On following up the complaint, he found that the trade being in relation to the Indo Myanmar Border-via-Zokhawthar, the same was outside the purview of his jurisdiction. Though thorough investigation could not be conducted, it was the opinion of the Inquiry Officer that the nature of the case was in relation to economic offences/commercial offences/import fraud/GST fake invoices and that the complainant/petitioner did not possess the locus standi to file the complaint.

21. The preliminary inquiry report of the Inspector of Police also stated that in terms of the judgment of the Supreme Court in ***LalitaKumari Vs. Government of Uttar Pradesh and Others***, reported in ***(2013) 14 SCR 713***, the case not being a cognizable case, the complaint/FIR submitted by the petitioner need not be registered compulsorily. In his opinion, the complaint needed to be investigated by the concerned Department viz, Directorate Intelligence Revenue (DIR), Central Board of Indirect Taxes and Customs, GST Investigation Wing, Taxation Department of Mizoram.

22. As can be seen from the affidavit of the Chief Secretary, the Police have not registered the petitioner's FIR, on the ground that the offences were not cognizable offences and as such, it was not mandatory to register an FIR.

23. The above stand of the Government is surprising, for the simple reason that a case involving fake or fraud GST invoices could attract Sections 420, 468 and 120 IPC. These sections are all cognizable offences and as such, the complaint/FIR submitted by the petitioner should have been registered, as cognizable offences could have been made out.

24. Be that as it may, the pleadings and the submissions made by the parties shows that there is something not quite right in the issuance of e-way bills for transportation of smuggled arecanuts from Champhai District, Mizoram to outside the said District.

25. As stated earlier, there being no plantations in Champhai District yielding arecanuts, it is not understood as to how dry arecanuts could be transported from Champhai District, especially when it is not the case of any of the parties herein, that the seized arecanuts had been brought into Champhai District from some other District of Mizoram. Champhai District being connected to Myanmar through the road at Zokhawthar Village, there is all likelihood of Zokhawthar being the main transit points for transportation of arecanuts. Thus, the source of the arecanuts, i.e., whether it is from a plantation in the State of Mizoram or from outside the State will have to be carefully gone into.

26. We are aware of the decision of the Supreme Court in the case of ***State of West Bengal & Others Vs. Committee for Protection of Democratic Rights, West Bengal & Others,*** reported in ***(2010) 3 SCC 571,*** wherein it was held that the extraordinary power to order an investigation by the CBI must be exercised sparingly, cautiously and in exceptional circumstances, where it becomes necessary to provide credibility and instil confidence in investigations, and should only be exercised or where the incident may have national and international ramifications.

27. In the present case, the issue of smuggling of arecanuts has been an ongoing hot topic in the State, with allegations being made of high ranking authorities being involved and the reluctance of the State Police to carry out any investigation in this regard. The issuance of GST Certificate/e-way bills for transportation of arecanuts from Champhai District, Mizoram to outside Champhai District by the C.G.S.T and S.G.S.T authorities, despite no plantation yielding aracanuts in Champhai as on 17.01.2023 in terms of the additional affidavit dated 17.01.2023, issued by the Home Department, Government of Mizoram, gives rise to inference that rampant smuggling is taking place in violation of the Customs Act etc.

28. We have also noticed that the Government of Mizoram, vide Notification No. C. 31016/1/2020-VIG dated 28.12.2023, had accorded consent to exercise powers and jurisdictions to the members of the Delhi Special Police Establishment, for investigation of offences in the State of Mizoram, in exercise of the powers conferred by Section 6 of the Delhi Special Police Establishment Act, 1946. Thereafter, though, the Government of Mizoram had withdrawn the general consent given to the CBI to take up cases relating to public servants controlled by the State Government of Mizoram, the previous general consent for any other offence by the State Government continues to remain in force, vide Notification No. C.31016/1/2020-VIG dated 27.06.2024, issued by the Vigilance Department.

29. The matter relates to cross-border smuggling of arecanuts with reports being made of seizures of the same even a few weeks back. As all the respondents have not objected to the investigation of smuggling of dry arecanuts in Mizoram to be undertaken by the CBI and in view of the Notification No. C.31016/1/2020-VIG dated 28.12.2023 issued by the Secretary to the Government of Mizoram, Vigilance Department, the respondent No. 37 i.e. the CBI, represented by the Director, Plot No. 5-B, 6th Floor, CGO Complex, Lodhi Road, New Delhi - 110003 is directed to cause investigation of the allegation of smuggling of dry arecanuts from Myanmar into India through Champhai District and the consequential transportation of the same, on the basis of alleged fake/forged e-way bills/ G.S.T certificates.

30. This direction has been passed due to the stand taken by the State Police that they are unable to investigate the said matter thoroughly as it involves international smuggling, originating from Myanmar. Further, the offence pertains to commercial transactions for which a fair and impartial inquiry amongst others, can be achieved only by an investigation undertaken by the CBI. Accordingly, the CBI shall investigate the matter and register a case, if necessary, and take it to its logical conclusion.

31. PIL is accordingly disposed of.

JUDGE **JUDGE**

Comparing Assistant