

Court No. - 2

Case :- MISC. BENCH No. - 7355 of 2021

Petitioner :- Indrajeet Prajapati

Respondent :- State Of U.P.Thru Prin.Secy.Basic Education Lko & Ors.

Counsel for Petitioner :- Vidhu Bhushan Kalia, Vaibhav Kalia

Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Manish Kumar,J.

Heard learned counsel for the petitioner and learned State Counsel for the respondent nos. 1 to 6.

On our request, Sri Vimal Kumar Srivastava, learned Government Advocate has also addressed the court.

By means of this writ petition, challenge has been made to the order dated 24-02-2021 passed by the state government, whereby the Regional Assistant Director of Education(Basic), Devi Patan Mandal, Balrampur has been directed to get the name of the petitioner included in the array of accused persons mentioned in the F.I.R. lodged against one Smt. Mamta Singh and Others.

Submission of the learned counsel for the petitioner is that the said decision is in complete derogation of the government orders dated 19-07-2005 and 24-05-2012.

The government order dated 19-07-2005 provides that in case any irregularity committed by an official/officer comes to light, then, he shall be departmentally proceeded with and on inquiry in the departmental/disciplinary proceedings, if it is found that the official/officer is criminally liable as well, then First Information Report can be lodged against him after seeking opinion of the law department. The government order dated 24-05-2012 only states that before lodging the First Information Report against the officer/employee of the state government, the government order dated 19-07-2005 will be strictly followed.

Learned State Counsel has received certain instructions sent to him by the state government

in its letter dated 19-03-2021, which are taken on record.

On the basis of the said instructions, learned State Counsel has attempted to justify the impugned order by submitting that though in this case, the petitioner himself was an informant in the First Information Report lodged on 05-02-2021 under section 7/13 of the Prevention of Corruption Act at Police Station-Kotwali Nagar, district-Gonda, however, since on an inquiry conducted by a committee comprising of higher officers of the district, petitioner's complicity in the matter also came to light, the state government took the decision which is embodied in the order dated 24-02-2021.

So far as submission of the learned counsel for the petitioner that the impugned order dated 24-02-2021 has been passed in derogation of the government orders dated 19-07-2005 and 24-05-2012 is concerned, it is apparent that before taking the decision for proceeding against the petitioner by taking recourse to criminal proceedings, neither the procedure as has been given in the government orders has been followed nor the opinion of the law department was taken. However, we may make it clear that the said ground is legally not tenable. The government orders dated 19-07-20095 and 24-05-2012 have been issued for guidance of the officers and for exercising abundant protection for the reason that before taking such a drastic decision for taking criminal action against an officer/employee of the state government, adequate caution is to be exercised, however, in case any cognizable offence comes to the notice of the state government or any of its officer, any consultation legally would not be required for lodging an F.I.R. under section 154 Cr. P. C.

Having said as above, what bothers us is the nature of directions issued in the government order dated 24-02-20-21 whereby a direction has been given to the Regional Assistant Director of Education(Basic) to get the name of the petitioner included in the array of accused persons in the F.I.R. dated 05-02-2021 lodged against Smt.

Mamta Singh and Others. Such a course, in our considered opinion, as also submitted by the learned Government Advocate, is not available. In case in a trail of events leading to crime, certain facts come to the notice of anyone including the state government and its officers, which may be relevant for appropriate investigation of the crime already reported, it is always open to the authority concerned to lodge an F.I.R. However, inclusion of the name of such a person in the array of accused persons in an already lodged F.I.R. would not be legally permissible. Once any F.I.R. is lodged, machinery of criminal investigation is set in motion and thereafter it is for the Investigating Officer/Agency to conduct investigation and gather evidence and thereafter form his opinion as to commission of crime and identify the persons against whom incriminating evidence is found about their involvement in the crime. Such person(s) may even be other than those named as accused in the F.I.R. However, any direction to include a person as accused in the array of accused persons in the F.I.R. will be legally impermissible.

For the aforesaid reasons, the order dated 24-02-2021 as contained in Annexure No. 1 to the writ petition is hereby quashed and the writ petition is **allowed.**

The state government will now take decision afresh in the matter in accordance with law as also taking into account the observations made herein above.

Order Date :- 22.3.2021

AKS