

W.P.(C) No. 20/2015
Kunga Nima Lepcha & Ors. Vs. State of Sikkim & Ors.

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

17. 02.06.17 Present: Mr. Arvind Kumar Gupta, Mr. Kausik Chatterujee and Mr. Ashok Subba, Advocates for Petitioners No. 1, 5, 7 to 14.

Mr. N. Rai, Sr. Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for Petitioners Bi. 2, 3, 4 and 6,

Mr. A. Mariarputham, Advocate General, Mr. J.B. Pradhan, Addl. Advocate General, Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for Respondent No. 1.

Mr. Karma Thinlay, Central Govt. Advocate for Respondent No. 2.

None for Respondents No. 3, 4 and 5.

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IA No. 16/2017

This is an application on behalf of second, third, fourth and sixth petitioners, seeking permission to withdraw from the case. It is stated by learned Senior Counsel appearing for the applicants/petitioners that the applicants/petitioners have come to a conclusion that the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946, as stands today, is proper and constitutional and does not require any judicial review or examination of the validity or constitutionality of the provisions of the said Act. Thus, they may be permitted to withdraw from the petition.

No objection from other side.

The application is ordered.

The cause-title be amended accordingly.

IA No. 14/2017

The instant writ petition, seeking a declaration to the effect that Section 6 of the Delhi Special Police Establishment Act, 1946 be held as unconstitutional, *ultra vires*, as being violative of Article 14 of the Constitution of India and also for a direction to quash the notification dated 21.07.2010 whereunder it is prescribed that the prior consent of the State Government shall be obtained for the investigation of any such offences in respect of public servants employed in connection with the affairs of the Government of Sikkim and persons employed in connection with the affairs of any authority subject to the control of the Government of Sikkim or any corporation, company or bank owned or controlled by the Government of Sikkim.

On 04.05.2015, cognizance was taken by this Court. Thereafter, the matter was taken up for hearing on various dates. On the last date, i.e. 22.05.2017, when it was set for final hearing, after arguing for some time, a request was made by learned counsel appearing for the petitioners, for adjournment.

In the meantime, the instant application has been filed, introducing or incorporating an alternative prayer to the following effect:

"Issue an order or direction in the nature of mandamus, directing the respondent no. 3 and 4 to register an FIR

regular case and prosecute the persons indicted in report dated 12.10.2010.”

The question that arises for consideration of the Court is as to whether the prayers sought for is an incidental prayer to the cause of action pending in the main writ petition or this changes the entire gamut of the writ petition.

Learned Advocate General appearing for the first respondent seeks and is granted two weeks’ time to file response on maintainability as well as merits.

IA No. 15/2017

This is an application seeking direction to the first respondent to produce the proceedings whereunder the aforestated notification impugned herein was issued.

I am not inclined to direct the authorities to file the entire proceedings in the Court, at this stage. However, Learned Advocate General is required to keep the entire file ready at the time of final hearing, if necessary, it may be perused by the Court.

List it for final hearing on 24.07.2017.

Chief Justice
02.06.2017

jk/pm Index : ~~Yes~~ / No
 Internet : Yes / ~~No~~