

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 390 of 2007

1. **Sri Lalbiakhluna**, aged about 49 years, S/o T. Lahnema, resident of Kolasib, P.O. Kolasib, District Kolasib, Mizoram.
2. Sri Vanlalhruaia, aged about 62 years, S/o late L.K. Siama, resident of Thingkangphai, Lamka, P.O. Churachandpur, District Churachandpur, Manipur.

... Petitioners

-Versus-

1. The State of Manipur, represented by the Secretary (Home), Government of Manipur.
2. The State of Mizoram, represented by the Secretary (Home), Government of Mizoram, Aizwal, Mizoram.
3. The Union of India, represented by the Secretary (Home) to the Government of India, New Delhi.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. D. Julius Riamei, Advocate
For the respondents	::	Mr. Shyam Sharma, GA; Mr. Kh. Samarjit, DSGI & Mr. Serto T. Kom, Advocate
Date of hearing	::	22-05-2024
Date of judgment & order	::	23-07-2024

JUDGMENT & ORDER

[1] Heard Mr. D. Julius Riamei, learned counsel appearing for the petitioners; Mr. Shyam Sharma, learned GA appearing for the respondent

No. 1, Mr. Serto T. Kom, learned counsel appearing for the respondent No. 2 and Mr. Kh. Samarjit, learned DSGI appearing for the respondent No. 3.

[2] The present writ petition has been filed with the prayer for issuing a direction to close/ drop or for quashing the criminal proceeding being Cril.(P) Case No. 9 of 1986 under FIR No. 103(6)1984 of Churachandpur Police Station u/s 395/397/307/326/34 IPC and 27 I.A. Act pending in the Court of the Chief Judicial Magistrate, Churachandpur, in respect of the petitioners only.

[3] The facts of the case, in a nutshell, are that both the petitioners were members of the Mizo National Army under the Mizo National Front (MNF) when it was engaged in the armed struggle for several years against the Government of India fighting for independence of the Mizo inhabited areas in the North Eastern region of India. While the petitioners were in the underground movement as members of the Mizo National Army, the petitioners were arrested in the year 1984 along with some others in Churachandpur District, Manipur, in connection with a case of armed robbery of the State Bank of India, Churachandpur and the Churachandpur Police registered a case being FIR No. 103/(6)/84 Churachandpur Police Station u/s 305/397/121/221(A)/307/121(B)IPC 25 Arms Act and 13 UAP Act. Subsequently, the petitioners were released on bail from their judicial custody.

[4] After several years of armed struggle under the banner of the MNF and under the leadership of several prominent leaders including Mr. Laldenga, the MNF entered into an agreement with the Government of

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India for a peaceful settlement of various outstanding issues by signing a Memorandum of Settlement on 30-06-1986. The said memorandum was signed by the authorities thereto after holding talks within the framework of the Constitution of India and in course of talks, various issues were settled which were incorporated in the said Memorandum of Settlement. With a view to restoring peace and normalcy in Mizoram, it was incorporated at para 3.1 of the Memorandum of Settlement that the MNF will, within the agreed time frame, take necessary steps to end all underground activities, to bring out all underground personnel of the MNF with their arms, ammunition and equipment to ensure their return to civil life, to abjure violence and generally to help in the process of restoration of normalcy and that the modalities of bringing out all underground personnel and deposit of arms, ammunition and equipment will be as worked out and the implementation of the same will be under the supervision of the Central Government.

[5] In para 3.2, it was also incorporated that the MNF Party will take immediate steps to amend its Articles of Association so as to make them conform to the provisions of law and that in para 3.3 of the said Memorandum of Settlement, it was incorporated that the Central Government will take steps for the resettlement and rehabilitation of underground MNF personnel coming overground after considering the schemes proposed in this regard by the Government of Mizoram. In Para 4.2 of the said Memorandum of Settlement, it was also incorporated that in order to give effect to the various commitments or agreements made under the said Memorandum of Settlement, necessary legislative and

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administrative measures would be undertaken by the Central Government including those for the enactment of Bills for the amendment of the Constitution and other laws for the conferment of Statehood, etc. The Memorandum of Settlement contemplates the following sequence of events:-

- (i) Coming overground of MNF personnel and depositing of arms, ammunition and equipment by them in accordance with the time bound programme as already agreed upon between the Ministry of Home Affairs and the MNF delegation;
- (ii) The MNF Party should take immediate steps to amend its Articles of Association to make them conform to the provisions of law;
- (iii) The Government will initiate steps for rehabilitation of MNF personnel coming overground; and
- (iv) After completion of action under Paras 1 and 2 above, the Constitution Amendment Bill will be introduced in Parliament for the grant of Statehood and other consequential legislative measures to be taken up.

[6] Consequent upon the signing of the aforesaid Memorandum of Settlement, all the cadres of the MNF, including the petitioners, came overground and gave up arms and ammunition with the hope and dream of starting to lead a normal civil life. The Central Government also started enacting and implementing laws and regulations in terms of the aforesaid Memorandum of Settlement. Parliamentary enactments were passed and various regulations/ instructions were issued for the smooth implementation

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of the said Memorandum of Settlement and the State of Mizoram came into existence as a result of the aforesaid Memorandum of Settlement.

As the members/ cadres of the MNF were to give up arms and ammunition and entered civil life in terms of the Memorandum of Settlement, the Government of India, in order to ensure smooth implementation of the Memorandum of Settlement and as part of the rehabilitation process of the MNF cadres, took the decision that no member of the MNF coming overground shall be prosecuted for the offences committed in connection with and during the period of underground activities. The Government of India also decided that investigation under progress at that time against the person coming overground should be suspended immediately and dropped. The Government of India also decided that on fulfilment of certain stipulation as contained in para 3.1 and 3.2 of the Memorandum of Settlement, it was proposed to withdraw prosecution in cases pending before the courts for any offences committed by the members of the MNF Party coming overground in connection with or during the period of overground activities and persons convicted for any such offences would be granted remission of sentence. The aforesaid decision of the Government of India was communicated by the Home Secretary to the Government of India by Wireless Message dated 30-06-1986 to the Lt. Governor of Mizoram.

[7] While the petitioners were leading a normal civilian life with the bona fide belief that the cases against them would have been dropped as in case of other MNF cadres, who have come overground in terms of the

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aforesaid Memorandum of Settlement and the decision taken by the Government of India, it is the case of the petitioner No. 1 that, to his shock and surprise, he came to know that sometime in the year 2000, a warrant of arrest had been issued against him in connection with the Cril. (P) Case No. 9 of 1986 pending in the Court of the Chief Judicial Magistrate, Churachandpur, which was registered pursuant to the aforesaid FIR No. 103(6)1984 Churachandpur Police Station. As regards the petitioner No. 2, he has been regularly attending the court in connection with the said criminal case, while all the time expecting that the aforesaid criminal case will be closed in view of the Memorandum of Settlement and the decision of the Government of India. When no positive result was forthcoming, the petitioners, feeling aggrieved, moved the authorities in Mizoram through their former colleagues to do the needful for withdrawal of the said criminal case pending against the petitioners in terms of the Memorandum of Settlement and the decision taken by the Government of India.

[8] Various high-ranking officials of the Government of Mizoram including the Chief Secretary and the Chief Minister wrote various letters to their counterparts of the Government of Manipur requesting to look into the criminal case pending before the Court of the Chief Judicial Magistrate, Churachandpur and to take up necessary steps for closing the said criminal case pending against the petitioners in terms of the Memorandum of Settlement and the decision taken by the Government of India. On part of the Government of Manipur, it has been responded to the various requests made by the Government of Mizoram by stating that every measure is being taken up for closing the said criminal case and the Government of Manipur

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have also sought instruction from the Government of India regarding the matter and the instruction of the Government of India is being awaited.

[9] In view of the series of efforts being made by the Government of Mizoram for closing the said criminal case, the petitioners were under the impression that necessary steps were being taken up by the Government of Mizoram and Manipur for closing the aforesaid criminal case against the petitioners in terms of the Memorandum of Settlement and the decision of the Government of India and that eventually the said criminal case would be closed. However, to the dismay of the petitioners, instead of closing the aforesaid criminal case, a fresh warrant of arrest was again issued by the Court of the Chief Judicial Magistrate, Churachandpur, in connection with the said Criminal Case No. 9 of 1986 against the petitioner No. 1 and another MNF cadre. Having been aggrieved, the petitioners approached this court by filing the present writ petition for redressing their grievances.

[10] It has been submitted on behalf of the petitioners that the said criminal case pending in the Court of the Chief Judicial Magistrate, Churachandpur, is in connection with a case of armed robbery which occurred in the State Bank of India, Churachandpur, Manipur in the year, 1984 when the MNF movement were spread in all the Mizo inhabited areas of the North East including the State of Manipur. It has also been submitted that the MNA were also deployed in the Mizo inhabited areas of Manipur including the Churachandpur District and the said incident of robbery were carried out by the cadres of the MNF (MNA), including the petitioners, along with other underground cadres of Manipur. The learned counsel for the

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petitioners strenuously submitted that since the Government of India have taken a decision to drop/ withdraw all the criminal cases against the MNF cadres/ MNA on their coming overground in terms of the Memorandum of Settlement and since the petitioners have come overground and led a normal civil life in terms of the Memorandum of Settlement, the aforesaid criminal case pending against the petitioners in the Court of the Chief Judicial Magistrate, Churachandpur, ought to have been dropped or withdrawn. It has further been submitted that the continuation of the aforesaid criminal case against the petitioners is clearly in violation of the terms of the Memorandum of Settlement and the decision taken by the Government of India as contained in the Wireless Message dated 30-06-1986.

[11] It has also been submitted on behalf of the petitioners that the cases against the other colleagues of the petitioners, who were ex-cadres of the Mizo National Army, registered during the underground movement of the MNF have been either closed or withdrawn. However, in case of the petitioners, the same treatment has not been extended and the aforesaid criminal case against the petitioners has been continued, thus causing acute physical and mental harassment to the petitioners. It has further been submitted that the petitioners have been subjected to hostile discrimination and their Fundamental Right of Equality guaranteed under Article 14 of the Constitution of India has been violated.

[12] The counsel for the petitioners submitted that the Memorandum of Settlement and the decision of the Government of India as contained

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in the Wireless Message dated 30-06-1986 are legally enforceable documents which cannot be ignored or violated, moreso when the rights of the persons who have given up arms and came overground are concerned. It has further been submitted by the learned counsel that pursuant to the aforesaid Memorandum of Settlement and the decision taken by the Government of India, several steps have already been taken for the effective implementation and rehabilitation of the ex-cadres of the MNF, who have come overground in terms of the Memorandum of Settlement and there is no reason why the decision of the Government of India to withdraw/ drop all the cases pending against the members of the MNF/ MNA should not be implemented so far as the petitioners are concerned.

[13] It has been submitted on behalf of the petitioners that it was the solemn promise and the undertaking given by the Government of India that it will take steps for the resettlement and rehabilitation of the underground MNF personnel coming overground and for withdrawing/ closing all the criminal cases against the cadres of the MNF/ MNA, who came overground, for any offences committed by them in connection with or during the period of underground activities. The learned counsel submitted that it was because of this solemn undertaking/ promise given by the Government of India that the petitioners gave up arms and came overground in the expectation that the criminal cases against them would also be dropped/ closed. Accordingly, the State respondents are bound by the principle of Promissory Estoppel and the petitioners have the legislative expectation that the criminal cases pending against them will be withdrawn or closed.

[14] Mr. Serto T. Kom, learned counsel appearing for the State of Mizoram submitted that in terms of the Memorandum of Settlement and the aforesaid decision taken by the Government of India, no member of the MNF Party, who have come overground, were prosecuted for offences committed in connection with and during the period of underground activities, investigation under progress at that point of time against the members of the MNF Party, who have come overground, have been suspended and dropped and prosecutions in cases pending before the courts for any offences committed by the members of the MNF Party, who have come overground, in connection with or during the period of underground activities have been withdrawn or dropped.

[15] The learned counsel further submitted that the Government of Mizoram sincerely pursue the matter for withdrawal of the aforesaid criminal case against the present petitioners. In this regard, the learned counsel draw the attention of this court to various letters of the high ranking officials of the Government of Mizoram, including the Chief Secretary and the Chief Minister, addressed to their counterparts of the Government of Manipur requesting for taking up necessary action for closing or withdrawing the criminal cases pending against the petitioners. The learned counsel submitted that despite the sincere and best efforts made by the Government of Mizoram, the said criminal case pending against the petitioners has not been withdrawn till date.

[16] Mr. Shyam Sharma, learned GA and Mr. Kh. Samarjit, learned DSGI appearing for the State of Manipur and Union of India respectively

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submitted that the Cril. (P) Case No. 9 of 1986 arising out of the FIR No. 103(6)1984 of Churachandpur Police Station u/s 395/397/307/326/34 IPC and 27 Arms Act, pending against the petitioners and others before the Court of the Chief Judicial Magistrate, Churachandpur, is in connection with the offence of armed robbery of the State Bank of India in Churachandpur District, Manipur. The learned counsel further submitted that the Memorandum of Settlement dated 30-06-1986 between the Government of India, Government of Mizoram and Mizo National Front as well as the secret Message dated 30-06-1986 from the Government of India to the Lt. Governor of Mizoram does not make any mention of dropping of criminal cases for offences committed by the MNF cadres outside the State of Mizoram and that there is nothing on record with the Government of India to show that the offences committed by the cadres of the MNF Party outside Mizoram were to be dropped or withdrawn. Thus, the State Government as well as the Government of India have taken a view that the aforesaid pending criminal case against the petitioners for committing the offence in Churachandpur District, Manipur, in connection with the FIR No. 103(6)1984 Churachandpur Police Station cannot be dropped or withdrawn. The learned counsel also submitted that there is no merit in the present writ petition and as such, the same is liable to be dismissed.

[17] I have heard at length the learned counsel appearing for the parties and also considered the rival submissions advanced by them. In the present case, a Memorandum of Settlement was made on 30-06-1986 involving the Government of India, Government of Mizoram and the Mizo

National Front. In para 3.1, 3.2 and 3.3 of the said Memorandum of Settlement, it has been agreed upon among the parties as under:

“3.1. With a view to restoring peace and normalcy in Mizoram the MNF Party, on their part, undertakes within the agreed time-frame, to take all necessary steps to end all underground activities, to bring out all underground personnel of the MNF with their arms, ammunition and equipment to ensure their return to civil life, to abjure violence and generally to help in the process of restoration of normalcy. The modalities of bringing out all underground personnel and the deposit of arms, ammunition and equipment will be as worked out. The implementation of the foregoing will be under the supervision of the Central Government.”

“3.2 The MNF Party will take immediate steps to amend its Articles of Association so as to make them conform to the provisions of law.”

“3.3 The Central Government will take steps for the resettlement and rehabilitation of underground MNF personnel coming overground after considering the schemes proposed in this regard by the Government of Mizoram.”

[18] It is also in record that the said Memorandum of Settlement contemplates the following sequence of events:-

“1. Coming overground of MNF personnel and depositing of arms, ammunition and equipment by them in accordance with the time bound programme as already agreed upon between the Ministry of Home Affairs and the MNF delegation.”

“2. The MNF Party should take immediate steps to amend its Articles of Association to make them conform to the provisions of law.”

“3. The Government will initiate steps for rehabilitation of MNF personnel coming overground.”

[19] It is also on record that on the date of making the said Memorandum of Settlement, the Secretary (Home), Government of India, sent a Wireless Message dated 30-06-1986 to the Lt. Governor of Mizoram conveying the decision of the Government of India, which are as under:-

“According to the Memorandum of Settlement in MIZORAM, the MNF Party have undertaken to end all underground activities, to bring out all underground personnel of the MNF with their arms, ammunition and equipment to ensure they are, turn to civilite, to abjure violence and generally to help in the process of restoration of normalcy . in order to ensure smooth implementation of above it has been decide that No member of the MNF Party now coming overground shall be prosecuted for offences committed in connection with and during the period of underground activities (.) Consequently investigation under progress currently against persons now coming overgrounds should be suspended forthwith and dropped (.) PARA (.)

On fulfilment of certain stipulations by MNF contained in Para 3.1 and 3.2 of the Memorandum of Settlement, it is proposed to withdraw prosecution in cases pending before Courts for any offences committed by the members of MNF Party now coming overground in connection with or during the period of underground activities and persons convicted for any such offences be granted remission of Sentence = 1”

[20] There is no dispute with regard to the facts that the cadres of the MNF/ MNA have fulfilled their undertakings given in para 3.1 and 3.2 of the Memorandum of Settlement by bringing out all the underground personnel of the MNF with their arms, ammunition and equipment and have abjure violence and helped in the process of restoration of normalcy by returning to their civilian life within the agreed time frame and also by amending its Articles of Association. Consequent upon fulfilment of such undertaking given by MNF Party, the Government also did not prosecute any member of the MNF Party for the offences committed in connection with and during the period of underground activities, dropped all the pending investigation against such personnel of the MNF and have also withdrawn prosecution in cases pending before courts against members of the MNF Party for the offences committed by them in connection with or during the period of underground activities in terms of the Memorandum of Settlement and

decision taken by the Government of India as contained in the Wireless Message dated 30-06-1986.

[21] The only reason given by the State of Manipur and the Union of India in their affidavit-in-opposition for refusing to withdraw or close the aforesaid criminal case against the petitioners is that under the Memorandum of Settlement and the decision of the Government of India, nothing is mentioned about dropping of criminal cases for offences committed by the MNF members outside the State of Mizoram and that there is nothing on record to show that offences committed outside Mizoram were to be dropped against the cadres of MNF. Thus, the Government have taken a view that the aforesaid criminal case cannot be withdrawn or dropped as the offence in connection with the said criminal case was committed by the petitioners in Churachandpur District, outside the State of Mizoram.

[22] As per the Memorandum of Settlement, with a view to restoring peace and normalcy in Mizoram, the MNF Party have undertaken to end all underground activities to bring out all underground personnel of MNF with their arms, ammunition and equipment to ensure their return to civil life, to abjure violence and generally to help in the process of restoration of normalcy within the agreed time frame. In order to ensure smooth implementation of such undertaking, the Government of India on its part have taken a conscious decision that no member of the MNF Party coming overground shall be prosecuted for offences committed in connection with and during the period of underground activities, to suspend forthwith and

dropped investigation under progress against the personnel of MNF coming overground and to withdraw prosecution in cases pending before courts for any offences committed by the members of the MNF Party coming overground in connection with or during the period of underground activities.

There is no dispute among the parties in the present case that such decision taken by the Government of India has been duly implemented so far as the State of Mizoram is concerned. In my considered view, the conscious decision taken by the Government of India is a sound one and such conscious decision had been taken to ensure smooth implementation and to facilitate in bringing out all the underground personnel of the MNF with their arms, ammunition and equipment and to help in the process of restoration of peace and normalcy in Mizoram. In my considered view, such sound decision is one of the main reason which led to the end of all underground activities of the MNF Party and in encouraging the personnel of the MNF to come overground and agreeing to return to their civil life and thereby resulting in bringing peace and normalcy in the State of Mizoram.

[23] On careful examination of the Wireless Message dated 30-06-1986 containing the aforesaid Government of India's decision, nothing is found on record to indicate that such decision will confine to or in respect of offences committed by the personnel of MNF within the State of Mizoram. The only fact that remains undisputed among the parties is that the said decision of the Government of India is applicable to and only for the benefit of personnel of MNF who have come overground in terms of

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the Memorandum of Settlement. When there is no material available on record to indicate that the decision of the Government of India will be applicable and confines to only those personnel of the MNF who have committed offences only in the State of Mizoram and not in any other State, this court is of the considered view that the reason given by the State of Manipur and Union of India for refusing to withdraw or close the criminal cases pending against the petitioners is misconceived, unfounded and unsustainable before law as no specific territorial limit had been mentioned in the said Government of India's decision. As there is no dispute that the said decision had been taken specially for the benefit of the personnel of the MNF, who have come overground in terms of the Memorandum of Settlement, I find no reason as to why the benefits given by the Government of India's decision should not be extended to the petitioners.

[24] This court also find force and merit in the submission advanced by the learned counsel appearing for the petitioners that the petitioners are also entitled to get the benefit of the decision taken by the Government of India like the other personnel of the MNF similarly situated with them irrespective of whether the petitioners have committed the offence outside the State of Mizoram and that the petitioners have been treated discriminatorily and that the State respondents have violated their Fundamental Right of Equality as enshrined under Article 14 of the Constitution of India.

In view of the facts and circumstances of the present case and for the findings and reasons given hereinabove, this court come to the

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conclusion that the petitioners have been able to make out a strong case in the present writ petition. Accordingly, the respondents are directed to take necessary steps to withdraw prosecution of the petitioners in connection with the Cril. (P) Case No. 9 of 1986 pending before the Chief Judicial Magistrate, Churachandpur or to close the said criminal case so far as the present petitioners are concerned. The whole process should be completed within a period of three months from the date of receipt of a certified copy of this order.

With the aforesaid directions, the present writ petition is disposed of. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda