
(2010) 12 GAU CK 0044
In the Gauhati High Court
Case No : Writ Petition (C) No. 6001 of 2010

Debajit Deka

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Citation : (2011) 1 GLT 581

Hon'ble Judges : Tinlianthang Vaiphei, J

Bench : Single Bench

Advocate : A.K. Bhattacharjee, K.K. Bhattacharjee, A.K. Choudhury, S. Dutta and T. Talukdar, for the Appellant; G.A., for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—Heard Mr. A.K. Bhattacharjee, the learned senior counsel, assisted by Mr. A. K. Choudhury, the learned Counsel for the Petitioner. Also heard Mr. G. Soren, the learned Counsel for State Respondents.

2. The case of the Petitioner is that he is carrying on the business of installation and operation of weighbridge in collaboration with the Transport Department, Government of Assam at Srirampur in the district of Kokrajhar, Assam since 2001 and that as the aforesaid place is predominantly politically disturbed area, in the year 2007, he was compelled to approach the Assam Police for providing him with Personal Security Officer (PSO) for protection of his life and liberty. In fact, by virtue of Clause 11 of the Deed of Agreement dated 7.5.2003 executed between the firm of the Petitioner, namely, M/s Bikalpa Enterprise and the Transport Department, Govt. of Assam, it was stipulated that the State Govt. would provide necessary security for the project at its own cost. It was pursuant to this agreement that the State Respondents provided one PSO to him, which was subsequently increased to two PSOs when he received threat of kidnapping of his daughter. According to the Petitioner, recently, when he was suffering from dengue fever, the State Respondents unilaterally and without prior intimation withdrew the aforesaid PSOs from him thereby rendering him vulnerable: his free

movement has been restricted and he now apprehends threat on his life and liberty. The representation made by the Respondent authorities to restore the PSOs did not evoke any positive response whereupon this writ petition has been filed by him.

3. The State Respondents have now filed their affidavit-in-opposition. The stand taken by the State Respondents therein is that the withdrawal, which was affected with the approval of the higher authority, was due to the reported illegal activities of the Petitioner. The Superintendent of Police, Kokrajhar had informed that the Petitioner visited Srirampur under Gosaigaon PS with his PSOs and had siphoned off a huge amount of money from some businessmen and had been indulging in fraudulent activities taking advantage of PSOs provided to him. The representation submitted by him has been duly inquired into and it was decided to assess the threat perception after receiving a report from the Superintendent of Police, Kokrajhar, whereafter the same would be put up before the SSCR for decision. The State Respondents categorically deny that the withdrawal is politically motivated or is at the behest of some powerful lobbies belonging to his business rivals.

4. The Petitioner filed his affidavit-in-reply in which he denied the contentions of the State Respondents in their affidavit-in-opposition.

5. The fact that the Petitioner was provided with personnel security officers in terms of the agreement executed between his firm and the Transport Department, Govt. of Assam remains undisputed. Nowhere in the affidavit-in-opposition of the State Respondents is it mentioned that the Petitioner is not under threat or his life is in danger. The only ground, which can be gathered from the affidavit-in-opposition for withdrawing the PSOs from him appears to be alleged indulgence of the Petitioner in fraudulent activities which he did by taking advantage of the PSOs provided to him. In my opinion, the ground for withdrawal of PSOs from the Petitioner is vague and is not substantiated by any evidence. Once the Petitioner was found to have been in need of security and was accordingly provided with the PSOs, such facilities cannot be withdrawn until and unless there is definite evidence that he no longer requires such security. Mere allegation that he has been taking advantage of the PSOs provided to him without any material to substantiate the allegation could not be the basis for withdrawal of the PSOs from him. As there is no evidence on record to justify the conclusion of the State Respondents that the Petitioner was taking advantage of the PSOs provided to him for siphoning off a huge amount of money from some businessmen or for indulging in fraudulent activities, the decision of the State Respondents in withdrawing the PSOs from the Petitioner is, therefore, arbitrary.

6. For the reasons stated in the foregoing, this writ petition succeeds. The State Respondents are directed to restore the two Personnel Security Officers provided to him earlier within a period of seven days from the date of receipt of this order.