
(1952) 08 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 20 of 1952

Dhanbahadur Ghorti

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 21-08-1952

Acts Referred:

Citation : AIR 1953 Guw 62

Hon'ble Judges : Ram Labhaya, J; Haliram Deka, J

Bench : Division Bench

Advocate : J.C. Sen and A.R. Barooah, for the Appellant; D.N. Medhi, Sr. Govt. Advocate, for the Respondent

Judgement

Deka, J.—This is a Rule obtained on an application by the petitioner under Article 226 of the Constitution of India against an order of the Deputy Commissioner, dated 5-10-51 and notice was served on the Deputy Commissioner, Garo Hills to show cause why the order petitioned against should not be set aside or why such further order or orders should not be passed as to this Court may seem fit and proper.

2. A preliminary objection has been raised as to the competence of this application by the learned Senior Government Advocate under Rule 9 of Chapter V-A of the Assam High Court Rules published under the Assam Gazette Notification of 25th July, 1950. The Rules under Chapter V-A were framed for covering applications for Directions, Orders or Writs (other than writs in the nature of Habeas Corpus) under Article 226 of the Constitution of India, and R. 9 thereof runs as follows :

"Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts."

In this matter, an application was made by the petitioner under Rule 22, Rules for the Administration of Justice and Police in the Garo Hills District, read with Article 226 of the Constitution of India, against the identical order passed by the

Deputy Commissioner and that was Criminal Miscellaneous Case No. 73 of 1951. That matter came up before me sitting singly for disposal and by my judgment dated 14-2-1952, I disposed of the Rule holding inter alia that no petition for revision under Rule 22, Rules for the Administration of Justice and Police in the Garo Hills District, was competent against the order of the Deputy Commissioner, dated 5-10-51 and I considered the applicability of Article 226 of the Constitution of India, regarding the facts of the present case. My conclusions in that case were in the following words :

"In my view, therefore, the present petition under Rule 22 of the Rules for the Administration of Justice and Police in the Garo Hills District is incompetent and there is no ground for giving relief to the petitioner under Article 226 of the Constitution of India."

3. It cannot, therefore, be said that I did not consider the matter from the standpoint of Article 226 with regard to the alleged violation of the fundamental rights enjoyed by the petitioner. The present petition though confined to the same order of the learned Deputy Commissioner, Garo Hills, dated 5-10-51, the allegation is that the petitioner's fundamental rights under Articles 13, 17 & 19, of the Constitution have been violated though in the previous petition before me only Article 19 was mentioned.

4. In connection with this petition, no Rule was issued on the Deputy Commissioner to show cause against issue of any writ though there was a prayer for the issue of a writ of mandamus but he was asked to show cause as to the validity of the order itself which was challenged on the ground that certain fundamental rights of the petitioner had suffered thereby. The facts that came up, before me for adjudication sitting singly, were exactly the same and my judgment, therefore, covered the alleged breach of the fundamental rights as well as the validity of the order passed by the Deputy Commissioner. The Rule was discharged by me, the result of which is refusal on the part of this Court to interfere with the order passed by the Deputy Commissioner on 5-10-51. The present petition is practically a replica of the previous petition filed under Rule 22, Rules for the Administration of Justice and Police in the Garo Hills District, along with Article 226, of the Constitution of India, and there is no mention of any new facts. In this view, apart from Rule 9, Assam High Court Rules, as framed and published in the Gazette Notification of 25-7-1950, my decision in the earlier case hits the petition and we are constrained to say that the present petition is incompetent.

5. Mr. Sen for the petitioner has contended that the previous order passed by the single Judge in connection with Criminal Miscellaneous Case No. 73 of 1951 cannot be a conclusive order in view of the fact that under Rule 2, Assam High Court Rules, Chapter V-A, aforementioned, a single Judge is not competent to hear an application for a writ under Article 226. of the Constitution of India. The Rule as it stands undoubtedly creates some doubt as to whether a single Judge can hear an application under Article 226 of the Constitution of India, under

normal circumstances but at the same time, there is no express bar to a petition under Article 226 being heard by single Judge if and when nominated by the Chief Justice for the purpose. The Cri. Misc. Case No. 73 of 1951 came up before me for hearing under the general order passed by the Hon''ble the Chief Justice of this Court and as such my order cannot be said to be without jurisdiction. However, assuming the order is without jurisdiction or erroneous in law, the remedy lay only by an appeal to the Supreme Court against my decision and not by making another application under Article 226 of the Constitution of India. It appears from a perusal of the petition filed in this case that facts were not fully placed before the Chief Justice before the Rule was obtained and the order issuing the Rule was framed in a most general form against the validity of the order of expulsion passed by the Deputy Commissioner against the petitioner and possibly no attention of the Hon''ble the Chief Justice was drawn for issue of high prerogative writ for alleged violation of fundamental rights under the Constitution of India. In any view, we must hold that there is no necessity of our going into the facts of the case for the second time, facts being identical, there being already an order of this Court refusing to interfere with the order challenged by the present petition.

6. The Rule is, therefore, discharged but under the circumstances, the petitioner is directed to pay Rs. 51/- as hearing fee.

Ram Labhaya, J.

7. I agree.

8. Mr. Sen, the learned counsel for the petitioner has applied for a certificate for appeal to the Supreme Court under Article 132, Clause (1) of the Constitution of India. This order does not involve any substantial question of law as to the interpretation of the Constitution of India. The certificate asked for is, therefore, refused.

H. Deka, J.

9. I agree.