
(1999) 08 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule (PIL) No. 12 of 1998 and PIL No. 9 of 1999

Gautam Uzir and Another

APPELLANT

Vs

Gauhati Municipal Corpn. and Others

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1999) 3 GLT 110

Hon'ble Judges : Brijesh Kumar, C.J.;B. Biswas, J

Bench : Division Bench

Advocate : N. Dutta, T.J. Mahanta and P. Bhattacharyya, for the Appellant; B.C. Das and S.N. Sarma, for the Respondent

Judgement

Brijesh Kumar, C.J.—These are two petitions filed in public interest--one by Shri Gautam Uzir, namely, Civil Rule (PIL) No. 12 of 1998, and the other by Shri Santanu Bharali, namely, PIL No. 9 of 1999.

2. In Civil Rule (PIL) No. 12 of 1998, the Petitioner appears personally, who is not present Shri N. Dutta, learned Counsel appears for the Petitioner in PEL No. 9 of 1999. We have heard the learned State counsel, Shri B.C. Das, and Shri S.N. Sarma, learned Counsel appearing for the Gauhati Municipal Corporation.

3. The problem which has been highlighted in both these petitions relates to potable water--its scarcity and impurity, both. It is the responsibility of the Corporation to supply sufficient drinking water, which should also be clean and drinkable. Ultimately, the Sate has also to be concerned about this primary and essential need of the public. So far responsibility part is concerned, we find the same has not been denied. In that connection, we may like to refer to certain averments made in the affidavit-in-opposition filed on behalf of the Gauhati Municipal Corporation in PIL No. 9 of 1999. In paragraph 6, it is stated thus:

That the deponent begs to state that the corporation is well aware about its duties with regard to supply of drinking water to the citizens, but due to its

financial constraints, it could not augment its existing plant.

4. In paragraph 10 of the affidavit-in-opposition, it is indicated that the daily requirement of water in the city of Guwahati is 150 MLD at the rate of 150 litres per capita. The existing water supply system against the installed capacity of 80 MLD, at present 55.40 MLD has been supplied daily from different installations. It is further stated in paragraph 10 of the affidavit-in-opposition that there is no scope of expansion of the existing plants due to space constraint. However, if new plants are set up and the old plants are augmented, then it will be possible to meet the present requirement of water in Guwahati City. We thus find at least this much is admitted that the Corporation owes responsibility to the people to supply sufficient and clean water and presently the supply is a little over 30 per cent of the total requirement.

5. According to the Corporation, the old plants are to be augmented and new plants are to be set up. There arises the question of raising funds to meet the expenses, for which purpose the Corporation as well as the State Government seem to be dependent upon some outside help, namely, from Japan, France or World Bank, or any other agency as may be possible. Ultimately, it comes out from the affidavit-in-opposition placed on the record that no such help is coming from any corner. Therefore, care has to be taken by the Government and the Corporation itself to discharge their responsibilities to provide sufficient and clean water to the people.

6. We also find that the Central Government advised the Corporation to approach HUDCO to advance some money to improve the water supply position. The affidavit-in-opposition of Respondent No. 5 indicates that the Corporation has actually submitted a proposal amounting to Rs. 162.71. crores to cover the eastern part of Guwahati to the HUDCO for loan assistance. Anr. request has been made to HUDCO through the State Government for an amount of Rs. 115.71 crores for covering the central part of Guwahati. Nothing has, however, been indicated as to when these proposals are submitted and what response the Corporation has received from HUDCO. It is also indicated that neither the State Government nor the Central Government has provided any financial assistance in the matter.

7. So far the State Government is concerned, we find that an affidavit-in-opposition has been filed in PIL No. 12 of 1998. In paragraph 8 of the said affidavit-in-opposition it has been stated that the Guwahati Municipal Corporation has been trying its best with its limited resources to extend all civic facilities and amenities, such as, construction of roads, drains, footpaths, providing drinking water, electricity etc. It is then indicated that all water supply schemes now operating under GMC are having age old machineries which require complete replacement. We feel that it will be worth quoting paragraph 10 of the affidavit-in-opposition, which reads:

That with regard to the statements made in paragraph 8 of the writ petition, the

deponent states that the smooth functioning of water supply schemes depends on the financial resources of GMC. However, in this connection it may be mentioned that the rent realised for supply of water from the citizens of Guwahati city has not been increased for last 24 years, there is dearth of fund which is the major constraints for smooth functioning of the existing water supply system. Therefore, for the said reason the Corporation has not yet been able to extend water supply network to new areas. In this connection, the deponent further states that at present only 30% of the Corporation area is covered by existing water supply network.

8. From the above paragraph it is clear that the State Government is quite alive to the fact that one of the reasons for the present poor state of affairs of water supply is dearth of fund with the Guwahati Municipal Corporation as the rent realised for water supply from citizens of Guwahati has not been increased for the last 24 years. Thus, there is dearth of funds, as a result of which only 30% of the Corporation area is covered by the existing water supply network. In this connection, we consider it necessary to indicate that the learned Counsel appearing for the Guwahati Municipal Corporation has made a submission that it is not possible to increase or revise any amount of rent, taxes, of cesses without the approval of the State Government. It has further been submitted that the Corporation has been making requests to the State Government for such approval, which is not forthcoming.

9. We find that this is the state of affairs that the Corporation is alive to its responsibility and also its remedy to certain extent by argumenting its own resources, which is also acknowledged by the State Government; but from the stand taken by the two it appears that the Corporation is continuing with the taxes fixed 25 years ago and the Corporation is a stand that the required approval is to come from the State Government.

10. Water, and clean water, is so essential for life. Needless to observe that it attracts the provisions of Article 21 of the Constitution. Hence, heavy responsibility is also laid on the State Government in this regard, apart from the Municipal Corporation. We feel that before making huge projects of hundreds of crores of rupees and approaching different bodies and Governments, including Japan, France and the World Bank, some genuine effort should have been made by the Corporation itself or the State Government to mitigate this malady as far as it could be possible within its means. The smaller the schemes requiring smaller amount of fund, which could be managed and raised, should have been put into service to meet the situation. But no serious interest seems to have been taken in that direction by either of the bodies responsible for this purpose. The projects always seem to be very expensive, which is also evident from the fact that none has come forward to help.

11. At this stage we have also feel it necessary to mention that the Municipal Corporation has not indicated about its potential resources and the arrears of taxes which might be there remaining unrealised. After indicating that schemes

are submitted to the Town and Country Planning Department, nothing has been indicated which could be said to be substantially done in that direction by the Corporation. In paragraph 19 of the affidavit-in-opposition of the State Government it is stated that estimate for replacement of old pump sets, pipes and other machineries have been received and fund is being sanctioned and released to GMC for overall improvement of the water supply network. It is not on the record as to how much of the same has been released and what improvement has been noted thereafter. There is a mention about release of a sum of Rs. 20 lakhs for charge of pipelines in the affidavit-in-opposition filed by the Gauhati Municipal Corporation.

12. At one of the places the Gauhati Municipal Corporation has pointed out that erratic electricity supply is also responsible to some extent. In connection therewith they had requested the State Government to grant some amount, about Rs. 4 crores or so, to have its own generators to avoid that kind of problem. But, it appears that nothing turned on that also.

13. In our view, in the facts and circumstances as indicated in the petitions and the affidavit-in-opposition and what has been observed above, it is not a matter where the Corporation and the State Government are too helpless to do anything except requesting for finance from one quarter to the other. We direct the State Government and the Municipal Corporation to prepare schemes of affordable amounts which may improve the situation of water supply in phases. The Corporation shall also take all steps for its better financial position as may be thought necessary. It is indicated that HUDCO has already been approached for grant of certain amount, as indicated in the earlier part of the order; but the outcome of the same has not been indicated.

14. We feel that it may not be possible for us to believe that the Respondents are helpless and shall continue to supply 1/3rd of the water required and that too, not very clean. Concrete, workable, practical and affordable scheme have to be framed by them, which may be placed before the Court within a period of three months. It shall also be indicated how far the Respondents have pursued the matter relating to grant of loan by the HUDCO. If any such proposal of loan has been accepted by the HUDCO, that may also be indicated.

15. List on 16.11.99, as prayed, to enable the Respondents to prepare the scheme. The scheme so prepared shall be placed before the Court and the Secretary to the Government of Assam, Guwahati Development Department as well as the Commissioner, Gauhati Municipal Corporation, shall also be present on the date fixed.

16. Copy of the order shall be furnished to the learned Counsel for the parties within three days.