

(2010) 11 GAU CK 0064
In the Gauhati High Court
Case No : WP (C) No. 3325 of 2006

In Re: Government of Assam and Others

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2011) 3 GLR 121

Hon'ble Judges : Madan B. Lokur, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : S. Shyam, Amicus Curiae, for the Appellant; A.C. Buragoain and Mr. D. Saikia, for the Respondent

Judgement

Madan B. Lokur, C.J.—This public interest litigation ("PIL") was taken up on the basis of reports appearing in newspapers sometime in June and July 2006. These reports suggested that the morgues in Assam, particularly the one in Guwahati, were in a moribund condition.

2. Since then, this court has required the State of Assam to file affidavits from time-to-time indicating the steps taken to improve the condition of the morgues and to expedite preparation of post mortem examination reports so that pending criminal cases are disposed of expeditiously.

3. The first issue in this PIL relates to infrastructure and other facilities while the second issue relates to matters of co-ordination between various State level agencies such as the Department of Health, Department of Home and the Police Department.

4. In so far as the availability of infrastructure is concerned, the State has now filed an affidavit on 15th November, 2010 through Shri Joy Chandra Goswami, Commissioner and Secretary in the Health and Family Welfare Department of the Government of Assam.

5. It is stated in the affidavit that the construction of morgues has been completed in 18 (eighteen) out of 21 Districts while in 2 (two) Districts (Tinsukia and Golaghat) the construction is between 90% and 95% complete. In respect of 1 (one) District, i.e., Jorhat, it is stated that the construction of the morgue is

complete and it has already been handed over to the Jorhat Medical College and Hospital and has been functioning for quite some time.

6. Of the 18 (eighteen) buildings that are complete, possession has been handed over in respect of 13 of them to the District Health Authority and it appears from the affidavit that the remaining will be handed over some time in the month of December 2010. From this, it appears that construction of the buildings where the morgue is located is more or less complete.

7. In so far as the facilities for conducting post mortem examinations are concerned, it is stated that equipments have been installed in 13 (thirteen) of the morgues and some of them have been modernized, including the one in the Gauhati Medical College Hospital. It seems that in respect of the remaining morgues, the equipment has not yet been installed. Learned Additional Advocate General for the State of Assam has assured us that the equipment is likely to be available soon and immediately thereafter, the morgues will be functional and then post mortem examinations can be conducted without much difficulty.

8. Learned amicus curie has given us his written submissions and he has expressed his satisfaction insofar as the infrastructure and facilities are concerned. We too have no reason to doubt the correctness of the status of the morgues or that the State of Assam will not abide by the commitments made on affidavit, but will ensure that the morgues are soon fully functional either in December 2010 or latest by February 2011.

9. With regard to second issue of lack of cooperation between the State agencies, an affidavit was earlier filed by the State of Assam on 20th September, 2010 through Shri A.H. Khandakar, Under Secretary in the Health & Family Welfare Department. He has stated in the affidavit that a District Level Committee with the Deputy Commissioner as the Chairman was constituted by a notification dated 5th January, 2007. The Committee is expected to meet every two months, on a fixed date, and to monitor the progress in the preparation of post mortem reports with a view to their timely submission. Review reports in this regard are required to be submitted to the Government after each sitting. Clearly, the objective is to ensure that pending cases are not delayed for want of post mortem reports.

10. Along with the affidavit, the Minutes of some of the meetings held in the year 2010 have been annexed. On a perusal of these Minutes, we find that the Committees have not been meeting every two months in terms of the notification and, therefore, we have no option but to direct the Deputy Commissioners of all States to convene meetings of the District Level Committees once every two months in terms of the notification dated 5th January, 2007. These Committees will faithfully carry out the task assigned to them and will ensure that post mortem reports are submitted well in time so that criminal cases pending in the courts are not delayed for want of post mortem reports.

11. We hope and expect the aforesaid State agencies to be pro-active in this

regard and to be in touch with various police stations of the States as well as with the officers and representatives of the District Health Departments and representatives of the District Magistrate to ensure that matters relating to pending post mortem examinations are not unduly delayed.

12. The District Superintendents of Police of all the Districts have already been instructed by a circular dated 7th June, 2010 to closely monitor the collection of post mortem reports. Our attention has been drawn to various clauses of the circular and we note from a perusal thereof that each Superintendent of Police is obliged to depute a Constable or Head Constable once a week to the Hospital concerned on a mutually agreed day for collection of pending post mortem reports. The Joint Director of Health Services is expected to designate a focal point at the Hospital concerned where the post mortem reports can be handed over to the Constable or Head Constable.

13. The Superintendent of Police of each District is also required to submit a monthly return of progress of the investigation in this regard and inform the Designated Committee headed by the District Magistrate if there is any lapse or delay in getting the post mortem reports and suggest steps to redress any difficulties that are faced or any problem that arises.

14. Some other circulars/instructions have been referred to in the affidavit, most notably two circulars dated 14th May, 2010.

15. The first such circular dated 14th May, 2010, requires the Medical Officers who perform a post mortem examination not to leave the District or Head Quarter on transfer without signing and submitting the post mortem report to the Superintendent of the concerned hospital. The Joint Director of Health Services and all other controlling officers will be held responsible for dereliction of duty if any doctor gets released in violation of that circular.

16. The second circular lays down the procedure for ensuring that the prescribed forms for submitting post mortem reports are always available.

17. We are glad to note that it appears from the various official communications (some of which have been referred to above) issued by the Government from time-to-time during the pendency of this writ petition that the State has eventually woken up to its duties and responsibilities in this regard.

18. Learned amicus curiae informs us that a total amount of Rs. 10 crore has been sanctioned for the modernization of morgues and purchase of equipments therein. We hope and expect that the amounts are utilized for the purpose for which they are meant.

19. Learned amicus curiae has suggested that the Department of Health and Family Welfare should ensure that a bi-monthly monitoring report is submitted in terms of the notification dated 5th January, 2007 and review reports are also submitted. He also suggests that the various guidelines and directions given on 7th June, 2010 and 14th May, 2010 should be strictly adhered to.

20. We fully endorse the suggestions made by the learned amicus curiae, more particularly because we find that he has been of great assistance to the Court in this matter from time-to-time. He has also visited the morgue buildings particularly the Gauhati Medical College Hospital and has taken sufficient pains in the matter.

21. The learned amicus curiae has also submitted that the separation of the investigation wing of the police from the law and order wing of the police in terms of the judgment of the Supreme Court in *Prakash Singh and Others Vs. Union of India (UOI) and Ors*, should be given meaningful effect to. This is, no doubt, necessary for effective and independent investigation and monitoring of criminal cases. We hope and trust that the State Government will abide by and implement the law laid down by the Supreme Court at the earliest.

22. In view of what we have noted, it is no longer necessary to keep this PIL pending. As already expressed, we hope and trust that the State will abide by the various commitments made in several affidavits filed from time-to-time.

23. For the assistance rendered by learned amicus curiae, we direct the State Government through the Secretary, Department of Health of the Government of Assam to remunerate him to the extent of Rs. 25,000 within a period of four weeks.

24. At this stage, learned Amicus Curiae graciously requests that the amount be deposited in the account of the Indian Law Institute, Assam Chapter.

25. The Secretary, Department of Health should now deposit the remuneration by way of a cheque in the account of the Indian Law Institute, Assam Chapter.

26. A copy of this order be given to the learned Additional Advocate General.