

(2025) 10 GAU CK 1129
In the Gauhati High Court
Case No : Crl.Pet. Of 263 Of 2022

Jakir Hussain And 12 Ors

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 13-10-2025

Acts Referred:

Citation : (2025) 10 GAU CK 1129

Hon'ble Judges : Anjan Moni Kalita, J

Bench : Single Bench

Advocate : L R Mazumder, A Z Ahmed, G N Sahewalla, M Sahewalla, T J Sahewalla, H K Sarma

Final Decision : Disposed Of

Judgement

Anjan Moni Kalita, J

1. Heard Mr. A Z Ahmed, learned counsel appearing on behalf of Mr. L R Mazumder, learned counsel for the petitioners. Also heard Mr. G N Sahewalla, learned Senior counsel appearing for the respondent No. 2.

2. The instant criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973, assailing the impugned order dated 11.11.2021 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in C.R. Case No. 46/2015, whereby the learned CJM, Cachar, Silchar rejected the prayer of the petitioners to allow them to participate in the aforesaid proceeding pending before the learned CJM, Cachar, Silchar.

3. It is submitted that the ONGC limited engaged 290 workers including the petitioners at Cachar Project, popularly known as the Cachar Forward Base, Silchar, Assam.

4. The Union of the Workers, i.e., ONGC Contractual Workers Union raised a dispute for regularization of the workers in the service of the ONGC way back from 1990. However, on failure of any conciliation, a dispute was referred by the

appropriate Government to the Central Industrial Tribunal, Guwahati for adjudication of the issue.

5. The Central Industrial Tribunal, Guwahati after registration of the reference as Reference Case No. 6(c) of 1990 passed the award dated 11.07.1994, whereby it was directed that the services of all the 290 contractual workers be regularized by the ONGC phase-wise, if not possible at a time, with pay and allowances as paid to the regular employees.

6. The aforesaid order dated 11.07.1994 was challenged by the ONGC before the Hon'ble Gauhati High Court in Civil Rule No. 3784/1994, wherein the Single Bench of the Hon'ble Gauhati High Court set aside the order dated 11.07.1994 vide its order dated 08.09.1998.

7. Against the aforesaid order dated 08.09.1998, the Contractual Workers Union preferred an appeal before the Hon'ble Division Bench of the Gauhati High Court, which after hearing the parties vide its judgment and order dated 24.12.1999 passed in Writ Appeal No. 269/1998 set aside the judgment and order dated 11.07.1994 passed by the learned Single Judge.

8. Though the ONGC management approached the Hon'ble Supreme Court against the order of the Hon'ble Division Bench of the Gauhati High Court, no effective order was passed by the Hon'ble Apex Court.

9. In view of the aforesaid facts and more specifically, in view of the award dated 11.07.1994 being not disturbed and attaining its finality, the workers approached the respondent No. 1, who is the competent authority under the Industrial Tribunal Act for necessary action.

10. The respondent No. 1, thereafter filed a fresh complaint before the learned CJM, Cachar, Silchar, which was registered as C.R. Case No. 46/2015.

11. It is submitted that the petitioners being affected parties though should have been made parties in the aforesaid C.R. Case No. 46/2015, were not made parties, and therefore, they preferred a petition before the learned CJM, Cachar, Silchar for allowing them to participate in the aforesaid proceedings. However, the aforesaid petition of the petitioners was rejected by the learned CJM, Cachar, Silchar vide its order dated 11.11.2021, which is challenged in the instant criminal petition.

12. Learned Senior Counsel appearing on behalf of the respondent No. 2 submits that a similar case being Criminal Petition No. 44/2022 was filed by two similarly situated petitioners before the Hon'ble Gauhati High Court and the aforesaid petition was disposed of by a Co-ordinate Bench of this Court vide its judgment and order dated 01.05.2025 and he submits that the instant criminal petition is squarely covered by the aforesaid judgment and order dated 01.05.2025.

13. This Court has given a careful perusal of the contents of the petition as well as the judgment and order dated 01.05.2025 passed in the aforesaid Criminal

Petition No. 44/2022.

14. Having found the facts and issues involved in both the petitions to be same, this Court is of the opinion that the instant criminal petition can be disposed of by following the judgment and order dated 01.05.2025 passed in the aforesaid Criminal Petition No. 44/2022.

15. However, it may be relevant to reproduce the relevant paragraphs of the aforesaid judgment and order dated 01.05.2025, which read as under –

“23. While considering the petition, it was observed in the order dated 11.11.2021 that there is no scope for the petitioners to be impleaded in this case at this stage.

24. It is submitted on behalf of the petitioners that they are not praying to be impleaded but they are praying to be represented by learned counsel to place their case and to examine witnesses on their behalf.

25. On the contrary, it is also submitted that it has been observed by the learned CJM that a final order has not been passed. It has been observed by the learned CJM that so far as the claim of the petitioners of their being victim is concerned, the case was not at the stage where the Court could ascertain that the petitioners are victims. It was observed that whether the petitioners are victims will be considered after the complainant adduces evidence in this case. The learned counsel for the Management has submitted that a negotiation has already been made with the petitioners and the demands of the petitioners have already been fulfilled.

26. It is apparent that an award is in favour of the petitioners which has not yet been implemented. So, it cannot be ignored that the petitioners are victims, moreso when a prosecution complaint was forwarded by the Labour Enforcement Officer against the Management.

27. Section 36 of the Act of 1947 reads :-

“[36. Representation of parties. (1) A workman who is a party to dispute shall be entitled to be represented in any proceeding under this Act by –

(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by –

- (a) an officer of an association of employers of which he is a member;
 - (b) an officer of a federation of association of employers to which the association referred to in clause (a) is affiliated;
 - (c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.
- (3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.
- (4) In any proceeding [before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be]].”

28. Section 24 (8) of CrPC reads :-

24(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. [Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-Section.]

29. It is true that both the petitioners have filed this petition in their personal capacities. They have not represented the workmen of ONGC, but at the same time they are the stakeholders or awardees of the award dated 11.07.1994 passed by the learned Industrial Tribunal, Guwahati in connection with Reference Case No. 6 (C)/1990. The prayer of the petitioners is not regarding their impleadment, as submitted by the respondents, but to participate in the criminal trial by assisting in the prosecution in CR Case No. 46 of 2015. It does not appear that the learned CJM has misconstrued the provisions under section 36 (3) of the Act of 1947 as the petition under Section 24(8) was not finally decided by the learned CJM in the order dated 11.11.2021.

30. It is true that as per Section 36 (3) of the Act of 1947, no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court. However, in any proceeding before a Labour Court, Tribunal or National Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties and with the leave of the Labour Court, Tribunal or National Tribunal.

31. Analogously, the Court of the learned CJM has taken into consideration the objection filed by the Management and leave was thus not granted for impleadment, and the prayer was kept in abeyance to be taken into consideration at a later stage after ascertaining whether the petitioners are

victims per-se. During argument, it has also surfaced that the petitioners have already joined the work force as regular employees.

32. It has also surfaced through the arguments of the learned counsel for the respondents that the petitioners are regular employees and are not representatives of the Contractual Workers' Union. As the prayer of the petitioners to assist the prosecution as victims under Section 24 (8) of CrPC has not been conclusively decided by the learned CJM vide order dated 11.11.2021, the order dated 11.11.2021 is modified. The learned CJM is directed to consider the petitioners' prayer as per Section 24 (8) of CrPC afresh without the condition to consider the matter after the complainant adduces evidence in this case."

16. In view of the aforesaid findings arrived at by the Hon'ble Co-ordinate Bench of this Court and the directions given in the aforesaid judgment and order, this Court is also of the opinion that similar directions should be given in the instant criminal petition also.

17. Accordingly, the impugned order dated 11.11.2021 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in C.R. Case No. 46/2015 is modified to the extent that the learned CJM, Cachar, Silchar shall consider the petitioners' prayer to participate in the proceeding of C.R. Case No. 46/2015 in terms of Section 24(8) of CrPC afresh, without any conditions.

18. In terms of the aforesaid observations, the instant criminal petition stands disposed of.