
(1998) 02 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 819 of 1998

K.S. Nath, District and Sessions Judge	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 23-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 235

Citation : (1998) 2 GLR 493

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : H. Roy, Amicus Curiea, for the Appellant; K.H. Chowdhury, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—This is an application under Article 226 of the Constitution of India seeking amongst others a writ in the nature of mandamus commanding the Respondents to start the work of residence of judicial officers of Hailakandi without any further delay in allotting the work.

2. The Government of Assam accorded administrative approval and financial sanction for construction of residential buildings for Assistant District Judge and Sessions Judge as well as construction of residential buildings of Chief Judicial Magistrates in the District Hailakandi in addition along with other districts of Assam. In spite of administrative approval and allotment of fund by the State Govt. to the High Court, the Respondents, more particularly the PWD authority did not proceed with the work in right earnest in the Hailakandi District causing inconvenience as well as serious loss to the State exchequer. The Petitioner accordingly presented this Writ Petition seeking the following relief:

... (a) Your Lordship may be pleased to admit this Petition, call for the records, issue rule calling upon the Respondents No. 1 to 7 to show cause as to why a Writ of Mandamus and/or Certiorari or/and any other appropriate Writ/Writs

should not be issued directing them immediately to start the work of the residences of the aforesaid judicial officers of Hailakandi without any further delay allotting the works to one hand for the reason stated in para No. 14 and 15, so that the construction of those quarters will save State Exchequer through Hon"ble High Court from recurring additional expenditure to the Rent Head for reimbursement of the rented/requisitioned quarters occupied by the judicial Officers at this station and when two other officers also can be accommodated in the existing quarters.

(b) The Respondents No. 1 to 7 may kindly be directed to compensate the loss for breach to trust already sustained allowing depreciation of the value of the allotted funds due to lapse of time and for escalation of price of the materials for non-construction of the quarters, and also the Govt. may be directed to allot further fund on requirement.

(c) The Respondent No. 8 may kindly be directed to hold an enquiry and to report why the allotted funds were deliberately not utilised for the purpose for which the same were sanctioned and how that funds were dealt with till date after drawal.

(d) If the proforma Respondent No. 10 disputed this petition he may be treated as a principal Respondent also directing to be accountable for the aforesaid laches.

(e) Appropriate action against the defaulting PWD authorities to be taken for breach of trust defying the direction of the Hon"ble High Court vide Annexure-XIV and XV on repeated requests of the Petitioner.

(f) In need, your Lordship may kindly direct the Govt. Advocate/Advocates of the Hon"ble High Court to conduct this case on behalf the Petitioner at the cost of the State Exchequer....

3. The Petition was presented by the District and Sessions Judge, Hailakandi. Objection was taken by the Stamp reporter of the High Court in entertaining of the Petition for want of Court fee. Instead of taking a technical approach on the matter, I on my own requested Mr. Hrishikesh Roy, Advocate of the High Court who is incidentally is also the Secretary of the High Court Bar was present in the Court to assist this Court as Amicus Curiea in behalf of the Petitioner. Mr. Roy, the learned Counsel accepted the request and accordingly the matter was ordered to be posted by order dated 23.2.98. A copy of the Writ petition was furnished by the registry to Mr. Roy the learned Counsel and Mr. K.H. Choudhury, the learned Addl. Sr. Govt. Advocate. The matter was accordingly taken up for consideration.

4. I have heard Mr. Hrishikesh Roy, the learned Amicus Curiea as well as Mr. K.H. Choudhury, the learned Addl. Sr. Govt. Advocate at length. Petitioner has taken the cause on behalf of the public mainly for monitoring the progress of construction. It is needless to state that the Judicial process has its own limitation. The system is trained and disciplined in the field of adjudication of

dispute rather than the affair of the Government to undertake the administration of the State. The task of administration of the country is entrusted to the executive authority by the Constitution of India which is the prime law of the country. The constitution and the law of land assigned as the judiciary the task of dispensation of justice in accordance with law and to uphold the Rule of law. The real task of a judge is dispensation of justice, justly fairly freely without being influenced by any prejudice and extraneous consideration. The subordinate judiciary is the hub in the administration of justice. The Indian legal system is product of history as its own independent tradition, developed and disciplined by the high tradition, culture and language and engaged in the quest for justice. In a democracy governed by rule of law the judiciary has a dominant role to play. With that view of the matter the makers of the constitution put greater emphasis on the independence of the judiciary. The Schemes of Chapter-VI of P-VI of the Constitution was introduced with that and in view. The control of subordinate judiciary is visited on the High Court exclusively and reposed the complete control over the subordinate judiciary. Article 235 therefore envisioned complete and exclusive control over the subordinate judiciary.

5. The matter involved in the Writ Petition pertains to the administrative side of the High Court It is always open to the Petitioner to invite the attention of the Administrative side of the High Court in respect of all genuine problems, instead of resorting to a Writ Petition like an ordinary litigants. The service of the Judicial officer cannot be perceived as a service in the sense of employment, the member of Judiciary exercises sovereign judicial function. It is an office of great public trust. A Judicial officer is thus entrusted with high responsibility in the field of dispensation of justice. The higher the responsibility the higher restrain one is to exercise. The function of a Judge is not only confined to justice delivery system but while functioning as such, the system must maintain its credibility and impartiality to instill the public confidence. Since the system basically depend on public trust and confidence the Judge is therefore required to conform to rigour standards and norm in its conducting itself. In this context the following observation of the Supreme Court reported in *C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Others*, is recalled:

Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct, Any conduct which tends to undermine public confidence in the integrity and impartiality of the Court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standard of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standard expected or a higher judicial functionary as wholesome standard of conduct which would generate public confidence accord dignity to the judicial office and enhance public image not only of the judge but the Court itself. It is therefore a basic requirement that a

Judge's official and personal conduct be free from impropriety; the same must be with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standards in the society....

6. The remedy lies on the self imposed discipline of judicial restraint. The other institution including the public at large can only demand but it is for the Court to exercise self restraint.

7. A proceeding under Article 226 is a proceeding involving assertion and enforcement of fundamental and legal rights of a person aggrieved. The right of the Petitioner affected by the impugned act or commissions of the Respondents the nature of the duties owed by the said Respondents are to be specifically pleaded. The right that can be enforced under the Article must relate to the personal rights of the Petitioner, The remedy provided by the Article can not be used for striking down certain actions of the Respondents on the ground that it is intended to effect the rights of some one else other than the Petitioner, The procedural technicalities no doubt relaxed today with a view to provide easy access to the justice to the weaker section of the community to combat injustice and exploitation and not otherwise. This is not the case here. The Petitioner does not have the locus to move the Writ Petition nor the judicial discipline and propriety warrants such a proceeding.

8. I have perused the entire materials on record accompanying the Writ Petition and on consideration of all aspects of the matter I do not find any merit in the Writ Petition and accordingly the same is dismissed. No costs.

9. Before parting with, I must express my appreciation to Sri Hrishikesh Roy, who acted as Amicus Curia and Mr. K.H. Choudhury the learned Addl. Sr. Govt. Advocate for rendering assistance to the Court.