
(1994) 09 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 151 of 1994

Prafulla Konwar and Others	Vs	APPELLANT
Dibrugarh Municipal Board and Others		RESPONDENT

Date of Decision : 17-09-1994

Acts Referred:

Citation : (1994) 09 GAU CK 0005

Hon'ble Judges : V.D. Gyani, J;B.N. Singh Neelam, J

Bench : Division Bench

Advocate : C. Baruah and P.J. Saikia, for the Appellant; D.P. Chaliha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Dutta Gyani, J.—This public interest litigation petition filed by the residents of Dibrugarh Town praying for a writ of mandamus, directing the Respondents to stop the marked run on both sides of B. C. Das Road, Dibrugarh from Mancotta Overbridge to Shantipara Railway Crossing Gate.

2. Petitioner's case is that B.C. Das Road has practically been converted into a Daily Market by fish and vegetable vendors locking both side of the road, throwing all garbage in the drains which goes on from dawn to dusk with the result that the drains have disappeared causing nuisance to the inhabitants of B.C. Das Road and adjoining areas. Recently this daily market was declared unauthorised by the Municipal Board. The holding of daily market leads to congestion, traffic blockades and pollution. The Petitioners approached various Authorities for redressal of their grievances as is evident from Annexures B and D. There used to be settlement of bazar on this road, so the inhabitants had approached this Court in Civil Rule No. 974 of 1993 wherein the following order was passed on 14.10.1993:

Considering the facts and circumstances of the case, it is ordered and directed that the period (1.4.1992 to 30.10.1992) mentioned in the letter dated

24.3.1993 of the Executive Officer, Dibrugarh Municipality, Dibrugarh shall not be extended and settlement of the bazar in question with Sri Manabendra Saikia from 1.11.1992 to 31.10.1993 is stayed until further orders.

3. The Petitioners have averred that with a view to circumvent the aforesaid order the Municipal Board has now developed a new practice of collecting tolls from pavement vegetable and fish vendors on the said road. The Municipal Board is presently under suspension and being administered by an Administrator appointed by the State Government.

4. We have heard Mr. C. Baruah, learned Counsel for the Petitioners and the learned Government Advocate for the Respondents. The public interest litigation is not a litigation of an adversarial character. This kind of litigation involves collective effort on the part of the State Government and its officers.

5. The Petitioners have filed a notice issued by the Executive Officer of the Municipal Board which is as follows:

NOTICE

This is to bring to the notice of the resident of Dibrugarh that some people are doing their business illegally by the side of B.C. Das Road (under the over bridge) and near the Paltan Bazar Road causing obstruction to the public movement and traffic disturbances.

Therefore, it is directed to close down their business immediately. Otherwise drastic actions will be taken against those businessman under the Municipal Act.

What is lacking is the will to enforce the law on the part of the Respondent authorities.

6. Vendors or Hawkers on footpaths and pavements of any road cannot claim any fundamental right to carry on their business of selling fish and vegetables in a public street converting into a market. It amounts to a public nuisance. The test is not whether sufficient alternative passage is left or available or there is no obstruction to public way. The test is whether it renders the way less commodious than before to the public? Apart from obstruction there is pollution and nuisance caused to the inhabitants of B.C. Das Road by throwing garbage in the drains.

7. A volume of case-law having bearing on the issue has come to develop covering a wide range of civil amenities. The case of shifting of graves in Gulam Abbas and Others Vs. State of U.P. and Others, , the Ganga water pollution by discharge of trade effluents by tanneries at Sajman Kanpur M.C. Mehta Vs. Union of India (UOI) and Others, , the ecological inbalance caused by stone quarry operation in J.B. Chopra and Others Vs. Union of India (UOI) and Others, , are but a few cases where the Supreme Court has issued directions to local bodies and administrative authorities to ensure public health and hygienic and civil amenities.

8. The Supreme Court while dealing with use of road has held that preliminary object of leading road is to facilitate people to travel from one place to another, even a travelled can not create unreasonable obstruction which may cause inconvenience to others. Nor he is permitted to make excessive use of a road to the prejudice of others Sheonandan Paswan v. New Delhi Municipal Committee AIR 1989 SC 1988. In case of pavement hawkers, they cannot be permitted too spread on empty road in the city. Various circumstances suggests width of the road, location hospital or other necessary public amenities, amount of traffic etc. are important factors to be taken into consideration. See Bombay Hawkers' Union and Others Vs. Bombay Municipal Corporation and Others, .

9. The learned Government Advocate, it may be noted that, had taken a very fair stand, but this fairness needs to be transformed into action by making the road free from encroachers and saved from being converted into a market by vegetable and fish vendors - the sooner it is done, the better. However, considering the nature of the problem, we think it proper to grant three months' time to the Respondents to carry the following directions: (a) Respondent Municipal Board shall remove all encroachment and structures over B.C. Das Road from Mancotta Over Bridge to Shantipara Railway Crossing Gate and shall keep the road clean and (b) The Respondents shall frame a comprehensive scheme regarding street trading in the Dibrugarh Town so as to rehabilitate the vegetable and fish vendors at present carrying on business at the above place; and (c) Pass appropriate order prohibiting selling of vegetable and fish on the B.C. Das Road, Dibrugarh.

The petition is allowed, we make no order as to cost.