
(2016) 08 GAU CK 0055
In the Gauhati High Court
Case No : PIL No. 53 of 2014

Shri. Jayanta Duarah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Citation : (2016) 6 GauLJ 225 : (2016) 6 GauLR 233 : (2017) 1 GauLT 134

Hon'ble Judges : Hrishikesh Roy and Paron Kumar Phukan, JJ.

Bench : Division Bench

Advocate : Mr. R.K. Dev Choudhury, Advocate, for the Respondent Nos. 7 and 8; Mr. D.K. Bagchi, Advocate, for the Petitioner; Mr. R.K. Bora, Govt. Advocate, for the Respondent Nos. 1 to 6

Final Decision : Disposed Off

Judgement

Paron Kumar Phukan, J. - The petitioner, being aggrieved by the decision of the respondent authorities to construct a crematorium in the vicinity of the thirty bedded hospital and a Muga Substation at Ward No. 1 Sarupathar Town, has presented this petition, as a Public Interest Litigation, seeking intervention of this Court in the matter.

2. The pleaded case of the petitioner, sans unnecessary details, is that the dispute arose when some members of respondent No. 8, No. 1 Padumoni Cremation Ground Development Committee tried to take forceful possession over 1 bigha of land covered by Dag No.254 and 281 situated at village No. 1 Padumoni. Due to protest lodged by him and some other local residents before respondent No. 5, the Sub-Divisional Officer (Civil), Dhansiri, Sarupathar, the construction of the cremation ground was stopped and the pillars erected by the miscreants were removed. Thereafter also some miscreants tried to take forceful possession of the land for setting up of the cremation ground which even led to filing of FIR before police, after which only the activities came to a halt. The matter subsided for a long time after rejection of the proposal for construction of the crematorium ground by Respondent No. 6, President, Land Advisory

Committee and asking the Circle Officer to find out some other plot of land.

3. In the early part of 2014 the respondent No. 5, 6 and 7 with the local MLA laid the foundation stone of the cremation ground, fund for which was allotted by the 4th Finance Commission. The Director, Sericulture Department, Government of Assam, on being informed by the Superintendent, Sericulture, Golaghat urged the respondent No. 5 not to construct the cremation ground over that plot of land on the ground that the Muga farm situated near the land would be affected. The Sub-Divisional Medical and Health Officer, Sarupathar, Golaghat, also issued a certificate to the effect that construction of the cremation ground in that area would be hazardous to the health of the patients in the hospital. The Principal of the Don Bosco High School, Sarupathar also raised objection on the ground that the students of the school situated near the land would suffer.

4. The pleaded case of the petitioner further is that a PIL filed before this High Court by some other persons was subsequently withdrawn and while disposing of the petition the High Court observed that if any other person takes recourse to prosecute the cause, the same shall be examined. Thereafter, the petitioner filed a Public Interest Litigation being PIL No. 32/2014 but the same was disposed of on 16.05.2014 by this Court giving liberty to him to file appropriate representation before the local authorities and accordingly, he filed the representation, but, having failed to get any response, he has filed the present petition before this Court.

5. According to the petitioner the construction works of the crematorium are in progress and the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department has already issued a letter to the respondent No. 4 conveying the order of the Governor of Assam allotting the said plot of land for construction of the cremation ground.

6. The petitioner, through this petition, has mainly raised the issue of health hazards to the patients of the thirty bedded hospital and destruction of the "Nuni plantations" of the Muga farm due to the construction of the cremation ground in that area. He also pleaded that the smoke and foul smell emitted during the burning of corpses would not only pose health hazards to the patients and damage the Muga farm but also the students of the Don Bosco School situated nearby would suffer and the pollutants like carbon-dioxide, carbon-monoxide, carbon particles and the smoke would seriously affect their health.

7. In controversion, the respondents pleaded through their affidavits that the cremation ground has been constructed at a distance of 120 metres from the hospital and the school and clearance has been obtained from the Sub-Divisional Medical and Health Officer for construction of the same. There was no likelihood of any health hazards to the patients and the students and appropriate measures would be taken to minimise air pollution. It is further pleaded that there is no "Nuni plantations" in that area except the Muga Sub-Station. The locus standi of the petitioner to file the petition as a Public Interest Litigation has also been

challenged.

8. Heard Mr. D.K. Bagchi, learned counsel for the petitioner and Mr. R.K. Bora, learned Govt. Advocate appearing for respondent No. 1 to 6 and also heard Mr. R.K. Dev. Choudhury, learned Advocate appearing for respondent No. 7 & 8.

9. Mr. Bagchi, learned counsel for the petitioner raised dispute regarding genuineness of the certificate dated 7.7.2014 (Annexure - 10) purportedly issued by Dr. J.L. Gam Sub Divisional Medical and Health Officer, Sarupathar, B.P.H.C. Golaghat relying on which the Chairperson, Sarupathar Town Committee passed the order dated 6.8.2014 directing continuance of the construction of the crematorium. It is submitted by Mr. Bagchi that the concerned Dr. J.L. Gam disowned the certificate, Annexure 10 and denied having issued the same and he even filed FIR before police alleging commission of forgery.

10. The petitioner in his rejoinder affidavit alleged that on the basis of a petition filed by him under the Right to Information Act, he has gathered information that no such letter (Annexure - 10) was issued from the office of the Sub-Divisional Medical and Health Officer and to fortify his plea he has produced the certified copies of the pages of the issue register covering the month of July, 2014 which does not disclose issuance of any letter dated 7.7.2014 written by Dr. J.L. Gam and it was sought to be projected by the petitioner that on the basis of the forged and fabricated letter, decision has been taken by the Chairperson Sarupathar Town Committee to continue with the construction of the crematorium. The petitioner also filed a complaint dated 12.5.2016 before the Hon'ble Chief Justice of this Court alleging that the Executive Officer, Sarupathar Town Committee with his affidavit filed the certificate, Annexure 10, which is a forged document and it was intentionally done to mislead this Court.

11. In pursuance to the orders passed by this Court, the learned Government Advocate not only produced the certified copy of the statement of Dr. J.L. Gam recorded under Section 164, Cr.P.C. in the police case filed by him, but also the affidavits of the Deputy Superintendent of Police, Golaghat to project that, the letter, Annexure 10, was in fact issued by Dr. J. L. Gam.

12. From the statement recorded u/s 164 Cr.P.C. it appears that Dr. J.L. Gam, in fact, issued the letter dated 7.7.2014 (Annexure- 10) while he was functioning as S.D.M.O. & H.O. at Sarupathar PHC. His statement further reveals that although he initially raised objection for construction of a crematorium near the hospital but, subsequently, on physical verification he found that the construction of the crematorium in that area would not cause any harm to the patients of the hospital and he intimated the same to the Sarupathar Town Committee vide Annexure 10. The Deputy Superintendent of Police, Golaghat also filed an affidavit stating that on the basis of the FIR lodged by Dr. J.L. Gam, Sarupathar P.S. Case No. 19/2015 under Sections 420/468 IPC was registered and during investigation it was found that the Sub-Divisional Medical and Health Officer, Dr. J.L. Gam issued the letter dated 7.7.2014 and he admitted his signature and

seal. During investigation Dr. Gam disclosed before the Investigating Officer that the Xerox copy of the letter was shown to him by the petitioner and he did not notice his signature and seal clearly and due to this reason he lodged the FIR.

13. Mr. Bora, learned Government Advocate submits that the affidavit of the Deputy Superintendent of Police, Golaghat coupled with the statement of the informant recorded u/s 164 Cr.P.C. by the Magistrate settles the issue that the letter Annexure 10 was, in fact, written by the informant Dr. J.L. Gam himself and he must have lodged the FIR as he did not notice his signature in the photocopy of the letter. Mr. Bora submits that Dr. Gam must have been pressurised by the petitioner to file the FIR before police. It is also submitted that report in final form has been submitted in the case by the Investigating Officer.

14. In view of the above facts and circumstances and more particularly, the statement of Dr. Gam recorded u/s 164 CrPC, we do not find any force in the contention of the petitioner that the Executive Officer of the Sarupathar Town Committee resorted to forgery by fabricating Annexure 10 letter to mislead this Court.

15. The next contention of Mr. Bagchi is that in due compliance to the order of this Court dated 16.5.2014 passed in PIL No. 32/2014 filed by the petitioner, he filed representation before the Chairperson, Sarupathar Town Committee but the same has not yet been disposed of. But the record reveals that vide order dated 6.8.2014 the Chairperson of the Town Committee disposed of the representation filed by the petitioner, dated 28.5.2014, holding, on the basis of the report of the Sub-Divisional Medical and Health Officer dated 7.7.2014, that there was no health hazard in setting up of the cremation ground over the proposed land and Section 252 of the Assam Municipal Act, 1956 is not applicable in this case. It was decided to continue the construction work of the cremation ground over the existing plot of land. The said order reveals that the copy of the same was forwarded to the petitioner for information which negates the plea of the petitioner that his representation has not been disposed of.

16. Advancing further, Mr. Bagchi argued that the construction of the crematorium in that area would not only pose health hazards to the patients of the hospital but also cause damage to the plantations of the Muga farm and apart from that, the students of the Don Bosco School would also suffer. Per contra, Mr. Bora, learned Government Advocate submits that the petitioner has no locus standi to represent the Health Department, the Sericulture Department or the Don Bosco School and if they had any problem they could have taken up the matter with the Government of Assam and their inaction in the matter itself shows that they are not going to be affected for construction of the crematorium in that area. Moreover, the crematorium is constructed at a distance of 120 metres from the hospital and Don Bosco School and apart from the Muga Sub-Station there is no plantation of the Sericulture Department. The respondent authorities decided to construct the crematorium in that area on public demand

after duly considering the genuine concern of the persons residing in that area. The respondent authorities are ready and willing to take all measures to protect the environment from the pollutants emitted during the burning of corpses. The learned counsel for the respondent Nos. 7 and 8 also submits that all measures will be taken to protect the environment from the pollutants.

17. Setting up of a cremation ground is an inevitable necessity and is not per se illegal. To our knowledge no emission standard has been fixed by the Pollution Control Board for setting up of a crematorium in a particular area. The authorities concerned decided to construct the cremation ground in that area for public convenience after duly considering the certificate issued by the Sub-Divisional Medical and Health Officer, Sarupathar, Golaghat who physically verified the spot himself and certified that the cremation ground may be set up in that area taking utmost care to prevent air pollution which might cause health hazards. The respondents authorities have assured that they would take all possible measures to minimise air pollution. Mr. Bora, learned Government Advocate submits that already the cremation ground has been constructed and people have started cremating dead bodies in the crematorium.

18. Having regard to the submissions advanced by the learned counsel for both the parties and also considering the facts and circumstances and the materials placed before this Court, we feel that it would be just and expedient to dispose of this writ petition directing the respondents to take all such steps as are feasible for reducing emission of polluting substances during the burning of the corpses and they may even take the help of the Pollution Control Board of Government of Assam for that purpose. We also direct the respondent authorities to maintain proper hygienic condition and cleanliness surrounding the area of the cremation ground and ensure quick disposal of the solid waste.

19. The petition is disposed of accordingly.