

(1994) 03 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 3241/93

Sri Achinta Mili and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Gauhati High Court Services (Appointment, Conditions of Service and Conduct) Rules,
1967 — Rule 1

Citation : AIR 1995 Guw 1

Hon'ble Judges : J.N. Sharma, J;D.N. Baruah, J

Bench : Division Bench

Advocate : S.N. Medhi, R. Chakraborty, M. Das and A. Choudhury, for the Appellant;

Judgement

Sarma, J.—This matter has been listed before the Division Bench in view of the order dt. 21-2-94 passed by a single Judge of this court. The order dt. 21-2-94 reads as follows:

"Mr. S. N. Medhi, learned counsel for the petitioners submits that under Chapter-VA Rule 1 of the Gauhati High Court Rules all the petitioners need not pay separate court-fee if the relief sought for is identical. In view of the circular circulated by the Registry I propose to refer the matter before a Division Bench. Accordingly, the matter is placed before the Hon"ble Chief Justice for necessary order".

2. Under the Court-fee (Amendment) Act, 1972, Schedule II, I(e) provides as follows:

(e) When presented to a High Court (11) under Article 226 of the Constitution of India = Rs. 50.00

3. It is established principle of law that the Court-fee is a fiscal matter and like all other tax matters it must be interpreted strictly. Court-fee is also intended not to

arm a litigant with a weapon of technicality but to secure revenue to the State.

4. Chapter V-A of the Gauhati High Court Rules provides for governing applications directions, orders or writs (other than in the nature of habeas corpus) under Article 226 of the Constitution of India. Rule 1 provides as follows:

"An application for a direction or order or writ under Article 226 of the Constitution of India, other than writ or habeas corpus, shall be drawn up in the form contained in the schedule to this Chapter and shall be accompanied by an affidavit.

Separate application should be filed for each individual where interests are not identical even if there is one common order covering several cases and the facts of each case should be separately supported by affidavit."

5. In 1992 by a notification another paragraph was added which reads like this :

"Provided that more than one such individual can jointly file a single writ petition on each of them paying court-fee payable on such application"

6. In the instant case, this application has been filed by 23 persons but only Rs. 50/- has been paid as court-fee. The question which arises is whether in pursuance of the Rules added in 1992, the petitioners are liable to pay court-fee. The proviso gives rights to more than one individual to file a joint single petition but it is further stated that each of them is to pay court-fee payable on such application.

7. We have heard Shri S. N. Medhi, learned Advocate for the petitioners. None appeared for the respondents.

8. Shri Medhi submitted that there is a decision by one of us (Sarma, J.) holding that in such a petition, payment of single court-fee of Rs. 50/- itself is sufficient. This judgment was not placed before us. But be that as it may, on consideration of the Rule as enacted, it is crystal clear that the Rule gives the power to more than one individual to file a single writ petition but each of them must pay the court-fee payable on such application. So, payment of Rs. 50/- only shall not be sufficient. Language of the Rule is clear and the, proviso which was added must be given its due importance. If it is held that the persons are to pay only Rs. 50/- then the other part of the Rule "each of them paying court-fee payable on such application" shall be otiose one and it will be absolutely a redundant one. That sort of interpretation certainly cannot be given to this Rule.

9. In that view of the matter, we are of the opinion that by virtue of the amended rule each of the petitioners is bound to pay Rs. 50/- each even though they may have the right to join to file a single petition. Therefore, it is held that the report of the stamp reported that in this petition deficit court-fee of Rs. 1,100/- is to be paid is correct.

10. This disposes of the matter referred by the single Judge.

11. The matter shall now go back to the single Judge who shall decide the matter in accordance with law after payment of the deficit court-fee.