Kanti Ram Moran and Others Vs Union of India (UOI) and Others

None

Court: Gauhati High Court

Date of Decision: Feb. 24, 2009

Acts Referred:

Constitution of India, 1950 â€” Article 21, 226

Citation: (2009) 4 GLR 755

Hon'ble Judges: Jasti Chelameswar, C.J; A.C. Upadhyay, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

A.C. Upadhyay, J.

This is an application under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus.

The prayer of the petitioner reads as follows : ?

Under the premises aforesaid it is, therefore, prayed that your Lordship may be pleased to admit this petition, call for the records, issue rule calling

upon the respondents to show cause as to why the writ in the nature of mandamus or any other appropriate writ, order or direction should not be

issued directing the respondents to ensure that the petitioners are not unnecessarily harassed by Army personnel and other miscreants and after

hearing the parties the cause''s as being shown if any be pleased to make rule absolute and also may be pleased to pass such other order/orders as

your Lordship may deem fit and proper.

2. Heard Ms. S. Dutta Learned Counsel for the petitioners and Ms. B. Goyal, learned G.A. Assam.

3. The petitioners alleged that a few persons, who have joined together with the Army personnel, introduced themselves as SULFA and they have

been giving harassment for a period almost six months and threatening the petitioners to implicate false accusations against them. It is also alleged by the petitioners that the miscreants under the banner of SULFA came every alternate two weeks and threatened the petitioners and their family

with dire consequences if cash amount demanded by them was not paid. The petitioners further stated that those SULFA miscreants also stalked

at the residence of the petitioner at night in drunken state and tortured them mentally and abused them with filthy words. The petitioners were also

threatened not to lodge any complaint in the police station. Even though a memorandum was submitted before the Chief Minister through the

Deputy Commissioner, Tinsukia by the All Assam Moran Students'' Union on 18.2.2008, however, that did not yield any fruit.

4. In response to the petition filed by the petitioners, the respondents, Deputy Commissioner, Tinsukia, Superintendent of Police, Tinsukia and

Commandant, Jammu Kashmir Rifles, filed affidavit in-opposition denying the facts allened The Dy. Commissioner, Tinsukia, in his affidavit stated

that he did not receive any report regarding the allegations made by the writ petitioners in the writ petition. He, further, stated that the allegations

and statements made in the writ petition, are vague and sweeping which is devoid of allegations involvement of any specific individual in the

incident, which left him clueless to verify the allegations made by the writ petitioners. It was submitted by the Learned Counsel for the respondents

that in the event of receipt of a report regarding such incident, all necessary enquiries/investigations would be made and necessary protection would

also be given to the petitioners under the law. Similarly, the Superintendent of Police, Tinsukia also stated that he had no information regarding the

alleged incident narrated by the petitioners in the writ petition. He, however, assured that in the event of receiving any report regarding such

incident, enquiry will definitely be made and necessary protection would be extended to the petitioners.

In reply to the above affidavit, the petitioners submitted affidavit in reply before this Court.

5. The affidavit submitted on behalf of the Union of India and the Commandant, Jammu Kashmir Rifles stated that the statements made by the

petitioners are misconceived and untenable in law. In response to a pointed query made by this Court to the Learned Counsel for the petitioners as

to whether any report of harassment and torture was made before the police or any authority concerned by the petitioners. In reply to the inquiry,

the Learned Counsel drew our attention to a memorandum addressed to the Chief Minister submitted by All Assam Moran Students'' Union

representing the incident before the Chief Minister at Annexure-2, filed together with the writ petition. The context of the memorandum at

Annexure-2, reads as follows:

Sir,

Dated 18.2.2008

Accept congratulations.

All Assam Moran Students'' Union is seeking for a political and peaceful disposal of the whole conflicts of Assam India. In Assam today the innocent people have died and have to go to jail custody besides doing ultimate harassment to them.

There has been doing ultimate harassment upon the innocent people of various regions of Tinsukia specially in the region of Talap Kordoiguri for

several days by the Army and a part of SULFA.

So, today the All Assam Moran Students'' Union accept the functioning of ""Dharna"" along with demanding to take necessary steps for establishing

peaceness in the aforesaid regions.

Otherwise if occurs population explosion in protesting to it the Union of public would have no responsibility.

Sincerely.

Sd/- Sd/

Sri Dipen Moran Sri Arunjyoti Chutia

President General Secretary

Assam Moran Sabha All Assam Moran Students'' Union

Sd/- Sd/-

Smt. Suntara Bora Moran Sri Nava Kumar Moran

President Vice President

Moran Jatiya Mahila Parishad All Assam Moran Students''

Union.

Smt. Depanjali Kakioti

Gen. Secretary

Moran Jatiya Mahila Parishad.

6. On careful perusal of the aforesaid memorandum, we are unable to find any prima facie materials, which discloses a case of harassment to the

petitioners by SULFA activist as stated in the writ petition.

7. Hon''ble the Supreme Court in Common Cause, A Registered Society Vs. Union of India and Others, categorically stressed the need to

ascertain that a prima facie offence is made out before a court resolves to order an investigation by the police into the matter. Hon''ble Supreme

Court has prohibited the courts from issuing directions to the investigating agency to enquire as to whether any person has committed an offence or

not , as it would be violative of Article 21 of Constitution.

8. On careful perusal of the materials on record and conjoint reading of the statements made by the writ petitioners as well as the affidavit in-

opposition submitted by the respondents together with the documents annexed with the writ petition, no prima facie case is made out to enable this

Court to exercise its jurisdiction to issue a direction to the State respondents or any other authority concerned on this matter as prayed for.

Consequently, we have no hesitation to hold that the writ petition is devoid of merit and it is liable to be dismissed, which we accordingly do so.

9. The writ petition stands dismissed. No order as to costs.

Before parting with the record, we consider it appropriate to say that the petitioner would be well advised if he decides to submit appropriate

application to the Superintendent of Police at Tinsukia by precisely narrating the specific allegations, if any, against any individual or authority.