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**(1991) 08 GAU CK 0004**

**Gauhati High Court**

**Case No:** Civil Rule No. 735 of 1989

Dr. (Miss) E. Sharma

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

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**Date of Decision:** Aug. 27, 1991

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** AIR 1992 Guw 58

**Hon'ble Judges:** S. Haque, J; J.M. Srivastava, J

**Bench:** Division Bench

**Advocate:** V.K. Dewan, C. Choudhury, A.K. Sharma, R.P. Sarma and V. Deka, for the Appellant; D.K. Bhattacharyya, Government Advocate, S. Ali, D.K. Das and B.M. Choudhury, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Srivastava, J.

This petition under Article 226 of the Constitution of India, stated to be in public interest, seeks, seizure of all Books of accounts of the Assam State Branch of Red Cross Society, direction to Respondents No. 3 and 4 to open up for new membership, direction to Respondent No. 4 to call Annual General Meeting forthwith and to appoint committee to enquire into all acts of the Red Cross Society for last seven years and thereafter take appropriate action. The Respondent No. 3 is the Indian Red Cross Society Assam State Branch hereinafter referred as the "Society", and the Respondent No. 4 is its Honorary Secretary.

2. The petitioner obtained M.B.B.S. degree in the year 1975 and started private practice at Guwahati. The petitioner attended M/s. Borthakur Nursing Home and in the year 1982 went to America for about a year. On return the petitioner again started private practice at Guwahati and was attached with M/s. East End Nursing Home. She later joined the Christian Medical College Hospital, Vellore and remained

there up to 1987. In the first part of 1988, the petitioner was appointed in the Red Cross Hospital at Chandmari. The petitioner resigned the post on 12-5-1989. This petition was filed on 23-5-1989.

3. Shri V.K. Dewan, learned counsel for the petitioner has submitted that this petition has been filed in public interest for the reasons mainly that no Annual General Meeting of the Respondent No. 3 has been held for the last ten years, that the resources of the Society have been misused and utilized for extraneous purposes, that two floors of the newly constructed building of the Red Cross Hospital at Uxanbazar had been let out to make profit ignoring the need for providing more accommodation in hospital, that some persons had held office of the Society for a number of years even though it was provided that no office bearer shall remain for more than three years, that the respondent No. 4 misused vehicles of the Society, that trainee nurses had been sent on Special night duty for extraneous consideration, that there was lack of care of patients in the hospital, and the medicines used were sub-standard, that the Red Cross Hospital had become an abortion centre, that its Finance Committee had not met for the last four years, that there was total mismanagement in the institution and only a handful of persons had been controlling the institution for their own benefits, that there had been serious allegations in the year 1982 by two Trainee nurses against the respondent No. 4 as contained in letter to a Newspaper Editor Annexure R4 with the rejoinder affidavit and that there was newspaper report in the Assamese newspaper "Boodhbar" dated 19-7-1989 (copy at Annexure-R7) and a petition by some persons to the Governor of Assam (Annexure R6).

4. The petitioner amended the petition incorporating some new facts and filed rejoinder affidavit. An Additional affidavit was also filed by the petitioner. The respondents have also filed counter-affidavits.

5. Shri V.K. Dewan, learned counsel for the petitioner has contended that the petitioner has no personal interest and this petition has been moved in public interest for the management of the Society and its hospital were in such deplorable state that immediate intervention by this Court was required.

6. The respondents No. 3 and 4 in their counter-affidavits have refuted the allegations. It has been stated that no General Body Meeting was held because it was earlier decided to hold meeting after the rules were amended and finalised, but the rules could not so far be finalised and hence the meeting could not be held that in any case, the General Body Meeting is shortly going to be held. The Red Cross Hospital was being run properly and there was no mismanagement as alleged. The new Red Cross Hospital building had been constructed also by taking loan and two floors of the said building had been let out to AMTRON (An Assam Govt. undertaking) and later to NEEPCO (a Central Govt. public sector undertaking), with a view to have resources to repay the loan taken for construction of the building. There was no misuse of vehicle. The trainee nurses had been sent on Special Night

Duty on three occasions of which details were furnished and it was stated that it was in accordance with the earlier decision taken by the management. The patients were duly looked after. It was stated that no expired medicines were distributed among the patients. It was refuted that any substandard medicines were used. It was wrong to say that the Red Cross Hospital had become an abortion centre.

7. Shri D.K. Bhattacharya, learned counsel for the respondents has submitted that the allegations made by the petitioner were motivated because she wanted to become a life member of the Society and that her own conduct while in service in the hospital for about a year had been a subject of enquiry by a committee which had been set up by the Management and that there was dissatisfaction with her performance and conduct and that this was not a public interest litigation. It has also been submitted on behalf of the respondents that under Rule 25 of the Rules adopted by the Indian Red Cross Society Assam State Branch hereinafter referred as the "Rules", the President of the State Branch was the Supreme authority to take any action he may consider necessary to meet the situation, and that the President of the Society is the Governor of Assam. Shri Bhattacharyya has therefore submitted that more effective alternative remedy being available, this petition should not be entertained. Shri Bhattacharyya has also contended that the Red Cross Hospital in respect of which the allegations have been made is run by the Guwahati District Branch of the Society, but it has not been made party. In support it was pointed out that the petitioner was appointed in the hospital vide Annexure 1 with the counter-affidavit by the Guwahati District Branch of the Indian Red Cross Society.

8. The learned counsel for the petitioner has referred to *Fertilizer Corporation Kamagar Union v. Union of India* AIR 1981 SC 344: (1980 Lab IC 1367) where it was held that in an appropriate case it may become necessary in the changing awareness of legal right and social obligation to take a broader view of the question of locus to initiate a proceeding be it under Article 226 or Article 32 of the Constitution. It was further held :

"When a citizen belong to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, a writ petition by such a citizen would have been permissible under Article 226 of the Constitution. Public interest litigation is part of the process of participate justice and "standing" in civil litigation of the pattern must have liberal reception at the judicial door-steps."

[Bihar Legal Support Society Vs. Chief Justice of India and Another](#), was also referred but the observations therein were with reference to treatment being given to weaker sections the poor and the dis-advantaged by the Supreme Court.

[Pt. Parmanand Katara Vs. Union of India \(UOI\) and Others](#), where a petition was filed for direction that every injured citizen brought for treatment should be given medical aid to preserve life and thereafter the procedural criminal law should be

allowed to operate . There could be no doubt that it was a public interest petition.

[R.R. Delavai Vs. The Indian Overseas Bank and Others](#), where public interest petition was filed in regard to huge loss of Rs. 200 crores to the bank and to the nation allegedly caused by the failure of high officials of the bank in their duty.

9. The learned counsel for the petitioner also referred to [State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd.](#), in support of the contention that existence of alternative remedy does not necessarily bar the courts jurisdiction under Article 226 of the Constitution.

10. Shri D.K. Bhattacharyya, learned counsel for the respondents cited, [Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others](#), where it was observed that frivolous litigation in the name of public interest litigation by public having vested interest should not be entertained. In para 61 at page 1136 it was observed:

"It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provision for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

Shri Bhattacharyya also cited [M.C. Mehta and another Vs. Union of India and others](#), and [Chhetriya Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others](#), where in para 8 it was observed -

"Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by this Court. This would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights".

[Prakash Roadlines \(Pvt.\) Ltd. Vs. Union of India \(UOI\) and Another](#), was cited in support of the contention that where alternative remedy was available and facts were in dispute High Court should not exercise its jurisdiction under Article 226.

11. We have heard the learned counsel for the parties at length at the admission stage, considered their submissions, the materials on record, and the authorities referred above.

12. The President of the Indian Red Cross Society, Assam State Branch is the Governor of Assam and the respondents have furnished the names of non-official persons who were associated with the Society since 1983-84, Annexure-7 with the counter-affidavit, which shows that eminent persons from Guwahati had been associated with the Society.

13. While it is not disputed that no General Body Meeting had been held, the reason given by the respondents in para 11 of the counter-affidavit was that the last General meeting had decided to amend the rules and until the new rules were made the Managing Body should continue, The rules could not be framed due to necessary consultation with the Red Cross, New Delhi. It has been stated at the Bar that since it has taken quite sometime, it has now been decided to hold a General Body Meeting. The version given by the respondents appears to be quite reasonable and the aforesaid ground by itself without anything more in our opinion, should not be considered sufficient for taking action as has been urged on behalf of the petitioner.

14. The respondents version why the two floors of the newly constructed building of the Red Cross Hospital at Uzanbazar had been let out is also quite sensible. While it may be that hospital building should be utilised for the purpose of the hospital yet, it was also important that the hospital needed resources to repay the loan which had been taken to construct the building. Besides, it may be noted that the said space had been let out to two Govt. Corporations. We, therefore think there was no impropriety committed in letting out the two floors of the building.

15. The allegation that some persons should not continue for more than three years on which the learned counsel for the petitioner laid considerable emphasis by itself is not quite sufficient material as may justify intervention by this court.

16. In so far as the allegation regarding Trainee nurses having been sent on Special High Duty the respondents have furnished necessary details in para 13 of the counter-affidavit how, why and to whom the aforesaid facility was provided which appears to us to be quite reasonable, in that the trainee nurses had been sent to lookafter old perons who needed assistance for the period the help was provided on two occasions in the Gauhati Medical College Hospital. Dr. P.C. Sarma who was In charge of the Red Cross Hospttl at Chandmari had written about it to the Director, Health Services, Assam who is respondent No. 5 in this petition. The Director, Health Services had written to the respondent No. 4 on 8-3-1989 Annexure-H with the

petition that the trainee nurses should not be so sent. The matter was taken up by the Respondent No. 4 with the Director, Health Services and explained the matter in her letter dated 7-7-1989 (Annexure-V) with the counter-affidavit. In any case, the learned counsel for the petitioner stated that after the Director Health Services had so directed no trainee nurse was sent on such duty. Accordingly, we think that there should not be cause for any more grievance on that score.

17. As regards the allegation of misuse of vehicle, the respondent No. 4 has explained that she has been authorised to use the vehicle. Considering that the Respondent No. 4 is the Secretary of the Society in honorary capacity considering her status it appears reasonable that she has been authorised to use the vehicle. The other allegations in that regard are in general terms and are vague.

18. In regard to the allegation that the Finance Committee had not met, the respondents have specifically asserted that the finance of the Society have been duly maintained. There is no specific allegation of any misuse of fund etc. and consequently this allegation too in our opinion would not justify intervention by this court.

19. The allegations contained in letter to a newspaper by two trainee nurses at Annex. R4 with the rejoinder affidavit, pertains to the year 1982, the allegation has been refuted by the respondent No. 4 in her additional affidavit. It has been denied that the aforesaid two persons were trainee nurses in the hospital. In any case, mere allegations relating to the year 1982 in our opinion would not justify any action on its basis. The allegations in Assamese newspaper "Boodhbar" dated 19-7-89 at Annexure R-7 which was filed along with the rejoinder affidavit are also such as may be looked into by the appropriate authority of the Society itself under Rule 25 of the rules. The other allegations regarding lack of care, substandard medicine, total mismanagement in the institution, all have been refuted by the respondents and in our opinion are just allegations, which the appropriate authority should be approached for action as may be found necessary.

20. Shri D.K. Bhattacharyya, learned counsel for the respondents at the time of hearing produced before us corresponds to show that the Managing body presided by the Governor of Assam had met recently. It was submitted that the Managing Body exercises effective control over the affairs of the Society. We are unable to accept the submission made on behalf of the petitioner that there is total mismanagement in the Society and its hospital.

21. It may be noted that a Special Committee had been constituted to look into the affairs of the hospital. The Committee in its report at Annexure 3 with the counter-affidavit fairly observed that there was some discontentment and there was scope for improvement in the affairs of the hospital which in our opinion is quite natural in any organisation. The committee made certain observations at a few places at page 5 para 4; page 6 para 6, in regard to conduct of the petitioner herself.

This committee submitted its report in March 89. This report clearly indicates that the respondent Society was alive to the need for having a critical look of the affairs of the hospital and to take steps to improve the institution.

22. Shri V.K. Dewan, learned counsel for the petitioner has submitted that this report of the Special Committee was in eye-wash and of no significance. We are unable to accept the submission. It further appears to us that this report supports the respondents' contention that the petitioner's own conduct had attracted adverse notice and comments. It may be noted that the petitioner had thereafter resigned and later filed this petition.

23. On careful consideration of the matter, we are inclined to think that while it may be that, the petitioner has not sought any relief for herself, the circumstances that her own conduct had been commented upon by the said committee and later the petitioner left service under the respondent Society, should be borne in mind, while considering the allegations made by the petitioner, of which the specific allegations against the respondents have been in our opinion reasonably satisfactorily explained as already shown above. We are inclined to think that it cannot be said that the petitioner has no motive to file this petition, for it could be just to embarrass the respondents.

It is true that the institution in question is a public institution but just because the petition has been filed in its regard the petition does not necessarily become a public interest petition, particularly, when there is a background of some differences between the petitioner and the respondents and the petitioner filed the petition soon after she left service. We are inclined to think that it is really not a public interest petition.

24. Moreover, on consideration of the nature of allegations made, we think it shall be more appropriate that the matter be taken up with the President of the Society under Rule 25 of the Rules for more appropriate and effective remedy. It is true that existence of alternative remedy does not prevent the Court from exercising its jurisdiction under Article 226 of the Constitution of India, but we think that in the disputed facts of the case and with the existence of alternative remedy we should refrain from exercising jurisdiction under Article 226 of the Constitution of India.

25. Shri Dewan learned counsel for the petitioner submitted that the Governor of Assam had been approached and referred to Annexure R-6 with rejoinder affidavit. Annexure R-6 is a photostat copy. It purports to have been signed by some persons. We see no reason why, if a proper application with necessary materials is made for exercise of powers under Rule 25 of the Rules, proper and adequate action shall not be taken. We, therefore, think that the Court should not interfere in the affairs of the Society in the manner urged by the petitioner.

26. For the aforesaid reasons, we do not admit this petition. The petition is dismissed. We, however, leave the parties to bear their own costs.

S. Haque, J.

27. I agree.