

Mina Sarma Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Mar-26-2007

Judge : Amitava Roy, J.

Appellant : Mina Sarma

Respondent : State of Assam and ors.

Advocate for Def. : Mr. J. Handique

Advocate for Pet/Ap. : Mr. A.M. Bujarbaruah

Disposition : Petition dismissed

Prior history : Amitava Roy, J. 1. The order under challenge is one dated 6.2.2007 passed by the Director of Health Services (FW), Government of Assam, keeping in abeyance the order dated 4.1.2007 whereby the petitioner and the respondent No. 4 were transferred to the posts as referred to therein. 2. I have heard Mr. A.M. Bujarbaruah, learned Counsel for the petitioner. Also heard Mr. D. Saikia, learned Standing counsel, Health & Family Welfare Department and Mr. J. Handique, learned Counsel for the responden

Judgement :

Amitava Roy, J.

1. The order under challenge is one dated 6.2.2007 passed by the Director of Health Services (FW), Government of Assam, keeping in abeyance the order dated 4.1.2007 whereby the petitioner and the respondent No. 4 were transferred to the posts as referred to therein.

2. I have heard Mr. A.M. Bujarbaruah, learned Counsel for the petitioner. Also heard Mr. D. Saikia, learned Standing counsel, Health & Family Welfare Department and Mr. J. Handique, learned Counsel for the respondent No. 4.

3. The pleaded versions of the parties would be necessary to better appreciate the submissions made. The petitioner has averred that by order dated 28.11.2006 she, a nurse (ANM) under the Director of Health Services (FW), Assam was transferred from Kamakhya State Dispensary to Rangjuli PHC under the Additional Medical and Health Officer, Goalpara vice one Miramayee Kalita, ANM transferred to her place. By a subsequent order dated 4.1.2007 the petitioner was transferred and posted at the Panbazar unit under the control of the Additional Chief Medical & Health Officer (FW), Kamrup, Guwahati to replace the respondent No. 4 who was posted to Rangjuli PHC. According to the petitioner, she joined the Panbazar Unit on 5.1.2007. While she continued there as such, by the impugned order dated 6.2.2007 the order dated 4.1.2007 was stayed and the earlier transfer order dated 28.11.2006 was resurrected.

4. Apart from contending that the impugned decision has been prompted by political considerations at the instance of the respondent No. 4, the petitioner has pleaded it to be in contravention of the transfer guidelines contained in the Office memoranda dated 4.2.2002 and 22.5.2002. As her representation dated 8.2.2007 before the Director of Health Services (FW), Assam failed to elicit any positive response, the writ jurisdiction of this Court has been sought to be invoked.

5. In the Additional affidavit filed by her, she has brought on record the order dated 6.1.2007 whereby the respondent No. 4 pursuant to the order dated 4.1.2007 had been released from Panbazar unit so as to enable her to join at Rangjuli PHC. The said order also discloses that in the meantime, the petitioner had joined at the Panbazar unit on 5.1.2007. In support of the above, the petitioner through the said affidavit has also submitted the photocopy of her Bank Account with the State

Bank of India Guwahati Branch reflecting receipt of her salary for the month of January, 2007 on 8.2.2007. The said affidavit further mentions that the order dated 4.1.2007 had been passed considering the eye ailment of her son.

6. The respondent State in its affidavit has contended that the petitioner by order dated 28.11.2006 had been transferred from Kamakhya State Dispensary, Guwahati to Rongjuli PHC, Goalpara as she had been serving at Kamakhya State Dispensary since 22.10.1990 at a stretch apart from consideration of public interest and the service exigency. The petitioner, however, did not comply with the order and instead got a representation dated 1.12.2006 submitted by her husband together with a letter on behalf of a Member of Parliament requesting cancellation of her transfer and posting at Guwahati. Though the said representation was addressed to the departmental Minister, it was not forwarded to the appropriate authority of the Government and the decision was taken at the Directorate level modifying the order dated 28.11.2006. As the consequential order dated 4.1.2007 was issued at the instance of the petitioner and was not in public interest or administrative exigency, it was kept in abeyance. This was more so, as the petitioner had been serving in the district of Kamrup since 1.8.1987 and the modified order dated 4.1.2007 was obtained exerting political influence. The State respondents also questioned the bonafide of the petitioner for having withheld from this Court the facts pertaining to the representation dated 1.12.2006 by her husband as well as the letter of recommendation of the Member of Parliament for the modification of the original transfer order dated 28.11.2006.

7. The respondent No. 4 in her counter in substance has asserted that after receipt of the order dated 4.1.2007 she submitted a representation before the Director of Health Services (FW), Assam for suspension thereof as she is due to retire on 1.1.2009. On a consideration of the above fact, the impugned order was passed so as to enable her to remain in her home district in Kamrup till her retirement.

8. Mr. Bujarbaruah has urged that the order dated 4.1.2007 having been implemented, consequent whereupon the petitioner had joined at Panbazar Unit, the impugned order keeping in abeyance the said order is per se misconceived besides being illegal and unsustainable in law. The order dated 28.11.2006 having

been modified acting on the petitioner's representation highlighting her personal problems on merit, the impugned order was uncalled for. According to the learned Counsel, the recommendation of the Member of Parliament on matters bearing on affairs of government ipso facto does not constitute political interference. Therefore, the plea to the contrary is unsustainable. The impugned decision being not backed by any reason whatsoever, needs to be interfered with, he urged. Mr. Bujarbaruah placed reliance on the decision of this Court in 2006 (3) GLT 624, Kalyan Kr. Sarkar, Appellant v. Alok Kanti Paul Choudhury and Ors., Respondents.

9. The learned State counsel assailing the maintainability of the writ petition contended that the petitioner having suppressed material facts, the same ought to be rejected in limine. According to him, as the petitioner was a beneficiary of political patronage to secure the order dated 4.1.2007, she is not entitled to get any equitable consideration of this Court. The learned State counsel urged that the petitioner has been serving in the district of Kamrup since 1987 and therefore on the grounds of public interest as well as administrative exigency, her transfer in terms of the order dated 28.11.2006 ought to be, maintained. The learned State counsel pressed into service the decisions of this Court in 1997 (2) GLT 318, M.T. Varghese, Appellant v. The State of Assam and Ors., Respondents and W.P. (C) No. 6396/2006 (Monowara Begum, Petitioner v. State of Assam and Ors., Respondents (Date of disposal 21.2.2007). Mr. Saikia has also produced the relevant official records.

10. Mr. Handique while adopting the arguments advanced on behalf of the State has maintained that the impugned order having been passed taking note of the respondent No. 4's impending retirement from service with effect from 1.1.2009, the same does not merit interference of this Court.

The contours of the debate having been outlined, it would be appropriate to decipher the relevant facts from the records.

11. File No. HSFV/AMN/154/2006 of the office of the Director of Health Services (FW) Assam reveals that the order dated 28.11.2006 transferring the petitioner from Kamakhya State Dispensary to Rangjuli PHC, Goalpara was in terms of the direction of the departmental minister to the Director of Health Services (FW) on

14.11.2006. Ms. Miramayee Kalita was posted at Kamakhya State Dispensary, Kamrup in view of the said direction. It transpires from Secretariat File No. HLA 706/95/Pt of the Health & Family Welfare (A) Department that the petitioner's husband on 11.12.2006 had submitted a representation before the Chief Minister of the State praying her (petitioner) retention in the greater Guwahati area instead of being posted at Goalpara because of her health problem and eye ailments of their son. The said representation was forwarded by the Chief Minister's office to the Secretary, Health & Family Welfare Department on 15.12.2006 for necessary action. The note sheets reveal that a decision was thereafter taken on 22.1.2007 to forward the said representation to the Director of Health Services (FW), Assam.

12. File No. HSFw/ANM/24/2006 of the of the of the Director of Health Services (FW), Assam discloses that on 1.12.2006 the petitioner's husband had submitted a representation before the Health Minister, Assam pleading against the transfer order dated 28.11.2006 with a request to modify the same and post the petitioner within the greater Guwahati area instead of Goalpara. In was inter alia stated in the said representation that the petitioner was suffering from ailments demanding frequent hospitalization in an well equipped center and that their eldest son was suffering from retinal problem for which he had been undergoing treatment at Vision Hospital, Guwahati. The File also contains a letter dated 27.12.2006 from Mr. K.L. Garg, P.S. to Shri M.K. Subba, Member of Parliament and addressed to the Director of Health Services, Assam carrying a request on behalf of the said political functionary to cancel the transfer order dated 28.11.2006. The said letter was forwarded to the Director of Health Services (FW), Assam. The said file discloses that on 2.1.2007 the matter was processed pursuant to the said request.

13. In the meantime, the Additional Chief Medical & Health Officer (FW), Kamrup on 29.11.2006 had submitted a list of ANMs who had been serving in greater Guwahati for more than 6/7 years, before the Director of Health Services (FW), Assam. The said list indicated inter alia that the respondent No. 4 had been posted at DFwB, Guwahati with effect from 8.2.1984. A note was put up before the Director of Health Services (FW), Assam on 3.1.2007 recommending the decision in favour of the petitioner in the face of the above representation as well as the request of the Member of Parliament by taking into account the list of serving

ANMs in the greater Guwahati. The Director of Health Services (FW), Assam on the same date accepted the proposal and directed that the incumbent who had the longest stay in Kamrup be transferred. Accordingly, the order dated 4.1.2007 was passed and the respondent No. 4 was diverted to Rangjuli PHC, Goalpara. The respondents have not disputed that in compliance thereof, the petitioner had joined in her transferred post.

The respondent No. 4 thereafter on 6.1.2007 and 9.1.2007 submitted representations before the Director of Health Services (FW), Assam and the departmental minister respectively contending that she had been suffering from hypertension and therefore taking treatment at MMC Hospital, Guwahati. She also mentioned about dislocation of her son's studies in case, the order dated 4.1.2007 was to be complied with by her. She highlighted the fact that Smti Purnima Saikia, ANM under the Chief Medical & Health Officer, Kamrup was going to retire on 1.3.2007 and that she could be absorbed against that post. The departmental minister was therefore requested to instruct the Director of Health Services (FW), Assam to stay her transfer and to retain her at her earlier place of posting and thereafter adjust her against the vacancy of Smti Purnima Saikia, following her retirement. The departmental minister, on the body of the representation ordered the Director of Health Services (FW), Assam to keep the order dated 4.1.2007 in abeyance. Accordingly the impugned order was passed.

14. In the meantime, on 1.2.2007 the Additional Chief Medical & Health Officer (FW), Kamrup intimated the Director of Health Services (FW), Assam that the petitioner had been serving in the Kamrup District since 1.8.87 and at the Kamakhya State Dispensary from 22.10.1990. The records produced do not divulge as to how the representation of the petitioner's husband submitted before the departmental minister had been dealt with at that level.

15. It is apparent from the above disclosure that the petitioner's husband had submitted a representation before the departmental minister against the order dated 28.11.2006 for the modification thereof praying therein for her retention within the greater Guwahati area. It is also obvious that a copy of the said representation had been forwarded to the Member of Parliament named

hereinabove for his intervention in the matter and accordingly the request on his behalf in the lines as desired by the petitioner was conveyed to the Director of Health Services (FW) Assam. The order dated 4.1.2007 was passed acting on the said request as well as the representation the copy whereof was forwarded along with the letter of the Private Secretary of the said political personality. This was apparently without any reference to the decision if any, taken on such representation at the higher level in the administration. This, in my view, has the potential of undermining organizational discipline and conventional norms ensuring transparency in governance. This assumes significance in view of the fact that the order dated 28.11.2006 sought to be modified had been passed as directed by the departmental minister in the interest of public service.

16. Noticeably, the petitioner has withheld from this Court the factum of her husband's representation before the departmental minister and the intervention of the Member of Parliament as above at his instance culminating in the order dated 4.1.2007. The writ petition therefore lacks in candid disclosure of essential facts, a requirement which has been held by this Court to be a sine qua non for invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India.

17. Though a recommendation by a peoples representative requesting his counterpart for a particular course of action in the realm of administrative functioning may not per se constitute an unauthorized or unwarranted interference or cause vitiation of the consequential steps as has been held by this Court in Kalyan Kr. Sarkar (supra), such a proposition would be contingent on the attending facts. If the contextual facts demonstrate servile subjugation of a departmental authority to the dictates of an outside entity in power by meekly abdicating his dominion, the resultant order or decision would be impeachable as antithetical to the foundational precepts of governmental functioning. The facts and circumstances of the case present a scenario where an executive authority felt obliged to comply with the request of apolitical functionary even without reference to his higher authorities in the hierarchy.

18. In my view, considering the factual background in which the order dated 4.1.2007 was passed and the omission on the part of the petitioner to disclose the

fact relating to the representation and the recommendation of the above named Member of Parliament leading to the passing of the order dated 4.1.2007 before this Court, no interference with the impugned order in the exercise of its equitable jurisdiction is warranted. There is no denial of the fact that the petitioner had been serving in the district of Kamrup since 1987. The plea that the order dated 4.1.2007 having been given effect to, it was impermissible in law to stay the operation thereof does not appeal to this Court as the said order is ab initio flawed. No interference with the impugned order is called for as in the prevailing circumstances such a course would revive an illegal decision. The mode adopted by the Director of Health Services (FW) to pass the order dated 4.1.2007 being in breach of the departmental procedure seeking to over reach the higher administrative authorities, the impugned decision does not call for any interference in the exercise of this Court's power of judicial re-view.

19. This petition therefore, fails. This determination notwithstanding, it would be open for the concerned State respondents to pass appropriate orders on the representations submitted by the parties, however, in conformity with the demand of public interest and administrative exigency. The petition is dismissed. No costs.