

Rangapara Development Circle Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jun-12-2007

Judge : J. Chelameswar, C.J. and T. Nandakumar Singh, J.

Appeal No. : P.I.L. No. 30 of 2007

Appellant : Rangapara Development Circle

Respondent : State of Assam and ors.

Advocate for Def. : Standing Counsel, PWD

Advocate for Pet/Ap. : S.C. Biswas, Adv.

Disposition : Petition dismissed

Judgement :

T. Nandakumar Singh, J.

1. The writ petitioner is an NGO (non-Government Organization) constituted in order to attain socio-economic development of the people of Rangapara and its neighbourhood. Though the writ petitioner-NGO is yet to be registered, necessary arrangements are being made for registration. Admittedly, at present petitioner-NGO is an unregistered Organization/Association. The reliefs sought for in the present writ petition are -

(i) For a writ in the nature of Mandamus directing/commanding the respondents for the greater public interest involved therein to immediately approve and sanction the proposal submitted by the respondent No. 3 referred in the letter dated 11.8.2006 (vide Annexure No. II) and carry out the following works of the proposal

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(ii) Repairing of Balipara to Old Missamari Road under Twelve Finance Commission fund for 2006-07 ; (Ch. 2000.00 M to 4500.00 M).

(iii) Improvement of Balipara to Old Missamari (Ch. 0.00 M to 1000.00 M).

(iv) Improvement of Balipara to Old Missamari Road connecting Balipara Bhalukpung Road and Thelamara Missamari Foot Hills Road.

(v) Conversion of all the existing SPT bridges to RCC bridges along with aforesaid roads.

(vi) To grant all such relief to which the petitioner is otherwise legally entitled.

2. Heard Mr. S.C. Biswas, learned Counsel appearing for the petitioner as well as learned Government Advocate appearing for the respondents.

3. The present writ petition, is filed for ventilating general resentment among the public of Rangapara and its adjacent area due to the dilapidated condition of the main road, i.e., Balipara to Missamari affecting the business community, students, office goers and the general public of the locality. It is also stated that the Executive Engineer, P.W.D., Tezpur Road Division had submitted a cost appraisal report for improvement of (i) Balipara Rangapara Road (ii) Rangapara Missamari Road (iii) Bindukuri Rangapara Road (iv) Bindukuri Road and (v) Pakiajan Extension Road amounting to Rs. 1,539.66 lakh to the Chief Engineer, PWD, Assam under his letter dated 20.9.2000. The Executive Engineer, P.W.D., Sonitpur State Road Division, Tezpur also sent a proposal for repairing of Balipara to Old Missamari Road under Twelve Finance Commission fund for 2006-07 under his letter dated 11.8.2006 to the Secretary, Rangapara Development Circle, Rangapara.

The repairing works of the Balipara to Old Missamari Road has not yet started as the State Government has not released necessary fund. Hence, the present writ petition for the reliefs above said.

4. Admittedly, the petitioner-NGO is an unregistered Association ; and therefore, petitioner-NGO is not a juristic person. It is well settled law that writ petition filed by the unregistered Association is not maintainable. Reference may be made to the decisions of this Court in (i) Narsingarh Mini Bus Owner's Syndicate and Anr. v. State of Tripura 1998 (4) GLT162 (ii) All Manipur DIC Supervisors' Association v. State of Manipur and Ors. 2000 (1) GLT 374 and (iii) State of Manipur and Ors. v. State Land Use Board Casual Employees' Association and Anr. 2007 (1) GLT 409 (D.B.).

The present writ petition filed by the petitioner-NGO for enforcement of the directive principles of the State Policy under the Constitution of India is not maintainable. We are of the considered view that present writ petition (PIL) is liable to be dismissed only on this score.

5. It is elementary that no one can ask for a Mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a Mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has the legal duty to do so or to absent from doing something. The Apex Court in Mani Subrat Jain etc. v. State of Harayana and Ors. : [1977]2SCR361 held that no one can ask for a Mandamus without a legal right. In the present case, the petitioner-NGO has utterly failed to show that the petitioner-NGO has acquired the legal right for seeking the reliefs sought for in the present writ petition. Hence, the present writ petition is not maintainable.

6. The questions as to whether or not the funds are required to be released for repairing the main road, i.e., Balipara to Old Missamari Road on the proposal submitted by the Executive Engineer, P.W.D., Tezpur Road Division, Tezpur under his said letter dated 20.9.2000 and also the questions regarding the requirements of repairing the said road by releasing necessary funds within the financial limit of the State, are to be decided by the Executive authority by taking into consideration

of various requirements for taking such decision. Therefore, it would be within the realm of executive authority. It would be inappropriate for the court to substitute 'itself for the executive authority to decide the matter. The court is also not taking the decision ought to have been taken by the executive authority. We may refer to the decision of the Apex Court in State of W.B. and Ors. v. Nuruddin Mallick and Ors. : AIR 1999 SC1466 .

7. For the reasons discussed above, the writ petition is devoid of merit. Accordingly, the same is dismissed.

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