

GAHC010060622018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/135/2018

PRITAM DAS AND ANR
S/O. LT. PRAFULLA KUMAR DAS, RESIDENT OF VILL. MOHADEVPUR, P.O.
MOHADEVPUR, P.S. DHOLAI, DIST. CACHAR, ASSAM.

2: ABDUL SELIM LASKAR
S/O. LT. HASON ALI LASKAR
RESIDENT OF VILL. GANGA NAGAR
P.O. GANGA NAGAR
DISTRICT- CACHAR
ASSAM

VERSUS

SAMIR SINGHA
THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH AND
FAMILY WELFARE DEPARTMENT, DISPUR, GUWAHATI-6.

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : MR. D P BORAH

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

11.08.2023

None appears for the petitioner on call although Mr. U. Ghosh, learned counsel for the respondent is present.

2. This contempt petition has been filed alleging wilful disobedience of the order dated 25.10.2017 passed in W.P.(C) No. 3426/2017 whereby the following order was passed:

“Heard MR. J.I. Borbhuiya, learned counsel for the petitioner and also heard Ms. S. Sarma, learned Standing Counsel for the Health Department.

2. The four petitioners herein are all residents of Mahadebpur village and other adjoining villages in the Cachar district. the petitioners are also interested in the welfare and development of the society of the locality and they are also holding various positions of different social organizations. Further, the petitioner No.4 is also the Secretary of Mother NGO of Dhalai Bidhan Sabha. These petitioners are concerned with the state of affairs in the Dhalai PHC to the effect that the concerned Medical Officer in charge of the PHC is not behaving in the manner expected out of a respected doctor holding that post. There are allegations that the concerned doctor was earlier involved with incidents of molestation of female patients as a consequence of which different cases were registered. There is also an allegation that the concerned doctor had made an attempt to rape a minor patient namely Ms Anjana Begum aged about 17 years. As a consequence of such complaints, there were certain earlier orders transferring the Medical Officer from the Dhalai PHC.

3. It is stated that the concerned Medical Officer is continuously serving in the Dhalai PHC for the last 27 years. Based with the aforesaid grievances, the petitioners and some other respected people of the locality had submitted a representation before the Commissioner and Secretary to the Government of Assam in the Health and Family Welfare Department. The said representation dated 17.05.2016 finds place as Annexure-4 page 23 to the writ petition. On the body of the representation, a seal of the concerned department also appears, which is an indication that the concerned representation had been served on the respondent authorities.

4. In this writ petition, the petitioners have prayed for a limited relief to the

extent that the representation filed by the petitioners be given a due consideration by the concerned authority and pass appropriate orders thereon.

5. The learned Standing Counsel for the Health Department considering the aspect that the only relief sought for by the petitioners is for a consideration of the representation, therefore, does not object to such prayer.

6. In the aforesaid premises, this writ petition is disposed of by directing the Commissioner and Secretary to the Government of Assam in the Health and Family Welfare Department to give a due consideration to the representation of the petitioners dated 17.05.2016 and in the process the petitioners be also given a personal hearing to present their grievance before the Commissioner and Secretary. To that extent, the Commissioner and Secretary shall inform the petitioners about the date and time of the hearing to be given. Upon completing the aforesaid process, a speaking order be passed by the Commissioner and Secretary.

7. The exercise of completing the process and passing the speaking order be completed within a period of two months from the date of receipt of a certified copy of this order.

In terms of the above, this writ petition stands disposed of."

3. Today when the matter is called up, Mr. U. Ghosh, learned counsel for the respondent submits that by speaking order dated 12.04.2018 the representation of the petitioner has been disposed of and in that context the order of the Court dated 25.10.2017 passed in W.P.(C) No. 3426/2017 has been complied with. A copy of the order dated 12.04.2018 is retained in the case records. The relevant portion extracted below:

The observation

It is a common experience in the government departments that officers in general like to be posted in home district and districts of choice with some exceptions. The practice is more prevalent amongst the Doctors serving under

Health & Family Welfare Department. Doctors who are posted in a particular district or place do not like to go on transfer to another district or place though their service is transferable. It is a common feature that Doctors are serving at a particular place years after years and do not like to go elsewhere even on promotion.

The case of Dr. Dilip Paul can be viewed from the above perspective. He was posted at Dholai PHC as Sr. Medical & Health Officer in 2007 and since then he has been serving there. He did not move from Dholai on his transfer. This was so because he developed affinity and relationship in Dholai and felt comfortable being at Dholai. Therefore, he continues to serve at Dholai. Side by side, he went on practicing at a private chamber called Sadhana Medicare during evening time after he is free from official duty. Some sections of the people might be benefited from his treatment at the private chamber, but the public at large cannot be expected to be benefitted from the service rendered by him from the private chamber since he treated patients in the private chamber in lieu of money for his personal benefit. Dr. Dilip Paul has not opted for grant of non-practicing allowances (NPA). So it is open to him in continuing private practices from a private chamber. However, it cannot be prudent to treat patients in private chamber at the behest of Government hospital.

The report of the Superintendent of Police, Cachar does not indicate that Dr. Dilip Paul was convicted for the case of molestation or rape. The report of the Deputy Commissioner, Cachar clarifies that M/S Sadhana Medicare is not a property of Dr. Dilip Paul. He only practices there.

It is an admitted fact that one cannot satisfy all the fraction of a society or locality at a time. While there is satisfaction from the activities of a government servant in a locality, there may be dissatisfaction amongst others of the same society. This fact becomes more evident when a government servant continues to be posted at a certain place for a prolonged period. The expectation of the people from the government servant being at the same place becomes more demanding. On the other hand, if the government servant decides to serve in the same place on his/her own interest, there is

every likelihood that the government servant becomes more indifferent to the aspirations of the people and desperate in earning personal gain.

Coming to the personal behaviour of Dr. Dilip Paul to the patients he treats it can be commented that the Doctor should not forget the medical ethics. Morale cannot be instilled into a person. Likewise, character is one's own property. Others cannot compel Dr. Dilip Paul to behave properly. There is law on earth and law takes its own course if someone violets it.

The Order:

The whole matter needs some interlocution and introspection on the part of Health & Family Welfare Department. The incidents of defying government order of transfer should be dealt with firmly. Some mechanism should be evolved to oversee and monitor the activities of Doctors at field. Constitution of some advisory committee at the block level to keep an eye on the activities of serving Doctors may also be thought of. But the policy of transfer of Doctors should be strictly followed so that they can serve at a particular place for the stipulated period of time with dignity and do not earn bad name for Department.

With this the representation dated 17-05-2016 is disposed of."

4. Taking on record the statement made by the learned counsel for the respondent as well as upon perusal of the order dated 12.04.2018 passed by the respondent, the contempt petition stands closed.

5. Notices issued are recalled.

JUDGE

Comparing Assistant