

GAHC010083982019



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

Case No. : WA/116/2019

M/S. WARES AND WANTS TRADING PVT. LTD.,
THE GOLDS GYM, MONAL TOWER, 5TH FLOOR, GANESHGURI, G.S. ROAD,
GUWAHATI- 781005, ASSAM, REP. BY SANJIV KUMAR JAIN, AGE- 46
YEARS, S/O- SUNDARLAL JAIN, R/O- 4 CHANAKYA PATH, G.S. ROAD, P.O.
AND P.S. DISPUR, GUWAHATI- 781005, ASSAM.

VERSUS

MR. ARMAN ALI AND 5 ORS.
S/O- LATE SHAHID ALI,
R/O- H/NO. 4, AROHAN PATH, NEW SARANIA, GANDHI BASTI, GUWAHATI-
781003, CURRENTLY SERVING AS THE EXECUTIVE DIRECTOR, SHISHU
SAROTHI, A CENTER FOR REHABILITATION AND TRAINING FOR
MULTIPLE DISABILITY, BIRUBARI, GUWAHATI- 781016, ASSAM.

2:THE UNION OF INDIA

REP. BY THE SECRETARY
DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI.

3:THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
SAROJINI HOUSE
BHAGAWAN DAS ROAD
NEW DELHI- 110001.

4:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
SOCIAL WELFARE DEPARTMENT
DISPUR GUWAHATI- 781006.

5:COMMISSIONER FOR PERSON WITH DISABILITIES
LATAKATA BASISTHA
GUWAHATI
ASSAM- 781029.

6:THE GOLDS GYM
CORPORATE OFFICE
GARDEN VIEW
J. MEHTA MARG NEPEANSEA ROAD
MUMBAI- 400006

For the appellant : Mr. B.D. Konwar,
Senior Advocate
Assisted by Mr. J. Singh, Advocate

For respondent No.1 : Ms. R.S. Choudhury, Advocate
For respondent Nos.3, 4, 5 : Mr. D. Nath,
Senior Govt. Advocate, Assam

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

15-02-2024

(V. Bishnoi, C.J.)

This intra-Court appeal is filed by the appellant being aggrieved with the order dated 11.03.2019 essentially of imposing cost/fine on the appellant by the learned Single Judge.

2. The learned counsel for the appellant at the outset has submitted that the appellant has no reservation in paying the cost as directed by the learned Single Judge, but is essentially aggrieved by indictment of it by the learned Single Judge.

It is argued that no finding was recorded in the impugned judgment as to the veracity of the allegations raised by the writ petitioner against the appellant and regarding in what manner the appellant failed in its duty to ensure that its facilities are friendly to the differently abled persons.

3. Learned counsel for the appellant has further submitted that the incident, of which the writ petitioner has complained, is pertaining to the year 2011 when The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was in force and as such, as per the provisions of the said Act, no responsibility was fastened upon the appellant, who is operating a gym in the name of Gold's Gym in Guwahati, for carrying out the provisions of the said Act. Referring to the definition of establishment as provided in Section 2(K) of the Act of 1995, it is submitted that a private entity was not covered under the definition of establishment and therefore, the findings arrived at by the learned Single Judge that the appellant is duty bound to ensure that its facilities are friendly to the differently abled persons, are erroneous.

4. It is again reiterated by the counsel for the appellant that the appellant is involved in various philanthropic activities and has no problem in depositing the cost of Rs.50,000/- with the Shishu Sarothi, a centre established at Guwahati for rehabilitation and training for multiple disability. However, the observations made by the learned Single Judge regarding the appellant in the impugned judgment are unwarranted.

5. The counsel for the respondents have opposed the appeal and argued that it was the duty of the appellant to provide facilities to the differently abled persons as per the convention of the United Nations General Assembly, which was ratified by India.

6. Having heard the learned counsel for the parties and after going through the impugned judgment, we are of the opinion that the learned Single Judge was concerned about the lack of facilities available to the differently abled persons in the government establishments as well as private establishments. The findings recorded by the learned Single Judge are more or less with the intention to create awareness about the rights and facilities available to the differently abled persons.

7. As such no finding has been recorded by the learned Single Judge against the appellant but even if the appellant feels that it has been blamed for no fault of it, then we deem it appropriate to observe that any adverse findings recorded by the learned Single Judge against the appellant be treated as deleted. However, as the counsel for the respondents has agreed, we direct the appellant to deposit the amount of Rs.50,000/- in favour of Shishu Sarothi, for its use and utilisation, within a period of two weeks from today.

With these observations, this writ appeal is disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant