

GAHC010115792023



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

Case No. : WP(C)/3101/2023

ASHRAFUL ISLAM
S/O AJIJUR RAHMAN, R/O VILL-ROWMARI, P.O.-ROWMARI, P.S.-
RUPAHIHAT, DIST-NAGAON, ASSAM, PIN-782125

VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY, GOVT. OF ASSAM,
SOCIAL WELFARE DEPARTMENT, DISPUR, GUWAHATI-06

2:DIRECTOR OF SOCIAL WELFARE
WOMEN AND CHILD DEVELOPMENT
ASSAM
UZANBAZAR
GUWAHATI-01

3:DISTRICT WOMEN COMMISSION
NAGAON
REPRESENTED BY THE CHAIRMAN SMTI. DEBAJANI CHOUDHURY
ACS
ADDITIONAL DISTRICT MAGISTRATE I/C WOMEN CELL
NAGAON
DIST-NAGAON
PIN-782001

4:THE SUPERINTENDENT OF POLICE
NAGAON
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

5:THE DISTRICT SOCIAL WELFARE OFFICER
NAGAON
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

6:THE SUPERINTENDENT OF STATE HOME
NAGAON
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

7:DR. PRITI PHUKAN
LADY DOCTOR
B.P.C.H. NAGAON
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

8:SMTI. DIPANNITA GOSWAMI
ADVOCATE
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

9:SMTI KABITA BORA
ADVOCATE
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

10:BALADEV SARMAH
SECRETARY GRAMYA PUTHIBHARA
MEMBER OF DISTRICT WOMEN CELL
NAGAON
PIN-782001

11:STATE BANK OF INDIA
NAGAON BRANCH
NAGAON
PIN-782001

12:ARIFA KHATUN
W/O ASHRAFUL ISLAM
R/O VILL- ROWMARI
P.O.-ROWMARI
P.S.-RUPAHIHAT
DIST- NAGAON

ASSAM
PIN-78212

Advocate for the Petitioner : MR. P MAHANTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

19.04.2024

Heard Ms. C. Sharma, learned counsel appearing on instructions of Shri P. Mahanta, learned counsel for the petitioner. Also heard Shri N. Goswami, learned State Counsel. The respondent no. 12 has also entered appearance and is represented by Shri N. Brahma, learned counsel.

Taking into consideration, the facts and circumstances and also the submissions made, this writ petition is disposed of at the admission stage.

The challenge in this petition is with regard to an order dated 28.11.2022 passed by the District Women Commission, Nagaon by which a direction was issued to the Superintendent of Police, Nagaon for deduction of a sum of Rs.30,000/- as monthly maintenance allowance to the respondent no. 12 who is the estranged wife of the petitioner. Pursuant to the said order, deductions were made for 5 months whereafter this present petition was filed.

This Court while issuing notice vide order dated 02.06.2023 had also passed an interim order staying the operation of the impugned order dated 28.11.2022 on a *prima facie* satisfaction that the District Women Commission is not bestowed with the power of adjudication of an issue of maintenance.

Ms. Sharma, the learned counsel for the petitioner has submitted that pursuant to the said order of this Court dated 02.06.2023, no further deduction has been made.

Shri N. Brahma, learned counsel for the respondent no. 12 has however fairly

submitted that though the order has been passed for deduction, the District Women Commission may not have the jurisdiction. However, he submits that it was only for the interest of justice, that such order was passed.

Shri N. Goswami, learned State Counsel however submits that on the jurisdictional aspect, there may be some issue as no powers appear to have been vested on a Commission to adjudicate an issue of maintenance.

Shri Brahma, the learned counsel has in fact assisted this Court by placing the following two judgments which would show that such Commission may not have the authority or competence for maintenance unless the same is specifically vested by law.

(i) *Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women and Anr. [(2010) 8 SCC 633]*

(ii) *Order dated 21.03.2022 of this Court in WP(C)/147/2015. [Prasanta Bhattacharjee vs. The State of Assam and Ors.]*

It is submitted by the learned counsel for the respondent no. 12 that though the decision of the Hon'ble Supreme Court may not be on the issue of maintenance, the same was taken into consideration by this Court in the decision passed in WP(C)/147/2015.

After hearing the learned counsel for the parties and on consideration of the jurisdictional issue, this Court is of the considered opinion that issue of maintenance would not come within the ambit of adjudication by a District Women Commission and accordingly the impugned order dated 28.11.2022 passed by the District Women Commission, Nagaon in W/C (N) Case No. 123/2022 be set aside.

It is however made clear that the present order would not preclude the respondent no. 12 to approach the appropriate forum with jurisdiction to claim for maintenance. Further, in the interest of justice, it is directed that the amount already paid to the Respondent No. 12 may not be recovered.

JUDGE

Comparing Assistant