

GAHC010115812024



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

Case No. : WA/207/2024

GUNAJIT NATH
S/O LATE JOGENDRA NATH, RESIDENT OF GALIAHATI COLLEG ROAD,
BARPETA, ASSAM 781301

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PUBLIC WORKS (ROAD) DEPARTMENT DISPUR GUWAHATI
ASSAM 781006

2:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS(ROAD) DEPARTMENT
DISPUR
GUWAHATI 781006

3:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (BORDER ROAD) CHANDMARI GUWAHATI
ASSAM 781003

4:THE EXECUTIVE ENGINEER
PUBLIC WORKS (ROADS) DEPARTMENT
BARPETA, BAGHBAR
CHENGA TERRITORIAL ROADS DIVISION
BARPETA, PO BARPETA, ASSAM 78130

For the petitioners : Mr. K. N. Choudhury, Sr. Advocate
Assisted by Mr. D.J. Das, Advocate

For respondent(s) : Mr. D. Nath, SC, PWD

– BEFORE –

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

12.08.2024

(Vijay Bishnoi, CJ

This instant writ appeal has been filed by the appellant being aggrieved with the order dated 10.05.2024 and 20.09.2023 passed by the learned Single Judge in Review Petition No. 120/2023 and WP(C) No. 5183/2023, respectively.

2. By the order dated 20.09.2023, the learned Single has dismissed the writ petition as withdrawn on the basis of the submission made by the learned counsel appearing for the writ petitioner. By the order dated 10.05.2024 passed in Review Petition No. 120/2023, the prayer of the review petitioner for review of the order dated 20.09.2023, passed in WP(C) No. 5183/2023 has been rejected by the learned Single Judge.
3. Before the writ court, the appellant essentially challenged the validity of the letter dated 21.08.2023, issued by the respondent PWD, Assam, whereby the contract agreement executed between the appellant and the PWD, in respect of a contract work, viz. *"Upgradation of Roads from MRL03-Mandia Palhaji Road to Salimpur via Bamundongra Road including cross drainage works and routine maintenance of the works for five year under Package No. AS-01-522, MPGSY-III, Batch-1, 2022-2023"* was cancelled. However, on 20.09.2023, when the writ petition was taken up for consideration by the learned Single Judge, the learned counsel, who was engaged by the writ petitioner in the writ court, made a submission that the writ petitioner was not pressing the writ petition in order to avail appropriate remedy available under the law. The learned Single Judge, considering the submission so made by the learned counsel for the writ petitioner, has dismissed the writ petition, on withdrawal, reserving the liberty to the writ petitioner to avail appropriate remedy permissible

under the law. The learned Single Judge has also recorded that the learned counsel appearing for the respondent PWD did not object to the prayer of the learned counsel for the writ petitioner for withdrawal of the writ petition.

4. As revealed from the record, soon after the dismissal of the writ petition as withdrawn on 20.09.2023, the appellant, through his Advocate issued notice to the respondent PWD on 23.09.2023 under Section 80 of the Code of Civil Procedure, 1908 indicating the reliefs he was likely to seek by instituting appropriate proceedings. It is also revealed that pursuant to the said notice, no suit has ever been instituted by the appellant against the respondent PWD.
5. Be that as it may, the appellant thereafter preferred a review petition before the learned Single Judge seeking review of the order dated 20.09.2023 passed in WP(C) 5183/2023 mainly on the ground that the counsel engaged by the appellant before the writ court had never been instructed to withdraw the writ petition with liberty to the petitioner to avail appropriate remedy under the law.

The learned Single Judge has dismissed the said review petition by a detail order dated 10.05.2024 observing that the appellant failed to demonstrate any error apparent on the face of the record, or any other sufficient reasons for review of the order dated 20.09.2023 passed in the writ petition. The learned Single Judge has also observed that from the events taken note of, it does not transpire in any manner that the submission made by the learned counsel for the writ petitioner in the course of the proceedings on 20.09.2023 was without approval of the petitioner. It is also noted by the learned Single Judge that soon after dismissal of the writ petition, a notice under Section 80 CPC was issued by the petitioner through his Advocate on 23.09.2023 indicating the reliefs he was likely to seek by instituting appropriate proceedings and, in such circumstances, it can be gathered that the appropriate proceeding under the law, for which the appellant sought liberty while getting the writ petition dismissed as withdrawn, can only be the proceeding other than the writ proceeding.

6. Reiterating the submission made by the learned counsel for the review petitioner before the learned Single Judge, Mr. K. N. Choudhury, learned senior counsel appearing for the appellant before this Court has submitted that since the writ petition was withdrawn by the counsel before the writ court without having any such instructions given by the petitioner, the impugned order dated 20.09.2023 passed in WP(C) 5183/2023 is liable to be set aside. Learned senior counsel has further submitted that the learned counsel appearing for the petitioner before the writ court was never instructed to withdraw the writ petition with liberty to avail appropriate remedy under the law and, therefore, in the interest of justice the impugned orders are liable to be set aside. Mr. Choudhury has attempted to justify the said submission on the ground that, as a matter of fact, there was no occasion for the appellant to avail appropriate remedy under the law, because the appellant had already approached the authorities concerned for redressal of his grievances before dismissal of the writ petition on withdrawal. It is submitted that the Division Bench of this Court in ***The State of Assam and another vs. All Assam Secondary Additional (Contractual) Teachers Association and others (Review Petition No. 14/2017)*** has held that a *bona fide* concession made by a litigant or its counsel, which subsequently turns out to be legally untenable, can be a valid ground for reviewing an order.
7. Per contra, Mr. D. Nath, learned counsel appearing for the respondent PWD has submitted that the learned Single Judge has committed no error in passing the impugned orders and, therefore, the appeal may be dismissed.
8. Heard the learned counsel for the parties and perused the material available on record.
9. It is not in dispute that soon after dismissal of the writ petition on 20.09.2023 as withdrawn, the appellant issued notice under Section 80 of the CPC to the respondent PWD. Therefore, it can be assumed that the appellant had the intention to institute a suit against the respondent PWD indicating the reliefs claimed by him. Since the

appellant acted pursuant to the liberty granted to him by this Court, it cannot be said that the learned counsel appearing on behalf of the petitioner before the writ court had prayed for withdrawal of the writ petition without the consent or knowledge of the appellant/writ petitioner.

10. So far as the judgment of the Division Bench of this Court passed in ***All Assam Secondary Additional (Contractual) Teachers Association and others*** (supra), is concerned, the learned Single Judge has already dealt with the same while dismissing the review petition and we do not find any reason to differ with the finding of the learned Single Judge on this aspect.

11. It is also to be noticed that the review petition as well as the present appeal are filed by an Advocate other than the Advocate who had filed the writ petition and appeared before the learned Single Judge at the time of its dismissal. The practice of changing the Advocates and filing subsequent proceedings has been deprecated by the Hon'ble Supreme Court in ***Tamil Nadu Electricity Board & Ant. Vs. N. Raju Reddiar & Anr.*** reported in ***(1997) 9 SCC 736***.

12. In view of the above discussion, we are of the considered opinion that no case is made out for interference with the impugned orders and, accordingly, the appeal is dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant