

Party Name : ATUN CH. SUTRADHAR Vs UNION OF INDIA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner as well as Mr. A. Roy Barman, learned Central Govt. Counsel appearing for the respondents.

This is a petition, challenging the order of transfer dated 03.07.2015, Annexure-1 to the writ petition, transferring the petitioner from the Haora site at Agartala to the Kumarghat site, in the public interest. Mr. C.S. Sinha, learned counsel appearing for the petitioner, having drawn attention of this court to the medical records so produced alongwith the representation dated 05.08.2015, has submitted that the petitioner has been suffering from serious cardiac ailments and for a substantial time he has been under the treatment of a reputed hospital, namely NH Narayana Institute of Cardiac Sciences, Bangalore.

The said representation dated 05.08.2015 has been filed by the son of the petitioner, namely Anup Sutradhar, stating that unless the petitioner is retained in his previous place of posting or any other site around the Agartala city, the petitioner's life would be endangered for lack of proper medical attention. Mr. Sinha, learned counsel, has further submitted that no response as yet has been received by the petitioner or his son on the said representation dated 05.08.2015.

Mr. A. Roy Barman, learned CGC appearing for the respondents, has plainly stated that he has no instruction as to whether the said representation has been considered or not.

Be that as it may, it is well settled that this court does not have any jurisdiction in view of the apex court decision in the matter of Shilpi Bose & Ors. vs. State of Bihar & Ors., reported in AIR 1991 SC 532, that the challenge against the transfer order cannot be entertained by a court unless the said order has been passed in breach of any law or in bad faith. For purpose of reference, the relevant part of Shilpi Bose & Ors. vs. State of Bihar & Ors. is reproduced hereunder :

In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.

In the event of attaching mala fide against the transferring authority, the burden of establishing mala fide is on the petitioner and he has to discharge the onus of establishing mala fide in such a manner that the court can arrive at a decision definitely that the imputations are grave and is unexpected of the authority which has a high responsibility in the administration (E.P. Royappa vs. State of Tamil Nadu & Anr., reported in AIR 1974 SC 555).

Mr. C.S. Sinha, learned counsel, has fairly submitted that the petitioner has not alleged any mala fide in this case. The sole purpose of filing this petition is that before the petitioner is released from his present place of posting, his representation filed through his son, Annexure-4 to the writ petition, is duly considered by the transferring authority on compassionately considering the medical records as produced with that representation.

At this juncture, Mr. Roy Barman, learned CGC, has submitted that the transferring authority, if by this time has not considered the representation so filed by the petitioner's son, would definitely consider the representation considering the material facts and also the records.

Having regard to the statement made in bar, this court is of the opinion that this writ petition can be disposed of by the following direction :

The respondents are directed to consider the representation dated 05.08.2015, Annexure-4 to the writ petition, having regard to the medical records so filed by the petitioner's son or any other material circumstances and pass the necessary order as expeditiously as possible. Till such disposal, the petitioner may not be disturbed from his present place of posting.

Accordingly, this petition stands disposed of. There shall be no order as to costs.

A copy of this order be furnished to the learned counsel for the parties in the course of the day.