

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS...8378-8392 OF 2010
(Arising out of S.L.P.(C) Nos.6432-6446 of 2008)

State of Assam

..... Appellant

Versus

Union of India and Ors. Etc.

..... Respondents

J U D G M E N T

H.L. Dattu, J.

- 1) Leave granted.
- 2) The appellant, being aggrieved by the judgment and order in WA No. 535/2001 and other connected appeals and also the dismissal of the Review Petition No. 124/2006 by the Division Bench of High Court of Gauhati, is before us in these appeals.
- 3) The factual matrix in brief is as under :

The Union of India (Respondents herein) had introduced "Family Welfare Scheme" under its Family Planning Programme with effect from 1st day of September, 1966. Under the said scheme, there was a provision for the appointment of 'Voluntary Female Attendants' on a monthly honorarium of `50/- per month from the inception of the scheme, which was subsequently increased to `100/- per

month with effect from February, 2001. According to the Union of India, the work of these attendants is to motivate people in their locality to have a small family. This assertion of the Union of India is disputed by the private respondents. They assert that though they were appointed as 'Volunteers', they were made to assist the Auxiliary nurses-cum-midwives in the Health sub-centers at the time of field visit and for miscellaneous works like cleaning, etc. in the sub-centers.

- 4) Sometime in the year 1993, one such Voluntary Female Attendant - Nandeshwari Bora filed a writ petition CR No. 3847/1993 before the High Court of Gauhati against the State of Assam, on the ground that the work of the Voluntary Female Attendant under the aforesaid scheme and that of the regularly appointed 'Ward Girls' by the respondents therein was similar and, therefore, demanded parity in the pay scale as 'Ward Girls', which at that time was `900-1435 per month. The single Judge of the High Court allowed the writ petition and directed the State Government to pay the minimum pay-scale in the time-scale of pay i.e. `900/- per month. Unfortunately, the text of this judgment of the learned Single Judge is not before us for our perusal, as the counsel appearing on both sides have stated that though they have made all efforts to secure a certified copy of the judgment, they have been unsuccessful, as the same is not available in the Registry

of the High Court of Gauhati. Therefore, we will have to proceed without having the advantage of seeing the reasoning of the learned Judge in his conclusion. However, in the subsequent judgment passed by the High Court, there is some reference to the findings and conclusion reached by the learned Single Judge in Nandeshwari Bora's case. This may help us in understanding the reasoning and conclusion reached in Nandeshwari Bora's case.

- 5) After the decision of the High Court in Nandeshwari Bora's case in C.R. No. 3847 of 1993, nearly 54 (fifty four) Voluntary Female Attendants filed writ petition in the High Court, inter alia seeking the same relief that was granted in Nandeshwari Bora's case. The lead case was by Jalini Brahma being C.R. No. 3073 of 1995. The relief that was sought in the writ petition was for regularization of their services and for payment of salary as per the existing pay scale. In the light of the decision of the Court in Nandeshwari Bora's case, the learned Single Judge of the High Court by judgment and order dated 22.02.2000, partly allowed the writ petition and directed all the respondents (which included the Union of India and the State Government) to pay `900/- per month, the minimum of the pay scale to the Voluntary Female Attendants. The operative portion of the Judgment and order is extracted. It reads :-

"...Learned Counsel for the respondents have not been able to show anything whereby the petitioners can be deprived of their minimum wages. It is submitted that the ROP Rules of 1990 provide a pay scale of Rs.900-1435/- for the post of Female Attendant. Accordingly, I direct all the 7 respondents to pay the petitioner the minimum wages of Rs. 900/- per month from the month of July 1990 or from the date of their employment, whichever is later.."

6) However, with regard to the question of regularization of service, the learned Single Judge has observed that it was for the State of Assam to consider the same in accordance with law.

7) Subsequently, another Writ Petition No. 5496 of 2001 came to be filed by Hazera Khatoon for the same relief as in Jalini Brahma's case. There were 5 (five) respondents in the petition, amongst them were the Union of India and the State of Assam. The learned Single Judge of the High Court disposed of the same in light of the decision of the Court in Jalini Brahma's case.

8) After disposal of the writ petition filed by Hazera Khatoon, the Union of India, being aggrieved by the said order and the orders passed in Jalini Brahma's case, filed appeals before the Division Bench of the High Court. In the appeals so filed, the Union of India, strangely, did not implead the State of Assam as a party to those proceedings.

9)

In their appeals, the Union of India contended that these Voluntary Female Attendants were not their employees and, therefore, the learned Single Judge ought not to have issued any direction to the Union of India, much less for payment of minimum of pay scale. It was further brought on record that the State of Assam had issued appointment letters to these Female Attendants and there was no mention in those appointment letters that they were appointed under the Centrally Sponsored Scheme. Hence, the Union of India requested the Court to discharge them of the liability of any payment of wages to the private respondents appointed by the State Government by issuing orders/letters of appointment. The Division Bench, while accepting the stand of the Union of India, has observed :-

"..However, it will be seen as discussed in this judgment that the appointment letters in question have nothing to link them with the centrally sponsored scheme of Voluntary Workers at fixed honorarium espoused by the present appellant. Neither in the assertion in the writ petitions nor in the appointment letters there are any contention to invite and fix any liability on the Union of India for minimum wages. Any such dispute is a matter to be settled by the Union of India and the State of Assam without effecting the rights of the Writ petitions.

Appeals filed by the Union of India are allowed. The Union of India has no liability in these connected Writ Appeals, vis-à-vis the writ petitions..."

- 10) By this order, the Division Bench of the High Court absolved the Union of India of the responsibility of making payment of minimum of the pay scale to these Voluntary Female Attendants, but fixed this liability on the State of Assam.
- 11) Aggrieved by the judgment and order of the Division Bench, a Review Petition was filed by the State of Assam, inter alia, on the ground, that they were not heard before an adverse order was passed against them. By an innocuous order, the Division Bench has dismissed the same. Hence the State of Assam is before us, being aggrieved by the judgment and order of the Gauhati High Court in the said Writ Appeals and also against the dismissal of the Review Petition.
- 12) Shri. Krishnan Venugopal, learned senior counsel, appeared on behalf of the appellants. Shri. H.P. Rawal, the learned Additional Solicitor General, appeared for the Union of India. The private respondents were represented by Sh. Vijay Hansaria, learned senior counsel and Sh. Sanjiv Sen, learned counsel.
- 13) The State of Assam has raised several grounds in their petitions for Special Leave. However, at the time of hearing of these appeals, the learned senior counsel for the State of Assam contended that the State of Assam

was not arrayed as a party to the proceedings and without impleading the State and without affording an opportunity of hearing, the Division Bench ought not to have passed an adverse order against the State. He further contended that the State of Assam was a necessary party to the lis before the High Court and the non-impleadment was contrary to the well settled principle of Natural Justice, namely audi alterem partem. In aid of this submission, the learned senior counsel has placed reliance on the law laid down by this Court in the case of Udit Narain Singh Malpharia Vs. Additional Member, Board of Revenue, Bihar (AIR 1963 SC 786), wherein it was held that in proceedings for a writ of certiorari, it is not only the Tribunal or Authority whose order is sought to be quashed but also the parties in whose favour the said order is issued, are necessary parties and that it is in the discretion of the Court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo-moto or on the application of a party to the writ or on application filed at the instance of such proper party.

14)

We respectfully agree with the observations made by this Court in Udit Narain's case (supra) and adopt the same. We may add that the law is now well settled that a necessary party is one without whom, no order can be made effectively and a proper party is one in whose

absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

15) In the appeals filed, the State of Assam has specifically joined the issue with the respondents that the appellant was neither impleaded as a party to the proceedings nor it was heard in the matter before passing an adverse order against it. The specific issue raised reads as under:

"c) For that, the Division Bench of the Hon'ble Court while exercising its review as well as writ appellate jurisdiction failed to appreciate the facts of the case and overlooked the fact that the State of Assam, present leave petitioner, was not made party to the said 14 numbers of Writ Appeals preferred by the Respondent No.1 while allowing the said Writ Appeals absolving the responsibility of Union of India/Respondent No.1 from making payment of the honorarium at the enhanced rate of Rs. 900/- per month to the writ petitioners and imposing the entire burden of such payment on the State of Assam and more particularly when the State of Assam was not made a party in the aforesaid Writ Appeals. In view of commission of such gross error of law as well facts, the said impugned order dated November 16, 2007 and judgment and order dated September 02, 2003 is liable to be interfered with for meeting the ends of justice."

16) The Union of India has filed its counter affidavit. It has denied various assertions made by the appellants, but in so far as the aforesaid assertion of the appellants, it is not stated by them that they had arrayed the State of Assam as a party to the proceedings

nor do they assert that the learned counsel for the State was heard in the matter. In our view, the respondents must deal specifically with each allegation of fact of which, it does not admit to be true. The allegation of fact, if not denied/controverted in the counter affidavit, normally it shall be taken to be admitted by the respondents.

17) The learned A.S.G. Shri H.P. Rawal drew our attention to the observation in the impugned judgment of the Writ Appeal to contend that though State of Assam was not arrayed as a party in the Memorandum of Appeal filed, the learned Government Advocate was heard in the matter. In support of his submission, the learned ASG invites our attention to the following observations made by the Court in the course of the order :-

"5. We have heard the learned Sr CGSC and the Government Advocates in length, considered all relevant materials in these appeals and perused the judgment and order passed by the Single Benches."

18) Keeping the aforesaid observation in view, Sh. Rawal urged before us that an inference can be drawn from the reference made in the judgment, that the State of Assam was heard through their Government Advocate. Therefore, he submits that it cannot be contended by the State of Assam that they were not heard before passing of the impugned judgment. We are not inclined to accept this argument.

19)

State of Assam, while filing these appeals, has enclosed the copies of the memorandum of writ appeals filed by the Union of India before the Division Bench of the High Court. On a perusal of the same, we are of the view that in light of the grounds raised and relief sought, the State of Assam should have been joined as a necessary party. The reason being, firstly, the State of Assam was the first respondent in the writ petition that was filed by the private respondents. Secondly, the main grievance of the Union of India was against the direction issued by the learned Single Judge to pay minimum pay scale to the volunteers, since it is their stand in the writ appeal that under the scheme, their liability is only to the extent of `100/- per month as honorarium payable to Voluntary Female Attendants and anything over and above, requires to be paid by the State Government. Thirdly, the Division Bench of the High Court has imposed the burden of payment of the salary/wages as directed by the Single Judge on the State of Assam in view of the fact that the appointments were made by the State Government. In our view, this omission or default cannot be characterized as technical breach nor just an irregularity, since this omission has resulted in a party suffering an adverse order without getting a fair hearing.

20) We cannot also agree with the contention of Shri Rawal, learned Additional Solicitor General, that the learned Government counsel for the State of Assam was heard by the Division Bench before passing the impugned order for the reason that it is consistently held by this Court that we need to look into the impugned judgment for the facts stated therein and not infer facts based on what is urged before us. In other words, the appellate court always proceeds on the assumption that whatever is on record in clear terms is the correct factual position, and not what can be inferred by interpreting stray observations. This principle is now well settled by several decisions of this Court. [See: State of Maharashtra v. R.S. Nayak, (1982) 2 SCC 463; Apar Pvt. Ltd. v. Union of India, (1992) Supp (1) SCC 1; Registrar, Osmania University v. K. Jyoti Lakshmi, (2000) 9 SCC 177].

21) We are also unable to comprehend any possible reasons for the Union of India to omit the State of Assam from the array of parties in the writ appeals filed before the Division Bench of the High Court. The fact remains that they were not made parties to the proceedings. The High Court, in our view, while allowing the appeals filed by the Union of India and shifting the liability of payment of salary/wages to Voluntary Female Attendants on the State of Assam, should have taken a little more care and

caution to find out whether the State of Assam is arrayed as a party to the proceedings and whether they are served with the notice of the appeals and in spite of service, whether they have remained absent. This is the least that is expected from the Court. Without making this small verification, the Division Bench of the High Court has fixed huge recurring financial liability on the State Government. In our opinion, in matters of this nature, even by mistake of the party, the proper parties were not arrayed in the proceedings, it is the duty of the Court to see that the parties are properly impleaded. It is well settled principle consistent with natural justice that if some persons are likely to be affected on account of setting aside a decision enuring to their benefit, the Court should not embark upon the consideration and the correctness of such decision in the absence of such persons.

22) In light of the above findings, we have no other alternative except to set aside the impugned judgment and remand the matter to the Division Bench of the High Court for de-novo hearing.

23) The next issue that needs our attention is: what is to be done to protect the interests of the private respondents who are working as volunteers for the last two decades. Whether they should wait till the writ appeals

are decided by the High Court or whether they should be paid some remuneration during the interregnum. If they have to be paid immediately, what is the amount and who should pay?

24) Sh. Vijay Hansaria and Sh. Sanjiv Sen, appearing on behalf of the private respondents, have vehemently argued before us that the matter may be remanded only to decide who should shoulder the burden of payment of salary to the private respondents.

25) In support of their submission, they have urged before us that the issue whether the liability of payment of salary exists or not, has attained finality. The only issue that requires to be gone into by the High Court is who should shoulder the responsibility. It is pointed out that in Jalini Brahma's case, the learned Single Judge of the Gauhati High Court has placed the responsibility of payment of salary to the private respondents and similarly placed persons, on all the respondents, viz. the Union of India and the State Government (or their functionaries). They further stated that the question of liability, as decided by the learned Single Judge, was never appealed against and in so far as the payment of minimum wages to the Voluntary Female Attendants at par with the regularly appointed Ward Girls has also attained finality. They

fairly conceded that with respect to their request for regularization of their service, the learned Single Judge had decided against the private respondents, and since they never appealed against the same, it had also attained finality. Therefore, the learned counsel would contend that till the appeals are decided by the Division Bench of the High Court, the State of Assam should be directed to pay the minimum of the pay scale to the private respondents.

26) Having considered the rival opinions suggested by the learned counsel for the parties to the lis and also keeping in view the interim orders passed by this Court dated 20.04.2009, pursuant to which it is the State of Assam which is paying minimum of pay scale to the private respondents, we are of the view that the private respondents in these appeals require to be paid at least minimum wages payable under The Minimum Wages Act during the pendency of the appeals before the High Court, by the State of Assam, subject to the final orders that may be passed by the High Court.

27) In view of the above, we allow these appeals and set aside the impugned judgment and orders passed by the Division Bench of Gauhati High Court and remand the matter to the High Court with a request to dispose of the appeals as early as possible, at any rate, within six months from

today after ensuring that proper parties are impleaded. During the interregnum, we direct the State Government to pay the minimum wages under the provisions of Minimum Wages Act, as notified in their official Gazette to the private respondents. Liberty is reserved to all the parties to raise all such contentions which are available to them including the contentions raised before this Court. In the facts and circumstances of the case, we direct the parties to bear their own costs.

.....J.
[D.K. JAIN]

.....J.
[H.L. DATTU]

New Delhi,
September 30, 2010.



JUDGMENT

ITEM NO. 1-A
(For Judgment)

COURT No.5

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NOS. 8378-8392 of 2010 @
PETITION FOR SPECIAL LEAVE TO APPEAL © NOS. 6432-6446 OF 2008

State of Assam

.. Appellant(s)

Versus

Union of India & Ors. Etc.

.. Respondent(s)

DATE : 30/09/2010

These matters were called on for
pronouncement of judgment today.

For Appellant(s)

Mr. Avijit Roy, Adv.
for M/s Corporate Law Group, Adv.

For Respondent(s)

Mr. Sanjeev Sen, Adv.
Mr. Jai Prakash Pandey, Adv.

Mr. Rajiv Mehta, Adv.

Mr. D.S. Mahra, Adv.

Mr. Shankar Divate, Adv.

Mr. Goodwill Indeevar, Adv.

Mr. Gopal Singh, Adv.

Hon'ble Mr. Justice H.L. Dattu pronounced the judgment of the Bench comprising Hon'ble Mr. Justice D.K. Jain and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed order. In the facts and circumstances of the case, the parties are directed to bear their own costs.

[Charanjeet Kaur]

Court Master

[Kusum Gulati]

Court Master

[Signed reportable judgment is placed on the file]

