

GAHC010072252026



2026:GAU-AS:6254

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

Case No. : WP(C)/2018/2026

SHRI PARASH KUMAR BHATTACHARJEE
S/O LATE SATYENDRA NATH BHATTACHARJEE, RESIDENT OF REGENT
PARADISE, GHORAMARA CHARIALI, PS- HATIGAON, GUWAHATI -28,
DISTRICT- KAMRUP(M) ASSAM

VERSUS

THE CHIEF SECRETARY TO THE GOVT OF ASSAM
DISPUR, GHY-6

2:THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
IN-CHARGE IRRIGATION DEPARTMENT
D-BLOCK
DISPUR
GHY-6

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE
ANTI-CORRUPTION AND VIGILANCE
SHRIMANTAPUR
GUWAHATI-32

4:THE PRINCIPAL SECRETARY IN CHARGE FINANCE DEPARTMENT

DISPUR
GUWAHATI-06

5:THE SECRETARY TO THE GOVT OF ASSAM

IRRIGATION DEPARTMENT
C- BLOCK 3RD FLOOR
DISPUR
GHY-6.

6:THE CHIEF ENGINEER
IRRIGATION ASSAM
CHANDMARI
GHY-3

7:THE ADDITIONAL CHIEF ENGINEER

INSPECTION AND QUALITY CONTROL (IQC) IN THE OFFICE OF THE
CHIEF ENGINEER
IRRIGATION
ASSAM
CHANDMARI
GHY-3.

8:THE SUPERINTENDING ENGINEER

NAGAON CIRCLE IRRIGATION
AMOLAPATTY
NAGAON
PIN-782003

9:THE EXECUTIVE ENGINEER

MORIGAON-LAHARIGHAT-JAGIROAD DIVISION
IRRIGATION
MORIGAON
PIN-782105

10:SHRI BEDANTA BORA THE THEN EXECUTIVE ENGINEER
MORIGAON DIVISION POSTED AS LAHARIGHAT-JAGIROAD (IRRIGATION)
PRESENTLY DIRECTOR PLANNING IN THE OFFICE OF THE ADDITIONAL
CHIEF ENGINEER PLANNING AND RESEARCH
CHANDMARI
GUWAHATI-0

Advocate for the Petitioner : PETITIONER IN PERSON,

Advocate for the Respondent : GA, ASSAM, SC, FINANCE,SC, IRRIGATION

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

07.05.2026

Heard the petitioner-in-person. Also heard Mr. H. Sarma, learned Additional Senior Government Advocate, Assam for the respondent nos. 1 & 3; and Mr. N. Upadhyay, learned Standing Counsel, Irrigation Department for the respondent nos. 2, 5, 6, 7, 8 & 9.

2. The petitioner-in-person has instituted the instant writ petition seeking to invoke the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

3. In this writ petition, the petitioner has specifically sought for a direction to the respondent authorities to initiate criminal proceeding against the respondent no. 10, who has been impleaded inadvertently at some places as the respondent no. 9, under Section 59, Section 61 and Section 316[5] of the Baratiya Nagarik Suraksha Sanhita [BNSS], 2023. The petitioner has alleged involvement of the respondent no. 10 in committing crimes in the capacity of Executive Engineer, Morigaon-Laharighat-Jagiroad Division, Irrigation Department. It is mentioned that the respondent no. 10 is presently posted as the Director, Planning O/o the Additional Chief Engineer, Planning & Research, Chandmari, Guwahati.

4. It is relevant to refer to the provisions of Section 59, Section 61 and Section 316[5] of the BNSS at first.

5. Section 59, BNSS has provided that the Officer In-Charge of the police stations shall report to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

6. Section 61 has provided for power, on escape, to pursue and retake. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India and Section 44 shall apply to such arrest although the person making any such arrest is not acting under a warrant and is

not a police officer having authority to arrest.

7. Sub-section [5] of Section 316 of the BNSS is with regard to record of examination of an accused.

8. From the statements and averments made in the writ petition, it is noticed that allegations are made against the respondent no. 10 with regard to irregularities he had allegedly committed during his tenure as Executive Engineer, Morigaon-Laharighat-Jagiroad Division, Irrigation Department in various tender processes. The petitioner has alleged that while discharging his duties as a public servant, the respondent no. 10 had acted in excess of the financial powers delegated to him and in the process, had committed misconduct. To support his case, the petitioner has relied upon a report submitted by the Additional Chief Engineer, Inspection & Quality Control, Irrigation Department, Assam.

9. The prayer made in the writ petition is for a direction to the respondent authorities to initiate criminal proceeding against the respondent no. 10 under the afore-stated provisions of the BNSS without any previous approach by the petitioner seeking statutory remedies provided under the BNSS. There is no averment to the effect that the petitioner has lodged any complaint before the police alleging commission of any offence by the respondent no. 10. Without availing such statutory remedies provided under the BNSS, the petitioner has approached this Court directly invoking the writ jurisdiction of this Court seeking direction for initiation of criminal proceeding. In the considered view of this Court, such a recourse in the first instance is contrary to the settled principles of law.

10. In *Sujal Viswas Attavar and another vs. State of Maharashtra and others*, 2026, INSC 442, decided on 04.05.2026, it has been observed that the High Court is not bound to entertain a writ petition merely because of alleged inaction or negligence is made out against a statutory authority. Ordinarily, where a statute provides a complete and efficacious remedy, the same must be exhausted before invoking constitutional jurisdiction. The decision in *Sujal Viswas Attavar* has referred to the decisions in *Sakiri Vasu vs. State of Uttar Pradesh and others*, [2008] 2 SCC 409 and *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage*, [2016]

6 SCC 277.

11. The approach made by the petitioner through this writ petition is found to be misconceived one and therefore, the writ petition is dismissed.

JUDGE

Comparing Assistant