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

Case No. : WP(C)/4025/2025

NABANITA CHAKRABARTY AND ANR
D/O SAMIR PRASAD CHAKRABARTY, VILL- HAKAMA PT. II (BILASIPARA
WARD NO. 9 TOWN), P.O.- HAKAMA, P.S.- BILASIPARA, DIST- DHUBRI
(ASSAM), PIN-783348

2: DEEPJITA CHAKRABARTY
D/O SAMIR PRASAD CHAKRABARTY
VILL- HAKAMA PT. II (BILASIPARA WARD NO. 9 TOWN)
P.O.- HAKAMA P.S.- BILASIPARA
DIST- DHUBRI (ASSAM)
PIN-78334

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM (REVENUE AND DISASTER MANAGEMENT DEPARTMENT),
DISPUR, GHY-06

2: THE DISTRICT COMMISSIONER
DHUBRI ASSAM PIN-783301

3: THE SUB-DIVISIONAL OFFICER CIVIL
BILASIPARA CUM CO-DISTRICT COMMISSIONER
BILASIPARA

4: THE CIRCLE OFFICER
BILASIPARA REVENUE CIRCLE
DIST- DHUBRI ASSAM PIN-783348

5: RAJ PRASHAD CHAKRABARTY
S/O LT. KIRITI PRASAD CHAKRABARTY
VILL- HAKAMA PT. II (BILASIPARA WARD NO. 9 TOWN)
P.O.- HAKAMA

P.S.- BILASIPARA
DIST- DHUBRI (ASSAM)
PIN-783348

6:PRAVATI SUTRADHAR
D/O MANINDRA SUTRADHAR
VILL- HAKAMA PT. II (BILASIPARA WARD NO. 9 TOWN)
P.O.- HAKAMA P.S.- BILASIPARA
DIST- DHUBRI (ASSAM)
PIN-783348

7:HIRAK PRASAD CHAKRABARTY
S/O LT. DURGA PRASAD CHAKRABARTY
VILL- HAKAMA PT. II (BILASIPARA WARD NO. 9 TOWN)
P.O.- HAKAMA P.S.- BILASIPARA
DIST- DHUBRI (ASSAM)
PIN-78334

Advocate for the Petitioner : MR. M U MONDAL, A A AHMED,MR K ISLAM,MS. N NASRIN
Advocate for the Respondent : SC, REVENUE, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. MU Mondal, learned counsel for the petitioners. Also heard Ms. G Hazarika, learned Standing counsel for the Revenue & Disaster Management Department, representing the respondent No. 1 and Mr. SS Roy, learned Government Advocate, Assam representing the respondent Nos. 2 to 4.
- 2.** The petitioners are aggrieved by non-delivery of a Public Service (Demarcation of Land) within the stipulated period under the Assam Right To Public Services Act, 2012 (hereinafter referred to as the ARTPS Act, 2012). Petitioners' father, Samir Prasad Chakrabarty, applied for demarcation of a plot of land. The same has not been carried out by the respondent No. 4 i.e. the Circle Officer, Bilasipara, though, several dates have been fixed for completion of the demarcation process.
- 3.** It is the further case of the petitioners that the father of the petitioners required financial assistance for medical treatment. Therefore, after demarcation, they would be

able to sell the aforesaid land.

4. The petitioners earlier approached this Court by filing WP(C) No. 1129/2025.

5. This Court, after analysis of the provisions of the alternative statutory remedy available under the ARTPS Act, 2012, more particularly, under Section 9(2)(a) and Section 8(3)(4) of the ARTPS Act, 2012 and taking note that an efficacious alternative remedy of appeal against alleged delay is available, relegated the petitioner to approach the Appellate Authority.

6. Now, the present application is filed alleging that the petitioners thereafter, have approached the First Appellate Authority, and when the First Appellate Authority also did not decide the application of the petitioners, the petitioners preferred a second appeal under Section 8(4) of the ARTPS Act, 2012, however, none of the aforesaid applications have been decided till date.

7. On instruction, Mr. S. S. Roy, learned Government Advocate, Assam, submits that there are some disputes and therefore, the demarcation could not be carried out.

8. This Court, at this stage, is not concerned with whether the demarcation can be carried out or not, but whether the mandate of law to decide and deliver public service within a stipulated period, as provided under the ARTPS Act, 2012 is followed.

9. Before dealing with the contentions made by the learned counsels for the parties, let this Court deal with the provisions of the ARTPS Act, 2012.

10. Though this Court could have closed this writ petition based on the submission of the learned Advocate for the respondent that, if 2nd appeal is filed afresh by curing the defect, however, this Court while taking up similar matters, in recent past has observed that there are numbers of writ petitions filed before this Court with a grievance of non-grant of notified service within stipulated time as provided under the ARTPS Act, 2012.

11. Therefore, it is essential to decide, in this case, more particularly, the effect of keeping the public service pending, by the Designated Public Servant. Therefore, this Court would first like to deal with the object of the ARTPS Act, 2012 and the corresponding duty entrusted upon a Designated Public Servant towards providing notified services to a citizen.

12. The State Legislature enacted the ARTPS Act, 2012, the Preamble of which states that it is an Act to provide for the delivery of the notified public services to the people of the State of Assam within the stipulated time limit and for the matters connected therewith and incidental thereto. In exercise of the powers conferred by Section 15 of the ARTPS Act, 2012, the State Government has also made a set of rules viz. the Assam Right to Public Services Rules, 2012 ('the ARTPS Rules', for short).

13. The ARTPS Act, 2012 is extendable to the whole of Assam, except for the districts of Kokrajhar, Chirang, Baksa, Udalguri, Karbi Anglong and Dima Hasao.

14. The term '**eligible person**', defined in Section 3(d), means a citizen who is eligible for obtaining the notified service. As per Section 3(h), '**Right to Public Service**' means the right to obtain the notified service under the ARTPS Act, 2012 from time to time within the stipulated time limit as prescribed under Section 5. '**Notified service**', as per Section 3(i), means any service notified by the State Government under Section 4. Section 3(k) has provided for the '**stipulated time limit**', which means the maximum time to provide the service by the Designated Public Servant or to decide the appeals by the appellate authorities as notified under Section 4.

15. In exercise of the powers conferred under Section 4 of the ARTPS Act, 2012, the State Government may, from time to time, notify, inter-alia, the public services including the provisions for fast track service delivery ("Tatkal Sewa"), the appointment of Designated Public Servants in the administrative units/offices under it, Appellate Authorities to hear and decide the appeal by an eligible person against rejection of his/her application or delay in providing notified public services within the stipulated time limit, etc.

16. Under Section 5, every eligible person has the right to obtain the services in accordance with the ARTPS Act, 2012 within the time period as notified under Section 4.

17. The responsibility has been casted on the Designated Public Servant, under Section 6, to provide the notified services under Section 4 to the eligible person within the stipulated time limit, which starts, as per Section 7, from the date when the application for obtaining a required notified service is submitted to the Designated Public Servant or

to a person, subordinate to him, authorized to receive the application.

18. It has been made mandatory under Rule 3 of the ARTPS Rules to issue an acknowledgement to the citizens applying for notified services.

19. The State Government by a Notification No. AR.32/2020/PT-I/28 dated 10.06.2021 has further made it mandatory to issue an acknowledgement against each such application for the notified service to track the delivery of the notified service and to verify whether the notified service has been delivered within the stipulated time period.

20. The Designated Public Servant, on receipt of an application to provide a notified service, shall either provide the notified service or reject the application and in case of rejection of an application, he shall have to record the reasons in writing and communicate to the person making the application (i) the reasons for such rejection; (ii) the period within which an appeal against such rejection may be preferred; and (iii) the particulars of the Appellate Authority.

21. Section 8 of the ARTPS Act, 2012 has made provisions for appeal as well as for a second appeal before an Appellate Authority and the Assam State Commission for Right to Public Services ('the Commission', for short) respectively, within the time limits provided thereof.

22. The State Government in exercise of the powers conferred by Sub-Section 2 of Section 8D of the ARTPS Act, 2012 has also made a set of regulations by the name of 'the Assam State Commission for Right to Public Services Regulations, 2021 ('the ARTPS Regulations', for short) for regulating the procedure and disposal of business of the Commission and the ARTPS Regulations have been notified by the State Government vide a Notification No. AR.21/2021/31 dated 12.11.2021.

23. Section 9 of the ARTPS Act, 2012 has prescribed for penalty at the rate specified from time to time as stipulated in the rules framed under the Act, if the Designated Public Servant, has refused to receive an application for notified services or has failed to provide the notified public services within the stipulated time as fixed under the Act or malafidely denied the request for notified services or obstructed in any manner in delivering the notified services without sufficient and reasonable cause. Provision is also made therein

for imposition of a penalty up to a maximum of Rs. 25,000/-. Section 10 of the ARTPS Act, 2012 has laid down the procedure for recovering the penalty, making provision for recovery of the penalty from the salary of the concerned Designated Public Servant.

24. The State Government has, thereafter, in exercise of the powers conferred under Section 4 of the ARTPS Act, 2012, notified and brought a number of services under the purview of the ARTPS Act, 2012. Amongst the services, so notified and brought under the ambit of the ARTPS Act, 2012, are the demarcation of land.

25. Now, coming to the case in hand, the application filed by the petitioners' father was received in the office of the Circle Officer, Bilasipara Revenue Circle on 10.07.2024. Accordingly, the Circle Officer registered Demarcation Case No. BPC/D/97/2024 and notice was issued to the Co-pattadars on 08.01.2025 fixing the date of hearing on 01.02.2025 at 10:00 am seeking objection. Again, another notice was issued on 07.02.2025 fixing the next date on 10.02.2025. Subsequent notice was issued on 11.02.2025 fixing the next date on 13.02.2025 and thereafter, notice was issued on 15.02.2025 fixing the next date on 19.02.2025. When nothing was progressing and the land was required to be demarcated for selling of the property to meet the medical expenses required for the father of the petitioners and as already NOC for selling of the property was granted, the petitioners persuaded for the same. In the meantime, the father of the petitioners died of his illness. The petitioners had the requirement of money, they approached this Court by filing the writ petition. As recorded hereinabove, the petitioners were relegated to the appellate authority and till date, no such decision has been taken, though admittedly, the statutory period stipulated under the ARTPS Act, 2012, had already elapsed.

26. The 1st Appeal preferred by the petitioners was also kept pending beyond the stipulated period.

27. Though the 2nd appeal was preferred by the petitioners before the Appellate authority, however, due to description of the appellate authority as "the Commissioner and Secretary to the Government of Assam in the Revenue and Disaster Management Department," the same was also kept pending till this Court asked the reasons for pendency; when it was intimated to this Court that the appeal was not taken on record

for the defect in addressing the 2nd Appellate Authority.

28. This is very unfortunate state of affairs, more particularly, in terms of the ARTPS Act, 2012, the Designated Public Servant for carrying out the demarcation is the Circle Officer. The time stipulated as prescribed for carrying out the demarcation is total 30 days. Though the petitioners' father filed the application for demarcation of land, however, such application was neither rejected with reasons as required, nor the public service was provided.

29. As recorded hereinabove, an appeal can also be preferred, when designated service is not provided within the stipulated period of time. The stipulated time period prescribed for the appellate authority under the ARTPS Act, 2012 is minimum 30 days and maximum 45 days after filing of an appeal. Admittedly, such period was also over, however, no decision was taken by the 1st Appellate Authority.

30. As recorded hereinabove, the object of enactment of the ARTPS Act, 2012 as disclosed in the preamble, is to provide for delivery of notified public services to the people of the State of Assam within the stipulated time limit. In the considered opinion of this Court and the given facts of the present case, this Court is having no hesitation to hold that the noble object of the legislature in providing speedy public service to citizen is totally flouted, at the hands of such designated public authority including the appellate authorities, defeating very object of the ARTPS Act, 2012.

31. This Court is also of the opinion that the prescription of time limit for providing the designated public service to a citizen and prescription of imposition of fine, when public service is not provided beyond the prescribed time, is mandated by legislature to fix responsibility upon the designated officer and to strictly compel such designated public servant to follow the mandate and the object of the ARTPS Act, 2012 i.e. to deliver notified public services to the people of the State of Assam within the stipulated time limit.

32. It is apposite to record here that it is a bounden duty upon such Designated Public Servant to decide and either to give such service, if permissible under law or to refuse it and inform the reason thereof.

33. In the name of a Public Service, in this case, a person is required to run from pillar to post. He approached before the Designated Public Servant, who was kept pending beyond the stipulated period. He approached the First Appellate Authority against such a delay, which is also kept pending and not delivered within the stipulated period. When only for the reason of delay, he had to approach the Second Appellate Authority, and now, the Second Appellate Authority comes within an explanation, they cannot entertain such an application as the appeal was not addressed in the name of the appropriate authority. They could have relegated the petitioners to the proper authority instead of keeping that appeal pending and compelling the petitioners to approach before this Court.

34. It is also apposite to record here that the powers and functions of the Commission have been outlined in Sub-section (1) of Section 8D of the Act with the mandate that it shall be the duty of the Commission to ensure proper implementation of the ARTPS Act, 2012 and to make suggestions to the State Government for ensuring better delivery of services. For the said purpose, the Commission may (a) entertain and dispose of appeal under Section 8; (b) recommend Department action against any officer or employee of the State Government who has failed in due discharge of functions cast on him under this Act; (c) recommend charges in procedures for delivery for transparent and easier: provided that before making such a recommendation, the Commission shall consult the Authority of the concerned Administrative Department which is to deliver the services; and (d) recommend steps to be taken by Public Authority for efficient delivery of Public Services. Sub-section (2) of Section 8D has conferred power to the Commission to frame regulations, subject to the previous approval of the State Government, consistent with the provisions of the ARTPS Act, 2012 and the ARTPS Rules, 2012 for regulating its own procedure and disposal of its business with sub-section (3) thereof contains the mandate to publish such regulations in the Official Gazette.

35. Thus, the Commission is the protector of the right of the citizens under the ARTPS Act, 2012. However, it is unfortunate to record here that in the present case, the Commissioner-cum-2nd Appellate Authority, should have been more sensitive, in the

backdrop of trust and responsibility bestowed upon it by the Legislature for protection of right of citizens.

36. That being the position, even if the contention of Mr. Roy, learned Government Advocate, Assam is accepted that the petitioners shall be at liberty to approach the 2nd Appellate Authority by filing a fresh 2nd Appeal curing the defect, this Court cannot be unmindful of clear violation of the time limit prescribed by the designated officers as well as the 1st Appellate Authority as recorded hereinabove and therefore, in any view of the matter, the aforesaid designated public servants are liable to pay the fine to the petitioners.

37. In view of the aforesaid, it is held that the Designated Public Servant is required to pay penalty as prescribed. The Assam State Commission for Right to Public Services, shall calculate the amount of penalty in terms of the ARTPS Act, 2012 and the Rules framed thereunder and ensure payment of the same to the petitioners. Such exercise, be carried within a period of 30 days from the date of furnishing a copy of this order before the Assam State Commission for Right to Public Services . A compliance report of this direction be forwarded to the Registrar (Judicial), Gauhati High Court.

38. The petitioners shall be at liberty to file a fresh 2nd appeal curing the defects.

39. With the aforesaid observation and direction, the instant writ petition is accordingly disposed of. Parties to bear their own costs.

JUDGE

Comparing Assistant