

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM & ARUNACHAL PRADESH)
SHILLONG BENCH

W.P.(C) No. 1(SH) of 2012.

1. Shri Saiful Islam
son of Sri Shukur Ali

2. Shri Bahadur Rahman
son of Shri Zuhurul Haque

3. Smti Anjuwara Begum
wife of Shri Sadibur Rahman

all residents of Village Phershakandi
PO New Bhaitabari
PS Phulbari, West Garo Hills
District, Meghalaya.

: Petitioners

versus

1. The State of Meghalaya
represented by the Commissioner
and Secretary, Community and
Rural Development, Shillong.

2. The Deputy commissioner/
District Programme Coordinator of
The Mahatma Gandhi National Rural
Employment Guarantee
(MGNREG) Scheme,
West Garo Hills District,
Meghalaya

3. The Block Development Officer/
Programme Officer,
Selsella Block,
West Garo Hills District,
Meghalaya.

: Respondents

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioners

: Mr AS Siddiqui,
Mr R Kar,
Ms SA Pandit, Advs

For the respondents : Mr ND Chullai, Sr. GA

Date of hearing : 13.02.2012

Date of judgment and order : 17.02.2012

JUDGMENT AND ORDER

The sole question which falls for consideration is, whether the petitioner can withdraw this writ petition at this stage? This exercise has been necessitated by the vehement objection raised by Mr. N.D. Chullai, the learned Senior Government Advocate appearing for the State-respondents, against the oral prayer made by Mr. A.S. Siddiqui, the learned counsel for the petitioner, for allowing the petitioner to withdraw the writ petition without leave to file a fresh case. According to the learned counsel for the opposite parties, the petitioner, who had obtained an interim order from this Court for staying the election process for election to the post of Secretary of the Village Employment Council being held on 31-1-2012 and who, contrary to the stay order, having participated in that election held on 31-1-2012, should not be allowed to withdraw this writ petition. It is the submission of the learned State counsel that by obtaining the stay order against the holding of the election, the petitioner is barred from contesting such an election; he is abusing the process of this Court. Refuting the submissions of the learned State counsel, the learned counsel for the petitioner, contends that as the copy of the stay order dated 27-1-2012 was not delivered to the petitioner by the Registry of this Court on that day itself, the next day and the subsequent being holidays, the copy could not reach the respondents in time and the election was already held by the time the stay order was made known to the respondent No.

3. As the stay order proved to be unhelpful for the petitioner, according to the learned counsel, he had no alternative but to contest the election and seeks withdrawal of the writ petition as it has become infructuous.

2. Before advertng to the rival contentions of the learned counsel appearing for both the parties, we may refer to the relevant provisions of Order 23, Rule 1 of the Code of Civil Procedure:

**“1. Withdrawal of suit or abandonment of part of claim.—
(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:**

Provided that where the plaintiff is a minor or other person to whom the provision contained in Rules 1 to 14 of Order 32 extend, neither the suit nor any part of the claim shall be abandoned without the leave of the court.

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The principle underlying withdrawal of suit under Order 23, Rule 1 of CPC has been extended by the Apex Court in **Sarguja Transport Service v. S.T.A.T., (1987) 1 SCC 5**, in the interest of administration of justice, to cases of withdrawal of writ petition also. The legal position with respect to withdrawal of suit by the plaintiff when no leave to apply for filing a fresh suit is made by him has been explained by the Apex Court in **M/s Hulas Rai v. K.B. Bass & Co., AIR 1968 SC 111** in the following manner:

“(2) The language of Order 23, Rule 1, Sub-rule (1), C.P.C., gives an unqualified right to a plaintiff to withdraw from a suit and if no permission to file a fresh suit is sought under sub-rule (2) of that Rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject-matter under sub-Rule (3) of that Rule. There is no provision in the Code of Civil Procedure which requires the Court to refuse permission to withdraw the suit under such circumstances and to compel the plaintiff to proceed with it. It is, off course, possible that different considerations may arise where a set-off may have been claimed under Order 8, C.P.C. or a counter-claim may have been filed, if permissible by the

*procedural law applicable to the proceedings governing the suit.
....”*

3. The Apex Court in **Sneha Gupta v. Devi Sarup, (2009) 6 SCC 194**, relying on Hulas Rai case (supra), held that a right to withdraw a suit in the suitor would be unqualified, if no right has been vested in any other party. In the instant case, it is nobody's case that the petitioner has already obtained undue benefits by entertaining the writ petition or by obtaining an interim stay. Neither is the interest of third parties affected by the interim order as the election sought to be stayed has already been held in which the petitioner himself is reported to have participated. In my opinion, the objection raised by the learned Senior Government Advocate against the prayer of the petitioner for unconditional withdrawal of the writ petition is misconceived and is, accordingly, rejected.

4. For what has been stated in the foregoing, the prayer of the petitioner for unconditional withdrawal of the writ petition is allowed. The writ petition is, therefore, dismissed on withdrawal. No costs. The interim order passed in the connected Misc. Case also stands vacated.

JUDGE

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