

PETITIONER:
DR. (MRS.) NEERAJ BALA GOSWAMI

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT: 11/04/1996

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
HANSARIA B.L. (J)

CITATION:
JT 1996 (4) 138 1996 SCALE (3)427

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY.J.

In this application, respondent No.3 Sri Surender Mohon, has prayed for direction to expunge the remarks made against him in the order dated 21.11.1994 passed in the writ petition filed by Dr. (Mrs.) Neeraj Bala Goswami. For the the purpose of appreciating the prayer, some background facts may be reiterated.

A young soldier Sri Shyamai Goswami of Meerut gave an exemplary display of courage risking his own life for the defence of his motherland during indo-Chinese war in 1962, when he was in an army detachment in a forward area in Chusul. At the gravest risk of his life, he faught undauntedly against a heavy detachment of Chinese army and by that process became severely wounded. Later on, he was rescued and treated. But his legs had to be amputated. In recognition of his gallantry and exemplary courage and devotion to duty, he was awarded the highest gallantly award for an army personnel: "Mahavir Chakra". In the year 1992, the Government of U.P. gave Col. Goswami a land measuring about 2 bighas 11 biswas and on getting a dealership of licence of L.P.G. from Indian Oil Corporation. Col. Goswami used to run the said Gas Agency. Col. Goswami married the petitioner, Dr. Neeraj Bala Goswami, but it appears that the conjugal life had to suffer a rough weather. At the time of his death, his wife used to live separately. In April 1992, Col. Goswami was found murdered in his house in the campus of Goswami Gas Agency. After the death of Col. Goswami, dispute as to ownership of the Gas Agency and right to carry on the said agency arose between his widow Dr. Neeraj Goswami and the sisters of Col. Goswami, particularly Sm. Ashoka Trikha, who claimed to be a partner of Col. Goswami long before his death.

The applicant is the husband of one of the real sisters of Col. Goswami, Sm. Deepashree Mohon respondent no.14. He is a very senior member of the Indian Administrative

Service. While holding a very senior assignment as an IAS Officer in Uttar Pradesh Cadre, the applicant wrote two letters one dated 10th August 1993 to the Executive Director of Indian Oil Corporation and the other dated May 5, 1994 addressed to the Principal Secretary, Home Department of the State of U.P. In the order dated 21.11.1994 it was observed that "we are of the view that respondent No.3 Sri Surendra Mohon had acted with gross impropriety and in violation of the office by addressing letters dated 10th August 1993 to the Executive Director of Indian Oil Corporation and letter dated 5th May 1994 to the Principal Secretary, Home Department of the State when his wife and other near relations were involved in the matter. We strongly disapprove of his conduct."

Along with this application, the applicant has annexed both the said letters and has given his explanation as to why and under what circumstances and for what purpose the said letters were written by him. After giving our careful consideration to the letter dated 5th May, 1994 addressed to the Principal Secretary, Home Department of the State of U.P., it transpires to us that the said letter was addressed not with a purpose to influence the course of investigation of the case relating to unfortunate murder of Col. Goswami, who was the real brother of the wife of the applicant. There is no difficulty in appreciating the anguish of the applicant in not solving the case of murder of a valiant son of the country, committed in a mysterious circumstance. It appears to us that the letter was addressed so that the investigation in the case of murder is taken more vigorously by requisitioning the service of the CID department. Normally, such prayer is often made by near relations and friends, when the police fails to solve the mystery of murder. But the applicant was a senior member of the IAS. His letter is likely to assume a different dimension and it is not unlikely that such letter may influence the course of action to be taken by the department. Since such letter was written to the Principal Secretary of the Home Department, we do not think that the same was written with any intention to influence another very senior member of the cadre. On reconsideration of the facts and circumstances of the case. We feel that such letter was addressed bonafide in an anxiety to ensure speeds and effective investigation in the case of murder of Col. Goswami. The applicant, therefore may not deserve the strong observation made by this Court for the said letter in the order dated 21.11.1994.

So far as the Letter dated August 10, 1993 addressed to the Executive Director of Indian Oil Corporation is concerned, the applicant being a senior member of the IAS and holding a high office of responsibility should have desisted writing of the said letter when in the rival claims for the gas agency, his very close relations were involved. There is no difficulty in appreciating the applicant's concern for his near relations at the personal level but in his official capacity, such letter should not have been addressed. It was expected of the applicant to be alive to the possibility that such letter was likely to create prejudice against the other rival claimant. However, on a careful consideration of the facts and circumstances of the case and noting that petitioner Dr. Neeraj Goswami was approaching various authorities including the political high ups to recommend her case for giving the agency in her favour, it appears to us that the said letter was written to highlight the viewpoint of the other claimant Sm. Ashoka Trikha so that the authorities concerned may consider the

rival claims after keeping in mind the relevant facts and circumstances. Although such course of action on the part of the applicant was unwise and should have been avoided, it appears to us that the said letter was not written with any malafide intention. Considering the statements made in the application, we do expect that the applicant would be more careful in future in writing letters in his official capacity. He has genuinely regretted for failing to appreciate the consequence which his letter was likely to bring about.

We, therefore, modify the order dated 22.11.1994 by expunging the observation made in connection with both the said letters. The application is disposed of accordingly.

JUDIS