
(1984) 09 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 444 of 1984

Achan Ali

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 06-09-1984

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 138, 138(1), 138(2), 146, 24
Constitution of India, 1950 — Article 226, 38, 39, 41, 46

Citation : (1985) 1 GLR 141

Hon'ble Judges : K. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : P.G. Barua and D. Goswami, for the Appellant; D.N. Choudhury, Sr. Govt. Advocate, J.P. Bhattacharjee, P.K. Goswami, A.K. Phukan, R. Gogoi, T.H. Laskar and D. Bhuyan, for the Respondent

Final Decision : Dismissed

Judgement

K. Labiri, J.—This is an application under Article 226 of the Constitution of India directed against the resolution of the Executive Committee, Mangaldoi Mahkuma Parishad dated 14.6.84 recommending to the Mahkuma parishad for setting Sonarisal Animal Market with Respondent No. 3, Md. Baharul Islam, and the order dated 20.7.84 passed by the Government of Assam in exercise of its power u/s 138 of the Assam Panchayati Raj Act, 1972 (as amended) for short "the Act", upholding the resolution and turning down the prayer of the Petitioner for setting the Bazar with him.

2. The Mangaldoi Mahkuma Parishad invited tenders for settlement of the market in question and also other hats and markets for the year 1984-85. The period of settlement is 1.7.84 to 30.6.85. As such, the end of the term of the settlement is not far off. The Petitioner is and was at all relevant time duly elected member of the Banmaja Gaon Panchayat. There were other tenderers apart from the Petitioner and Respondent No. 3. However, we are not concerned with there in the present writ application, It is indubitable that the Petitioner offered the

second highest bid of Rs. 55,000/ Respondent No. 3 offered Rs. 41,301/-. The tender of the Petitioner was considered but the Executive Committee of the Mahkuma Parishad resolved that Respondent No. 3 was the suitable tenderer for getting the settlement. However, no reason was given by the Executive Committee why it found Respondent No. 3 to be suitable and why the Petitioner was not found so. It is the common case of the parties that resolution of the Executive Committee was required to go to the Mahkuma Parishad for its acceptance and only upon such acceptance the lease/settlement could be granted to Respondent No. 3. It is also conceded by learned Counsel for the parties that in view of the several decisions of this Court no appeal lay against a resolution of the Executive Committee however, a revision lay u/s 138(2) of "the Act". Against the resolution of the Executive Committee the Petitioner filed an application u/s 138 of "the Act".

3. Mr. P.G. Barua, learned Counsel for the Petitioner, concedes that the said application was a revision u/s 138(2) of "the Act" though filed and dealt with as an appeal. The petitions was entertained and records and reports were called but it was rejected by the State Government by a speaking order. The State Government treated the revision as an appeal, and considered all contentions of the Petitioner. The Petitioner contended that his tender was higher than that of Respondent No. 3 and as such, he was entitled to settlement. The Petitioner also contended that the order of the Executive Committee contained no reason for selecting Respondent No. 3 and why the Petitioner was not found suitable. It was contended that the Executive Committee preferred Respondent No. 3 as an "unemployed educated youth" which was not a valid ground for granting preference to Respondent No. 3. Before the Government, it was contended that the Petitioner had resigned before the date of the order of settlement as such he was not a member of the Gaon panchayat on the date of settlement, and therefore he was not ineligible to get the settlement. Indeed, the Petitioner claimed before the Government that he had submitted his resignation from the membership of the Gaon panchayat on 2.6.1984 and the resolution of the settlement was taken on 14.6.1984. It was, therefore urged that the Petitioner was no longer a member of the Gaon panchayat on the date of the resolution and as such he was not ineligible to get the settlement nor was he disqualified to get the settlement under "the Act". The State Government held that the Petitioner did not comply with the provisions of the Section 24 of "the Act", that is, he did not submit his letter of resignation to the Deputy Commissioner and as his resignation was not accepted by the competent authority he continued to be a member of the Gaon panchayat. Accordingly, he was ineligible to get the settlement in view of the bar imposed in Section 146 of "the Act". The Government also held that the Executive Committee on consideration of the local condition and in the interest of the efficient management of the bazar rightly settled the market with Respondent No. 3. The offer made by Respondent No. 3. was not low, The authority also held that Respondent No. 3 was an unemployed educated youth and the Executive Committee did not commit any wrong in

resolving to offer the market to Respondent No. 3, an educated unemployed youth. The Government upheld the resolution and turned down the prayer of the Petitioner holding that Respondent 3 was more suitable than the Petitioner. In fact the State Government held that the Petitioner was ineligible to get the settlement u/s 146 of "the Act" as he was a member of a Gaon panchayat.

4. The first contention of Mr. P.G. Barua, learned Counsel for the Petitioner is that the Petitioner submitted his resignation on 2.6.84 and as such the Petitioner was never dis-qualified to bid for or obtain the settlement of the market u/s 146 of "the Act". It is true that the Petitioner had submitted his resignation just 12 days before the date of settlement but the Petitioner has not able to show even before us that his resignation was accepted by the competent officer. In our opinion, a member of a Gaon Panchayat continues to hold his office even after submission of resignation until his resignation is accepted by the competent authority. Section 24 of "the Act" lays down the procedure how a member of a Gaon Panchayat can resign during the term of his office. Section 24 provides that a member may resign during the term of his office by intimating in writing his intention to do so to the Deputy Commissioner or Sub-divisional Officer as the case may be and to the Mahkuma Parishad or Gaon Panchayat concerned and only on such resignation being accepted by the Deputy Commissioner/Sub-divisional Officer as the case, may be, he shall be deemed to vacate his office. Under these circumstances we are constrained to hold that the Petitioner did not comply with the provisions of "the Act" is not submitting his resignation in writing to the Deputy Commissioner, which he was obliged to do u/s 24 of "the Act". Further, the Petitioner can failed to produce any material before us to show that his resignation has been accepted by a competent officer. As such, the Petitioner continues to hold the office. We are of the firm opinion that the State Government has rightly held that the Petitioner was a member of the Gaon panchayat on 14.6.1984 when the impugned resolution was taken by the Executive Committee. We are of the opinion that the Petitioner was holding the office on 14.6.84.

5. It is interesting and intriguing to note that the Petitioner, an elected member of the Gaon Panchayat whom the voters of the Gaon Panchayat had elected for serving the cause of the Gaon Panchayati area, instead of serving the cause tendered resignation from the office to obtain settlement of the market within the limit of his Mahkuma Parishad for his personal gain, just on the eve of the date of selection. The Petitioner elected to abdicate his office to gain personal profits or gain. It is most intriguing that he chose to do it just on the event of the settlement. Indeed, he realised that even if, it was not illegal or prohibited or forbidden act, at least it was immoral, unethical and unprincipled act on his part to participate in the settlement or sale proceedings of Mahkuma market while holding the office of a Gaon Panchayat. We are of the view that the entire democratic fabric of the Panchayati System would receive a severe jolt if the members of Gaon Panchayats and/or Councillors of the Mahkuma Parishads fight between them and others for getting settlement of Hat, Bazar or contract works

under the Mahkuma Parishad. There is a potent danger in permitting the members of the Gaon Panchayats or the Councillors of the Mahkuma Purshads or members of the Panchayati Adaiat to participate in such proceedings, directly or indirectly. We say with strong emphasis that "the, Panchayati Raj" visioned by Mahatma Gandhi, father of the Nation, never contemplated participation of the elected member of the Panchayats/Mahkuma Parishads to fight for obtaining contract works or settlements belonging to the Panchayats/Mah-kuma Parishads. If they are allowed to participate in such proceedings, directly or indirectly, such proceedings would be the breeding ground of corruption, favouritism and nepotism. It is abhorrent to the very norms of pancheyati system. It would be Dooms-day for the entire panchayati system if the elected members are allowed to participate and start getting such contract works and settlements Every settlements in favour of an elected member will bear the stamp of favouritism, nepotism and bias. We feel that the Executive Committee was absolutely justified in not considering the Petitioner as a suitable person and it uphold its honour and dignity in leaving out of consideration the case of the Petitioner. If an elected member of a Gaon Panchayat chooses to get such settlement throwing to winds the confidence reposed on him by the voters tenders resignation to obtain settlement of a market it is just and reasonable to treat him as an unsuitable person. At any rate it was not an unreasonable ground to leave out of consideration the tender of an elected member of a Gaou Panchayat. It cannot be said that Executive Committee acted unreasonably in not granting settlement to the Petitioner who was still holding the office of Gaon Panchayat member. We are of the opinion that Executive Committee was justified to leave out of consideration the tender of the Petitioner to uphold its honour, dignity, integrity and glory. It is well nigh impossible on our part to say that the Executive Committee was not justified in leaving out of consideration the tender of the Petitioner on the grounds just alluded. Under these circumstances, assuming that there is no legal bar for a member of the Gaon Panchayat to obtain settlement, we are constrained to hold that the Executive Committee and the State Government were justified in not considering the Petitioner as suitable for getting the settlement. As such, when there existed just, reasonable and prudent grounds for the authorities not to make settlement with the Petitioner for reasons stated above, we are of the opinion that on this ground alone the petition is liable to be rejected.

6. The next contention is that in the absence or any indication in the tender notice that preference would be given to the educated unemployed youth the Executive Committee and the State Government had gone wrong in holding that Respondent No. 3, an educated unemployed youth was more desirable and suitable to get the settlement. The resolution clearly depicts that Respondent No. 3 was found to be an educated unemployed youth and on consideration of that fact as well, he was preferred, as the settlement with Respondent No. 3 meant providing employment to him and other educated unemployed young persons who would help Respondent No. 3, The State Government also held that

Respondent No. 3 was "an educated unemployed youth". The fact has not been disputed before us. As such, admittedly Respondent No. 3 was an educated unemployed youth and the Executive Committee of the Mahkuma parishad considered that he should be preferred. To establish Local-self Government in the villages of Assam with a view to enable panchayati Raj Institutions to function more effectively as units of Self Government, the Assam Panchayati Raj Act of 1972 was enacted. Panchayats are the local authorities. The educated unemployed youths are the products of the present generation. Realising the impact of industrial and other revolutions to come and the possibilities of increase in the number of educated unemployed youth the Constitution provided means to uphold their interest. Educated young persons, creature of civilization, do not stand on a better footing than others who are economically and socially backward. The Constitution assures "dignity of the individual". Does it not include provision for employment to those unemployed? Is it not the assurance impressed in the Preamble to our Constitution and other Constitutional provisions? The Directive Principles of the State Policy provide means to minimise the inequality in status and open up even facilities and opportunities, to provide for the right to adequate means of livelihood, right to work. Youth is protected against exploitations under Articles 38, 39, 41 and 46 etc. of the Constitution, "Work opportunity" is the cry of the day and the need of the hour. "Work" is the principal activity of a young person. It is our daily experience which we note that people in most cultures define themselves in terms of their work and derive self respect from it. Occupational achievement is the foundation of prestige and reputation, rather than inherited wealth or ownership or an inherited distinguished family name, "Unemployment" is the condition where one capable of working actively seeking work is unable to get it, Labour force is a different class by itself, Educated young persons, are in most cases not really fit to form part of the labour force but fitted for gainful jobs. The history of nation is blackened by multiplicity of unemployed educated youth. Denial of job opportunity" is a breach of trust reposed by the Indians upon themselves.

7. Situated thus, if the Executive committee of Mahkuma Parishad and the state Government considered that "inter se", the Petitioner and Respondent No. 3, the latter was more suitable, we do not consider that it was an unreasonable consideration as the authorities followed the directive principles of the State Policy. As such, when authorities considered that it was undesirable to settle the market with the Petitioner as he was a member of Gaon Panchayat and when the authorities found that it would help local educated unemployed youth and his educated unemployed associates to provide with employment and considered Respondent No. 3 to be more suitable, we feel that we should not interfere with the findings or conclusion reached by the authorities.

8. This apart, the question as to who is more suitable is pre-eminently a question of fact and the decision of a primary settling authority should not be disturbed as it knows local condition and understands how best the settlement would serve the cause of local people. When a decision touching suitability of a tenderer is

confirmed by the revisional authority the High Court in exercise of powers under Article 226 of the Constitution should not lit as a Court of appeal and nullify the concurrent decisions. This is also another reason why the Petitioner's contention must be rejected.

9. Let us now consider whether a member of Gaon Panchayat is eligible to participate in such sale proceedings u/s 146 of "the Act". Members of the Gaon Panchayats or Panchayati Adalats etc. are prohibited to acquire any interest in the property or contract work of the local bodies. Before construing the provisions of Section 146 of the Act we turn to the preamble of "the Act". The Assam Panchayati Raj Act, as the preamble goes, was enacted for providing Local-self Government in the villages of Assam with a view to enable Panchayati Raj Institutions to function more effectively as units of Self Government. A member of Gaon Panchayat is elected by the voters of the Assembly by election within the Gaon Panchayats area. They must have requisite qualifications to be nominated as members and those are statutory qualifications. They do not hold office of pleasure. They can be removed from the office only under special and specific circumstances. They are public servants, vide Section 48 of "the Act". Similarly the members of Panchayati Adalats are appointed by the Gaon Panchayat. They must hold certain specific qualifications. There are specific provisions for resignation and removal of the members of a Panchayati Adalat. They have jurisdiction to try Civil, Criminal and Revenue cases. The Judicial Officers Protection Act, 1850, applies to the members of the Panchayati Adalat. As such, it appears clear that a member of a Gaon Panchayat is an elected member, he is public servant and he has specific duties and obligations to the local bodies. Similarly member of a Panchayati Adalat, although not elected member, has special statutory rights and obligations. Under such circumstances it is prudent and desirable that they should vie for getting settlement of bats, markets or purchase property and enter in any contract work in respect of the properties of the local authorities, Participation in such proceedings invariably invites litigations, so members of the Gaon Panchayats, Panchayati Adalats etc, should not be permitted to participate in such proceedings or take any contract work under "the Act", if settlements are granted, there will be litigation and member of a Gaon Panchayat and Panchayati Adalat shall figure as parties. Similarly, if a settlement is not granted such a member shall litigate against Mahakuma Parishad. As such, it appears that such persons who are elected members and that class of persons who are "Judicial Officers" should not participate in such proceedings. However, let us consider Section 146 of "the Act" which is extracted below:

146. No member of a Gaon Panchayat or Panchayati Adalat or Councillor of a Mahakuma Parishad or other officers having any duty to perform in connection with any sale or contract work under this Act, shall directly or indirectly bid for, or acquire any interest in any property sold at such sale or accept a contract work.

(Emphasis supplied)

If we read the portion in italics, it appears clear that no member of a Gaon Panchayat or Panchayati Adalat or Councillor of a Mahakuma Parishad can directly or indirectly bid for or acquire any interest in any property/sale or accept a contract work. This is in consonance with the scheme and object of "the Act". However, it has been contended that the prohibitions contained in Section 146 of "the Act" apply only to those members who have any duty to perform in connection with any sale or contract work under the Act. As such, those who have no duty to perform in such sale can with impunity participate in such proceedings, submits Mr. P.G. Barua, learned Counsel for the Petitioner. However, on scrutiny of the Act and the Rules we reach the conclusion that only "officers" who have any duty in connection with any sale or contract work are prohibited to bid for or acquire any interest in any property sold at such sale or accept a contract work. In our opinion there is a blanket prohibition in respect of a member of Gaon Panchayat, Panchayati Adalat etc. From the very nature of the duties and obligations of such members, it appears, they should not be parties to such sale or contract work. Learned Counsel for the Petitioner could not bring to our notice that any member of a Gaon Panchayat/Panchayati Adalat has any duty to perform in connection with any sale or contract work etc. "under the Act", Settlement or sale of Hats and public ferries by inviting tender and settlement of fisheries by sale inviting tenders etc. fall within the jurisdiction of Mahakuma Parishad. Section 36, IV(3) and (5) show that only a Mahakuma Parishad and/or members of the Mahakuma Parishad perform the duties in respect of sale or contract work under "the Act". Neither Section 35 nor any other provisions of the Act enjoins any statutory obligation on any member of Gaon Panchayat or Panchayati Adalat to perform any duty in connection with such sale or contract works. Sections 70, 71 and 73 of the Act are provisions for settlements of hats, ferries and fisheries wherein the Gaon Panchayat and/or members of Gaon Panchayat do not figure nor do they have any duty to perform in any such sale or contract work. As such, when a member of the Gaon Panchayat/Panchayati Adalat has no statutory duty to perform in connection with any sale or contract work under "the Act" did the legislature include the expression "a Gaon Panchayat member" or "a member of Panchayati Adalat etc." in Section 146 for nothing. Are the expressions "the Gaon Panchayat" or "Panchayati Adalat" or "Councillor of Mahakuma Parishad" otiose. In our opinion, Section 146 of "the Act" should be interpreted bearing its plain and natural meaning in such a manner as to carry out the intention of the legislature. On perusal of the scheme and object of "the Act", the purpose sought to be achieved by Section 146, we discern that the intention of the legislature was to prohibit the members of Gaon Panchayat/Panchayati Adalat/Councillor of Mahakuma Parishad to participate in such proceeding, irrespective of the fact whether they have any duty to perform in connection with any sale or contract work.

9. Mr. P.G. Barua, learned Counsel for the Petitioner could not place before us any provision of "the Act" or the Rules to show that a member of Gaon

Panchayat/Panchayati Adalat etc, has any duty to perform in connection with any sale or contract work under "the Act". Learned Counsel referred to Section 63(xii) and Section 74 of "the Act", in support of his contention. In our opinion, Section 63 provides how the proceeds of any tax, cess, sale proceeds of market, fishery etc. are, credited to the Gaon Panchayat Fund, Section 64, similarly provides percentage required to be credited to the Mahakuma Parishad. It has nothing to do with the "duty" of a member of Gaon Panchayat or Panchayati Adalat etc., with which they are concerned. Section 63 shows that a Gaon Panchayat is highly interested in sale proceeds of such settlements, sales or contract works. It is therefore natural to assume that member of the Gaon Panchayat should not participate in such proceedings. Section 74 of "the Act" deal with the maintenance of hats. A Gaon Panchayat receives a share of the sale proceeds of hats/markets/fisheries etc. within its jurisdiction. The Section obligates the Panchayat to maintain hats, markets etc. In our Opinion, the prohibition for maintenance of hats etc. by a Gaon Panchayat does not mean imposition of any duty on a member of Gaon Panchayat/Panchayati Adalat to perform any duty "in connection with any sale or contract work under this Act," referred in Section 146 of "the Act", We hold that the object and purpose of Section 146 is to prohibit the members of Gaon Panchayat /Panchayati Adalat/ Councillor of Mahakuma Parishad to participate in the transactions referred in Section 146 no matter whether they have or have no duty to perform in connection with any sale or contract work under "the Act". The duties referred in Section 146 apply to the officers and not to the members/Councillors. In the result we hold that the Petitioner who was a member of Gaon Panchayat was ineligible to tender for or to get the settlement in view of bar contained in Section 146 of "the Act". As such, the authorities, below are justified in holding that Petitioner was ineligible such unsuitable to get the settlement.

10. Mr. P.G. Barua, learned Counsel for the Petitioner has strenuously contended that the resolution of the Executive committee did not ascribe any reason for not selecting the Petitioner nor did the executing committee ascribe any reason for settling the hat with Respondent No. 3. In our opinion, in the instant case, it is merely an academic question. We have already held that the Petitioner was unsuitable and/or ineligible to get the settlement. The Executive Committee as well as the State Government were justified in holding that Respondent No. 3, an educated unemployed youth was more suitable than the Petitioner and that it was inappropriate to settle the hat with an elected member of Gaon Panchayat. Further, the order of settlement is now merged in the order of the State Government. Indeed, it is essential that the Executive Committee must give reasons selecting a tenderer as suitable and it is also necessary to give reasons for not selecting another tenderer, more so when offer of the other tenderers is higher. In the order of settlement we find that Respondent No. 3 was preferred because he was an educated unemployed youth but no reason was ascribed as to why the Petitioner was not selected. However, it has been rectified in view of the reasons provided by the Executive Committee to the State Government at the

hearing of the application u/s 138 of "the Act". The Mahakuma Parishad stated before the Government that they did not select the Petitioner as he was a member of the Gaon Panchayat. This is a just and appropriate reason. Reasons were furnished to the Government, the higher authority, and those were accepted by the latter as just and appropriate. Under the circumstances the defects were cured by providing reasons to the State Government as to why the Petitioner was not selected and Respondent No. 3 was found suitable. We hold that the defects, if any, were cured at the stage when the State Government considered the petition u/s 138 of the Act. Further, the resolution of the Executive Committee has merged in the order of the State Government and the former no longer exists. Even if we quash the first order the "final order" rendered by the State Government survives. Section 138(2) provides that the State Government may pass any order as it may deem necessary and such order is "final". As such, when the State Government held that Respondent No. 3 was entitled to settlement in exercise of power u/s 138(2) it became the "final order".

11. In our opinion decision of the State Government u/s 138 of "the Act" is final be it as order u/s 138(1)(b) or u/s 138(2) of "the Act". As such, the order of the State Government being final it superseded the resolution of the Executive Committee. Under these circumstances the contention raised by the Petitioner fails. Further, the State Government who has been conferred with the power to make a final order in respect of proceeding has co-extensive power with the primary authority. u/s 138(2) of the Act the State Government can pass any order "as may be deemed necessary". Section 138 provides that the orders of the State Government "in this regard" are final. On the authority of *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, which dealt with similar provisions finding place in the Eastern Bengal and Assam Excise Act, 1908, we hold that the State Government has had co-extensive power with the primary authority and the order rendered by it is final. At such the contention of the Petitioner fails. No other point has been raised by learned Counsel for the Petitioner.

12. For the foregoing reasons we hold; (1) that the question as to the suitability of a tenderer is pre-eminently a question of fact and we cannot disturb such finding while exercising power under Article 226 of the Constitution; (2) that the authorities below were justified in holding Respondent No. 3 as suitable on the ground that he was an educated unemployed youth and the settlement was made in consonance with the directive principles of the State Policy; (3) that the authorities below were justified in not preferring the Petitioner as he was a member of Gaon Panchayat. We also hold that a member of Gaon panchayat is ineligible to participate in any such proceeding, in view of the prohibition contained in Section 146 of "the Act".

12 A. In the result the petition fails. However, we make no order as to costs. It will be for the Mahakuma parishad to do the needful required under "the Act" and the Rules framed thereunder. All interim orders passed in connection with

this case, including those rendered in Misc. Case Nos. 438/84 and 458/84 stand vacated.