

(2005) 06 GAU CK 0058
In the Gauhati High Court
Case No : WP (C) No. 6781 of 2004

Bamboo Bagicha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-06-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 GLR 422

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : K.N. Choudhury and D. Barua, for the Appellant; S. Sharma, A.C. Borbora, G.N. Sahewalla, K. Agarwal and U. Bhuyan, for the Respondent

Judgement

I.A. Ansari, J.—I have heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. D Barua, learned Counsel for the petitioner, and Mr. S Sharma, learned standing counsel for the respondent Nos. 1 to 5. Also heard Mr. A.C. Barbora, learned senior counsel, assisted by Md. Aslam, learned Counsel for the respondent No. 6, Mr. GN Sahewalla, learned Senior counsel, for the respondent No. 7, Mr. K Agarwal, learned Counsel for the respondent No. 8, and Mr. U Bhuyan, learned Counsel for the respondent No. 9.

2. Multiple litigations between the writ petitioner, on the one hand, and the respondent Nos. 1 to 5, on the other, have not been able to resolve the real issues between the parties and the present one is yet another round of litigation between the parties concerned.

3. Because of the nature of controversy, which the present writ petition has raised and the nature of reliefs and counter-reliefs, which the parties have sought for, the entire writ petition, as prayed for by the learned Counsel for the parties, has been heard at the admission stage itself for the purpose of final disposal.

4. For effective disposal of the writ petition, a brief out-line of the relevant policy

of the NF Railway and the material facts, which have given rise to the present writ petition, are set out as follows : -

(i) As a matter of policy, the Northeast Frontier Railway (in short, "the NF Railway") makes, from time to time, settlement of those plots of land, which remain unused, at various railway stations for the purpose of loading of bulk commodities like bamboo, coal, etc. Such settlements/allotments were, at one point of time, made on the basis of applications made by persons, who load such commodities into railway wagons, the settlements being, however, made on such rent or rake rent basis as would be fixed by the authorities concerned with prior approval of the General Manager, NF Railway. While making the recommendations for giving settlement, the loading performance viz-a-viz the commitment as well as the terms and conditions under which the settlement is granted are required to be kept in mind. Moreover, the area of land to be settled has to be commensurate with the loading commitment.

(ii) The petitioner, namely, Bamboo Bagicha, which is a proprietary firm of the district of Bongaigaon, is engaged in the business of sale and supply of bamboo chips and the petitioner dispatches bamboo from various railway stations located at different parts of India. As the petitioner loads and dispatches bamboo to various parts of India, it made, way back in 1979, an application seeking settlement of a commercial plot of land and continued to make endeavours to receive such settlement by making applications and renewing his prayer for settlement from time to time. Alleging that though the railway authorities have done away with the erstwhile system of specific licensing of commercial plots with effect from 1.1.1999 and a new system of allowing the interested parties to stake materials against indent of one rake upto 10 days prior to commencement of loading has been introduced, but the railway authorities are taking steps to allot land in favour of some private parties without adhering to their declared policy, the petitioner came to this Court with WP(C) No. 818/2001. The railway authorities, however, informed the Court that there was no diversion of their settlement policy. On the basis of the submission, so made, the writ petition was dismissed, on 26.2.2001, with direction that in case there is any change in the policy decision by the railways or if the railways decide to allot the land on lease basis for bamboos, the case of the petitioner shall also be considered.

(iii) However, as had been apprehended by the petitioner, the relevant policy was changed and a notice, dated 24.1.2003, was published by the railway authorities/respondents inviting applications from interested traders for allotment of commercial plots on license basis at various railway stations under Alipurduar Division including Chaprakata Railway Station. In response to this notice inviting applications, the petitioner submitted an application and committed therein that he would load 30 rakes of bamboo. This application was also accompanied by a certificate issued by the Station Master of Chaprakata railway station indicating therein the petitioner's loading performance from 1991 till 2001. Soon after making of the said application, the petitioner, once again, came to this Court with

WP(C) No. 3056/2003, wherein the petitioner claimed that his case had not been considered by the railway authorities concerned and also with prayer that the railway authorities be directed not to issue any license in respect of Chaprakata railway station to any person other than the writ petitioner. By order, dated 29.4.2003, this writ petition was disposed of with direction that the railway authorities shall consider, in accordance with law, the application of the writ petitioner along with the applications received from other applicants.

(iv) As against the commitment made by the petitioner for loading of 30 rakes, the respondent No. 6 had committed that it would load 20 rakes. However, the railway authorities, subsequent to the disposal of the WP(C) No. 3056/2003, on 29.4.2003, allotted an area of 1.467 acres of land to the respondent No. 6. This settlement, dated 13.5.2003, as challenged by the petitioner in WP(C) No. 3882/2003. An order was passed, on 6.6.2003, in WP(C) No. 3882/2003 aforementioned, rejecting the prayer for interim direction sought for by the petitioner. This order of rejection, dated 6.6.2003, was impugned, in WA No. 262/2003, by the petitioner. The writ appeal was disposed of, on 10.6.2003, with direction to decide and dispose of the writ petition in the month of July 2003, itself inasmuch as the respondent No. 6 had fulfilled all the formalities for allotment of the plot of land and possession had already been handed over to the respondent No. 6 by the railway authorities concerned. As the allotment to the respondent No. 6 was for the period from 19.5.2003 to 18.5.2004 and during this period, the respondent No. 6 had loaded only 5 rakes of bamboo chips as against their commitment of 20 rakes, the writ petitioner made a miscellaneous application in WP(C) No. 3882/2003 aforementioned. By order, dated 23.7.2004, the Court directed the railway authorities to maintain status quo as on 23.7.2004 in respect of license of respondent No. 6. In course of time, the WP(C) No. 3882/2003 was disposed of by order, dated 2.8.2004, This order, dated 2.8.2004, is, undoubtedly, most relevant, The relevant portions thereof are, therefore, quoted hereinbelow :

The matter relates to allotment of commercial plots by the respondent railways for which the notice inviting tenders was floated by the Railways on 24.1.2003 and pursuant to that, the petitioner before us, had submitted his offer for Sarbhog and Chaprakata Railway Stations However, the respondent Railways allotted the commercial plots in favour of respondent No. 6 vide Annexure-11 letter dated 13.5.2003 and the said order of allotment has been impugned in this writ petition.

Mr. KN Choudhury, learned Counsel for the petitioner submits that the allotment has been made in violation of the guidelines laid down by the Railways for such allotment.

At this stage, Mr. A.C. Borbora, learned Counsel for the respondent No. 6 has submitted that the impugned allotment was made for a period of one year and the said period has expired on 19.5.2004. It is also submitted that an agreement was executed between the parties wherein the period of one year has been

specifically mentioned commencing from 19.5.2003 and ending on 19.5.2004. Mr. A.C. Borbora, learned Counsel for the respondent No. 6 submits that he had applied for renewal of the license but no order of renewal has been served on him till today.

Learned Counsel for the Railways submits that the respondent Railways are contemplating to consider fresh application for allotment including the prayer for extension. It is also submitted that the offer of the petitioner, if any, shall also be considered along with the prayer for renewal made by the respondent No. 6.

In view of the submission made above, the writ petition stands disposed of with the observation that the petitioner as well as the respondent No. 6 will be at liberty to approach the respondent authorities for allotment of commercial plots at Sorbhog and Chaprakata Railway Station and the Railway will be at liberty to proceed with the matter in accordance with the rules and regulations, guidelines governing the matter.

(v) Following the disposal of WP(C) No. 3882/2003, the petitioner made a representation, dated 9.8.2004, seeking allotment of the said plot of land, namely, 1.467 acres at Chaprakata railway station, which had become the subject-matter of dispute between the parties concerned and the said 1.467 acres, which had been, as indicated hereinabove, allotted to the respondent No. 6. This application was followed by yet another application, dated 31.8.2004, On 13.9.2004, the writ petitioner approached this Court with the present writ petition alleging, inter alia, that though a direction had been issued by this Court in WP(C) No. 3882/2003 aforementioned requiring the railway authorities/respondents concerned to consider the case of the petitioner as well as of the respondent No. 6 in respect of allotment of the said 1.467 acres of land at Chaprakata railway station, and despite the fact that the petitioner had made representations seeking allotment, the railway authorities/respondents concerned were treating the petitioner unfairly by favouring the respondent No. 6 and taking steps to allot the land to the respondent No. 6. On 14.9.2004, an order was passed, in the present writ petition, directing the railway authorities/respondents concerned not to grant any extension/allotment and/or renewal in favour of the respondent No. 6 in respect of the said plot of land on license basis without leave of this Court. On the following day, i.e., on 15.9.2004, the railway authorities/respondents issued a notice inviting applications from interested parties for allotment as well as renewal of commercial plots of land at various railway stations including Chaprakata railway station. In this notice inviting application, an application format was enclosed which, inter alia, required the applicant to state the area applied for, commitment of traffic in rake in one year and the figure of loading performance during the last three years. On 13.10.2004, the Selection Committee considered the question of allotment in terms of the notice, dated 15.9.2004, aforementioned. The relevant portions of the minutes of the meeting of the Selection Committee reveal as follows : -

(vi) On 8.12.2004, an application was made, in the present writ petition, by the

railway authorities/respondents, namely, 1 to 5, which gave rise to Misc. Case No. 3478/2004. In this Misc. case, the railway authorities/respondents submitted to the effect that the petitioner stood allotted a commercial plot of land measuring 3,836 sq. metres as fresh allotment and, hence, the case of the petitioner had become infructuous. Soon after the Misc. Case No. 3478/2004 aforementioned was registered on the application of the railway authorities/respondents concerned, Kalpataru Agro Forest Enterprise Ltd, Bharat Bamboo & Timber Suppliers and Durga Trading Company, in whose favour recommendations for settlement had been made as per the minutes of the meeting of the Selection Committee held on 13.10.2004, approached this Court with Misc. Case Nos. 3561/04, 992/2005 and 993 of 2005 respectively, whereby these respondents-applicants sought to get themselves impleaded on the ground, inter alia, that the areas of the various plots of land, which stood allotted to them for the period commencing from 19.5.2003 and ending on 19.5.2004, had been arbitrarily reduced by the recommendations made by the said Selection Committee on 13.4.2004 and as the recommendations aforementioned were in violation of the agreements reached by the railway authorities/respondents concerned, on the one hand, and the said applicants, on the other, without even giving any notice to those applicants, these applicants' interest were likely to be affected by the out come of this writ petition. The prayers made by these applicants were allowed and Kalpataru Agro Forest Enterprise Ltd, Bharat Bamboo & Timber Suppliers and Durga Trading Company were accordingly impleaded in the writ petition as respondent Nos. 7, 8 and 9 respectively.

(vii) It is also noteworthy that the respondent No. 7 herein came to this Court by way of WP(C) No. 9317/2004 alleging that contrary to the understanding reached by the railways with the respondent No. 7 herein in respect of renewal of the lease of the land, the railway authorities/respondents concerned unfairly denied to consider the case of the writ petitioner, i.e., the respondent No. 7 herein. On hearing the parties concerned including the present writ petitioner, the Court passed an order, on 2.2.2005, directing the railway authorities/respondents to consider the case of the respondent No. 7 herein in accordance with the stand, which they had taken in this writ petition and also in accordance with the rules and policy decision of the railways, and since the lease of the respondent No. 7 was to expire on 25.2.2005, the decision shall accordingly be taken before 25.2.2005. In terms of the directions, so issued, by the Court, the railway authorities/respondents concerned reviewed the selection made by them on 13.10.2004, whereby they had allotted to the present petitioner a plot of land. The railway authorities/respondents concerned found, on review, that their recommendation in favour of the present writ petitioner was incorrect and that the respondent No. 7 herein, namely, Kalpataru Agro Forest Enterprise (P) Ltd. having satisfied the criterion of loading of minimum number of rakes, within the period of the lease, was entitled to the renewal of the lease/license. Upon such review, the Selection Committee of the railway authorities/respondents concerned recommended renewal of the lease of respondent No. 7 for a period of

one year w.e.f. 15.3.2005 ; so far as the present petitioner, namely, Bamboo Bagicha and the respondent Nos. 6, 7 and 8 are concerned, the Selection Committee recommended that the total remaining area of the commercial plot may be equally distributed amongst all these four persons. Depending upon the recommendations, so made, by the Selection Committee, the railway authorities/respondents, (i.e., the respondent Nos. 1 to 5 herein) filed an additional affidavit, in this writ petition, bringing to the notice of this Court their proposal of distributing the four plots of land, at Chaprakata railway station, to five parties by demarcating the four plots into five plots of land and giving equal share to each of the four parties aforementioned. Challenging the re-demarcation, offered to be so made by the railway authorities/respondents concerned, Bharat Bamboo & Timbers Suppliers" as well as Durga Trading Company got themselves impleaded in this writ petition as respondent Nos. 8 and 9 respectively, the case of these two respondents, namely, the respondent Nos. 8 and 9, being, as already indicated hereinabove, that as per the agreement, which the railway authorities/respondents concerned have with these two respondents, their lease is valid till 8.1.2006 and in such a situation, the re-demarcation by the railway authorities/respondents concerned without even giving notice to these respondents, if approved, would cause serious prejudice to these respondents.

5. It is in the above backdrop of the facts and circumstances that this writ petition was heard for final disposal.

6. On a microscopic and careful examination of the facts, which emerge from the pleadings of the parties and also from the materials on record, what attracts my attention, most prominently, is that the writ petitioner had applied for granting him lease of the area of 1.467 acres, which the railway authorities/respondents concerned had settled, on lease, with the respondent No. 6. The clear direction, which emanated, on 29.4.2003, from WP(C) No. 3056/03 to the railway authorities/respondents concerned was that the writ petitioner's application shall be considered along with other applicants in accordance with law. Subsequent to the judicial direction, so given, on 29.4.2003, the railway authorities/respondents concerned settled the said area of 1.467 acres in favour of the respondent No. 6. This settlement was challenged by the present writ petitioner by way of WP(C) No. 3882/03. This writ petition was eventually disposed of, on 2.8.2004, by a clear direction to the railway authorities/respondents concerned to consider, in accordance with the relevant rules, regulations and guidelines, the present writ petitioner's application in respect of the said 1.467 acres of the land (which stood leased out to the respondent No. 6) along with the case of the respondent No. 6 for renewal thereof. Following the order, dated 2.8.2004, aforementioned, the writ petitioner made his representation seeking allotment. When no communication was made by the railway authorities/respondents concerned to the writ petitioner with regard to his request for allotment, as indicated hereinbefore, the writ petitioner came to this Court with the present writ petition expressing his apprehension that the respondents/authorities concerned were likely to renew the lease of the said plot of land in favour of the respondent No. 6

ignoring the claim of the writ petitioner. It was in such a situation that an interim order was passed, on 14.9.2004, in the present writ petition, directing the railway authorities/respondents concerned not to grant any extension, allotment and/or renewal of the said 1.467 acres of land in favour of the respondent No. 6 without leave of the Court. While the present writ petition was pending, the railway authorities/respondents concerned, on 15.9.2004, issued a notice inviting applications from the interested parties and responding to this invitation, the present writ petitioner, as usual, applied for settlement of said 1.467 acres of land. It is, thus, abundantly clear that the directions of this Court had been to consider the case of the present writ petitioner vis-a-vis the case of respondent No. 6 in respect of said 1.467 acres of land. However, ignoring such clear directions, the railway authorities/respondents concerned opted to renew the lease of the respondent No. 6 in respect of the said 1.467 acres of land and offered to grant, in favour of the petitioner, lease in respect of a plot of land, which was different from the one, which had been the subject-matter of repeated directions of this Court.

7. It is trite that the power of judicial review conferred on the High Court under Article 226 of the Constitution of India cannot be exercised against a decision for selection, but against the decision making process. The questions, which have been raised in the present writ petition, as to what the relative merit or demerit of the writ petitioner vis-a-vis the respondent No. 6 are and/or whether the respondent No. 6 deserved renewal of the lease are questions, which, to my mind, need not be answered in this writ petition. Suffice it to mention here that the railway authorities/respondents concerned, for reasons not disclosed to this Court, did not consider, at all, the request of the writ petitioner for settlement of the said 1.467 acres of land vis-a-vis the claim for renewal made, in this regard, by the respondent No. 6 and ignored thereby the repeated directions of this Court. On a consideration of the claim for renewal of the respondent No. 6 in respect of said plot of 1.467 acres of land vis-a-vis the request for settlement made by the present writ petitioner, had the respondents/authorities concerned come to a conclusion that the said plot of land deserved to be renewed in favour of the respondent No. 6, this Court might have been hesitant to interfere with such settlement and might have refused to probe further the relative merit and demerit of the two contenders.

8. What, however, the railway authorities/respondents concerned have done, if I may reiterate, is that they have coolly allotted the plot of land, which has been the subject matter of the real controversy, in favour of the respondent No. 6 without even considering the case of the petitioner in respect thereof. This apart, the railway authorities/respondents concerned, in fact, allotted, in favour of the present petitioner, an area, which was under lease of the respondent No. 7, and when the respondent No. 7 approached this Court, the railway authorities/respondents concerned retraced their steps. Since the claim of the writ petitioner was in respect of the said plot of 1.467 acres of land, question of considering the petitioner's case vis-a-vis the case of the respondent No. 7, in respect of an area

of land, which was under lease of respondent No. 7, could not have arisen at all. While observing this, I must hasten to add that this Court shall not be taken to have put its seal of approval on the decision of the railway authorities/respondents concerned to renew the lease of respondent No. 7, for, the merit of renewal of lease in favour of the respondent No. 7 is not a subject of consideration in this writ petition.

9. Similarly, the railway authorities/respondents concerned had no business to reduce the area, which is under lease to the respondent Nos. 8 and 9, for, no application for allotment of any part or portion of the plots of land, which have been under lease of respondent Nos. 8 and 9, were invited by the railway authorities/respondents concerned and/or were part of any of the directions given in the series of writ petition aforementioned. Thus, the decision of the railway authorities/respondents concerned to reduce the area of the plots of land leased out to respondent Nos. 8 and 9 are irrelevant.

10. What was required and what is still required is that the railway authorities/respondent concerned examine the claim for renewal made by the respondent No. 6 in respect of said plot of 1.467 acres of land vis-a-vis the claim of the writ petitioner for settlement of the said plot of land in favour of the writ petitioner by way of lease. In this regard, however, it may be noted that though under the revised policy, adopted by the railway authorities/respondents concerned on 4.9.2004, the renewal of the lease would be considered only if, at least, 50% of the commitment for loading given at the time of allotment are fulfilled, this policy cannot be applied in respect of the request for renewal of the lease made by the respondent No. 6, for, the terms and conditions of the lease, which the railway authorities/respondents concerned have with the respondent No. 6 is that if the respondent No. 6 completes 15% of the commitment made by the respondent No. 6, it would be eligible for consideration for renewal of the lease. Contrary to this stipulation, the railway authorities/respondents concerned cannot disqualify and/or treat the respondent No. 6 ineligible by taking resort to their subsequent circular, dated 4.9.2004, aforementioned. However, while the request for renewal made by the respondent No. 6 has to be considered in terms of the lease, which the respondent No. 6 had with the railway authorities/respondents concerned, what is of immense importance to note is that the respondent No. 6, having, admittedly, loaded 15% of the commitment made by it, has merely become eligible for consideration for renewal. It does not mean, I must emphasise, that mere loading of 15% of the commitment by the respondent No. 6 shall, in itself, be treated as adequate and/or reasonable to renew the lease in favour of the respondent No. 6, for, the policy of allotment as well as renewal, admittedly, is consideration of the last three years' loading performance and also the loading commitment for future. By fulfilling the minimum requirement of 15% of the leading commitment made, the respondent No. 6 merely becomes eligible for consideration for renewal of the lease and, at the same time, the writ petitioner, being eligible in terms of the invitation for application published on 15.9.2004, also stands on the same footing for consideration of its request for leasing out

the said area in favour of the writ petitioner. In the face of such a situation, the railway authorities/respondents concerned are required to take into account the past three years' loading performance of the parties concerned and also the genuineness and/or reasonableness of the loading commitment made by them and, upon such considerations only, the decision for either renewal of the lease in favour of the respondent No. 6 or granting of lease, for the first time, in favour of the writ petitioner can be taken by the railway authorities/respondents concerned.

11. To a pointed query made by this Court as to whether the case of the writ petitioner had been considered by the railway authorities/respondents concerned vis-a-vis the case of the writ petitioner in respect of their rival claims over the said plot of 1.467 acres of land, Mr. S. Sharma, learned standing counsel for the railways, had to concede that the materials on record do not disclose that at any stage, the Selection Committee and/or the railway authorities/respondents concerned had considered, in terms of the repeated directions given by this Court, the request of the writ petitioner vis-a-vis the request of the respondent No. 6 in respect of the said 1.4767 acres of land. The conduct of the railway authorities/respondents concerned, thus, clearly indicates that they have been repeatedly attempting to ignore the directions of this Court and thereby waste the time of this Court with multiple litigations. Instead of squarely meeting the directions and taking a firm decision in respect of the said 1.467 acres of land by considering the rival claims of the writ petitioner and also the respondents No. 6 (in respect of the said plot of 1.467 acres of land), the railway authorities/respondents concerned have been, as is discomible from the materials on record, dragging the issue by making multiple conflicting and wholly unreasonable offers, for, it was meaningless to settle the plot of land, which was under lease to the respondent No. 7, nor was there any meaning and/or justification in deciding to reduce the area of the plots of land, which stood allotted to the respondent Nos. 8 to 9. by resorting to such meaningless exercises, the railway authorities/respondents concerned have been wasting the valuable public time rather than settling the dispute by making appropriate selections.

12. Considering, therefore, the matter in its entirety and in the interest of justice, this Court, while making it clear that this Court neither approves nor disapproves of the renewal of the lease made in respect of respondent No. 7, sets aside and quash the recommendations made and/or the decision taken by the railway authorities/respondents concerned to reduce the areas of the plots of land, which stand leased out to respondent Nos. 8 to 9. The recommendations and/or the decision of the railway authorities/respondents concerned to renew the lease of the respondent No. 6 is also hereby set aside and quashed. The railway authorities/respondents concerned are hereby directed to consider the writ petitioners request for settlement of the said plot of 1.467 acres of land in favour of the writ petitioner vis-a-vis the request of the respondent No. 6 for renewal of its lease in respect of the said plot of 1.467 acres of land.

13. Upon consideration of the rival claims made by the writ petitioner and the

respondent No. 6, the railway authorities/respondents concerned shall pass appropriate order(s) in terms of the policy, guidelines, executive instructions, rules and regulations, if any, relevant thereto. The respondent Nos. 1 to 5 shall pay of Rs. 2,000, which shall be deposited with the Legal Aid Cell of this High Court's Registry, for, such a direction, in the opinion of the Court, is necessary to be given against the railway authorities/respondents concerned for wasting the time of this Court.

14. With the above observations and directions and also with cost of Rs. 2,000 imposed on the respondent Nos. 1 to 5 for wasting the valuable time of this Court, this writ petition shall stand disposed of.