
(1984) 01 OHC CK 0010

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2341 of 1983

Bhaskar Chandra Jena

APPELLANT

Vs

Revenue Divisional Commissioner and Others

RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Citation : (1984) 57 CLT 213

Hon'ble Judges : D.P. Mohapatra, J;B.K. Behera, J

Bench : Division Bench

Advocate : S.C. Ray, N. Ray and Umesh Mohapatra, for the Appellant; Y.S.N. Murty, S.S. Rao for O.P. No. 4 and D.P. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The Petitioner has filed this writ application praying inter alia to quash the order of the Revenue Divisional Commissioner (Central Division) dated 19-10-1983 in Lease Revision Case No. 17/83 (Annexure-4 to the writ petition) and for restraining the opposite parties from taking any action to give effect to the said impugned order. The subject matter of the case relates to grant of lease of 9 sand sairat sources divided, into two lots, on river Bolanga situated in Mouza Kasaba, Dahapada, Gambhari, Kasimpur and Baghua in the district of Balasore, for the year 1983-84. Opposite parties 1 to 3 are the Public Officers who passed orders at different stages in the proceeding and opposite party No. 4 is the competing applicant with the Petitioner for settlement of the said sairat sources.

Courter to the writ petition has been filed on behalf of opposite party No. 4 and Petitioner in turn has filed a rejoinder to the said counter affidavit. Opposite parties 1 to 3 have not chosen to file any counter affidavit. The admitted facts that emerge on a perusal of the writ petition, the counter affidavit and the rejoinder can be summarised as follows:

The auction for the said sairat sources was fixed on 23-3-1983 by the Tahasildar,

Balasore in his office. The Petitioner was the highest bidder in the said auction. Since the bid amount did not come up to the expectation, the Tahasildar decided to hold negotiations on 25-3-1983. On the said date the Petitioner was not present when negotiation was taken up and the Tahasildar decided that the sairat sources may be settled with opposite party No. 4. When the Petitioner learnt about the said decision he filed Mise Appeal Nos. 3 and 4/84 before the Additional District Magistrate, Balasore against the decision of the Tahasildar. The Additional District Magistrate, Balasore, disposing of the appeals by his order dated 22-4-1983, set aside the decision of the Tahasildar and directed him to hold fresh negotiation for settlement of the sairats in question. He also directed the Petitioner to deposit a total sum of Rs. 25,000/- towards earnest money in order to test the bona fides of the Petitioner for taking the lease of the sairat sources. The Petitioner duly deposited the said sum of Rs. 25,000/- on 25-4-1983.

On fresh negotiation in pursuance to the direction issued by the Additional District Magistrate, Balasore, the sairat sources were settled with the Petitioner and the Tahasildar sent the proposal for confirmation to the Revenue Divisional Commissioner (Central Division) Cuttack. The opposite party No. 4 did not participate in the fresh negotiation but challenged the order of the Additional District Magistrate before this Court in O.J.C. No. 902/83. This Court by order dated 4-5-1983 disposed of that case at the admission stage. The relevant portion of the order is quoted hereunder:

Heard counsel for both the parties.

2. It is agreed to by counsel for both parties that the order passed by the learned Additional District Magistrate, Balasore in Misc. Appeal Nos. 2 and 4/83 will not be operative and the question of confirmation of the annual lease of the sand sairat sources for the year 1983-84 will be referred to the competent authority within a fortnight hence for passing appropriate orders. The Petitioner undertakes not to operate the sand sairat sources until confirmation of the annual lease by the competent authority.

In pursuance to the aforesaid direction of this Court the records were submitted to the Revenue Divisional Commissioner on 17-5-1983 who confirmed the annual lease in favour of the Petitioner on 14-7-1983. The Petitioner was also given possession of the sairat sources together with the permission to operate the same by the Tahasildar, Balasore in his letter No. 5681 dated 16-7-1983 (Annexure-3).

Opposite party No. 4 filed an application for review before the Revenue Divisional Commissioner which, as stated earlier, was numbered as Lease Revision Case No. 17/83. By order dated 19th October, 1983, the Revenue Divisional Commissioner recalled the previous order confirming the lease of sairat sources in favour of the Petitioner and directed that the said sairat sources be settled with the opposite party No. 4. The operative portion of the order reads as follows:

Send back the lower court case records to the Collector, Balasore with direction to recall the previous order in favour of the settlement of lease of these Sairat Sources with the D.P. No. 3 and to re-settle the lease, of 1983-84 in favour of the Petitioner who is the only rightful party for settlement. The Petitioner, however, has to pay the price which is fixed as the upset price for these Sairat Sources for the current year. There is no reason as to why Government should lose revenue on account of the protracted litigation between these parties. The Petitioner has already paid Rs. 23,000/-. He should be given notice to deposit the balance amount. The sale is confirmed accordingly. The previous order of confirmation stands superseded. In case the Petitioner is not prepared to pay the balance amount the deposit of Rs. 23,000/- will stand forfeited and the Sairat Sources will be put to reauction:

This order is impugned in the present case.

2. The opposite party No. 4, in his counter affidavit has further stated that in pursuance to the order of the Tahasildar settling the sairats in question with him he had deposited the total sum of Rs. 23,000/- for the two lots on 25-3-1983. By order dated 2-4-1983 the Tahasildar had permitted the said opposite party No. 4 to operate the aforesaid sand sairat sources for the period from 1-4-1983 to 31-3-1984 subject to the confirmation by the competent authority. The said opposite party No. 14 has further averred that he has deposited the balance sum of Rs. 5,535/- on 24-10-1983 to make up the total to the off set price fixed by the Tahasildar as directed by the Revenue Divisional Commissioner in the impugned order. The Tahasildar, Balasore by his order dated 25-10-1983 had permitted opposite party No. 4, to operate the sand sairat sources in question. According to opposite party No. 4, the Revenue Divisional Commissioner while confirming the lease of the sairat sources in favour of the Petitioner was misled by the note of the Additional District Magistrate, Balasore that the Petitioner had deposited an amount of Rs. 25,000/- during fresh negotiation as directed by the Additional District Magistrate. This amount was admittedly deposited by the Petitioner towards the earnest money to prove his bona fides in taking the lease of the sairat sources as directed by the Additional District Magistrate and not during the fresh negotiation. The order of the Revenue Divisional Commissioner having been passed on such misrepresentation of facts, he was justified in recalling the earlier order.

Sri S.C. Ray, the learned Counsel appearing for the Petitioner has mainly raised two contentions, firstly that the Revenue Divisional Commissioner has no jurisdiction to review his earlier order since the power of review is not vested in him under any statute applicable to the case and secondly that even if the Revenue Divisional Commissioner decided to recall the order of confirmation passed in favour of the Petitioner he should have directed fresh negotiations to be held after giving an opportunity to the Petitioner to participate therein.

Sri Y.S.N. Murty, the learned Counsel for opposite party No. 4 while refuting the contention raised on behalf of the Petitioner has submitted that even quasi-

judicial authority has the inherent power to correct its own mistake and recall orders passed on the basis of such mistake. He has further submitted that opposite party No. 4 having already invested a substantial sum of money and having operate the sairat sources for several months should not be disturbed at present. He prays for confirmation of the order of the Revenue Divisional Commissioner under Annexure-4.

3. On an analysis of the admitted facts stated above it is clear that this Court while disposing of the writ petition filed by opposite party No. 4 in O.J.C. No 902/83 directed that the order of the Additional District Magistrate, Balasore in Misc. Appeal Nos. 3 and 4/83 will not be operated and the question of the annual lease of the sand sairat sources will be referred to the competent authority within a fortnight for passing an appropriate order. It is by the order of the Additional District Magistrate, Balasore in Misc. Appeal Nos. 3 and 4/83 that the Petitioner who had not participated in negotiation before the Tahasildar Balasore, was given an opportunity to take part in the fresh negotiation. In view of the order of this Court, the Petitioner was to be kept out of the field of consideration for settlement of the sairat sources. The only offer available to be considered for confirmation was that of opposite party No. 4. As such, the note of the Additional District Magistrate, Balasore to the Revenue Divisional Commissioner (Central Division) Cuttack, indicating that the case of the Petitioner is available to be considered for confirmation of the lease of sairat source and that he had deposited a sum of Rs. 25,000/- during the fresh negotiation was incorrect and misleading. The order of the Revenue Divisional Commissioner confirming the lease in favour of the Petitioner having been passed on such an erroneous and misleading statement of facts was rightly recalled by him. Accepting the I order of confirmation passed in favour of the Petitioner would mean nullifying the effect of the order of this Court passed in O.J.C. No. 902/83 and also settling the sairat sources in favour of a person whose offer was not available to be considered in view of the order passed earlier. The order is not strictly speaking an order of review but a correction of the mistake of the authority. It is well settled that no party should be allowed to suffer due to the mistake of the authority passing the order. Thus in our view, the contention raised by Sri S.C. Ray, the learned Counsel in this regard is devoid of merit.

Regarding the Contention to direct is renegotiation and to allow the Petitioner to participate in the same, we do not see any justification for the same In view of the chequered career of the proceeding and also the fact that the period of settlement in question i.e. the year 1983-84 is to expire shortly.

4. In the result, the writ petition fails and it is dismissed. But in the circumstances of the case, there is no order for costs.

B.K. Behera, J.

5. I agree.