

(1984) 05 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No's. 887 and 1199 of 1983

Bhupen Kataki and etc.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-05-1984

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 138

Citation : AIR 1985 Guw 100

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : P.K. Goswami, B.P. Borah, J.P. Bhattacharjee, A.K. Bordoloi and B.N. Sarma, for the Appellant; P. Roy, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—Whether the authority constituted u/s 138 of the Assam Panchayati Raj Act, 1972, as amended, has power to stay the operation of an impugned order and if so, under what circumstances? These are precisely the questions we are to answer. We extract the impugned order hereinbelow :

"STATE/TELEGRAM/EXPRESS

Dt. 9-12-83.

To CHIEF ADMINISTRATOR, MAHKUMA PARISHAD TEZPUR

PDA 2538372 AAA SRI DANDIRAM NATH PREFERRED APPEAL AGAINST THE ORDER DATED 18TH NOVEMBER '83 PASSED BY YOU FOR SETTLEMENT OF BARGAON SAPTAHIK BAZAR AAA COPY OF APPEAL BEING SENT PER POST FOR SUBMISSION OF DETAILED REPORT AND RECORD IMMEDIATELY AAA CASE WILL BE HEARD BY MINISTER PANCHAYAT ON 31ST DECEMBER '83 AAA MEANTIME IMPLEMENTATION OF IMPUGNED ORDER DATED 18TH NOVEMBER '83 STAYED AAA PLEASE DIRECT PETITIONER SRI DANDIRAM NATH AND RESPONDENT SHRI BHUPEN KATAKI TO ATTEND HEARING

DEV SEC"

The admitted position is that the Mahkuma Parishad settled the Bargaon Saptahik Bazar with the petitioner following the provisions of the Act and the Rules. The operation of the order passed by the Executive Committee was stayed by the State Government in purported exercise of its power u/s 138 of the Act. Admittedly, the stay order was rendered before the records were called.

2. Mr. P. Ray, learned Government Advocate concedes that no order of stay could be passed by the State Govt. Under Section. 138(2) of "the Act" without calling the records and before perusal thereof. Learned Government Advocate concedes that an order rendered before the records are called is violative of Section 138(2) of "the Act". Learned counsel, however, contends that the impugned order was made u/s 138(1)(b) of "the Act" and there is no embargo therein prohibiting the State Government to pass a stay order "without calling for the records". One of us (Lahiri, J.) expressed an opinion in passing in *Md. Rustom Ali Vs. The State of Assam and Others*,

"Chapter II of the Act expressly bestows self-Government to the Panchayats in the fields of sanitation and health, public works and education, sports and cultures, self-defence and many other spheres or activities. Upon grant of such large power, the Government retained some control and supervision over the Institutions with the object to make the institutions strong and healthy but not to wreck their independence or upset their day to day functioning control and supervision ought to be slow and minimal, nothing ought to be done to destroy the independent character of the local bodies manned by elected village representatives. Nepotism, violation of the principles of natural justice, bias injustice, undue influence, corruption, violation of the constitutional mandates and wrongs of the like nature must be disciplined and corrected with strong hands. The State and its instrumentalities are the repository of massive powers Under Sections 133 and 138(2) of the Assam Panchayati Raj Act, 1972, for short "the Act" and have undoubted power to alter, intervene and set aside the actions of the institution. Vast and expansive being the powers the exercise thereof must be slow and appropriate. It appears from a number of decisions of the State that it considers as if it were the original settling authority of the hats, bazars etc. frequent and unnecessary interference in the functioning of the local body are plentiful. Hats, bazars, cattle pounds etc. are the sources of revenue as well as matters of great concern to the local bodies and the local villagers. It has been noticed that while admitting an appeal or revision, the State grants stay order with impunity forgetting the resultant pecuniary loss to the Institutions. This apart blanket stay orders in respect of settlements of hats and bazars without any directions as to the manner and method of their interim managements create problem to the Institutions and local villagers as well. The parties having the backing of settlement order in their favour deposit money for getting the settlement. There is no express power noticed by me conferring power of stay in the Panchayati Raj Act either u/s 133 or u/s 138(2) of "the Act" until records are

called. It appears that the legislature which made the State as the appellate/ revisional authorities, with eyes open did not bestow the power to grant stay during the pendency of an appeal or revision till the records are called. However, this is an observation in passing as the petitioner has not raised the point in this application. Be that as it may, grant of stay or injunction is an extraordinary power which affects status quo. The villagers who look forward to the bazars, their trading and commercial, centres invariably suffer due to stay orders. In absence of a strong case no stay is granted even in civil proceedings. Unfortunately in the proceedings Under Sections 133 and 138 of "the Act" the State Government grants stay almost as a matter of course."

This is a view expressed which requires consideration in future. However, the main thrust of the learned counsel for petitioner is that the authority could not have exercised the discretionary power and ordered stay of the impugned order without ascribing any reason why the stay order was at all necessary, As such, the impugned order is no order and invalid as such.

3. Whenever an order is made by a statutory authority and the operation of the order is required to be suspended by the appellate or revisional authority exercising its discretionary power, the latter should not render the order as a matter of routine or as a matter of course. An order may be passed when a strong prima facie case is made out by the appellant or petitioner showing that the order impugned need be stayed on some appropriate or deserving grounds. An effective order, which is in operation, cannot be whittled down and made nugatory or suspended by the appellate or revisional authority unless reasons are set-forth in the order as to why the order is required to be suspended. We extract the provisions of Sections 138(1)(b) and 132(2) of the Act hereinbelow.

"138(1)(a). Any employee under a Gaon Panchayat or any person aggrieved by any order or act of a Gaon Panchayat may file an appeal within fifteen days from the date of receipt of such order or performance of such act, to the Chief Executive Councillor of the Mahkuma Parishad, within the jurisdiction of which such Gaon Panchayat is falling, and the decision of the Chief Executive Councillor of the Mahkuma Parishad in this regard shall be final.

(b) Any employee under a Mohkuma Parishad or any person aggrieved by any order or act of a Mahkuma Parishad may file an appeal within thirty days of receipt of such order or performance of such act, to the State Government the decision of which in this regard shall be final.

(2) Notwithstanding anything contained in the foregoing Sub-section (1), the State Government may at any time call for the records in any matter from a Gaon Panchayat or Mahkuma Parishad and give such order as may be deemed necessary after examination of such records. The order of the State Government, in this regard shall be final."

There is no express provision conferring power on the authority to suspend the operation of the order impugned before the authority. Let us assume that it has

such power. Let us also assume that u/s 138(1)(b) of "the Act", the authority has power to suspend the operation of the impugned order before the records are called. Let us examine when and where a stay order can be declared to be a valid order or when it should be declared as invalid. There is no wrangle at the bar that an order granting stay is an order in favour of a party and naturally it goes against the opposite party. Further, a competent order rendered by a competent authority ordinarily should not be kept in abeyance or suspended unless some reason is ascribed. An order of stay ascribing no reason for the order is a barren order, in fact, not a legal order and invalid as such. In our opinion, stay can be granted by the State Government acting u/s 138 of "the Act" only in deserving and appropriate cases when the Government is satisfied that serious prejudice would be caused or the appeal or revision will be frustrated or made nugatory unless the impugned order is suspended. The operation of an impugned order may be stayed when the authority is satisfied that the continuance of the order is likely to cause grave injustice or irreparable loss to the appellant or petitioner.

4. In *French Kier Developments Ltd. v. Secretary of State for the Environment* (1977) 1 All ER 296 (QBD) an appeal was presented to the Minister against the order refusing permission for development and the same was dismissed, but the reasons of dismissal were obscurely stated. It was held that there was no good and sufficient reason for dismissal of the appeal. Therein even the order of dismissal in limine was successfully challenged and the Court held that the order of dismissal rendered by obscured reasons was an invalid order and the decision of the Minister was quashed. In reaching the conclusion a decision on the similar point reported in *Vale Estates (Acton) Ltd. v. Secretary of State for the Environment* (1970) 69 LGR 543 (557) was relied upon.

5. In *Income Tax Officer Cannanore v. M. K. Mohammed* AIR 1969 SC 430, the question arose as to the ambit of the power of the Income Tax Appellate Tribunal to stay the proceedings against the respondent. It was observed by their Lordships that the Tribunal should not exercise the power of stay in a routine way or as a matter of course. It was observed :

"It will only be when a strong prima facie case is made out that the tribunal will consider whether to stay the recovery proceedings and on what conditions and the stay will be granted in most deserving and appropriate cases where the tribunal is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal".

6. In *Siliguri Municipality and Others Vs. Amalendu Das and Others*, , the High Court granted a stay order in Recovery Proceeding exercising power under Article 226 of the Constitution. Their Lordships outlined the ambit of power to stay proceedings. Indeed it was a Tax Recovery Proceeding, but the principles incorporated therein are, in our opinion, applicable in the cases of the nature with which we are concerned. The Supreme Court ruled that the main purpose of

passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation bearing in mind the relevant factors including the vulnerability of the challenge, irreparable injuries, and, the Court is also to strike a delicate balance after considering the pros and cons of the matter including public interest as well as harassment that might be caused to the party which had obtained the order. The stay order passed by the High Court was set aside as the order did not contain the consideration of any of the relevant matters required to be considered before making the order of stay. We are of the opinion that while granting stay, the authority u/s 138 of "the Act" must consider the prima facie case of the petitioner or the appellant and give reasons as to why the suspension of the order is called for and the order must spell out that the authority considered the effects of the stay order on the Panchayat as well as the lessee. The impugned order has been rendered without ascribing any reasons. It was passed as a matter of routine or as a matter of course. There is no inkling in the impugned order: (1) that the appellant had a prima facie case; (2) that there was some reason or urgent reason for not permitting the impugned order to operate during the pendency of the proceedings before the authority u/s 138 of "the Act", (3) that the authority ever considered the effect of the stay order on the Panchayat or the lessee.

7. For the foregoing reasons, we hold that it is not an order contemplated under the law. It is void ab initio. Accordingly, we quash the same. However, it has been stated at the bar that the appeal before the authority is still pending. As such, we make it clear that the appellate authority shall be at liberty to make any order as it thinks fit while disposing of the appeal or it may pass any order of stay, if it thinks just and proper upon hearing the learned counsel for both the parties.

8. In the result, the petition is accepted. However there is no order as to costs.

9. This is analogous to the Civil Rule No. 1199 of 1983 which we have just disposed. The impugned order reads as follows :

"STATE TELEGRAM EXPRESS

DT. 4-8-83.

CHIEF ADMINISTRATOR MAHKUMA PARISHAD, TEZPUR.

NO. A2433365A AAA SHRI RABIN KUMAR BORDOLOI HAS FILED APPEAL CHALLENGING SETTLEMENT ORDER OF MAHKUMA PARISHAD ON DIKARAI SAPTAHIK HAT FOR 1983-84 AAA APPEAL ADMITTED AND BEING SENT AAA OPERATION OF IMPUGNED SETTLEMENT ORDER IS STAYED UNTIL FURTHER ORDER AAA MAHKUMA PARISHAD WILL MANAGE THE BAZAR ITSELF UNTIL FURTHER ORDERS AAA NINTH SEPTEMBER 1983 IS FIXED FOR HEARING SAID APPEAL IN PANCHAYAT MINISTER CHAMBER AAA ATTEND HEARING SITE REPORT AND RECORDS ON APPEAL

DEVEC"

10. It suffers from all the infirmities noted in Civil Rule 1199/83 and for the reasons set forth in the said Civil Rule we also declare the impugned order to be invalid and void. In consequence, the impugned order is quashed.

11. If the appeal is still pending the appellate authority may pass any appropriate order at the time of disposal of the appeal or it may pass any order suspending the operation of the impugned order upon hearing the parties before it.

12. In the result, the petition is accepted. However, there will be no order as to costs.