(2003) 02 GAU CK 0043

In the Gauhati High Court

Case No : WP (C) No. 7801 of 2002

Bijon Kumar Das APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 17

Citation : AIR 2003 Guw 164 : (2003) 2 GLR 143

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : P.J. Saikia and J. Handique, for the Appellant; I.H. Laskar, P.K. Deka and K.C. Mahanta, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The subject-matter of challenge in the instant proceeding is the notice dated 4.9.2002 issued by the Divisional Forest Officer, Hailakandi Division, Hailakandi withdrawing the resale notice dated 1.8.2002 whereby tenders were invited for settlement of Dhaleswari River Fishery Mahal upto 19.11.2003.

2. I have heard Mr. P. J. Saikia, learned counsel for the petitioner, Mr. I. H. Laskar and Mr. P.K. Deka, learned counsel for the respondent No. 5 and also Mr. K.C. Mahanta, learned State Counsel, for the respondent Nos. 1 to 4.

3. The factual background for the case in short is that on 26.7.2001 a sale notice was published for settlement of the Daleswari River Fishery Mahal for the period 2001to 2003. Pursuant to the said tender notice dated 26.7.2001 the petitioner as well as the respondent No. 5 offered their bids along with others. The bid of the respondent No. 5 at Rs. 2,50,501 was accepted as the highest bid and by a communication dated 18.2.2002 he was informed that the aforesaid Mahal had been settled with him for the period from 20.11.2001 to 19.11.2003. By the said communication the respondent No. 5 was asked to deposit the security money of Rs. 12,625, the 1st Kist Money of Rs. 31,331 Assam General Sales Tax of Rs.

2506 the Income Tax Rs. 5405 within seven days, from the date of issue thereof. As the respondent No. 5 failed to deposit the same, he was informed by a communication dated 2.3.2002 that on his failure to comply with the instructions contained in the communication dated 18.2.2002, the fishery Mahal would be put to sale on his risk on 30.4.2002 and his earnest money would be forfeited and any loss of Government revenue for such sale would be recovered from him as an arrear of land revenue. Thereafter the resale notice dated 1.8.2002 was published and the petitioner along with others submitted their tenders and on scrutiny thereof, the authority found that the petitioner was the highest bidder and his bid of Rs. 2,01,101 was accepted. Thereafter by a communication dated 27.8.2002 the Respondent No. 4 asked the petitioner to produce some documents mentioned therein. While the matter was pending before the said authority for consideration, suddenly the said authority by the impugned notice dated 4.9.2002 withdrew the resale notice. Aggrieved, the petitioner submitted a representation/appeal dated 5.9.2002 before the Chief Conservator of Forest, Guwahati, Assam but of no avail.

4. The State respondents have not filed any affidavit. In the counter filed by the respondent No. 5 it has been contended that the settlement of the fishery in question though offered to him pursuant to the process initiated by the sale notice dated 26.7.2001, the process of finalisation thereof was greatly delayed as a result of which he lost almost one year of the settlement period. He, however, after receiving the letter dated 18.2.2002 of the Divisional Forest Officer, on 2.3.2002 deposited the 1st kist money. According to the answering respondent, as the petitioner had failed to submit the essential documents necessary for settling the fishery, he did not acquire any unassailable right for settlement thereof and therefore the respondent No. 4 was fully justified in withdrawing the resale notice. It has been further contended that in the meantime, he had deposited the 1st and 2nd kist money as well as other amounts relating to the settlement of the fishery.

5. Mr. P.J. Saikia, learned counsel for the petitioner while supporting the grounds taken in the writ petition has contended that the respondent No. 4 having decided to put the fishery on resale, being satisfied that the Respondent No. 5 had failed to deposit the security money etc. and to comply with the other requirements as contained in the communication dated 18.2.2002, his action of withdrawing the sale notice by the impugned order dated 4.9.2002 is ex facie, illegal, arbitrary and whimsical and cannot be sustained in law as well as on facts. He has argued that as the bid offered by the petitioner in the resale had not been cancelled and was under active consideration at the relevant time when the impugned action was taken, the notice dated 4.9.2002 on the face of the records is not fair and in bonafide exercise of power.

The reason recorded in the impugned order for withdrawing the resale notice is wholly irrelevant as in the instant case the same authority had taken a decision to cancel the bid of the respondent No. 5 for failing to make the compulsory deposits in terms of the stipulations subject to which the settlement was offered. Mr. Saikia, in support of his submissions had drawn the attention to Rule 17 of the Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 (hereinafter referred to as the ''Rules'').

6. In reply Mr. K.C. Mahanta, learned State counsel has submitted fairly that the respondent No. 4 having decided to put the fishery for resale for the failure of the respondent No. 5 to comply with the terms and conditions of the earlier settlement, the impugned order ought not to have been passed by the said authority on the consideration recorded therein.

7. Mr. I.H. Laskar, learned counsel for the respondent No. 5 has strenuously argued that at the point of time when the impugned notice had been issued, the petitioner had not acquired any subsisting right in the fishery on basis of the resale. According to him, the petitioner therefore has no locus standi to challenge the impugned action. He has contended that the settlement in favour of the respondent No. 5 was unduly delayed by a year and eventually he made the deposits though there was slight delay in doing so. Learned counsel has argued that as no final decision had been taken by the respondent No. 4 in settling the fishery with the petitioner following the resale, it was open for the said authority to permit the respondent No. 5 to deposit the dues in connection with his settlement and withdraw the resale notice.

8. The admitted facts are that before resale, settlement of the fishery was made in favour of the respondent No. 5 by the respondent No. 4 subject to the compliance of the terms and conditions as contained in the communication dated 18.2.2002 within a period of seven days thereof. It is not the case of the respondent No. 5 that he had complied with the instructions as contained in the communication dated 18.2.2002 within the time fixed. It is noticeable that the respondent No. 5 did not challenge the order dated 2.3.2002 of the respondent No. 4 put the Mahal on resale. It is also not disputed by the respondent No. 5 that he had not participated in the process of resale of the fishery. From the communication dated 27.8.2002, it does not appear that the bid of the petitioner had been finally cancelled. Rather it appears, that his bid was then still under active consideration. It is not disputed that the petitioner was the highest bidder so far as the resale process is concerned. The respondent No. 5 has also not questioned the validity of the second process of resale of the fishery.

9. It appears from the communication dated 2.3.3002 that the respondent No. 4 had taken a conscious decision to put the fishery on resale in exercise of his power under Rule 17 of the Rules on the ground that the respondent No. 5 had not only failed to deposit the security money and other Government dues but also did not comply with the other terms and conditions subject to which the settlement had been offered to him.

10. In my considered view, in the above back drop of facts, it was not open for the respondent No. 4 to withdraw the sale notice on the ground that in the

meantime the respondent No, 5 had made the deposit of all Government dues and had signed the agreement. It amounts to reducing the whole process for resale of the fishery, to a farce, the respondent No. 4 having published the resale notice in terms of the Rule 17 of the Rules being satisfied that such a course of action was called for, it was not permissible on his part to retrace his path in absence of any cogent, compelling and convincing ground. Consistency fairness and transparency are the indispensable attributes of a valid state action. Every power is coupled with duty and no discretion is unfettered. The impugned notice in the facts of the present case is not backed by acceptable logic and rationale and is a product of mechanical exercise of power. To uphold such an action would be to approve a move to subvert a public process without any justification. The impugned notice, thus cannot be sustained and is set aside and quashed.

11. The respondent No. 4 would non complete the process initiated by the resale notice as expeditiously as possible, preferably within 15 days herefrom. The petitioner would submit a certified copy of this order before the respondent No. 4 to enable him to do the needful in terms of the above directions.

The petition succeeds and is allowed.

No costs.

