
(1988) 06 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 44 of 1988

Bimal Chandra Kalita

APPELLANT

Vs

Assam Board of Revenue, Gauhati

RESPONDENT

Date of Decision : 24-06-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1988) 2 GLJ 77 : (1988) 2 GLR 226

Hon'ble Judges : S.N.Phukan, J and T.C.Das, J

Bench : Division Bench

Advocate : C.Choudhary, A.M.Majumdar, K.C.Das, K.P.Pathak, D.N.Choudhary, P.Pathak, M.K.Sharma, Advocates appearing for Parties

Judgement

Phukan, J.—The country spirit shop in question, viz, Makum Junction C.S. Shop No. 4 was settle by the Primary Settling Authority, i.e., the SubDivisional Officer, Tinsukia with the petitioner for the term of 19871990 with effect from 1.5.87 to 31.3.1990. The settlement order was passed by the settling authority on 28.2.87 on the advice of the Advisory Committee: Being aggrieved the four unsuccessful tenderers including respondent No. 4 herein filed four appeals before the appellate authority, i.e., the Assam Board of Revenue. The appeal of the present respondent No. 4 was numbered as Case No. 19 E (D)/87. Out of the above four appeals, two appeals were dismissed on withdrawal at the hearing stage and the learned Board considered the appeal filed by the present respondent No. 4 and also by one Jayanta Kumar Neog, The learned Board by the common judgment and order dated 6.1.88 allowed the appeal filed by the present respondent No. 4 and set aside the settlement order and settled the shop in question with the said respondent No. 4. However, the appeal of Jayanta Kumar Neog was dismissed. Hence the present petition.

2. The main grounds on which the learned Board set aside the settlement order of the Primary Settling Authority Were that the present petitioner "had no genuine finance" and money provided to him was by Benamdar which is

prohibited by Rule 211 of the Assam Excise Rules of 1945 and that the present petitioner is not an unemployed youth, and as such, he is not entitled to any preferential treatment under Rule 223 of the said Rule as he is aged more than 35 years.

3. The main attack of Mr. Majumdar, learned counsel for the petitioner is that the findings of the learned Board are based on irrelevant consideration of facts and on no evidence on record, and as such, liable to be quashed. Mr. Das, learned counsel for the respondent No. 4 has mainly urged that any finding of fact by the learned Board cannot be disturbed by this Court in exercising jurisdiction under Article 226 of the Constitution in view of the settled law.

4. In *Mukumla vs. Bangshidhar*, AIR 1980 S C. 1524, the Apex Court had occasion to consider the power of High Court under Article 226 of the Constitution vis-à-vis finding of fact of a Domestic Tribunal and that case also arose out of a settlement of a country spirit shop of Jorhat Sub-Division, Assam. In that case, the learned Board of Revenue allowed the appeal. Their Lordships of the Apex Court held that under Article 226 of the Constitution the finding of fact of a Domestic Tribunal can not be interfered with as the High Court does not act as a Court of Appeal. It was also held that High Court can interfere with only when there is an error of jurisdiction apparent on the face of the record committed by the Domestic Tribunal and that a finding based on no evidence or purely on surmises and conjectures of which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. This Court relying on decisions of the Apex Court and also a decision by a Division Bench of this Court in *Lilaram Pegu vs. The Assam Board of Revenue*. (1983) 1 GLR 96, had that any finding of fact arrived at on oral or documentary material by the learned Board cannot be touched unless it is based on "no material or inadmissible material or is patently wrong" much so that no person instructed in law would have arrived at the conclusion (see *Parag Saikia vs. Bishnuram Bora and others*, (1984) 2 GLR 285).

5. Situated thus let us examine whether by exercising writ jurisdiction we may interfere with the findings of the learned Board and in doing so we have to consider whether the findings of the learned Board are based on no evidence or purely on surmises and conjectures or whether these are manifestly against the principles of natural justice.

6. Rule 223 of the Assam Excise Rules, 1945 inter alia, provides that in making settlement preference shall be given to the educated unemployed youth and persons belonging to more Backward Community of the other Backward Classes. The finding of the learned Board that the respondent No. 4 belongs to other Backward Classes and that the petitioner is not an educated unemployed youth cannot be touched. In this connection we may also mention that in the Note to the said Rule 223 it has been mentioned that a person cannot be treated as educated unemployed youth if his age exceeds 35 years.

7. As stated earlier, the learned Board found that the money provided to the present petitioner after settlement was by a "Benamdar financier". In arriving at the above conclusion, learned Board took into consideration some deposits and withdrawals from the Bank account of the petitioner. The learned Board observed as follows:

"Indeed this withdrawal of Rs, 4000/ on 27.3.87, the previous day of settlement dated 27 3.87, is exhibited in the said account of respondent Shri Kalita. As regards the charge money and the money for purchase of liquor totalling to Rs, 32,405/, it was argued before us by the learned Advocate for the respondent that on 20.4.87 Sri Prafulla Kalita paid the respondent Rs. 10,000/ which was deposited into his Bank account and another sum of Rs. 29,000/ was deposited on 30.4.87 which was paid to Shri Kalita by one of his friend Sri Ram Nivas on repayment of loan taken from him earlier and the aforesaid expenditure for taking, charge of the shop and for purchase of liquor were not from that money. But Sri Prafulla Kalita did not speak anything about this payment of Rs. 10,000/ by swearing affidavits or the so called friend of respondent Shri Kalita also did not file any affidavit supporting the contention of the respondent that he paid Rs. 25,000/ as repayment of loan. Moreover, this was not mentioned in the tender also, which was contended for the first time on the date of hearing only by filing an affidavit in opposition. The appeal was running for hearing since 18.9.87 and it was in the knowledge of respondent Sri Kalita that the appeal was pending against him since April, 1987. But yet, respondent Sri Kalita did not file any affidavit in opposition or any other document explaining his case till the date of hearing. From the passbook standing in the name of respondent Shri Bimal Kalita it appears that there were two deposits of big amount of Rs. 10,000/ and Rs. 25,000/ on 20.4.87 and 30.4.87 respectively just on the eve of taking charge of C. S. shop and this huge deposits remained unexplained as the money did not flow from sources disclosed in the tender of Shri Kalita, i.e. from the bank deposits of his two brothers as stated in his tender. Therefore, we find force in arguments of appellants that Shri Bimal Kalita, respondent No.1, received the financial help for running the shop from some one also not disclosed and as such there is some reason to believe that there was a benamdar financier behind him for which Rule 211 of the Excise Rules appears to have been offended?.

8; The memo of appeal filed by the respondent No. 4 before the learned Board is at Annexure "B" to the writ petition and the only allegation regarding "Beaami" transaction is at paragraphs 13 and 14. From the said paragraphs we find that the present respondent No. 4 alleged before the learned Board that the Security money of Rs. 1,902/ deposited by the present petitioner was "by some backdoor financier". In the memo of appeal there is no allegations regarding two deposits of Rs. 10,000/ and 25,000/ on 20th and 30th April, 1987 respectively in the account of the present petitioner. The allegations in paragraphs 13 and 14 of the memo of appeal filed by the respondent No 4 before the learned Board have been explained by the present petitioner. But as there was no allegation in the said memo of appeal regarding two deposits the present petitioner had no

occasion to give suitable explanation before the learned Board. We are informed at the time of hearing that these allegations were made in other two appeals which were dismissed on withdrawal and the said allegation, as stated by learned counsel for the petitioner, have been duly explained by the petitioner in his affidavit filed in the said appeals. We are, therefore, of the opinion that the consideration of the learned Board about the deposits and the finding that "these huge deposits remained unexplained" is based on no evidence. The said finding is also against the principles of natural justice as there is nothing on record to show that the present petitioner was given any chance to explain the deposits in the appeal in question. If the learned Board made the above observation on the basis of allegation made in other two appeal to which were dismissed it was necessary for the Board to give an opportunity to the present petitioner to explain this fact in the present appeal, more so as the Primary Settling Authority settled the shop in question with the petitioner on the basis of records available at the relevant time.

9. For the reasons stated above, we are, therefore, of the opinion that the finding of the learned Board in the appeal in question that there was a "Benamdar" financier behind the petitioner is based on no evidence and that the finding was arrived at by the learned Board without giving adequate opportunity to the present petitioner to explain these facts. The above finding of the learned Board is not tenable in law as it is based on no evidence and is also against the principles of natural justice.

10. While considering, the financial stability of the respondent No.4, the learned Board took into consideration that in the year 1979 the learned Board in an appeal found the respondent No. 4 financially suitable. It is needless to say that financial soundness of a person in respect of settlement of country spirit shop has to be considered in relation to the fact obtained at the relevant period. By taking into consideration that in the year 1979 the respondent No. 4 was found financially suitable.: we are of the opinion that the learned Board has based its finding on extraneous circumstances, and as such, "the said finding cannot be sustained as it is based on inadmissible material. Of course the learned Board has also observed that thereafter the present shop was settled with respondent No. 4 and he was running his shop smoothly without any blemish. But as the learned Board took into consideration extraneous matter while arriving at the financial soundness of the respondent No. 4 we are of the opinion that this finding is without any jurisdiction.

11. From what has been stated above, we hold that this is a fit case for interfering with the impugned judgment and order dated 6. 1. 88 passed by the learned Board of Revenue in Appeal No. 19E(D)/87. However, we do not propose to disturb possession of the country spirit shop.

In the result, the petition is allowed. The impugned judgment and order is set aside. We direct the learned Board to dispose of the appeal after hearing the parties and in accordance with law within a period of two months from the

receipt of the records. We direct the parties to appear before the learned Board on 30th June. 1988 for obtaining necessary orders. Parties to bear their own costs.