
(1981) 12 GAU CK 0006
In the Gauhati High Court
Case No : Civil Revision No. 262 of 1980

Daya Ram Basumatary

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 02-12-1981

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Act, 1977 — Section 21(3)
Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21, 21(1),
21(2), 21(3)
Constitution of India, 1950 — Article 14

Citation : (1981) 1 GLR 334

Hon'ble Judges : K.M. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : S.N. Bhuyan and B.C. Dutta, for the Appellant; Junior Govt.
Advocate, S.N. Medhi, U. Baruah and P. Pathak, for the Respondent

Judgement

K. Lahiri, J.—In this writ application the Petitioner questions the validity of the order of the State Government refusing to grant extension of the term of the fishery to which, according to the Petitioner, he was entitled to obtain under Rule 21 of the Assam Sale of Forest produce, Coupes and Mahals Rules, 1977 for short "the Rules".

2. In a short campus the relevant facts may be stated thus: The Petitioner got settlement of the Forest Fishery governed by "the Rules" for a period commencing from 16.1.78 to 13.5.80. Admittedly the Petitioner, for no fault of his own, did not get possession of the fishery for 2 months 25 days, as one of the tenderers preferred a review application against the order of settlement, The Petitioner in a composite application before the Govt. asked for extension of the period of 2 years in lieu of losses and the loss of the period of operation for the aforesaid period of 2 months 25 days. On the body of the review petition the Petitioner had clearly stated that he lost 2 months 25 days in getting possession of the settlement of the fishery and referred the same as "an exceptional circumstance" along with other circumstances to get an extension for 2 years.

The Government did not pass any order on the petition, however it sent a note to the Conservator of Forests, Upper Assam Circle, Jorhat that the Governor had expressed inability to recommend the prayer for extension of the working period in respect of the fishery in favour of the Petitioner and directed the Conservator to put the Mahal to sale. The order of the Government rejecting the application of the Petitioner for extension has not been produced before us. However, we assume that Annexure "J" is the purport of the order said to have been passed by the Governor, The reason behind the rejection has been reflected in the following collocation of words, namely "the Governor of Assam regrets its inability to recommend the prayer for extension of the working period...".

3. This is a non-speaking order. On an application under Rule 21 of "the Rules" the Government was duty bound to give reasons why it exercised its power in refusing to grant the extension. Entertainement of an application under Rule 21 and disposal thereof is a public duty and the repository of power is the Government. The Petitioner made the application to the Government setting forth several good grounds, but the order of rejection is "a non-speaking order". We have repeatedly held that disposal of such applications requires giving of reasons. The nature of the power and the effect of the order affects not only the applicant but also the members of public as the Government Fisheries are in reality public properties held by the State on behalf of the people. The new expectations progressively brought into existence by the welfare state must be thought of not as privileges to be dispensed unequally or by arbitrary fiat of Government officials but as substantial rights in the assertion of which claimant is entitled to an effective remedy, a fair procedure, and a reasoned decision. Anything short of this leaves subject in this essential interests to arbitrary will of another man who happens to partake of public power; and that kind of unequal and demanding encounter is repugnant to every sense of the rule of law (Rule of Law and The Welfare State-58 C.L.R. 143 by H.W. Jones). It has been further stated thus:

A thousand times as many deciding officers are needed to settle the issues presented by claimants of the new and more widely held rights of the welfare State. Is it beyond hope that this vast new company of officials can, in time, develop a tradition of decision worthy of being called, in Pound's fine phrase, an "ethos of adjudication" ?

The rule of law under our Constitution prescribes justice in accordance with law and prescribes anti law methodology. The important function of the Government cannot be discharged by making a cryptic order" which does not contain any reason. The party who had raised the disputations or put forward the claim wants to know the reasons why the grounds raised by him were turned down. The Government while exercising the power under Rule 21(3) exercises a public duty and we should not forget the repository of the power is the State Govt. itself. As the administrative actions are subject to judicial review by the High Court, therefore, a speaking order is necessary. The necessity of a reasoned order is all

the more necessary because in the absence thereof it would be natural to conclude that the authority could not meet the challenges or it had no reason to offer in respect" of the contentions raised. There is a potent danger of absolute non-consideration of the contentions and that trend would encourage mechanical exercise of power. Therefore, the duty to give reasons acts as a safety valve to protect arbitrary action of the Government. Giving of reasons is one of the fundamental of good administration. In a Government of laws there should not be unfettered discretion immune from judicial review ability unless under special circumstances. The executive, no less than the judiciary, is under a general duty to act fairly. Fairness founded on reason, is the issuance of guarantees epitomised in Article 14. We have no hesitation in arriving at the conclusion that the authority was obliged to give reasons while disposing of application u/s 21(3) of the Rules.

4. Now the next question is, to what relief the Petitioner is entitled. Mr. Bhuyan is correct in submitting that Rule 21 is an enabling provision which confers rights in favour of the tenderer. We set-forth the relevant extracts of Rule 21:

21. Extension of Mahal or Coupe period. (1) No extension of the coupe or mahal period shall ordinarily be admissible. In exceptional cases, Government may however reserve to itself the right of extension on merit of each case at its discretion.

(2) In case, however, there is delay in communication of final order of acceptance of tender by two months or less beyond the date from which the coupe or mahal period is to commence, the D.F.O. within whose jurisdiction the coupe or mahal is situated shall automatically, if necessary, recoups by giving extension for so much time as is lost without charging any extension fee.

(3) Where, under exceptional circumstance any extension beyond the time mentioned in Sub-rule (2) above is found to be justified, such extension may be given on the following conditions-

(i) extension under this sub-rule together with any extension given under Sub-rule (2) shall not exceed more than three years at a time;

(ii) application for extension shall have to be submitted to the D.F.O. or to Government with a copy to the competent authority one month prior to the expiry of the mahal or coupe period;

(iii) coupe or mahal dues shall not have fallen in arrear due to the lapses on the part of the contractor or mahaldar;

(iv) extension granted under this sub-rule in respect of mahals shall be on payment of proportionate value or extension fee as determined by competent authority to grant extension.

Sub-Rule (1) confers discretion in the Government to grant extension of coupes or mahals in "exceptional cases". The nature and power of the State Government

is purely discretionary. However, the exercise of the power should not be arbitrary. Some tincture of judicial discretion is necessary in making such an order.

Sub-Rule (2) confers an absolute right in favour of a tenderer if there is a delay in communication of the final order of acceptance of the tender by 2 months or less. The Divisional Forest Officer has been empowered to "recoupe" by giving extension of the time without charging any extension fee. It clearly shows that a tenderer is entitled to extension under the contingency without payment of any fee. Sub-rule (3) takes charge of exceptional circumstances. Powers have been conferred on the authority to extend the period under certain conditions and limitations, contained in Clauses (i), (ii), (iii) and (iv). Sub-rule (3) is attracted when exceptional circumstances exist and the conditions set-forth in the clauses are also fulfilled.

Mr. Bhuyan, the learned Counsel for the Petitioner, submits that the Petitioner had made a composite application under Rules 21(2) and 21(3). The Petitioner stated in his application that he had lost 2 months and 25 days and expressed other difficulties and prayed before the Govt. for extension of the lease by 2 years. We fail to see how the Petitioner's right of extension for 2 months 25 days could be rejected by the State Govt. when he had an absolute right to get it under Rule 21(2) of "the Rules". However, it was discretionary for the State Govt. to extend or not to extend the period for 2 years beyond the extended period of 2 months 25 days. In our opinion, there must be (1) exceptional circumstance and (2) the period for extension must be beyond 2 months for Rule 21(3) to get attracted. If the lost period is less than 2 months, the D.F.O. is the appropriate authority to "recoupe" or to grant extension, However, it is not within his power to grant extension beyond 2 months. As such when there is a delay in communication of the final order of acceptance of Under by more than 2 months, beyond date from which the period of coupe or mahal is to commence, the case goes beyond the power and competence of the D.F.O but it is an exceptional circumstance as contemplated under Rule 21(3) of the Rules in our opinion, the Petitioner WHS entitled to extension for 2 months and 25 days beyond 15.5.80 and the refusal of the extension was bad in law.

However, things have changed for which the Petitioner is not entitled to relief at this end. We find from records that a sale notice was issued on 28.2.80 for settlement of the Fishery, before filing the writ application. It was published in the Assam Gazette dated 9.4.80 inviting tenders of the fishery for the period commencing from 16.8.80 to 15.5.82. Tenderers have submitted their tenders in pursuance thereof. Government has expended money in the settlement proceedings. If the process of settlement in pursuance of notice issued is affected there will be loss to public exchequer and the effect would fail on the public. Therefore, no public interest will be upheld if the matter is sent down for fresh disposal. The period of 2 months and 25 days beyond the last date of settlement, viz. 15.5.80 has already expired. We are of the view that grant of

relief to the Petitioner, in the form of extension by 2 months and 25 days cannot be given as the period has already expired. Further, the matter cannot be remitted back to the Govt. for fresh consideration as it would lead to confusion and chaos in the affairs of settlement which has made a substantial progress. There is no absolute guarantee that the Petitioner would get. the extension as a matter of right, if the matter is remitted back. To save the, inconvenience of the settling authorities, the new tenderness who have submitted tenders and to avoid confusion and chaos in the matter of settlement we feel no effective relief should be granted to the Petitioner as it would cause inconvenience, confusion, chaos and would be detrimental to the public interest. Although we only declare the order to be invalid and refrain from granting relief to the Petitioner.

In the result, the impugned order is declared to be invalid. However, the Petitioner is not entitled to any relief. The stay order stands vacated. We direct that the settling authorities may proceed to settle the Fishery in terms of the Sale Notice published in the Assam Gazette dated 9.4.80 without further delay. Mr. Bhuyan, counsel for the Petitioner submits that there should be a direction to the authorities to consider the case of the Petitioner favorably. We observe this far and no further that the case of the Petitioner will certainly be considered favorably but in accordance with law. There is no order as to cost.