(1986) 11 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule No. 1106 of 1986

Dhanbor Gohain APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 24-11-1986

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21

Citation : AIR 1987 Guw 48

Hon'ble Judges : K.M. Lahiri, C.J;S.N. Phukan, J

Bench : Division Bench

Advocate : A.C. Borbora and R. Borbora, for the Appellant; P. Prasad, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Lahiri, C.J.—This is an application under Article 226 of the Constitution directed against the order dated 7-10-1986 passed by the Government of Assam rejecting the prayer of the petitioner to extend the term of Sand Mahal No. 2 under Doomdooma Division settled with the petitioner under the Assam Sale of Forest Produce (Coupes and Mahals) Rules, 1977 for short "the Rules."

2. We have heard Mr. A. C. Borbora, learned counsel for the petitioner at length and also heard Mr. P. Prasad, learned Senior Government Advocate, Assam.

3. The factual matrix may be summed up as follows : In pursuance to notice calling for tenders for sale of Sand Mahal No. 2 under Doomdooma Division for the year 1982-84 the petitioner submitted his tender and offered Rs. 3,01,593.00. His tender was accepted and the Sand Mahal was settled with him for a set settlement period commencing from June 16, 1984 to June 15, 1986. The petitioner operated the sand mahal for the entire period. However, before the expiry of the period of settlement, i.e. on 14-5-86, he filed an application to the Government under Rule 21(1) of "the Rules" praying for extension of the tenure of the settlement. We extract the provisions of Rule 21(1) of "the Rules".

"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."

4. Let us consider the nature of the right of an applicant to get an extension and the ambit of power of the Government to extend a mahal under Rule 21(1). The provision commences with an inhibitive note that ordinarily no extension of a coupe or mahal period should be granted. Only in exceptional cases the Government reserves its right of extension on consideration of the merit of each case "at its discretion". It, therefore, follows that the Government "may" or may not extend the term of a mahal. The power of extension is hedged with a number of constraints : first, the Government must hold that it is an exceptional case in which the extension should be granted, secondly, while granting extension it must consider the merit of the case. The use of the expressions "Government may" and "at its discretion" discloses that the nature of power is discretionary and the right to grant extension has been reserved to the Government. No right as such has been conferred on an applicant. The only right which has been conferred on the applicant is to make an application making out an exceptional case and establishing that on merit his case need be considered by the Government. It is thus seen that it is an extraordinary discretionary power which has been conferred on the Government to grant extension only in exceptional cases considering the merit of each case.

5. Mr. Borbora, learned counsel for the petitioner has submitted that the petitioner could not lift 4500 cm. of sand and sustained loss therefore, as some persons were allowed to lift sand around his sand mahal. It is thus apparent that it was the petitioner who could not lift sand due to his inability or failure. The Government considered the application but did not find it to be either exceptional case or a case which deserved extension on its merit.

6. The next submission of Mr. Borbora is that the mahal is not economically sound or viable and accordingly, he had sustained loss.

7. Mr. P. Prasad, learned Sr. Government Advocate Assam has submitted that the sand mahal has been settled with Shri Uttam Sonowai after the period of settlement with the petitioner had expired at his offer of Rs. 8,51,000/-. It is thus seen that the very same Manal which was settled with the petitioner in 1984 at Rs. 3,01,593.00 fetched an offer of Rs. 8,51,000/- for the same tenure. As such, the contention of Mr. Borbora, learned counsel for the petitioner that the Mahal is not economically viable cannot be accepted.

8. We also find on consideration of the application made by the petitioner and on scrutiny of the impugned order the Government considered the case of the petitioner and held that he was not entitled to any extension on the ground set out in his application. We also do not find that it is an exceptional case and/or on merit the petitioner was entitled to any extension.

9. In any view of the matter the question of extension cannot be considered at this stage when the Mahal was already been settled with Shri Uttam Sonowai.

10. For the foregoing reasons we hold that the application has no merit, accordingly, it is dismissed in limine.

11. Before parting with the records we would like to observe that the views we have taken find support in Civil Rule No. 818 of 1986 decided on 7-8-86 (Chandra Kanta Das v. State of Assam), Jagannath Choudhury v. State of Assam (1985) 1 Gau LR 496, Dayaram Basumatary v. State of Assam (1981) 1 Gau LR 334 ; Jagannath Urang v. State of Assam (1985) 2 Gau LR 38 and Sureswar Mazumdar v. State of Assam (1982) 1 Gau LR 399.