

(1960) 06 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rules No's. 27 to 30 of 1960

Gajendra Nath Sarma

APPELLANT

Vs

Padma Kanta Chetia and Others

RESPONDENT

Date of Decision : 08-06-1960

Acts Referred:

Constitution of India, 1950 — Article 14, 19(2), 226
Eastern Bengal and Assam Excise Act, 1910 — Section 15, 17, 25, 36, 36(1)
Eastern Bengal and Assam Excise Rules, 1910 — Rule 178, 202, 218
Essential Commodities Act, 1955 — Section 3
Income Tax Act, 1961 — Section 5(7)A

Citation : (1960) 06 GAU CK 0007

Hon'ble Judges : H. Deka, J;G. Mehrotra, J

Bench : Division Bench

Advocate : S.K. Ghose, J.C. Medhi and B.K. Goswami, for the Appellant; R. Chaudhary, M.C. Pathak, Jr. Govt. Advocate, H. Goswami and C.R. Kalita, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, J.—These rules arise out of applications under Article 226 of the Constitution of India. As they all raise common questions of law, they can be disposed of by one judgment. The facts of each case however, have to be given separately.

2. Rule No. 27 arises out of a petition filed on behalf of Gajendra Nath Sarma who was the lessee of the Panitola Country Spirit Shop in the District of Lakhimpur for the year 1959-60. For the first time he got settlement of the aforesaid shop in the year 1958-59. In accordance with the Provisions of the rules framed under the Eastern Bengal and Assam Excise Act, 1910 (hereinafter called the Act) the Excise shops are to be settled by the Deputy Commissioner in Sadar Sub-Division and the Sub-Divisional Officers in other Sub-Divisions by tender system. The settlement by the Sub-Divisional Officer or the Deputy Commissioner is to be sanctioned by the Commissioner. The Deputy

Commissioner, Lakhimpur fixed the date of settlement of the country spirit shop in Dibrugarh including Panitola shop for 1960-61 on 31-10-1959 and sale notices were issued accordingly.

The Petitioner submitted his tender for the said shop for the year in question. The various other persons who have been impleaded as opposite parties to this proceeding also submitted their tenders. The settlement was however, postponed to 9-11-1959 purporting to be in pursuance of the Government letter issued to the Commissioner of Excise on 30-10-1959. On 9-11-1959 the shop was settled for two years, namely 1960-61 and 1961-62. In all the Districts of Assam the settlement of the Excise shops used to be for one year but with regard to the Districts of Lakhimpur and Sibsagar the Government by notification directed that the settlement should be made for two years.

By the order dated 9-11-1959 the Deputy Commissioner settled the shop with the Petitioner. Against the aforesaid order the opposite party No. 1 along with others preferred appeal before the Commissioner of Excise who by his order dated 21-1-1960 set aside the settlement made by the Deputy Commissioner and ordered settlement in favour of opposite party No. 1. The Petitioner thereupon filed an appeal against the aforesaid order of the Commissioner of Excise before the Commissioner of Hills Division and Appeals who is the Excise Appellate Authority.

The Commissioner of Hills Division and Appeals by his order dated 23-3-1960 dismissed the appeal and upheld the order of the Excise Commissioner. It is the order of the Commissioner of Hills Division and Appeals which has been challenged by means of the present petition and a writ of mandamus or certiorari is claimed quashing the order of the Commissioner of Hills Division and Appeals, Assam and the earlier order of the Commissioner afore-mentioned.

3. Rule No. 28 arises Out of a Petition filed on behalf of one Tankiram Rao who was also a sitting lessee of Kaliapani Country Spirit Shop for the year 1959-60. Originally he got settlement in the year 1956-57. The settlement was originally fixed for 31-10-1959 but was postponed for 9-11-1959 under instructions from the Government and the settlement was made for two years. The Deputy Commissioner acting on the advice of the Advisory Committee constituted for the purpose directed the settlement of the aforesaid country spirit shop for two years, namely 1960-61 and 1961-62 with Shilaram Mech who has been impleaded as opposite party No. 5 to this petition.

The Petitioner thereupon preferred an appeal to the Commissioner of Excise against the order of the Deputy Commissioner which was dismissed on 12-1-1960 and on further appeal to the Commissioner of Hills Division and Appeals the order of the Deputy Commissioner was affirmed. The orders of the Commissioner of Hills Division and Appeals, the Deputy Commissioner and the Commissioner of Excise have been impugned by the present petition.

4. Rule No. 29 arises out of a petition by Sailendra Nath Kakati who was the

sitting lessee of the Moran Country Spirit Shop for the year 1959-60. The date for settlement of this shop was originally fixed on 31-10-1959 but it was postponed to 9-11-1959 under the direction of the State Government. On that date it was settled for two years, namely 1960-61 and 1961-62. The shop was settled by the Deputy Commissioner on the advice of the Advisory Committee on 9-11-1959 with Rabindranath Khargharia who has been impleaded as opposite party No. 5 to the present petition. The appeals filed by the Petitioner to the Commissioner and thereafter to the Commissioner of Hills Division and Appeals were both dismissed and the order of the Deputy Commissioner affirmed. This order has been impugned by the present petition.

5. Rule No. 30 arises out of the Petition filed by one Sarat Chandra Barua who is the sitting lessee of the Tinkhong Country Spirit Shop for the year 1959-60. Originally the date fixed for the settlement was 31-10-1959 and tender notices were issued for the said date. Subsequently however the date was adjourned to 9-11-1959 under instructions from the State Government and on 9-11-1959 the Deputy Commissioner settled the aforesaid shop for two years, namely 1960-61 and 1961-62, with Bipin Chandra Sarma who has been impleaded as opposite party No. 5 to the present petition. The appeals filed by the Petitioner against the aforesaid order of the Deputy Commissioner to the Commissioner of Excise and the Commissioner of Hills Division and Appeals were dismissed and the order of the Deputy Commissioner affirmed. These orders have been impugned by the present petition.

6. The contention raised by the applicants in all these petitions is that the orders of the Commissioner of Excise affirmed in appeal directing settlement of the Country Spirit Shops in question for two years are illegal and must be quashed. Secondly it is contended that no proper notice was given to the Petitioners of the date of settlement. Originally the date fixed was 31-10-1959 which was changed to 9-11-1959 and the notice as required under rules was not given to the tenderers including the Petitioners.

7. As to the first question, the argument of the Petitioner is that Section 25 of the Act gives power to the Board to issue directions fixing the period of settlement subject to any rules made u/s 36(2)(g) of the Act. The power of the Board vests in the Government. Section 25 of the Act reads as follows:

25. Every license, permit or pass granted under this Act

(a) shall be granted

(i) on payment of such fees, if any,

(ii) for such period, and

(iii) subject to such restrictions and on such conditions,

and

(b) shall be in such form and contain such particulars, as the Board subject to

any rules made u/s 36, Sub-section (2), Clause (g) may direct either generally or in any particular instance in this behalf:

Provided that no fee shall be charged for any permit granted u/s 17 for the Possession of an (intoxicant) for bona fide private consumption or use.

Rules have been framed u/s 36(2)(g) and (h) of the Act and Rule 178 provides that licenses for the wholesale or retail vend of intoxicants may be granted for one year from the 1st April to the 31st March, or for any shorter period within that year subject to the provisions that follow that section. In view of the provisions of Rule 178 it is urged that the settlement could be made only for one year and if the power of the Government to issue directions is subject to the rules framed u/s 36, no directions could be issued by the Government in derogation of the provisions of Rule 178. The learned Counsel for the opposite parties has relied upon Rule 218 which reads as follows:

218. Notwithstanding anything contained in these rules the settlement of all or any country spirit or ganja shops may be made in conformity with such procedure or on such terms or for such period, as the Provincial Government or the Governor of Assam as the case may be, may from time to time direct.

This rule according to the counsel for the opposite party, gives power to the State Government to fix by an order the period for settlement. The Petitioner however impugns the validity of the aforesaid rule mainly on three grounds. Firstly it is contended that the rule is in conflict with Section 25 of the Act. Section 25 expressly states that the power of the Government to issue directions fixing the period of settlement is to be subject to the rules, while Rule 218 lays down that notwithstanding any provisions of the rules the power of fixing the period can be exercised by the State Government.

Thus there is a conflict between Section 25 and Rule 218. Secondly it is contended that Rule 218 gives an unguided and uncontrolled discretion to the Government to fix the period of settlement and is thus violative of Article 14 of the Constitution and that it also amounts to excessive delegation. Thirdly it is contended that the rule is not covered by any of the clauses of Section 36 of the Act and is thus in excess of the power conferred u/s 36 of the Act.

8. Besides supporting the order of the Commissioner of Hills Division and Appeals on merits, the counsel for the opposite parties has further contended that no person who has given his tender has any legal right to get settlement and as such if the settlement has been refused, the Petitioners have no right to get any relief under Article 226 of the Constitution. It is also urged by him that no writ of certiorari could be issued quashing the order of the Commissioner of Hills Division and Appeals as there is neither any error of jurisdiction nor any other manifest error of law committed by him.

The powers of the Appellate Authority are co-extensive with that of the Deputy Commissioner and any selection made by the Appellate Authority cannot be said

to be without jurisdiction. It is also urged by him that Gajendra Nath Sarma Petitioner in Civil Rule No. 27 was himself granted settlement for two years by the Deputy Commissioner. He never raised any objection to the grant of the settlement for two years. When the settlement with him was upset on appeal, he cannot now raise the question of the validity of the settlement for a period of two years.

In this rule in the counter-affidavit filed on behalf of the Deputy Commissioner it is stated that the sale notice inviting tenders for settlement of excise shops in Dibrugarh for 1960-61 was issued on the 27th October 1959 and fifteen days due notice was given. The State Government however, decided to allow settlement of country spirit shops in the Dibrugarh Sub-Division and Sibsagar District for two years at a time from 1-4-1960 to 31-3-1962 and the date of settlement was thus extended beyond 27-10-1959. The previously fixed date of 27-10-1959 was therefore postponed to 9-11-1959 and on 2-11-1959 another notice was issued informing all the tenderers about the Government's decision to grant settlement for two years instead of one year.

After that notice the tenderers including the Petitioner agreed to the same and submitted their tenders on the understanding that the settlement was going to be made for two years. The Petitioner therefore cannot now take up the plea that the settlement for two years was illegal.

9. In the counter-affidavit filed on behalf of the opposite party No. 5 in each of the Rules Nos. 28, 29 and 30 it is stated that the Government recently introduced Central Bottling System in Sibsagar District and Dibrugarh Sub-Division of the Lakhimpur District and the lessees through their association represented to Govt. to extend the period of lease in those areas, as, unless the period was extended, they were to suffer considerable loss. It was in response to the wishes of the lessees' Association that the Government decided to make the settlement biennially, only in the bottling areas.

10. Section 15 of the Act prohibits the sale and possession of any intoxicant except under the authority and in accordance with the terms and conditions of a license granted in that behalf by the Collector or by the Excise Commissioner. Section 25 provides the form and conditions of licenses. Section 36(2)(g) provides for regulating the periods for which and the persons to whom a license for the sale of any intoxicant may be granted and providing for the selection of sites at which shops may be opened and Clause (h) of the section prescribes the procedure to be followed and the matters to be ascertained before any license for such sale is granted in any local area. Rule 178 deals with the duration of the licenses.

The procedure for the settlement of the shops is laid down in Rules 202 onwards. Reading these sections of the Act and the rules, it will be clear that the sale and possession of the intoxicants is regulated by grant of licenses. Certain shops are fixed where the spirit could be sold and the settlement of these shops is made in

accordance with the procedure provided under the rules. After the shops have been settled in accordance with the Procedure laid down under the rules, the lessee is granted a license. Before the license could be granted, certain preliminary procedure is laid down for the selection of the person with whom the settlement is to be made and who is to be granted a license. Section 25 gives power to the Board or in the present case, the State Government, to fix either generally or in any particular instance, the period of license.

This power has been made subject to rules made u/s 36(2) of the Act. The words "subject to any rules" in Section 25 to my mind, only indicate that any direction given by the Board fixing the period of the license will not prevail as against the provisions of the rules. But it cannot be said that if the rule itself makes provisions regarding the period, the rule will be inconsistent with the provisions of Section 25. It is not disputed that if the rules themselves had provided the period of two years, there would have been no inconsistency between Section 25 and the rules.

The contention of the Petitioners is that as Rule 218 gives power to the Government to fix any procedure or any period, notwithstanding any provisions in the rules, such a rule is inconsistent with the provisions of Section 25. We do not think that there is any substance in this argument. Rule 218 is as much a part of the rules as any other rule and if Rule 218 is otherwise valid, it only gives effect to the provisions of Section 25 and cannot be regarded as inconsistent with it.

11. The direction issued by the Government fixing a period of two years for settlement of the country spirit shops was not issued u/s 25 of the Act and the question therefore, whether it is in conflict with the Rule 178 does not arise. The order is purported to have been issued under Rule 218. Rule 218 authorises the State Government to fix the period of settlement. Unless therefore, it can be held that Rule 218 is ultra vires, the order passed by the Government cannot be challenged. The contention of the Petitioners therefore, is that Rule 218 is violative of Article 14 of the Constitution inasmuch as it gives an unfettered discretion to the State Government to fix different periods for different shops or different localities. A number of authorities were cited by the counsel for the Petitioners to show that such a discretion cannot be upheld. The principles governing the applicability of Article 14 of the Constitution have been laid down in various decisions of the Supreme Court and are no longer obscure.

The difficulty only arises in the application of the principles. The equality before law guaranteed by Article 14 of the Constitution no doubt prohibits class legislation but it does not prohibit the legislature from legislating on the basis of a reasonable classification. If the classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the statute based on such reasonable classification the validity of the statute cannot be successfully challenged under Article 14.

In applying the said principles to the different sets of facts presented by different cases emphasis may shift and the approach may not always be identical, but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the court reaches having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature and effect of the provisions the vires of which are under examination. After dealing with all the earlier cases of the Supreme Court, their Lordships of the Supreme Court in the case of *Kangshari Haldar and Another Vs. The State of West Bengal*, at p. 464 laid down the law as follows:

The result of those decisions appears to be this. In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the court should apply the dual test in examining its validity; Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied the statute must be struck down as violative of Article 14.

In the present case however, the argument of the Petitioners in effect is that as Rule 218 gives a very wide power to the Government to fix one period for a particular shop and for the other shop similarly situated a different period, such a wide discretion itself contains the germs of discrimination and should be struck down. In the case of *Pannalal Binjraj Vs. Union of India (UOI)*, where the question of the validity of Section 5(7)A of the Indian Income Tax Act was under consideration, it was observed by their Lordships of the Supreme Court as follows:

There is a broad distinction between discretion which has to be exercised with regard to fundamental right guaranteed by the Constitution and some other right which is given by the statute. If the statute deals with a right which is not fundamental in character the statute can take it away but a fundamental right the statute cannot take away. Where, for example, a discretion is given in the matter of issuing licences for carrying on trade, profession or business or where restrictions are imposed on freedom of speech, etc., by the imposition of censorship, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions. Discretion of that nature must be differentiated from discretion in respect of matters not involving fundamental rights such as transfers of cases.

An inconvenience resulting from a change of place or venue occurs when any case is transferred from one place to another but it is not open to a party to say

that a fundamental right has been infringed by such transfer. In other words, the discretion vested has to be looked at from two Points of view, viz., (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied.

12. It cannot be disputed that the possession and the carrying on of business in respect of an excisable article can be controlled by making provisions for the issue of license. Such a restriction will be reasonable within the meaning of Article 19(2) of the Constitution. If therefore, the discretion is left to the State Government to fix the period of license having regard to the circumstances of each case and the underlying object of the Act itself, it cannot be said that such a discretion is unguided and uncontrolled.

There may not be uniformity with regard to the period in every case. As has been pointed out in the present case, as Bottling System had been introduced in these two areas, the State Government thought that in order to achieve the object for which the Bottling System had been introduced, it was essential that the period should be raised to two years. It cannot therefore, be said that the discretion given to the Government under Rule 218 is unguided.

13. Section 25 also gives power to the State Government to fix the period of license and the said power is regulated by the object and the purpose of the Act. Similar power if conferred under the provisions of the rule cannot be said to be uncontrolled and it cannot be said that for the purpose of deciding the vires of the provisions of the rule the object and the purpose of the Act as a whole cannot be considered. Moreover Section 75 of the Act provides that "all rules made and notifications issued under this Act shall be published in the official Gazette and, on such publication, shall have effect as if enacted in this Act". Thus Rule 218 forms part of the Act itself.

The provisions of Rule 218 will be in view of Section 75 considered as the part of the Act itself. It was argued by Dr. Medhi that the power given to the State Government u/s 25 to fix the period is subject to the rules framed u/s 36(2)(g) of the Act and thus the power given u/s 25 is not uncontrolled while the power given under Rule 218 has not been made subject to the rules. As I have already pointed out, the power to fix the period u/s 25 has been made only subject to the provisions of Section 36(2)(g), which deals with the regulation of the periods for which and the persons to whom licenses for the sale may be granted, which only means that the power cannot be exercised so as to be inconsistent with the provisions of the rules.

But the words "subject to any rules u/s 36 Sub-section (2) Clause (g)" do not regulate the exercise of the power u/s 25. The power granted u/s 25 is regulated by the object and the purpose of the Act and the same purpose of the Act regulates the power given under Rule 218 of the Rules framed under the Act. In our opinion therefore there is no substance in the contention that Rule 218 is

violative of Article 14 of the Constitution.

14. The next ground on which the validity of the provision was attacked was that it was an excessive delegation. We do not think that there is any substance in this contention. Section 36 of the Act gives very wide power to the State Government to frame rules including the regulation of the period of License and settlement. The object and the purpose of the Act is fully set out in the Act itself and if under those circumstances the power of subordinate legislation is given to the Government, it cannot be said that it is an excessive delegation. Section 36 which gives power to the State Government to frame certain rules therefore, cannot be said to be hit by the rule of excessive delegation.

If Section 36 itself is not hit by the rule of excessive delegation and if Rule 218 has been otherwise validly enacted, it cannot be said that the rule itself is an excessive delegation. Moreover as I have already pointed out, Rule 218 by virtue of Section 75 will be deemed to be a part of the Act itself and if the Act itself after laying down the policy had left it to the discretion of the executive to fix the period of licence, it cannot be regarded as an excessive delegation.

15. The next point urged is that Rule 218 is outside the ambit of the rule making power given to the State Government u/s 36 of the Act. Section 36(1) lays down that:

the State Government may make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to the Excise revenue.

Section 36(2)(g) and (h) provides as follows;

36(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules:

* * * *

(g) regulating the periods for which and the persons to whom licenses for the sale of any intoxicant may be granted and providing for the selection of sites at which shops may be opened;

(h) prescribing the procedure to be followed and the matters to be ascertained before any license for such sale is granted in any local area.

It is contended that Clauses (g) and (h) of Section 36(2) only give power to the State Government to frame rules fixing the period of the license and prescribing the procedure. It does not give power to the State Government to frame general rule to the effect that the fixation of periods and the procedure can be laid down by State Government by means of a direction issued under the rules. On the face of it the argument appears to be plausible. But Sub-section (2) applies without prejudice to the generality of sub-S. (1) and sub-S. (1) of Section 36 gives ample powers to the Government to frame rules for carrying out the provisions of this Act.

Section 25 gives power to the State Government to fix the period and if a rule is made to the effect that similar power be given to the State Government, it can be said that such a rule is for the purpose of carrying out the provisions of the Act. Moreover the direction issued by the Government fixing the period of settlement for two years in respect of shops in certain districts itself can be read as a Part of Rule 218 and as such it will be within the scope of Section 36(2)(g) of the Act.

16. The only difficulty in reading the direction of the Government as a part of the rule will be that the direction has not been published in the Gazette while the rule requires publication in the Official Gazette u/s 75 of the Act. In the present case however, the Petitioners are claiming a writ of certiorari quashing the order of the Commissioner of Hills Division and Appeals and we do not think that the order can be quashed on the ground that the direction requires Publication in the Official Gazette. It may be that the Government may even publish the direction now and in the event of its publication in the Gazette it will be read as a part of Rule 218. The Commissioner of Hills Division and Appeals only affirms or interferes with the selection made by the Deputy Commissioner of the person with whom the shop, can be settled.

The power which the Commissioner exercises in appeal is a quasi judicial power and any order passed by him can only be set aside if there is any want of jurisdiction or manifest error of law. The order of the Commissioner of Hills Division and Appeals therefore, cannot be set aside on the ground that the Government should have published the order issued by it in the Official Gazette. The selection made by the authorities cannot be interfered with by this Court under Article 226 of the Constitution. Besides this, the Government in its order dated 30-10-1959 communicated to the Deputy Commissioners, had clearly laid down that it had decided to allow settlement of the country spirit shops for two years at a time and that this will be given effect to in the settlement to be made by 31-10-1959.

Before settlement the settling officers should tell the tenderers that the settlement should be for two years and that if any of the tenderers do not wish to have the settlement for two years, his case will not be considered. All the tenderers submitted their tenders on the distinct understanding that the settlement was going to be made for two years. They cannot be allowed therefore, to urge that the order of the Commissioner is illegal inasmuch as he has directed settlement for two years.

17. The case of Narendra Kumar and Others Vs. The Union of India (UOI) and Others, may be usefully referred to in this connection. The facts briefly of that case were that the Petitioners before the Supreme Court had entered into contracts of purchase of copper with importers in Bombay and CalCutta. Before however they could take delivery from the importers the Government of India issued on 2-4-1958 an order called the "Non-ferrous Metal Control Order 1958" in exercise of its powers u/s 3 of the Essential Commodities Act. Clause 4 of this

Order provided that:

No person shall acquire or agree to acquire any non-ferrous metal except under and in accordance with a permit issued in this behalf by the Controller in accordance with such principles as the Central Government may from time to time specify.

The Central Government in a communication addressed by the Deputy Secretary to the Government of India dated 18-4-1959 to the Chief Industrial Adviser to the Government of India, New Delhi, specified certain principles which were to govern the grant of the permit. The permit was refused to the Petitioners and they came to the Supreme Court for enforcement of their fundamental rights. One of the points taken was that the principles set out by the Government in its communication dated 18-4-1959 should be treated as a part of Clause 4 of the order issued by the Central Government. It was observed by their Lordships of the Supreme Court at page 438 of the report as follows:

All that is necessary to make Clause 4 effective is that some principles should be specified, and these notified in the Gazette, and laid before the Houses of Parliament. It may be necessary from time to time to specify new principles in view of the changed circumstances; these have again to be notified in the Gazette and laid before the Houses of Parliament, in order to be effective. So long as new principles do not come into operation, by being specified by Government, and thereafter notified in the Gazette, and laid before Houses of Parliament, the previous principles last specified, notified in the Gazette and laid before Houses of Parliament, will remain effective. As, however, the principles specified in the letter of the 18th April have not been notified in the Gazette, nor laid before Houses of Parliament, and no principles appear to have been specified before or after that date, Clause 4 of the order, as it now stands, must be struck down as void.

As I have stated earlier, the contention in that case was that the principles specified under the communication by the Central Government were an integral part of the order issued u/s 3 of the Essential Commodities Act and as such they had to be notified as every other order. This case may on the face of it, lend some support to the contention of the Petitioners in the present case that unless the direction issued by the Government itself was notified in the Gazette, it could not have effect as a rule and could not be regarded as an integral Part of Rule 218.

But there the relief was granted to the Petitioners on the ground that Clause 4 which restricted the right of the Petitioners to carry on the trade in the metal, will become unreasonable unless the principles were validly specified as provided for under Clause 4 itself. In that view of the matter the relief was granted to the Petitioners restraining the Respondents from enforcing Clause 4 of the Non-ferrous Metal Control Order so long as the Principles in accordance with law were not published in the Official Gazette. In the present case as already pointed out,

the relief claimed is one of certiorari and the order of the Commissioner of Hills Division and Appeals cannot be quashed on the ground that he has directed settlement for two years. It is open to the Government to regularise the matter by publishing the direction in the Gazette.

18. The Petitioners have further contended that due notice was not given in the Present case. Originally the settlement was to take place on 31-10-1959 but it was changed to 9-11-1959 without giving a fortnight's notice. It is sufficient however to point out that all tenderers including the Petitioners had full knowledge of the fact that the settlement was going to be made on 9-11-1959 and they had submitted their tenders after fully knowing the change of the date and did not raise any objection on that count. Therefore no prejudice was caused to the Petitioners and no right of theirs was affected thereby. In the result therefore, we reject these petitions. The Petitioner in rule No. 27 will be liable to pay cost to the opposite parties which we assess at Rs. 200/ -. In other cases there will be no orders for costs.

H. Deka, J.

19. I agree.