
(1962) 01 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 523 of 1961

Haridas Baishnab

APPELLANT

Vs

State of Assam and others

RESPONDENT

Date of Decision : 02-01-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1964 Guw 56

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : H. Goswami and B.M. Goswami, for the Appellant; R.K. Goswami, Senior Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, C.J.—The Division Forest Officer, Nowgong called for tenders for settlement of Forest fisheries of Now gong Division on the basis of the sale notice published in the Assam Gazette for three years from 1-7-1961 to 30-6-1964 The Pabhakhati Beel is shown as No. 14 in the schedule of fisheries in the sale notice. The petitioner before us along with others submitted a tender for settlement of the said fishery. The petitioner offered Rs. 10,175/- per year and also indicated in his tender that he had preferential claim as he was an actual fisherman belonging to the scheduled caste. Sahar Ali opposite party No. 4 to this petition, submitted a tender of Rs. 15,175/- per year. The petitioner in view of his being an actual fisherman belonging to the scheduled caste was offered by the Divisional Forest Officer to accept the settlement on the highest bid offered by the opposite party No. 4, that is Rs. 15 100/-. The petitioner declined to accept the settlement on the highest bid on the ground that it was a reckless offer. Thereafter the Conservator of Forests opposite party No. 2 settled the fishery with Sahar Ali opposite party No. 4 for Rs. 15.175/- per year. The petitioner then in accordance with the provisions of the Sale notice filed an appeal before the Government of Assam on various grounds challenging the settlement in favour of

opposite party No. 4 The petitioner contends in his petition that at the appellate stage he offered to accept the settlement on the highest tender but his appeal was rejected by the Government on the ground that he was a defaulter and his appeal could not be considered. Thereafter he made a review petition before the Government which was rejected on the ground that no review application is maintainable. On these facts the present petition has been filed under Article 226 of the Constitution praying that the order of the Government of Assam rejecting the appeal of the petitioner be quashed and a mandamus be issued to the opposite party the Government of Assam to consider the appeal on merits.

2. The contention of the petitioner mainly is that there was no justification for the Government to come to the conclusion that the petitioner was a defaulter and as the appeal has been rejected only on the ground that the petitioner is a defaulter which is not correct on the facts of the present case. The petitioner was not given any reasonable opportunity to be heard and the order of the Government on appeal should be set aside.

3. A counter-affidavit has been filed in which it is stated that the review petition was rejected on the ground that it was not maintainable. As regards the allegation of the petitioner that he was a defaulter it is alleged that from the report of the Divisional Forest Officer it appears that the petitioner is a defaulter in the Forest Department for Rs. 830/- being outstanding dues of the said Beel (Pabhakhati) for 1956-57 for which a Bakijal case has been pending in the Nowgong Court, as he stood surety and as he was appointed as an approved Agent by the Mahaldar Sri Dhandhari Sohani for the said beel.

4. The contention of the petitioner is that the Beel was never settled with the petitioner and thus he cannot be a defaulter in respect of the disputed Beel. The contention further is that he never stood surety and even if he stood surety he cannot be regarded as a defaulter. The word "defaulter" has nowhere been defined. The State Government in exercise of its plenary powers in disposing of the appeal has rejected the appeal as the State Government considered the petitioner not to be a suitable person with whom the settlement should be made. Under those circumstances we under Article 226 of the Constitution will not issue any mandamus directing the opposite parties to consider the appeal according to the provisions of the sale notice. No statutory provision has been pointed out under which an appeal lies to the State Government. The procedure for settlement is provided for in the sale notice itself. It cannot be said that the order of settlement on the face of it, is erroneous.

5. The contention raised by Mr. Goswami for the petitioner is that the petitioner at a later stage before the appellate authority was willing to accept the highest tender and that the opposite party No. being a school teacher was disqualified to get settlement. Nothing has been pointed out in the Fishery Rules which disqualifies a person who is a school teacher to take settlement. Some provision of the Assam Government Servants Conduct Rules has been placed before us. Even if that may be a ground for taking proceedings for misconduct against the

opposite party No. 4, it cannot be a ground of disqualification for settlement.

6. The counsel for the petitioner has rightly conceded that the Government in disposing of the appeal under the conditions of the sale notice does not act in a judicial capacity and the order passed by the State Government is an administrative order. But his contention is that this court can interfere with administrative orders. It is true that the powers of this court under Art. 226 of the Constitution are very wide. They are not restricted to the interference with the quasi-judicial orders. Any order passed by any authority is examinable by this court under Art. 226 of the Constitution. This court's powers are not fettered by the form of the writ specifically mentioned under Art. 226 of the Constitution namely writs of certiorari, mandamus or quo warranto but any direction can be issued by this court. But the power being discretionary the circumstances of each case will have to be examined and when under the sale notice very wide powers have been given to the appellate authority, this court cannot interfere with the order of the appellate authority and cannot declare that there was no proper disposal of the appeal and to grant mandamus against the opposite parties directing them to hear the appeal according to law. The petitioner can have no grievance against the order of settlement. In fact at that stage he admits that he declined to accept the highest bid.

7. Further the petitioner has got no legal right to enforce the terms of the sale notice. He will only be entitled to a mandamus if there is any breach of any statutory provision. If any contractual obligation has been violated, the remedy of the petitioner may be to bring a suit. But in the circumstances of the case we do not think that the petitioner is entitled to any relief in the present case. The petition is accordingly rejected but under the circumstances we direct that the parties will bear their own costs.

S.K. Dutta J.

8. I agree.