
(1983) 03 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule No's. 1106 and 1169 of 1982

Hazarat Ali and etc.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 31-03-1983

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 138

Citation : AIR 1984 Guw 35

Hon'ble Judges : T.C. Das, J;K. Lahiri, J

Bench : Division Bench

Advocate : S.N. Bhuyan, H.A. Sarkar and S.A. Laskar, for the Appellant; S.S. Rahman, (for No. 6) and Government Advocate, for the Respondent

Judgement

Lahiri, J.—The State unsettled the settlement of Rupohi Bazar, made by the Executive Committee of the Nowgong Mahkuma Parishad, and authority constituted under the Assam Panchayati Raj Act, 1972 and "the Rules" framed thereunder. The Mahkuma Parishad settled "the Bazar" with the petitioner. The State, has settled "the bazar" with respondent No. 6 Abdul Hakim Moral, after cancelling the settlement made by the Mahkuma Parishad. Hazarat Ali, being aggrieved by the order passed by the Government, in purported exercise of its power u/s 138 of the Assam Panchayati Raj Act, 1972, for short "the Act", as well as another co-tenderer, Abdul Khaleque, have preferred two separate writ applications against the common order passed by the Government. The order of settlement in favour of respondent Abdul Hakim and cancellation of settlement with the petitioner was made by the State Government in a composite order. As both the petitioners have come up against the same impugned order and the points involved are common we propose to dispose of both the cases by a common order.

2. Before dealing with the facts of the case and the contentions of the parties it is worthwhile to note that we are dealing with a matter concerning "the Panchayats".

3. "the greater the power of the panchayat the better for the people" So said Mahatma Gandhi, the Father of the Nation. It found expressions in our Constitution which underlines the necessity of strong, healthy and invigorating Panchayati System. Goaded by the high ideals, the States throughout India including the State of Assam made laws, which guarantee self-government to the Panchayats. It is one of the Directive Principles of the State Policy to uphold, organise village Panchayats and to endow maximum powers and authorities to enable them to function as units of self-governments vide, Article 40 of the Constitution. Even the Preamble to the Assam Panchayati Raj Act, 1972, itself speaks in clear terms that the law is to enable the Panchayat institutions to function effectively as units of self-government, in the real sense of the term and not on papers only. One of us (Lahiri, J.) dealt with this aspect in *Md. Rustom Ali Vs. The State of Assam and Others*, Various powers and functions have been expressly bestowed on the Panchayats. Upon grant of such large and wide powers, the Legislature advisedly retained some control and supervision over the institutions with the object of making them strong and healthy but surely not to wreck and undermine their powers and jurisdiction or to upset their functions, control and supervision must be there, however, nothing should be done so that these institutions may think that they are not the units of self government but are entirely and exclusively controlled by "higher ups". Nepotism, violation of the basic principles of natural justice, bias, injustice, undue influence, corruption, violation of the constitutional mandates and wrongs of the like nature must be disciplined and rectified by the Government with strong hands. However, this does not mean that the State should always hold the driver's seat and disturb the exercise of the powers and functions of the panchayats. The bazars and hats are exclusively controlled by the panchayats. They have elected representatives. They know that those hats, bazars and ferries under their control are the main sources of revenue to the institutions. They are much more interested in the functioning of hats, bazars etc., than anybody else. We are of the firm opinion that notwithstanding the massive power of the State and its instrumentalities under Sections 133, 138 (2) of "the Act", the Legislature thought that the intervention of the function of the Mahkuma Parishads and/or the Gaon Panchayats by the Government or their instrumentalities should be minimal. Hats, bazars, cattle pounds, ferries are the main sources of revenue to the panchayats. They know the local condition and the local people, they also know how best the bazars and hats can be run, managed and maintained and who are the persons on whom the responsibilities should be reposed, considering the local conditions. In our opinion, before an order of settlement of Mahkuma Parishad is set aside, the authority should consider that the settling authority is none but the Mahkuma Parishad and the Legislature never considered that the power of settlement should be exercised by the State Government or their instrumentalities in the absence of extraordinary or special circumstances. The power to settle "hats" has been conferred on the Panchayats under "the Act", surely not on the State Government. Therefore, before disturbing an order of settlement made by an elected body, the authority should be very slow,

circumspect and cautious. 4. The Nowgong Mahakuma Parishad invited tenders for settlement of the Rupohi Weekly Bazar under their jurisdiction. Respondent 6 Abdul Hakim Moral offered Rs. 15,001 per month, the present petitioner Hazarat Ali offered Rs. 14,655/- per month and the petitioner in Civil Rule No. 1169 of 1982, Abdul Khaleque, offered Rs. 17,751 per month. There were other tenderers but we are not concerned with them. Amongst the tenderers the petitioner was found most suitable, considering the respective merits & demerits of the tenderers. On 21-6-1982 the Mahkuma Parishad settled the Bazar with the petitioner, the period of settlement is from 1-7-1982 to 30-6-1983. The present petitioner deposited a sum of Rs. 43,965/- as security money on 28-6-1982, executed the lease deed took over possession of the Bazar on 1-7-1982 and continued to run it. Many tenderers including respondent 6 and Abdul Khaleque filed applications u/s 138 (2) of the Assam Panchayati Raj Act, 1972 to the State Government. Upon hearing the parties, the Government by the impugned order dated 22-4-82 settled the Bazar with respondent 6 and set aside the order of settlement made by the Mahkuma Parishad. These writ petitions have been filed against the impugned order marked Annexure 3 (in CR 1106/82).

5. The authority dismissed the cases of all except those of respondent 6 and Abdul Khaleque, the petitioner in the connected Civil Rule. The claim of Abdul Khaleque was rejected on the ground that he had furnished inadequate security and his bid was reckless i. e., too high. Therefore, there remained only two persons in the field. Hazarat Ali, the present petitioner as well as respondent No. 6 Abdul Hakim Moral. But curiously enough the authority considered the case of respondent 6 and Abdul Khaleque and held that Abdul Hakim Moral was entitled to the settlement, but it completely left out of consideration the case of Hazarat Ali, the present petitioner; made no discussions why the settlement with the petitioner required interference, as such, the impugned order is bad for the reason that the authority did not at all consider why the settlement in favour of the petitioner was bad on merits or otherwise, no reason has been ascribed why the settlement required annulment or cancellation. Therefore, the error of law is apparent on the face of the record and the impugned order is liable to be set aside.

6. It is apparent on the law of the record that the present petitioner offered, for the period of settlement (1-7-1982 to 30-6-1983) at the rate of Rs. 14,655/- per month, whereas respondent 6 offered only Rs. 15,001/- more, that is at the rate of Rs. 15,001/- per month. Even assuming that respondent 6 had no disqualification, the authority was bound to consider while taking upon itself the responsibilities of making the settlement, why the offer made by the petitioner required rejection. The petitioner had previous experience like respondent No. 6. Further the difference in tender amounts was nominal. The petitioner deposited the security amount of Rupees 43,965/- on 28-6-1982, as called upon. Further, lease deed had been executed and possession of the bazar was taken over by the petitioner on 1-7-1982. To disturb such a settlement, when the tenderer had deposited such a large amount, had executed the lease and took over

possession, the authority ought to have been very slow and circumspect in disturbing the continuity of the settlement. The authority did not take into consideration that the offer made for the earlier period was only Rs. 13,766/-, lower than the offer made by the petitioner. It is also apparent that during the year in question, in view of the agitation in Assam, the offer made by the petitioner was quite reasonable. Under these circumstances, the least that was expected of the authority was to consider the relevant factors which it omitted. Therefore, the impugned order is bad for non-consideration of the relevant materials at all and settling the bazar in favour of respondent 6. The error is apparent on the face of the record and as such, the impugned order is liable to be set aside.

7. The next question is that the authority found that the principles of natural justice had been violated by the Mahkuma Parishad in not affording a reasonable opportunity to respondent No. 6 to meet the allegations about the public complaints against Mm. It is true that some opportunity need be given to a party against whom certain allegations are made, but it cannot be an elaborate proceeding. If it were so it would take several months to hold enquiry and all such short term settlements would be affected or stalled. Admittedly there were complaints by the members of the public against respondent 6, that as the lessee for the previous term, he collected tolls more than he was legally entitled to collect. The Mahkuma Parishad had received the complaints and respondent 6 denied that same before the State Govt. The Mahkuma Parishad reiterated that there were complaints. According to the authority, opportunity should have been given to respondent 6. In our opinion, in such settlements proceedings, where allegations are received, an elaborate enquiry is not called for. It should be of a summary nature. It might have been that the allegations were incorrect, but the fact remains that the Mahkuma Parishad received some complaints and did not like to settle the bazar to respondent 6 in view of the public complaints, to contain or honour the public opinion. But what the authority did was to settle the bazar with respondent 6 against whom there were existing public complaints. It did not hold any enquiry to find out the truth or otherwise of the allegation. As such, the settlement by the authority was in spite of the existence of the complaints. Was it really a very happy settlement made by the authority, in favour of respondent 6, against whom there were allegations? Now, the members of the public would consider that the settlement was made in spite of their complaints against respondent 6, and carry a bad impression that without holding an enquiry respondent 6 was settled with the bazar. Under these circumstances, when natural justice is vacated the course open for the authority is to remit the matter to the concerned authority to decide the question or settlement after a fresh hearing, on quashing the order or it might maintain the settlement made by the Mahkuma Parishad and remit the matter to it for holding a fresh enquiry and to make a fresh settlement. As the Mahkuma Parishad did not afford opportunity to respondent No. 6 to meet the charges, the authority, without holding any enquiry whatsoever, made the settlement to the person

against whom public allegations were still subsisting. In all fairness, this was not the right course adopted by the authority. It undermined the independence of the Mahkuma Parishad, an elected body. The Mahkuma Parishad did not consider that respondent 6 was entitled to get the settlement as it had reasonable ground to believe that the members of the public would be unhappy if the settlement was made with respondent 6. In the instant case what the authority did was to impose respondent 6 as the lessee whom the Mahkuma Parishad did not desire to settle in "public interest". These errors committed by the authority are apparent on the face of the records and, as such the impugned order cannot be maintained.

8. For the reasons set forth above, we set aside the impugned order and uphold the order of the Mahkuma Parishad. We would have remitted the case to the Mahkuma Parishad for giving opportunity to respondent 6 to meet the charges against him, but the period of lease is going to expire on 30-6-1963, and as such we do not desire to remit back the case to the Mahkuma Parishad, but quash the remarks against respondent 6. However, if these allegations are brought against him in future, the Mahkuma Parishad shall inform him about the allegations and give him a reasonable opportunity. However, the enquiry must be a summary one and should be finished within a matter of a day or so. However, we do not think that this remark against respondent No. 6 shall be made a handle to debar respondent 6 in future settlement.

In the result Civil Rule 1106/82 is allowed. The Rule is made absolute. The connected Civil Rule No. 1169 of 1982 is dismissed. There will be no order as to costs.

T.C. Das, J.

I agree.