(1988) 09 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule No. 268 of 1976

Imamuddin Ahmed APPELLANT

Vs

Jorhat Mahakuma Parisad & Others. RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 68, 68, 77(3), 77(3)

Citation : (1988) 2 GLR 322

Hon'ble Judges : A.Raghuvir, C.J. and Manisana, J

Bench : Division Bench

Advocate : P.G.Barua, D.Goswami, Advocates appearing for Parties

Judgement

Manisana, J.—In this writ application, the petitioner has challenged the resolution of the Nakachari Gaon Panchayat adopted on 26. 6. 75 for revising tax on private hat or market place.

2. Mr. P. G. Baruah, the learned, counsel for the petitioner, has submitted that the resolution of the Gaon Panchayat was not approred by the Mahkuma Parishad, as provided under section 68 of the Assam Panchayati Raj Act, 1972 (for short the "Act"), and, therefore, no tax could be levied. Mr. Baruah has further submitted that the resolution adopted by the Gaon Panchayat was in violation of section 77(3) of the Act as no such resolution could be adopted less than one month before the financial year, viz, the year commencing from the 1st day of July.

3. As regards the approval of the Mahakuma Parishad under section 68 of the Act, the resolution for imposing and collecting "tax" or "fees" on private hat is to be approved by the Mahakuma Parishad. Mr. Baruah has submitted that the respondents have not filed counter to rebut the statement made in the petition that the impugned resolution was not placed before the Mahakuma Parisbad for approval and, therefore, the statement made in the petition is to be accepted as correct. But the order of the appellate authority against the resolution of the

Gaon Panchayat passed on 27.3.76 filed by the petitioner indicates that the resolution was approved by the Mahakuma Parishad. Therefore, two views are possible in this case. To prefer one to another view of the fact approved by the Mahakuma Parishad will not be permissible on the facts and circumstances of the case.

4. As regards the violation of section 77(3) of the Act, under section 77(3) of the Act, a tax imposed under subsection (2) of section 77 shall continue to be in force until the Gaon Panchayat in its meeting held not less then one month before the end of the financial year, revise the amount of tax for the ensuing financial year. "Financial year" is defined under section 2 (12) of the Act. For the purpose of this case ''financial year'' is the year commencing on the 1st day of July. The impugned resolution was passed on 26.6.75. Therefore, the contention of Mr. Baruah has some force. But the petitioner did not file appeal within the prescribed period of limitation and allowed the resolution to become final. The resolution relates not only market of the petitioner but also other markets within the jurisdicton of the Gaon Panchayat. The petitioner has been paying the enhanced tax or fees. The petitioner has not prayed for refund of the enhanced tax paid. Therefore, on the facts and circumstances of the case, we are not inclined to invoke our jurisdiction under Article 226 of the Constitution of India. However, as it is a matter of taxation, we propose to pass the following order as regards future course of tax :

So far the future course of tax or fees on private hat or private market are concerned, we direct that it would not be open to the respondents to impose and collect tax or fees unless the resolution is approved by the Mahakuma Parishad.

With the above direction and observation, the petition is disposed of. No costs.

