
(1992) 11 GAU CK 0011
In the Gauhati High Court
Case No : Writ Appeal No1 of 1992

Jaidav Chandra Dhingia

APPELLANT

Vs

Lal bahadur Das and Ors.

RESPONDENT

Date of Decision : 26-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1993) 1 GLJ 1

Hon'ble Judges : U.L.Bhat, C.J. and W.A.Shishak, J

Bench : Division Bench

Advocate : A.K.Sharma, D.N.Choudhary, K.C.Das, C.Baurah, P.K.Kalita, P.J.Saikia, N.M.Lahiri, N.Choudhary, Advocates appearing for Parties

Judgement

U.L. Bhat, CJ.

1. The petitioner in Civil Rule No.1876 of 1990 is the appellant herein. He is aggrieved by the dismissal of the writ petition by the learned Single Judge. We have heard the learned counsel for the appellant teamed counsel representing the State and the learned counsel for the first respondent.

2. The dispute in the case relates to settlement of No.7 Moran Country Spirit Shop for the period, 1.4.1990 to 31.3.1993. For the earlier period 1987-1990 the Deputy Commissioner settled the shop with the appellant First respondent and other unsuccessful tenderers filed there separate appeals before the Assam Board of Revenue which by a common judgment set aside the settlement made in favour of the present appellant and directed resettlement of the shop. This was done on the basis that the financial position of the claimants was not satisfactory. The present appellant challenged the decision of the Assam Board of Revenue by filing Civil Rule No. 1330 of 1988.. This Court directed statusquo to continue. The present appellant continued to conduct the shop till 31.3.1990. When this was brought to the notice of the Court the writ petition was disposed of as infructuous. For the period 1990-93 appellant, first respondent and others submitted tenders. The Deputy Commissioner settled the shop in favour of the

appellant. First respondent herein challenged the same by filing appeal before the Assam Board of Revenue which allowed the appeal and settled the shop with the first respondent on the ground that appellant was not financially sound. Ultimately appellant filed Civil Rule No. 1876 of 1990 and this Court stayed the operation of the judgment of the Board of Revenue. In other words, appellant continued to operate the shop till today. The learned Single Judge dismissed the writ petition and that is now challenged.

3. Rule 208 of the Assam Excise Rules, 1945 empowers the Collector to make settlement of Excise shops in consultation with the Advisory Board by adopting tender process and after the Advisory Board considers all the tenders. Shops shall not be settled with persons of bad moral character or persons who may be considered undesirable. The selected tenderer shall also be financially sound to run the shop. Rule 211 cautions the Presiding Officer of the Advisory Board to be on his guard against combination of tenders at the time, of settlement. It also states that benami transactions shall not be permitted and tenders submitted by undesirable persons may not be considered. Thus, it may be seen that financial soundness of the tenderer is an important factor to be taken into consideration.

4. The Board of Revenue took the view that the appellant was not financially sound and the first respondent was financially sound. The Board of Revenue in the appeal relating to the period 1987-1990 had taken the view that none of the tenderers before it including the present appellant and first respondent was financially sound. In other words, in regard to the appellant the Board of Revenue followed its earlier finding but in regard to the first respondent it did not follow its earlier finding. In the writ petition the finding of the Board of Revenue regarding "financial soundness of both the parties was under challenge.

5. "The learned Single Judge" referred to the litigation regarding settlement for the previous period, noticed that the Board had decided rightly or wrongly against the appellant about his financial soundness after considering the particular fixed deposit relied on by him but that the High Court did not decide it on merits and therefore the finding of the Board that in view of the conclusion in the earlier litigation there is no justification to arrive at a different conclusion is reasonable on the ground of public policy that the same question or issue shall not be raised again and, again. The learned Single Judge indicated that the finding is also founded on the principle underlying the rule of resjudicata. Thus, it was held that there was no justifiable reason to invoke Article 226 of the Constitution. The learned , Single Judge did not consider the contention of the appellant that the finding of the Board of Revenue that the first respondent had financial soundness is perverse and vitiated by error of law.

6. For the period 1987 to 1990 appellant put forward certain sources of finance. He has a house! He and his wife have landed property which fetched income and his cousin brother Prasanna Changmai had promised him to give financial support. No evidence was placed with reference to that period regarding the particulars of the landed property or that the house fetched any income. In

regard to the financial capacity of Prasanna Changmai, reliance was placed in the earlier litigation on the fact that there was deposit of Rs. 36,50,332 in the name of Prasanna Changmai and his wife in the Kamrup Branch of the State Bank of India, a deposit of Rs.4,12,241 in their joint account and cash amount of Rs.5,500/in his hand. The relevant Pass Books were made available. It was found that the existence of these amounts in Bank were proved by production of documents. The State Bank of India's Pass Book showed that Prasanna Changmai had deposited Rs. 22,900/ on 12.1.87 that is shortly before the tender. Prasanna Changmai filed an affidavit before the Board of Revenue in the previous case stating that this amount was received by him as House Building Advance but in his earlier affidavit filed along with the tender he had not referred to the House Building Advance. The Board of Revenue commented on the nonproduction of documentary evidence to show that Prasanna Changmai had received House Building Advance and his failure to refer to the particular source in his first affidavit to come to the conclusion that the amount came from some hidden source. The Board of Revenue also commented on the fact that there was no documentary evidence regarding the land or its income or that the house rent was available. The Board of Revenue finally held that the financial support pleaded by the appellant was not genuine and not proper. If these findings remained unchallenged or survived a challenge, they could have been relied on for the purpose of the next period also; but as we have already noticed the decision of the Board of Revenue referred to above for the previous period was challenged before this Court in a writ petition, this Court stayed the operation of the judgment with the result that the party who failed before the Board of Revenue continued to operate the shop till the period of settlement was over and thereafter this Court without going into the merits of the contention before it disposed of the writ petition as infructuous. It is not as if the present appellant who failed before the Board of Revenue in the previous litigation refrained from challenging the decision of the Board or otherwise accepted the decision. He challenged the decision and succeeded in obtaining an interim order in his favour which enabled him to operate the shop till the end of the term. In these circumstances, the view taken by the Board of Revenue as well as the learned Single Judge that some sanctity remained with the earlier findings of the Board of Revenue is wholly erroneous and contrary to law. The view taken by the learned Single Judge that principles of res judicata apply to the situation is wholly erroneous. It is true that public policy requires that the same question or issue should not be allowed to be raised again and again. This is the principle which is the basis of the doctrine of res judicata and the doctrine of estoppel by judgment. If these doctrines do not apply to a given situation, the situation cannot be met by falling back upon any principle based on public policy. On the facts there can be no serious controversy that the finding of the Board of Revenue in the previous litigation against the appellant herein or first respondent herein would not be binding on the parties and would not operate as res judicata and no party would be estopped from raising a plea contrary to such finding. It was the duty of the Board of Revenue to have decided the controversy before it

on the materials placed before it and untrammelled by its decision in the appeal relating to the earlier period since those finding had been challenged before the High Court and the High Court dismissed the writ petition as infructuous. It is brought to our notice that in the. appeal before the Board of Revenue for the succeeding period the present appellant had filed documents which according to him established that Prasanna Changmai had received House Building Advances out of which he made deposit of Rs.22,900/ on 12.1.87. The Board of Revenue had failed to consider these materials. The learned Single Judge did not appreciate the serious omission on the part of the Board of Revenue.

7. The appellant has a grievance that his challenge regarding the financial soundness of the first respondent was not considered seriously on the materials available by the Board of Revenue and this matter was not adverted to by the learned Single Judge. We find the scheme of the judgment of the Board is rather curious. Several paragraphs refer to the arguments of the lawyers appearing for the one side or the other and these paragraphs are followed by perfunctory delineation of the decisions without adequate reasons. Some reasons are given in regard to financial soundness of the appellant though mainly on the basis of the findings in the appeal for the previous period, but the Board of Revenue did not give any reason for upholding the financial soundness of first respondent except to state that a close scrutiny of the materials available satisfied the Board regarding such soundness. A judgment must necessarily contain reasons. A judgment without reasons is no judgment at all. Reasons are required to be given in a judgment to indicate that the authority had applied its mind to the relevant materials to indicate that the decision is not arbitrary and to enable the appellate authority to examine the soundness of the reasons. It may be that the Board of Revenue was satisfied about the financial soundness of the first respondent but the judgment does not discuss the materials which persuaded the Board of Revenue to take that View. This serious infirmity in the judgment of the Board of Revenue also escaped the notice of the learned Single Judge.

8. The learned counsel for the first respondent tried to satisfy us on the original materials that appellant is financially not sound and the first respondent is financially sound. In our opinion, an independent decision by us on the original materials before the Board would be outside the scope of Article 226 of the Constitution. It is well accepted that the scope of judicial review under Article 226 is limited. The High Court under Article 226 of the Constitution does not deal with a case as an appellate Court would. It subjects the decision or rather, the decision making process of the inferior Tribunal to review in accordance with well established parameters guiding its jurisdiction. We cannot, therefore, go into the merits and arrive at our own conclusion.

9. Ordinarily we would have been reluctant to send the parties back to the Board of Revenue since only four and odd months remain for the expiry of the period of settlement but we have not been able to obtain a satisfactory suggestion from the rival parties as to the manner in which the shop could be. dealt with for the

remaining period. Therefore, we are constrained to send the matter back to the Board of Revenue for an expeditious decision in accordance with law.

10. We set aside the impugned judgment of the learned Single Judge. We also set aside the impugned judgment of the Board of Revenue and direct the Board of Revenue to take the appeals back on its file and dispose of the same in accordance with law as expeditiously as possible keeping in mind the fact that the period of the settlement would expire shortly. There will be no direction as to costs. The records will be sent back forthwith.