

(1983) 01 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No's. 483 and 697 of 1982

Jayanta Kumar Das

APPELLANT

Vs

Assam Board of Revenue and Others
 Amiya Kumar
Kakaty Vs J.C. Dutta and Others

RESPONDENT

Date of Decision : 10-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) 1 GLR 318

Hon'ble Judges : T.C. Das, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, D.N. Barua, C. Barua and B. Das, in C.R. No 483/82 and K.C. Das and J. Das, in C.R. No. 697/82, for the Appellant; T.C. Buragohain in C.R. No. 483/82 and A.K. Choudhury, Government Advocate, G.K. Talukdar and P. Roy, in C.R. No. 697/82, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—Every branch of organized activity has its discipline. Law is no exception. The due process of law and the, rule of law would become mere claptrap, as observed in Fuzlunbi Vs. K. Khader Vali and Another, if judges bound to obey precedent choose to disobey on untenable alibi. These observations had fallen from the highest court of the land when it had noted that a crystal clear ruling of that court was almost defined by the disingenuous process of distinguishing the decision. It has to be remembered that without departing from judicial discipline, no subordinate court or tribunal can whittle down, wish away or be unbound by the ratio of the decision of a higher court. It is also worth pointing out that a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned" as stated in Ambika Prasad v. State of U.P. AIR 1980 SC 1762 by referring to Salmond's "Jurisprudence" page 215, 11th Edition So, every new discovery or argumentative novelty cannot (sic) or compel reconsideration of a binding precedent.

2. We have opened the judgment with those thoughts because it has been noted by us that though a special Bench of this Court had held the finance obtained by the Petitioner in Civil Rule No. 482/82 by sale of 1(one) bigha of land as unstained, the Board had thought it fit to regard the same as dubious or suspicious. This is just not permissible in law. Any attempt by a subordinate court to sit as if over the judgment of a higher court is fraught with grave danger to the edifice which has to administer justice. It is indeed an insidious approach. A subordinate court has to reconcile itself if its findings are set aside by a higher court.

3. The present civil Rules are related to settlement of (sic) G.S. (Country Spirit) shop. Among a large number of tenderers, as many as 64, the primary authority in consultation with the Advisory Committee selected the Petitioner in Civil Rule No. 483/82. 8 (eight) persons preferred appeals to the Assam Board of Revenue. The learned Board has undone the settlement given by the primary authority and has selected Jeewan Chandra Dutta, one of the Respondents in the present petitions as the most suitable person to run the shop. Feeling aggrieved, the (sic) selected and one of the Appellants who lost before the learned Board have preferred these applications.

4. We have to first take up Civil Rule No. 483/82 inasmuch as Shri Das appearing for the Petitioner in Civil Rule No. 697/82 has fairly stated that the question of considering the claim of this Petitioner would arise only if it is found that the learned Board was right in setting aside the settlement. It is because of this that both the cases were heard together and we propose to take up the first petition first.

5. Reference to the impugned judgment shows that the learned Board first dealt with the case of the petition in Civil Rule No. 483/82 and set aside the settlement in his favour being of the view that the finance of this Petitioner was suspicious. The Board came to this conclusion because of three reasons; (i) sudden deposit of Rs. 21,000.00 in the pass book of the Petitioner which had remained unexplained in the affidavit filed before the learned Board. What weighed more in regard is the opening of a fresh account to deposit a sum Rs. 18,000.00 and odd which the Petitioner had received while handing over possession of Ledo C.S. shop on 2.7.81; (ii) obtaining of Rs. 30,000.00 by sale of 1(one) bigha of land was not accepted as a genuine source; and (ii) "evaporation" of a sum of Rs. 25,000/ and add which must have remained with the Petitioner he had to pay a sum of about Rs. 27,000/- while taking possession of Ledo C.S. shop on 7.8.79 whereas when he, in (sic), gave possession of that shop on 12.10.79, had received a sum of Rs. 2,000.00 only.

6. To appreciate the above findings, we have to travel a little backward and note the fate the Petitioner had to meet while tendering for the Ledo C.S. shop. We may, however, (sic) confine ourselves to the happenings of that Shop from 1.6.79. The settlement from that date to 31.3.80 had been given by the Primary authority to this Petitioner but he lost at the hand of the learned Board

whereupon an approach was made to this Court in Civil Rule No. 452/79. That Rule along with many others came up for examination before a Special Bench of three (sic) of this Court in *Rajkumar Dilip Narayan Singha v. The Assam Board of Revenue and Ors.* ILR 1980 Gau 99. The Special Bench owed its constitution because a question of (sic) portance was raised which was of some moment in so far (sic) educated unemployed youths are concerned, who are requested to be given preference in settlement of country spirit shops. The Bench was called upon to examine the question as to whether the essential for the purpose of getting settlement of an excise shop? If so, how should it be judged and on what touchstone? As the time of settlement was running out, it was thought fit that the special Bench should itself go into the merits of the case and should not confine only to the legal question posed before it. While doing so, this Court examined the question of financial soundness of this Petitioner, and the genuineness or otherwise of the aforesaid sale transaction was a specific matter gone into by the Bench. After noting the points which had led the Board to regard this source as tainted, this Court came to the conclusion that as the sale was to a person not related to the Petitioner in any way and was testified by a registered sale deed, the money coming out from the transaction was from a genuine source. This Court, therefore, felt that it has to set right an injustice done to the Petitioner "who first lost his land to win the shop, but ultimately lost both the land and the shop". The order of the learned Board in that civil Rule was, therefore, set aside. But as the judgment came to be pronounced after the expiry of the term of the lease there was, no direction for giving possession of the shop to the Petitioner. It may be stated that the conclusion on merits arrived at by one of the Judges of the Bench (Hansaria, J.) was specifically approved by another learned Judge (Lahiri, J.).

7. But the learned Board has thought it fit to cling to its own old finding, and by referring to some anomaly in an affidavit of the father of the Petitioner filed on 18.2.1980 has come to say that the finance from the sale transaction is suspicious, Our attention could not be invited by any of the learned Counsels to the affidavit dated 18.2.80 which has been mentioned by the learned Board in this connection. That, however, cannot be an affidavit in this case. This is clear from the date mentioned owned in the judgment. It may be stated that the term with which these petitions are concerned is from 31.10.81 to 31.3.84. We have not thought it fit to re-examine the question as to whether the money obtained by the Petitioner by the sale of 1(one) bigha of land can be regarded as suspicious. Further, it is not open to any other authority in the country except the Supreme Court to do so.

8. This takes care, of the second factor noted by the Board which is rentable to the first settlement of Ledo shop. Let us now see as to what happened in the second round which was from 1.4.80 to 31.3.81 subsequently extended upto 30.6.81 and afterward till 30.9.81. This time also the primary authority found the Petitioner to be the most suitable candidate, and the Board again set, aside that settlement. The Petitioner knocked the door of this Court and his grievance was

examined in Civil Rule 84/81. As that case came up for final adjudication on 12.6.81, this Court did not go into the merits and passed a consent orders observing, inter alia, as below:

That inadvertently or otherwise if any of the parties to the proceedings before the appellate authority was stigmatized in any form or favour (s/c), the said stigma or adverse remarks shall not be used against them in future in settlement of excise shops.

Despite this, the Board has found the finance for the Panitola shop as suspicious because the investment of the Petitioner in Ledo shop was so, according to it. The Board, therefore, says "that suspicion still lingers on". It just cannot linger on on the face of what has been stated by this Court in Civil Rule No. 84/81. of course, if on a fresh appraisal of the materials, it is found that the finance has come from a dubious source, it would definitely be open to the Board to say so. The past cannot, however haunt like a ghost the Petitioner for all times to come without a fresh look at it.

8A. The money received by the Petitioner (Rs. 18,000/-) while handing over possession of the Ledo shop on 2.7.81 is the subject matter of the first ground noted above, This money along with some other, making a total of Rs. 21,000.00, was deposited on 9.7.81 by the Petitioner in a new savings bank's account. The Board has first stated that this sudden deposit was not explained by the Petitioner in his affidavit. This is, however, not so inasmuch as it has been averred in paragraph 13 of the affidavit-in-opposition filed by the Petitioner before the Board that a sum of Rs. 18,000.00 had been received by him while handling over charge of Ledo shop and this sum was kept by him in the Assam Co-operative Apex Bank by opening a new account, It may be stated that the earlier account of the Petitioner was in the State Bank of India. It is thus a misreading of the affidavit to say that the Petitioner had not explained the deposit. It was thereafter stated that there was no explanation about opening a fresh account to deposit the money instead of keeping it in the old account, The Petitioner had stated in his affidavit that the new account had been opened "for his convenience". It is common knowledge that persons do keep their accounts in many banks of a town or city; and even if they have deposit in one bank, they do open account in some other bank if it be convenient to them. No reasonable person could have found fault with the Petitioner merely for keeping the money in bank other than the one with which he was already dealing, of course, if one wants to beat a person, any stick would do. That cannot, however, be a judicial approach.

9. This takes up to the third ground which is again relatable to the happenings of the first settlement of the Ledo shop. The Board has thought that the difference of Rs. 25,000.00 mentioned above, got evaporated. This is, however, not so at all inasmuch as the judgment of the learned Board relating to the second settlement of the Ledo C.S. shop, (filed along with the affidavit in opposition of Respondent No. 3) shows that the Petitioner had a sum of Rs. 18,600/- and odd as his

deposition the savings bank's account when he had tendered for that shop second time. Thus, a large part of the aforesaid Rs, 25,000.00 was in deposit in the savings bank's account. This apart this ground has been taken into consideration by the Board only to fortify its conclusion about the dubiousness of the Petitioner's finance, which conclusion it had arrived at from the two other grounds. As the Board could not have traversed again the second factor; and as the first is founded on misreading of affidavit and unreasonableness, the finding about the suspicious nature of the Petitioner's finance is absolutely unwarranted on the facts and circumstances of this case.

10. While coming to this conclusion, we are conscious that as a writ Court, we cannot enter into a finding of fact, duly arrived at by the Board. Indeed, even if the finding is not impeccable, this Court would have no, jurisdiction to upset same in a proceeding under Article 226 of the Constitution, as (sic) in *Mukunda Bore Vs. Bangshidhar Buragohain and Others*, But (sic) the Board usurps a jurisdiction not vested in it by law, acts unreasonably and comes to a finding by almost ignoring what has been stated and held by a higher authority, such a finding (sic) as to be upset. The power under Article 226 has to be exercised in such a contingency. Anything else would give rise to discipline in law.

11. As the foundation which led the learned Board to examine the case of the Appellants before it and thereafter to settle the (sic) with somebody else stands knocked down, it is not necessary to deal with the contention advanced by Shri Das in Civil rule No. 697/82 that amongst the appeals before the learned board the Petitioner in this case was the best suitable tendered, and the converse view taken by the Board by stating that finance of this applicant was not readily available is founded on erroneous view of law, and is against its own decision in Case No. (sic)/81

12. The result is that Civil Rule No. 483/82 stands allowed setting aside the impugned order, the effect of which is that (sic) Settlement granted by the primary authority in favour of the Petitioner of this case stands undisturbed. The rule in Civil(sic) No. 697/82 stands discharged. On the facts and circumstances of the case, we leave the parties to bear their own costs.