
(1997) 05 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 5127 of 1996

Jeng Hanser

APPELLANT

Vs

Karbi Anglong Autonomous District Council and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 12, 3, 3(3)
Constitution of India, 1950 — Article 14, 226

Citation : (1997) 3 GLR 436

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A.F.G. Osmani and M.H. Rajbarbhuiya, for the Appellant; B.D. Das, S.C. and S.S. Dey, Addl. Sr. G.A., for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the orders dated 10.9.96 and 23.9.96 issued by the Deputy Secretary (T) i/c Forest, Karbi Anglong Autonomous District Council to the Divisional Forest Officers, Hamren Division for settling Bark Mahal of Hamren Forest Division with Sri Deori Rongpi and Sri Robi Singh Teron, Respondents 6 and 7 respectively.

2. The facts, briefly, are that in the year 1988 the Petitioner was settled with the Laham Mahal Hamren Forest Division for a period of two years by an order dated 9.3.88 issued by the Principal-Secretary of the Karbi Anglong Autonomous District Council. On the basis of the said settlement the Petitioner collected Bark from the said Mahal during the year 1988-89. But Subsequently by an order dated 9.5.89 the aforesaid settlement in favour of the Petitioner was cancelled in public interest. Therefore, during the years 1989 to 1995, Bark Mahals under the Karbi Anglong Autonomous District Council were not put for sale presumably on account of ecological reasons and in the public interest. Suddenly by orders dated 10.9.96 and 23.9.96 issued by the Deputy Secretary in-charge Forest,

Karbi Anglong Autonomous District Council the Bark Mahal (Raknallah Bnark, Caul Bark Laham Bark, Bud seed pipuli Bark of the entire Hamren Division) was settled with Respondent No. 6 and Bark Mahal (A.P. Bark and L.S. Bark) was settled with Respondent No. 7 respectively for a period of one year. It is there two orders issued by the Deputy Secretary, in-charge Forest, Karbi Anglong Autonomous District Council in favour of Respondents 6 and 7 which have been challenged in this writ petition.

3. Mr. AFG Osmani, learned Counsel appearing for the Petitioner contended that before settlement of the aforesaid Mahals in favour of Respondents 6 and 7 no auction was held nor any advertisement was issued inviting tenders. Hence the Petitioner did not get any opportunity to participate in the settlement. He further contended that the aforesaid settlement in favour of Respondents 6 and 7 have been made by negotiation. According to Mr. Osmani though negotiation is one of the methods by which sale of forest Mahal can take place under Rule 3 of the Assam Sale Forest Produce Coupes and Mahals Rules, 1977 (hereinafter referred to as the Rules) the Government or authority on its behalf cannot negotiate with any one it likes and in any case all interested parties should be given to the Petitioner and hence the settlement was contrary to the principal of fair play and public interest. Mr. Osmani cited a judgment of the Supreme Court in the case of Ram and Shyam Company Vs. State of Haryana and Others, wherein the Apex Court has held that the Government is not free like an ordinary individual, in selecting recipient for its largesse. It need not deal with anyone but if it does so, it must do so fairly and without exercising absolute and unfurled discretion and without unfair procedure. Alternatively, Mr. Osmani submitted that from a reading of the two impugned orders dated 10.9.95 and 23.9.96 it will be clear that one and the same Bark Mahal has been settled jointly in favour of the two parties and according to Mr. Osmani no such joint settlement is permissible as would be evident from Rule 12 of the Rules where under no coupe or mahal can be sold jointly to more than one person except in the case of a Co-operative society or a firm or a joint stock company duly registered in the office of the appropriate Registering Authority in Assam.

4. Mr. B.D. Das, learned Counsel appearing for the Karbi Anglong Autonomous District Council, Respondent 1 to 4, submitted relying on the averment in the affidavit-in-opposition filed on behalf of the said Respondents that the writ petitions did not make arty application for settlement of the Mahal in question and, therefore, the question of considering his case did not arise. He further submitted relying on the said averments in the affidavit-in-opposition that Petitioner defaulted in payment of Mahal dues of earlier settlement and had also resorted to unsciea(sic) method in removing the barks. He also contended that on the facts of the present case the authorities have not followed the pick and choose policy and discriminated against the writ Petitioner and that the settlement has been made in favour of Respondents 6 and 7 on the basis⁵ of their application for settlement of Mahal in accordance with the relevant provisions of the Rule. Mr. Das further pointed out that it has been held by a

Division Bench of this Court in Chitt(sic) Ganguly and Ors. v. State of Assam and Ors. (1991) 2 GLR (NOC) 16, that the State Government has the power to negotiate and settle forest mahals under Sub-rules (3) of Rule 3 of the Rules, but the said power has to be exercised in public interest and in doing so, the Government shall have to take all reasonable steps to obtain the best available market price and such settlement cannot be done secretly or arbitrarily.

5. Mr. S.S. Dey, learned Additional Senior Government Advocate, Assam appearing for Respondent No. 5, submitted that though under Rule 3 of the Rules of the State Government to sell forest produce by negotiation, normally a sale has to be done by inviting tenders or by public auction and it is only in exceptional method would not fetch the best available price in public interest, the Government may resort to negotiation. According to Mr. Dey, question as to which of the there method is to be adopted in selling forest produce will depend upon the facts and circumstance of each case.

6. Rule 3 of the Rule which details the modes of sale to be adopted in respect of forest produce is quoted hereinbelow:

3. MODE OF SALE (a) The forest produce shall be sold by any of the followings methods:

(1) By inviting tender

(2) By public auction

(3) By negotiation, direct by Government or on behalf of Government on Assam in the Forest Department or any other manner as decided by Government on its own discretion.

The aforesaid Rule makes it clear that sale of forest produce can take place by any of the three methods, i.e., by inviting tender, by public auction or by negotiation. Thus while sale of forest produce by inviting tender or by public auction may be the: normal rule, in appropriate cases a departure can be made for sale of forest produce by negotiation for compelling reasons.

7. In fact, the question as to whether public owned property or State owned property can be sold by negotiation came up for consideration before the Supreme Court in the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, in which sale of a public property by the Government of West Bengal to the Taj Group of Hotels by negotiation was challenged and the Apex Court after considering relevant case laws held:

...State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property public auction or by inviting tenders. Though that is the ordinary rule, it is an invariable rule. There may be situations where there m compelling

reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

Applying the said test, the Supreme Court held in that case that on the facts and circumstances as found in that case, it was impossible to hold that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightway at arm's length with the Taj Groups of Hotels.

8. As far as the facts of the present case are concerned, admittedly, no public auction has been held nor any tender invited for sale of the Bark Mahal. No compelling reasons have been indicated by the Respondents 1 to 4 as to why a departure has been made from the formal rule to sell the Forest Mahal in question by inviting tender or by holding public auction and to sell the Bark Mahal in favour of Respondent 6 and 7 straightway by negotiation. It is true that the Petitioner had not applied for settlement of Bark Mahal in question in his favour, but then the Petitioner and other intending buyers had no notice of the fact that the authorities were been on settling the Bark Mahal by negotiation . The Petitioner was, therefore, deprived of fair opportunity to participate in the said sale by negotiation. No material has also been placed before the Court by the Respondents 1 to 4 to show that the price at which the Bark Mahal has sold in favour of Respondent No. 6 and 7 was the best available price and that the authorities had taken all reasonable steps to obtain the best available price. The sale in favour of Respondent Nos. 6 and 7 did not satisfy the test of public interest. I have, therefore, no doubt in my mind that the sale of Bark Mahal in question in favor of Respondents 6 and 7 under the impugned orders was contrary to the principal of fair play and justice and was violative of Article 14 of the Constitution.

9. Records of the case indicate that notice on Respondents 6 and 7 were issued by Registered post with A/D on 10.12.96. More than 30 days have lapsed since then and service of notice on the said Respondents is thus presumed. The said Respondents 6 and 7 have however not appeared before the Court either in person or through their counsel to support the impugned orders issued in their favor.

10. For the reasons stated above the impugned orders dated 10.9.90 and 23.9.96 issued by the Deputy Secretary, in-charge Forest, Karbi Anglong Autonomous District Council, settling the Bark Mahal in favour of Respondents 6 and 7 are quashed. The writ petition is allowed. However, considering the entire facts and circumstances of the case the parties shall bear their own costs.