
(1980) 02 GAU CK 0006
In the Gauhati High Court
Case No : Civil Rule No. 419 of 1979

Jitendra Nath Saikia

APPELLANT

Vs

Himanshu Kumar Dutta and Others

RESPONDENT

Date of Decision : 11-02-1980

Acts Referred:

Assam Excise Rules, 1945 — Rule 223(4)

Citation : AIR 1980 Guw 77

Hon'ble Judges : Baharul Islam, C.J;N. Ibotombi Singh, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, P.C. Kataki and G. Bhattacharjee, for the Appellant; M.K. Sharma, Government Advocate and K.C. Das, for the Respondent

Final Decision : Dismissed

Judgement

Baharul Islam, C.J.—This is an application under Article 226 of the Constitution by which the order of the Assam Board of Revenue (hereinafter "the Board") upholding the settlement of the Bokakhat Country Spirit Shop (hereinafter "the C.S. Shop") for the period from 1-6-1979 to 30-3-1980 with respondent No. 1 made by the Sub-divisional Officer, Colaghat (hereinafter "the S.D.O."), has been challenged.

2. The material facts are brief. The C.S, shop was advertised for sale and six tenderers, including the petitioner and respondents Nos. 1 and 2, filed tenders. The S.D.O. settled the C.S. shop with respondent No. 1. The petitioner preferred an appeal before the Board being appeal No. 69 E/79 and respondent No. 2 also filed an appeal being appeal No. 114 E/79 before the Board. Both the appeals were disposed of by the Board by the common impugned order.

3. Mr. J.P., Bhattacharjee, learned counsel appearing for the petitioner, submits that the settlement of the C.S. shop with respondent No. 1 is in violation of Sub-rule (4) of Rule 223 of the Assam Excise Rules (hereinafter "the Rules") and is without jurisdiction,

4. In order to appreciate the point urged, a few more facts need be stated. The father of respondent No. 1 was the lessee of the C.S. shop in question from 1939-40 till his death on 17-12-1971, whereafter the shop was settled with respondent No. 1 on 20-12-1971. Since then the settlement was being made with respondent No. 1 for every term. At the time of the death of his father, respondent No. 1 was about 23 years of age and was dependent on the father.

5. Mr. Bhattacharjee submits that in view of Sub-rule (4) of Rule 223 of the Rules, respondent No. 1 is disqualified to get the settlement of C.S. shop.

Rule 222 of the Rules is in the following terms:

"No person who held a licence of any country spirit shop for a period of fifteen consecutive years shall be eligible to get settlement of any such or other country spirit shop".

This Rule disqualifies a person, who held a licence of a C.S. shop for fifteen consecutive years, from getting settlement of a C.S. shop. The purpose, in our opinion, is to break monopoly of a particular individual to get settlement of a C.S. shop. Sub-rule (4) of Rule 223 of the Rules disqualifies dependents of the persons who held such a shop for a total period of fifteen consecutive years. It is in the following terms:

"223. (4) The dependents of the persons who hold any country spirit shop for total period of fifteen consecutive years shall not be entitled to settlement of such or any other country spirit shop."

The purpose of this Rules seems to be to stop a disqualified person to set up a benamidar to get settlement of C.S. shop.

The submission of the petitioner is that persons who were dependents of persons who hold C.S. shops for fifteen consecutive years, are disqualified. The question is what will be the date on which the dependent of a disqualified person shall be disqualified. The petitioner's submission is that the date is not necessarily the date on which the settlement is to be made. According to the submission of the learned counsel if that interpretation is given then certain words, namely, "on the date of settlement" are to be incorporated in Sub-rule (4) of Rule 223 of the Rules, which is not permissible. In our opinion this submission is not acceptable. In our view the date of disqualification of the dependent is very material. The implication of the submission is that a person who was dependent on the person disqualified under Rule 222 at any time in the past is disqualified to get settlement of a C.S. shop. If this submission of the petitioner is accepted even then the expression "at any time in the past" in between the words "the dependents" and "of the persons" will have to be read, which is also not permissible according to the well known canons of interpretation of statutes. The dependence, therefore, shall be at the time of the settlement to be made.

6. In the present case the Board has found and this finding has not been disputed by the respondent No. 1 --that during the lifetime of his father and at

the time of his death, the respondent No. 1 was dependent on the father. But thereafter the settlement was being made from period to period with respondent No. 1, as observed earlier. The Board has found that after the death of the father, respondent No. 1 was no longer dependent on the father and on the date of the settlement of the C.S. shop in question respondent No. 1 could not possibly be dependent on his father as he had already expired eight years ago. In other words, the Board has found that at the time of the settlement of the C.S. shop in question respondent No. 1 was not dependent of any person. The submission of the petitioner, therefore, has no substance.

7. As a result of the foregoing discussions we reject the application and discharge the Rule. We, however, leave the parties to bear their own costs.

N.I. Singh, J.

I agree.