
(1988) 09 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 1291 of 1988

Joyjit Das

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-09-1988

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1990 Guw 24

Hon'ble Judges : A. Raghuvir, C.J; S.N. Phukan, J

Bench : Division Bench

Advocate : S.K. Sen, R.P. Sarma and P.K. Nag, for the Appellant; P. Prasad, Sr. Govt. Advocate, Assam, for the Respondent

Final Decision : Allowed

Judgement

Phukan, J.—The petitioner an educated unemployed local youth, wants to start a saw and veneer mill at Baladmari in Goalpara District and accordingly be approached the Forest Department. He purchased more than 2 bighas of land at Rs. 50,000/-, developed the same, obtained necessary licence from the Chief Inspector of Factories and also no objection certificate from the Gaon Panchayat. By letter dated 30-11-84 the Divisional Forest Officer, Goalpara Division informed the petitioner that the Chief Conservator of Forest was pleased to allow him to establish the said saw mill on the land. This licence was however cancelled by the Chief Conservator of Forest on 22nd July, 1985. But on the prayer of the petitioner, this cancellation order was vacated on July 25, 1985. The petitioner also obtained necessary sanction of power and placed order for machinaries worth Rs. 5 lakhs. According to the petitioner his Factory is in a position to commence production, but surprisingly enough by letter dated 1-2-1986 respondents informed the petitioners that the permission for establishment of the mill was withdrawn. Thereafter, petitioner approached the respondents number of times to get the order of withdrawal of permission cancelled. But though verbal assurance was given, ultimately the Government in

the Forest Department by Letter No. FRS. 307/87/46 dated 11-7-88 informed the Chief Conservator of Forest the inability of the Government to grant licence in favour of the petitioner. Hence the present petition.

2. After hearing Mr. S; K. Sen, learned counsel for the petitioner and Mr. P. Prasad, learned senior Govt. Advocate, we propose to dispose of the petition by passing this final order at the admission stage.

3. Mr. Prasad was granted time by this Court to obtain necessary instructions and he has submitted that the licence was cancelled in view of the Government policy communicated under memo No. FRS. 53/85/3 dated 2-5-85. Mr. Sen, learned counsel for the petitioner has urged that this policy of the Government was formulated in the year 1985 whereas permission to establish the mill by the petitioner was granted on 30th November, 1984 and as such the said policy is not applicable. Mr. Sen has further urged that after the permission to establish the saw mill was granted, the petitioner invested more, than Rs. 5 lakhs and as such the respondents are bound to grant the licence to the petitioner on the principle of doctrine of promissory estoppel. In support Mr. Sen has drawn our attention to the decision of the Apex Court in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,

4. We found considerable force in the submission of Mr. Sen that the policy decision of the Government communicated by the above letter dated 2-5-88 is not applicable to the case in hand inasmuch as the permission to the petitioner was granted before this decision was taken. That apart we find that this decision was taken in pursuance to the discussions between Inspector General of Forest, Special Secretary, Govt. of India and officers of the State Government and in the said discussions the officials of the Government of India advised the State Government to stop issuing licence to more mills in Assam. Thus it is clear that the advice tendered by the Government of India was in respect of new mills. In Godfrey Philips (supra), it was laid down that doctrine of promissory estoppel is applicable against the Government in exercise of its governmental, public or executive functions and doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the said doctrine. However, doctrine of promissory estoppel would be displaced if it would be inequitable to hold the Govt. or public authority to promise or representation made by it.

5. In the case in hand except referring to the above policy decision of the Government contained in the letter dated 2-5-85 nothing has been shown to us that it would be inequitable if the promise made by the Govt. by granting the permission to the petitioner to establish saw mill is enforced. On the other hand we find that on receiving the permission to establish a saw mill the petitioner acted on the said permission spent huge amount and as such it would be inequitable if the petitioner is not allowed to start his mill.

6. From what has been stated above, we hold that the cancellation order in

respect of the licence contained in Memo No. FG 39/3/Genl dated Gauhati Feb. 1, 1986 from the Chief Conservator of Forest to the Conservator of Forest, Central Assam Circle, Gauhati and the letter of the Government in the Forest Department No. FRS 307/87/46 dated 11-7-88 to the Chief Conservator of Forest (G) are liable to be quashed, which we hereby do. We further direct that the petitioner shall be allowed to run his mill established pursuant to the order of the Divisional Forest Officer, Goalpara Division contained in letter No. B/Saw mill/13, 450-51 dated 30-11-84.