
(2004) 11 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 8272 of 2004

Kalyan Bora

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21, 28

Citation : (2005) 2 GLR 564

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : M.A. Sheikh and K.U. Ahmed, for the Appellant; R. Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J. 1. The grievance of the petitioner relates to the Government's refusal to grant further 34 days as loss period in connection with the Hatigaon Land Quarry earlier settled with the petitioner for the period 21.12.2001 to 20.12.2003. The petitioner asserts that in taking the impugned decision, the respondent authority has over looked the materials on record.

2. I have heard Mr. MA Sheikh, learned counsel for the petitioner and Ms. Rekha Chakravarty, learned State counsel.

3. During the period of settlement as above, the bridge on the access road to the quarry was closed for traffic for some days for which the petitioner could not operate the quarry. Before the expiry of the settlement period, the petitioner therefore applied before the Division Forest Officer, Sonitpur East Division, for granting him the loss period, which he computed to be 165 days. In the report that was submitted the concerned Range Officer confirmed that traffic on the bridge was suspended for 124 days. On a consideration of the said report, the Chief Conservator of Forest (T), Assam, recommended grant of 90 days as loss period to the petitioner. The recommendation was accepted by the Principal Chief

Conservator of Forest. The petitioner, still aggrieved, submitted a representation before the Government for further grace period. By the impugned communication dated 4.11.2004, the concerned authority, on a consideration of the materials on record, has declined the request.

4. Mr. Sheikh has contended that as admittedly in terms of the report of the Range Officer, the bridge was closed for 124 days, the petitioner was entitled in law to be granted a loss period to the full extent and that the rejection of his request of further period beyond 90 days is arbitrary, unfair and unjust, more particularly, when the petitioner has duly cleared in advance all the instalments for the entire period of settlement.

5. The learned State counsel on the other hand has submitted that grant of loss period in a settlement of this nature is a matter of discretion and it cannot be claimed as of right. The concerned authority having exercised its discretion on the basis of the materials on record, the petitioner's claim for further loss period is untenable and the petition is, therefore, liable to be dismissed in limine.

6. Having noticed the nature and extent of the petitioner's grievance, it is now to be determined as to whether the impugned decision warrants interference of this Court. It is indubitable that for settlements of this type, grant of loss period cannot be demanded as a matter of right. It is admittedly within the realm of discretion of the administrative authority to favour the settllee with a grace period if satisfied that he deserves it in the attending facts and circumstances. In the instant case, the report submitted by the primary authority discloses that the bridge in question was kept off the traffic for 124 days and the Principal Chief Conservator of Forest, Assam, on a consideration of the said report and other materials on record granted a loss period of 90 days. It is, therefore, not a case of total refusal of grace period.

7. Under Rule 21 of the Assam Sale of Forest Produce, Coupes and Mahals Rules, 1977, (as amended in 2000), the maximum period allowable beyond the tenure of settlement is three months by the Principal Chief Conservator of Forests. The Rules, therefore, restrict the term of a grace period. Rule 28 saves the residuary power of the Government to settle or dispose of any forest produce in the form of coupes and mahals by way of negotiations or any other manner at its discretion in public interest or in accordance with the provisions of the Assam Forest Regulations, 1891.

8. From the nature of the power so reserved, it is explicit that the same can be invoked only in exceptional situations and that too in public interest. From the materials available on record, I do not consider that the instant case is one in which refusal to grant further loss period can be said to be opposed to the letter or spirit of the said provision of the Rules. The appropriate authority of the Government on weighing the pros and cons of the matter has declined to exercise its discretion granting further loss period. The view taken cannot be said to be absurd or in defiance of logic. It is not a case of abuse of discretion by the

administrative authority calling for interference of this Court in the exercise of its power of judicial review.

9. At this stage, Mr. Sheikh submitted that the petitioner's claim for refund of the Kist money proportionate to the unextracted forest produce may be directed to be considered by the respondents. Without expressing any merit on such claim, it is provided that the petitioner may approach the appropriate authority of the Government with such a request and if the same is done, it would be verified and an appropriate decision would be taken in accordance with law.

The petition is dismissed. No costs.