
(1963) 08 GAU CK 0016
In the Gauhati High Court
Case No : Civil Rule No. 387 of 1962

Kanak Chandra Dutta

APPELLANT

Vs

The State of Assam and others

RESPONDENT

Date of Decision : 13-08-1963

Acts Referred:

Constitution of India, 1950 — Article 132(1), 311

Citation : AIR 1964 Guw 54

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : S.K. Ghose and B.M. Goswami, for the Appellant; M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.S. Nayudu, J.—The simple point that arises for consideration in this civil rule is whether the petitioner, who had been appointed as a Mauzadar, is entitled to the protection of Article 311 of the Constitution.

2. At the outset it may be pointed out that it has been conceded by the learned Govt. Advocate that Article 311 of the Constitution has not been complied with in this case, but his contention is that it was not complied with because the petitioner was not entitled to the protection. On the other hand, Mr. Ghose, the learned counsel for the petitioner, contended that a Mauzadar, like the petitioner, is as much a public servant as any other and that he certainly holds a civil post within the meaning of Article 311 of the Constitution and that consequently he is entitled to the protection of the Article unless there is something in it which excludes the case of a Mauzadar, and as there is nothing, he claims that the petitioner is entitled to the protection of Article 311 and he could not, therefore, be dismissed from his employment except by following the procedure and the conditions prescribed under Article 311 of the Constitution.

3. In order to determine this question, it is necessary to examine the exact

nature of the post held by a Mauzadar. In this connection it would be necessary to refer to certain relevant provisions contained in the Assam Land and Revenue Regulation, 1886, hereinafter referred to as the Regulation. Chapter VII of the Regulation deals with the powers of officers and Part A thereof refers to revenue officers. Rule 115 of the Regulation deals with Mauzadars, and is as follows :

Mauzadars shall be appointed and dismissed by the Deputy Commissioner subject to the approval of Government in either case. A mauzadar may, however, be suspended by the Deputy Commissioner on his own authority. Notice of suspension shall ordinarily be served on the mauzadar by an officer of the status of "Revenue Officer" who shall take over all books and papers of the mauza and any collected revenue at that time in the mauzadar's hands." In regard to the making of the appointments of Mauzadars, Rule 116 of the Regulation requires that a Mauzadar's successor shall ordinarily be selected from amongst the members of his family. Rule 117 requires that a Mauzadar shall permanently reside in his mauza with his family, but in exceptional cases he may be allowed to reside outside his mauza with the Commissioner's permission. Rule 120 lays down that a Mauzadar is a public servant whose primary duty is to collect land revenue and other Government dues with the collection of which he is entrusted. Rule 121 lays down that in regard to land revenue the Mauzadar's duties shall be confined to collection, and he shall have no concern with its assessment, the settlement of land, the checking of maps Or assessment papers. The Mauzadar, however, is responsible for reporting any systematic or extensive omission of land from assessment on the part of the mandal or kanungo. Rule 122 requires that the Mauzadar shall also collect and be responsible for poll-tax, house-tax and tauzi-bahir revenue, for which lists are submitted, and shall pay the amount of fauzi-bahir revenue into the Treasury within four months of receipt of the lists. Rule 123 requires that the Mauzadar shall also collect grazing fees in his mauza if there is no mohsirdar appointed for the purpose and also any other dues the recovery of which is entrusted to him by rule or order. Rule 124 provides for the special duties which a mauzadar is expected to perform, and is as follows:

- (1) To supervise the performance of their duties by GAO Buras.
- (ii) To receive such applications for waste land as the Deputy Commissioner may authorise him to entertain and to submit them with a report to the Circle Sub-Deputy Collector or where there is no Sub-Deputy Collector, to the Deputy Commissioner or the Sub-divisional Officer.
- (iii) To submit reports without delay on the cases which are sent to him by special order for local inquiry.
- (iv) To assist the district authorities in the assessment of income tax.
- (v) To report, when so directed, upon the sufficiency of the security offered by the lessees of Government or Local Board ferries, fisheries, etc.
- (vi) To submit weekly reports upon the condition of crops, upon the prevalence of

epidemics amongst men or cattle, upon loss of life caused by wild animals and upon the appearance of insect-pests.

(vii) To compile and submit to the Civil Surgeon of the district the monthly return of vital statistics, and to check the goobers' reports of births and deaths by local inspection.

(viii) To effect field mutations and field partitions in uncontested cases under Rule 215 of the Assam Land Records Manual when he goes to the village. In this he will follow the procedure laid down for the disposal of undisputed field mutations in Rule 211 of the Assam Land Records Manual. He may also transfer entire dags under Rule 213 of the said Manual from one patta to another with the consent in writing of the parties.

(ix) To assist Government in any work connected with the village organisation system.

(x) To warn persons not to allow their cattle to stay on, or damage, the roads and to report offenders.

(xi) To report encroachments on roadside lands.

(xii) Unless specially exempted, to submit to the Deputy Commissioner or Sub-divisional Officer a weekly return of collections in Form No. 112. Mauzadars exempted from submission of the weekly return will submit a monthly return in the same form.

Rules 126 and 127 deal with the other duties of the Mauzadar. Rule 128 empowers the Mauzadar to send warning notices by post or messenger before proceeding to attach a (sic) property. Rule 129 gives power to the Mauzadar to execute warrants of attachment. Rule 130 lays down that the Deputy Commissioner may empower any Mauzadar to sell any moveable property not exceeding Rs. 20/- in value attached by him, or under his orders. The other rules in the Chapter prescribe the registers and forms etc. to be maintained by the Mauzadar in the discharge of his duties. Rule 159 provides that Mauzadars will receive commission at 10 percent on all collections made by them

4. It may be seen from a consideration of these rules that the Mauzadar performs a number of onerous functions on behalf of the Government and the Deputy Commissioner. These functions are essentially of a civil nature, and hence we experience no difficulty whatsoever in coming to the conclusion that a Mauzadar performs civil duties for and on behalf of the Government and its revenue officers, and therefore, must be deemed to hold a civil post under the State. The learned Govt. Advocate contended that as Mauzadars are not paid monthly salary like other Government servants but they are only remunerated by commission on the basis of the collections made by them, they must be more regarded as being in the nature of an independent contractors rather than as Government servants or persons holding civil posts under the Government. We are not impressed by this argument. All that Article 311 of the Constitution

requires is that a person should hold a civil post under the State in order to be entitled to the benefit thereof. In this connection this Article may be referred to, which is as follows:

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause; or

(c) where the President or Governor, as the case may be is satisfied that in the interest of the security of the State it is not expedient to give that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

There is nothing in this Article which lays down that a person could be said to hold a civil post under the State only if he draws a monthly salary as his remuneration from the State. If that were the intention of the Constitution makers they would have expressly said so in the Article. We are satisfied on a careful consideration of the provisions of the Regulation that the post of Mauzadar is a civil post and that a person holding the post of a Mauzadar can be said to be a person holding a civil post under the State within the meaning of Article 311 of the Constitution.

In this connection the agreement of contract which a Mauzadar is required to execute under the Regulation and which is contained at page 94, Volume II of the Assam Land Revenue Manual, may be referred to and it shows that the remuneration could be either by way of commission or by way of salary. Para 8 of the form of Kabuliat to be executed by a Mauzadar runs as follows :

My remuneration as mauzadar shall be either by commission on the revenue, local rate, and glazing dues collected, or by fixed salary. In either case, the rate of commission or amount of salary shall from time to time be fixed by the Local

Government.

We feel that the mere fact that a Mauzadar may be paid his remuneration in the shape of commission would not put him out of the operation of Article 311 of the Constitution. He would nevertheless, in our opinion, be holding a civil post under the State.

In this connection, the learned Government Advocate invited our attention to a decision in the case of *Sher Singh Vs. State of Rajasthan and Another*, . In that case the dismissal of a Chaudhari, who was a sort of agent of the Government for the collection of land revenue for which he got certain remuneration, came to be considered. The learned Judges held on the facts of that case that a Chaudhari appointed under the Land Revenue Act of Bikaner is not a person in the civil employ of the State, and therefore, not entitled to the protection of Article 311. That judgment does not state what the functions of a Chaudhari in the State of Rajasthan are and what regulations govern his employment and his duties. In the absence of information in regard to this very important circumstance it is not possible for us to form an opinion as to the correctness or otherwise of the ruling in the said decision. If the duties of a Chaudhari correspond on all fours with those of the Mauzadar in this State, we with great respect to the learned judges must say that we cannot agree with them that such a person is not entitled to the benefit and protection of Article 311 of the Constitution.

5. So far as this case is concerned, we experience no difficulty whatsoever in holding that Mauzadars are public servants entrusted to perform certain duties or their own responsibility as well as on behalf of the higher officers of the Government and that they do hold a civil post under the State within the meaning of Article 311 of the Constitution.

6. We are therefore of the opinion that Article 311 of the Constitution would apply to any disciplinary action taken by way of dismissal of the petitioner and as it is conceded that no show cause notice was given as regards the punishment once it was decided upon as required under Article 311. the disciplinary action taken against the petitioner directing his dismissal from service, must be struck down as (sic) and void by reason of Article 311 of the Constitution.

7. The petition is accordingly allowed and the rule made absolute with costs, which we assess at Rs. 100/-.

8. The learned Government Advocate prays for leave under Article 132(1) of the Constitution on the ground that this judgment involves a substantial question of law as to the interpretation of the Constitution. We do not think that this is so. We, therefore, do not consider it to be a fit case for the grant of the certificate in question.