

(1983) 03 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 971 of 1982

Khoi Singnar

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

Date of Decision : 08-03-1983

Acts Referred:

Citation : (1983) 2 GLR 228

Hon'ble Judges : K.Lahiri, J and T.C.Das, J

Bench : Division Bench

Advocate : A.K.Phukan, J.P.Bhattacharjee, M.K.Sarma, Advocates appearing for Parties

Judgement

Lahiri J.

1. Kakojan Stone Quarry is the bone of contention. The petitioner's tender was the highest. Admittedly, he belongs to a Scheduled Tribe but his tender was rejected on extraneous consideration, for which he had to come to the High Court and his petition was accepted but the matter was remitted, after quashing the order of the authority. The appeal being remitted went back to the appellate authority. However, this time the petitioner's claim was turned down on a different ground altogether, namely that the petitioner was disqualified under Rule 13 of the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967, "the rules" for short.

2. Let us consider the contentions of Dr. M.K. Sharma, learned counsel for the petitioner. We extract Rule 13 of "the Rules".

"13. Option to refuse settlement with a defaulter.

The authority competent to make settlement shall have the discretion to refuse settlement with a tender who, though otherwise suitable is a defaulter in respect of any forest division in Assam".

It will be seen on bare perusal of the rule that a defaulter of the forest revenue is

not automatically disqualified. He is qualified, but there is an option to refuse settlement by "the authority competent to make the settlement". The settling authority has been granted the power of liberty of choosing. The authority has the freedom of choice but it must exercise its discretion which must be manifested in the order itself. When an order is passed refusing settlement with a defaulter, the rule envisages that reasons for refusal of the settlement must be clearly set forth in the order. A defaulter in respect of forest revenue is not debarred or disqualified to submit his tender. He is eligible. However, the competent authority is to exercise his "discretion". He must give reasons why he exercised the "discretion". Patently this has not been done in the instant case. The nature and quality of default vary. To cite but one example if a defaulter undertakes to pay the amount by installments and his payments are accepted, it would be difficult for the competent authority to reject his claim, unless it gives strong reasons for the rejection of the tender. Say, he unknowingly defaulted and no sooner his default is pointed out he makes the payment we feel that under such circumstances he would be entitled to settlement.

3. In the instant case when the order of settlement was made, admittedly the petitioner had paid up the entire amount "due" from him by the forest department. In fact, the appellate authority held:

"The report disclosed that an amount of Rs. 4,164/ had been outstanding against Shri Khoi Singnar in respect of Rangali Stone Mahal No. 2 for the period 1977-79. However, the report mentioned that the arrears had been paid in installments on 9.9.79, 3.12.79 and 4.2.80 respectively.

Even the report dated 12.6.1981 does not show that the petitioner was a defaulter. It was stated that the amount was "outstanding" against the petitioner. A person may have "dues" but he does not become "a defaulter" because he owes some money. A loanee or a borrower is not a defaulter, ipso facto. Neither a borrower nor a loanee nor a person from whom some amount is "due", is a "defaulter". A strict interpretation of the word "defaulter" is necessary to bring his case within the purview of rule 13 of "the Rules" with which we are concerned in the instant case.

4. We are constrained to hold that the appellate authority has gone wrong in holding that

"A defaulter of this nature in respect of a similar Mahal will clearly attract rule 13 which is mandatory and the authority is precluded from making any settlement with the defaulter". [Emphasis added]

We clearly lay down that the rule is optional and not mandatory. We also make it clear the authority is not precluded from making settlement with a defaulter. To reach the conclusion one is merely to glance at Rule 13.

5. Under these circumstances we are constrained to hold that the authorities turned down the appeal of the petitioner in complete disregard of rule 13 of "the

Rules". The authority committed error apparent on the face of the record in holding that rule 13 is mandatory and that the authority was precluded from making any settlement with a defaulter, The impugned order is also had as the discretion required to be exercised was not performed by the authority concerned, and, as such the authority failed to exercise its discretion vested in it by law. These apart, there is no finding that the petitioner is "a. defaulter" as contemplated under the Assam Forest Act and the Rules framed there under. Merely because the petitioner had some outstanding dues, he could not be declared "a defaulter". In any view of the matter, the petitioner had applied for and paid up the installments from time to time and when he was not a defaulter on the date of the impugned order, the petitioner could not have been declared "a defaulter". It is true that "a departmental list of defaulter" was produced before the appellate authority. We are constrained to hold that it was produced for the first time at the hearing and the petitioner did not get any reasonable opportunity to rebut it. So the principles of Natural Justice were violated. The said departmental list and the report of the Divisional Forest Officer have not been produced before us. Accordingly, we hold that the impugned order, whereby the petitioner was deprived of the settlement on the ground set forth in the impugned order, must be held to be void and invalid, which we hereby do. Ordinarily we do not grant any relief when the period of settlement is over. But, in the instant case, considering the injustice done to the petitioner, we direct that if any extension of the settlement is made, it should be granted in favour of the petitioner and should not be made with Respondent No. 5.

6. In the result the petition is allowed to the, extent indicated above. However, there will be no order as to cost.