(2000) 04 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (C) No. 3405 of 1999

Krishna Kanta Mill — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 12-04-2000

Acts Referred:

Assam Excise Act, 1910 — Section 9
Assam Excise Rules, 1945 — Rule 208, 208(4), 223(2)

Citation : (2000) 2 GLT 355

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : Mr. N. Dutta and Mr. B. Chetri, for the Appellant; Mr. C. Baruah and Mr. N.K. Baruah, for the Respondent

Final Decision : Allowed

Judgement

B. Biswas, J.—This writ petition is directed against the judgment and order dated 13.7.1999 passed by the Assam Board of Revenue, Guwahati, in Excise Appeal Nos. 1E (DMJ)/99 and BE(DMJ)/99.

2. The petitioner submitted his tender for settlement of country spirit shop in Dhemaji District for the term 1.4.1999 to 31.3.2002 in pursuance of the Tender Notice dated 31.10.1998 and the authority, in consultation with the Advisory Committee constituted under the provision of Rule 208 of the Assam Excise Rules, 1945, selected the petitioner and settled the said shop with him vide order dated 28.12.1998. On such settlement, the petitioner deposited the security money, licence fees and all other dues payable under the Rules and spent a sum of Rs. 1,29,000/- for the purpose of operation of the Country Spirit Shop.

3. The respondent No.4 also submitted tender for settlement of the same shop and, having failed, they preferred an appeals u/s 9 of the Assam Excise Act. After hearing both the parties the Revenue Board by the impugned judgment set aside the settlement order dated 28.12.1998 passed by the Deputy Commissioner, Dhemaji in favour of the writ petitioner and directed it to be settled with Shri

Sanjoy Medok, the respondent No.4, for the remaining period of the term of settlement upto 31.3.2002. Being aggrieved thereby the petitioner has filed this writ petition for quashing the impugned judgment dated 13.7.1999 (Annexure-F). While admitting the petition, this court directed that status quo in respect of the disputed Country Spirit Shop be maintained as on date.

4. Shri N. Dutta, learned senior counsel argued that the Revenue Board failed to appreciate the questions involved in the appeal in its proper perspective and erroneously held that the source of finance of the writ petitioner is not reliable while the source of finance of respondent No.4 is more genuine and sound. The learned counsel further pointed out that on such conclusion, the Board passed the impugned order cancelling the settlement made in favour of the writ petitioner.

5. Shri C. Baruah, learned counsel for the respondents, however, with reference to the affidavit-in-opposition, submitted that the writ petitioner has no finance of his own and the settling authority, without due consideration of the financial source of the petitioner as per law, settled the C.S. Shop in his favour.

6. It would appear from the order dated 4th January, 1999 that the C.S. Shop was settled with the writ petitioner with effect from 1.4.1999 after due consideration of the recommendation given by the Advisory Committee. The report of the Advisory Committee is available at Annexure-B. The petitioner undisputedly deposited the licence fee etc. and started operation of the C.S. Shop. The Board of Revenue while admitting the appeal did not pass any order of stay of the settlement order. Therefore, the fact remains that the writ petitioner is in possession of the C.S. Shop and operating the same with effect from the date of settlement. While admitting the writ petition, this Court also ordered that status quo be maintained. This means that the writ petitioner is still in operation of the C.S. Shop as on today.

7. The proceedings of the Advisory Committee shows that there were about 21 tenders for settlement of the disputed Country Spirit Shop at Jonai. Out of these 12 tenders were rejected due to technical defects on scrutiny. The remaining 9 tenders were considered and the tender documents submitted by the writ petitioner was found complete and correct in all respect. Therefore, the Committee unanimously recommended settlement of the C.S. Shop at Jonai with the writ petitioner.

8. The respondent No.4 Shri Sanjoy Medok and the respondent No. 5 Shri Girin Doley, the other unsuccessful tenderer raised objections on various grounds as to the eligibility of the writ petitioner including the financial ability to operate the C.S. Shop. The Board of Revenue did not accept the contention of the respondent No. 5 as to his source of finance as he had failed to produce the Pass Book of the Bank Account in support of his claim. That apart, his case has also been rejected on the ground that he has not submitted any affidavit along with his tender or before the Board of Revenue regarding his financial position.

9. The discussion as to the financial ability of the writ petitioner has been made in para-5(c) of the Judgment. It would appear from the discussion of the learned Revenue Board that the writ petitioner, in Column-11 of his tender, mentioned that he would be financially supported by Shri Roshik Ch. Nath to the extent of Rs. 1 lakh. There is no mention about other source of finance in Column-11 of his tender. The copy of certificate issued by the Branch Manager of SBI, Jonai shows that Shri Roshik Ch. Nath was given cash credit facility to a limit of Rs. 1 lakh only. The statement of Bank Account in the name of Shri Roshik Ch. Nath showed the debit balance of Rs. 85,698 during the time of submission of tender and Rs. 65,103 at the time of settlement of the C.S. Shop in question. The Pass Book of the relevant account of Shri Roshik Ch. Nath was also not produced before the Board of Revenue for inspection. In the affidavit sworn in on 13.11.1998, Shri Roshik Ch. Nath stated that if the writ petitioner is settled with the Country Spirit Shop at Jonai, he would finance him from his Bank Account. The Board of Revenue was not convinced as to the financial capacity of Shri Roshik Ch. Nath to support the writ petitioner in view of the debit balance in his bank account in the State Bank of India. Jonai Branch.

10. The tender form has been annexed as private as Annexure A2. Column- 11 along with the reply reads as follows: -

The writ petitioner''s source of finance as indicated above is on the above of financial assistance from Shri Roshik Ch. Nath. Affidavit has also been sworn in by Shri Roshik Ch. Nath to this effect. The cash credit facility given to him indicate that he has regular transactions with the bank and is a customer of credence. Therefore, the source of finance of the petitioner appears to be much better than respondent No. 5.

11. The Board of Revenue discussed about the source of finance of the respondent No. 4, Shri Sanjoy Medok in para-5(A) of the Judgment. Respondent No. 4 in Column-11 of his tender form submitted as follows:-

The Board of Revenue after inspection of a number of Pass Books of SBI, Post Office and term deposit Account of the Respondent No. 4 came to the finding that the respondent No. 4 is financially sound to operate the C.S.Shop. The affidavit dated 7.6.1999 sworn in by his father Shri Jaygeswar Medok having a sum of Rs. 33,000 in his Bank Account also supports the source of finance of respondent No. 4. The affidavit further discloses that Shri Jaygeswar Medok, because of his old age, has allowed his son to look after his grocery shop and to maintain various accounts in Bank and Post Office at Jonai. Shri Sanjoy Medok, respondent No. 4, also in his affidavit dated 27.5.1999 declared that he has been maintaining all the accounts under authority of his father. That apart, the enquiry report submitted by the Inspector of Excise also confirms the statements made by respondent No. 4. The Board of Revenue with reference to the pleadings on record, affidavits and Pass Books of the Bank and Post Office rightly came to the conclusion that the source of finance, of respondent No. 4, Shri Sanjoy Medok, is more genuine and sound than that of the petitioner Shri Krishna Kanta Mill and respondent No. 5 Shri Girin Doley.

12. The Board of Revenue concluded that all the three contenders are educated unemployed youth within the meaning of Rule 223(2) of the Assam Excise Rules, 1945 and also belong to Scheduled Tribes (Plain) Community. Shri Dutta, learned senior counsel for the petitioner, assailed the finding of the Board on the ground that respondent No. 4 cannot be accepted as an unemployed youth since he is looking after the business of his farther and is operating a number of Bank and Postal Accounts having sufficient balance to his credit. The affidavit sworn in by the respondent No. 4 and his father, according to him, indicate that the respondent No. 4 is looking after the business of his father and that the balance in different accounts are sufficient indication of his being gainfully employed. According to Shri Dutta, the source of finance of respondent No. 4 may be more sound, but in view of the fact that he is gainfully employed, the Board committed an error in adjudging him as an unemployed youth.

13. The affidavit sworn by the respondent No. 4 Shri Sanjoy Medok on 27.5.1999 before the Judicial Magistrate 1st Class, Jonai, explaining his financial position and that of his father sworn on 7.5.1999 appear to have significant bearing on the issue before this Court. The respondent No. 4 in his affidavit in para-5 declared as follows:-

"5. That, my father Shri Joygeswar Medok is a businessman and runs a small grocery shop at Ujoni Bijoypur Tiniali. As I am the only son of my father, my father has allowed me to look after the business and grocery shop and has also allowed me to deposit the proceeds of the said business in my personal accounts.".

14. In supporting affidavit, the father of the respondent No. 4 declared as follows:-

"(4) That Sri Sanjoy Medok is my only son. Time to time I also provide him money with which he is maintaining various Bank accounts in the said State Bank of India, Jonai Branch and Jonai Post Office".

15. It would appear that the respondent No. 4 is the only son of Shri Joygeswar Medok and has been entrusted with the affairs of his grocery shop because of his old age. The bank balance, as indicated, also shows, that the turn-over of the grocery shop is not insignificant. Since he is the only son of his father and is gainfully engaged in the business of his father, it would be difficult to conclude that he is an unemployed youth within the meaning of Rule 223(2) of the Assam Excise Rules, 1945. The term "educated unemployed youth" as mentioned into note to sub-rule (2) of Rule 223 for the purpose of giving preference in the matter of settlement of Country spirit Shop is a person not exceeding 35 years of age who has passed the HSLC or its equivalent examination and is without any employment. The definition in its plain meaning signifies a person without any gainful avocation i.e. out of work. Therefore, it would be reasonable if a conclusion is drawn that respondent No. 4 is not unemployed within the meaning

of the term defined above.

16. Rule 208(4) provides that settlement of shop has to be made by selection from amongst the tenderers and the tenderer so selected shall also be financially sound to run the shop. This provision does not mean that a tenderer having better financial status would have to be given preference to the exclusion of other tenderers. If the financial condition of the tenderer so selected is sound enough for the purpose of operating of the C.S. Shop, selection of such tenderer cannot be questioned on the ground that other tenderers have better financial ability than the tenderer selected.

17. In the instant case, as observed above, although the source of finance of respondent No. 4 is more genuine and sound than the petitioner, this factor alone is not sufficient enough for rejection of the tender of the writ petitioner. The petitioner has been settled with the Country Spirit Shop in consultation with and on recommendation of the Advisory Committee by order dated 28.12.1998, the fact that since then he has been operating the shop till date without being indicted in any manner whatsoever including paucity of fund to run the shop is indicative of his financial ability. It is pertinent to note her that the Board of Revenue did not pass any order on the interim prayer of the Respondent Nos. 4 and 5 to stay the operation of the settlement order. The High Court while admitting the writ petition directed that status quo as on 19.7.1999 be maintained, thus permitting the writ petitioner to manage the Country Spirit Shop. This court being a court of equity will not be inclined to unsettle the position as on today especially on consideration that the respondent No. 4 is not unemployed and that the source of finance of respondent No. 5 is not comparable with that of the writ petitioner. The Board has obviously committed an error in interfering with the order of settlement purely on the ground that the respondent No. 4 has better source of finance.

18. In the result this petition is allowed and the impugned judgment and order dated 13.7.1999 passed by the Board of Revenue in both the appeals are hereby set aside.

19. No order as to costs.