
(2014) 08 GAU CK 0016
In the Gauhati High Court
Case No : WP (C) Nos. 4660 and 4670 of 2009

Lakshya Medhi

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 4 GLT 258

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.P. Singh, Advocate for the Appellant; M. Choudhury, SC, DLR and B.J. Talukdar, State Counsel, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—Both the writ petitions raising the issue relating to appointment as Mandal under the Deputy Commissioner, Sonitpur have been heard analogously and are being disposed of by this common judgment and order. Both the petitioners are desirous of appointment as Mandal on the basis of the selection that was conducted in 2009. As would be evident from the minutes of the Selection Board, both the petitioners were provisionally recommended as in their case a clarification in reference to a WT message dated 04/02/2009 was sought for. Both the petitioners are holders of certificate of Survey under Rule 13 of the Assam Land Records Manual. Be it stated here that the provisions thereof are only executive instructions and not statutory rules. As per the said executive instructions (Rule 13), if a person who has not secured a Certificate of Survey, without assistance of any other person in the course of survey actually surveys independently 500 bighas of land and an Officer not below the rank of Sub-Divisional Officer checks the said survey and finds the same correct then on the recommendation of the Deputy Commissioner or the Settlement Officer the Director of Land Records may grant Survey Certificate. Such Certificate holder Mandal is to be sent within two years for training to Survey School.

2. It appears that pursuant to the process initiated towards de-recognition of the

aforesaid provisions entitling the person to get certificate of Survey, a WT message dated 04/02/2009 was issued by all the Deputy Commissioners of the Districts and also to the Director, Land Records, Assam and Settlement Officers throughout the State by the Government of Assam in the Revenue and DM (LR) Department. By the said WT message, the Government decision to fill up the vacant posts of Mandals only through those candidates who had passed RCCC Certificate Training Course from the Assam Survey and Settlement Training Centre was conveyed. By the said WT message, the certificates which used to be issued in reference to the provision of earlier Rule 13 had been done away with. In fact, in the advertisement that was issued on 08/02/2009 inviting candidatures for six posts of Mandals, the qualification laid down was - HSLC passed along with the RCCC training from Assam Survey and Settlement Training Centre, Guwahati. Thus, the qualification of the petitioners as regard the certificate of Survey for which they had been issued with the certificates by the Director of Land Records in reference to earlier Rule 13 was expressly excluded. However, it is the case of the petitioners that since their candidatures were accepted and were also recommended for appointment. The said WT message followed by the subsequent clarifications, more particularly, the clarification vide letter dated 02/04/2009 could not have been made applicable to their case as by the time the clarification dated 02/04/2009 had come to be issued, the selection was already over. Thus in a nutshell, it is the case of the petitioners that the amendment to Rule 13 referred to above cannot have retrospective application so as to exclude the petitioners from the purview of the selection and appointment.

3. I have heard Mr. K.P. Singh, learned counsel for the petitioners in both the writ petitions. I have also heard Mr. B.J. Talukdar, learned State Counsel and so also Mr. M. Choudhury, learned Standing Counsel, DLR. I have also perused the entire materials on record.

4. While Mr. Singh, learned counsel for the petitioners referring to the above noted pleas of the petitioners and also the Division bench judgment of this Court dated 25/07/2011 passed in WA No. 130/2011 has submitted that the amendment to Rule 13 cannot have retrospective application so as to cover the selection to which the petitioners had participated. On the other hand, Mr. M. Choudhury, learned Standing Counsel, DLR, has submitted in reference to the stand of the respondents in their counter affidavit that earlier Rule 13 being not applicable to the case, more particularly, because the petitioners had been invited for the interview/selection, they are not entitled to take the plea that they are not covered by the amendment brought to Rule 13. Mr. B.J. Talukdar, learned State Counsel has also submitted in the same line.

5. From the materials on record, it appears that a writ petition being WP(C) No. 3810/2010 was filed by one Shri Sapon Borah projecting the plea that the amendment to Rule 131 by which the earlier Certificate of Survey was recognized in exceptional cases, cannot be done away with and that the amended provisions

of Rule 13 will have only prospective application. It was also contended that merely because the certificate of Survey as per the earlier Rule 13 was done away with, such certificate holders cannot be deprived of participation and selection as the amended provision will have only prospective application. Repealing the said contentions, the writ petition having been dismissed, a review petition was filed, which was also dismissed. Thereafter, a writ appeal being WA 130/2011 was filed which was also dismissed by judgment and order dated 25/07/2011. For a ready reference, the paragraphs 7 and 8 of the said judgment which are relevant to the issue involved in this proceedings are quoted below :-

"7. Indisputably, no formal deletion of Rule (Clause?) 13 of Assam Land Records Manual has been made pursuant to the recommendation of the State Level Committee. Nevertheless, in the year 2009, the Director of Land Records & Survey, Assam wrote to the State Government stating that a large number of applications were received by him from Deputy Commissioners as well as Settlement Officers for granting Survey Certificates to candidates so that a number of posts of Mandal lying vacant could be filled up from such Certificate holders as well. The Principal Secretary, Revenue & Disaster Management Department by his letter dated 2-4-2009 communicated to the Director of Land Records & Surveys that the Government expressed its regret for its inability to approve the proposal. However, the Director of Land Records & Survey by his letter dated 18-7-2009 proceeded to inform all the Deputy Commissioners of the State that the candidates who had obtained certificate under Rule 13 were also eligible for applying the posts of Mandals when the posts were being filled up by way of advertisement. This apparently prompted the State Government to inform the Director of Land Records & Survey through its Joint Secretary, Revenue & Disaster Management in the letter dated 29-8-2009 that his instruction to the Deputy Commissioners in respect of the advertisement for filling up of the vacant post of Mandal under Rule 13 as one of the eligibility criteria of candidates was not warranted. The letter referred to the earlier letter dated 2-4-2009. The learned Single Judge was of the view that it was in acceptance of the recommendation of the State Level Committee that the letter dated 29-8-2009 had been issued by which it disapproved the proposal of the Director of Land Records & Survey for filling up the post of Mandal from amongst the certificate holders under Rule 13 and that the provisions of Assam Land Records Manual being only executive instructions, it could be amended by issuing subsequent executive instructions. In other words, what the learned Single had held is that the Government decision contained in the letter dated 29-8-2009 had the effect of deleting Rule 13 from the Manual though no formal amendment was made thereto. In our opinion, the learned Single Judge was not wide of the mark in taking this view. The view taken by the learned Single Judge that if any advertisement is issued for the post of Mondal, the requisite qualification would have to be considered on the basis of the existing instructions, and it could not be said that the earlier qualification which the appellant and other had obtained should hold the field, is a possible view and does not suffer from perversity.

8. Coming now to the second limb of contention of the learned senior counsel for the appellant that the recommendation of the State Level Committee for deletion of Rule 13, assuming without admitting that the State Government has accepted it also, it cannot have retrospective effect and cannot have the effect of de-recognizing the Certificates already so granted, there is also no merit in this contention. As already observed by the learned Single Judge that the provisions of Assam Land Records Manual are merely executive instructions, no enforceable right to apply for the post of Mandal ever accrued to the appellant when Certificate of Survey was granted to him under Rule 13. It is a settled law without reference to cases that non-statutory executive instructions such as Assam Land Records Manual do not confer an enforceable right on a person, or impose an obligation on the Administration or any person. This is the difference between a statutory provision and an executive instruction. Though Rule 13 has not been expressly deleted from the Manual, yet a conscious decision has already been taken by the State Government not follow Rule 13 of the Manual as evident from the letter dated 2-4-2009 of Principal Secretary to the Government of Assam, Revenue & Disaster Management Department conveying the decision of the State disapproving the proposal of the Director of Land Records and Surveys, Assam for allowing the candidature of the holders of Survey Certificate under Rule 13 for the post of Mondal. In our opinion, the letter dated 2-4-2009 has, by necessary implication, deleted the provision of Rule 13 from the Manual, and the absence of formal or express deletion will not preclude the State-respondents from disqualifying the petitioner for the post of Mondal as has been done now. No other substantial issue survives for consideration."

6. In reference to the aforesaid judgment, Mr. Singh, learned counsel for the petitioners have submitted that the formal declaration towards deletion of earlier Rule 13 having been made only by letter dated 02/04/2009, the selection that was already held prior to the said date in which the petitioners participated, cannot render infructuous, so as to deny appointment to the petitioners. This plea is not acceptable, inasmuch as, in the advertisement itself it was clearly indicated that only those candidates who have passed the RCCC training from Assam Survey and Settlement Training Centre would be eligible to submit applications. The earlier certificate of Survey which used to be issued in reference to earlier Rule 13 was no longer recognized. This plea has been taken by the respondent NO. 3 specifically in his affidavit filed on 09/03/2010 annexing therewith a copy of the advertisement dated 08/02/2009.

7. That apart, the Government of Assam in the Revenue and DM (LR) Department vide its WT message dated 04/02/2009 addressed to all concerned specifically conveying the Govt. decision to confine the selection only in respect of those candidates who had passed RCCC Training Course from the Assam Survey and Settlement Training Centre. There was no recognition to the certificates issued to be issued under earlier Rule 13 of the Rules. It is in this context, Mr. M. Choudhury, learned Standing Counsel, DLR has submitted that merely because the petitioners had been invited for selection by the Deputy

Commissioner, that by itself did not cloth the petitioners with any kind of right.

8. In the minutes of the selection board also, there is specific reference to aforesaid WT message dated 04/02/2009 in respect of which clarification was sought for. On perusal of the said minutes it is seen that the petitioners were not recommended and/or included in the main list but were recommended with the specific observation "but did not consider for appointment as per Govt. direction vide message No. RLR 36/2008/37 dated 04/02/2009 for which clarification is sought for."

9. The letter dated 02/04/2009 on which the learned counsel for the petitioners has referred to so as to claim that amendment to Rule 13 will have only prospective application is only a letter of regret to the Director of Land Records by the Government of Assam in the R & D Department. By the said letter, the proposal for appointment of candidates possess the certificates under the earlier Rule 13 was regretted. Thus, on the face of it, by this letter dated 02/04/2009 nothing new was communicated but the proposal of the DLR was regretted and rightly so in view of the Government decision conveyed in the aforesaid WT Message dated 04/02/2009.

10. The Government having consciously taken decision to lay down the qualification for Mandal as HSLC passed with RCCC training from Assam Survey and settlement Training Centre and the same having been communicated by the aforesaid WT message dated 04/02/2009, the Selection Committee could not have selected the petitioners as they did not possess the required qualification. Their selection was also provisional pending further clarification. The required clarifications followed thereafter.

11. For all the aforesaid reasons, no direction can be issued for appointment of the petitioners pursuant to the selection in question. Accordingly, both the writ petitions are dismissed, without however, any order as to costs.