

(1984) 06 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 1112 of 1983

Md. Rais Mia Talukdar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-06-1984

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 36
Constitution of India, 1950 — Article 226

Citation : AIR 1986 Guw 21

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

Bench : Division Bench

Advocate : R.P. Kakati, for the Appellant; N.Z. Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Lahiri, J.—This is an application under Article 226 of the Constitution directed against the order dt. Oct., 11, 1983 passed by the State Government acting u/s 138 of the Assam Panchayati Raj Act, 1972. The Nowgong Mahkuma Parishad advertised Doboka Weekly Bazar for settlement. The petitioner as well as others submitted tenders. The petitioner tendered Rs. 4,605/- whereas respondent No. 5 offered Rs. 4,600/-. The Mahkuma Parishad settled the Bazar with Respondent No. 5. It appears that the Mahkuma Parishad rejected the tender of the petitioner on the ground that there was "a public complaint" against the petitioner lodged with the Mahkuma Parishad.

2. Being aggrieved the petitioner preferred an appeal u/s 138(2) of the Assam Panchayati Raj Act, for short, "the Act". The State Government who heard the appeal held that the difference of "tender amount" between the petitioner and Respondent No. 5 was very nominal. The appellate authority also held that the Mahkuma Parishad was justified in settling the hat with Respondent No. 5 on the ground that there are serious allegations against the petitioner. The appellate authority held that though the tender of the petitioner was higher yet there were some allegations against him, whereas the amount offered by Respondent No. 5

was marginally lower than that of the Petitioner, but against Respondent No. 5 there was no allegation. The appellate authority thereafter held that the Mahkuma Parishad was justified in settling the bazar with Respondent No. 5 Tamzul Ali.

3. The validity of the order has been questioned on the ground that the Mahkuma Parishad did not give the petitioner any opportunity of hearing before rejecting his tender. However, in the writ petition no assertion has been made by the petitioner that there was no complaint before the Mahkuma Parishad at all relevant time. The sole ground is that no opportunity had been given by the Mahakuma Parishad before rejecting the tender.

4. In the instant case what the Mahakuma Parishad considered was not the truth or otherwise of the allegations but weighed the respective qualifications of the parties. While dealing with the case of Respondent No, 5 the Mahkuma Parishad thought that there was a man against whom none complained, however, insofar as the petitioner was concerned the Mahakuma Parishad considered that it was not desirable to settle the hat with him because at least some persons had some grouse against him.

5. As the term of settlement is going to expire by the 30th of June, 1984 we do not decide the question as to the correctness or the validity of the order. Respondent No. 5 is admittedly in possession of the bazar and managing it. There would be chaos and disorder if the order is set aside and the Mahkuma Parishad is directed to settle the bazar in accordance with law. Perhaps the period will be over. Only about 12 days are left before the term of the bazar is going to expire. Mr. R.P. Kakati, learned counsel for the petitioner submits that it would cause more inconvenience rather than profit to the petitioner if the order of settlement is set aside or the petitioner is offered settlement. However, learned counsel desires that we should make certain observations as to what the Mahkuma Parishad should do under similar circumstances. None appears for the State. Mr. Ahmed, learned counsel for Respondent No. 5 also desires for such a direction.

6. There is always danger lurking if complaints are taken at their face value by the settling authority as even against the most qualified able persons false wild and fictitious allegations can be brought to disable him to get settlement. The best person may be deprived and worse person may come in by adopting this means. If such a complaint is received, the Mahkuma Parishad is required to consider the truth of the allegation. If it finds truth in the allegation the least it should do is to hear the person against whom the complaint has been made. Thereby the Mahkuma Parishad would be free to decide with whom the settlement should be made. Complaints lodged by few persons should not always be given credence. The Mahkuma Parishad is run by local people. They know local conditions and perhaps know most of the tenderers. As such, while considering such complaints, the Mahkuma Parishad should themselves enquire into the matter, come to a decision. If the finding is against the tenderer, he

should be given an opportunity of hearing. This is the minimum requirement before denying a person to get a settlement. In the instant case, suppose on enquiry it is found that the entire allegation was false, we are sure that the Mahkuma Parishad would have blamed themselves for depriving the petitioner of his rightful place. These are our observations in passing. It may not be understood that we have made a cast iron rule. There may be exceptions.

7. However, before parting we would observe that the petitioner shall not be disqualified or held to be a person having stigma against him due to the complaints because the allegations of the complaint are nothing but allegations. They are not proved or established facts. In future, therefore, if the petitioner vies for any settlement he should not be disqualified on the ground that in the settlement there was some complaint against him.

With the above observations we dismiss the application. No costs.