

(2024) 04 GAU CK 0076
In the Gauhati High Court
Case No : Writ Petition (C) No. 6206 Of 2022

Md. Sirajul Islam

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:

Assam Panchayat (Financial) Rules, 2002 — Rule 49
Assam Cattle Preservation Act, 2021 — Section 19

Citation : (2024) 04 GAU CK 0076

Hon'ble Judges : Kardak Ete, J

Bench : Single Bench

Advocate : M H Choudhury, M.K. Choudhury, K. Konwar

Final Decision : Allowed

Judgement

1. Heard Mr. M.H. Choudhury, learned Senior Advocate assisted by Mr. M.K. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Konwar, learned Standing Counsel, Panchayat & Rural Development (P.&R.D.) Department for all the respondents.

2. By filing this writ petition, the petitioner has challenged the impugned speaking order dated 08.06.2022, passed by the Principal Secretary, P. & R.D. Department, Govt. of Assam, whereby the claim of 90% remission by the petitioner on the settlement value of the Bihiagaon Weekly Market has been rejected.

3. The case of the petitioner, in brief, is that in pursuant to the publication of the tender notice dated 17.05.2021 for settlement of a numbers of market including the Bihiagaon Weekly Bazar, the petitioner had participated and was settled with the said market by an order of settlement issued by the Chief Executive Officer, Sonitpur Zilla Parishad, Tezpur on 10.09.2021. The settlement was for a period w.e.f. 13.09.2021 to 30.06.2022, at a settlement amount of Rs. 25,99,758/- (Rupees twenty five lakhs ninety nine thousand seven hundred and fifty eight)

only on the basis of the bid value offered by the petitioner.

4. On being settled with the said market, the petitioner had taken over possession of the market by complying with all the requisite formalities including the deposit of security money.

5. It is contended that soon after the operating of the market by the petitioner, the Assam Cattle Preservation Act, 2021 was enacted and notified vide dated 15.09.2021 and published in the Official Gazette on 16.09.2021. It is contended that after the Assam Cattle Preservation Act, 2021 came into force, certain restrictions were put on place with regard to trading of the cattle. Apart from the restrictions imposed in trading of cattle by the Assam Cattle Preservation Act, 2021, the market had to be operated for a limited period of six (6) hours, due to continuance of Covid-19 pandemic and then prevailing Covid-19 protocols, issued by the State Government as well as the Central Government from time to time and the same has adversely aggravated the situation in collection of revenue from the Market. According to the petitioner, trading in cattle is one of the main source of generating revenue in the market for him.

5. The petitioner had filed representations before the Chief Executive Officer, Sonitpur Zilla Parisad on 14.09.2021 and 06.10.2021, highlighting the grievances of the petitioner for remission of 90% of the settled amount under Section 49 of the Assam Panchayat (Financial) Rules, 2002. The Chief Executive Officer, Sonitpur Zilla Parishad by his letter bearing No. SZP 7/2021-22/6550 dated 23.02.2022, forwarded to the Principal Secretary, P. & R.D. Department, Govt. of Assam, clearly highlighting regarding the imposition of the Assam Cattle Preservation Act, 2021 and claiming of remittance by the lessees, including the present petitioner, by making reference to the representations submitted by the lessees, including the present petitioner.

6. In the said forwarding it had stated that the matter has been discussed in the Budget meeting of the Sonitpur Zilla Parishad held on 28.12.2021 and a decision has been taken to bring the matter to the knowledge of the competent higher authority in the Panchayat and Rural Development Department for granting remission as per Rule 49 of the Assam Panchayat (Financial) Rules, 2002.

7. Having not been considered the grievance of remission which was forwarded by the Chief Executive Officer, Sonitpur Zilla Parishad by the concerned authority, the petitioner approached this Court by filling a Writ Petition being WP(C) No.3105/2022. This Court on 20.05.2022, disposed of the Writ Petition with a direction to the respondent authority to take the representations of the petitioner, already forwarded by the Chief Executive Officer, Sonitpur Zilla Parishad on 23.02.2022 and after due consideration, dispose of the same taking into the aspects highlighted by the petitioner, by a speaking order.

8. The Principal Secretary, P. & R.D. Department, Govt. of Assam vide impugned order No.PDA.102/2022/23, dated 08.06.2022 has considered the grievance of the petitioner as directed by this Court, however, rejected the claim of the

petitioner for remission.

9. Mr. M.H. Choudhury, learned Senior Counsel for the petitioner submits that under Rule 49 of the Assam Panchayat (Financial) Rules, 2002, the Government has the authority to consider the remission cases on special grounds i.e. flood, natural calamities and any other disturbances which are beyond the control of the locality and the authority. He further submits that in view of the Covid-19 pandemic and the protocols issued by the State Government as well as the Central Government, the market could not be properly operated, which is beyond the control of the locality and the authority. Mr. Choudhury further submits that due to the enactment and enforcement of the Assam Cattle Preservation Act, 2021, there was restriction on the trade of cattle for which the petitioner could not operate his business. The learned Senior Counsel also submits that although in the impugned speaking order, a reference has been made to the provisions of the Assam Cattle Preservation Act, 2021, no discussion has been made and considered with regard to the Covid-19 pandemic, for which the speaking order suffers from non-application of mind. In fact, it cannot be said to be in accordance with the law. Therefore, he submits that the impugned order dated 08.06.2022 is not sustainable in law.

10. On the other hand, Mr. K. Konwar, learned Standing Counsel for the P.&R.D. Department, submits that the Assam Cattle Preservation Act, 2021, there is no any mention of prohibition as regard to the cattle market. It only prohibits the slaughter of cows but permits the slaughter of other cattle, if the cattle is over fourteen (14) years of age or has become incapacitated due to injury or deformity. The Section 19 of the 2021 Act also exempted certain kind of slaughter of cattle from the purview of the Act.

11. Mr. K. Konwar, learned Standing Counsel for the P.&R.D. Department also submits that so far the Covid-19 pandemic is concerned, although there was some restrictions in the opening of the markets, the markets were allowed to operate/open for six (6) hours, which was sufficient for running the market. He further submits that in the tender condition itself provides that on the settlement of the market, pursuant to the tender, the Covid Protocol/restrictions that may be imposed by the State Government as well as the Central Government are to be followed. Therefore, he submits that the petitioner was well aware about the restrictions and protocols with regard to the Covid-19 pandemic and therefore, he cannot take the ground of Covid-19 pandemic for remission.

12. Mr. K. Konwar, learned Standing Counsel for the respondents further submits that one of the grounds for rejection of the representation of the petitioner is that the same cannot be estimated due to the imposition of the Assam Cattle Preservation Act, 2021, the collection of the revenue in the instant market and therefore, Mr. Konwar submits that there is no ground for the petitioner for seeking remission of the settled amount, as the same is not on the ground of natural calamities etc., which is beyond the control of the authority and as such the authority has rightly rejected the claim of the petitioner with reasoned order.

13. Due consideration has been extended to the submissions of learned counsel for the parties.

14. The grievance of the petitioner is for grant of 90% remission of the settlement amount of Rs. 25,99,758/- (Rupees twenty five lakhs ninety nine thousand seven hundred and fifty eight) only, for the settlement of the Bihiagaon Weekly Bazar under the Sonitpur Zilla Parishad, w.e.f. 13.09.2021 to 30.06.2022, under Rule 49 of the Assam Panchayat (Financial) Rules, 2002, which provides, with non-obstante clause that the Government may consider the remission cases of Hat, Ghat, Fishery, etc. on the special ground i.e. flood, natural calamities and any other disturbances which is beyond the control of the locality and the authority.

15. A bare reading of the said provision goes to show that the Government has the authority to consider the case of remission on the ground of natural calamities etc. and any other disturbances which is beyond the control of the locality and the authority.

16. The pandemic of Covid-19 is known to the whole world which needs no explanation. Such pandemic definitely falls within the purview of the natural calamities, which is beyond the control of the locality and the authority.

17. Admittedly, the enactment of the Assam Cattle Preservation Act, 2021 by the Legislature of the State has not been put to challenge by the petitioner. The enactment of law, by competent legislature and its enforcement until it is challenged before the Competent Court and is interfered with, its enforcement cannot be questioned, as there is always presumption of its constitutionality. It is to be observed that perhaps, no one can take the plea of hardship on the operation of law without challenging the same.

18. On consideration of the impugned order dated 08.06.2022, it transpires that although reference has been made to the provision of Rule 49 of the Assam Panchayat (Financial) Rules, 2002, by quoting the provisions therein, no discussion has been made in the impugned speaking order dated 08.06.2022. The impugned order shows that consideration has been made to the provisions of the Assam Cattle Preservation Act, 2021, having a reference on the provisions mentioned therein, to which this Court is of the view that such a provision which is lawfully enforced, may not be a ground for granting remission as the Act is enforced lawfully after enactment of competent legislature of the State.

19. Having taken note that the authority has not considered the other ground for remission i.e. with regard to the Covid-19 pandemic, except the vain attempt of learned counsel for the respondents at the time of hearing, that the petitioner had the knowledge of such Covid-19 Protocols, and no discussion has been made at all by the authority, this Court is of the considered view that the ground of the Covid-19 pandemic, for which the petitioner has suffered in operating the market after settlement in pursuant to the NIT, the grievance of the petitioner for remission on the ground of Covid-19 pandemic, needs to be re-considered by the

authority.

20. In view of the above, I am of the considered view that since the grievance of the petitioner, so far as the ground of Covid-19 pandemic has not been taken into consideration for grant of remission under Rule 49 of the Assam Panchayat (Financial) Rules, 2002, the authorities are deserved to be directed for reconsideration.

21. Consequent thereupon, the impugned order dated 08.06.2022 is hereby interfered with for non consideration of grant of remission on account of Covid-19 pandemic.

22. Accordingly, the respondent authorities, particularly the respondent No.1 i.e. the Principal Secretary, P. & R.D. Department, Govt. of Assam is directed to reconsider the grievance of the petitioner taking into consideration of Covid-19 pandemic for grant of remission of the settlement amount of the petitioner, within a period of 2 (two) months from the date of receipt of certified copy of this order.

23. The Writ Petition stands allowed and disposed of. No order as to cost.