(1971) 06 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 250 of 1970

Mufosin Ali Barbhuvan APPELLANT

Vs

State of Assam and others RESPONDENT

Date of Decision : 16-06-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(4), 16(4)

Citation : (1971) 06 GAU CK 0001

Hon'ble Judges : P.K. Goswami, C.J;M.C. Pathak, J

Bench : Division Bench

Advocate : M.S. Rahman, for the Appellant; J.C. Medhi, Advocate-General, Assam, A.M. Majumdar, Jr. Govt. Advocate, R.K. Deb and S.K. Hom Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Goswami, C.J.—This application under Article 226 of the Constitution is directed against an order dated 22nd November, 1969 of the Conservator of Forests. Assam (Respondent No. 3) settling the Jatinga Damcherra Combined Stone Quarry with the 5th Respondent for the year 1969-71.

2. The Divisional Forest Officer, Silchar (Respondent No. 4) invited tenders for Sand and Stone Mahals under Cachar Division for the year 1669-71 by a Sale Notice dated 31st July, 1969 published in the Assam Gazette on 8th October, 1969. For the Stone Quarry in Question, there were only two tenderers, viz. the petitioner and the 5th respondent. When the tenders were opened on 27th October, 1969 it was found that the petitioner''s offer was Rs. 43.775/- and that of the 5th respondent was Rs. 26.501/-. The 5th respondent belongs to the Namasudra community which is a recognised Scheduled Caste and this fact is not questioned before us. Under the Assam Delegation of Financial Powers Rules 1960, read with clause 4 of the Sale Notice, as the value of the accepted tender exceeds Rs. 10,000 but does not exceed Rs. 50.000 the Conservator of Forests is the competent authority to settle this Mahal. The 3rd respondent, on receipt of

the tenders and reports from the 4th respondent, settled the Mahal with the 5th respondent giving him preference under Rule 11(1) (b) of the Assam Settlement of Forest Coupes and Mahals by Tender System Rules 1967 (hereinafter called the ''Tender Rules'', for brevity), under which the settlement has taken place. The petitioner appealed to the Governor under Rule 9 and the same was rejected on 24th February, 1970 and he obtained the (sic) Rule on 24th March, 1970.

Since the petitioner challenged the validity of Rule 11 of the Tender Rules, notice was given to the Advocate-General. Assam who has made his submissions before us.

3. The petitioner submits that Rule 11 is ultra vires the provisions of Article 15 (1) and Article 14 of the Constitution and is not saved by the provisions of Article 15 (4). It is contended that by Rule 11 there is a total exclusion of all others except the Scheduled Castes and Scheduled Tribes or other Backward Classes recognised by the State Government in settlement of coupes and mahals. Such a total exclusion, according to him cannot be considered as a special provision to enjoy the protection of Article 15(4) of the Constitution. The learned counsel relies upon a decision of the Supreme Court in M.R. Balaji and Others Vs. State of Mysore, and draws our attention to the following observations at paragraph 31 of the Report:

It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Art. 15 (4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society that clearly is outside the scope of Art. 15. It would be extremely unreasonable to assume that in enacting Article 15 (4) the Constitution intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored.

The case before the Supreme Court was with regard to the constitutionality of an executive order of the Government of Mysore reserving 68% of available seats for admission to the Engineering and Medical Colleges and to the other technical institutions specified in the order. It is in that context that the above observations were made by the Supreme Court. The Court also observed as follows:

In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case.

The Court also held that the provisions of Article 15 (4) are similar to those of Article 16 (4) which fell to be considered in the case of The General Manager, Southern Railway Vs. Rangachari, . The Court held that what is true in regard to Article 15 (4) is equally true in regard to Article 16 (4).

4. The learned Counsel referred to another decision of the Supreme Court reported in T. Devadasan Vs. The Union of India (UOI) and Another, and relied upon the following passage:

Where, therefore, the State makes a rule providing for the reservation of appointments and posts for such backward classes it cannot be said to have violated Art. 14 merely because members of the more advanced classes will not be considered for appointment to these posts even though they may be equally or even more meritorious than the members of the backward classes, or merely because such reservation is not made in every kind of service under the State. Where the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion of appointments for them in the public services of the State what the State would in fact be doing would be to provide the members of backward classes with an opportunity equal to that of the members of the more advanced classes in the matter of appointments to public services. If the reservation is so excessive that it practically denied a reasonable opportunity for employment to members of other communities the position may well be different and it would be open then for a member of a more advanced class to complain that he has been denied equality by the State. (Para 12)

5. Bearing in mind the above principles, we do not find any substance in the contention that rule 11 of the Tender Rules is discriminatory and is violative of Article 14 or Article 15 (1) of the Constitution. We may now read that Rule:

(1) Subject to suitability and ability of the tenderer to perform the work satisfactorily, preference and concession in settlement of a coupe or mahal shall be admissible in the following manner to a person belonging to any of the Scheduled Castes. Scheduled Tribes, or other Backward Classes recognised by the State Government, provided the recognised highest offer for the coupe or the mahal does not exceed Rs. 50.000:

(a) If the offer from a member of the abovementioned categories of persons is not below 92? per cent of the recognised highest offer, the coupe or the mahal shall be settled with such person at his own offer.

(b) Even if the offer from a member of the aforementioned categories of persons is below 92? per cent of the recognised highest offer, the coupe or the mahal may at the discretion of the competent authority be settled with such person at an amount 7? per cent less than the recognised highest offer.

(2) x x x x.

This rule is dealing with tenders of persons belonging to the Scheduled Castes. Scheduled Tribes or other Backward Classes, provided the recognised highest offer for the coupe or the mahal does not exceed Rs. 50.000/-. The preferential offer and concession is confined only to a particular category of mahals while the rest are free for open competition without any limitation. Then again, the settlement is subject to suitability and ability of the tenderer to perform the work satisfactorily, which is again another limitation. Thirdly, under Rule 11 (1) (a), the offer of a member of the abovementioned categories of persons must not be below 92? per cent of the recognised highest offer. That is to say the persons are setting only 7? per cent preference under Rule 11 (1) (a) in an appropriate case. It is true that under Rule 11 (1) (b), even if the offer is below 92? per cent of the recognised highest offer, the mahal may be settled with such a person, but at an amount 7? per cent less than the recognised highest offer. Under Rule 11 (1) (b) however, there is a discretion given to the competent authority to settle with such a person offering below 92? per cent of the recognised highest offer.

Reading Rule 11 (l) (a) and (b) we do not find that there is any such reservation in favour of the Scheduled Castes. Scheduled Tribes or other Backward Classes with regard to settlement of mahals and coupes which would totally exclude all coupes and mahals from being settled in favour of other persons. The rule cannot strictly be called a reservation rule with all the limitations provided therein and discretion given to the competent authority subject always to suitability and ability of the tenderer to perform the work satisfactorily. There is, therefore, no total exclusion which is complained of by the petitioner in this case, nor is the preferential treatment so unreasonable as to attract the ratio decidendi of M.R. Balaji and Others Vs. State of Mysore, . We are therefore clearly of opinion that Rule 11 (1) (a) is not violative of Article 15 (1) or Article 14 of the Constitution. The submission of the learned counsel, therefore, fails.

6. It is next contended that the tender of the 5th respondent is no tender in the eye of law for non-compliance with Rule 6 (4) (v) of the Tender Rules. The relevant rule may be read:

4. The tender shall be accompanied with the following documents, namely--

(v) Documents evidencing financial soundness of the tenderer:

Provided that such documentary evidence shall not be necessary in case of a tenderer who has been registered under any rule prescribed by the State Government for registration of forest contractors but in such case he shall furnish the particulars of his registration.

The proviso to the rule clearly shows that such documentary evidence is optional in a particular case. Besides this, by Rule 7 the Authority calling for tender may call for any other particulars from the intending tenderer with a view to identifying the tenderer or to eliciting information about his financial soundness. Reading rule 6 (4) (v) with the proviso and Rule 7 it is clear that Rule 6 (4) (v) is not mandatory and only directory. That being the position, there is no substance in the argument that the tender in absence of the documents evidencing financial soundness could not be considered by the settling authority in this case. It is stated by the 2nd respondent in his counter-affidavit that the 5th respondent is financially sound and he furnished a security bond on 5th December, 1969 for Rs. 40,491. Even the appellate authority has not considered him to be financially unsound.

Both the contentions of the petitioner fail.

7. The application is dismissed. We will, however, make no order as to costs.

M.C. Pathak, J.

8. I agree.

