
(1986) 02 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 875 of 1985

Pabitra Patowari

APPELLANT

Vs

District Judge, Kamrup and Another

RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1987 Guw 50

Hon'ble Judges : K.N. Saikia, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : T.C. Majmudar and D.C. Mahanta, for the Appellant; C.K. Sarma Barua, for the Respondent

Judgement

1. Mr. Durlav Chandra Mahanta, the learned counsel appearing on behalf of the petitioner, submits that he has instruction not to press this application and accordingly he does not press it.

2. In the result the petition is dismissed as not pressed. The stay order stands vacated. There will be no order as to costs.

3. However, we feel that some observations are necessary in respect of arrangements of refreshment stalls in Court compounds within the State of Assam. The first notification brought to our notice dealing with the manner of allowing refreshment stalls in Court compounds, in the Government Circular No. 4B dated 9th Feb., 1928 issued by the Public Works Department to all Commissioners of Divisions, District and Sessions Judges, and Deputy Commissioners in Assam, which reads as follows :

"It has been brought to the notice of Government that there is no uniformity of practice as regards the leasing of sites for stalls in Court compounds. From the reports obtained, it appears that in some places the sites of stalls are not leased and the right to sell refreshments or other articles is sold by public auction, the proceeds being used for works of public utility; while in others, stalls are erected

with the permission of the Civil authorities, who also get the proceeds.

2. In order how to regularise the various practices obtaining in different places in this matter, I am directed to draw your attention to paras 175 and 181, Assam Public Works Department Code, and to say that District Officers and Judges being responsible for cutchery compounds, though these are borne on the books of the Public Works Department, should obtain the formal consent of the Executive Engineer to the creation of the stalls (or the right to erect stalls) year by year, one of the conditions being that the stalls will be removed at any time without compensation on demand by the Deputy Commissioner.

3. The proceeds accruing from leasing the sites of such stalls and also of the existing ones should be credited to the appropriate head in the Public Works Accounts.

4. It is suggested that the areas of a single stall should not exceed 64 square feet and that any stalls permitted should conform to the enclosed type plan. This, while securing uniformity, will not allow the Court compounds to become so unsightly as they would otherwise be."

The next Circular, which has been brought to our notice, is Circular No. 16-B of 1940 dt. 13th Sept. 1940 which is also of the Public Works Department, which reads as follows :

"I am directed to say that the erection and leasing of refreshment stalls in Court Compounds will be regulated by the following rules. This cancels all previous instructions on the subject : --

1. Only stalls built to specifications not inferior to those provided in the attached type plan are to be permitted.

2. The Executive Engineer's decision as to whether stalls fulfil this requirement will be final.

3. The maximum size of a stall will be 120 s.ft.

4. The number of stalls required will be decided by the Officer-in-charge of the compound, i.e. District Officers or Judges as the case may be.

5. Stalls will be leased for a minimum period of (indistinct) years by the Officer-in-charge of the compound by auction or settlement as he considers most suitable.

6. If required by Government for any reason whatsoever any stall must be dismantled by the lessee and removed on 3 months' notice leaving the site clean and tidy. Compensation may be paid to the lessees in such cases, the amount being fixed by the Officer-in-charge of the compound.

7. All leases should contain a clause that the incoming lessee will have to pay to the outgoing lessee the value of the stall, as fixed by the Sub divisional Officer, Public Works Department, at the time of the change of tenancy.

8. The proceeds accruing from leasing the sites of such stalls and also of the existing ones should be credited to the appropriate head in the Public Works Accounts.

Condition 1 is to be rigidly enforced whenever existing leases terminate."

4. The above are pre-Constitutional Circulars. It has also been brought to our "notice that thereafter two other circulars were issued. However, we do not get Circular No. 9286-M dt. 20-11-1952. We find the Circular No. B-313/49/5298-311 dt. 9th June, 1953 issued by the Secretary to the Government of Assam, Public Works Department to the Commissioner of Divisions, District and Session Judges and Deputy Commissioners in Assam.

5. We are of the tentative view that most of the arrangements made by judicial officers in respect of refreshment stalls in Court compounds are not happy. We feel that after the separation of the Judiciary the High Court should examine the position and issue appropriate directions regarding the arrangement of refreshment stalls within the Court compounds in Assam in view of the provisions contained in Chap. V and Chap. VI of Part VI of the Constitution. We feel that the matter requires thorough examination as to the need for framing necessary rules and/or guidelines. We are constrained to make this observation on perusal of some of the arrangements made in respect of the subject-matter of this writ petition.