(1984) 01 GAU CK 0013

In the Gauhati High Court

Case No : Civil Rule No''s. 480 and 844 of 1982

Phanindra Bora and Another — APPELLANT

Vs

The Assam Board of Revenue and Others — RESPONDENT

Date of Decision : 20-01-1984

Acts Referred:

Assam Board of Revenue Act, 1962 — Section 13
Assam Board of Revenue Regulations, 1963 — Regulation 17, 17(4)
Constitution of India, 1950 — Article 226

Citation : AIR 1985 Guw 15

Hon'ble Judges : T.S. Misra, C.J;K.N. Saikia, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, D.N. Barua and C. Barua, in C.R. No. 480/82, G.K. Talukdar and A.C. Buragohain, in C.R. No. 844/82, for the Appellant; A.C. Buragohain, (in C.R. No. 480/82), D.N. Barua and D.P. Chaliha, (in C.R. No. 844/82), for the Respondent

Final Decision : Allowed

Judgement

Saikia, J.—As both these applications impugn the same judgment, they are heard analogously and disposed of by this common judgment.

2. Pursuant to a notice issued by the Sub-Divisional Officer, Tinsukia (shortly, the S. D. O.) inviting tenders for settlement of country spirit shops (C. S. shops) of Tinsukia Sub-Division for the period from 1-10-1981 to 31-3-1984, both the petitioners, inter alia, submitted valid tenders for the Margherita C. S. shop and the same were considered by the S. D. O. in consultation with an Advisory Committee and he was pleased to settle the shop with Shri Phanindfa Bora (petitioner of Civil Rule No. 480/82) in preference to Shri Hiranya Konwar (petitioner in Civil Rule 844/82) vide order dt. 29-8-1981.

3. Against the settlement order Shri Hiranya Konwar appealed to the Assam Board of Revenue, shortly, ''the Board'', in Case No. 56-E/81 impleading Shri Phanindra Bora as respondent, and the Board by the impugned order dt.

20-5-1982 partly allowing the appeal set aside the settlement order holding that .there was strong possibility of the respondent (Phanindra Bora) being the benamdar of some under-hand financier working in his name and therefore the settlement in his favour has got to be set aside. However, the Board also had definite doubt regarding "the ingenious operation of an unseen hand" behind the appellant (Hiranya Konwar) and found him also to be not suitable for the settlement and accordingly it directed that fresh tenders may be invited for settlement of the shop as early as possible, meanwhile it being managed departmentally through non-party official vendor. Both the parties are now before us each impleading the other as respondent.

4. Mr. J. P. Bhattacharjee, the learned Advocate-General appearing for the petitioner in Civil Rule 480/82 submits, inter alia, that the Board took into consideration materials called behind the back of the petitioner after the hearing was concluded and arrived at a conclusion regarding financial unsuitability of the petitioner (Phanindra Bora) on the basis of those materials and thus it acted in violation of Regulation 17 of the Assam Board of Revenue Regulations and also in violation of the principles of natural justice as it did not afford the petitioner a reasonable opportunity of addressing the Board as envisaged in sub-regulation (4) of Regulation 17 aforesaid, Mr. G. K. Taiukdar, the learned counsel appearing for the respondents in Civil Rule 480/82 and the petitioner in Civil Rule 844/82 (Hiranya Konwar) does not dispute that informations and documents were called for after the hearing was concluded. In the order sheet of Case No. 56E/81, the following order dated 1-4-1982 is found :

"While examining case record for preparing judgment it is found that the tender submitted by respondent Phanindra Bora for this shop (Margherita) for the term 1980-81 and 1976-79 are necessary. His tender for the term 1979-80 is available in Case No. 52-E/79. Ask S. D. Q. by wire to send the two tenders by special messenger. As appeal for 1976-79 term was entertained by Govt Excise Deptt may also be asked to send the tender for 1976- 79 if it is with them. Fix 8-4-1982.": ,.

Thereafter series of orders have been recorded on 13-4-1982, 19-4-1982,. 23-4-1982 and on 20-5-1982 on which date the impugned judgment was delivered That the materials received pursuant to the aforesaid order were considered by the Board is clear from the impugned judgment itself. In paras;8, 9, 10, 11, 12, 13 and 14 the Board elaborately discussed the judgments and materials of cases No. 139E, 161-E, 166-E of 1980, Para 11 of the impugned judgment begins as follows:

"The records of the above 3 appeals were called for and the judgment passed has been gone through. We have also gone through the affidavit sworn and filed by the respondent on 31-12-1980 in the Excise Appeal No. 166E/80. The relevant portions relating to the finance of the respondent in this affidavit as well as in the judgment are required to be reproduced for a proper appreciation and understanding of the fact. This has also been unavoidable as the respondent has not gone beyond just referring to the earlier case. Following are the extracts:....."

The Board then proceeded to. discuss paras 12 and 14 of the affidavit dt. 31-12-1980, and para 8 of the Board''s judgment dt. 30-3-1981 in Case No. 166E/80. In para 13 of the impugned judgment it has been observed that it was essential to look into the judgment in Case. No. 52 E/79 also and the Board proceeded to discuss that judgment In para 15 of the impugned judgment the Board has examined the tenders filed by the respondent- (petitioner-Phanindra Bora) in Cases Nos. 52E/79 and 166E/80. On the basis of all these materials the Board took the view that the circumstances did lead to a strong possibility of the petitioner (Phanindra Bora) being the benamdar of some under hand financier working in his name and therefore the settlement in his favpur was to be set aside.

5. Section 13 of the Assam Board of Revenue Act, 1962 empowers the Board to make regulations. Under Sub-section (1) of that section, subject to the previous sanction of the State Government the Board shall, from time to time, frame regulations consistent with the provisions of the Assam Board of Revenue Act and the rules made u/s 12 for regulating the procedure and disposal of its business. The Assam Board of Revenue Regulations, 1963 were framed in exercise of that power and as such the Regulations have statutory force, Regulations provides for adducing freshe vidence as follows:

"17.(1) No party to an appeal or an application shall be entitled to adduce fresh evidence, whether oral or documentary before the Board. The Board may, however, at any stage accept documents tendered by a party or call for any documents, fi it is of opinion that they are necessary for deciding the appeal or application, provided that the othe rparty shall in that case be entitled to produce rebutting evidence.

(2) A party desiring to produce such documents or affidavit shall file three copies of the same on a date at least seven days ahead of the date of hearing and shall at the same time serve an additional copy thereof on each of the respondents or opposite parties.

(3) The Board may direct any authority against whose order an appeal or application is made, to make such further investigation or to take additional evidence directly or through any subordinate authority, as it may think necessary.

(4) Where fresh evidence has been adduced under sub-regulation (1) or a further investigation is made or additional evidence is taken under sub-regulation (3), the parties shall be entitled to address the Board on points arising out of the fresh or additional evidence or further investigation."

Thus under sub-regulation . (4) of Regulation 17 where fresh evidence has been adduced under sub-regulation (1) or a further investigation is made or additional evidence is taken under sub-regulation (3), the parties shall be entitled to address the Board on points arising out of the fresh or additional evidence or further investigation.

6. In the instant case the Board has called for records including judgments of earlier cases after the hearing was concluded and behind the back of the petitioners. It was, therefore, incumbent on the part of the Board to have allowed the parties to address it on points arising out of such fresh or additional evidence or results of further investigation as the parties were entitled to so address the Board, This provision is also consistent with the principle of natural justice as no party should be condemned unheard. There has, therefore, been palpable violation of the above statutory provisions.

7. A writ of certiorari may be issued from the High Court where the subordinate tribunals or bodies act in violation of the principles of natural justice, as was held in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, In T.C. Basappa Vs. T. Nagappa and Another, it has been observed that a tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. So also in Parry and Co. Ltd. Vs. P.C. Pal and Others, it has been reiterated that a writ of certiorari is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. It is, therefore, settled law that where subordinate tribunals have acted in clear disregard of statutory provisions of law or the statutbrily prescribed procedure or the principles of natural justice a certiorari may issue. In our judgment the procedure adopted by the Board in calling for fresh information and materials and undertaking investigation behind the back of the parties and passing its judgment without affording opportunity to the petitioners to address the Board on them, is clearly violative of the provisions of Regulation 17 as well as the principles of natural justice and it is a fit case where certiorari should issue. ''

8. Mr. Talukdar for the petitioner in Civil Rule No. 844/82 submits that the finding of the Board relating to his financial unsuitability has also been arrived at after consideration of the above materials collected behind his back. He further submits that the finding of the Board about the financial unsuitability of the petitioner (Hiranya Konwar) is based on extraneous materials and on conjectures and surmises and, as such, it is not sustainable in law. We find force in this submission, but we do not consider it necessary to give reasons in detail as we are going to set aside the impugned judgment.

9. For the reasons discussed above, we quash the impugned judgment and remand the appeal to the Board to be disposed of in accordance with law after giving the parties reasonable opportunity to address the Board on the fresh or

additional evidence or results of investigation received by the Board after hearing was concluded, in compliance with sub-regulation (4) of Regulation 17 of the Assam Board of Revenue Regulations. As both the petitions have impugned the same judgment both the petitions are allowed and the Rules made absolute. We, however, make no orders as to costs. The interim order dt. 24-5-1982 in Misc. Case No. 60 of 1982 stands vacated.

10. In view of the fact that the term of settlement is going to expire soon, let the Board dispose of the appeal within one month from to-day. Send down the records forthwith.

T.S. Misra C.J.

11. I agree.