
(2001) 05 GAU CK 0001
In the Gauhati High Court
Case No : Civil Appeal No. 3592 of 2001

Raj Sekhar Gogoi	Vs	APPELLANT
State of Assam and Ors.		RESPONDENT

Date of Decision : 03-05-2001

Acts Referred:

Assam Excise Rules, 1945 — Rule 206(2), 206(2)

Citation : (2001) 3 GLJ 309

Hon'ble Judges : B.N.Kirpal, J and Ruma Pal, J

Bench : Division Bench

Advocate : Raju Ramchandram, Rajiv Mehta, R.Rahim , Parimal Prasad, P.K.Goswami, Krishna Sharma, Chanchal Kumar Ganguli, J.R.Luwang, Advocates appearing for Parties

Judgement

1. Special leave granted.
2. The dispute in the present case pertains to the settlement of a country a liquor shop in favour of respondent 4 as a result of the decision of the Division Bench of the High Court.
3. In October 1998, a tender notice was issued for the settlement of one shop. The appellant along with respondent 4 and another person filed applications in the form prescribed under Rule 206 of the Assam Excise Rules, 1945. According to Rule 223, preference was to be given to educated unemployed. The note with regard to the said Rule stated that an educated unemployed would be one who has passed HSLC or equivalent examination and is without any employment.
4. In the order of settlement on 28.12.1998, the application of respondent 4 was accepted. This was challenged by the appellant and another unsuccessful tenderer by filing an appeal before the Board of Revenue. In the appeal, two contentions were raised firstly, that respondent 4 could not be treated as an educated unemployed youth within the meaning of that expression in Rule 223 (2) and secondly, in the application which was filed, the financial particulars had

not been given by the said respondent. In support of the first contention, the case of the appellant was that respondent 4 had appeared in the examination in June 1998 but had failed. Thereafter, she appeared as a noncollegiate student in March, 1999. It was contended that this shows that respondent 4 was pursuing her studies and, therefore, could not be regarded as falling under the category of "educated unemployed" and reliance in this behalf was placed on a decision of this Court in *Bishnu Ram Borah vs. Parag Saikia* reported in (1984) 2 SCC 488 : AIR 1984 SC 898.

5. The appeal filed by the appellant was allowed with the Board coming to the conclusion that respondent 4 could not be regarded as an educated unemployed youth and secondly, the facts adduced by the said respondent 4 about her sources of finance were not reliable. In coming to this conclusion, it also held that provisions of Rule 206 were mandatory.

6. The decision of the Board was challenged by the respondent by filing a writ petition in the High Court. The Single Judge dismissed the same and affirmed the decision of the Board (2000 (2) GLJ 44). A letters patent appeal filed by respondent 4 was successful. The Division Bench (2000 (2) GLJ 177) came to the conclusion that the decision of the Board that Rule 206 was mandatory was an error apparent on the face of the record. It also held that respondent 4 was an educated unemployed youth within the meaning of that expression in Rule 223 (2).

7. For the view which we are taking, it is not necessary to go into the question as to whether respondent 4 could be regarded as an educated unemployed youth or not. It appears to us that her application should have been rejected at the threshold. We make it clear that this does not mean that we affirm the finding of the High Court that she was an educated unemployed youth.

8. Rule 206 after its amendment in 1981 reads as follows :

"206. (1) Save with the special sanction of the State Government all country shops will be settled under the tender system.

(2) The tenders must be in such form and contain such particulars as may be prescribed by the State Government. Tenders not containing all the particulars shall be liable to be rejected.

(3) Each tender must bear a court fee stamp of Rs. 24.75 or any other amount as may be prescribed by the State Government from time to time.

(4) Each tender shall be for a single shop, but any person may submit separate tenders for any number of shops. The tenders are not transferable from one shop to another. No shop shall be settled with anyone who has not tendered for the shop within the notified time. Whenever it is found that no tender has been received for a shop within the notified time or where a suitable person from amongst the tenderers is not found for settlement, a fresh notice shall be issued inviting tenders for such a shop; provided that a notice often days will be

sufficient in such cases."

It is admitted that prior to 1981 the sentence "tenders not containing all the particulars shall be liable to be rejected" occurring in sub rule (2) of Rule 206 was not there. It is for this reason that the earlier decision of the Assam High Court had come to the conclusion that the said Rule was not mandatory especially when it did not provide for the consequence in the event of the application not being filed in accordance with the prescribed form. Column 11 of the form of tender reads as follows :

"11. Whether the tenderer will be capable of functioning his business himself. Give details of source : cash in hand, bank balance, security, assets etc."

In answer, respondent 4 stated as under :

"Yes, I am financial capable enough to run the business. I shall get financial assistance in this respect from my father and also from my sister and sister's husband."

9. It is clear that respondent 4 merely made a general statement that she will receive financial assistance from her father, her sister and her sister's husband. No documents or even affidavits or any other particulars were furnished along with the tender which she had submitted. It was not indicated whether she had any cash in hand or whether she even had any bank balance. Under these circumstances, her tender had to be rejected in compliance with the provisions of Rule 206 (2). There could be no occasion for tenderer to place before the authorities at the time of settlement any particulars which were required to be given in the tender form. The need for furnishing particulars in the tender form obviously is to enable the authorities concerned to scrutinize the tender to determine financial capability of the tenderer who wants to get the benefit of Rule 223. Furthermore, in the tender notice clause 10 states as follows :

"The tenderer for settlement of shop is required to give full information regarding his financial capacity in the tender, such information must include the details of soundness of finance, cash in hand, bank balance, security and assets etc. Such information shall be verified by the Deputy Commissioner/any other authorised person before settlement of shop to the tenderer."

10. This clearly shows that it was imperative for a tenderer to furnish full information as required so that the same could be verified by the Deputy Commissioner or any other authorised person "before settlement of shop to the tenderer" (emphasis added). In the present case, such an opportunity was clearly denied to the authorities when respondent 4 had not furnished the requisite particulars along with her tender.?

11. We are, therefore, of the opinion that as the tender itself of respondent 4 was liable to be rejected because of lack of particulars as stated herein above, no further question arises. We do not agree with the observations of the High Court that Rule 206 is not mandatory. The language of the said Rule is clear and

unambiguous. It not only says that the tenders must be in their required form but also stipulates the consequence of noncompliance thereto, the consequence being that the tenders not containing all the particulars "shall be liable to be rejected".

12. For the aforesaid reasons, this appeal is allowed, the decision of the Division Bench (2000 (2) GLJ 177) which is impugned in this appeal is set aside and that of the Single Judge restored (2000 (2) GLJ 44).