
(1991) 06 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule Nos. 596 and 726 of 1991

Ratneswar Das; Sarat Baruah

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 07-06-1991

Acts Referred:

Assam Excise Rules, 1945 — Rule 223(2), 223(2)

Citation : (1991) 2 GLJ 21 : (1992) 1 GLR 203

Hon'ble Judges : S.Haque, C.J. and J.M.Srivastava, J

Bench : Division Bench

Advocate : C.Barua, A.C.Borbora, S.N.Bhuyan, D.P.Chaliha, D.N.Choudhary, B.P.Bora, Advocates appearing for Parties

Judgement

J.M. Srivastava, J.—These petitions under Article 226 of the Constitution of India are directed against the judgment and order dated 1. 2. 91 passed by the Assam Board of Revenue, hereinafter referred as the "Board" whereby the settlement of Tingrai Country Spirit Shop with the petitioner in Civil Rule No. 596 of 1991 for the term 1.4.90 to 31.3.93 was set aside, and the aforesaid shop was settled with Shri Kumud Chandra Das respondent No 3 in Civil Rule 596 of 1991 and respondent No. 4 in Civil Rule No. 726 of 1991. The petitioner in Civil Rule No. 726 of 1991 was also an applicant for settlement of the said shop without any success in the matter.

2. Briefly, the facts giving rise to the petitions are, that the Deputy Commissioner, Tinsukia had in pursuance to the decision of a Committee constituted for the purpose settled Tingrai Country Spirit Shop in Tinsukia District with Shri Ratneswar Das, a member of Scheduled Caste for the term 1. 4. 90 to 31. 3. 93 following a meeting of the said Committee on 28. 11. 89. Aggrieved, Shri Kumud Das, a member of More Other Backward Community, for short the "MOBC", and Shri Sarat Baruah, a member of Scheduled Tribe, preferred separate appeals before the Board. By judgment and order dated 1. 2. 91 the Board held that "all the three candidates were educated unemployed youths with

clear finance". It further held that in view of the provisions of Rule 223 (2) of the Assam Excise Rules, 1945, hereinafter referred as the "Rules", the Deputy Commissioner had no alternative but to settle the shop with the candidate belonging to the MOBC, but as he had not done this, the impugned order was in violation of the requirements of Rule 223 (2). In the result, the settlement made by the Deputy Commissioner in favour of Sri Ratneswar Das was set aside and the aforesaid shop was settled with Shri Kumud Chandra Das. Aggrieved, Shri Ratneswar Das and Shri Sarat Baruah have filed the present writ petitions.

3. We have heard Shri D. N. Choudhury, learned counsel for Shri Ratneswar Das, the petitioner in Civil Rule No. 596 of 1991, Shri C. Baruah, learned counsel for Shri Sarat Baruah, the petitioner in Civil Rule No. 726 of 1991, Shri S. N. Bhuyan, learned counsel for respondent Shri Kumud Chandra Das, and Shri B.P. Bora learned Govt. Advocate for the respondent State of Assam.

4. Shri D. N. Choudhury, learned counsel for the petitioner Shri Ratneswar Das, has submitted that the view taken of the provision of Rule 223 (2) by the Board was erroneous and in disregard of and conflict with the view taken by the Board itself earlier in a similar matter which came before this Court in *Rukma Moran vs. Assam Board of Revenue & others*, (1989) 1 GLR 375 [1989 (1) GLJ 14] where the Board had upheld the settlement of the country spirit shop with a member of Scheduled Caste ignoring the claim of a member belonging to MOBC, and when the aforesaid member of the MOBC had challenged the decision of the Board in this Court it was held that since Scheduled Caste candidates also form part of backward communities, there was no error in the settlement of shop with a member of Scheduled Caste. It was observed that the provisions of Rule 223 (2) could not be read in isolation and that the entire Rule considered as a whole did not prescribe any preference to the members of MOBC or OBC over members of Scheduled Castes or Scheduled Tribes, Shri Choudhury has also referred to the proceeding of the Committee for the settlement of country spirit shop in Tinsukia District (Annexure 1 with the affidavit in reply) to show that of the twenty shops settled, only one at SI. No. 8, the Tingrai shop in question had been settled with a member of Scheduled Caste, three shops had been settled with the members of Scheduled Tribes, and the rest of the shops had been settled with OBC or MOBC. Shri Choudhury has accordingly contended that there was absolutely no justification for the view taken by the Board which being erroneous, the impugned judgment and order of the Board should be set aside and that of the Deputy Commissioner should be restored.

5. Shri B. P. Bora, learned Govt. Advocate has supported the settlement made by the Deputy Commissioner and has assailed the impugned decision of the Board. Shri C. Baruah has, however, questioned the settlement made by the Deputy Commissioner as well as by the Board.

6. Shri S. N. Bhuyan, learned counsel for respondent Kumud Chandra Das has submitted that while there was no dispute that Scheduled Castes and Scheduled Tribes are also backward classes or backward communities, they are not OBC or

MOBC, that Rule 223 (1) provides for reservation of shops for SC or ST, but subrule (2) of Rule 223 does not provide for any settlement with SC or ST, but clearly provides for preference to be given to MOBC and that consequently the view taken by the Board was correct and does not require any interference. Shri Bhuyan cited *Ziaur Rahman vs. Assam Board of Revenue and others*, (1983) 2 GLR 390. This authority, however, does not provide any assistance to the respondent. Shri Bhuyan has contended that where there has been no reservation of shops in favour of SC and ST in pursuance to Rule 223 (1) and the settlement was made under Rule 223 (2), country liquor shop had to be settled with the member of the MOBC or OBC. Shri Bhuyan has also submitted that the view taken by this Court in *Rukma Moran* (supra) requires reconsideration.

7. We have considered the submissions for the parties and the materials on record.

8. As stated earlier, the Board has clearly found that all the three candidates i. e. the petitioners and Shri Kumud Chandra Das were educated unemployed with clear finance, i. e. they were all otherwise equally placed or situate. However, the Board has taken the view that under Rule 223 (2), the Deputy Commissioner had no alternative i. e. that he was obliged to settle the shop with a member belonging to MOBC, and consequently the settlement made by the Deputy Commissioner was wrong and had to be set aside.

9. Rule 223 reads as under:

"223.(1) Settlement of country spirit shops shall be made giving adequate representation to the Scheduled Castes and Scheduled Tribes. Of the total number of shops to be settled in a Subdivision, a minimum quota of such shop to be settled with persons belonging to Scheduled Castes and Scheduled Tribes shall be fixed on the basis of population of those communities in the Subdivision.

(2) In making settlement to any person preference shall always be given to the educated unemployed youths or to Cooperative and Cooperative Firms formed by such educated unemployed youth. Preference shall also be given to the persons belonging to the more backward community of the other backward classes, (emphasis supplied)

(3) While making settlement to such persons due consideration shall " be given to the economic backwardness of the person seeking settlement. No person shall be considered economically backward unless the annual income of such person or his parents is less than Rs.5,000/.The direction issued by the State Government in this respect shall be scrupulously followed.

(4) The dependants of the persons who held any country shop for total period of fifteen consecutive years shall not be entitled to settlement of such or any other country spirit shop".

10. While it is true that Rule 223 (1) provides for minimum quota of shops to be fixed for Scheduled Castes and Scheduled Tribes and Rule 223 (2) provides for

preference to be given to the members of more backward community of the OBC and does not mention SC and ST specifically, we are unable to accept the contention on behalf of the respondent Kumud Ch. Das, for the reasons that the provisions of subrules (1) and (2) of Rule 223 should not be considered in isolation but have to be considered as a whole, which so considered leave no doubt that in making settlement of such shops preference has to be given to the educated unemployed youths, and to SC, ST, members of MOBC. The fact that subrule (2) does not mention SC and ST specifically, in our opinion, does not make any substantial difference to the provision because the intention could not be that only when shops are reserved for ST and SC they would get settlement of such shops and that where no such reservation, as has been stipulated in subrule (1) has been made such shops have to be settled only with members of MOBC. Such an interpretation, in our opinion, shall not be in conformity with the basic approach for upliftment of the economically and socially backward classes, which undoubtedly include SC and ST. There cannot be any doubt that members of Scheduled Castes and Scheduled Tribes are also backward classes just as some others described as OBC or MOBC. As said before the provision of Rule 223 read as a whole in the context of the purpose underlying the same, it shall not be proper to take the view that Rule 223 (2) should be read in isolation as has been done by the Board. Besides, it may be noted that the Board itself in the aforesaid case of Rukma Moran had taken the view that settlement of a country liquor shop with a member of SC in preference to that of a member of OBC was correct. This Court in Rukma Moran (supra) has held that the provisions of subrule (2) of Rule 223 do not mean that settlement of a shop with a member of Scheduled Caste in such circumstances was incorrect or illegal. With respect, we are in agreement with the above view and see no reason for reconsideration of the view laid down therein.

11. It may further be noted that of the twenty country spirit shops in Tinsukia District, sixteen shops had been given in settlement with the OBC and MOBC, three shops to the members of Scheduled Tribes, and just one which is involved in the consideration before us was settled with a member of Scheduled Caste, and on this score also it could not be said that any error or impropriety had been committed by the Deputy Commissioner in the settlement of the shop with petitioner Ratneswar Das following consideration of the matter by a Committee for the purpose. On the contrary, we are inclined to think that the Committee and Deputy Commissioner had fairly settled the shop in question with petitioner Ratneswar Das. In our opinion, the Board had clearly committed a serious error in law in taking the view that the Deputy Commissioner was under legal obligation to settle the shop with MOBC and in setting aside the settlement made by the Deputy Commissioner. We think that the impugned order dated 1.2.91 passed by the Board has to be set aside and the settlement of the shop in question with petitioner Ratneswar Das by the Deputy Commissioner has to be restored.

12. For the same reasons, we find no merit in the submission on behalf of Shri

Sarat Baruah, the petitioner in Civil Rule No. 726 of 1991. The settlement made by the Deputy Commissioner in favour of Ratneswar Das, a member of Scheduled Caste was correct and in accordance with law.

13. For the aforesaid reasons, the petition in Civil Rule No. 596 of 1991 is allowed. The impugned judgment and order dated 1. 2. 91 passed by the Board are set aside and the settlement of Tingrai Country Spirit Shop in Tinsukia District for the term April, 1990 to March, 1993 with petitioner Sri Ratneswar Das is restored. The Civil Rule No. 726 of 1991 is also decided accordingly. We leave the parties to bear their own costs.