
(1999) 09 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (C) No. 3400 of 1999

Runima Dutta

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

Assam Excise Rules, 1945 — Rule 206(2), 208(4), 223(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 1 GLT 555

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : D.C. Mahanta, M. Singh, G. Singh and B. Buragohain, for the Appellant; Rekha Chakrabarty, C. Baruah and N.K. Baruah, for the Respondent

Judgement

J.N. Sarma, J.—This writ application has been filed challenging the legality and validity of the order dated 16.7.99 passed by the Assam Board of Revenue, Guwahati in Excise Appeal No. 17E(L) 99, and No. 23E (1)99. In this particular case we are only concerned with the decision in the appeal No. 17E(L) 99.

2. The brief facts are as follows:

The Deputy Commissioner, Lakhimpur by an order dated 28.12.99 settled the North Lakhimpur C.S. Shop No. 1 at Hatilung in favour of the present writ Petitioner Smt Runima Dutta for the period from 1.4.99 to 31.3.2002. The present Respondent No. 3 filed an appeal before the Assam Board of Revenue on the following grounds:

(i) that he (Respondent No. 3) is an unemployed educated youth and belongs to Ahom Community which is recognised by the authority as OBC in Assam and as such he is entitled to get preference under Rule 223(2) of the Assam Excise Rules, 1945. Rule 223(2) is quoted below:

(2). In making settlement to any person preference shall always be given to the educated unemployed youths or to Co. operatives and Co-operative 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.

It was claimed by the writ Petitioner that she is also educated unemployed youth.

(ii) That the writ Petitioner is a set-up candidate backed by some backdoor financier like her father who in his own statement was an agent and partner of Laluk C.S. Shop.

(ii) That the source of finance disclosed by the Petitioner is not at all genuine and the writ Petitioner failed to state the detailed source of finance in Column No. 11 in the tender as required and the person who wanted to finance her also did not have any established source of income.

(iv) It was further submitted that the sister and the husband of the sister have not established/substantial source of income and it is not believable that they can provide any amount to the writ Petitioner for running the shop in question. Further a certificate was produced from the Mouzadar, North Lakhimpur wherein the Mouzadar certified that the income of Mr. D. Dutta, the father of the writ Petitioner was Rs. 13,000/- only per year and as such it raises a question how he will be able to finance such a huge amount to the writ Petitioner from his genuine income.

3. The learned Board heard both the parties. Rule 208(4) of The Assam Excise Rules, 1945 provides as follows:

(4) Settlement of a shop shall have to be made by selection from amongst the tenderers for that particular shop, and the tenderers so selected shall also be financially sound to run the shops.

So that rule itself envisages that the settling authority must be satisfied with regard to the financial soundness of the person in whose favour the shop is settled. The Board in para 5 of the judgment took up first the question of financial soundness of Respondent No. 3 R Gogoi and after detailed discussion came to the following finding:

The financial documents including the Pass Books in Banks and Post Office produced before this Court have confirmed the above mentioned financial position of the Appellant Sri Raj Sekhar Gogoi. There is nothing in the record to doubt the source of finance of Sri Rameswar Gogoi and Smti Kusheswari Gogoi, both the financiers of the Appellant. The Inspector of Excise, North Lakhimpur, in his inquiry report has also confirmed the statements of the Appellant regarding his finance and has stated that the Appellant is financially sound.

4. Thereafter, the question of financial soundness of the writ Petitioner was taken up by the Board and the Board after detailed consideration of the materials including the documents submitted by her as well as by her father as well as by her brother-in-law, found as follows:

Hence, it raises a question as to the genuineness of the source of finance of the Respondent No. 1, from which the security money was paid. The contention of both the Appellants that the security deposit etc. are being paid by the Respondent No. 1 with the money provided to her by the backdoor financiers and not from the disclosed sources of finance has, therefore, sufficient force. The above facts have proved that the statements made by the Respondent No. 1 Sri Runima Dutta about her source of finance is not reliable.

Facts stated in para A, B, C discussed above have clearly established that the source of finance of the Appellant Sri Raj Sekhar Gogoi is more genuine and more sound than that of the Respondent No. 1 and much more than that of the other Appellant Sri Ranjit Doley.

So, it is the finding of fact arrived at by the learned Board that the writ Petitioner was not financially sound and it was further found that the money provided to her by the backdoor financier and not from the disclosed source of finance.

5. The other question regarding the performance was also decided by the learned Board and the Board came to the finding that the Respondent No. 3 R. Gogoi is an educated unemployed youth as defined under Rule 223(2) of Assam Excise Rules, 1945 and also belongs to OBC. With regard to the writ Petitioner the Board on consideration of the materials on record came to the following findings:

It appears that Smti. Runima Dutta has been prosecuting her studies without break till 1999; i.e., after the date of settlement of the C.S. Shop in question in her favour. As has been ruled in *Bishnu Ram Borah and Another Vs. Parag Saikia and Others*, the Supreme Court has held that "the expression" educated unemployed youth" has definite legal connotation. It denotes a class of citizens who after completion are faced with unemployment. By no stretch of imagination can a student who is still pursuing his course of study in a University be regarded as having completed his education or being "unemployed youth". We are in respectful agreement with the views of the Hon'ble Supreme Court. Hence Smti. Runima Dutta is a student and is not an educated unemployed youth as defined in Rule 223(2) of the Assam Excise Rules, 1945 in view of the Hon'ble Supreme Court's view in the above mentioned case *Bishnuram Borah v. Parag Saikia*. Accordingly the contention of the two Appellants that Smt Runima Dutta is not an educated unemployed youth being student has sufficient force and as such is maintainable. The contention of the Respondent No. 1 that she is not a student but an educated unemployed youth is not maintainable in view of the Hon'ble Supreme Court in the case mentioned above. Hence, Smti. Runima Dutta the Respondent No. 1 is not an educated unemployed youth as defined in Rule 223(2) of the Assam Excise Rules, 1945.

6. Before we proceed further, let us have a look at the power of this Court for judicial review of judicial decisions. This matter came up for consideration before the Supreme Court in *M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another*, wherein the Supreme Court in para 19 of the

judgment pointed out inter-alia by relying on the earlier judgments in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, Sadhu Ram Vs. Delhi Transport Corporation, that unless there was a patent error committed by the lower Court and/or lower authority, the High Court in exercise of the jurisdiction under Articles 226 and/or 227 could not have interfered with the findings of the lower Court as if it was hearing an appeal. The High Court cannot set aside any finding reached by the lower Court and/or authority where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law, the scope of judicial review is not available. The findings must be patently, erroneous and dehors the factual and legal position on record. It is on this background, we must proceed with, the present decision of the learned Board. In Mukunda Bore Vs. Bangshidhar Buragohain and Others, . a case from this Court under the present Assam Excise Rules, the Supreme Court in para 16 of the judgment pointed out as follows:

While on facts the order of the Board under appeal is not impeccable, we must remember that under Article 226 of the Constitution, a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a Court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on "no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. In the instant case, the finding of the Board that the Appellant does not possess the necessary financial capacity, is largely a finding of fact under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of source of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the Inquiry Officer.

7. The Supreme Court pointed out that if the Board had any doubt with regard to the bonafide of finance, the Board can set aside a settlement in terms of Rule 208(4) of the Rules quoted above. Basically the finding regarding bonafide of the finance is a finding of fact and if it is not patent, erroneous and/or perverse, the High Court cannot set it aside. So, the first contention of the writ Petitioner that the finding regarding the financial soundness is a perverse finding cannot be accepted and stands rejected.

8. The learned Counsel for writ Petitioner with regard to second point whether she is an educated unemployed youth or not relying on the decision reported in (1990) 1 GLR 356 Shri Sajal Dutta v. The State of Assam and Ors. There the facts are different The person in that particular case left the school when he was a student of Class VIII in the year 1980 and thereafter in the year 1987 he appeared as a private candidate in the matriculation examination and the

settlement was made for the period w.e.f. 1.5.87 to 31.3.90 and on the facts of that case, this Court found that the Petitioner cannot be deemed to be a student and accordingly the decision in the case of Bishnu Ram Borah and Another Vs. Parag Saikia and Others, was distinguished. That is not the position in the case in hand. Here in this particular case, the writ Petitioner was a student of the Degree Course and she failed in the year 1998 and thereafter again as a non-collegiate student she appeared in the year 1999 from the same college and it was during that period being unsuccessful in the examination that the settlement was made in her favour and she claims to be a educated unemployed youth, cannot be accepted.

9. The learned Counsel for the Petitioner also places reliance in (1995) 1 GLR 178 Bikul Chandra Dutta v. The State Board of Revenue and Ors. That decision says that the decision of the Board can be assailed before the High Court if matters which ought to be considered by the Board at the time of adjudication of the appeal for the purpose of determining the entitlement of tenders to get the settlement are not considered. This Court further pointed out that if there are some guidelines for considering the person who fall specifically under some category and if that is not considered, then also the High Court can exercise the writ jurisdiction. That is not the position in the case in hand. In that particular case the Division Bench pointed out that the finding of fact recorded on the basis of evidence may not be interested with by the writ Court unless the same is based on no evidence or is perverse.

10. Accordingly, there is no merit in this writ application and the same shall stand dismissed. Stay order passed earlier stands vacated. However, I leave the parties to bear their own costs.

11. Heard Mr. D.C. Mahanta, learned Counsel assisted by Mr. M. Singh, Mr. S.G. Singh for Petitioner, Mr. C. Baruah, learned Counsel assisted by Mr. N.K. Baruah for Respondent No. 3 and Ms. Rekha Chakraborty, learned Counsel for Respondents 1 and 2.

This disposes of this writ application as well as all the misc. cases.