
(1988) 11 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 224 of 1988

Safur Ali

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-11-1988

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21, 21, 8(1), 8(1)

Citation : (1989) 1 GLJ 406

Hon'ble Judges : S.N.Phukan, J and S.P.Rajkhowa, J

Bench : Division Bench

Advocate : S.C.Das, P.C.Goswami, H.N.Sharma, D.N.Choudhary, C.Choudhary, A.C.Sharma, Advocates appearing for Parties

Judgement

Phukan, J.—The notice inviting tender for sale of Khareghat SandcumGravel Mahal No. 1 was issued on 29. 6. 87. The period for settlement was from 15. 7. 87 to 14. 7. 89. As many as six persons submitted tender and the offer of the petitioner amounting to Rs. 10,65,001.00 was highest. Though the offer of respondent No. 1 amounting to Rs. 9,27,707.00 was third highest, the mahal was Settled with him at the above rate offered by the present petitioner. The appeal filed by the present petitioner before the State Government was rejected. Hence the present petition.

2. Though the petition has been opposed by the State Government no affidavitinopposition has been filed. But all the relevant records have been placed before this Court

3. The first contention of Mr. Choudhury is that the settlement order is bad in law as both under the tender notice and also under the relevent Rules the settling authority was the Chief Conservator of Forest as the value of the mahal was more than one lakh but the final settlement order was passed by the State Government. In this connection Mr. Choudhury has drawn our attention to law laid down by the Apex Court in the following decisions :

In *Orient Paper Mills Limited vs. Union of India*, AIR 1969 S C 48. it was held that Collector under Central Excise and Salt Act, 1944 while hearing appeal acts quasi judicially and direction issued by the Central Board of Revenue which are not covered by the relevant rules cannot be binding on him for the purpose of deciding the appeal. In *Orient Paper Mills Limited vs. Union of India*, AIR 1970 SC 1498, Apex Court considered whether an assessment made by a subordinate officer in accordance with the instruction issued by Collector to whom an appeal lie against the order of the subordinate officer can be called a valid assessment in the eye of law. It was held that if the judgment of the subordinate assessing authority is controlled by the directions given by higher authority namely, the Collector, it cannot be said to be independent judgment in any sense of the word and accordingly it was held that the proceedings before the subordinate authority were vitiated. In *Hukum Chand Shyamlal vs. Union of India and others* (1976 2 S C C 128, it was held that it is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden.

4. Law has been clearly laid down that the authority on whom power to decide a matter is vested as to decide it in accordance with law and the judgment of the said authority cannot be vitiated by any direction by any superior authority. It is also well settled that the power vested under any law to decide a matter that authority is alone competent to decide it.

5. In the instant case, according to Clause IV of the tender notice (Annexure I), Chief Conservator of Forest is the settling authority as the value of the mahal was more than one lakh. This notice was issued under the provisions of Assam Sale of Forest Produce, Coupes and Mahals Rules, 1977 (for short the Rules) and Rule 8 (I) of the Rules, inter alia, provides that orders for acceptance for any tender shall be passed by the respective competent authority whose competency shall be according to the delegation of financial powers under the Assam Delegation of Financial Power Rules, 1961. This subrule further states that according to the delegation under the said Rules any tender the value of which is more than rupees one lakh has to be accepted by the Chief Conservator of Forest. This subrule further provides as follows:

"Government in Forest Department have the full power or have the full residuary power of withdrawal of settlement or otherwise not repugnant in these Rules".

6. Thus we find from the above said Rule that Government have also power of settlement of any mahal notwithstanding the fact that the Chief Conservator of Forest can settle a mahal the value of which is more than rupees one lakh. This position is strengthened by the fact that under Rule 9 a review petition would lie to the State Government in the event the original order is passed by the Government

7. From the records we find that respondent No. 5 who was the sitting lessee

filed a petition before the State Government for extension of the period of settlement and while considering the said petition State Government instead of passing the final orders after taking into consideration that mahal was notified for resettlement directed the subordinate authority to send all tenders after opsnio for consideration by the State Government. Under Rule 21 of the Rules, the Government have got right of extension of the period of settlement. Reading Rules 8 and 21 and on perusal of the record we are of the opinion that the orders of the State Government having power of settlement directing the Chief Conservator of Forest to send the tender papers for consideration were within the competency of the Government. Consequently it follows that the impugned order of settlement passed by the State Government do not suffer from any illegality as the State Government have power to settle any mahal as envisaged in Rule 8 of the Rules.

8. The next contention of Mr. Choudhury, the learned counsel for the petitioner, is that the rejection of the tender of the petitioner on the ground of nonsubmission of certificate of financial soundness is bad in law. In this connection Mr. Choudhury has drawn our attention to two decisions of this Court, namely, *Mofosin All Barbhuyan vs. State of Assam*, AIR 1970 Assam and Nagaland 171 and *Khoi Singnar vs. State of Assam*, (1983) 1 GLR 410. In the above decisions this Court considered Rule 6(4) (v) of the Assam Settlement of Forest Coupes and Mahals by Tender System Rules, 1967. Under the aforesaid Rule tender was to be accompanied by documents evidencing financial soundness of the tenderers and this Court after considering the above Rule held that said Rule is directory and noncompliance will not make the tender invalid. The Rules of 1967 have been repealed by the present Rules of 1977 and in the present Rules there is no provision for submission of documents evidencing financial soundness of tenderer along with the tender. Only in the tender notice it was provided for such a certificate vide Clause 3(c) (v). We find from the letter dated 2.12.87 vide AnnexureIII to the petition sent to the petitioner and others that the Divisional Forest Officer informed the necessary particulars that should contain in such financial soundness certificate. Annexure IV to the petition is the certificate submitted by the petitioner which is not in accordance with the direction issued by the Divisional Forest Officer by AnnexureIII as the said certificate did not contain the full particulars of the immovable property of the petitioner. By letter dated 5.2.88 vide AnnexureVI to the petition the Divisional Forest Officer informed the petitioner of the above position. It is not the case of the petitioner that subsequently he furnished a proper certificate. The letter dated 25.1.88 from the State Government vide AnnexureV to the petition addressed to the Chief Conservator of Forest, is the settlement order. On reading the said settlement order we find that the Government considered the tender of the petitioner along with the second highest tender and rejected both the tenders on the ground that "as without knowing the financial position of the tenderer such a mahal of handsome value cannot be settled and the tenders of the first highest and second highest tenderers are liable to be rejected". From record we find that

while considering the question of nonsubmission of financial soundness certificate it was also pointed out that there are instances where unregistered contractor wilfully used to collect exorbitant rate but subsequently became defaulter causing loss of government revenue.

9. From the above facts it appears that the tender of the petitioner was not rejected outright on the ground of nonsubmission of financial soundness certificate. But the settling authority did not settle the mahal with him on the ground that it was risky to settle such a mahal without knowing the financial position of the person. The question whether the condition laid down in the tender notice asking for financial soundness certificate is directory and mandatory is not relevant in the case in hand as the tender of the present petitioner as stated above was not rejected outright for nonsubmission of the said certificate but the settling authority after due consideration did not find the tender of the petitioner fit for settlement. We do not find any illegality in the settlement order as tender of the petitioner was duly considered.

10. Mr. Choudhury, learned counsel for the petitioner has raised two other contentions, namely, the appeal of the respondent No.5 was considered and the settlement was given to him on the basis of the appeal though the petitioner was not heard. This contention of Mr. Choudhury is not supported by records as we find no appeal was filed by the respondent No. 5 but he only agreed to take the mahal at the rate offered by the petitioner as these offer was made in the interest of public revenue. We are of the opinion that Government was justified in accepting this offer after having found that first and second highest tenders could not be accepted. The second contention of Mr. Choudhury is that the settlement with the respondent No.5 was made behind the back of the petitioner and that the petitioner ought to have been given a chance to make afresh offer. The tender of the petitioner was rejected not on the ground of insufficiency of the offer but on the ground that there was no evidence to show that he was financially sound. In view of this position making an offer to the petitioner to increase his offer cannot arise.

11. Mr. Das, learned counsel for the respondent No. 5 has drawn our attention that prior to approaching this Court the petitioner filed a Civil Suit and also prayed for injunction. Mr. Choudhury has drawn our attention to the certificate copy of the order passed in the Civil Suit. By the aforesaid order the Civil Court dismissed the suit on withdrawal. Hence the contention of Mr. Das has no force.

12. From what has been stated above, we are of the opinion that this is not a fit case for exercising our writ jurisdiction.

In the result, the petition is dismissed and the Rule is discharged. Parties to bear their own costs.

S. P. Rajkhowa J. I agree.