
(2011) 07 GAU CK 0063
In the Gauhati High Court
Case No : WA No. 130 of 2011

Sapon Borah

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Assam Land Records Manual Rules — Rule 13, 8(3)

Citation : (2011) 6 GLR 468

Hon'ble Judges : Madan B. Lokur, C.J; Tinlianhang Vaiphei, J

Bench : Division Bench

Advocate : H.R.A. Choudhury, J. Islam and F.U. Barbhaya, for the Appellant; GA, Assam, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This writ appeal is directed against the order dated 15-11-2010 and the judgment dated 27-8-2010 passed by the learned Single Judge in Review Petition No. 97 of 2010 and W.P.(C) No. 3810 of 2010 respectively dismissing the review petition and the writ petition filed by the Appellant herein.

2. The facts giving rise to this appeal as pleaded by the Appellant may be noticed at the outset. The Director of Land Records, Assam granted a Certificate of Survey to the Appellant under Rule 13 of the Assam Land Records Manual ("Manual" for short) as he had apparently, in the course of extension survey, surveyed independently more than 500 bighas of cultivated lands. The case of the Appellant is that after obtaining this Certificate, he became eligible for the post of Mondals under Rule 8(3) of the Manual, which lays down, among others that, the qualification for that post is possession of a Certificate of Assam Survey School or a Certificate granted by the Director of Land Records under Rule 13 of the Manual. Thus, the Appellant considered himself to be qualified for the post. In the meantime, the Director of Land Records, Assam issued instructions to the Deputy Commissioners of different Districts to treat a Certificate of Survey issued under Rule 13 of the Manual to be one of the eligibility criteria of a candidate.

However, much to the consternation of the Appellant, the Joint Secretary to the Government of Assam, Revenue Department by his letter dated 29-8-2009 informed the Director of Land Records that the Government had regretted its inability to approve such proposal to treat a Certificate of Survey as a qualification for the post of Mondal and observed that such proposal was unwarranted. This letter had been purportedly issued in terms of the Government letter dated 2-4-2009. The net effect of the letter dated 29-8-2009 is that the Appellant found himself to be disqualified for the post. According to the Appellant, numerous posts of Mondals/Recorders are lying vacant in different Districts of Assam, which were being filled up by the Respondent authorities by issuing advertisements, but the Deputy Commissioners refused to accept the Certificate Survey issued under Rule 13 as the requisite qualification: this denied him the right to be considered for those posts. Challenging the impugned decision of the Respondent authorities, the Appellant filed the writ petition. As noticed earlier, the writ petition was dismissed by the learned Single Judge. The review petition filed by him on the ground of discovery of new evidence was also dismissed by the learned Single Judge. Both the orders of dismissal are under challenge in this appeal.

3. The case of the State-Respondents, as projected in their affidavit-in-opposition, is that in the present day context when there are already full-fledged Survey and Settlement Training Institute in the State with a number of trained Recorders, the provision of Rule 13 is no longer suitable: the rule itself states that such Certificates shall be given only in exceptional circumstances and when an adequate explanation for non-attendance at the Survey School is submitted. Besides, the modern methods of Survey Training and instruments as a result of advancement of technology is the demand of the day which a Recorder can gain only through a systematic course imparted in the Institute and not by undertaking survey works of only 500 bighas of cultivated lands. Hence, the Government in the Revenue Department taking into account all these aspects decided to delete Rule 8(3) concerning the said Certificate of Survey granted by the Director of Land Record & Survey and Rule 13 along with some other provisions which have no relevance in the present day from the Manual which came into being in the year 1906-07: the Revenue Department accordingly issued directions to the Director of Land Record and Survey, etc., Assam. These were the principal contentions of the State-Respondents. They, therefore, prayed for dismissal of the writ petition, which was devoid of merit.

4. The learned Single Judge had recorded the findings that as per the Notification dated 13-7-2007, a decision was taken in the Conference of Revenue Officers held on 25-4-2007 recommending the deletion of Rules 13 from the Assam Land Records Manual, which was duly considered by the State Level Committee and on its acceptance, the Government of Assam in the Revenue Department issued the aforesaid letter dated 29-8-2009 informing the Director of Land Records of its inability to accept the Certificate of Survey as the qualification for the post of Mondal/Recorder. The learned Single Judge held that the Assam Land Records

Manual, not being a statute but merely executive instructions, could be amended by subsequent executive instructions as was done now. From the aforesaid findings, the learned Single Judge came to the conclusion that there was thus no question of recognizing the Certificate of Survey granted under Rule 13 by the Director of Land Records as qualification for recruitment to the post of Mondal. This led to the dismissal of the writ petition. Undaunted, the Appellant promptly preferred Review Petition No. 97 of 2010 before the same learned Single Judge on the ground principally that de-recognition of the particular certificate obtained by the Petitioner and others could only have prospective effect and those who had already obtained such certificate could not be held ineligible to apply for the post of Mondal on the basis of the certificate obtained earlier. According to the Petitioner, the report of the State Level Committee, in fact, had never recommended for de-recognition of the Certificate of Survey already issued under Rule 13 and the recommendation was merely for not issuing fresh Certificates and that these vital facts could not be placed before the learned Single Judge at the time of hearing of the writ petition, which resulted in dismissal of the writ petition. According to the Appellant, this amounts to an error apparent on the face of record or is, at any rate, discovery of important facts warranting the review of the order dated 27-8-2010. The learned Single Judge was apparently not impressed with the contentions of the Appellant and held that if any advertisement was issued for the post of Mondal, the requisite qualification would have to be considered on the basis of the existing instructions and the qualification prescribed in the earlier instructions for which the Appellant was found to be qualified, on the coming into force of the new instructions, could no longer hold the field and accordingly dismissed the review petition.

5. It is the contention of Mr. H.R.A. Choudhury, the learned senior for the Appellant, that the question of de-recognition of the certificates already issued under Rule 13 of the Assam Land Records Manual was neither proposed by the Director of Land Records nor was such issue discussed in the meeting of the State Level Committee: the issue which came up for consideration in that meeting was whether a fresh certificate under Rule 13 was to be issued or not. The learned senior counsel, therefore, submits that the learned Single Judge did not properly apply his mind to the issue raised by the Appellant and has in the process come to an erroneous conclusion. He further contends that the Appellant was granted the certificate under Rule 13 in the year 2005 whereas the recommendation for deletion of the rule was made only in 2007 and, as such, such recommendation cannot have retrospective effect and cannot be applied to the case of the Appellant. He, therefore, contends that the learned Single Judge has misconceived the scope of the letter dated 2-4-2009

6. For better appreciation of the controversy, even at the risk of repetition, we reproduce below the relevant portion of the recommendation of the State Level Committee dated 29-4-2007:

8.1 Rule 13 of the Assam Land Records Manual states that -

The Director of Land Records may, on the recommendation of the Deputy Commissioner or Settlement Officer, grant survey certificate to uncertified men who in the course of extension survey have surveyed independently at least 500 bighas of cultivated land and whose work has been checked and found accurate by an officer not below the rank of a Su-Deputy Collector/Assistant Settlement Officer.

These certificates will be given in exceptional circumstances and when an adequate explanation for non-attendance at the Survey School is submitted. Ordinarily, all recorders should have passed through the Survey School. Recorders holding only the Survey Certificates given by the Director of Land Records should at the earliest be sent to the Survey School to the Refresher Course or less sufficient mandals:

Provided that during the re-settlement operation if sufficient number of trained recorders be not available, arrangement may be made with the Survey School authorities for six weeks training of suitable candidates will be given the necessary training in map revision and chitha writing and may later be recommended, if their work during settlement is found satisfactory and accurate, for Survey Certificate under this rule.

When a certificate has been lost or spoilt, the owner, if he requires a duplicate should apply to his District Officer or to the Settlement Officer if the district is under resettlement, sending with his application a sum of Re. 1. The District Office or the Settlement Officer will credit the fee to Government and forwarded the application, with a copy of receipted chalan, to the Director of Land Records, Assam for necessary action."

The Committee feels that this provision is no longer necessary, as there is no dearth of trained personnel for the Assam Survey & Settlement Training School. In fact, there are quite a huge number of recorders training course pass certificate holders waiting for employment. Moreover, most of the areas of Assam have already been surveyed for which the scope of individuals undertaking survey work independently without help and assistance from any other person has diminished to almost nil rendering the proviso redundant. Not only that, misuse of the proviso cannot be ruled out.

Accordingly, the Committee recommends for deletion of Rule 13 of the Assam Land records Manual.

7. Indisputably, no formal deletion of Rule (Clause?) 13 of Assam Land Records Manual has been made pursuant to the recommendation of the State Level Committee. Nevertheless, in the year 2009, the Director of Land Records & Survey, Assam wrote to the State Government stating that a large number of applications were received by him from Deputy Commissioners as well as Settlement Officers for granting Survey Certificates to candidates so that a number of posts of Mandal lying vacant could be filled up from such Certificate holders as well. The Principal Secretary, Revenue & Disaster Management

Department by his letter dated 2-4-2009 communicated to the Director of Land Records & Surveys that the Government expressed its regret for its inability to approve the proposal. However, the Director of Land Records & Survey by his letter dated 18-7-2009 proceeded to inform all the Deputy Commissioners of the State that the candidates who had obtained certificate under Rule 13 were also eligible for applying the posts of Mandals when the posts were being filled up by way of advertisement. This apparently prompted the State Government to inform the Director of Land Records & Survey through its Joint Secretary, Revenue & Disaster Management in the letter dated 29-8-2009 that his instruction to the Deputy Commissioners in respect of the advertisement for filling up of the vacant post of Mandal under Rule 13 as one of the eligibility criteria of candidates was not warranted. The letter referred to the earlier letter dated 2-4-2009. The learned Single Judge was of the view that it was in acceptance of the recommendation of the State Level Committee that the letter dated 29-8-2009 had been issued by which it disapproved the proposal of the Director of Land Records & Survey for filling up the post of Mandal from amongst the certificate holders under Rule 13 and that the provisions of Assam Land Records Manual being only executive instructions, it could be amended by issuing subsequent executive instructions. In other words, what the learned Single Judge held is that the Government decision contained in the letter dated 29-8-2009 had the effect of deleting Rule 13 from the Manual though no formal amendment was made thereto. In our opinion, the learned Single Judge was not wide of the mark in taking this view. The view taken by the learned Single Judge that if any advertisement is issued for the post of Mandal, the requisite qualification would have to be considered on the basis of the existing instructions, and it could not be said that the earlier qualification which the Appellant and others had obtained should hold the field, is a possible view and does not suffer from perversity.

8. Coming now to the second limb of contention of the learned senior counsel for the Appellant that the recommendation of the State Level Committee for deletion of Rule 13, assuming without admitting that the State Government has accepted it also, it cannot have retrospective effect and cannot have the effect of de-recognizing the Certificates already so granted, there is also no merit in this contention. As already observed by the learned Single Judge that the provisions of Assam Land Records Manual are merely executive instructions, no enforceable right to apply for the post of Mandal ever accrued to the Appellant when Certificate of Survey was granted to him under Rule 13. It is a settled law without reference to cases that non-statutory executive instructions such as Assam Land Records Manual do not confer an enforceable right on a person, or impose an obligation on the Administration or any person. This is the difference between a statutory provision and an executive instruction. Though Rule 13 has not been expressly deleted from the Manual, yet a conscious decision has already been taken by the State Government not to follow Rule 13 of the Manual as evident from the letter dated 2-4-2009 of Principal Secretary to the Government of Assam, Revenue & Disaster Management Department conveying the decision of

the State disapproving the proposal of the Director of Land Records and Surveys, Assam for allowing the candidature of the holders of Survey Certificate under Rule 13 for the post of Mondal. In our opinion, the letter dated 2-4-2009 has, by necessary implication, deleted the provision of Rule 13 from the Manual, and the absence of formal or express deletion will not preclude the State-Respondents from disqualifying the Petitioner for the post of Mondal as has been done now. No other substantial issue survives for consideration.

9. The off-shoot of the foregoing discussion is that there is no merit in this appeal, which is hereby dismissed. However, on the facts and in the circumstances of the case, the parties are directed to bear their respective costs.