(1984) 08 GAU CK 0007

In the Gauhati High Court

Case No : Civil Rule No. 491 of 1984

Shri Jitendra Nath Phukan APPELLANT

Vs

Shri Dulal Ch. Borthakur and Others RESPONDENT

Date of Decision : 08-08-1984

Acts Referred:
Assam Excise Rules, 1945 — Rule 234

Citation : (1984) 2 GLR 483

Hon'ble Judges : T. Nandakumar Singh, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : A. Sarma, for the Appellant; K.C. Das and P.K. Kalita, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, J.—There was a valiant effort made by Mr. A. Sarma, learned Counsel for the Petitioner, to convince us that injustice was caused to the Petitioner by the Assam Board of Revenue which had settled the S.S. shop in question with the Ist Respondent in breach of his fundamental right and of statutory rules.

2. Shri Shrimanta Pratim Barua had got settlement of the liquor shop and Respondent No. 1, Shri Dulal Ch. Borthakur, a co-tendered, preferred an appeal before the highest authority which deals with the settlement of liquor shops in Assam. We would observe that while making settlement of liquor shops the settling authority is required to consider various personal qualifications before settling a shop with a tendered. Admittedly, Shri Srimanta Pratim Barua had those qualifications. During the pendency of the appeal and upon the death of late Srimanta Pratim Barua, the appellate authority could set aside the order and would remit the matter to the settling authority. It has also power and jurisdiction to make settlement with any of the tenderers found most suitable. Instead of remitting the matter to the primary authority on just and sufficient grounds it held that Dulal Ch. Borthakur, Respondent No. 1, was competent qualified and eligible, to get settlement of liquor shop and made a direction

settling the same with him. In so far as the qualities, qualifications, capacity and capabilities of Respondent No. 1 are concerned, the present Petitioner has not questioned anything in this, writ application. Naturally so as he was neither a tendered nor a Respondent before, the appellate authority, The present Petitioner claims that he is a cousin of deceased Srimanta. Interestingly father of late Srimanta is not a Petitioner nor aggrieved by folder of the, learned Board of Revenue. The Petitioner contends that he has bad a right to get the settlement under the provisions of Rule 234 of the Assam Excise Rules 1945, as amended, framed under the Assam Excise Act 1910 and. that notwithstanding his right to contest the appeal the learned Board of Revenue did not hear his case and accordingly the impugned order is liable to be set aside. The following facts have not been, disputed before us by learned Counsel for the Petitioner.

1. That the Petitioner was not, a tenderer;

2. That the licence which was granted to deceased Srimanta was never transferred in favour of the Petitioner as required under Rule 234 of the Rules; and

3. What precise statutory right of the Petitioner was infringed by the learned Board of Revenue in not giving him a hearing in the appeal was not asserted or spelled out before the Board and indeed not before us either.

3. It is only the tenderers and/or license-holders who are competent to contest an appeal; others are incompetent and cancel be made parties. Mr. Sarma, learned Counsel for the Petitioner submits that the Petitioner had a statutory right conferred by Rule 234 of the Rules to contest the appeal. We extract the provisions of Rule 234:

Transfer of license on death of licensee- On the death of a licensee the Collector may with the previous sanction of the State Government renew the license for the remainder of the lease on the same term in favour of a representative of the deceased if he be satisfied that such representative is fit to bold it and on the condition that any arrears due from the deceased licensee are recovered before the license is so renewed. In such case no fresh deposit need be called for.

4. The Rule falls under the heading - "Grant of Licenses". It deals with the cases in which the licensee dies and a representative of the deceased satisfies the Collector that he is qualified to hold the license who may transfer the license of the deceased to the representative of the deceased with the previous sanction of the State Govt. As such, it is clear that when a license is granted to the settlement holder it continues in his name. on his death until it is transferred in accordance with provisions of Rule 234, no person including the representative of the deceased, can claim the right to be a licensee under the Act and the Rules. In the instant case the Petitioner completely failed to show that the State Govt. have granted any Sanction for transfer of the license to the Petitioner till the present day. The license which stood in toe mime of the deceased has not been transferred in the name of the Petitioner. Under these circumstances the

Petitioner cannot claim that he has stepped into the shoes of the deceased Srimanta and acquired the right to contest the appeal.

5. Mr. Sarma, learned Counsel for the Petitioner, is justified in making submission that on the death of a license an appeal against him does not abate automatically. He is also correct in his submission that a transferee of the license of the deceased license-holder who has stepped into the shoes of the deceased as contest all proceedings including the proceedings before the appellate authority. In the instant case, till the date of the disposal of the appeal and/or even till today, the license has not been transferred in favour of the Petitioner: Nor there is any sanction of the State Govt. or possibility of gening such sanction as the Petitioner''s case is not that the Collector has taken Steps to obtain such sanction? Further is the Petitioner a better representative of the deceased license-holder than his father? Person who ought to have been or should have been aggrieved is not aggrieved the father of the deceased license-holder. the Petitioner claims that he is a cousin and on the basis of tea relationship the Petitioner contends that he bad a right to contest the appeal. In the instant case the appellate authority was never informed by the Petitioner that there was possibility of the license being transferred in the name of the Petitioner within a reasonable period. Nor was there any application made by the Petitioner to the appellate authority to stay the proceedings in the appeal until the Petitioner got a firm order in his favour or against him under Rule 234 of the Rules. Situated thus, when there was no such application before the Board, the only alternative, rightly chosen by the appellate authority, was to hear and dispose of the appeal as early as possible and the Board did the same. There is no error of jurisdiction or lack of jurisdiction or illegality in exercise of the jurisdiction in my form whatever.

6. Under these circumstances when the Petitioner did not ask for stay of proceeding before the Appellant authority that he had made any application for transferring the license of the deceased licensee in his favour and/or there was possibility of re-transfer within a Short period, we find that in the instant case the Board of Revenue was justified in making the impugned order. Mr. A. Sarma, learned Counsel for the Petitioner, pointed out to us the application which was made to the Board of Revenue which is marked as Annexure-3. In the application the Petitioner had merely indicated that the Excise Commissioner had allowed him to run the liquor shop on the death of Srikanta. However, it is partially correct. There was no averment in the petition that the Petitioner had made any application for transfer of the, license under Rules 234 of the Rules. If the Petitioner would have made such an application the Board, in our opinion, ought to have stayed the proceedings enabling the Petitioner to obtain an order in his favour and on such re-transfer of the license the Petitioner would have every right to contest the appeal. However, in the instant case, during the pendency of the appeal no right by way of re-transfer of the license accrued in favour of the Petitioner. We are therefore, constrained to hold that the Board of Revenue did not cause any injustice to the Petitioner in hearing and disposing of the appeal in

accordance with law, However, one of the most strong points that has been urged by Mr. Sarma is that unfortunately the father of former license-holder, namely, Shri Surja Kanta Barua has been hard hit, economically and otherwise, by virtue of the settlement. No sooner it was said Mr. K.C. Das, learned Counsel for Respondent No. 1, Shri Dulal Ch. Borthakur, stood up and expressed that Respondent No. 1 shall pay and continue to pay a sum of Rs. 100/- p.m. from the month of August/84 untill the expiry of the term of the lease in March/87. Indeed, it is a nice gesture on the part of Respondent No. 1. In view of the offer made by Respondent No. 1. In Shri Dulal Chandra Barthakur, we direct that Respondent No. 1 shall have to pay a sum of Rs. 100/- from August, 1984 till March, 1987. While payment for Aug. 84 shall be made within this month, for the subsequent month it shall have to be made is the Ist week of every month. This direction shall from a part of this order and shall be binding on the parties.

7. In the result the petition is dismissed with the above observations.

