

---

**(1989) 03 GAU CK 0026**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 1088 of 1987**

Shri Sajal Dutta

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

---

**Date of Decision :** 31-03-1989

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1990) 1 GLR 356

**Hon'ble Judges :** S.K. Homchaudhuri, J;S. Haque, J

**Bench :** Division Bench

**Advocate :** B.K. Goswami and R.L. Yadav, for the Appellant; K.C. Das and P.K. Kalita, for the Respondent

**Final Decision :** Allowed

---

## Judgement

S.K. Homchaudhuri, J.—This is a 3rd approach by the Petitioner in this Court invoking jurisdiction under Article 226 of the Constitution of India in respect of settlement of Silchar Country Spirit Shop No. 1 for the period from 1987-1990 expiring on 31.3.90. On the basis of selection by the Advisory Committee, the Deputy Commissioner, Cachar the Settling Authority, by order dated 20.3.1987 settled the Silchar C.S. Shop No. 1 with the Petitioner for the period from 1.5.87 to 31.3.90.

2. The Respondent No. 4, who was the settlement holder of the C.S. Shop of the previous term also filed the tender. Being unsuccessful to get the settlement of the shop, Respondent No. 4, preferred an appeal under the learned Assam Board of Revenue, Gauhati and the appeal was registered as Case No. 42(E)(C)/87. On the prayer for interim stay of the settlement order pending disposal of the appeal the learned Board by the exparte order dated 25.4.1987 stayed the settlement order and directed that the shop should be ran departmentally by official vendor and that none of the beneficiaries arising out of the decision of the Advisory Committee shall be considered for engagement of official vendor. The Petitioner impugned the exparte stay order dated 25.4.1987 passed by the learned Board

of Revenue in this Court in Civil Rule No. 447/87. The Respondent No. 4 also filed Caveat in this Court. This Court, after hearing both the parties by the order dated 25.5.87 quashed the order of stay dt. 25.4.87 and remanded the case to the Board of Revenue with a direction to dispose of the said stay application within a specified period. By order dated 17.6.87, the Board directed that the liquor shop in question might be run departmentally. The learned Board of Revenue after bearing the parties by appellate judgment and order dated 31.8.87, set aside the order of settlement passed in favour of the Petitioner and settled the shop in question in favour of the Respondent No. 4. Being aggrieved, the Petitioner impugned the said appellate order in Civil Rule No. 849/87. The Respondent No. 4 filed Caveat in this Court. This Court after hearing the parties set aside the appellate judgment dt. 31.8.87 and remanded the appeal for disposal in accordance with law. In the said writ petition, Petitioner's grievance was that on the date of hearing some documents, namely, a letter of Inspector of School, Silchar dated 1.8.1987 was filed in which it was stated that the Petitioner appeared in the last H.S.L.C. Examination of 1987, but could not pass the said examination and that the learned Board passed the appellate judgment placing reliance on the said letter. The Petitioner did not have any opportunity to controvert the allegations that he was a student at the time of settlement of the shop, although in fact he was not a student of any school/institution at the material time. This Court in the judgment passed in Civil Rule No. 849/87 specifically directed that the appeal should be disposed of preferably within 15 days after giving fresh opportunity to the Petitioner to adduce fresh evidence. After remand, the Petitioner submitted the mark-sheet he secured in the H.S.L.C. Examination of 1987 wherein it was clearly stated that the Petitioner appeared as a private candidate. Mark Sheet was submitted with an application supported by an affidavit wherein it was specifically stated that while the Petitioner was a student of Class-VIII, he could not continue his studies, and gave up studies in the school in 1980 and that in the year, 1987 he appeared in H.S.L.C. Examination as a private candidate.

3. After remand the appeal was again heard on 28.9.87. On the date of bearing, an application was filed on behalf of the Petitioner stating that due to flood in the district of Cachar, Petitioner was unable to move and submit the Bank Pass Book in support of his financial soundness on the date of settlement of the shop and prayed for adjournment but the appeal was heard by the learned Board and judgment was reserved. After the flood receded the Petitioner came to Gauhati and before the delivery of judgment, submitted the Bank Pass-Book with an application on 9.10.88 before the learned Board and served a copy to the counsel for the Appellant. The judgment was delivered on 12.10.87 and the Learned Board by the impugned judgment dated 12.10.87 set aside the settlement order in favour of the Petitioner and settled the liquor shop in question in favour of the Respondent No. 4. Being aggrieved, by the appellate impugned judgment dated 12.10.87, Petitioner has approached this Court in the instant writ petition for issue of an appropriate writ or direction.

4. Mr. B.K. Goswami, learned Counsel for the Petitioner has submitted that the impugned judgment dated 12.10.87 is nothing but exact copy of the earlier appellate judgment dated 31.3.87 passed by it in all material aspect of the appeal, inasmuch as, (i) the learned Board in the impugned judgment mechanically dealt with the identical submissions and gave the identical finding word for word as these were given in the judgment passed earlier on 31.3.37, (ii) on the basis of finding the learned Board has given the identical decision word for word, as was given in the earlier judgment dated 31.3.87 and (iii) the learned Board by the identical operative order set aside the settlement of the shop in favour of the Petitioner and settled the shop in question in favour of Respondent No. 4. On perusal of the impugned judgment, we find the contention of the learned Counsel for the Petitioner as correct.

5. The learned Counsel has submitted that the finding of the learned Board that it was being conclusively established that the Petitioner was a student at the time of making tender as well as the time of settlement is erroneous and perverse, inasmuch as, the learned Board wholly ignored the contention of the Petitioner that when he was reading in Class VIII in the year 1980 he gave up studies and that in H.S.L.C. Examination of 1987 he appeared as private candidate which was clearly established by the mark sheet he submitted before the Board, after the opportunity was afforded to him by the judgment of the Court On the finding of the Board that the Petitioner did not put his signature after tender was accepted, the learned Counsel has submitted that the finding is arbitrary inasmuch as on comparison of the signature on the bid book with other signatures of the Petitioner, it cannot be said that the signatures of the bid book is not the signature of the Petitioner. A, regards the non-submission of pass book and other authentic proof of financial soundness the learned Counsel has submitted that the Petitioner had given a cogent reason for his inability to submit the pass book on the date of bearing of the appeal, namely, due to flood in the district of Cachar, the communication between Cachar and Gauhati was snapped. Besides, the Petitioner also filed pass book with an application with notice to the Appellant before delivery of judgment by the learned Board with the prayer that if necessary learned Board might be pleased to hear the parties in respect of the pass book.

6. Mr. K.C. Das, learned Counsel for the Respondent No. 4 has submitted that the Petitioner had no locus standi to file the writ petition inasmuch as he having not signed the bid book, there is no settlement in the eye of law in his favour. Learned Counsel has further submitted that the settling authority arbitrarily and illegally denied the settlement of the shop in favour of the Respondent No. 4 on the ground that conduct of his client in running the shop during previous settlement period was not satisfactory, inasmuch as, without giving opportunity to meet the allegation, the settling authority ought not to have acted upon the said allegations, Another submission of learned Counsel for the Respondent No. 4 is that even if the Petitioner appeared in the H.S.L.C. Examination as a private candidate, he ought to be regarded as a student. As such, learned Board rightly

held that, being a student the Petitioner was not entitled for settlement.

7. On the question whether the settling authority could deny settlement to Respondent No. 4 on the basis of some allegation without giving him the opportunity to meet the allegation, Mr. B.K. Goswami, learned Counsel for the Petitioner has drawn our attention to the decision of the Apex Court in the case of Bishnu Ram Borah and Another Vs. Parag Saikia and Others, wherein the Hon"ble Supreme Court held:

...the Deputy Commissioner is the head of the administration of the district and is conversant with the local situation and has secret sources of information. Normally the Board is entitled to rely upon the word of the Deputy Commissioner. It is expected that the Deputy Commissions would always act with a sense of responsibility. Secondly, the report of the Deputy Commissioner was confidential in nature. There was no question of the Board disclosing the contents of the report to Respondents Nos. 1 and 2. Futher, Respondents Nos. 1 and 2 never made a demand for a copy of the report, and even if such a request was made, the Board would have been fully justified in not furnishing the same. Such a refusal would not amount to denial of natural justice for the obvious reason that the rules of natural justice must necessarily vary with the nature of the right and the attendant circumstances. The grant of a liquor licence was not a matter of right but merely in the nature of privilege.

8. Relying on the aforesaid observation of the Apex Court learned Counsel for the Petitioner has submitted that it was not necessary for the Deputy Commissioner or the District Authorities, as the case may be to give reasonable opportunity to the Petitioner against the allegations as disclosed from the confidential report. The Deputy Commissioner on receipt of the confidential report was satisfied that Respondent No. 4 was not a desirable person for getting settlement of the country spirit shop and that Rule 211 of the Excise Rules empowers the Deputy Commissioner to refuse settlement of country spirit shop to undesirable person. We find much force in the submission of the learned Counsel for the Petitioner.

9. We have considered the submission made on behalf of the Petitioner as well as on behalf of the Respondent No. 4. We have also perused the impugned judgment and the materials on records. We find that although by the judgment dated 3.9.87 passed in Civil Rule No. 849/87, this Court directed that the learned Board would give opportunity to the Petitioner to adduce fresh evidence and to dispose of the appeal on consideration of the evidence, however, it appears that the learned Board has not at all consider the fresh evidence adduced by the Petitioner to rebut the allegation that he was a regular student because be, appeared in the H.S.L.C. Examination in 1987. It is very unfortunate that the learned Board did not apply its mind to the judgment dated 3.9.87 passed in Civil Rule No. 849 of 1987, and ignored the direction of this Court. We hold that non-consideration of the mark sheet and the application of the Petitioner has vitiated the decision of the Board. The contention of the learned Counsel for the Respondent No. 4 is that even if the Petitioner appeared as a private candidate in

the H.S.L.C. Examination of 1987 be should be deemed to be a student, is not tenable. We are of the opinion that if a person is not a student of any institution but simply appears in an examination of the Board or University as a private candidate, he cannot be regarded as a student for disentitling him to get settlement of a country spirit shop. We also hold that the Petitioner having given cogent reason for his inability to produce the Bank Pass Book on the date of hearing, the learned. Board, for the interest of justice ought to have considered the pass book which was submitted before delivery of judgment and non-consideration of the pass book has caused failure of justice.

On the question as to whether the signature on the bid book is that of the Petitioner or not, on comparison of the signature on the bid book with other signatures of the Petitioner, we are inclined to hold that it cannot be said with certainty that signature on the bid book is not of Petitioner's signature.

10. For the aforesaid reasons, we hold that the impugned judgment and order passed by the learned Board cannot be sustained in law and the same is liable to be set aside. The impugned appellate judgment dated 12.10.87 passed by the learned Board is therefore set aside.

11. Having set aside the impugned judgment and order normally we would have remanded the appeal to the learned Board for disposal thereof in accordance with law by taking into consideration the evidence adduced by the Petitioner which the learned Board did not at all consider in the impugned judgment. But in the instant case the settlement period will come to an end on 31.3.90 and, moreover, the Petitioner has approached this Court for the third time in writ petition invoking jurisdiction of this Court on the question of settlement against the order passed by the Board. The object of Article 226 of the Constitution is to provide expeditious remedy to the aggrieved party. In case the appeal is again remanded to the learned Board for a decision the very purpose of approaching this Court in writ petition for the third time would be frustrated, inasmuch as, the period of settlement will come to an end and the entire exercise on the part of the Petitioner would be futile. Hon'ble Supreme Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, was pleased to hold that in a petition under Article 226 of the Constitution, the High Court has jurisdiction to try issues both of fact and law. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition. In the instant case for coming to the decision we are required to consider (1) whether the Petitioner was merely a private candidate in the H.S.L.C. Examination or as a regular student at the time of settlement, (2) whether it can be ascertained that the settling authority had materials before it that the Petitioner was financially sound.

12. We find that soon after the remand of the appeal by the judgment dated 3.9.87, in Civil Rule No. 849/87 the Petitioner submitted an application in

support of the affidavit stating that he ceased to be a student in the year, 1980. However, he appeared in the H.S.L.C Examination purely as a private candidate in 1987. The mark sheet clearly indicates that the Petitioner was a private candidate in the H.S.L.C. Examination. This statement has not been controverted or denied by the Respondent No. 4 and, as such, we hold that the Petitioner was not a student of any institution at the time of filing the tender and, as such, he was eligible for getting the settlement of the shop.

13. As regards the financial soundness, we have perused the pass book of Saving Bank Account No. 721 in the Purbanchal Bank in the name of the Petitioner. It is clear from the entry of the pass book that there was materials before the settling authority to be satisfied that Petitioner was financially sound at the time of granting settlement of the shop. That being so, having set aside the impugned appellate judgment dated 12.10.87. We restore the settlement order dated 20.3.87 passed by the learned Deputy Commissioner, settling the C.S. Shop No. 1 in favour of the Petitioner and direct the Deputy Commissioner, Cachar, Silchar to take steps within 10 days from today for giving effect to the settlement order of the shop passed in in favour of the Petitioner.

14. The petition is allowed. The Rule is made absolute. We make no order as to costs.