(1991) 12 GAU CK 0018

In the Gauhati High Court

Case No : Civil Rule No. 385 of 1985

Single (India) Tea Company Ltd. APPELLANT

Vs

State of Assam & Ors. RESPONDENT

Date of Decision : 10-12-1991

Acts Referred:

Citation : (1993) GLR 379 Supp

Hon'ble Judges : U.L.Bhat, C.J. and S.Barman Roy, J

Bench : Division Bench

Advocate : B.P.Chaliha, C.Baruah, P.C.Gayan, Advocates appearing for Parties

Judgement

U.L. Bhat, C.J.—Four tea companies in Assam have filed this petition under Article 226 of the Constitution of India challenging tender notices published by Charaideo Mahkuma Parishad proposing to settle certain hats and marketplaces on successful tenderers. On behalf of the Parishad Chief Administrator has sworn to counter affidavits. Petitioners have filed reply affidavits.

2. The common contention of the petitioners is that the market places or hats proposed to be settled under (he impugned tender notices belong to the respective petitioners as part of tea garden area, that the hats were established by the petitioners for the benefit of their employees, that in these private hats of petitioners in the tea company areas Mahkuma Parishad has no right or any sort and Mahkuma Parishad can not validly seek to settle these hats by tender or otherwise. The short answer of the Parishad is that after Assam Panchayati Raj Act, 1972 was amended by Assam Act 11/77 bringing the tea companies areas also within the jurisdiction of Gaon Panchayats or Mahkuma Parishads, all hats or market places within tea Company areas are to be settled by Parishads and not by the Companies.

3. As Section 1(2) of the Assam Panchayati Raj Act, 1972 (for short the Act) that originally stood, the Act extended to villages of the State subject to the specific exceptions indicated therein. By the amending Act 11 of 77 Section 1 (2) of the

Act was amended to state "It applies to all the villages and the tea garden areas in the whole of the State of Assam " There should therefore be no doubt after the enactment of Act 11 of 1977 Gaon Panchayats and Mahkuma Parishads have jurisdiction over tea garden areas also.

4. Learned counsel representing Parishad relies on Section 70 of the Act. SubSection (1) of Section 70 states, inter alia, "all hats within the jurisdiction of a Mahkuma Parishad shall be settled in a manner for a period of one year by inviting tenders at the office of......". It is argued that by virtue of this provision Mahkuma Parishads have the right to settle all hats within their respective jurisdictions whether the hats are private or public. The words "all hats" can have wide or narrow connotation. They can be understood as all hats whether private or public or they can be understood as meaning those hats which vest in Mahkuma Parishads. Whether one or the other interpretation is to be given is the aspect to be considered.

5. Section 68 of the Act declares the power of Gaon Panchayat to impose taxes and fees as indicated therein. Clause (a) of Subsection (1) of Section 68 gives statutory power to impose "tax on private hats or market places". This would clearly indicate mat the legislature was conscious that hats are of two kinds, namely, private hats and public hats. So far as public hats are concerned, legislature has enacted 1 provision for settlement. Regarding private hats legislature has taken care to provide an arrangement for imposition of tax. This is further elaborated in Section 77 of the Act.

6. Title of the Section 77 of the Act is "power of Gaon Panchayat to prohibit use of unlicensed that" SubSection (1) of Section 77 reads as follows:".... the Gaon 1 Panchayat may issue an order that within its jurisdiction no land other than the land used as hat established by or vested in the Mahkuma Parishad or Gaon Panchayat shall be used as hats without obtaining a licence from the Gaon Panchayat. (emphasis supplied.) SubSection (2) contemplates the imposition of a tax for using such land as hat. Gaon Panchayat is given power to cancel/suspend me licences so granted. Under SubSection 7 the owner or occupier of any land using or permitting user of land as a hat without a licence renders himself liable to a fine,

7. It appears to us that the provisions of Section 70 can not be read in isolation since they form part of a scheme covered by a part of Section 68, Section 70 and Section 77 and other related provisions and therefore the provisions of Section 70 I have to be understood in this setting.

8. From reading of Section 68 and Section 77 it is manifest that the legislature contemplated two kinds of hats with reference to which Mahkuma Parishad or Gaon Panchayat have a role to play, namely private hats and nonprivate hats. Nonprivate or public hats are those which attract the provisions of Section 70 whereby, Mahkuma Parishads are granted the right to settle by tender process for a period of one year. Section 77 appears to be the provision relating to

private hats, that is, hats not established by or vested in Mahkuma Parishads. If a hat is established by Mahkuma Parishad Gaon Panchayat has no right to derMnd tax or fee from the Parishad. In the case of private hat, that is, hat not established by or not vested in Mahkuma Parishad or Gaon Panchayat according to Section 77, Gaon Panchayat may in proper cases issue an order that no such private land shall be used as hats without obtaining licences from the Gaon Panchayat. In such a case, tax can be imposed. This would make it clear that when an individual desires to establish a hat in private land, if Section 77 (1) has been invoked by the Panchayat requiring taking out a licence from the Gaon Panchayat, the individual has to obtain licence I and pay the tax prescribed therefore. It is for the individual to decide in what manner that hat should be operated. He is the owner of the hat and the hat is at his disposal, subject to the condition that he obtains a licence and pays the prescribed tax. It does not stand to reason that in the case of such a private hat for which a private individual is required to obtain a licence and pay tax, the Mahkuma Parishad, can step in and settle it by tender or otherwise and collect revenue. The revenue must belong to the private individual who establishes the hat. It. must necessarily follow that the words "all hats" used in Subsection (1) of Section 70 must receive a narrow construction namely "all hats" which are established by or vest in Malikuma Parishad. We agree with the contention of the petitioner that the Mahkuma Parishad can not validly seek to settle private hats belonging to petitioners.

9. The periods of the tender notices impugned in this writ petitions have expired. We are told that for the next year similar tender notices were issued and writ petitions have been filed in this court. Hence we thought it necessary to refrain from disposing the writ petition, as in fructuous and to decide the controversy between the parties. The writ petitions are accordingly allowed but in the circumstances without costs.

10. If under orders of this court petitioners have deposited any amount with the Registry the same may be refunded to the respective petitioners.