(1981) 02 GAU CK 0001

In the Gauhati High Court

Case No : Civil Rule No. 558 of 1980

Sri. Radha Mohan Teli	APPELLANT
Vs	
The State of Assam and Others	RESPONDENT

Date of Decision : 11-02-1981

Acts Referred:

- Assam Excise Act, 1910 — Section 9(1)
- Assam Excise Rules, 1945 — Rule 208, 339
- Constitution of India, 1950 — Article 226
- Evidence Act, 1872 — Section 8

Citation : (1981) 1 GLR 115

Hon'ble Judges : N.I. Singh, J;B.E. Hansaria, J

Bench : Division Bench

Advocate : C.R. Dey, P.K. Goswami and B. Banerjee, for the Appellant; J.P. Bhattacharjee, B.K. Goswami and N.S. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

N.I. Singh, J.—This petition under Article 226 of the Constitution arises out of the order dated 23.9.80 of the Assam Board of Revenue u/s 9(1) of the Assam Excise Act read with Rule 339 of the Assam Excise Rules, by which the order of the Deputy Commissioner, Dibrugarh, settling the Dikon Country spirit shop No. 8 with the Respondent No. 3, Sri Sobha Rum phulkonwar, for the period from 1.4.80 to 31.3.81 was upheld, rejecting the appeal of the Petitioner.

2. Tenders were invited by the Petitioner. Deputy Commissioner, Dibrugharh, for settlement of the said shop for the period from 1.4.80 to 31.3.81 by a notice dated 7.2.80; and in response to the notice, Petitioner, and Respondent No. 3, submitted their tenders. The Deputy Commissioner, Dibrugarh on the advice of the Advisory Committee Constituted under Rule 208 of the Assam Excise Rules, by an order dated 29.2.80, settled the said shop with the Respondent No. 3 for the aforesaid period, The Petitioner, Radha Mohan Tell, preferred an appeal u/s 9(1) read with Rule 339 of tile Assam Excise Rules before the Assam Board of Revenue, The Board dismissed the appeal. Hence, the present petition under

Article 226 of the Constitution of India.

3. Learned Counsel for the Petitioner submits first that the Deputy Commissioner, who is the primary authority, by a non-speaking order, rejected the tender of the Petitioner, and as such, the order was not legally sustainable in law. This point was also urged before the Board of Revenue, but was rejected, The Board itself examined the merits of the Petitioner and recorded a finding against him which is under challenge in the present proceeding. It is settled by the Supreme Court in the case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, that the powers of the appellate authorities in the matter of settlement are co-extensive with the powers of the primary authorities. That being the legal position, though non-speaking order was passed by the primary authority, as the Board had itself examined the inter-se-merits of the tenders and recorded finding, the contention of the learned Counsel for the Petitioner has no substance.

4. Learned Counsel next submits that the finding of the Board is perverse, because (a) it took into account extraneous matters, viz. money transactions, withdrawals and deposits in his Bank Account No. 7924 opened with the Assam Co-operative Apex Bank Ltd., Dibrugarh branch, which are subsequent to the date of settlement; (b) affidavit of the father sworn on 13.2.80 was not taken into consideration treating it to be defective illegally.

5. Learned Counsel for the Respondent No. 3 counters the contentions above and submits that the finding of the Board is purely a finding of fact based on the materials before it. It is urged that while on facts the order of the Board may not be impeacable, this Court under Article 226 of the Constitution of India cannot interfere with such finding. In support of his contention, reliance is placed on the decision of the Supreme Court in Mukunda Bore Vs. Bangshidhar Buragohain and Others,

6. In our opinion, there is no ground to interfere with the order impugned herein in the extraordinary jurisdiction under Article 226 of the Constitution of India. The Board came to the finding on a consideration of the following circumstances, namely, (I) sudden deposit of a big amount of Rs. 15.000/- in case on 13.2.80 i.e. on the eve of submission of tenders, without any explanation as to the source; (II) there is no mention in the affidavit of the father of the Petitioner sworn on 13.2.80 that the said money was paid by him to his son; (III) affidavit of the father was held to be defective as the identification of the father was made on 12.2.80 when the affidavit was sworn on 13.2.80; (IV) In the Pass Book produced by the Petitioner there appeared withdrawals of Rs. 5,000/- and Rs. 7,000/- on 20.6.80 and 12.8.80 respectively and deposits of Rs. 1,500/- and Rs. 12,000/-on 20.9.80 and 4.9.80 respectively, These entries were not explained, nor was the Pass Book of the father produced.

7. Learned Counsel for the Petitioner vehemently urges that the money transactions as shown in the entries of his Pass, book subsequent to the date of

settlement on 29.2.80 have no material bearing on the financial solvency; and as such, he was not bound to explain the same. It appears that the Board had not accepted the contention and took into consideration the said entries as one of the pieces of circumstantial evidence to test the financial solvency of the Petitioner.

8. In our view, the entries are relevant u/s 8 of the Evidence Act as showing the subsequent conduct and reflecting the financial position of the Petitioner; and non-explanation of these entries speaks a volume against the Petitioner. The Petitioner did not produce the Pass Book of the father even at the time of the hearing before the Board, though he was aware that his financial soundness was challenged. In view of the information furnished in column No. 11 of his tender that his father had undertaken to finance him in the business, the financial soundness of his father was much relevant; and it was, there fore, necessary on the part of the Petitioner to satisfy the soundness of the financier who would assist him in his business as HELD by the Board. The view of the Board as such, cannot be considered to be based on mere surmise or conjecture.

9. In regard to the grievance of the Petitioner that the affidavit of the father was not defective, we find that though it was taken to be defective, the Board did not leave it out of consideration. It held that in the affidavit there was no mention that any money was paid by him to his son. The affidavit dated 13.2.80 which was before the Board simply stated that be assured his son that he would give his son financial assistance to the extent of Rs. 20.000/- in case his son succeeds in his attempt to take settlement of a country spirit shop within Dibrugarh Sub-Division for the year 1980-81. On the face of such an affidavit, the Board had rightly held that the affidavit was of no value, irrespective of the question of being defective or not.

10. In our opinion, the Board had rightly reached the conclusion of the consideration of the relevant materials before it that the finance shown by the Petitioner was suspicious and could not be accepted as genuine and" satisfactory and that the Petitioner did not possess the financial capacity to run the shop. Such a finding cannot be said to be based on no evidence or purely surmise or conjecture. There is no error apparent on the face of the record, nor is there any jurisdictional error.

11. That apart, the terms of the settlement will expire shortly on 31.3.81, and even if the Board has committed some irregularities or failed to discuss all the evidence, as a sound practice, we are reluctant to disturb the settlement in exercise of special jurisdiction under Article 226 of the Constitution of India, Similar view was taken by the Supreme Court in Mukunda Bore (supra).

12. In view of the forgoing discussion, the Petitioner which is without merits is dismissed, There will no order as to costs.

