
(1990) 06 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 1551 of 1989 analogous with Civil Rule No. 1695 of 1989

Sri Rongkehai Hanse

APPELLANT

Vs

Karbi Anglong District Council, Diphu and Others

RESPONDENT

Date of Decision : 20-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 Guw 18

Hon'ble Judges : Manisana, J;M. Sharma, J

Bench : Division Bench

Advocate : B.K. Goswami and R.L. Yadav, for the Appellant; H. Roy, Standing Counsel, karbi Anglong District Council, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—The Civil Rules Nos. 1551 of 1989 and 1695 of 1989 can be disposed of by a common judgment.

2. The case of the petitioner, in brief, is thus. He filed an application before the Chief Executive Member of the Karbi Anglong District Council, "Council" for short, for settlement of a Green Wood Coupe. The Council settled Hembari Green Wood Coupe No. 3 of 1988-89 with him under letter dated 8-6-88. On the direction of the Divisional Forest Officer under his letter dated 24-1-89, the petitioner deposited the security money of Rs. 8,495/- and first kist money of Rupees 42,489/- within the stipulated time. Thereafter, on 25-1-89, the petitioner entered into a contract with respondent-3, the Principal Secretary of the Council, for operation of the forest. In spite of the deposit of security and kist money, the respondents have not issued the work order to enable the petitioner to operate the coupe. The petitioner has, therefore, filed Civil Rule No. 1551 of 1989 in this Court for a direction to allow the petitioner to operate the Green Wood Coupe No. 3 of 1988-89.

While the writ petition was pending, the settlement of the forest coupe with the

petitioner has been cancelled, vide, letter dated 23-9-89 of the Secretary, Executive Committee of the Council. The grounds for cancellation are as follows. The settlement was made without following any procedure, and without ascertaining the availability of the matured trees in the coupe in question. Many a complaint has been received from the public that the general public do not get any opportunity to compete in the process of settlement as it was not sold by auction. The Range Forest Officer at Silonijan by his letter dated 24-1-89 informed that there is no area in Kalapahar for operation of the coupe as settled with the petitioner. The agreement has not been executed for operation of the coupe. In compliance with the Government letter dated 30-3-84 from the Special Secretary to the Government of Assam, the coupe under reference was to be put to sale by notification. In the letter it is also mentioned that the petitioner shall be informed about the proposed public sale and the Council shall take into consideration the case of the petitioner as he has incurred some loss.

3. The case of the respondents, in short, is that from the report dated 24-1-89 of the Range Officer, Silonijan, it appears that there was no area in Kalapahar for settlement of a coupe. Pre-marking of trees available for settlement was not done before the issuance of the notice dated 8-6-88 for settling the coupe with the petitioner. The settlement order was issued by the Council in violation of the provisions of the Assam Sale of Forest Produce, Coupes and Mahals Rules, 1977, "Rules" for short. The settlement was not made by inviting tender or by public auction. If the settlement on the basis of the said letter was permitted to be made there would be a loss of about Rs. 5.00 lac. No tree was available for settlement of a coupe in Kalapahar area and as such the letter dated 8-6-88 has not been executed for enforcement of a lease. It would not have been in public interest to settle the coupe in terms of the letter dated 8-6-88. The decision to cancel the settlement was taken by the Council, but not by the Secretary.

4. Mr. B. K. Goswami, the learned Counsel for the petitioner, has contended that the Secretary, Executive Committee had no jurisdiction to cancel the settlement. As already stated, it is stated in the affidavit that the decision for cancellation of the settlement was taken by the Council, and the Secretary of the Executive Committee of the District Council only communicated the decision or order. That being the position, the contention of Mr. Goswami cannot be accepted.

5. The next contention of Mr. Goswami is that, the decision for cancellation of the settlement, no notice to show cause as to why the settlement should not be cancelled was issued, and therefore the principle of natural justice was violated.

The basic concept of principle of natural justice is fair play in action (Administrative, Judicial or quasi-judicial) and to prevent miscarriage of justice. But, it is not possible to lay down rigid rules as to when the principles of natural justice are to apply. It depends upon the facts and circumstances of each particular case. The facts and circumstances and the entire course of events have to be taken into account from initiation of the proposal to the taking of final decision when examining the decision and the reasons for the action.

Under Rule 3 of the Rules, the forest produce shall be sold by any of the following methods: (i) by inviting tender; (ii) by public auction; and (iii) by negotiation, direct by the Government or on behalf of the Government of Assam in the forest department or any manner as decided by the Government on its own discretion, The Government of Assam also directed to sell a coupe by a notification as per provisions of law. The settlement was not made by inviting tender nor by public auction nor under clause (iii) of Rule 3. That apart, it is settled that the disposal of the State property must be by such method as would afford an opportunity to the public at large to participate in it. The Government is not free like ordinary individual in selecting recipient for its largesse.

As already stated, the settlement of the coupe in question was not made by inviting tender nor by public auction. The Council required to afford an opportunity to the public at large to participate in the sale of coupe. The Council had not done so, and the Council realised the mistake after the issue of the letter dated 8-6-88 for the settlement of the coupe with the petitioner. In such a situation, the cancellation was in the interest of public. It is true that the rules of natural justice should not be jettisoned save in very exceptional circumstances. The public interest is one of the exceptional circumstances. Therefore, the case where the public interest is involved in, the limitation imposed by the principles of natural justice shall not operate. That apart, the petitioner is seeking to enforce through these writ petitions his right to operate the lease or settlement under the agreement dated 25-1-89. Mr. Goswami has addressed to us that the petitioner was entitled to an opportunity to show cause against the cancellation of the settlement. Rules of natural justice are attached to the performance of certain functions regulated by statutes and rules made thereunder involving decisions affecting the rights of parties. But the petitioner has failed to prove any breach of the statutory provisions. From this point of view also the principles of natural justice shall not be applicable (see Radhakrishna Agarwal and Others Vs. State of Bihar and Others,

6. Mr. Goswami has further contended that the order of cancellation was vitiated by mala fides. We have already concluded that the cancellation was in the interest of public, and therefore the question of mala fides does not arise.

7. In view of our conclusions above, Civil Rule No. 1551 of 1989 has become infructuous and Civil Rule No. 1695 of 1989 is to be dismissed. Accordingly, the petitions are dismissed. Stay orders, if any, stand vacated. No costs.

M. Sharma, J.

8. I agree.