

(1981) 09 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 80 and 608

Sri Sureswar Mazumdar

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 02-09-1981

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21, 21(2),
21(3), 21(4), 25
Constitution of India, 1950 — Article 226

Citation : (1982) 1 GLR 399

Hon'ble Judges : T.C. Das, J

Bench : Single Bench

Advocate : S.N. Bhuyan and B. Agarwalla, for the Appellant; P.P. Prasad, for the Respondent

Judgement

T.C. Das, J.—The dispute raised by the Petitioner in this writ Petition under Article 226 of the Constitution of India relates to the validity of an order dated 25.9.80 (Annexure-G to the Petition) passed by the Government of Assam in rejecting the application of the Petitioner praying for extension of the term in accordance with Rule 25 of "The Assam Sale of Forest Produce, (SIC) and Mahals Rules, 1977 for short "the Rules". The validity of the order has been challenged mainly on the ground of non-compliance of the provisions of Rule 21 of the Rules by narrating some facts which I shall set out afterwards. In order to understand and appreciate the ground of attack as alleged, it is necessary to state briefly the circumstances under which the impugned order was passed by the Government.

2. The Petitioner, in pursuance of the sale notice dated 23.1.78 inviting tenders by the Divisional Forest Officer, Goalpara. Forest Division for sale of stone quarry of Goalpara Forest Division for the period from 1.5.78 to 31.10.79, submitted his tender seeking settlement of Chaprakata stone quarry. Subsequently, on scrutiny of the tender, Chaprakata stone quarry was sealed with settled with the Petitioner for extraction of stone the quantity of which was 5000 cm., and the value of which was fixed at Rs. 1,37,000/-. After completing the necessary

formalities, an agreement was executed containing the terms and contains as to the operation of the Mahal for extracting stone. The period of settlement was for a year and a-half as per sale notice But as there was delay in communicating the final order of settlement the Government by its order No. FRS. 572/78/41 dated 30.12.78, allowed the Petitioner full two years working period in the Mahal by re-fixing the same from 1.10.78 to 30.9.80 instead of 1.8.78 to 31.10.79, as advertised earlier in the sale notice. Thereafter, the Divisional Forest Officer, Goalpara, by his letter dated 6.6.79 informed the Petitioner about the fixation of Kist money realizable in 8 (eight) equal installments on different dates as mentioned in the said letter, each Kist was assessed at Rs. 17,125/-. The quantity of stone allowed to be extracted and or to be removed was fixed at 625 cm. of stone per Kist against payment of an amount of Rs. 17,125,00. The Petitioner was to deposit the above Kist money on respective dates to cover up eight kists for extraction of stone for the total quantity of 5000 cm. The Petitioner extracted and could remove only 1315 cm. of stone within the aforesaid period though the Petitioner paid the value for 3750 cm. of stone in six equal installments The Petitioner has stated in his Petition that during relevant period, he could not continue properly with the work of extraction of stone in the quarry due to Statewide prolonged agitation on foreigners" issue where the normal life was disrupted and the working in the stone quarry also came to a grinding halt. According to the Petitioner, he engaged 40 workers in his stone quarry for extracting and (SIC) stone who subsequently left the quarry due to the Statewide agitation. The Petitioner further stated that it was difficult for him to get the supply of blasting materials during those period. Narrating all the circumstances and in view of the fact that he made full payment of Kist money for extraction of 3715 cm. of stone, the Petitioner submitted an application before the authority concerned within the period as indicated in the Rules with a prayer for allow. fog him extension of time so that he may extract and remove the remaining quantity of stone. His Petition was rejected or 28.9.80. While rejecting his Petition, the authority concerned directed that the Mahal be put to sale immediately. This is mainly the order which has been impugned by the Petitioner in this writ Petition.

3. Mr. S.N. Bhuyan, learned Counsel for the Petitioner was submitted that the matter for consideration in this writ Petition is on a very short point, The only grievance of his (SIC)to the effect that the application submitted before the authority concerned praying for extension of time was not considered in conformity with Rule 21(2) and (3) of the Assam (SIC)of Forest Produce, Coupes and Mahals Rules, 1977. There according to Mr. Bhuyan, the impugned order so passed on the Petition of the Petitioner thereby rejecting his prayer with a farther direction to put the Mahal for resale is in violation of the said Rules being passed without adhering to the mandatory provisions of Rule 21 of the Rules. Mr. Bhuyan has submitted that the impugned order on the face of it, appears to be arbitrary and not in conformity with the aforesaid Rule. He has further submitted that the authority concerned in passing the impugned order did not care to apply its mind

to consider the submissions made by the Petitioner in his application. Therefore, according to the learned Counsel, the impugned order is liable to be quashed.

4. To appreciate the above submissions of the learned Counsel in its proper perspective, it would be necessary to look into the provisions of Rule 21 of the aforesaid Rules, which deals with extension of Mahals or coupe period Rule 21 runs thus:

21. Extension of Mahal or coupe period - (i) No extension of the coupe or Mahal period shall ordinarily be admissible. In exceptional cases, Government may however, reserves to itself the right of extension on merit of each case at its discretion.

(2) In case, however, there is delay in communication of final order of acceptance of tender by two months or less beyond the date from which the coupe or Mahal period is to commence, the D.F.O. within whose Jurisdiction the coupe or Mahal is situated shall automatically, if necessary, recoup by giving extension for so much time as is lost without charging any extension fee.

(3) Where, under exceptional circumstances any extension beyond the time mentioned in Sub-Rule (2) above is found to be justified, such extension may be given on the following conditions:

(i) extension under this sub-Rule together with any extension given under Sub-Rule (2) shall not exceed more than three years at a time.

(ii), application for extension shall have to be submitted to the D.F.O. or to Government with a copy to the competent authority one month period to the expiry of the Mahal or coupe period.

(iii) Coupe or Mahal dues shall not have fallen in arrear due to the lapses on the part of the contractor or mahaldar:

(iv) extension granted under this sub-Rule in respect of Mahals shall be on payment of proportionate value, or extension fee as determined by competent authority to grant extension.

(4) Extension under Sub-Rule (3) shall be granted by the following authorities:

(i) D.F.O. (a) up to a maximum of one month in respect of Drift wood and clear felling coupe at half proportionate value, up to a maximum of 4 months in respect of dead wood, wind fallen and green wood coupes at extension fee equivalent to 5 per cent of the coupe value.

(ii) C.F. Up to a maximum of 8 months in addition to extension granted under Sub-Rule (4) (i) at extension fee equivalent to 5 per cent of the coupe value on recommendation of the Divisional Forest officer.

(iii) Governor is all other cases not covered under sub-Rule (4)(i) and (ii) on payment of extension fee or proportionate value as may be decided up to 3 years maximum at a time.

5. Referring to the said Rule, Mr. Bhuyan, the learned Counsel for the Petitioner has drawn my attention to Sub-Rule (3) of Rule 21 and has submitted that (a) the Petitioner in his Petition for extension of period has clearly mentioned about the existence of exceptional circumstances for consideration by the authority in granting extension of the period and (b) his application was well within time as per Clauses (i) and (ii) of Sub-Rule (3) of Rule 21 of the Rules. The learned Counsel further submitted to me that on going through the impugned order it apparently clear that the authority concerned did not consider any of the averments made in his Petition for extension of time as such, the order rejecting the prayer of the Petitioner arbitrary and not in accordance with law. The relevant facet that the Petitioner has deposited the entire amount for six Kists. was also not considered nor any order was passed in that regard. Therefore, according to the learned Counsel, the impugned order is not only arbitrary but is tainted with malafide intention to cause substantial loss to the Petitioner.

6. This aspect of the matter is not necessary to be considered in the present nature of the case. What is to be considered here is to see as to whether a reasoned order has been passed by the authority concerned in dealing with the Petition of the present Petitioner. Sub-Rule (3) of Rule 21 of the Rules empowers the authority concerned to extend the time beyond the time mentioned in Sub-Rule (2) in it is found justified that such extension may be given on the basis of the conditions as enumerated in Sub-Rule (3) (i), (ii), (iii) and (iv) of Rule 21. A bare perusal of Sub-Rule (3) of Rule 21 shows that Sub-Rule (3) is only applicable in case where exceptional circumstances exist and not otherwise. It is equally incumbent on the part of the person concerned praying for such extension and requesting the authority concerned to invoke Sub-Rule (3) of Rule 21 to show existence of any exceptional circumstances for which extension of period is sought for, if he fails to do so, it is not obligatory on the part of the authority concerned to allow such a prayer even if as the matter of course one claims the existence of any such exceptional circumstances.

7. Mr. P. Prasad, learned Government Advocate has drawn my attention to Sub-Rule (1) and (2) of Rule 21 and has submitted that normally no extension of the coupe or Mahal can be granted, though in exceptional cases the Government may extend the period considering the merit of each case. The power to allow extension is entirely discretionary with reservation of right. The Government has full authority not to extend the period if on the merit of the case, it appears, that the discretion to that effect is to be applied. The Petitioner cannot claim as of right any such extension. Therefore, according to Mr. Prasad, as the Petitioner has no such legal right to exercise, no relief could be granted to the Petitioner by this Court in us Writ jurisdiction, more so, while there is no violation of any mandatory provisions of Rule 21 of the Rules in passing such order. I feel that the above submissions of Mr. Prasad, the learned Government Advocate are not wholly without any substance.

8. It is true that the authority concerned may or may not extend the period of

settlement and no can claim as of right such an extension if his case appears to be without any merit for consideration of the Government. In this particular case, the period was extended by the Government for complete two years instead of the period what has been stated in the sale notice. The Petitioner further prayed for extension of time by his Petition on the averments made therein. But on going through the impugned order, it is not possible to ascertain as to whether those averments made by the Petitioner in his Petition for extension of time was over considered by the authority concerned to judge that merit of the case of the Petitioner. The impugned order is without any reason and same is not a speaking order. At least, the Petitioner is entitled to know as to how his Petition was dealt with and what were reasons for not allowing his prayer made in the Petition. The order may be discretionary but at the same time, on perusal of the order it must be known that the authority concerned while passing such order applied its mind to consider the merit of the case so that prima facie there may not be any scope for its criticism

9. On a perusal of the record of the case and the impugned order, I am of the opinion that the Petition praying for extension of time was not properly considered on its merit. I, therefore, direct that the Petition praying for on its merit in conformity with Rule 21 of the Rules and to pass an appropriate order as the authority may deem fit and proper in its discretion.

10. In the result, impugned order dated 25.9.80 is quashed with the direction as indicated above. The Rule is made absolute. No order as to cost.

11. However, I would like to make it clear that the observations made above are passing observation and this will not in my way stand on the way to affect the mind, of the authority concerned while dealing the Petition on merit and to arrive at its own conclusion as it may deem fit and proper.