

(1961) 04 GAU CK 0001

Gauhati High Court

Case No: Civil Rule No. 3 of 1961

Kumud Chandra Das

APPELLANT

Vs

Divisional Forest Officer and
Others

RESPONDENT

Date of Decision: April 4, 1961

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1961 Guw 123

Hon'ble Judges: Haliram Deka., C.J; S.K. Dutta, J

Bench: Division Bench

Advocate: S.K. Ghose, D. Pathak and A.M. Majumdar, for the Appellant; R.K. Goswami, Sr. Govt. Advocate for O.P. Nos. 1 and 2 and M.C. Pathak, for O.P. No. 3, for the Respondent

Judgement

Deka, C.J.

This is an application for an appropriate writ or writs under Article 226 of the Constitution of India.

2. The case for the petitioner is that tenders were invited by the Divisional Forest Officer, Goalpara East Division, Kokrajhar, for settlement of a Khoir Mahal known as Kanamakara Khoir Mahal for the year 1960-61 within the jurisdiction of the Goalpara East Division fixing the last date of submission of tenders as 26th August 1960. The petitioner in response to the Government notification filed a tender for settlement and offered a sum of Rs. 17,777/-, as royalty, and, Opposite Party No. 3, who is the present settlement-holder, offered Rs. 23,241/- as royalty, and the highest bid given by a third party was Rs. 30,050/-.

The procedure for settlement was indicated in the notice inviting tenders which stated that the tenders would be received by the Divisional Forest Officer and the order of settlement will be given by the respective competent authorities as shown in the list that followed. In this particular case, the settlement was made by the

Governor and the order of settlement was communicated to the Divisional Forest Officer on 3rd December 1960 whereby the settlement was made with the Opposite Party No. 3 Motilal Nayak "at highest bid thirty thousand fifty less 7 1/2 per cent in one instalment as agreed by Nayak."

On getting this information the petitioner made an application for review of the order of settlement as provided in the sale notice, which we have mentioned, and it was done within fifteen days after the settlement order was communicated to the present settlement-holder. On 7th of January 1961, an order was purported to be passed by the Government and communicated under the signature of the Under Secretary, Government of Assam, Forest Department which stated that the review petition of Kumud Chandra Das regarding the settlement of a forest mahal was rejected.

3. Mr. Ghose appearing on behalf of the petitioner has mainly raised two objections, one in regard to the validity of the order and the other in regard to the summary dismissal of the application for review. The learned Counsel has contended, that since the order of the Governor granting settlement with Opposite Party No. 3 was made on some other representation apart from the tender, the settlement was not good, and, there fore, it should be interfered with by a writ of mandamus.

The other objection was that the review petition ought not to have been disposed of without hearing the petitioner or giving him the chance of representing his case either by himself or through his lawyer. We have held in several cases of this Court that a sale notice issued by the Forest Department like the one in question, is not a notice covered by any of the statute and the terms thereof cannot be said to be terms having statutory sanction.

It is admitted that the order of settlement by itself is an administrative order and unless there be violation of any statutory rules or principles there is no scope for issue of any writ of mandamus even if those terms were violated. In the present case, there does not appear to be any violation of any of the terms of the sale notice itself in regard to the settlement; nor has Mr. Ghose succeeded in showing us that there was any violation of any of the terms in the matter of settlement except that the party made a representation to the Government apart from the tender. Such representation, does not seem to be a bar under the terms of the notice.

Under the terms of the notification the Governor had the right to settle the forest mahal having regard to the valuation and the order was passed in the name of the Governor. Paragraph 7 (b) of the sale notice is to the effect that even if the bid of candidates belonging to the Schedule Castes, Schedule Tribes or other backward classes as recognised by the Government is not within 7 1/2, per cent of the recognised highest bid, they may be given preference in settlement provided they are otherwise considered able and suitable for the performance of the work in question. In the present case, the Government purported to act on the principle as

laid down here. We cannot, therefore, say that there was any illegality in the matter of settlement as such.

4. Next we come to the other contention, namely, as to whether the aggrieved party had the right to be heard. In a recent decision of this Court, namely in Civil Rule Nos. 13 and 14 of 1961, *Abani Kanta Guha v. State of Assam*, disposed of on 22nd March, 1961, it has been held by a Division Bench of this Court, under similar Circumstances, that the Government was not obliged to give the party a hearing and that there was neither any violation of the principles of natural justice as contended.

We need not discuss further details of that judgment but this point has been categorically considered as to whether it was within the rights of the parties to be heard in connection with the review petition. Though the sale notice did not come under any statutory rules or sanction, it is generally expected that the Government would abide by the terms of the notice they issue. In this case, it cannot be said, however, that the terms of the notice have not been respected, because the notice nowhere lays down that the party applying for review would be heard in person or through his representative.

In the absence of any rule being specifically laid down as to what procedure has to be followed in hearing a review application, and, in the absence of any statutory sanction to those rules, we do not think we will be justified in holding that there has been violation of the principles of natural justice even if the party be not heard, as in the present case" The State Government, in their counter-affidavit have stated that the facts were so patent that the Government did not think it necessary to hear the party in person or ask him for any further representation the petitioner's bid being one of the lowest. In this view of things, we hold that the petitioner is not entitled to any writ as prayed for.

5. The rule is accordingly discharged with costs of Rs. 100/-, Opposite Party Nos. 2 and 3 each being entitled to half.

Dutta, J.

6. I agree.