

(1994) 07 GAU CK 0006

Gauhati High Court

Case No: Civil Rule No. 2732 of 1993

Debendra Nath Taid

APPELLANT

Vs

Assam Board of Revenue and
Others

RESPONDENT

Date of Decision: July 15, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1994) 2 GLR 423

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: N. Dutta and U. Bhuyan, for the Appellant; P. Pathak and R. Baruah, for the Respondent

Final Decision: Allowed

Judgement

A.K. Patnaik, J.

In this writ petition under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of a certiorari quashing the order dated 22.9.93 of the Assam Board of Revenue passed in Appeal Case No. 80E (S)/93 in respect of Dehingmukh Country Spirit Shop.

2. The brief facts of the case are that the Deputy Commissioner, Sibsagar invited tenders for settlement of various country spirit shops including No. 7 Dehingmukh C.S. Shop for the period 1.4.93 to 31.3.1996. The Petitioner and the Respondent No. 3 submitted tenders for the said No. 7 Dehingmukh country spirit shop and, after enquiry on the advice tendered by the Advisory Board the Deputy Commissioner settled the country spirit shop with the Petitioner by order dated 19.2.93 and the Petitioner took charge of the shop on 1.4.93. Aggrieved by the said order dated 19.2.93 of the Deputy Commissioner, Respondent No. 3 preferred an Excise Appeal No. 80E (S)/93 before the Assam Board of Revenue (for short "the Board") and after

hearing the parties the Board set aside the order of settlement in favour of the Petitioner and directed the Deputy Commissioner, Sibsagar to settle the shop with the Respondent No. 3 in accordance with the provisions of the Assam Excise Act and the rules framed thereunder for the remaining period of the term. While issuing notice of motion in the present Civil Rule, by order dated 24.9.93 this Court directed that status quo as on 24.9.93 at 12 noon shall be maintained by the parties, and while issuing Rule, by order dated 3.1.94 this Court continued the said stay order dated 24.9.93.

3. Mr. Dutta, learned Counsel for the Petitioner submitted at the hearing of the writ petition that a reading of the impugned judgment of the Board would show that the only ground on which the settlement of the country spirit shop in favour of the Petitioner was set aside was the financial untenability of the settlement. The Board has discussed in paragraph-5 of the impugned judgment that the Petitioner was to be financed by the financier to the extent of Rs. 20,374/- out of his S.B. A/C No. 1955/10 in Manketta Branch of U.C.O. Bank and Rs. 20,000/- out of his Account No. 7233 in U.B.I Branch at Demow. As on 1.4.93, when the accounts were drawn, an amount of Rs. 15,000/- only had been drawn by the said financier of the Petitioner from Demow Bank on 27.3.93 and this amount of Rs. 15,000/- taken together with the cash in hand of Rs. 10,000/- with the Petitioner totalled to Rs. 25,006/- but by 1.4.93 the Petitioner had already incurred an expenditure of Rs. 5,000/- on licence fee for March 93, Rs. 1670/- as security deposit in Feb 93 and Rs. 39,746 on the expenditure for taking over. Thus the Board came to finding that as against a total amount of Rs. 25,000/- available with the Petitioner, a total expenditure of Rs. 46,416 had been incurred by the Petitioner by 1.4.93 and there was a deficit which was made good from sources other than those mentioned in column 11 of the tender of the Petitioner. Mr. Dutta submitted that before the Board the Petitioner had filed an affidavit-in-opposition dated 14.7.93 along with an affidavit of the financier of the Petitioner Shri Bhadreswar Chung Krang which was annexed to the said affidavit-in-opposition as Annexure-IV and in paragraph-13 of the said affidavit-in-opposition the Petitioner had explained circumstances in which the Petitioner had been compelled to obtain extra finance of Rs. 22,000/- from the said financier who had received from Shri Teba Ghosh a sum of Rs. 23,500/- towards the sale proceeds of milk but the Board proceeded on a misconception of law that any finance obtained from sources other than those indicated in column 11 of the tender of the Petitioner was not permissible under the Assam Excise Rules, 1945. Mr. Dutta cited before me the Full Bench judgment of this Court and in particular the judgment of Hansaria J. reported in ILR Gauhati Vol. 32 1980 99 for the proposition that the settlement holder is not altogether debarred from obtaining finance from sources not disclosed in column 11 of his tender specially when the need for extra finance is forced upon him due to reasons beyond his control but it would be his burden to satisfy the concerned authority that the fund had really come from a genuine source as disclosed by him. On the basis of the law its laid

down in the said decision, Mr. Dutta submitted that the Board should have examined the genuineness of this extra, source of Rs. 22,000/- obtained by the Petitioner under very compelling circumstances as explained in the aforesaid affidavit-in-opposition filed before the Board, and should not have set aside the settlement order in favour of the Petitioner merely on the ground that the amount of Rs. 22,000/- had not come from the financier or from sources indicated in column 11 of the tender of the Petitioner.

4. Mr. P. Pathak, learned Counsel for the Respondent No. 3, on the other hand, submitted that a reading of the impugned judgment of the Board would show that on the materials on record the Board has come to a finding of fact that the settlement in favour of the Petitioner was financially untenable and this Court in a certiorari proceeding cannot interfere with the said finding of fact of an appellate authority. Mr. Pathak also submitted that it is not possible for this Court to hold that the affidavit-in-opposition of the Petitioner and the affidavit of the financier filed before the Board were not considered by the Board. Mr. Pathak cited the decisions of this Court reported in (1981) 1 GLR 115 : (1982) GLR 563 and in the case of Tulshi Kumar Dutta v. State of Assam and Ors. Civil Rule No. 24 of 1979 in support of his submission that findings of fact of the Board of Revenue relating to the suitability or otherwise of a tenderer for a country spirit shop cannot be interfered by this Court in its writ jurisdiction.

5. In view of the aforesaid submissions of the learned Counsel for the parties the only question to be decided is as to whether the impugned judgment of the Board of Revenue is vitiated by error of law and is liable to be interfered by this Court in a writ jurisdiction or as to whether the findings in the impugned judgment are findings of fact based on the materials on record before the Board of Revenue and cannot be interfered by this Court in exercise of its writ jurisdiction.

6. In the Full Bench judgment of this Court reported in ILR Gau 1980 99. Hansaria J. has discussed under the heading "FINANCIAL SOUNDNESS-HOW TO BE JUDGED" the question as to whether finance obtained by a settlement holder from a source not disclosed in column 11 of his tender form was altogether prohibited and after considering the relevant provisions of the Assam Excise Rules 1945 as well as previous authorities on the point held in paragraph 33 of his judgment:

Thus, though a settlement-holder is not debarred because of compelling reasons from obtaining finance from a source not disclosed in column 11 of his tender form, specially when the need extra finance has been forced upon him due to reasons beyond his control, it would be his burden to satisfy the concerned authorities that the fund had really come from a genuine source as disclosed by him. If he fails to do so to the satisfaction of the authorities, it would undoubtedly be open for them to hold that the money having come from unknown sources, the transaction or was benami. This conclusion would follow even if the settlement holder himself had no direct transaction dealing with the unknown financier, but the person who is sought

to have financed him had hush hush transactions with the unknown financier. This would be so because the real beneficiary in such a case would be the settlement holder and what has been stated in para 32 of Tulashi Dutta (supra) would apply.

It is thus clear from the aforesaid conclusion in the judgment of Hansaria J. that the settlement holder is not entirely debarred from obtaining finance from a source not disclosed in column 11 of his tender form and when the need for extra finance is forced upon him due to reasons beyond his control he will have to satisfy the authorities that the funds had really come from a genuine source as disclosed and this will apply equally when the settlement holder himself had no direct dealing with the unknown financier and the extra finance had been obtained through the financier from an unknown source.

7. The case of the Petitioner before the Board in paragraph-13 of his affidavit-in-opposition dated 20.7.93 was that for the reasons suited therein an amount of Rs. 22,000/- was obtained from his financier Bhradeswar Chung Krang on 1.4.93 at the time of taking over charge of the C.S. Shop and in the affidavit of the said financier annexed as Annexure-IV to the said affidavit-in-opposition before the Board it has been explained by the said financier that an amount of Rs. 23,500/- had been received by him from his Milk Contractor Teba Ghosh on 31.3.93 out of which he paid a sum of Rs. 22,000/- to the Petitioner. As per the law stated in the aforesaid judgment of Hansaria J. the authorities could not reject the settlement in favour of the Petitioner merely because the said finance of Rs. 22,000/- was obtained by the Petitioner from a source other than those disclosed in column 11 of his tender but will have to examine further as to whether the funds have really come from a genuine source as disclosed by the Petitioner when a need for extra finance was forced upon the Petitioner due to reasons beyond his control and only if the authorities were not satisfied with the explanation of the Petitioner in this regard, they could turn down the settlement in favour of the Petitioner.

8. On an examination of the impugned judgment of the Board, it will be clear that the Board set aside the settlement in favour of the Petitioner on the sole ground that the finance of Rs. 22,000/- had not come from the financier or from the source of finance as disclosed in the tender of the Petitioner but had come from Teba Ghosh on account of sale of Milk. The exact reason given by the Board in the impugned judgment is quoted herein below:

According to the Respondent he had got through his financier a sum of Rs. 22,000/-, which the latter had got Rs. 23,500/- from Sri Kehar Ghosh on account of sale of milk. This having not come from his financier and that too not from his bank account can't be accepted. Thus on grounds of financial untenability, the settlement order cannot be upheld.

The Board has not further examined as to whether the source of the amount of Rs. 22,000/- disclosed by the Petitioner was a genuine source tapped by the Petitioner

for meeting the immediate financial requirements of taking over the C.S. Shop on 1.4.93 as explained in the affidavit of the Petitioner before the Board and has not given any finding thereon.

9. In paragraph-13 of the judgment of this Court in (1982) 1 GLR 563 cited by Mr. Pathak, learned Counsel for the Respondent No. 3, this Court held that the Board found that the financial source disclosed in the tender of the Petitioner did not come from bonafide source" and thereafter refused to interfere with the said finding of fact of the Board. In the case of (1981) 1 GLR 115 relied upon by Mr. Pathak this Court listed the four circumstances on the basis of which the Board reached the conclusion on the relevant materials before it that the finance shown by the Petitioner was suspicious and could not be accepted as genuine and satisfactory" and refused to interfere with the aforesaid finding of fact of the Board, Similarly in Civil Rule 24 of 1978 Shri Tulshi Kr. Dutta v. State of Assam and Ors. cited by Mr. Pathak this Court again held in para 6 of the judgment dated 15.12.78 that the appellate authority was not satisfied on the basis of the affidavit filed before it regarding the source from which the money came and in view of the said finding of fact refused to interfere with the said inference of fact drawn by the Board from the affidavits before it.

10. In the present case, however there is no finding by the Board one way or the other with regard to the genuineness of the source of finance of Rs. 22,000/- not indicated in the tender but disclosed by the Petitioner in the affidavit-in-opposition filed before the Board and the Board proceeded on a misconception of law that once a source of finance other than those indicated in the tender is lapped by a settlement holder, the settlement has to be rejected on the ground of financial untenability and the explanation of the settlement holder regarding the compelling circumstances in which the extra-source was tapped and the genuineness or otherwise of such extra source of finance were not relevant at all.

11. Since the impugned judgment dated 22.9.93 of the Board in Case No. 80E (S)/93 is vitiated by the aforesaid error of law, it is quashed and the matter is remanded to the Board for a fresh decision in-accordance with law within 3 (three) months from the date of receipt of this order. The writ petition is allowed, but there shall be no order as to cost. The case records of the Board may be sent back forthwith.