Ramzan Ali (Md.) Vs State of Assam and Others

Civil Rule No. 5658 of 1997

Court: Gauhati High Court

Date of Decision: April 23, 1998

Acts Referred:
Assam Panchayat Act, 1994 â€" Section 105, 105(3), 105(4), 52(1)#Assam Panchayati Raj (Financial) Rules, 1990 â€" Rule 58(5), 58(6), 58(7)#Constitution of India, 1950 â€" Article 226

Citation: (1998) 3 GLT 529

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

Bench: Single Bench

Advocate: H.R.A. Choudhury, A. Begum and S. Baruah, for the Appellant; S.A. Laskar, M.H. Rajborbhuyan and T.C. Chutia, G.A., for the Respondent

Judgement

A.K. Patnaik, J.
In this application under Article 226 of the Constitution, the Petitioner has prayed for quashing the order dated 7.11.97 of

the Secretary to the Govt. of Assam, Panchayat & Rural Development Department setting aside the order of the SDO (S), Morigaon and

President of the Kapili Anchalik Panchayat settling the Jaluguti weekly market in favour of Shri Kushal Chandra Nath and settling the said market

in favour of Shri suren Dueri, Respondent No. 4.

2. The facts briefly are that by a tender notice dated 15.5.96, the Additional Deputy Commissioner, Morigaon, who was the in charge President of

the Kapili Anchalik Panchayat invited tenders for settling of Jaluguti weekly Bazar for the 1997-98 fixing minimum of bazar at Rs. 35,000/- in the

tender notice. Pursuant to said tender notice, eighteen (18) tenders including the Petitioner and the Respondent No. 4 submitted tenders. The bid

of the Petitioner was at Rs. 92,209/- while the bid of the Respondent No. 4 was at Rs. 65,039/-. The settlement, however, was made in favour of

Shri Kushal Chandra Nath at Rs. 50,551/-. Aggrieved by the said order of settlement, the Petitioner, Respondent No. 4 as well as others filed

appeals before the State Government of Assam in the Panchayat & Rural Development (A) Department. The Secretary of the said department in

his appellate order dated 7.11.97 after hearing the parties set aside the order of settlement in favour of Shri Kushal Chandra Nath on the ground

that under the provisions of Second proviso to Sub-rule 7 of Rule-58 of the Assam Panchayati Raj (Financial) Rules, 1990, the tender of the

highest bidder was to be accepted and the acceptance of tender other than the highest bid required the State Government''s previous and formal

approval, but in the instant case, the tender of Shri Kushal Chandra Nath was at the amount of Rs. 50,551.00 which was not the highest bid but

the settling authority accepted the same with our previous and formal approval of the State Government. By the said appellate order dated

7.11.97, the Secretary to the Govt. of Assam, Panchayat & Rural Development Department further held that of the bids quoted by different

bidders, the bid amount of Rs. 65,039/- per month of Shri Suren Dueri, Respondent No. 4 was the most reasonable bid and that in the public

interest as well as in the interest of Anchalik Panchayat, the market should be settled in favour of the Respondent No. 4.

3. At the hearing, Mr. H.R.A. Choudhury, learned Counsel for the Petitioner, vehemently contended that there were eighteen (18) bidders for the

bazar and the highest bidder was Noor Mahammad Sheikh at the rate of Rs. 1,17,000/- and the second highest bider was the Petitioner at Rs. 90,

209/- The bid of the Respondent No. 4 as low as at Rs. 65,039/-. Thus the appellate authority acted contrary to the public interest in settling the

bazar in favour of the Respondent No. 4 at a bid of Rs 65,039/- Mr. Choudhury further submitted relying on the decision of the Apex Court in the

case of Dutta Associates Pvt. Ltd. v. Indo Merchantiles Pvt. Ltd. and Ors. 1997 (2) GLT 1, that whatever procedure the Government proposes

to follow in accepting the tender must be clearly stated in the tender notice and in case the Government or the settling authority intends to settle the

bazar not at the highest rate, tendered by the Parties, but at a reasonable rate, in the tender notice itself a stipulation should be made that the bazar

would be settled at a reasonable rate on the basis of the rates quoted by the parties. Mr. Choudhury further submitted relying on the second

provision to Sub-rule 7 of Rule 58 of the Assam Panchayati Raj (Financial) Rules, 1990, that the tender of highest bidder is to be accepted.

4. Mr. S.A. Laskar, learned Counsel for the Respondent No. 4, in reply, submitted that Sub-rules 5, 6, and 7 of Rule 58 of the Assam Panchayati

Raj (Financial) Rules 1990, are not applicable to settlement of hats and bazars under the Assam Panchayat Act, 1994. He relied on the decision of

a Division Bench of this Court in the case of Md. Ranjal Ali Thakuria v. State of Assam and Ors. 1997 (1) GLT 158, Wherein it has been held

that Sub-rules-5, 6 and 7 of Rule 58 of the Assam Panchayati Raj (Financial) Rules, 1990 would not apply to settlements of hats and bazars under

the provisions of Assam Panchayati Raj Act, 1994. Mr. Laskar further contended that the standing committee after scrutiny of the tenders of

different tenderers affirmed that the tender of the Petitioner and others were invalid tenders and that the tender Nos. 11, 15 and 18 were valid

tenders. He further contended that amongst the three (3) valid tenders, the tender of the Respondent No. 4 Shri Suren Dueri was the highest at Rs.

65,039/-. According to Mr. Laskar, therefore , until and unless the Petitioner was found to be a valid tenderer, the Petitioner had no locus standi

to claim settlement in his favour.

5. Mr. T.C. Chutia , G.A. Assam, has produced records, but I need not go into the records to examine the different points raised by the learned

Counsel for the parties as it appears from the impugned appellate order dated 7.11.97 of the Secretary to the Govt. of Assam in Panchayat &

Rural Development Department that he has set aside the settlement made in favour of Shri Kushal Chandra Nath only on the ground that he was

not the highest bidder and yet the settlement was made in favour of Shri Suren Dueri without referring the matter to the State Government. The

provision requiring previous and formal approval in case a settlement is proposed in favour of a party other that the highest bidder is contained in

Second proviso to sub-rule 7 of Rule 58 of the Assam Panchayati Raj (Financial) Rules, 1990. But in the case of Md. Ranjal Ali Thakuria v. State

of Assam and Ors. (Supra), a Division Bench of this Court has clearly held after examining the provisions of Assam Panchayat Act, 1994 and the

Assam Panchayati Raj (Financial) Rules, 1990, that after coming to force of the Assam Panchayat Act, 1994, the provisions of Sub-Rules 5,6 and

7 of Rule 58 of the Assam Panchayati Raj (Financial) Rules, 1990 have no application to the settlement of hats and bazars u/s 105 of the Assam

Panchayat Act, 1994 and that sending of papers by the Secretary of the Anchalik Panchayat under the First and Second proviso to sub-rule 7 of

Rule 58 of the Assam Panchayati Raj (Financial) Rules, 1990 was ultra vires the provisions of Section 105 of Assam Panchayat Act, 1994, Para

12 of said judgment in the case of Md. Ranjal Ali Thakuria v. State of Assam and Ors. (supra) is extracted herein below.

12. Rule 58(5) however, provides tenders have been submitted the tenders have to be examined by a committee which is constituted by the State

Government under the said sub-rule (5) of Rule 58 we see the provision Sub-section 4 of Section 105 of the 1994 Act. We find that it has now

conferred the power of examination and final acceptance of tender to the Standing Committee which is to be constituted u/s 52(1)(a) of the 1994

Act. From the aforesaid provisions it is therefore clear that it is now the Standing Committee constituted u/s 52(1)(a) of the 1994 Act which will

examine the tender and accept the same and the State Government cannot now form a Committee under Rule 58(5) of the Assam Panchayati Raj

(Financial) Rules, 1990. All the provisions of sub-rules (5), (6) and (7) of Rule 58 related to the aforesaid committee constituted by the State

Government. If now under the provision of Assam Panchayat Act, 1994 no such committee can be formed by the State Government, we are of

the opinion that Sub-rules (5), (6) and (7) of Rule 58 if applied would become inconsistent with the mandatory provision of Section 105(3) of the

Act. It is therefore clear that after coming into the force of the new Act, the provisions of Sub-rules (5), (6) and (7) of Rule 58 of the Assam

Panchayati Raj (Financial) Rules, 1990 will have no application to settlement of hats u/s 105 of the 1994 Act. The sending of the papers by the

Secretary of the Anchalik Pnchayat which could only be justified under the first of second proviso to Sub-rule 7 of Rule 58 of the said Rules

therefore was ultra vires the Provisions of Section 105 of the 1994 Act. Thus, the aforesaid action of the Secretary of the Anchalik Panchayat was

uncalled for and the State Government had no power to give any approval in case the highest tender was not accepted. We are thus of the opinion

that the impugned order passed by the State Govt. dated 30th Sep 96 in so far as it settles the Nokhola Weekly Bazar in favour of Sri Rajanti

Kanta Das (Respondent No. 7) at Rs. 25,005/- per month is liable to be quashed.

6. Thus as per the aforesaid judgment, the second proviso to sub-rule 7 of Rule 58 of Assam Panchayati Raj (Financial) Rules, 1990 was not

applicable to settlement of hats under the Assam Panchayat Act, 1994. The only reason given by the Secretary to the Govt. of Assam in the

Panchayat and Rural Development Department in his appellate order dated 7.11.97 for setting aside the order of settlement in favour of Shri

Kushal Chandra Nath, therefore, was not correct law. It appears that there were large number of appeals before the appellate authority and they

had raised several grounds against the order of settlement in favour of Shri Kushal Chandra Nath. But the said contentions of the Appellants have

not been considered by the Secretary of the said Panchayat and Rural Development Department in his appellate order dated 7.11.97. Since, I am

remitting the matter back to the said appellate authority, he shall consider the said contentions raised by different Appellants and pass fresh order in

accordance with law before, 31.5.98. Till disposal of the appeal before 31.5.98, the Respondent No. 4 who is presently operating the bazar will

continue to operate on the terms and conditions on which the bazar has been settled with him. Certified copies of this order shall be filed both by

the Petitioner and the Respondent No. 4 before the Secretary to the Govt. of Assam, Panchayat and Rural Development Department within 15

days from today. However, considering the facts and circumstances of the case, the parties shall bear their own costs.