**(1971) 03 GAU CK 0006**

**Gauhati High Court**

**Case No:** Civil Rule No. 809 of 1970

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| Dulal Chandra Hazarika | | APPELLANT |
| | Vs | |
| The Assam Board of Revenue and Others | | RESPONDENT |

**Date of Decision:** March 19, 1971

**Acts Referred:**

- Assam Board of Revenue Regulations, 1963 - Regulation 11
- Assam Excise Rules, 1945 - Rule 219
- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** M.C. Pathak, J; B.N. Sharma, J

**Bench:** Division Bench

**Advocate:** S.K. Ghose, J.P. Bhattacharjee, P.C. Kataki and K.C. Das, for the Appellant; K.N. Saikia, S.N. Bhuyan, K.C. Gogol and N.C. Das, for the Respondent

**Judgement**

Pathak, J.

By this application under Article 226 of the Constitution of India the Petitioner Dulal Chandra Hazarika prays for quashing the order of the learned Board of Revenue passed on 26-11-1970 in Excise Case No. IE of 1970.

2. The Petitioner''s case briefly is that he Is a graduate and he joined M. A. and LL.B. classes of the University of Gauhati but left his studies in 1968. The Petitioner as well as Respondent No. 3 Prafulla Chandra Das and 19 others submitted tenders for settlement of Singlijan Country Spirit Shop for the years 1970-73 in response to a tender notice issued by the Deputy Commissioner of Lakhimpur District. By his order dated 15th December 1969 the Deputy Commissioner on the advice of the Advisory Committee constituted under the provisions of the Excise Act settled the Singlijan Country Spirit Shop with the Petitioner. Respondent No. 3 preferred an appeal against the said order of settlement before the Assam Board of Revenue, which was numbered as Case No. IE of 1970. That the learned Board of Revenue by

its judgment and order dated 26-11-70 allowed the appeal of the Respondent No. 3. set aside the order of settlement dated 15-12-69 of Singlijan Country Spirit Shop with the Petitioner and directed that the shop be settled with Respondent No. 3 for the remaining period of the term. The present petition is directed against this order of the learned Board.

3. Mr. S.K. Ghose, the learned Advocate-General of Nagaland, appearing on behalf of the Petitioner submits that the learned Board''s finding that the financial soundness of the Petitioner was not established is not based on any evidence on record, but on the other hand in arriving at that finding the learned Board took into consideration irrelevant materials and did not take into consideration relevant materials on record and as such the finding of the learned Board in this regard is vitiated. That the learned Board set aside the settlement in favour of the Petitioner only on the ground of financial unsoundness and this finding being vitiated, as submitted earlier, the impugned order of the Board is liable to be quashed.

4. The learned Advocate-General also submits that the learned Board itself found that Respondent No. 3 suffered from serious drawbacks, that he had been a lessee for long thirty years and he was financially sound and had other means of income also and in that view it is submitted that the learned Board erred in law in directing settlement of the shop with Respondent No. 3.

5. The learned Advocate-General lastly submits that the materials on record are eloquent that the Respondent No. 3 was a defaulter of Government revenue and therefore the settlement in favour of the Respondent No. 3 being in violation of Rule 219 of the Assam Excise Rules, the impugned order of the Board is liable to be quashed.

6. Mr. S.N. Bhuyan, the learned Counsel appearing for the Respondent No. 3 submits that the learned Revenue Board on consideration of the materials on record found the Petitioner to be financially unsound and this was a finding of fact arrived at on the materials on record by the Board and such a finding of fact may not be interfered with in a writ petition. Mr. Bhuyan submits that on consideration of the materials on record the learned Revenue Board, whose jurisdiction Is co-extensive with that of the original settling authority, found that the Respondent No. 3 was more suitable than the Petitioner and therefore set aside the settlement in favour of the Petitioner and settled the shop with Respondent No. 3. That the order of the learned Revenue Board is quite within jurisdiction and it is not vitiated by any illegality or absence or excess of jurisdiction and in that view the impugned order of the Board is not liable to be interfered with. The learned Counsel adds that the jurisdiction of the High Court in an application under Article 226 of the Constitution of India is not an appellate jurisdiction and therefore there cannot be reappreciation of evidence.

7. This Court in Bapudas Kalita v. Assam Board of Revenue, Gauhati, Civil Rule No.,698 of 1970, in which judgment was delivered on 12-2-1971 : (report ed in AIR 1971 Gau 102 ), considered some of the Supreme Court decisions as well as English decisions bearing on the scope of certiorari on a petition under Article 226 of the Constitution of India, such as Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, Edwards (Inspector of Taxes) v. Bairstow 1956 AC 14 : (1955) 3 All ER 48. Regina v. Medical Appeal Tribunal. (1957) 1 QB 574 . The Provincial Transport Service Vs. State Industrial Court, State of Orissa v. Murlidhar Jena, AIR lV33 SC 404 and also the decision tn Avadh Narain Singh Vs. Additional Superintendent of Police and Others, In that case it was observed by this Court as follows:

It is thus a settled law that a writ of certiorari may be issued when it is found that there is some error of law apparent on the face of the record.

On consideration of the decisions referred to above, we are clearly of the opinion that if there are no materials on record to support a finding of fact arrived at by a tribunal, any order passed by the Tribunal based on such a finding is liable to be quashed on the ground that there is an error of law apparent on the face of the record. So also if a finding of fact is such that no person acting judicially and properly instructed could have given it on an examination of all the relevant facts on record it may be quashed by certiorari.

8. Mr. Ghose. the learned Advocate-General has in this connection referred to Parry and Co. Ltd. Vs. P.C. Pal and Others, and Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, In Parry and Co. Ltd. Vs. P.C. Pal and Others, It has been observed in paragraph 11 as follows:

The grounds on which interference by the High Court is available in such writ petitions have by now been well established. In T.C. Basappa Vs. T. Nagappa and Another, - T.C. Basappa Vs. T. Nagappa and Another, it was observed that a writ of certiorari is generally granted when a Court has acted without or in excess of its jurisdiction. It is available in those cases where a tribunal, though competent to enter upon an enquiry, acts in flagrant disregard of the rules of procedure or violates the principles of natural justice where no particular procedure is prescribed. But a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise but a manifest error apparent on the face of the proceedings based on a clear ignorance or disregard of the provisions of law or absence of or excess of jurisdiction, when shown, can be so corrected. In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, ; Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, this Court once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226 unless it could be shown to be wholly unwarranted by the evidence.

Likewise, in State of Andhra Pradesh Vs. Sree Rama Rao, this Court observed that where the Tribunal has disabled itself from reaching a fair decision by some considerations extraneous to the evidence and the materials of the case or where its conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person can ever have arrived at that conclusion interference under Article 226 would be justified.

In Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, the Supreme Court observed as follows:

There is ample authority to the effect that if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may properly issue to quash its order. (See S. A. de Smith, Judicial Review of Administrative Action, (2nd Ed.) 324-325). One such relevant consideration, the disregard of which would render its order amenable to interference, would be the well settled principles laid down in decisions binding on the tribunal to whom the discretion is entrusted. The refusal by the High Court to interfere way equally mechanical and amounted to refusal to exercise its jurisdiction. Its order, therefore, becomes liable to interference.

9. The law laid down by the Supreme Court in this regard may be summed up as follows:

In an application under Article 226 of the Constitution of India the High Court is not entitled to reappreciate evidence as an appellate court and a mere wrong decision cannot be corrected by a writ of certiorari as that would be using it as the cloak of an appeal in disguise. The High Court may interfere by issuing a writ of certiorari if the Tribunal''s order is vitiated by an error of law apparent on the face of the record. If the tribunal''s order is based on a finding for which there is no evidence on record, the order may be quashed by a writ of certiorari. If the tribunal''s order is based on a finding of fact which no person acting judicially and properly instructed could have given on an examination of all the relevant materials on record, or, which finding is apparently contrary to the evidence on record, the High Court may quash the tribunal''s order by issuing a writ of certiorari. A certiorari may also properly be issued to quash an order if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations.

10. Keeping In view the law laid down by the Supreme Court In this regard let us examine the Instant case. In this case the Deputy Commissioner, who is the primary settling authority, settled the country spirit shop with the Petitioner on the unanimous advice of the advisory committee. The appeal having been admitted by the Board, a report on the points raised in the memo of appeal from the original settling authority was called for under Regulation 11 of the Assam Board of Revenue Regulations I of 1963. Accordingly a report was submitted by the Deputy Commissioner, Lakhim-pur, which is Annexure B to the petition, wherein it is

observed that the Advisory Committee found the Petitioner as the most suitable one and he was considered to have requisite finance to run the Singliian Country Spirit Shop, which was not a big shop the security of which was fixed at Rs. 1,100/- only. The Deputy Commissioner observed in the report that the Respondent No. 3 was the sitting lessee of the shop since 1941-42 and was the holder of two stage carriage permits and had been running two line buses. In Annexure C, which is a report of the Deputy Commissioner in respect of the Additional grounds, it -was stated that leaving aside the movable and immovable properties, the bank deposit of the Petitioner alone would be sufficient to manage the shop and the Petitioner was an unemployed educated youth deserving special consideration.

11. The Petitioner''s case is that his father Bulon Chandra Hazarika gave him a sum of Rs. 8,000/- out of natural affection and love for starting a business in the middle of 1968. He decided to file tender for the shop in question. Finding that a bank account was necessary for a tendered of an excise shop, he deposited a sum of Rs. 6,000/- in the State Bank of India, Tinsukia Branch, in October 1969. When the financial position was challenged by the Respondent No. 3 in his appeal before the Revenue Board, an affidavit was sworn by the Petitioner to the above effect. The fact that the Petitioner received a sum of Rs. 8,000/- in the middle of 1908 from his father for running business was affirmed by his father by an affidavit dated 20-5-70. which is Annexure D (1) to the petition.

12. The learned Revenue Board while considering the financial position of the Petitioner observed that he opened his bank account only on the eve of submission of tender in October 1909 and there was no satisfactory evidence that his father actually gave him a gift of Rupees 8,000/- in November 1968 and if he really received it how he utilized it. The learned Board also observed that it could not be satisfied by the mere promise held out in his declaration dated 26-11-69, which was completely silent with regard to the gift of Rs. 8,000/- in November 1968.

13. The declaration dated 26-11- 69 referred to by the Board is Annexure K to the petition regarding additional finance, wherein the father of the Petitioner promised to ''pay Rs. 10,000/- for his son''s business- if, needed. Hence there was no necessity or occasion for referring to the gift of Rs. 8,000/-. In Annexure J to the petition, which is a declaration made by the Petitioner on 26-11-69 he stated that he had Rs. 6,000/- in the State Bank of India, - Tinsukia Branch Account No. 1920. The learned Revenue Board while considering the financial condition of the Petitioner, did not consider the affidavit of his father Annexure D (1) to the petition, which categorically stated that the Petitioner was-given Rs. 8,000/- in middle of 1968 for running business. This explained the source of the money deposited by the Petitioner in State Bank of India, Tinsukia Branch. By not con side ring the affidavit of the father, Anne sure D (1) to the petition in considering the financial soundness of the Petitioner, the learned Board failed to take into consideration the relevant materials on re cord. There is no allegation nor has the learned Revenue Board found that the

Petitioner was benamdar of any person. The Petitioner had admittedly Rs. 6,000/- deposited in the Bank. The security for the shop is Rs. 1,100/- and the admitted general standard adopted by the learned Revenue Board in assessing the financial soundness of a tendered being that the tendered should have an amount at least five times the security amount, there was no material on record to find that the Petitioner has failed to establish his financial soundness. No doubt the sum of Rs. 6,000/- was deposited in bank before filing the tender and after the notice calling for tenders. There is no law or reason that the money must be in the bank prior to the issue of the tender notice. If the money deposited was found to be not the money of the Petitioner but of some demander, that would have been a relevant consideration- It being father''s money which fact was affirmed by the father on oath, the learned Board erred in law in not considering that affidavit. The learned Board''s finding that the Petitioner failed to establish his financial soundness is not based on evidence, it is apparently contrary to evidence on record and it is further vitiated by non-consideration of the relevant materials on record. In the circumstances that finding must be set aside.

14. Mr. Ghose, the learned Advocate-General submits that the learned Board erred in law in finding that the Respondent No. 3 was not a defaulter in respect of Government taxes. The learned Board however on consideration of the materials on record particularly relying on the certificates issued by the Tax authorities came to the '' finding that the Respondent No. 3 was not a defaulter, hence that finding cannot be interfered with.

15. The learned Eevenue Board, however, set aside the settlement in favour of the Petitioner only on the ground that the Petitioner had failed to establish, his financial soundness. We have found that this finding is not based on any materials on record and further it was arrived at without consideration of the relevant materials on record. This finding is therefore set aside and accordingly the impugned order of the learned Board .setting aside the settlement of the Singlijan Country Spirit Shop with the Petitioner by the primary settling authority is set aside and the order settling the shop with the Respondent No. 3 is also set aside. The settlement made in favour of the Petitioner by the Deputy Commissioner is restored.

16. On going through the record if is found that the Petitioner in paragraph 5 of his petition stated that Sri K.C. Gotfoi the then Member of the Assam Board of Revenue admitted the appeal No. IE of 1970, which is corroborated by the order of the Revenue Board dated 12-1-70. From the impugned order of the learned Revenue Board it appears that Sri K.C. Gogoi, Advocate argued the case of the Appellant before the Board (Respondent No. 3 in this case) in appeal NT; IE of 1970. As no submission was made at the bar in this respect we refrain from making any observation regarding the propriety of the action. We would,, however, like to observe that the Assam Board of Revenue, which is a quasi-judicial tribunal, should keep in view the'' oft quoted maxim "justice should not only be done but it should

always appear. to have been done."

17. The petition is allowed. The rule is made absolute. We make no order as to costs.

B.N. Sarma, J.

18. I agree.