

(1991) 03 GAU CK 0006

Gauhati High Court

Case No: Civil Rule Nos. 1851 and 2413 of 1990

Nirmal Sonowal; Ranjit Manje

APPELLANT

Vs

Assam Board of Revenue,
Gauhati

RESPONDENT

Date of Decision: March 7, 1991

Acts Referred:

- Assam Excise Rules, 1945 - Rule 223(2), 223(2), 223(3), 223(3)
- Constitution of India, 1950 - Article 226, 226

Citation: (1991) 1 GLJ 296

Hon'ble Judges: A.Raghuvir, C.J. and S.N.Phukan, J

Bench: Division Bench

Advocate: C.Barua, A.K.Sharma, D.N.Choudhary, D.N.Barua, Advocates appearing for Parties

Judgement

A. Raghuvir,, C.J.

These two writ petitions arise out of a common set of facts and the common question that is raised in the two writ petitions arises under the Excise Rules of 1945.

The Deputy Commissioner, Tinsukia on September 13, 1990, interalia, called for tenders for a Country Spirit Shop at Digboi bearing No. 19 for the period 1st April, 1990 to 31st March, 1991. After the tenders are received the Deputy Commissioner in consultation with the Advisory Committee consisting of the following five persons, viz. (1) Shri Krishna Kan"n Borgohain, Chaliha Nagar, P.O. Tinsukia, (2) Shri Kalpataru, Kumbhakar, Loonporia Village, Gaharipam (near Hizuguri), (3) Shri Mitharam Das, Loonpuria, Village, Gaharipam (near Hizuguri), (4) Shri Jatin Baruah, Kakaratoli Gaon, P.O. Borguri and (5) Shri Prasanta Bora, Okanimuria Village, P.O. Laipuli (near Tinsukia) accorded the settlement to Nirmal Sonowal. 13 among the unsuccessful tenderers filed appeals before the Assam Board of Revenue and 11 out of them were dismissed for default. One such person whose appeal was dismissed

for default filed a writ petition Civil Rule No. 1853 of 199U and on February 19, 1991 the writ petition was not pressed therefore the same was dismissed as not pressed.

The balance two appeals before the Board of Revenue were considered on merits. The Appeal No. 67E (T)/90 was allowed and the other Appeal No. 78E (Tj)/90 was dismissed on merits. Aggrieved thereby the two appellants have filed the above two writ petitions.

At first we may consider the writ petition filed by Ranjit Manje as in that writ petition he has questioned the constitution of the Advisory Committee as it was not properly constituted. The Memo of Appeal of Manje before the Board of Revenue contained objections as to the constitution of the Advisory Committee and it is represented the same was argued but the Board of Revenue in the impugned order did not consider the same.

The objection that was taken was that the members of the Advisory Committee should have knowledge about the social conditions of the residents in the district and the members should represent the majority of the community living in the district. They further should have sympathy for the cause of temperance and prohibition and should be guided by the principles of social justice. These are all aspects adumbrated in Rule 208 of Rules. It is now argued that there is no Scheduled Caste member in the Advisory Committee, no Scheduled Tribe member and also there is no member from the Other Backward Classes in the Advisory Committee. This objection was neither taken in the Memo of Appeal before the Board of Revenue in this manner nor it is stated in the writ petition. The objection raised was that the five members were picked up from the vicinity of the district therefore the Advisory Committee was not properly constituted. As to the member of Scheduled Caste, Scheduled Tribe and Backward Classes, no objection was taken. Evidently the Government has not filed any counter showing who among the five is a Scheduled Casts, Scheduled Tribe and also Backward Classes person among the five persons. Therefore objections now raised do not hold any water.

It is next argued on Lehalf of Ranjit Manje that he is a permanent resident of Village Mungong Pathar and belongs to Singpho Tribe. The Singpho Tribe is a Scheduled Tribe in Arunachal Pradesh not in Assam. The petitioner offered a certificate issued by the President/Secretary, Tinsukia District Tribal Sangha and some person signed on behalf of the SubDivisional Officer.

The above certificate refers to two Circulars of the Govern meat being No. TAD/ST/279/S2/16 dated December 24, 1982 and another No. TAD/S1/279/82/47 dated March 7, 1986. These two Circulars are not produced before the Court but in a Hand Book of Government Circulars relating to Preferential Treatment and Appointment etc. of persons belonging to Scheduled Castes and Scheduled Tribes of 1983, the former among the two Circulars is printed in that clause (2) of para 3 reads that for the purpose of giving economic, educational and employment benefits, "hill

tribes in plains" will be considered against quotas if any, reserved for Scheduled Tribes (Hills) while the "plains tribes in hills" will be considered against quotas, if any, reserved for Scheduled Tribes .(Plains). Since Manje is not a Scheduled Tribal we do not think he has any preferential claim against a Scheduled Caste person like Nirmal Sonowal who has been accorded the settlement in the instant case.

The Board of Revenue considered the case of Sonowal in paragraph 12 which is as below :

""12. We must now consider whether the order of Me Collector settling the Digboi Country Spirit Shop with respondent Nirmal Sonowal is in accordance with the Rules and prescribed procedure. We have before us the appeal petitions, the affidavits filed by various parties, the records of settlement which includes the tender and the enquiry report as well as the comments of the Deputy Commissioner. We also have the benefit of elaborate arguments by the learned Advocates for the parties. The Rules require the settling authority to give preference to educated unemployed youth. In fact the main attack on the respondent Nirmal Sonowal is that he is not unemployed. From the material before us, the facts records the respondent's employment status have emerged as follows :

Shri Nirmal Sonowal was in business as the proprietor of firm name Nirmal Agro Agency. He had in that capacity secured a licence for dealership in pesticides. These licences were issued to him on 27.12.88. They were upto 3.12.90. According to respondent, he applied to the SubDivisional Agricultural Officer on 18.8.89 to cancel the licences and the authority cancelled them after enquiry on the same date. This is very quick and fast action on the part of the Agriculture Department. The enquiry it appears, was completed instantaneously. There is a letter from the SubDivisional Agricultural Officer that the respondent did not sell any fertilisers or pesticides. The licences were not for sale to the department but for sale to consumers. In Tinsukia District, bulk consumers are the Tea Companies. It is also stated that Shri Sonowal had a Sand Mahal He has produced a certificate from the District Forest Officer which says that on the date of the certificate i.e. 20.2.90, he had no dealings with the Forest Division. What is crucial in the present case is whether he was operating the Sand Mahal on the date of tender. On this vital issue the certificate is silent. Through the Settlement Rules the State has endeavoured to provide employment for the educated unemployed. The question which arises is who is educated unemployed ? Would it include Shri Nirmal Sonowal proprietor of Nirmal Agro Agency and licenced dealer for supply of fertilisers and pesticides who surrendered the licences with a view to apply for a licence to deal in country spirit. The question is who is educated unemployed ? In this we would do no better than to refer to the clear and precise connotation of the term educated unemployed enunciated by the Supreme Court in Bishnuram Bora vs. Parag Saikia (AIR 1984 SC 898) in that case, the Court stated that educated unemployed are those who after completing their education are in search of employment. We do not find possible to include the respondent Shri Nirmal

Sonowal, proprietor of Nirmal Agro Agency and erstwhile licence holder for fertilisers and pesticides dealership in this category. A licence to deal in fertilisers and pesticides, in our present system, is not easily available to the common man. Dealership licences for trade in such control lot commodities are issued to the privileged few. In the circumstances it is clear that the primary authority in preferring Shri Nirmal Sonowal to other tenderers by considering him to be unemployed, has committed serious irregularity contrary to the requirement of the Rules. In these circumstances we set aside the impugned order settling the shop with the respondent Shri Nirmal Sonowal".

Sonowal was a sole proprietor of a firm of M/s Nirmal Agro Agency for which licence was accorded on December 17, 1988 valid upto December 31st, 1990. by the S.D.O. Agriculture/Tinsukia. He had also a fertiliser licence dated December 26, 1988 valid upto December 31st, 1990 granted by the S.D.O. Agriculture, Tinsukia. He is reported to have a Sand Mahal settlement in Doom Dooma Forest Division which the Board of Revenue found not true. The two licences issued by the S.D.O. Agriculture, Tinsukia were considered by the Board of Revenue and it is shown these licences were cancelled on the application of Sonowal on August 18, 1989 by the SubDivisional Officer, Agriculture. The Board of Revenue in the impugned order held that cancellation order was made on August 18, 1989 whereas application was made on August 14. The District Forest Officer issued a certificate on February 22, 1990 to the effect that he had no settlement in the above Forest Division. The Board of Revenue on the above facts held that the cancellation enquiry was completed instantaneously. The S.D.O. in the order states that; he did not sell any fertiliser or pesticides to the Department but to the consumers in Tinsukia District where the bulk consumers are tea companies. It is on these facts AIR 1984 SC 898 (Bishnu Ram Borah vs. Parag Saikia) was considered and held unemployed persons are those who are in search of an employment and Sonowal who had fertilisers and pesticides licences cannot be classified in the category as unemployed person as these licences are not easily available to the common man. They are accorded to the privileged few therefore the original authority the Deputy Commissioner of Tinsukia erred in law in settling the shop in favour of Sonowal and the Rules have been violated therefore the settlement was set aside.

We are unable to support this conclusion as on the day when the application was made Sonowal was not shown to be employed. His licences were already cancelled on August 18, 1989. We do not see any irregularity in the order passed by the primary authority in according the settlement in favour of Sonowal. The learned counsel for the petitioner argued that on the date when the tenders were submitted on November 28, 1989 the petitioner was not holding any fertiliser or pesticides licences as the two were cancelled on August 18, 1989 therefore the petitioner was an educated unemployed youth. The contention thus raised has force.

The learned counsel for Manje, however, argued that there are two tests to be applied to determine whether a person is unemployed. A person should be considered as unemployed when he makes effort to get employment and in spite of his efforts he does not obtain employment. When a person voluntarily resigns then in such a case the person cannot be considered as an unemployed person.

We cannot subscribe to the two tests that are cited on behalf of Ranjit Manje. It is in this regard a decision of this Court 1LR (J980) (Gauhati) Vol. 32 1 (Ranajyoti Barua vs. The Assam Board of Revenue and others) was cited where at page 5 it was observed "the job was thus not as precarious, according to Shri Bhattacharjee, as is contended by Mr. Medni. If that be so, question is if a person gives up his job to make himself fit to claim the preference, can he be punished for this? It is common experience that persons holding posts under the Government or office of profit do resign to contest elections but no such person can be disqualified on this ground. If the petitioner resigned his job which was that of Junior Observer under the Central Water Commission to have a better start in life, we find no reason for being disqualified to claim the preference which the law has enjoined on him "

We hold Nirmal Sonowal on the date when the settlement was accorded in his favour was an educated unemployed youth. The order of the Primary Authority suffered no error whatever. The order of the Board suffers from the error apparent on the face of the record. Therefore, the writ petition filed by Nirmal Sonowal is allowed and the writ petition filed by Ranjit Manja is dismissed. In both the writ petitions no order as to costs.