

Mukunda Bore

Vs

Bangshidhar Buragohain and Others

Civil Appeals No. 2687 of 1979

(R. S. Sarkaria, R. S. Pathak JJ)

27.03.1980

JUDGMENT

SARKARIA, J. –

1. This appeal by special leave is directed against a judgment, dated August 23, 1979, of the High Court of Assam at Gauhati.
2. The material facts are that the Deputy Commissioner, Sibsagar invited tenders for settlement of the Meleng Country Spirit Shop No. 3 of Jorhat Sub-Division for the period June 1, 1979 to March 31, 1980. Fourteen other person, including respondent 1, also submitted tenders for settlement of the said shop.
3. The Deputy Commissioner (hereinafter called the Primary Authority) on the advice of the Advisory Committee constituted under Rule 208 of the Assam Excise Rules, by an Order dated April 30, 1979, settled the shop with the appellant for the aforesaid period.
4. Mukunda Bore (sic), respondent 1, preferred an appeal under Section 9 of the Assam Excise Act before the Assam Board of Revenue. The Board on the application of respondent 1 herein, by an Order dated May 31, 1979, stayed the operation of the aforesaid settlement order, dated April 30, 1979, observing that the appellant (respondent 1 herein) was a sitting lessee and had alleged that the financial position of the appellant herein is not good and that the latter had suppressed facts in the tender. With this reasoning, the Board passed an interim order staying the operation of the settlement during the pendency of the appeal.
5. Against the Board's interim Order, dated May 31, 1979, Mukunda Bore filed a writ petition in the High Court which, by an interim Order dated June 1, 1979, stayed the operation of the interim Order, dated May 31, 1979, passed by the Board.
6. The appellant thereafter on June 6, 1979 took possession of the shop on payment of Rs. 6,905.07 which included the cost of liquor, bottles, boxes, carrying charges, vend fee and duty etc., to the former lessee, that is, respondent 1.
7. Subsequently, by a judgment, dated August 22, 1979, the Board allowed the appeal of respondent 1, set aside the settlement order of the Primary Authority that had been made in favour of the appellant, and settled the shop with respondent 1 for the remainder of the term.
8. Against this judgment, dated August 22, 1979, the appellant filed a writ petition under Article

226 of the Constitution before the Gauhati High Court, which, by an Order, dated August 23, 1979, dismissed the petition in limine.

9. It may be observed that Mukunda Bore, appellant herein, had passed B. Sc. Part I Examination. He was an unemployed youth of about 32 years and belonged to Chutia Community which falls in the "more backward community" and was entitled to preferential treatment in the matter of settlement of C.S. shop as provided under Rule 223(2) of the Assam Excise Rules, 1945. Respondent 1, Bangshidhar Buragohain, is an Ahom and is recognised by the Rules as "other backward class".

10. In the information on his financial capacity submitted by Mukunda Bore in the Form prescribed under the Assam Excise Rules, he mentioned that his "father will finance him with Rs. 25,900 or more" and in support filed an affidavit of his father, Mukta Ram Bora. Particulars of the funds held by the father were given by him in his affidavit as under :

(1) Rs. 20,000 held under Account No. 9774 lying in deposit at Jorhat Post Office.

(2) A balance of Rs. 5,902.50 in Savings Bank Account No. 8648 of the United Bank of India, Jorhat Branch.

The information supplied by Mukunda Bore or his father in the affidavit did not disclose any other financial source. The Inquiry Officer endorsed the same information in his report regarding the appellant's tender.

11. As against this, Bangshidhar Buragohain, respondent herein, filed an affidavit, dated June 26, 1979, pointing out that the deposit of Rs. 20,000 in the Jorhat Post Office held by the father of Mukunda Bore was a term deposit which would mature for encashment only by the middle of 1983 and consequently, this deposit was not readily available for investment in the business. This was countered by a certificate, dated June 19, 1979, issued by the Assistant Post Master, Jorhat, saying that the term deposit of Rs. 20,000 in the name of Mukta Ram Bora was available at any time.

12. The Board held that the financial capacity of Mukunda Bore (appellant) "to run the shop is not satisfactory". It further observed :

Though he had a better claim as an educated unemployed youth belonging to the community recognised as more backward amongst the notified backward classes, we cannot agree to the settlement given to him by the Primary Authority. On the other hand, the appellant (Bangshidhar Buragohain, respondent 1 herein) who was the lessee for the term expiring on May 31, 1979, has got the financial capacity to undertake the lease of the Meleng Country Spirit Shop.

13. In arriving at the conclusion that Mukunda Bore did not have the necessary financial capacity, the Board gave these reasons :

(a) When on June 6, 1979, he took over charge of the shop on payment of Rs. 6,905.07, no amount was withdrawn from the term deposit of Rs. 20,000 or from Account No. 8648 having a credit balance of Rs. 5,902.50. The Board observed "that it was not shown to the court (Board) how the amount which was required at the time of taking the charge of shop was obtained by the respondent (Mukunda Bore)".

(b) Even if it be assumed that a part of this amount of Rs. 6,905.07 came out of Account No. 8648 which on April 19, 1979 had a credit balance of Rs. 5,902.50, then also, no explanation was coming forth about the source of the shortfall of about Rs. 1,000.

(c) It was apparent that part of the source required by the respondent, Mukunda Bore did not come from bona fide source.

14. Learned counsel for the appellant contends that the Board should not have lightly set aside the order of the Primary Authority by which the shop had been settled in favour of the appellant after that authority had satisfied from the inquiry report of the Inquiry Officer with regard to the financial solvency of the appellant. It is further contended that there was a third account of the father of the appellant with the State Bank of India, Jorhat, which had been overdrawn for Rs. 5,900, and this money constituted the bulk of the amount of Rs. 6,905.07 which Mukunda Bore had paid to the former lessee for taking possession of the shop. In this connection, reference has been made to a letter, dated June 11, 1979, from the Agent of the State Bank of India, Jorhat, to the appellant's father. This letter, it is submitted, was produced before the Board in rebuttal of the allegations of the respondent. The Board never applied its mind to this letter which substantially explained the source of the money which was paid to the former lessee by the appellant. It is further contended that the entries in the passbook issued by the bank in favour of appellant's father would fully bear out that a sum of Rs. 5,900 was overdrawn from this account just before making payment to the former lessee. Winding up his arguments, counsel submits that the only ground on which the Board could set aside the settlement in favour of the appellant was that the appellant was a mere benamidar for somebody else behind the scenes. It is emphasised that the Board did not record any finding that the transaction was benami or that the appellant was otherwise an undesirable person. The Board, it is argued, has proceeded merely on suspicion and conjectures about the source of the finance and recorded a finding which is based on no evidence. In so doing, the Board has committed errors of law which the High Court could set right in the exercise of its writ jurisdiction.

15. On the other hand, learned counsel for the respondents submits that it could not be said that the Board had proceeded merely on conjectures and surmises. It is stressed that no information was disclosed either at the time of tender or at any stage before the Inquiry Officer that there was a third account of the appellant's father with the State Bank of India, Jorhat, which had been overdrawn to the extent of Rs. 5,900; and that this money was utilised towards the amount which was paid to the former lessee at the time of taking possession by the appellant. It is further pointed out that at the time of arguments before the Board, the position taken by Mukunda Bore was that this amount came from Savings Bank Account No. 8648, which was evidently false. The Board pronounced its judgment about three weeks after the hearing of arguments. Even during this interval, it is emphasised, Mukunda Bore did not produce the passbook issued by the State Bank of India, Jorhat, to the appellant's father which could show that a sum of Rs. 5,900 was drawn from that account with the bank. No affidavit was filed to explain the source whence this amount of Rs. 6,905.07 paid to the former lessee, came. Counsel maintains that in the circumstances, it cannot be said that the finding of the Board to the effect that this money did not come from bona fide sources and that Mukunda Bore did not have the necessary financial capacity to take the settlement, could not be said to be based on no evidence whatever. Lastly, it is submitted that the term of the settlement will expire shortly on March 31, 1980, and from that point of view even if the Board has committed some irregularities or failed to discuss all the evidence, then also the court should not, on principles of sound practice, disturb the settlement in the exercise of its special jurisdiction under Article 226 of the Constitution.

16. While on facts the order of the Board under appeal is not impeccable, we must remember that under Article 226 of the Constitution, a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a court of appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. In the instant case, the finding of the Board that the appellant does not possess the necessary financial capacity, is largely a finding of fact. Under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of sources of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the Inquiry Officer.

17. In the case before us, the appellant admittedly did not give information regarding the account with the State Bank of India, Jorhat, wherein his father had a balance of Rs. 5,900. He did not disclose this information even during the inquiry to the Inquiry Officer or to the Primary Authority at any stage. Even before the Board, he did not produce his father's passbook relating to that account with the State Bank of India, Jorhat, to show that the amount overdrawn from this account by the appellant's father was used towards the bulk of the payment of Rs. 6,905.07 to the former lessee of the shop. In this connection, it may be noted that the orders were pronounced about three weeks after the hearing of final arguments by the Board. At the time of arguments, the appellant must have become aware that the source from which he paid the amount of Rs. 6,905.07 to the former lessee was being questioned. Instead of disclosing the true source of the amount, his counsel appears to have take the stand that this amount came from Account No. 8648, which, on the face of the entries in that account, was manifestly incorrect. It is true that the appellant produced a letter, dated June 11, 1979, from the Agent of the State Bank of India, showing that his father's account with that bank stood overdrawn to the extent of Rs. 5,900 on the date. It is true that the Board has not discussed the evidentiary value of this letter. But without the production of the passbook relating to that bank account, this letter did not by itself furnish adequate information with regard to the source of the entire amount of Rs. 6,905.07 which the appellant had to pay the former lessee while taking possession of the shop. The failure on the part of the Board therefore, to discuss this letter did not amount to an error of law.

18. It is further correct that the Board did not, in terms, record a finding that the appellant was merely a figure-head or a benamidar, while the real beneficiary was somebody else who was not otherwise eligible for taking the settlement. It was desirable for the Board to have recorded a clear finding against the appellant so as to set aside the settlement in his favour on any of the grounds mentioned in Rule 211. But this does not vitiate its order, because such a ground is implicit in the finding by the Board that the money paid to the former lessee by the appellant to get possession of the shop did not come from bona fide sources. At the highest, all that can be said, is that if the High Court or this Court were in the position of the Board as an appellate authority, it might have upheld the settlement in favour of the appellant who was an educated, unemployed youth belonging to the "more backward community". This, however, as already observed, is not a ground for setting aside the judgment of the Board in the exercise of the writ jurisdiction, particularly when the period of settlement is about to run out in a couple of months by March 31, 1980.

19. In the result, the appeal fails and is dismissed, but without any order as to costs.

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