
(2003) 03 GAU CK 0057
In the Gauhati High Court
Case No : Writ Petition (C) No. 6721 of 2002

35 No. Pakoria Min Samabai Samity Ltd.	APPELLANT
Vs	
Assam Fisheries Development Corpn. Ltd. and Others	RESPONDENT

Date of Decision : 10-03-2003

Acts Referred:

Citation : (2003) 3 GLR 66

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A.K. Goswami, M.K. Das and S. Banik, for the Appellant; S. Sarma, K.N. Choudhury and I. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. A.K. Goswami, learned counsel for the petitioner. Also heard Mr. S. Sarma, learned standing counsel appearing on behalf of the respondent Assam Fisheries Development Corporation Ltd. (for short the "Corporation") and also heard Mr. K.N. Choudhury, learned Sr. Counsel assisted by Mr. I. Choudhury, learned counsel for the Caveator - Shri Palon Ch. Mandal, President, Katahguri Min Samabai Samiti Ltd.

2. The brief facts leading to filing this writ petition are that the petitioner was initially settled with No. 129 Haria Dublong Fishery for a period of 5(five) years with effect from 23.10.2000 to 22.10.2005. While the petitioner was enjoying the said settlement, an another society, i.e., M/s 129 Haria Dublong Meen Samabay Samity Ltd., moved this court through WP(C) No. 6001 of 2000 challenging the said settlement made with the petitioner and this court by order dated 3.1.2002 dismissed the said petition. Being aggrieved by the said dismissal of the writ petition the Writ Appeal being Writ Appeal No. 21/02 was preferred before the Division Bench of this court and the said Writ Appeal was also dismissed on 31.5.2002. After such dismissal of the writ petition as well as writ appeal against the said settlement, while the petitioner was legitimately possessing and enjoying the settlement of the said fishery in question, suddenly, without any

notice or hearing whatsoever, the said settlement of the petitioner was cancelled by the Corporation by order dated 7.10.2002, (Annexure II to the writ petition) alleging that the petitioner had sublet the fishery to a third party and on the basis of an enquiry conducted into such allegation of subletting to a third party, the petitioner was found to have violated the Clause 3 read with Clause 18 of the Agreement. Hence this writ petition has been preferred challenging the impugned order dated 7.10.2002 only on the sole count that the same was passed without giving any notice and/or affording any opportunity of hearing whatsoever to the petitioner.

3. Challenging the impugned order Mr. Goswami, learned counsel for the petitioner, has vehemently argued that this impugned order itself, ex-facie goes to show that no opportunity of hearing was given to the petitioner inasmuch as when this impugned cancellation was being admittedly done only on the basis of an enquiry conducted by the Government against the petitioner to substantiate the allegation that the fishery in question was transferred by the petitioner to a third party and such allegation having been found to be established on the basis of the report of the Circle Officer, Mayang, no such enquiry in its true sense was ever held by the Corporation to arrive at a decision of impugned cancellation of the fishery. His contention is that immediately after such cancellation on the same day, i.e., 7.10.2002, the Corporation settled the said fishery in question in favour of the Caveator which clearly reflects that such cancellation was purely motivated one with an object only to accommodate the Caveator who was given settlement of the fishery only for three months commencing from 7.10.2002 to 7.1.2003.

4. Supporting the impugned order of cancellation, Mr. K.N. Choudhury, learned Sr. counsel has strenuously contended that the submission of Mr. Goswami as regards non-giving of the opportunity of hearing to the petitioner does not merit consideration inasmuch as the petitioner was given all the reasonable opportunity of hearing before passing the impugned order and the same is evident from the fact that at the time of enquiry held by the Government, the Secretary of the petitioner Society was duly heard and his statement was well recorded. That apart, the allegations of violation of the terms and conditions of the agreement particularly, Clauses 3 and 18 therein were also proved in the said enquiry conducted by the Government through State functionaries like Circle Officer as well as Gaoburah of the village and in the said enquiry they had categorically reported that the petitioner subject the fishery in question to one Mr. Samsul Haque by making an agreement with him. According to Mr. Choudhury, the agreement by and between the Corporation and the petitioner at the time of settlement being a non-statutory agreement, no notice whatsoever is necessary in compliance with the principle of natural justice. To bolster up this point, Mr. Choudhury has relied on a decision of this court reported in Shikshan Bachao Samiti Vs. Commissioner, Ahmedabad Municipal Corporation and Others, In that case, this court, relying on a decision of the Top Court in State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, in paragraphs 6

and 7 held that non-furnishing of the enquiry report to the petitioner before cancellation/settlement made in his favour shall not be affected by the principle of natural justice. In the said case there was allegation against the writ petitioner of subletting to third party and as against that allegation the petitioner was issued notice asking him to show cause and thereafter he submitted his reply and enquiry was held and after the said enquiry, the allegation was found to be proved as against the petitioner but the only grievance of the petitioner was that no enquiry report was furnished to him. In terms of the decision of the Apex Court, this court held that the termination of an arrangement is not a quasi-judicial act nor an administrative or executive act and hence principle of natural justice are not required to be followed. But in the cited case, before making the enquiry against the allegation of the petitioner, the petitioner was asked to show cause.

5. Reckoning on another case of Division Bench of this court reported in 1998 (1) GLR 405 (Majority Min Samabai Samity Ltd. v. Sukhraj Min Samabai Samity Ltd. and Ors.) in support of the submission that the petitioner cannot claim the compliance of natural justice, the learned senior counsel for the private Respondent has contended that this court, in the above cited case, held that natural justice is not a capsule formula of universal application and, it varies in its application from case to case, depending on facts of each case and such principle has to be applied and tested on the pragmatic touch-stone of pragmatic realism. Obviously there is no doubt about such legal position. Applicability of the concept of natural justice always varies from case to case and depends on the factual matrix of each case.

6. Mr. Sarma, learned standing counsel appearing on behalf of the Corporation, defending the impugned order, has endorsed the submissions of Mr. Choudhury, learned Sr. counsel and has vehemently submitted that the impugned action of cancellation was taken on the basis of enquiry conducted by the Government and also by taking into consideration the report submitted by the Circle Officer and Gaoburah as well and both these Government authorities, i.e., Circle Officer and Gaoburah had expressly reported that the petitioner was involved in subletting its fishery to a third party. According to him, in causing such an enquiry, the petitioner was given due opportunity of hearing and the same is evident from the fact that the statement of the Secretary of the petitioner fishery was recorded in the said enquiry. Mr. Sarma has argued that the petitioner obtained the interim order in the instant writ petition by suppressing the Clause 3 and 18 violation of which was alleged was not produced before the court.

7. Perused the records so produced by the learned standing counsel for the Corporation and on careful perusal of the same it appears that before passing the impugned cancellation no notice whatsoever was furnished to the petitioner. The Secretary of the petitioner fishery was heard only during the enquiry so conducted by the Government that was initiated against the petitioner without giving any notice to it. The record also reveals that the Secretary of the

petitioner fishery, in making the statement before the enquiry officer, stated that he did not sublet the fisher in question but a conspiracy was hatched up against the petitioner by certain person having vested interest who were trying to dislodge the petitioner from the settlement by making certain false allegations of such nature. After going through the note sheet, it also transpires that the Managing Director of the Corporation on 1.10.2000 at page 30 observed that though the report of the Circle Officer, Mayang was found to be correct to the effect that the petitioner had transferred the fishery in question to a third party, but on the basis of the papers made available the same was not yet clear and as such only on the proof of such transfer, the settlement would be cancelled accordingly. But from the record it is seen that thereafter no attempt had been made to cause any such enquiry in order to prove the allegations finally. Be it mentioned herein that this note was given on the basis of the Circle Officer's report and on consideration of all the materials available on record and the statement of the Secretary of the petitioner fishery as well.

8. Upon consideration of the factual position in its entirety, this court is of the considered view that the ratio of the case of Jarman Das and Majority Min Samabhai Samity Ltd. & Ors (supra) is not applicable in the facts and circumstances of the instant case because it is found that the so-called enquiry initiated by the Government was held behind the back of the petitioner. Even no notice was issued before initiation of such enquiry. In Jarman Das's case (supra), the grievance was that no enquiry report of the Circle Officer who initiated enquiry as regards subletting the fishery, was furnished to the petitioner but in that case prior to initiation of that enquiry notice was being issued to the petitioner which was not done in the instant case. It is established principle of law that though the public authorities have some discretion in settling or cancelling any contract having commercial element, such discretion is not absolute and must be governed by existing norms and procedure in public interest. First and foremost norm is the compliance of natural justice. It is incumbent upon the public authorities, in exercise of their administrative discretion, to act fairly, justly and reasonably following the principle of natural justice.

9. In that view of what has been observed, this court is of the considered opinion that before cancellation of the settlement in question, the petitioner ought to have been given reasonable opportunity of hearing but the same was denied to the petitioner in the case in hand. Accordingly, this impugned order of cancellation dated 7.10.2002 deserves interference and the same is hereby set aside and quashed. However, liberty is granted to the Corporation to make necessary enquiry, if so advised, as regards the allegation levelled against the petitioner by complying the dictum of natural justice within a period of one month from to day and to take a decision by passing a speaking order. It is made clear that the kist money, if already deposited by the Caveator in pursuance to his settlement dated 7.10.2002 be returned to him.

10. The records so produced be returned to Mr. S. Sarma forthwith.

11. In the result, the writ petition stands allowed. No costs.