(2001) 05 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (C) No. 1188 of 2000

Ahri Abdul Jalil APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12, 8
Constitution of India, 1950 — Article 14

Citation : (2001) 3 GLT 557

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

Bench : Single Bench

Advocate : N.C. Das and D. Sinha, for the Appellant; G.A. Assam, A. Hazarika and G. Uzir, for the Respondent

Judgement

A.K. Patnaik, J.—The petitioner is a resident of Kangter village in the District of Karimganj, Assam and has challenged the order dated 24.12.1999 of the Managing Director, Assam Fisheries Development Corporation Ltd. Gauhati by which the respondent No. 4 has been allowed to operate the Kangter Fishery of Karimganj District on contract basis for a period of 5 years with effect from 1.4.2000 to 31.3.2005 on payment of the annual revenue as follows:-

2. Mr. N.C. Das, learned counsel for the petitioner submitted that in a recent judgment in 129 Haria Dablong Min Manal Samabai Samiry Ltd. v. Assam Fisheries Development Corporation Ltd. and Ors. (Writ Appeal No. 260/99) a Full Bench of this Court has held, inter alia, that the Assam Fisheries Development Corporation Ltd. does not have the power to make direct settlement of Fisheries under the proviso to Rule 12 of the Assam Fishery Rules. According to Mr. Das, therefore, the Corporation could have settled the fishery only by tenders or by holding a public auction. He cited the decision of this Court in Ganesh Das Vs. State of Assam and Others, wherein direction is given to settle the fishery by following the tender system.

3. Mrs. A Hazarika, learned counsel on behalf of the Corporation, on the other

hand, submitted that the records produced before this Court would show that the impugned order dated 24.12.1999 allowing the respondent No. 4 to operate the aforesaid fishery was not really a fresh settlement, but was an extension granted by the Corporation. She submitted that in the aforesaid Full Bench judgment it has been held that the Assasm Fisheries Development Corporation Ltd. have not only powers to make settlement in respect of the fisheries vested with the Corporation, but also have implied power to pass orders regarding extension of the settlement. She further referred to the records as well as the affidavit-in-opposition filed on behalf of the respondent Nos. 2 and 3 to show that the settlement n respect of the aforesaid fishery was extended for a further period of 5 years with effect from 1.4.2000 to 31.3.2003 at 10% extension fees in favour of the respondent No. 4 on the request made by the 47 villagers of Kangter village in Karimganj District. In this context, Mrs. Hazarika submitted that in an earlier Writ petition C.R. No. 195/1992, a Division Bench of this Court by judgment and order dated 11.2.1992 had directed that the Kangter Beel Fishery will be settled only with one of the Kangter Beel villagers and it is in compliance with the said judgment of this Court that the settlement in favour of respondent No. 4 who is a villager of Kangter Beel has been extended for a further period of 5 years by the impugned order. She also submitted that the writ petitioner was one of the signatories to the petition of the villagers requesting the Managing Director of the Corporation to resettle the Kangter Beel in favour of the petitioner. Mr. Uzir, learned counsel for the respondent No. 4, reiterated the submissions of Mrs. Hazarika and relied on the averments made in the affidavit-in-opposition filed on behalf of respondent No. 4. Mr. Uzir, learned counsel, further submitted that the Corporation was an autonomous body with its own Memorandum & Articles of Association and under Article 115 of the Article of Association, the Directors of the Corporation had the power to manage the business of the Corporation. According to Mr. Uzir, in exercise of such power, the Board of Directors of the Corporation has laid down its own policy and makes settlement of fisheries or grants extension to the parties in accordance with such policies.

4. In the judgment of the Full Bench 129 Harm Dablong Min Mahal Samabai Samity Ltd. v. Assam Fisheries Development Corporation Ltd. cited by learned counsel for the parties, it has no doubt been held that the Corporation does not have power to make direct settlement of fisheries as the State has under the proviso to Rule 12 of the Assam Fishery Rules. But in the said judgment, the Full Bench has clarified that under Rule 8(c)(ii) of the Assam Fishery Rules, the Corporation has power to manage any registered fishery as has been entrusted to the Corporation by the State Government by a notification. The power to manage a fishery so entrusted by the State Government to the Corporation obviously includes the power to make settlement of such fishery as well as the power to pass orders regarding extension of such settlement as has been clarified by the Full Bench in the said judgment. The power to make settlement of the Corporation would be wide enough to make such settlement not only by

inviting tenders or by holding public auction but also by negotiation in appropriate cases. Such settlement by way of negotiation can be made by the Corporation not under the proviso to Rule 12 of the Assam Fishery Rules, but under the its powers contained in the Memorandum of Association of the Corporation read with Rule 8(c)(ii) of the Assam Fishery Rules.

5. But such powers of the Corporation to make settlement is subject to Article 14 of the Constitution as well as the limitations imposed by public law. This is because the Corporation is an instrumentality of the State and is a public body and cannot act in violation of the right to equality under Article 14 of the Constitution. Moreover, since the fishery entrusted by the State Government to the Corporation is public property, it cannot settle the same or grant extension in respect of it in favour of any parry in a manner which affects the public interest. Accordingly, when the order of settlement or an order of extension granted by the Corporation in favour of a party is challenged before the Court, the Court will have to examine as to whether public interest was considered by the Corporation while making settlement or granting the extension.

6. It appears from the records of the present case that a petition dated 11.3.1998 signed by 47 persons describing themselves to be villagers of Kangter village was submitted to the Managing Director of the Corporation requesting him to re-settle the Kangter Beel with the respondent No. 4 for a further period of 5 years at 10% extension fee. Pursuant to the said request of the 47 persons, respondent No. 4 was allowed to operate the Kangter Beel for a further period of 5 years w.e.f 1.4.2000 to 31.3.2005 at 10% extension fee. No effort whatsoever has been made by the authorities of the Corporation to find if there was any other villager of the Kangter village who was willing to offer a higher revenue than the respondent No. 4 for operating the Kangter fishery during the period from 1.4.2000 to 31.3.2005. Such higher offer of revenue for operating the aforesaid fishery from 1.4.2000 to 31.3.2005 could have been obtained either by inviting tenders or by holding public auction or even in any exceptional cases by holding direct negotiations when the offers received through tender process or through auction were found to be not adequate or reasonable. Moreover, no effort whatsoever appears to have been made by the authorities of the Corporation to find out as to whether the settlement or extension if granted in favour of the respondent No. 4 for the period from 1.4.2000 to 31.3.2005 would benefit the majority of the villagers of Kangter village or would only benefit the 47 persons who are said to have signed the petition requesting the Managing Director of the Corporation to re-settle the aforesaid fishery in favour of the respondent No. 4. An enquiry should have also been made to find out the total number of villagers in Kangter village who are depending upon the Kangter fishery. The records do not reveal that the aforesaid enquiries were made before the impugned order dated 23.12.1999 was passed in favour of respondent No. 4.

7. Mr. Das, learned counsel for the petitioner disputed the fact that the petitioner was among the 47 villagers of the Kangter village who had signed the aforesaid

petition to the Managing Director of the Corporation for resettlement of the Fishery in favour of respondent No. 4. It may be that the petitioner has signed the said petition, but such consent given by the petitioner will not absolve the authorities of the Corporation to discharge their duties and obligations imposed under Article 14 of the Constitution as well as public law and it was incumbent upon the authorities of the Corporation to have made the aforesaid enquiries to find out as to whether the settlement in favour of respondent No. 4 as requested by the 47 villagers of Kangter village would be in the public interest and would not be arbitrary.

8. For the aforesaid reasons, I quash the impugned order dated 24.12.1999 allowing the respondent No. 4 to operate the Kangter fishery of Karimganj District on contract basis. The Corporation will make afresh settlement of the Kangter fishery in accordance with law within a period of 2 months from today. Till such fresh settlement is made within a period of 2 months, the respondent No. 4 would be allowed to operate the fishery. It is made clear that the petitioner and the respondent No. 4 including other eligible parties may participate in the fresh settlement process if they so like.