
(2022) 09 GAU CK 0004
In the Gauhati High Court
Case No : Writ Appeal No. 211 Of 2022

Apurba Ch. Barman

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 06-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 12
Assam Fishery Rules, 1953 — Rule 12

Citation : (2022) 09 GAU CK 0004

Hon'ble Judges : R.M. Chhaya, CJ;Soumitra Saikia, J

Bench : Division Bench

Advocate : A.K. Talukdar, P. Sharma, M. Bhattacharjee

Final Decision : Dismissed

Judgement

R.M. Chhaya, CJ

1. Feeling aggrieved and dissatisfied with the judgment and order dated 28.03.2022 passed by the learned Single Judge in WP(C) No. 2262/2022, the appellant/original petitioner has preferred this appeal.

2. The following facts emerge from the record of the appeal:

It is the case of the appellant/original petitioner that the respondent No.3 herein floated a Tender Notice vide Tender No. 1/2015 inviting tenders from interested persons from the Scheduled Caste listed communities of the respective areas in the State of Assam in respect of different fisheries throughout the State including Dohor-Jogra Fishery in Dhubri District for a period of seven years. It is the case of the appellant that he did apply pursuant to the said Tender Notice and offered a sum of Rs. 4,50,001/- per year and was the second highest bidder. As the record unfolds, one Amar Barman was the highest bidder, who had offered Rs. 9,00,101/- for one year. It appears from the record that the successful bidder could not act as per the accepted bid and did not deposit the requisite amount. It further appears that on coming to know about the same, the appellant/original

petitioner wrote a letter/petition on 21.02.2016 expressing his willingness to take the lease, which culminated into an agreement dated 03.05.2016. By the said agreement, the appellant/original petitioner agreed to pay a sum of Rs. 4,50,001/- for Dohor-Jogra Fishery. It was clearly mentioned by the appellant/original petitioner in his letter dated 21.02.2016 that the settlement of the fishery may be given to him by cancelling the existing settlement. As per the agreement so made, the appellant/original petitioner deposited an amount of Rs. 27,00,006/-. The record further indicates that on completing six years of the lease, the appellant/original petitioner did apply for extension. However, the same was not considered by the respondent authorities and meanwhile, the respondent authorities issued a Tender Notice on 14.03.2022 being Tender Notice No. AFDC.992/2021/3870-3884 for settlement of Dohar-Jogra Fishery in Dhubri District. The said Tender Notice was challenged by the appellant on the ground that it was prima facie illegal. It was the case of the appellant that in the State of Assam fisheries are given on lease for a minimum period of seven years and, therefore, the appellant cannot be discriminated as he has regularly paid all the instalments.

3. Relying upon Covenant No. 36 (a) of the terms and conditions of the agreement executed on 03.05.2016, it is contended by the appellant that the extension be granted in his favour and on such other grounds it was also contended that the impugned Tender Notice if allowed to be carried out, would be violative of Articles 14 and 16 of the Constitution of India. On such factual background and the grounds raised in the petition, the appellant inter alia prayed for the following reliefs in the writ petition :

" In the premises aforesaid, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to admit this petition, call for the records and issue Rule calling upon the Respondents to show cause as to why, the impugned illegal Tender Notice No. 01/2022 (Annexure-L, Page-) dated-14/03/2022 issued by the Managing Director, (Respondent No-3) of the Assam Fishery Development Corporation Limited, vide Memo No. AFDC 992/2021/3870-3884, only to the extent of No. 20/106 Dohor-Jogra Fishery, in the District of Dhubri, inviting for lease of the same fishery for seven years, starting from 2022-23, shall not be set aside and quashed and upon hearing the cause or causes that may be shown by the respondents, Your Lordships may be pleased to make the Rule absolute and or to pass any further order or orders as Your Lordships may deem fit and proper for the interest of justice.

AND

In the interim Your Lordships may further be pleased to pass an interim order by staying further proceeding of the impugned illegal Tender Notice No. 01/2022 dated-14/03/2022 issued by the Managing Director, (Respondent No-3) of the Assam Fishery Development Corporation Limited, vide Memo No. AFDC 992/2021/3870-3884, to the extent of No. 20/106 Dohor-Jogra Fishery, in the District of Dhubri, inviting for lease of the same fishery for seven years, starting

from 2022-23, and or to pass any further order or orders as Your Lordships may deem fit and proper for the ends of justice.”.

4. The learned Single Judge by the impugned judgment and order dated 28.03.2022 came to the conclusion that the appellant/original petitioner was given the lease contrary to the ratio laid down by a Full Bench of this Court in M/s. 129 Haria Dablong Min Mahal Samabai Samity Ltd. –vs- Assam Fisheries Devp. Corporation Ltd. & Ors., reported in 2001 (1) GLT 454. Referring to the agreement dated 03.05.2016, the learned Single Judge came to the conclusion that the same is duly signed by both the parties. The year of settlement of the fishery in question was from the period 2016-2017 to 2021-2022, which has never been objected to by the appellant/writ petitioner. Relying upon Rule 12 of the Assam Fishery Rules, the learned Single Judge also opined that the respondent AFDC has no such power to settle any of the fisheries directly and was pleased to dismiss the writ petition with a further clarification that if the application of the petitioner for extension of lease of the said fishery is pending before the respondent AFDC, the authorities in AFDC shall consider the same in accordance with law before settling the said fishery in terms of the impugned Tender Notice No. 01/2022, keeping in mind that the settlement of the fishery with the appellant/original petitioner on 03.05.2016 was not in conformity with the law laid down by the Full Bench of this Court in M/s. 129 Haria Dablong Min Mahal Samabai Samity Ltd. (supra). Being aggrieved by the said judgment and order dated 28.03.2022, the present writ appeal has been filed.

5. We have heard Mr. A.K. Talukdar, learned counsel for the appellant. We have also heard Mr. P. Sharma, learned Standing Counsel, AFDC and Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam.

6. A co-ordinate Bench of this Court vide order dated 20.06.2022 while adjourning the present appeal to 27.06.2022, was pleased to grant status quo as on that date i.e., 20.06.2022, which has continued till date.

7. The respondent AFDC has filed its affidavit-in-opposition. The appellant has also filed his affidavit-in-reply.

8. Mr. A.K. Talukdar, learned counsel for the appellant has taken this Court to the impugned judgment and order as well as the factual matrix arising out of the appeal based upon the record, as discussed hereinabove. Mr. Talukdar has contended that the respondents have committed an illegality by issuing the Tender Notice dated 14.03.2022 even though the lease was subsisting between the appellant and the respondents. It was contended that no affidavit was filed before the learned Single Judge, controverting the fact that there was a mistake in the agreement and the settlement was actually for six years and not seven years. It was contended that the lease period originally fixed has been curtailed without any fault on the part of the appellant. It was also contended that the learned Single Judge has wrongly come to the conclusion that there was a direct settlement between the appellant and the respondent authorities and has totally

ignored the fact that the appellant had submitted his bid as per the Tender Notice issued in the year 2015. It was also contended that even though there was a status quo order, the authorities have tried to create third party rights. It was contended that even though such rights are created, the same has to be treated as being subject to outcome of this appeal. It was further contended that as per the provision of Clause 12.2 and 20.3 of the 'Fisheries Tender and Rules for Realisation', every tender for lease of a fishery in the State of Assam is for seven years with extension provision at Clause 15.1. It was contended that the learned Single Judge has totally ignored the said provision. On all the aforesaid grounds, it was contended that the writ appeal be allowed.

9. Per contra, Mr. P. Sharma, learned counsel for the respondent AFDC has relied upon the affidavit-in-opposition filed by the authorities. Mr. Sharma contended that the settlement so made in the favour of the appellant was not as per any tender process. Relying upon the affidavit-in-opposition, Mr. Sharma further contended that the appellant had agreed to pay a sum of Rs. 4,50,001/-per year and, in fact, the appellant deposited an amount of Rs. 27,00,006/-, which clearly proves that from the beginning the settlement in favour of the appellant was for six years only. Mr. Sharma contended that it is not the case of the appellant that he had paid any amount for lease of seven years. Relying upon the affidavit-in-opposition, Mr. Sharma further contended that the fishery has already been settled pursuant to the impugned Tender Notice in favour of one Sri Madhab Barman and contended that appeal being meritless, deserves to be dismissed.

Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam has adopted the argument of Mr. P. Sharma, learned counsel for the respondent AFDC.

10. Having heard the learned counsels for the parties, it is pertinent to note that the respondent authorities settled the lease of Dohor-Jogra Fishery in favour of one Amar Barman who had offered Rs. 9,00,101/-. It is no doubt true that as per the record the appellant was the second highest bidder, but the fact remains that the Tender Notice No. 01/2015 had already been acted upon and the said Amar Barman was declared to be the successful bidder and settlement was ordered to be made in his favour. The letter dated 21.02.2016 written by the appellant to the respondent authority clearly establishes the fact that the appellant was well aware of the fact that the lease had already been given as per the earlier Tender Notice and as the lessee could not deposit the revenue, he showed his willingness to hold the rights of the fishery as per his offer of Rs. 4,50,001/-. The appellant clearly spelt out that he is prepared to run the fishery for the said amount and urged before the respondent authority to cancel the existing settlement. It is a matter of record that acting upon the letter dated 21.02.2016 written by the appellant, the respondent authorities settled the lease in favour of the appellant for a total consideration of Rs. 27,00,006/-. Thus, even if arithmetical calculation is made, as per the said agreement an amount of Rs. 27,00,006/- corresponds to Rs. 4,50,001/- x 6 i.e. for six years. It is no doubt

true that in the agreement it is mentioned that it is for seven years, the fact remains that the amount determined, which was paid by the appellant, was for six years. As rightly observed by the learned Single Judge, the same has never been objected to by the appellant. A Full Bench of this Court in the case of M/s. 129 Haria Dablong Min Mahal Samabai Samity Ltd. (supra), in Paragraph Nos. 15 and 16 observed as under:

"(15) Now regarding the application of the Fishery Rules in the matter of settlement by AFDC, we hold that although AFDC is a State under Article 12 of the Constitution and it is 100% Govt. enterprises, the provisions of the Assam Fishery Rules are not applicable in the matter of settlement to be made by the AFDC. Thus the AFDC does not have the power to make any direct settlement of fisheries as the State has got in view of the proviso to Rule 12 of the Assam Fishery Rules. We are in full agreement with the following observations of a Division Bench of this Court in Writ Appeal No.161/95.

"In our considered opinion, the real power lies with the Board of Directors and it is for the Board of Directors to lay down the policy while awarding settlement. The Apex Court has settled the law that as far as the Government Companies which the Assam Fisheries Development Corporation is, the same will be governed by the definition of State as defined under Article 12 of the Constitution and while awarding settlement of fisheries it cannot act arbitrarily and will have to act on definite guidelines."

We also hold that the decision rendered by a Division Bench of this Court in Review application No. 30/97 arising out of Writ Appeal No. 373/96 has not laid down the correct law.

(16) In view of our foregoing discussion and decisions, we answer the question raised as follows: 1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rules 8(ii) of the Assam Fishery Rules; 2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency, need not be reemphasized in view of the catena of decisions of the Apex Court on the point. 3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus to the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Mainao community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity. 4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We

may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out give relief to the lessee in proper and suitable cases. 5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3.1.1994 were produced before us and the said resolution provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too to the highest bidder. In view of what has been stated by us as above, the AFDC is directed to lay down the guidelines and the policy decisions in the matter as early as possible preferably within a period of six months by convening a meeting of the Directors and other experts in the matter. The Reference stands disposed of as above."

As per the binding decision of the Full Bench of this Court, the respondent authority has no power to make any direct settlement in terms of Rule 12 of the Assam Fishery Rules. Thus, it appears that even though the agreement speaks of seven years at the rate of Rs. 4,50,001/- per year, the appellant has admittedly paid the amount for six years i.e. Rs. 4,50,001/- x 6 = Rs. 27,00,006/-. The very fact that the appellant applied for extension shows that the amount paid was only for six years.

11. It is also a matter of record that the settlement was granted in favour of the appellant without issuing any tender which is de hors the ratio laid down by the Full Bench of this Court in M/s. 129 Haria Dablong Min Mahal Samabai Samity Ltd. (supra). Though Mr. Talukdar also contended that the appellant is still in possession, the affidavit-in-opposition filed by the authorities clearly spell out that the proceedings of the impugned Tender Notice has culminated into settlement in favour of one Madhab Barman and settlement order has been issued on 10.08.2022, which has been done by the respondents as per the Tender Notice. It is not the case of the appellant that he participated in the tender process pursuant to the impugned Tender Notice. Hence, the grounds raised by the learned counsel for the appellant lack merit. The observations made by the learned Single Judge are based on correct interpretation of Rule 12 of the Assam Fishery Rules. We are in total agreement with the observations made and the view taken by the learned Single Judge. No interference is, therefore called for with the impugned judgment and order dated 28.03.2022 passed by the learned Single Judge in WP(C) No. 2262/2022.

12. The appeal being bereft of merits, deserves to be dismissed and is hereby dismissed. However, there shall be no order as to costs.