
(2008) 02 GAU CK 0071
In the Gauhati High Court

Bamgaon Matshyajbi Self Help Group and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 2 GLT 695

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—I have heard Mr. N.C. Das, learned Senior counsel, appearing on behalf of the petitioner in WP(C) No. 4799/2007, and Ms. B.L. Sinha, learned Government Advocate, appearing on behalf of the State respondents, in WP(C) No. 4799/2007, WP(C) No. 5835/2006, WP(C) No. 5680/2007 and WP(C) No. 7203/2005. I have also heard Mr. I. Choudhury, learned Counsel, appearing on behalf of the private respondent, i.e. respondent No. 4, in WP(C) No. 4799/2007, who is appearing on behalf of the petitioners in WP(C) No. 5835/2006, WP(C) No. 5680/2007 and WP(C) No. 7203/2005.

2. By this common judgment and order, I propose to dispose of all the four writ petitions, namely, WP(C) No. 4799/2007, WP(C) No. 5835/2006, WP(C) No. 5680/2007 and WP(C) No. 7203/2005, for, all these writ petitions are closely inter-linked and have, therefore, been, as sought for by the learned Counsel for the parties, heard together.

3. Before entering into the discussion of the facts involved in these four writ petitions, it is required to be borne in mind that the controversy, arising out of the subject-matter of these writ petitions, demands determination of the scope and ambit of Rule 8 read with Rule 12 of the Assam Fishery Rules, 1953.

4. Before the Assam Fishery (Amendment) Rules, 2005, came into force with effect from 08.04.2005, Rule 8 and Rule 12 of the Assam Fishery Rules, 1953, read as under:

Rule-8. Settling Authority. - (a) The Deputy Commissioners or the Additional Deputy Commissioners in case of Sadar Sub-Divisions and the Sub-Divisional Officers in case of other Sub-Divisions shall be the authorities for settlement of all registered fisheries under the tender system of sale in their respective jurisdiction.

Rule-12. Except those referred to in Sub-rule No. 8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale by auction:

Provided that the State Government may settle any registered fishery otherwise than under tender system with Fishery Co-operative Society formed with 100 per cent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Caste of the State or Maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time.

5. A combined reading of Rule 8 and Rule 12, as these two rules had existed before 08.04.2005, shows that in respect of a registered fishery, located within a Sadar Sub-Division, it was the Deputy Commissioner or the Additional Deputy Commissioner of the District, who was the competent authority to grant lease and, in respect of those registered fisheries, which fell in Sub-Divisions other than Sadar Sub-Divisions, it was the Sub-Divisional Officer of the Sub-Division concerned, who was the authority to grant lease. Moreover, what the unamended Rule 12 laid down was that all registered fisheries should be settled under tender system of sale and not by way of auction or otherwise. The proviso to Rule 12, however, empowered the State Government to settle any registered fishery otherwise than under tender system with Fishery Co-operative Society formed with 100 percent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Caste of the State or Maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time.

6. By the Assam Fishery (Amended) Rules, 2005, the proviso to Rule 12 stands amended with effect from 08.04.2005. With the amendments incorporated, the proviso to Rule 12, now, reads as under:

Provided that the Government shall settle a 60% category fishery with special category of co-operative Societies, Non-governmental Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.

Explanation 1: For the purpose of this rule, the words "special category" means and includes the Co-operative Societies, Self-Help Groups, Non-governmental Organizations comprising of 100% actual fishermen of the Scheduled caste community or Maimal community of erstwhile Cachar district. Who can not participate in competitive bidding because of poor financial condition due to famine, food, draught, epidemic of any other circumstances which are beyond control of the society, non-governmental Organization or Self Help Groups as the

case may be.

Explanation 2 : For the purpose of this rule, "a 60% category fishery" means 60% of registered fisheries available in a Civil Sub-Division eligible for settlement in a particular year.

7. From a careful reading of the amended Rule 12, what becomes clear is that 60% of the registered fisheries, located in a civil subdivision, which is available for settlement in a particular year, shall be settled by the State Government with special category of co-operative societies, non-governmental organizations and self-help groups consisting of 100% actual fishermen in the neighbourhood. However, the settlement, in favour of special category of co-operative societies, non-governmental organizations and self-help groups mentioned hereinbefore, has to be made by way of tender system. Thus, Rule 12 (as presently stands amended), makes it obligatory, on the part of the State Government, to identify, every year, 60% of the registered fisheries, which may be available for settlement in favour of special category of co-operative societies, non-governmental organizations and self-help groups. Thus, not only the general settlement, which is made by the Deputy Commissioner, Additional Deputy Commissioner or the Sub-Divisional Officer, as the case may be, in terms of Rule 8, even settlement by the Government, has to be made by way of tender system. However, settlement of the 60% of the registered fisheries, to be made by tender system, would remain confined to special category of co-operative societies, non-governmental organizations and self-help groups.

8. When the amendments, introduced by the Assam Fishery (Amendment) Rules, 2005, are read, in the light of the provisions contained in Rule 8, it clearly follows that in respect of a registered fishery, located within a Sadar Sub-Division, it is the Deputy Commissioner or the Additional Deputy Commissioner of the District, who shall be the competent authority to grant lease and, in respect of those registered fisheries, which fall in Sub-Divisions other than Sadar Sub-Divisions, it is the Sub-Divisional Officer of the Sub-Division concerned, who is the authority to grant lease.

9. Moreover, what the unamended Rule 12 laid down was that all registered fisheries should be settled under tender system of sale and not by way of auction or otherwise. The proviso to Rule 12, however, empowered the State Government to settle any registered fishery otherwise than under tender system with Fishery Co-operative Society formed with 100 percent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Caste of the State or Maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time. However, with the amendment of the proviso to Rule 12, 60% of the registered fisheries, located in a civil sub-division, which is available for settlement, in a particular year, shall, now, be settled by the State Government with special category of co-operative societies, non-governmental organizations and self-help groups consisting of 100% actual fishermen in the

neighbourhood, as mentioned hereinbefore. The settlement of 60% of the registered fisheries has to be by way of tender system and not by way of direct settlement as had been permitted earlier by the proviso to Rule 12.

10. Bearing in mind what have been pointed out, let me, now, turn to the facts of the cases at hand. Undoubtedly, in all the present writ petitions, it is No. 50 Batua River Fishery, which forms the subject matter of dispute. Before proceeding further, let me, now, take note of the material facts, which are not in dispute:

(i) A tender notice was published, on 20.06.2005, by the office of the Deputy Commissioner, Dhemaji, for settlement of the No. 50 Batua River Fishery. Pursuant to the tender notice, altogether five tenderers participated. The tenderers and their bids were as follows:

(ii) With the allegation that the said fishery was sought to be settled with the Self Help group represented by Sri Iswar Das, i.e. the present petitioner, Batua Bangalmari Fishery S.S. Ltd., which is a co-operative society registered under the Co-operative Societies Act, came to this Court by way of a writ application made under Article 226 of the Constitution of India, which gave rise to WP(C) No. 7203/2005. By order, dated 05.10.2005, the High Court directed the State respondents not to settle, without leave of the Court, the fishery, in question, with any bidder other than the writ petitioner, who appeared to have quoted the highest bid, except if there was any defect in the tender documents of the petitioner.

(iii) In course of time, an order was issued, on 10.02.2006, by the State Government settling the said fishery in favour of Batua Bangalmari Fishery S.S.Ltd. for a period of three years. Close on the heels of the said order of settlement, dated 10.02.2006, a letter, dated 06.11.2006, was issued by the Additional Deputy Commissioner, Dhemaji, addressed to the Superintendent of Police, Dhemaji, whereby the police were notified that though the settlement of No. 50 Batua River Fishery and 22 Bangalmari Pavamari Fishery, made in favour of No. 22 Batua Bangalmari Fishery S.S. Ltd., stood expired on 12.10.2006, the Chairperson of the No. Batua Bangalmari Fishery S.S. Ltd. was found operating the fishery. By this letter, dated 06.11.2006, the Additional Deputy Commissioner, therefore, requested the Superintendent of Police, Dhemaji to take necessary steps for stopping the operation of the settlement of the fishery. It is, however, clear that since the settlement of No. 50 Batua River Fishery had been made, by order, dated 10.02.2006, aforementioned for a period of three years, the Batua Bangalmari Fishery S.S. Ltd. could not have been stopped from operating the said fishery by virtue of the letter, dated 06.11.2006, aforementioned.

(iv) The Batua Bangalmari Fishery S.S. Ltd., then, came to this Court by another writ petition, which has given rise to WP(C) No. 5835/2006 and an interim order was passed therein, on 24.11.2006, suspending the operation of the impugned

letter, dated 06.11.2006, aforementioned and the Court further directed the State respondents not to disturb Batua Bangalmari Fishery S.S. Ltd. from operating the said fishery. It needs to be pointed out that in WP(C) 5835/2006, the fishery, which formed the subject matter of the dispute, was No. 50 Batua River Fishery and not the fishery, namely, 22 Bangalmari Pavamari Meen Mahal. By virtue of, however, the said interim order, dated 24.11.2006, as the entire letter, dated 06.11.2006, was suspended, there was no restraint on the part of the Batua Bangalmari Fishery S.S. Ltd. from operating even No. 22 Bangalmari Pavamari Fishery, if they were so operating, though Batua Bangalmari Fishery S.S. Ltd. had no right to operate No. 22 Bangalmari Pavamari Meen Mahal.

(v) By yet another letter, dated 02.10.2007, issued by the Deputy Commissioner, Dhemaji, to the Superintendent of Police, Dhemaji, a reminder was issued as regards the letter, dated 06.11.2006, aforementioned, which already stood suspended by the High Court in WP(C) 5835/2006. Consequently, M/s Batua Bangalmari Fishery S.S. Ltd., once again, came to this Court with a writ application, which gave rise to WP(C) 5680/2007. An interim order was passed, in WP(C) 5680/2007, on 30.10.2007, suspending the operation of the letter, dated 24.10.2007, aforementioned.

(vi) Thereafter, on 11.09.2007, M/s Bamgaon Matsyajibi SelfHelp Group Society, a self help group, came to this Court with a writ application, which gave rise to WP(C) 4799/2007. By making this application, M/s Bamgaon Matsyajibi Self Help Group Society has sought for issuance of appropriate writ(s) commanding the Deputy Commissioner, Dhemaji, to cancel, in terms of the order, dated 07.12.2006, passed by the Deputy Secretary, Government of Assam, Fishery Department, the settlement of No. 50 Batua River Fishery, made in favour of Batua Bangalmari Fishery SS. Ltd. According to this letter, dated 07.12.2006, the lessee of No. 50 Batua River Fishery had become a defaulter and, hence, the settlement was directed to be cancelled, proceedings for recovery of the arrear amount were directed to be initiated and the said fishery was directed to be run, on daily basis, by engaging a third party. 11. It is not in dispute that before the order, dated 07.12.2006, aforementioned was issued, no notice was issued to, and/or served upon, Batua Bangalmari Fishery S.S. Ltd. After passing of the order, dated 07.12.2006, aforementioned, another order was passed by the Deputy Commissioner, Dhemaji, addressed to the Deputy Secretary, Government of Assam, Fishery Department, requesting the Government to call tender to settle the 50 Batua River Fishery.

12. From the chronology of events, what clearly transpires is that the settlement of No. 50 Batua River Fishery was made in favour of the Batua Bangalmari Fishery S.S. Ltd. for a period of three years and, hence, until completion of the period of three years, the settlement, made in favour of the Batua Bangalmari Fishery, cannot be cancelled except in accordance with law, which would obviously include giving of a notice to the lessee if the settlement has to be cancelled due to non-payment of "Kist money" or otherwise. No such notice has

so far been issued to Batua Bangalmari Fishery S.S. Ltd. directing them to show cause as to why their settlement of lease shall not be cancelled.

13. In the circumstances, as indicated hereinabove, Batua Bangalmari Fishery S.S. Ltd. cannot be stopped from operating the 50 Batua River Fishery. So far as the 22 Bangalmari Pavamari Meen Mahal is concerned, since this is not a subject matter of controversy between the parties, this Court,, at this stage, expresses no opinion except indicating the fact that the suspension of the letter, dated 06.11.2006, aforementioned, by virtue of the order, dated 24.11.2006, passed in WP(C) 5835/2006, shall not be treated to have covered this fishery.

14. In view of the fact that the settlement of the No. 50 Batua River Fishery has already been given in favour of the Batua Bangalmari Fishery S.S. Ltd. by virtue of the order, dated 10.12.2006, WP(C) No 7203/2005 has become infructuous and the same shall accordingly stand disposed of. However, in view of the fact that the settlement order, dated 10.02.2006, has not been cancelled so far and no notice, as already indicated hereinbefore, has been given to Batua Bangalmari Fishery S.S. Ltd. directing them to show cause against the proposed cancellation of their lease on the ground that they were defaulter, this Court has no option, but to make the interim directions passed, on 24.11.2006 and 30.10.2007, absolute.

15. So far as WP(C) 4794/2007 is concerned, the writ petitioner has not been able to point out that the directions, given by the State Government, by order, dated 07.12.2006, is valid and enforceable in law. This order, as already indicated above, could not have been passed without giving an opportunity of showing cause to Batua Bangalmari Fishery S.S. Ltd. However, as the order, dated 07.12.2006, is not under challenge, this Court does not, at this stage, interfere with the said order, dated 07.12.2006, but make it clear this order must be treated as non est.

16. The State respondents are, however, left at liberty to cancel, if the facts and circumstances of the case so justify, the lease of 50 Batua River Fishery, made in favour of Batua Bangalmari Fishery S.S. Ltd., by following the procedures as prescribed by law. However, the liberty, so given, shall not be construed as a direction for cancellation of the lease already made in favour of Batua Bangalmari Fishery S.S. Ltd. It is further made clear that this liberty is given to the State respondents so that disposal of this writ petition shall not be treated as a bar for the State respondents to take necessary action(s) with regard to cancellation of the said fishery as may be required and permissible in law.

17. With the above observations and directions, all these four writ petitions shall stand disposed of.

18. No order as to cost.