

(1998) 09 GAU CK 0025
In the Gauhati High Court
Case No : Civil Rule No. 4847 of 1996

Barunguri Beelgaon Matshyajbi Samabai Samity Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 19-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 GLT 318

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

Bench : Single Bench

Advocate : S.N. Bhuyan and U. Bhuyan, for the Appellant; H.N. Sarma, A.K. Goswami and A. Talukdar, for the Respondent

Judgement

A.K. Patnaik, J.—The Petitioner in this writ petition is a fishery Co-operative Society. By order dated 29.10.94, the State Government settled the No. 129 - Haria Dublong Fishery with the Petitioner-society with an annual revenue of Rs. 35,766.00 for a period of five (5) years subject to observance of usual terms and conditions laid down in the Rules for Settlement of Fisheries. Pursuant to the said settlement, the Petitioner-society deposited security money and completed all necessary formalities, took possession of the fishery and started operation of the same. But by order dated 5.8.96, the State Government cancelled the aforesaid settlement made in favour of the Petitioner-society on the ground that the Petitioner-society had sub-let Dublong portion of the fishery to one Shri Nishi Kanta Das in violation of the rules. By the said order dated 5.8.96 the State Government settled the said fishery in favour of Respondent No. 5-Society at an annual revenue of Rs. 35,766/- with immediate effect upto 28.10.99 subject to observance of usual terms and conditions of Rules for Settlement of Fisheries. Accordingly, the Petitioner has moved this Court in the present Civil Rule under Article 226 of the Constitution for quashing the order dated 5.8.96.

2. At the hearing of the Civil Rule Mr. S.N. Bhuyan, learned Counsel for the Petitioner, submitted that the impugned order dated 5.8.96 was passed by the

State Government cancelling the earlier settlement of fishery made in favour of the Petitioner-society without giving any opportunity whatsoever to the Petitioner-society to present its case against the proposed cancellation and, therefore, the impugned order was liable to be quashed for violation of principles of natural justice. He relied on the decisions of a Division Bench of this Court in the case of *Desung Part-II Min Samabaya Samitee Limited v. State of Assam and Ors.* (1982) 1 GLR 143, and *Probin Kumar Das v. State of Assam and Ors.* (1985) 1 GLR 516 in which orders cancelling the settlement of fishery made in favour of a party without affording opportunities to show-cause were held to be void and accordingly quashed.

3. Mr. H.N. Sarma, G.A., Assam, stated that the records did not indicate that show cause notice was issued to the Petitioner-society or any hearing was afforded to them before the impugned order dated 5.8.96 was passed cancelling the settlement in their favour. He, however, submitted that the records indicate that one Shri Jawaharlal Biswas belonging to the Petitioner-society had executed a lease in favour of some other party and had thereby sub-let the fishery contrary to the Rules for Settlement of Fisheries.

4. Mr. A.K.. Goswami, learned Counsel for the Respondent No. 5, vehemently argued that the records would indicate that No. 129-Haria Dublong Fishery had earlier been settled with one M/s. Jagiroad Matshya Bebosai Samabaya Samitee Limited and that the said settlement was cancelled by the State Government by order dated 29.10.94 without affording any opportunity to the said society and the said fishery was settled with the Petitioner. The order dated 29.10.94 under which the settlement of fishery was made in favour of the Petitioner-society was, therefore, in violation of the principles of natural justice and was void. In case this Court now quashes the order dated 5.8.96 cancelling the settlement made in favour of the Petitioner-society, the Court would in fact restore the illegal and void order dated 29.10.94 under which the settlement was made in favour of the Petitioner-society. According to Mr. Goswami, on this ground alone, this Court should refuse to exercise its discretion under Article 226 of the Constitution. In support of this submission Mr. Goswami cited the decision of the Supreme Court in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, and decision of a Division Bench of this Court in the case of *Haren Hazarika v. State of Assam* (1991) 2 GLR 384, in which exercise of power under Article 226 of the Constitution was refused by the High Court and the impugned order was not quashed on the ground that quashing of the impugned order would have the effect of restoring an illegal order. Alternatively, Mr. Goswami submitted that the Court can always remit matter back to the State Government to give post-decisional hearing to the Petitioner-society and direct that in the meanwhile status quo as regards possession of the fishery should be maintained by the parties. In support of this submission he relied on the decision of a Division Bench of this Court in the case of *Kusumpara Pakaria Min Samabaya Samitee Limited v. State of Assam* (1992) 2 GLR 328. In this context, Mr. Goswami states that the Respondent No. 5 is in possession of the fishery since the impugned

order was passed in the month of August, 1996 and has been operating the same and it will not be just and proper on the facts and in the circumstances of the case to quash the impugned order of settlement in favour of the Respondent No. 5. Finally, Mr. Goswami pointed out that the Petitioner-society had initially filed Civil Rule No. 3867/96 through Shri Jawaharlal Biswas but when the affidavits were exchanged, the said Shri Jawaharlal Biswas who had executed the lease deed in favour of the third party in respect of the fishery withdrew the writ petition on 17.9.96 and the present Civil Rule was again filed by the present Petitioner.

5. On a perusal of the records of Civil Rule No. 3867/96, I find that the same was filed by Shri Jawaharlal Biswas describing himself to be Secretary of the Petitioner-society and on 12.8.96, the Court issued notice on the said Civil Rule but on 17.9.96, the Petitioner submitted that there was some defects in the writ petition for which he wanted to withdraw the same and sought liberty to refile the same. The records of Civil Rule do not indicate that any affidavit was exchanged between the parties by then. A Caveat petition, however, was filed by the Respondent No. 5 in the said Civil Rule through Mr. A.K.. Goswami and Mr. Goswami had made statement on 12.8.96 that the Respondent No. 5 had already taken possession of the fishery and all formalities had been completed including payment of kist money. Mr. Bhuyan, learned Counsel for the Petitioner, explained that the earlier Civil Rule No. 3867/96 was withdrawn because Shri Jawaharlal Biswas who filed the Civil Rule was no longer Secretary of the Petitioner-society and instead the present Civil Rule was filed through its newly elected Secretary Shri Bhakta Mohan Sarkar.

6. On a perusal of the records produced before the Court, it appears that the fishery was earlier settled with M/s. Jagiroad Matshya Bebosai Samabaya Samitee Limited till 31.3.95. But the said society had become defaulter of Rs. 18,030/- as on 31.3.95 and in the circumstances, the settlement made in favour of the said society had to be cancelled by order dated 29.10.94 and the fishery was settled in favour of the Petitioner for a period of 5 years. It is true that no show-cause or hearing was afforded to the said M/s. Jagiroad Matshya Bebosai Samabaya Samitee Limited before the settlement in favour of Respondent No. 5 was made. But it appears from the records that the said Jagiroad Matshya Bebosai Samabaya Samitee Limited had itself admitted that it was defaulter and had submitted an application enclosing a Treasury Challan showing deposit of Rs. 20,000/- and even after adjustment of Rs. 20,000/- an amount of Rs. 18,030/- still remained outstanding against the said society. Since the said society did not dispute the position that it was a defaulter, no opportunity was required to be given to the party before cancelling the settlement in its favour on the ground of defaulter. Therefore, I am of the considered opinion that the impugned order dated 29.10.94 cancelling the settlement in favour of the said society and settling the fishery in favour of the Petitioner-society cannot be held to be illegal and void for violation of principles of natural justice. The contention of Mr. Goswami, therefore, that the impugned order dated 5.8.96 if quashed would

restore an illegal and void order has no merit.

7. The settlement that was made in favour of the Petitioner under the order dated 29.10.94 was under the proviso to Rule 12 of the rules for Settlement of Fisheries, 1953 and, therefore, a statutory settlement and it has been held by a Division Bench of this Court in the case of *Desung Part-II Min Samabaya Samitee Limited and Ors. v. State of Assam (supra)* and *Probin Kumar Das v. State of Assam (supra)* cited by Mr. Bhuyan that principles of natural justice will have to be followed before a statutory settlement made in favour of a party is cancelled. In the instant case, admittedly, the Petitioner was not issued any notice to show-cause nor given any hearing before the impugned order dated 5.8.96 was passed by the State Government cancelling the settlement made in favour of the Petitioner under order dated 29.10.94. But it appears that soon after the impugned order dated 5.8.96 was passed the Respondent No. 5 in whose favour the settlement was made under the said order took possession and has been operating the said fishery since August, 1996. It also appears from the records that there is a document purportedly executed by erstwhile Secretary of the Petitioner-society Shri Jawaharlal Biswas subletting the fishery to a third party. In these peculiar facts and circumstances, following the judgment of the Division Bench of this Court in the case of *Kusumpara Pakaria Min S.S. Limited v. State of Assam (supra)* cited by Mr. Goswami, I am of the considered opinion that ends of justice would suffice if the Petitioner is given a post-decisional hearing by the competent authority of the Government and until a decision is taken by the State Government after such hearing, the Respondent No. 5 would continue to be in possession of the fishery.

8. In the result, this writ petition is disposed of with the direction that the competent authority of the State Government would afford a post-decisional hearing to the Petitioner-society indicating the materials which reveal that the Petitioner-society has sub-let the fishery to a third party and take decision after such hearing within a period of 2 months from the date of receipt of a certified copy of this order and until such decision is finally taken, the Respondent No. 5 would continue to be in possession of the fishery and will operate the same in terms of the settlement made in its favour under the impugned order dated 5.8.96. But considering the facts and circumstances of the case, the parties shall bear their own costs.