(2011) 09 GAU CK 0028

In the Gauhati High Court

Case No : Writ Petition (C) No''s. 2658 of 2010 and 2659 of 2011

Bharat Das APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Citation : (2012) 1 GLD 501

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : B. Bhuyan, Mr. B. Talukdar, Mr. M. Das, in W.P. C No. 2658/2010 and Ms. B. Bhuyan, Mrs. R.S. Deuri, Mr. M. Das, Mr. B. Talukdar, Ms. A. Saikia, Ms. P. Pathak, Mr. P. Mahanta, Mr. P. Borgohain, in W.P. C No. 2659/2010, for the Appellant; N.C. Das Ms. M. Devi, A. Das, in W.P. (C) No. 2658/2010 and Dr. B. Ahmed, SC, AFDC, GA, Assam, in W.P. (C) No. 2659/2010, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The petitioner, who was the lessee of Kumotia Group of Fisheries under the Assam Financial Development Corporation (in short the Corporation) for a period of 7 (seven) years commencing from the financial years 2007-08 to 2013-14, by these petitions has challenged the orders dated 26.2.2010 and 28.4.2010 passed by the Managing Director of the Corporation, whereby and whereunder the settlement made in his favour has been cancelled on the ground of subletting and refusing to accept the subsequent kist money, which is the subject matter in WP(C) No. 2658/2010 and consequent sale notice dated 7.55011 issued by the Managing Director of the Corporation for settlement of the said fishery for a period of 7 (seven) years commencing from the financial years 2011-12, which is the subject matter in WP(C) No. 2659/2011. Both the writ petitions are taken up together, as those relate to the cancellation of the settlement made in favour of the petitioner and consequential sale notice issued by the respondent Corporation in respect of the same fishery and as agreed to by the learned counsel for the appearing parties. The facts relevant for the purpose of the present cases are that pursuant to the sale notice issued by the respondent Corporation for settlement of the aforesaid fishery, the petitioner along with others submitted their bids and accordingly the fishery was settled in favour of the petitioner for a period of 7(seven) years with effect from the financial years 2007-08 to 2013-14. The petitioner has been informed about such settlement vide communication dated 19.072007. Accordingly the possession of the fishery was handed over to the petitioner on execution of the agreement containing a clause that in no circumstances possession of the fishery or any part thereof shall be handed over to any other person and also not to sell the fishery to any other person. The Managing Director of the respondent Corporation on 11.12.2007 i.e. during the period of continuance of the lease, issued a notice to the petitioner to show-cause as to why the settlement made in his favour should not be cancelled on the ground that the management of the fishery was handed over to a 3rd party. Since the petitioner did not submit any reply, the Managing Director of the respondent Corporation issued another communication to the petitioner on 09.01.2008 giving him further 7(seven) days time to submit his reply pursuant to the earlier notice dated 11.12.2007 to show-cause as to why the settlement should not be cancelled for subletting and for not engaging local fishermen of fishing community. The petitioner thereafter on 24.01.2008 submitted his reply denying the allegations levelled against him. The respondent-Corporation being not satisfied with the reply submitted by the petitioner decided to hold an enquiry relating to the allegation of subletting and accordingly the General Manager of the respondent-Corporation on 26.4.2008 issued notice of hearing to the petitioner fixing 7.8.2008. The petitioner was also informed about the subsequent date of hearing i.e. on 10.11.2008 vide communication dated 24.10.2008 issued by the General Manager. In the said proceeding the petitioner participated. The General Manager of the respondent-Corporation on completion of enquiry submitted his report on 18.04.2009 with the finding that the allegation of subletting levelled against the petitioner has been proved. The Managing Director of the respondent-Corporation thereafter passed the impugned order dated 26.2.2010 canceling the settlement made in favour of the petitioner w.e.f. 1.4.2010 on the ground of subletting, however, allowing the petitioner to manage the fishery up to 31.3.2010. The management of the fishery was taken over by the Corporation w.e.f. 1.4.2010, about which the petitioner was informed. The petitioner thereafter filed an application on 8.4.2010 to accept the kist money of Rs. 48,988/-, which has been refused by the Managing Director of the respondent-Corporation vide communication dated 28.04.2010 as the settlement of the fishery has already been cancelled. Consequent upon such cancellation the respondent-Corporation issued the sale notice dated 7.5.2011 for settlement of the fishery in question for a further period of 7 (seven) years with effect from the financial year 2011-12 i.e. w.e.f. 1.4.2011. Hence, the present writ petitions.

2. I have heard Ms. B. Bhuyan, learned counsel for the petitioner, Dr. B. Ahmed, learned standing counsel appearing for the respondent-Corporation and Mr. N.C. Das, learned senior counsel appearing for the respondent No. 6 in WP(C) No. 2658/2010. I have also heard the learned State counsel appearing for the

respondent State of Assam.

3. Ms. Bhuyan, learned counsel for the petitioner submits that the Managing Director of the respondent-Corporation has passed the impugned order of cancellation of the settlement dated 26.02.2010 on the basis of a report submitted by the Enquiry Officer in the enquiry conducted pursuant to the aforesaid show-cause notice dated 10.12.2007 without however furnishing a copy of the enquiry report to the petitioner, so as to enable him to demonstrate before the Managing Director that the finding recorded in such enquiry report is perverse being not based on any materials or evidence, thereby denying the petitioner the reasonable opportunity of being heard, which amounts to violation of the principles of natural justice. The learned counsel submits that as there is no evidence on record to arrive at the finding that the petitioner has sublet the fishery in question and thereby violates the conditions of settlement, non-supply of the copy of the enquiry report submitted by the Enquiry Officer caused prejudice to the petitioner as he has been deprived from demonstrating before the authority that there is no evidence to come such finding by the Enquiry Officer. The learned counsel submits since such allegation of subletting has been made, the authority must have the adequate evidence to cancel the order of settlement on the ground of violation of condition of such settlement, which is not being available, the order of cancellation is liable to be set aside. The learned counsel further submits that consequently the communication dated 28.04.2010 issued by the respondent authority refusing to accept the kist money as well as the subsequent sale notice dated 07.05.2011 also need to be set aside and the respondent authority may be directed to accept the kist money and to allow the petitioner to manage the fishery for the remaining period of settlement.

4. The learned standing counsel appearing for the respondent-Corporation supporting the order of cancellation of settlement as well as the subsequent order refusing to accept the kist money and the sale notice issued, has submitted that it is apparent from the evidences on record adduced during the enquiry conducted by the General Manager of the respondent-Corporation on the allegation of subletting that the petitioner admitted such subletting at least to one person, namely, Shri Jogen Das, in his statement recorded on 10.11.2008 and signed by him. The learned standing counsel, therefore, submits that the allegation of subletting having been admitted by the petitioner non-supply of the enquiry report before passing the impugned order did not cause any prejudice to him. The learned standing counsel further submits that since one of the condition for settlement was not to allow any person to manage the fishery or not to sell the fishery or part thereof to any other person, the settlement has rightly been cancelled by the Managing Director vide order dated 26.2.2010 for selling part of the fishery to another person, namely, Shri Jogen Das and consequently the authority has rightly refused to accept the kist money for the subsequent period and issued the fresh sale notice for settlement of the fishery in question.

5. Mr. Das, learned senior counsel appearing for the respondent No. 6 in WP(C)

No. 2658/2010 supporting the argument advanced by the learned standing counsel for the respondent-Corporation also submits that since the factum of subletting or sell of part of the fishery has been admitted by the petitioner, no illegality has peen caused by the Managing Director of the respondent-Corporation in canceling the settlement made in favour of the petitioner.

6. I have considered the submissions of the learned counsel for the parties and perused the pleadings as well as the materials available on record produced by the learned standing counsel of the respondent-Corporation.

7. The facts narrated above are not in dispute. The petitioner was issued with the notice dated 10.12.2007 asking him to show-cause as to why the settlement of the fishery in his favour made vide order dated 19.7.2007 for a period of 7 (seven) years commencing room the financial year 2007-08 to 2013-14 should not be cancelled on the ground that he has handed over the possession of the part of the fishery to other persons, thereby violating the clause 21 of the agreement executed between the parties. Since no reply was submitted, another opportunity was given by the Managing Director allowing him further 7(seven) days time to file his reply. The petitioner accordingly on 24.01.2008 submitted his reply denying the allegation made. An enquiry thereafter was conducted by the General Manager of the respondent-Corporation and on the dates of hearing including 07.06.2008 and 10.11.2008 the petitioner was present pursuant to the notices issued by the Enquiry Officer, namely, the General Manager. The petitioner in his signed statement, recorded on 10.11.2008, has admitted the induction of one Jogen Das as partner of the said fishery and parting with part of the management of the fishery in his favour. The translated version of the relevant portion of the said statement of the petitioner is reproduced below:-

........Jogen Das and I decide about the fishermen to be engaged in the fishery. I inducted Jogen Das as the shareholder. His father''s name is Lt. Kameswar Das of village Deudubi. He gets 40% of the fish and I take 60%. He helps me in all respect. Jogen Das pays 1/3rd of the cost incurred in the fishery. I pay the rest.

8. The Enquiry Officer in his report dated 18.4.2009, taking into consideration such admitted position, has recorded the finding the allegation levelled against the petitioner has been proved. The Managing Director of the respondent-Corporation passed the impugned order dated 26.2.2010 canceling the settlement made in favour of the petitioner on the ground of violation of the conditions of the settlement, based on the finding recorded by the Enquiry Officer in the enquiry report and also the materials made available on record.

9. The contention of the petitioner, as noticed above, is that since the petitioner has not been furnished with the copy of the enquiry report dated 18.4.2009, which is the basis for passing the impugned order dated 26.2.2010, he has been denied the opportunity to demonstrate that the Enquiry Officer could not have recorded the finding, there being no evidence on record to arrive at such finding, thereby violating the principles of natural justice. There is no dispute that the

copy of the enquiry report dated 18.4.2009 has not been furnished to the petitioner, before passing the order dated 26.2.2010 by the Managing Director. The respondent-Corporation in the affidavit-in-opposition has admitted that fact.

10. It is by now well settled that the Rules of natural justice are foundational and fundamental concepts in administrative law and applicable to almost whole range of administrative powers. It is however not possible and practicable to precisely define the parameters of natural justice and also it cannot be put in a strait-jacket formula. It depends on the facts and circumstances of a given case. An order passed by the administrative authority passed even in violation of principles of natural justice may not be interfered with by the Court unless prejudice is shown to have been caused to the person who complaints about the same.

11. In the case in hand, as discussed above, the petitioner in his statement given in writing on 10.11.2008 in the enquiry conducted by the General Manager of the respondent-Corporation into the allegation of parting with the management of the part of the fishery to another person has admitted the same. Non-furnishing of the enquiry report submitted by the Enquiry Officer on 18.4.2009, before passing the impugned order dated 26.2.2010 by the Managing Director of the respondent-Corporation, therefore, did not cause any prejudice to the petitioner, as he has admitted in his statement in writing dated 10.11.2008 about the parting with the part of the management of the fishery to another person. It would not make any difference whether the name of the said person was mentioned in the show-cause notice or not, the petitioner having admittedly violated the Clause 21 of the agreement executed between the parties containing the conditions of settlement, as the writ Court would, in exercise of equitable jurisdiction, not allow a person to manage the fishery who admitted violation of condition.

12. That being the position, I do not find any ground to interfere with the order of cancellation of the settlement passed by the Managing Director of the respondent-Corporation as well as the subsequent communication dated 28.04.2010 refusing to accept the kist money for the subsequent period and the consequential sale notice dated 07.05.2011 issued for settlement of the said fishery. The writ petitions are therefore, dismissed being devoid of any merit No costs.