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(1973) 01 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 795 of 1972

Bohori Reserve Gaon Min Samabay Samity Ltd — APPELLANT

Vs

Assam Board of Revenue, Gauhati and others. — RESPONDENT

Date of Decision : 30-01-1973

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1973 Guw 89

Hon'ble Judges : P.K. Goswami, C.J;M.C. Pathak, J

Bench : Division Bench

Advocate : J. P. Bhattacharjee, S. N. Medhi and B. C. Das, for the Appellant;

Final Decision : Dismissed

Judgement

P. K. Goswami, C. J.

1. This application under Article 226 of the Constitution of India is directed against an appellate order of the Assam Board of Revenue affirming the order of the Commissioner refusing to confirm the settlement of Bolaisuti River fishery in favour of the petitioner for the period of three years from 1-4-1972 to 31-3-1975.

2. The petitioner is a Co-operative Society with 100 per cent membership of actual fishermen. An individual fisherman submitted tender in answer to a sale notice by offering Rs. 14,501/- per year. The petitioner''s tender quoted Rs. 13,101/- per year, which is within 7 1/2 per cent of the highest tender. The Sub-divisional Officer accepted the tender of the petitioner by giving it an option to take the settlement at Rupees 14,501/- per year the highest tendered price. The petitioner also accented the offer of settlement at the highest tender. When the papers were sent to the Commissioner for confirmation under the Rules, he refused to confirm the settlement on the ground that the petitioner already having been granted a fishery for its tendered amount of Rs. 8,001/- cannot be expected to successfully run this bigger fishery. According to the Commissioner, the financial resources of the petitioner were not adequate to efficiently run the

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two fisheries at the same time. In that view of the matter, the Commissioner refused to confirm the petitioner''s settlement. The petitioner then preferred an appeal to the Assam Board of Revenue without success. The Board of Revenue gave two grounds for upholding the order of the Commissioner. Firstly, it stated that the Sub-Divisional Officer was not competent under the Rules to offer this fishery at a price which was not tendered by the Society and at what was actually tendered by an individual fisherman, which was, however. the highest tendered price. The Board relying upon a decision of this Court in connection with the Forest Rules came to the conclusion that there was no scope for dialogue between the Sub-divisional Officer and the petitioner society with regard to the tendered price.

It is true that this Court held to that effect while dealing with a case of Forest Mahal. But the ratio decidendi of that case would not be of assistance in this case when under Rule 13 (c) a Society of this category "shall be given option to accept settlement of fisheries at the highest tender, provided that their tender is within 7 1/2 per cent of the highest tender." There was no such provision in the Forest Rules which were the subject-matter of consideration in our decision in Monoranjan Paul''s case Assam LR (1970) Assam 164 = (AIR 1970 Gau 142). The case may have been different if the Subdivisional Officer instead of giving the petitioner an option in terms of R. 13 (c) accepted a price which is not in conformity with this sub-rule. That however, is not the case here. There is, therefore, no violation of Rule 13 (c) in this case and the ratio decidendi of Monoranjan Paul''s case Assam LR (1970) Assam 164 = (AIR 1970 Assam 142) will not be of assistance. Even so, the second ground given by the Board of Revenue is a complete answer to the petitioner''s case. The Board has agreed with the finding of the Commissioner with regard to the financial ability of the petitioner society. This is a finding of fact on the materials placed fore the authorities which cannot be interfered with on the Writ side. We, therefore, do not find any error of jurisdiction nor of any law apparent on the face of the record in the order of the Board of Revenue.

3. The application fails and is accordingly dismissed. As no one appears on behalf of the Respondents, we will not make any order as to costs.

M. C. Pathak, J.

4. I agree.

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