
(1970) 01 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 813 of 1969

Chandi Ram Keot

APPELLANT

Vs

Amal Patar and Another

RESPONDENT

Date of Decision : 23-01-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 46
Fisheries Rules, 1953 — Rule 46

Citation : AIR 1971 Guw 30

Hon'ble Judges : M.C. Pathak, J; D.M. Sen, J

Bench : Division Bench

Advocate : D.C. Goswami, B.K. Goswami, P.K. Choudhury and M.S. Pathak, for the Appellant; S.N. Bhuyan and D.P. Chaliha, for the Respondent

Judgement

Pathak, J.—The Petitioner along with some others including the Opposite Party No. 1 submitted tenders for settlement of No. 110 Erakolong Fishery. The Petitioner offered Rs. 2001.25 per annum while the opposite party No. 1 offered Rs. 2000/- per annum. The Additional Deputy Commissioner, Nowgong on the advice of the Local Advisory Board settled the fishery in question with the Petitioner at his highest tender. The opposite party No. 1 preferred an appeal before the Assam Board of Revenue. The Board after hearing the parties, allowed the appeal, set aside the order of settlement by the Additional Deputy Commissioner, Nowgong and settled the fishery in question with the opposite party No. 1 for the remaining period of the term at the highest tender of Rs. 2001.25 per annum. Against the said order of the Board, this petition under Article 226 of the Constitution has been filed.

2. Mr. B.K. Goswami the learned Counsel for the Petitioner submitted that the learned Board of Revenue gave wrong interpretation to Rule 46(b) of the Fishery Rules and arrived at an illegal conclusion and wrongly settled the fishery with the opposite party No. 1. The learned Board in its order observed that under Rule 46(b) of the Fishery Rules option might be given to persons in order of

preference stated therein for taking the settlement of the fishery at the highest tender offered. The Board observed that under Rule 46(b) if a suitable tenderer belonging to the category entitled to preference was available the option should be given otherwise the very purpose of providing the necessary protection would be defeated. Mr. Goswami, the learned Counsel for the Petitioner however submitted that on a correct interpretation of Rule 46(b) if there was no co-operative society offering tender whose tender was below 71/2% of the highest tender, the preference stated in the rule was not at all called for.

3. Rule 46 of the Fishery Rules may be quoted:

46. Fisheries shall be settled to the best advantage and subject to this condition, the agency of middlemen as lessee shall be done away with as far as possible.

(a) A Co-operative Fishery Society formed by actual fishermen of the Scheduled Caste and registered under the Assam Co-operative Societies Act 1949, shall be given option of taking settlement of Fisheries at the highest tender, provided that its tender is not less than % per cent of the highest tender.

(b) When the tender of such Co-operative Societies is below per cent of the highest tender, (i) Co-operative Societies as stated above, (ii) individual members of the Scheduled Caste, (iii) individual members of the Scheduled Tribes and other Backward Classes who may submit tender at not less than 60 per cent of the highest tender may be given option to take settlement of the fishery at the highest tender in the order of preference stated above subject to the suitability of the tender.

(c) When a fishery, the tender value of which does not exceed Rs. 35,000 is settled with any one falling within one of the categories stated in the Sub-rule (a) or (b) above, the lessee shall get rebate of 1 per cent as concession.

(d) Any tenderer who claims the concession provided in this Rule shall indicate it in his tender.

Under this Rule fisheries shall be settled to the best advantage and subject to the condition that the agency of middleman as lessee shall be done away with as far as possible. Clause (a) of the Rule provides that if any co-operative fishery society formed by actual fishermen of the Scheduled Caste and registered under the Assam Co-operative Societies Act, 1949 offers tender which is not less than 7 per cent of the highest tender, such co-operative fishery society shall be given option for taking settlement of the fishery at the highest tender. Clause (b) of the Rule provides that the following categories of tenderers may be given option to take the settlement of the fishery at the highest tender in the following order, of preference if they submit tender not less than 60 per cent of the highest tender, subject to the suitability of the tender:

(i) Co-operative Societies as described in Clause (a);

(ii) Individual members of the Scheduled Caste;

(iii) Individual members of the Scheduled Tribes and other Backward Classes.

4. In the instant case, the Petitioner is not a member of the Scheduled Caste or the Scheduled Tribe, or other Backward Class, while the opposite party No. 1 is a member of the Scheduled Tribe. The opposite party No. 1's tender was admittedly Rs. 2000/- which was not less than 60 per cent of the highest tender which was Rs. 2001.25. There was no Scheduled Caste tenderer. In the circumstances the Board gave the option to the opposite party No. 1 to take the settlement at the highest offer. Mr. Go-swami, the learned Counsel for the Petitioner submitted that the clause, "when the tender of such co-operative society was below 74% of the highest tender", occurring in Clause (b) of Rule 46 governs the cases of all the three categories of tenderers mentioned therein and therefore in the instant case there being no Co-operative Society offering tender, the opposite party No. 1 could not be given the option to take settlement of the fishery at the highest tender under Rule 46(b). We are however unable to accept this interpretation of Rule 46(b).

The intention of the Legislature in framing Rule 46 (a) and (b) clearly appears to give special consideration to:

(i) co-operative fishery society formed by actual fishermen of Scheduled Caste and registered under the Assam Co-operative Societies Act. 1949 ;

(ii) individual member of Scheduled J Castes and

(iii) Individual member of Scheduled Tribes and other Backward Classes who may submit tender at not less than 60 per cent of the highest tender, by giving them option to take settlement of the fishery at the highest tender in order of preference as stated in the Rule. If Rule 46(b) means that when there is no co-operative society giving any tender which is below 74 per cent of the highest tender no option of taking settlement at the highest tender should be given, it will frustrate the intention of the Legislature which apparently is to promote with special care the economic interests of the weaker section of the people particularly of the Scheduled Castes and Scheduled Tribes as provided in Article 46 of Part IV of the Constitution of India.

In view of the clear intention of the Legislature as appears from the language of the Rule, read as a whole, the construction of the sentence in Clause (b) of Rule 46 is somewhat unhappy inasmuch as the figure (i) should have come immediately after the letter (b). Since however on a perusal of the contents of Rule 46 as a whole it is quite clear that the intention of the Legislature in enacting the Rule is to promote with special care the economic interests of the members of the Scheduled Castes and Scheduled Tribes, we are clearly of opinion that the clause "when the tender of such Co-operative Society is below 74% of the highest tender" governs only item (i) of Clause (b), namely, the case of Co-operative Societies as stated above and it does not govern the cases of other tenderers mentioned therein. In the circumstances, we hold that the learned Board of Revenue correctly interpreted Rule 46(b) in relation to the facts

and circumstances of the case and the Board did not commit any error apparent on the face of the record or any error affecting the jurisdiction in passing the order of settlement in favour of the opposite party No. 1.

5. This petition therefore has no substance which is rejected without costs. The Rule is discharged.

D.M. Sen, J.

6. I agree.