

(2004) 11 GAU CK 0009
In the Gauhati High Court
Case No : WP (C) No. 6556 of 2004

Garemari Gaon Panchayat Min Samabai Samiti Ltd.	APPELLANT
Vs	
Assam Fisheries Dev. Corp. Ltd. and Others	RESPONDENT

Date of Decision : 14-11-2004

Acts Referred:

Assam Sale of Forest Produce Coupes and Mahals Rules, 1977 — Rule 21

Citation : (2005) GLT 687 Supp

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A. Sarma, for the Appellant; S. Sarma and A.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—By means of this writ petition, the petitioner which is a fishery Cooperative Society has put to challenge the order dated 4.9.2004 setting the fishery in question with the respondent No. 3 and the order of the same date rejecting the representation of the petitioner seeking extension of the lease period of the fishery which was settled with the petitioner for the earlier term.

2. As per the averments made in the writ petition, the petitioner is a fishery Co-operative Society composed of 100 per cent actual fishermen belonging to Scheduled Caste Community. Pursuant to the NIT issued by the respondent No. 2 inviting tenders for settlement of Bhoispuri Meen Mahal in the district of Dhubri for the period from 1999-2000 to 2003-2004, the petitioner submitted its tender. The respondents accepted the offer made by the petitioner's Society and the fishery was settled with the petitioner by order dated 7.5.1999 for a period of five years at a total revenue of Rs. 3,61,000.00.

3. Pursuant to the said settlement made in favour of the petitioner by an order dated 7.5.1999, the necessary formalities towards execution of the agreement, etc. were carried out and the petitioner was put to possession of the fishery and

the petitioner continued to run the same. The petitioner by its representation dated 12.8.2002 made to the Managing Director of the Assam Fishery Development Corporation (respondent No. 2), prayed for extension of the period of lease for further period to recover losses purportedly sustained by it due to flood. Nothing was done on the same representation and on expiry of the lease period on 31.3.2004, the petitioner made a further representation dated 29.5.2004 to the respondent No. 2 praying for extension of the lease period. In the said letter dated 25.9.2004, the petitioner referred to its earlier petition dated 12.8.2002. The petitioner has also annexed the report of the Junior Technical Manager (Deputy Project Director of the Corporation) favouring extension of term of lease upto March 2005.

4. Some action was taken on the prayer petition of the petitioner for extension of the lease period and the respondent No. 2 by his letter dated 28.7.2004 requested the Deputy Commissioner, Dhubri to furnish his views. While endorsing a copy of the said letter to the petitioner, the respondent No. 2 asked the petitioner to manage the fishery until further order and the same was treated to be in the interest of the Corporation and the fishermen. The petitioner's Society duly acknowledged the request made by the respondent No. 2 and by their letter dated 21.7.2004 requested him to accept the revenue and to execute the agreement etc.

5. When the matter rested thus, the impugned NIT dated 9.7.2004 was issued inviting offers for settlement of the fishery for a term of seven years from 2004-2005 to 2010-2011 (31.3.2011). The last date of receipt of tender was fixed as 23.7.2004, which, however, was extended upto 6.8.2004 by order dated 22.7.2004. However, by yet another order dated 31.7.2004 the order of extension dated 22.7.2004 was stayed until further order. In the meantime a report was furnished from the office of the Deputy Commissioner, Dhubri under the signature of Additional Deputy Commissioner, Dhubri to the respondent No. 2 recommending extension of the lease period in favour of the petitioner. By Annexure-XII tender notice dated 6.8.2004, once again offers were invited from the interested persons for settlement of the fishery for a period of seven years from 2004-2005 to 2010-2011. The last date of receipt of tender was specified as 10.8.2004. By the said NIT, the earlier letter dated 31.7.2004 staying the extension for submission of tender upto 6.8.2004 was withdrawn.

6. Being aggrieved by the aforesaid action on the part of the respondent, the petitioner approached this Court by filing a writ petition which was registered and numbered as W.P.(C) No. 5594/2004. Upon hearing the learned counsel for the parties, the writ petition was disposed of with a direction to the Corporation to consider and dispose of the application filed by the petitioner seeking extension of the period of lease within two weeks from the date of the order with a direction that till disposal of the application, the tender process should not be finalised. Direction was issued to consider the relevant materials while disposing of the application submitted by the petitioner. Thereafter, the impugned order

dated 4.9.2004 has been passed settling the fishery with the respondent No. 3 for the aforesaid period from 2004-2005 to 2010-2011 at the revenue mentioned in the letter itself.

7. As per the averments made in the writ petition, the Corporation rejected the prayer petition of the petitioner seeking extension of the period of lease. However, without furnishing a copy of the order rejecting the prayer, the Corporation issued the impugned order dated 4.9.2004 settling the fishery with the respondent No. 3 for the aforesaid period. Thus it is the case of the petitioner that there is non-compliance of the order of this Court passed in W.P.(C) No. 5594/2004 in terms of which the representation of the petitioner was required to be disposed of taking into consideration all the relevant materials. The petitioner has also assailed the manner and method in which the settlement has been made in favour of the respondent No. 3 without furnishing a copy of the order rejecting the prayer of the petitioner seeking extension of the period of lease.

8. An affidavit-in-opposition has been filed on behalf of the Corporation supporting the action towards passing the impugned order. Records have also been produced on behalf of the said respondent. The stand in the affidavit is that the petitioner after submitting their representation dated 12.8.2002 seeking remission of revenue and extension of the term of the lease period, never pursued the matter and that it was only after expiry of the period of lease on 31.3.2004, a further representation was made on 29.5.2004 seeking extension of the lease. Thus the stand in the affidavit is that the petitioner having enjoyed the full term of the lease period upto 31.3.2004, there was no question of granting any further extension of the lease period and that too after expiry of the same with effect from 31.3.2004. Referring to the Clauses - 8, 14, 19, 22 and 23 of the agreement pertaining to the lease executed by the petitioner with the Corporation, it is the stand in the affidavit that the petitioner cannot claim extension of the period of lease as a matter of course. As regards the prayer for extension as was required to be considered by the Corporation in terms of the order of this Court, it is the stand in the affidavit that the petitioner was given due opportunity of hearing and the petitioner, in fact, did participate in the proceeding before the Corporation and the Corporation after taking into account all relevant factors passed two orders, both dated 4.9.2004, one towards rejection of the prayer made by the petitioner and another, i.e., the impugned order towards settlement of the fishery in favour of the respondent No. 3.

9. I have heard Mr. A. Sarma, learned counsel for the petitioner and Mr. S. Sarma, learned Standing counsel, Assam Fisheries Development Corporation. Mr. A.K. Bhattacharyee, learned senior counsel assisted by his junior made submissions on behalf of the respondent No. 3.

10. Mr. Sarma, learned counsel for the petitioner referring to the impugned order dated 4.9.2004 by which the representation made by the petitioner's Society seeking extension of the lease period was rejected strenuously argued that the order passed by the Corporation was a mere formality. According to him no

reasons have been assigned towards rejection of the prayer of the petitioner and the course of action adopted by the respondent is in complete violation of the order of this Court in terms of which the respondent-Corporation was required to take into account all relevant materials. He further submitted that the entire action on the part of the Corporation is to accommodate the respondent No. 3.

11. Re-acting to the aforesaid submission made by Mr. Sarma, learned counsel for the petitioner, Mr. S. Sarma, learned Standing Counsel of the Corporation made submissions in reference to the stand in the affidavit. Supporting the impugned action on the part of the Corporation, Mr. Sarma submitted that there was lack of bonafide on the part of the petitioner in seeking extension of the lease period inasmuch as the matter was never pursued after submission of the first representation way back in August 2002. He submitted that the said prayer for extension having spent its force with the expiry of the period of lease with effect from 31.3.2004, there was no question of granting any extension.

12. Mr. A.K. Bhattacharjee, learned senior counsel placing reliance on the following decisions submitted that the period of lease having already expired on 31.3.2004, there was no question of granting any extension to the petitioner. He submitted that the petitioner cannot pray for any mandamus for extension of the period of lease and the order of this Court in terms of which the case of the petitioner was required to be considered having been complied with, there was no illegality in passing the impugned order.

(i) (1992) 2 GLR 01 (Tanuram Tayeng v. State of Assam and Ors.),

(ii) (1985) 2 GLR 38 (Jagannath Urang v. State of Assam and Ors.);

(iii) Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another,

13. I have considered the arguments advanced at the Bar. I have also considered the materials available on records including the records produced by the learned Standing Counsel for the Corporation. The relevant provisions of the agreement which was signed by the petitioner with the Corporation and as quoted in the affidavit-in-opposition read as follows : -

8. The Corporation will not be held liable for any loss incurred due to flood, and any other natural calamity and the lease will not get any remission of revenue on the basis of all these factors.

14. The lessee has no right to pray for any extension of term of the lease except for the term as is fixed by this Agreement.

19. The lessee will not hand over the fishery to any third party.

22. As the lessee has taken possession of the fishery after evaluating geographic position of the fishery, the Corporation will not consider any representation from the lessee for any loss incurred due to it.

23. The lessee has to make adequate insurance for any kind of loss to be

incurred from any calamity within 15 days from the date of the Agreement.

14. The aforesaid clauses in the agreement make it clear that the petitioner cannot claim extension of the lease period as a matter of course. There is no dispute that the petitioner after submitting its application dated 12.8.2002 seeking permission of revenue and extension of the period of lease, made no effort to pursue the same and it was only after expiry of the period of lease on 31.3.2004 made a further representation on 29.5.2004. In both the representations praying for an extension of the period of lease, no period was specified by the petitioner. In Annexure-IV report dated 16.6.2004, the extension was recommended upto March 2005. In Annexure-XI letter dated 30.7.2004 also, the Additional Deputy Commissioner, Dhubri while recommending extension in favour of the petitioner did not specify any period.

15. In the case of Jagannath Urang (supra) a Division Bench of this Court interpreting the word "extension" held that when the term of the lease has not expired the same may be extended. However, if the period of original lease is over, there is no question of granting any extension. If such extension is granted, it would amount to granting of fresh lease after expiry of the original lease. Interpreting the provision of Rule 21 of the Assam Sale of Forest Produce, Coups and Mahal Rules, 1977, it has been held in that case that the Governor is not empowered to grant fresh lease on the expiry of the term of the original lease. In the event of granting the same, it would amount to grant of new lease for a subsequent periods which is not contemplated in Rule 21. The same view has been reiterated by the Division Bench of this Court in the case of Tanuram Tayeng (supra). The decision in Provash Chandra Dalui (supra) was pressed into service to bring whom the argument that the Court would only look into the terms of the lease irrespective of the averments in the pleadings. The basic thrust was that the petitioner having accepted the terms and conditions of the lease as enumerated above, could not have turned round the same so as to make out a case on the basis of the pleadings seeking further extension of the originally fixed period of lease.

16. As regards the settlement made in favour of the respondent No. 3, nothing has been stated in the writ petition as to how the settlement made in his favour is illegal. The same has been put to challenge only in the context of the rejection of prayer of the petitioner seeking extension of the original period of lease. I have gone through the impugned order dated 4.9.2004 by which the prayer of the petitioner was rejected. One of the ground assigned in the order is that the prayer made in August 2002 seeking remission of revenue and extension of the period of lease has lost its relevance. Another ground assigned is the delay towards observance of formalities etc. in respect of the prayer for extension and issuance of NIT and good response to the same. The order has been stated to be issued in public interest.

17. Although it was argued on behalf of the petitioner that the grounds assigned are not tenable more particularly in absence of anything to show that any

consideration was given to the reports furnished in favour of granting such extension to the petitioner, I am of the considered opinion that the impugned order dated 4.9.2004 cannot be said to be palpably illegal or based on any malafide exercise of power. As per direction of this Court, the prayer for extension of the petitioner was required to be considered taking into account relevant materials. The observations of the Corporation that the prayer for extension made by the petitioner way back in August 2008 has lost its relevance cannot be said to be an irrelevant consideration. The impugned order dated 4.9.2004 may not be to the likings of the petitioner and may not be a well drafted order, but it contains reasons not to grant any extension to the petitioner and the reasons assigned cannot be said to be arbitrary.

18. The Corporation was also to take into consideration about the NIT already issued and the response shown to the same. The Corporation was also obliged to take into account the revenue factor and upon consideration of the same if the decision was taken to settle the fishery through tender process, no fault could be attributed to the respondent-Corporation. Furthermore, the petitioner was bound by the agreement itself had executed with the Corporation in terms of which the petitioner cannot seek extension of the period of lease as a matter of course.

19. In the impugned order it has been rightly held that the prayer made in 2002 has lost its relevance more particularly after expiry of the period of lease with effect from 31.3.2004. It is in this context, the aforesaid two decisions of the Division Bench of this Court were pressed into services to buttress the argument that after expiry of the period of lease, the Corporation was not obliged to grant any extension in favour of the petitioner, lest, the same is branded as a fresh lease.

20. Even if the arguments advanced on behalf of the petitioner is to be accepted, one of the recommendations made in favour of the petitioner, recommended extension only upto March 2005. The petitioner, in spite of expiry of lease period on 31.3.2004 continued to be in possession of the fishery and in fact the respondent No. 2 while calling for a report by Annexure-V letter dated 28.6.2004 and endorsing a copy thereof to the petitioner allowed the petitioner to manage the fishery until further order. Thus, the petitioner, in fact, got extension of the period of lease by few months.

21. Nothing could be brought on record to show as to what was the alleged loss sustained by the petitioner for not granting the extension. In the prayer petition also the petitioner did not specify any loss. There was also no specification about the period of extension it had prayed for. The Corporation has settled the fishery with the respondent No. 3 at a total revenue of Rs. 21,20,000 covering the period of 2004-2005 to 2010-2011, i.e., seven years, as against the revenue offered by the petitioner for the earlier period of lease (five years) of Rs. 3,60,997. This will certainly be relevant factor so far as public revenue and Government earning is concerned.

22. In the case of Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, the Division Bench of this Court noticing that the yearly revenue would be lesser in granting the extension, refused to accept the prayer for extension. The Division Bench also noticed, as in the instant case, that no justification was made out as to why the extension should be granted and held that the aspects as in the instant case, are to be borne in mind if an exception is to be carved out giving extension. In that case the Division Bench upholding the decision of the learned Single Judge directed settlement of the fishery by tender process.

23. For the foregoing reasons and discussions, I do not find any infirmity in the impugned order dated 4.9.2004 and consequently the writ petition fails.

24. The writ petition stands dismissed, without however, any order as to costs.