
(1998) 09 GAU CK 0041
In the Gauhati High Court
Case No : Civil Rule No. 2160 of 1998

Jarban Das

APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 19-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 4 GLT 328

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

Bench : Single Bench

Advocate : N. Dutta, S. Kataki and A.J. Das, for the Appellant; A. Hazarika, for Respondent Nos. 1 and 2 and K.N. Choudhury and P. Bhomick, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution of India, the Petitioner has prayed for quashing the letter dated 4.5.98 of the Managing Director, Assam Fisheries Development Corporation Limited by which the earlier letter dated 13.1.98 allowing the Petitioner to manage the No. 7 Botha Beel Fishery of Darrang District for the year 1998-99 is sought to be cancelled.

2. The facts briefly are that by letter dated 13.1.98 of the Managing Director of Assam Fisheries Development Corporation Limited the aforesaid No. 7 Botha Beel Fishery was settled with the Petitioner for the period 1998-99 for an amount of Rs. 1,89,000/-. Pursuant to the said settlement and agreement was entered into between the Petitioner and the Assam Fisheries Development Corporation Limited and Clause-3 of the said agreement Provided that the Petitioner could not sell the Fishery to any other person, Clause-18 of the said agreement further provided that in case of any violation of any of the provisions of the agreement, the Assam Fisheries Development Corporation Ltd. (for short "the Corporation") would be entitled to cancel the settlement. Pursuant to the said settlement and agreement, the Petitioner deposited the required amount and took possession of the Fishery in question and started operating the same. But, thereafter, the

Petitioner received a notice dated 9.2.98 issued by the Managing Director of the Corporation stating, inter alia, that the Secretary of Sri Ganga Fishermen Sambai Samity has lodged a Complaint that the Petitioner has sold the said Fishery to Sri Atul Deka, and the said complaint was enquired into through the circle officer, Sipajhar and a report was submitted by him. In the said notice dated 9.2.98, it was further stated that the Petitioner had violated the lease agreement by selling the Fishery to another person and the Petitioner was asked to show cause as to why action against the petitioner for violation of the agreement should not be taken. The Petitioner submitted a reply to the said show cause, inter alia, denying that he had sold the Fishery to Sri Atul Deka. The Petitioner was thereafter heard by the Chairman of the Corporation on 27.2.98 and after such hearing the Chairman took the view that it had been proved that the Petitioner had sold the Fishery to Sri Atul Deka. Accordingly, the impugned letter dated 4.5.98 was issued by the Managing Director of the corporation informing him that he had violated the agreement entered into between the Petitioner and the Corporation by selling the Fishery to another person and that the proposal for allowing the Petitioner to manage the Fishery for the year 1998-99 was cancelled. Aggrieved, the Petitioner has filed this writ petition under Article 226 of the Constitution for appropriate relief.

3. At the hearing, Mr. N. Dutta, learned Counsel for the Petitioner, submitted that the settlement of the Fishery in favour of the Petitioner for the year 1998-99 was cancelled on the basis of the enquiry report of the Circle officer to the effect that the Petitioner had sold the Fishery to Sri Atul Deka, but the said enquiry report was not furnished to the Petitioner before or at the time of hearing by the Chairman of the Corporation. Mr. Dutta cited the decision of the Supreme Court in the case of *Tata Cellular Vs. Union of India*, , for the proposition that before any offer was cancelled by the authority, principles of natural justice were required to be followed. He submitted that the records would show that only a two-line order was passed by the Chairman that it had been proved during hearing that the Petitioner had sold the Fishery to Sri Atul Deka and that detailed reasons were not recorded by the Chairman of the Corporation in the file, Mr. Dutta further argued that there was no documents to show that the Petitioner had sold the Fishery to Sri Atul Deka, and that the Chairman has come to the aforesaid conclusion arbitrarily on the basis of the statements of three persons recorded during the enquiry by the Circle officer behind the back of the Petitioner.

4. Mrs. Anima Hazarika, learned standing Counsel appearing for the Corporation, produced the records and stated that the records did not reveal that the copy of the enquiry report was furnished to the Petitioner, but the records clearly show that the chairman had recorded that at the hearing it had been proved that the Petitioner had sold the Fishery to Sri Atul Deka. According to Mrs. Hazarika, Clause-3 of the Agreement clearly provided that the petitioner could not sell the Fishery to any other person and the corporation was entitled to cancel the settlement in favour of the Petitioner in exercise of its right under Clause-18 of the Agreement for violation of the provisions of the Agreement by the Petitioner.

5. Mr. Kamal N. Choudhury, learned Counsel appearing for the Respondent No. 3, stated that after the settlement of the Fisheiy in favour of the Petitioner was cancelled, it has now been settled with Respondent No. 3 and that after such settlement the Respondent No. 3 is entitled to take possession of the Fishery and operate the same. He further pointed out that Respondent No. 3 society has in the meantime deposited an amount of Rs. 47,500/- by Bank Draft dated 8.5.98 and has been given possession of the Fishery by letter dated 9.5.98 of the Assistant Manager in-charge of Botha Beel Fishery of Darrang District. Mr. Choudhury submitted that the cancellation of settlement of the Fisheiy in favour of the Petitioner by the Corporation was purely a contractual matter and there was no public law element involved in it. Hence, the corporation was not required to observe the principles of natural justice before cancelling the settlement in favour of the Petitioner and in any case a petition under Article 226 of the Constitution was not maintainable against such cancellation or termination of agreement before the High Court. In support of the aforesaid submission, Mr. Choudhury cited the decisions of the Apex Court in the cases of G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, , State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, and Assistant Excise Commissioner and Others Vs. Issac Peter and Others,

6. In the case of State of Gujrat v. M.P. Shah Charitable Trust, (supra), cited by Mr. K.N. Choudhury, learned Counsel for the Respondent No. 3, the Supreme Court observed:

We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alterem partem*) is void, The Termination is not a quasi-judicial act by any stretch of imagination, hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was-as has been repeatedly urged by Sri Ramaswamy-matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition, is not maintainable since it is a public law remedy and is to available in private law field, e.g., where the matter is governed by a non-statutory contract (see Assistant Excise Commissioner and Others Vs. Issac Peter and Others, Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further.

The aforesaid observatioas of the Supreme Court would show that where the matter is governed by a non-statutoiy contract a writ petition is not maintainable since it is a public law remedy and is not available in private law field. In the aforesaid decision, the Supreme court further observed that termination of an arrangement is not a quasi-judicial act nor an administrative or executive act and hence principles of natural justice are not required to be followed. In the case of TATA CELLULAR's case (supra), cited by Mr. Dutta, learned Counsel for the Petitioner, on the other hand, the Supreme Court found that Tata Cellular was provisionally selected for franchise for providing cellular mobile telephone service

at Delhi, but on reconsideration in the light of the judgment delivered by the Delhi High Court a revised list of provisionally selected bidders in the cities of Bombay, Delhi, Calcutta and Madras was prepared but Tata Cellular was left out of the said revised list. On these facts the Supreme Court held that Tata Cellular ought to have been heard before it was left out and that there was clear violation of the principles of natural justice. Thus, Tata Cellular's case was not a case of termination of an agreement after execution of the agreement by the parties but a case where Tata Cellular was left out of the list of provisionally selected bidders before any agreement was made with Tata Cellular. It is, therefore, doubtful whether the principles of natural justice would be required to be followed in case of termination of a nonstatutory agreement and whether a petition under Article 226 of the Constitution will be maintainable incase of termination of a non-statutoiy agreement where there is no public law element involved as in the present case.

7. Assuming, however, that principles of natural Justice were required to be followed by the Corporation before terminating the agreement with the Petitioner in this case, and that the writ petition is maintainable as contended by Mr. Dutta, the Petitioner has been served with a show cause notice dated 9.2.98 stating therein clearly that a complaint had been received that the Petitioner had sold the Fishery in question to Sri Atul Deka and that enquiry into the said complaint had been conducted through the circle officer, Sipajhar and the said circle officer submitted a report. Incase the Petitioner felt that without a copy of enquiry report submitted by the Circle Officer, Sipajhar he would not be able to submit his explanation or make his submissions at the hearing before the Chairman, it was open for him to have asked for a copy of the said enquiry report before submitting his reply or before making his submissions at the hearing before the Chairman. But no such steps appeared to have been taken by the Petitioner. On the other hand, it appears that the Petitioner knew about the contents of the enquiry report submitted by the circle officer, Sipajhar at the time he submitted his reply to the show cause notice and at the time he made his submissions before the Chairman. This would be evident from paragraph-2 of his reply to show cause notice in which he has dealt with the enquiry report. The said paragraph-2 of the show cause reply is quoted hereunder:

That I am in dark as to the alleged Circle Officer's report. On enquiry I came to learned that the circle officer had examined three persons, namely, Md. Ikramul, Tamash Ali and Abdul Jalil who are aggrieved persons as these three persons had purchased a part of the Botha Beel from Sri Ganga Fishermen Samabai Samity Limited, the previous lessee. The whole report of the circle Officer is a manufactured one and cannot be acted upon. The alleged Sri Atul Deka has not come forward to state that he purchased the Beel from me. On enquiry, I further came to learn that the said three persons alleged that I sold the Beel to Atul Deka. But they failed to produce any documentary evidence in this regard. Their statement cannot be acted upon against me without sufficient evidence. Their statement have without got no evidence value in die eye of law.

8. It is the settled position of law that where complaint of violation of natural justice is made, it is for the court to find out on the facts and circumstances of that case to whether there had in fact been violation of the principles of natural justice. In the present case, the Petitioner was duly informed that the Circle Officer had conducted an enquiry and submitted a report on the complaint against the Petitioner that he had sold the Fishery to Sri Atul Deka. The aforesaid extract from his reply to the show cause notice reveals that the Petitioner knew that the said report of the Circle Officer was based on the examination of three persons. The Petitioner has also stated the reasons in the show cause reply why the said three persons should not be believed that he had sold the Fishery to Sri Atul Deka. Thus, the petition had not suffered any prejudice due to the fact that the copy of the enquiry report had not been furnished to him. The contention of Mr. Dutta that the cancellation of the settlement made in favour of the Petitioner is vitiated by the principles of natural justice has no merit.

9. Regarding the submission of Mr. Dutta that only a two-line order was passed by the Chairman of the Corporation in the file and that detailed reasons were not recorded, in my considered opinion, the Chairman was not required to record detailed reasons in the file for terminating the agreement with the petitioner for cancelling or terminating the agreement with the Petitioner. All that the Chairman was required to be satisfied was that the Petitioner had violated the provisions of the agreement and since the Chairman found on materials on record before him after hearing the Petitioner that he had violated Clause-3 of the agreement by selling the Fishery in question to Sri Atul Deka, the Chairman was entitled to cancel the agreement under Clause 18 of the agreement. An Authority while cancelling an agreement in accordance with a clause in the agreement is not required to give detailed reasons for terminating the agreement and so long as the termination of agreement is in accordance with the provisions of the said agreement between the parties, the Court will not interfere with the same on the ground that detailed reasons have not been recorded by the Authority either in the file or in the communication sent to the party.

10. Regarding the contention of Mr. Dutta that there was no document in proof of the sale of the Fishery to Sri Atul Deka, a transfer of possession of a fishery can be made by a party without executing a document to that effect. Rather to avoid detection of such transfer of possession of a fishery for a consideration to a third party, a party to the agreement may prefer not to enter into a written agreement with such third party. As to whether such a transfer of possession of the Fishery has been made by the Petitioner to Sri Atul Deka therefore in the present case is a question of evidence. Since the Chairman of the Corporation has believed the report of the Circle officer based on the examination of three persons that the Petitioner had sold the Fishery to Sri Atul Deka, the High Court in exercise of its powers of judicial review cannot alter the said finding of the Chairman so long as there are some materials in support of the said finding and record a different finding on the complaint that the Petitioner had sold the Fishery in question to Sri Atul Deka.

11. There is, therefore, no merit in this writ petition and the same is dismissed. Interim orders passed earlier by this Court stand vacated. Considering however the entire facts and Circumstances of the case, the parties shall bear their own costs.