(2019) 08 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 5620 Of 2019

Kalpana Sarkar APPELLANT

Vs

State Of Assam And 5 Ors RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 08 GAU CK 0021

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : K N Choudhury

Final Decision : Disposed Off

Judgement

1. Heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. M. Mahanta appearing for the writ petitioner. I have also heard Mr. S. B. Sarma, learned Standing Counsel, AFDCL, appearing on behalf of the respondent Nos.1, 2 and 3. Also heard Mr. S. N. Sarma, learned senior counsel assisted by Mr. T. Islam, appearing on behalf of the respondent No.5 on the strength of a caveat. The respondent No.4 is the Project Manager working under the AFDCL authorities. In view of the order that is proposed to be passed today, service of notice upon the respondent No.6 is not deemed necessary.

2. The husband of the petitioner, viz., Late Ratan Kumar Sarkar, was awarded with the settlement of the 35 No. Pakaria Group Fishery in the district of Morigaon, for a period of seven years, by the order of settlement dated 17.04.2017 on condition of paying revenue of Rs.22,31,601/- per year for the years 2017-18 to 2019-20 and for the remaining years, the revenue was to be fixed as per the existingnorms of the AFDC Limited. Accordingly, Ratan Kumar Sarkar took over possession of the fishery but on 22.06.2019 he expired before completion of the term of settlement. On the death of the sitting lessee i.e. Ratan Kumar Sarkar, the respondent No.3 had issued the impugned order dated 01.07.2019 addressed to the respondent No.4 accepting his proposal for

incorporating the respondent No.5 as a stakeholder in the management of the said fishery for a period of four years, which can be extended for another seven years, against a target value of Rs.14,00,000/- per year for the years 2019-20 to 2020-21.

It is the order dated 01.07.2019 which has been assailed by the writ petitioner, who is the wife of deceased Ratan Kumar Sarkar, inter-alia on the ground that the impugned order of settlement has been issued by the respondent No.3 in a pick and choose manner, without floating any tender.

3. By placing reliance on a decision of the Full Bench of this Court rendered in the case of M/s. 129 Haria Baglong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Devp. Corporation Ltd. and others reported in 2001 (1) GLT 454 Mr. Choudhury has argued that the AFDC does not have any power to issue an order of settlement of fishery without floating a tender. The learned senior counsel has also argued that the law laid down by the Full Bench of this Court would cover cases where even the management of the fishery is sought to be shared with any private individual. Contending that even his client has requisite means to function as a partner/stakeholder for the management of the fishery, Mr. Choudhury submits that if a tender was floated then it would have been open for all the interested parties including the petitioner to submit their offers.

4. It is also the contention of the learned senior counsel for the writ petitioner that the kist money for the year 2019-20 had already been deposited by the deceased husband of the petitioner and due to his sudden demise, a sum of Rs.5,58,000/- deposited earlier, is lying with the authorities. The writ petitioner is, therefore, seeking a direction from this Court upon the respondent No.3 to consider her prayer for remission and or refund of the aforesaid amount as expeditiously as possible.

5. Responding to the above argument, Mr. S. N. Sarma, learned senior counsel appearing for the respondent No.5, has produced a copy of the notification dated 06.05.2019 issued by the respondent No.3 whereby, 13 fisheries/beels under the AFDCL has been identified for operating on PPP mode through stake holders SC/ST/Progressive NGO, S.C. Fishery Cooperative Society & SC Fisherman Group. By referring to the said notification, Mr. Sarma contends that this is not a case of direct settlement of the fishery but the respondent No.5 has merely been incorporated as a stakeholder to run the fishery jointly with the Project Manager for AFDCL on a realistic assessment of the revenue after taking note of the damages caused to the fishery due to the floods. Mr. Sarma, therefore, contends that the decision of the Full Bench of this Court rendered in M/s. 129 Haria Baglong Min Mahal Samabai Samity Ltd. (supra) having been delivered in the context of settlement of fisheries through NIT, the ratio laid down therein would not have any bearing in the facts and circumstances of the present case.

6. Mr. S. B. Sarma, learned Standing Counsel, AFDC, has produced the records for perusal by this Court. After perusal of the records produced by the learned

departmental counsel, I find that a notice inviting offer from stakeholders was put up in the regional office of the AFDC at Morigaon but the learned departmental counsel has fairly submitted that neither any tender was floated by the authorities nor was the notice published in any newspaper.

7. I have considered the submission made by the learned counsel for the parties and have also gone through the materials available on record.

8. As noted above, the husband of the petitioner was the sitting lessee of the fishery but after his untimely death, the impugned order dated 01.07.2019 was issued by the respondent No.3 incorporating the respondent No.5 as a stakeholder for management of the said fishery thereby cancelling the earlier settlement made with the petitioner's husband for all intent and purpose. The question as to whether or not the next of kin of the deceased sitting lessee can claim the right to continue with the settlement of the fishery, is a question that had arisen for decision of this Court in the case of Sujata Barman Vs.

The State of Assam and others whereby a Division Bench of this Court, by order dated 01.03.2011 passed in Writ Appeal No.44/2011, has held that in view of clause 41 of the deed of agreement for settlement, such a right cannot be claimed by the legal representative of the deceased settlement holder.

It is not in dispute that the same clause 41 is a part of the agreement signed by the husband of the writ petitioner with the AFDCL pursuant to the order of settlement dated 17.04.2017. In view of the above, the question as to whether the writ petitioner can claim right to operate the fishery as a legal representative of Ratan Kumar Sarkar would no longer survive for consideration by this Court. The issue that would, however, fall for consideration in this case is as to whether, the respondents have followed a transparent procedure for choosing the respondent No.5 as a stakeholder/partner by issuing the impugned order dated 01.07.2019.

9. In a catena of decisions rendered by the Hon'ble Supreme Court of India, it has been time and again held that in matters of Government contract or distribution of State largesse, it is not the merit of the decision of the authorities but the decision making process that would be open to judicial review by the Court in exercise of powers under Article 226 of the Constitution. The records produced by the learned departmental counsel does not indicate with any degree of clarity a to the process that has been followed by the respondent authorities leading to the selection of the respondent No.5.

10. Mr. Sarma, learned senior counsel, has relied upon the notification dated 06.05.2019, which reflects the policy decision of the Corporation to operate the fishery on a PPP mode. The question as to whether the policy decision is valid or not cannot be the subject matter of scrutiny in this writ petition. However, even to implement the aforesaid policy decision, the respondents would have to adhere to the norms of transparency and fairness while selecting the beneficiaries. A fair and transparent procedure would obviously have to begin

with wide publication of proper notice of the proposed settlement, permitting all the interested parties to submit their offer. Such a procedure would not only meet the test of equality enshrined in Article 14 of the Constitution of India but would also be in the best interest of revenue, in as much as, by following such a transparent process, the department would be in a position to generate maximum revenue. In this case, not to speak of issuing any tender, the respondents have not followed any transparent process for selection of the beneficiary i.e. the respondent No.5. Such being the position, I am of the view that the impugned order dated 01.07.2019 is unsustainable in the eye of law, the same having been issued in an arbitrary and illegal manner. The order dated 01.07.2019 is, therefore, set aside.

11. The respondent No.3 is directed to initiate appropriate measures for floating tenders for selection of stakeholders/partner for running/managing the fishery in question, within a period of seven days from today. The tender notice be published in the newspaper by giving 14 days notice. Till such time, the tender process is finalised, the fishery be managed by making an interim arrangement, by adopting a transparent criteria.

Taking note of the peculiar facts and circumstances of this case, it is hereby provided that while taking any decision on the interim arrangement that can be made in this case, the respondent No.3 would bear in mind the claim of the writ petitioner for remission/refund of kist deposit and also the interest of the respondent No.5 that may ensue upon him on account of deposit, if any, made pursuant to the impugned order dated 01.07.2019 The writ petition stands disposed of.

The records produced by the learned Standing Counsel, AFDC, be returned back.