(2001) 06 GAU CK 0012

In the Gauhati High Court

Case No : Writ Appeal No. 142 of 2001 in WP (C) No. 3089 of 2001

Kapiliparia Matshyajibi Samabai Samity Ltd. — APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. — RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:
Assam Fisheries Rules, 1953 — Rule 12, 8

Citation : (2001) 2 GLT 270

Hon'ble Judges : R.S. Mongia, Acting C.J.;B. Biswas, J

Bench : Division Bench

Advocate : B.N. Konwar, for the Appellant; A. Hazarika and G. Uzir, for the Respondent

Judgement

R.S. Mongia, C.J. (ACTG)

1. This writ Appeal is against the judgment and order of a learned Single Judge of this Court dated 30th April, 2001 passed in W.P.(C) No. 3089/2001.

2. Briefly stated facts may be noticed:

The appellant (writ petitioner) was aggrieved by the order dated 19.4.2001 passed by the Managing Director of Assam Fisheries Development Corporation Limited (hereinafter called ''the Corporation''). By the said order respondent Shri Kushal Chandra Biswas, resident of Barunguri, PO Laopani in the District of Nagaon had been given the extension to operate the 58 No. Laopani Meen Mahal of Nagaon District for 5 years commencing from the financial year 2001-02 till 31.3.2006 on a yearly revenue of Rs. 47,080. It may be observed here that said Shri Kushal Chandra Biswas was a sitting lessee for 9 months which term was to expire on 31.3.2001. It seems that both the appellant and respondent No. 3 Shri Kushal Chandra Biswas had sent their applications to the Minister of Fisheries and the Chief Minister of Assam respectively. The argument of the appellant (writ petitioner) before the learned Single Judge was that the respondent No. 3 Shri Kushal Chandra Biswas had been given the lease at the behest of the Chief

Minister. Learned Single Judge did not find any substance in this argument as it was held that the application was only forwarded with the remark that necessary action be taken thereon. Learned counsel for the appellant argued on the basis of a Full Bench judgment of this Court reported in 129 Haria Dablong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Devp. Corporation Ltd. and Others, that in fact the Corporation had no power to grant lease by way of direct settlement. The full Bench judgment was rendered on 4.4.2001 whereas, as observed above, the impugned order was passed by the managing Director on 19.4.2001. The concluding portion of the judgment of the Full Bench reads as under:-

" 17. In view of our foregoing discussion and decisions, we answer the question raised as follows:

(1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rule 8(c)(ii) of the Assam Fishery Rules;

(2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency need not be re-emphasised in view of the catena of decisions of the Apex Court on the point.

(3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the Co-operative Societies formed by 100% fisherman belonging to Scheduled Caste Community and Mainao Community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.

(4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out to give relief to the lessee in proper and suitable cases.

(5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3.1.1994 were produced before us and the said resolution provided that the settlement is to be made for a period ranging from 5 to 10 years and it should be by way of tender only and that too to the highest bidder.

In view of what has been stated by us as above, the AFDC is directed to lay down the guidelines and the policy decisions in the matter as early as possible preferably within a period of six months by convening a meeting of the Directors and other experts in the matter. The reference stands disposed of as above."

The Corporation, by the judgment of the Full Bench, has been given 6(six) months to lay down the guidelines for the grant of lease etc. That period has not so far expired. Learned counsel for the appellant on the basis of what has been stated in Clause 5 of paragraph 17 of the judgment submitted that there was already a resolution of the Corporation dated 3rd January, 1994 which lays down that the lease would be granted by way of tenders only, which may last between 5/10 years. According to the learned counsel, the order dated 19.4.2001 suffers from illegality as no tenders were invited before granting lease in favour of respondent No. 3. Learned counsel for the appellant submits that he has the instruction from his client to offer much more than what has been offered by respondent No. 3 as the lease money.

After hearing the learned counsel for the parties, we are of the view that interest of justice would be met in this case, if the impugned order dated 19.4.2001 is quashed with a direction to the Corporation to lay down the guidelines as per the directions given by the Full Bench and thereafter grant lease of the No. 58 Laopani Meen Mahal according to the guidelines that it may lay down and till the guidelines are laid down as per the direction of the Full Bench, the Corporation may operate the fishery, preferably itself, but if for any justifiable reason it cannot operate itself, it may operate through its agent till the fishery is again allotted as per the guidelines laid down. After the guidelines are laid down, the arrangement of operating the fishery as aforesaid would cease to exist and the Corporation would take immediate steps thereafter to lease out the fishery in accordance with the guidelines, it may lay down. We order accordingly. As a necessary sequal thereto the judgment and order of the learned Single Judge would stand quashed.

Before parting with the judgment we may also order that if respondent No. 3, pursuant to the order at Annexure-C dtd. 19.4.2001, had deposited any instalment money of the lease, the same would be refunded immediately to the party.

