
(2003) 06 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 7825 of 2002

Karha Fishery Samabai Samity Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Citation : (2003) 3 GLR 426

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : N.C. Das, P.C. Deka and D. Sinha, for the Appellant; P.J. Saikia, B. Chutia and G.A. Assam, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. N.C. Das, learned Sr. Counsel assisted by Mr. P.C. Deka, , learned counsel appearing for the petitioner. Also heard Mr. C. Baruah, learned Sr. Counsel assisted by Mr. R.K. Deka, learned counsel appearing on behalf of private respondent No. 5. Also heard Ms. R. Chakravorty, learned Govt. Advocate appearing for the State respondent.

2. The Writ Petitioner has challenged the legality and validity of the order dated 3.12.2002 (Annexure - VI to the writ petition) by which the competent authority, exercising the power of review, cancelled earlier order of settlement dated 31.5.2002 passed in favour of the petitioner with regard to No. 1 Kohra Fishery Part - II and thereafter settled the said fishery with the respondent No. 5. The only issue involved in this case is as to whether the competent authority has the power to review the earlier order in absence of any empowerment of such power under the Statute.

3. No record has been produced by the Govt. Nor has any response been filed on behalf of the State respondents.

4. Assailing the impugned order, Mr. Das, learned counsel for the petitioner, has advanced two grounds. Firstly, in absence of any power of review under the

statute, Govt. is not permitted to exercise such power of review. Secondly, the impugned order was passed without complying the principle of natural justice. Reliance has been placed by Mr. Das on the following judicial pronouncement of the Apex Court as well as this Court :-

"1. Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others,

2. Northwest Transport Syndicate and Anr. petitioners v. State of Assam and 3 Ors. Respondent (1986) 2 GLR 440."

5. In Kuntesh's case supra the Apex Court held that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. In the case of North West Transport Syndicate (supra), the Division Bench of this Court, in dealing with the power of review under the Motor Vehicle Act, 1939, categorically held that State Government had no power to review of an order passed under the Statute, when the Act did not confer specifically or by necessary implication of any power of review.

6. Rejecting the contention of Mr. Das, learned counsel for the petitioner, Mr. C. Baruah, learned counsel appearing for the private respondent has strenuously argued that by the impugned order the Government intended to correct the earlier illegal ex-parte order i. e., the order dated 31.5.2002 by which the settlement as regards part - II of the Fishery in question with the respondent No. 5 was cancelled out-rightly on the ground of defaulter without affording any opportunity whatsoever. His case is that earlier in passing the cancellation order dated 31.5.2002, no notice was served to show cause why the respondent No. 5 would not be declared as a defaulter and as such why the settlement would not be cancelled. Being aggrieved by such cancellation, when the respondent No. 5 moved the competent authority for review by making an application, the Government had only rectified earlier illegality committed by it and hence there was no illegality or infirmity on the part of the competent authority in passing the impugned order. Another point raised by Mr. Baruah, the learned counsel is that if the impugned, order is quashed now, that will simply amount to validate or revival of the earlier illegal order which is not permissible under the law. To substantiate his submission Mr. Baruah has taken me to the following judicial decision :-

1991 (1) GLJ 78 (Shri Haren Hazarika v. State of Assam and Ors.)

2. (1991) 6 SCC 237 (M.C. Mehta v. Union of India and Ors.).

7. The ratio laid down in Haren Hazarika's case (supra) is that the exercise of the extra-ordinary discretionary power under Article 226 by the Court would be refused, if by quashing the impugned order, the earlier illegal order is restored. In the instant case according to Mr. Barua, if this court is inclined to quash the impugned order it will amount to restore the earlier order dated 31.5.2002 which

was ex-facie illegal and also violative of principle of natural justice. As regards the application of the concept of natural justice, in M.C. Mehta's case (supra) the Apex Court held that the Court can refuse to exercise its discretion of striking down an order under Article 226 if such striking down would result restoration of another order passed earlier in favour of the petitioner and against the opposite party in violation of principle of natural justice or which is otherwise not in accordance with law. According to Mr. Barua, the proposition of law laid down in the above cited case is squarely applicable in this case and as such no interference is warranted with the impugned order.

8. I have given my anxious consideration to the submission made by the learned counsel of the rival parties and have also carefully perused the materials available on record including the impugned order as well as the order dated 31.5.2002 by which the settlement of the respondent No. 5 was earlier cancelled settling the same with the petitioner. I have gone through the relevant Fishery Rules. The Rules do not permit any such review of the Govt.'s order. That being so, as regards nonavailability of power of review by the Government under the statute. I find enough force in the submission made by Mr. Das, learned counsel for the petitioner. Applying the ratio of the judicial decisions referred above as cited by the learned counsel for the petitioner, this Court is unhesitatingly inclined to held that the Govt. has no power to review its own order in absence of any such power under the statute.

9. At the same time, this court is not at all impressed with the submissions advanced on behalf of the Respondent No. 5. It is admitted fact that the private respondent No 5 did not challenge the correctness of the earlier order dated 31.5.2002 before this court for reasons best known to them. Rather it preferred the review application in question before the Govt. which acted upon the application without having the power of review. On perusal of the order dated 31.5.2002 it is seemingly clear that the settlement of the respondent No. 5 was cancelled on the ground of defaulter and also after taking into consideration the written statement of the competent authority, though acceptably ex-parte. But such finding cannot be permitted to be rectified or corrected by the Govt. in exercise of power of review which neither expressly nor impliedly has been vested with the Govt. under the Rule. In view of such factual situation, this court is, with all respect, of the opinion that the pith and substance of the cases cited by the learned senior counsel of the Respondent No. 5, cannot be applied to the case at hand.

10. For the foregoing reasons, observation and discussion, this Court is inclined to interfere with the impugned order and the same is hereby set aside and quashed.

In the result, this writ petition succeeds. However, no order is passed as to costs.