

(2003) 11 GAU CK 0035

In the Gauhati High Court

Case No : Writ Petition (C) No. 3496 and 7373 of 2003 and Miscellaneous Case No. 1146 of 2003

Katahgurimin Samabai Samittee Ltd.

APPELLANT

Vs

Tepori Sonai Morisuti Meen Samabai Samittee Ltd. and Others

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) GLT 381 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : A.M. Mazumdar, A.K. Purkayastha, S.K. Sinha and J. Paul, for the Appellant; G.A., K.N. Choudhury and I. Choudhury, for the Respondent

Judgement

Amitava Roy, J.—The controversy involved in the above two writ petitions centers around the settlement of No. 38 Morisuti Fishery of Morigaon District (hereinafter referred to as the "Fishery"). In WP (C) 3496/03, the Petitioner therein had approached this Court apprehending cancellation of the settlement order dated 23.4.03, settling the fishery in its favour. In WP (C) No. 7373/03 the settlement of the same fishery in favour of M/S Kotahguri Meen Samabai Samittee Limited, the Respondent No. 4, vide order dated 11.8.03 has been assailed. Misc. Case No. 1146/03 was registered on 18.8.03 on an application praying for review of the order dated 12.8.03 passed by this Court in Misc. Case No. 1086/03 in WP (C) No. 3496/03 observing that the interim settlement of the fishery made in favour of the Petitioner on 4.8.03 shall not be disturbed till a fresh settlement is made by issuing a tender notice.

2. I have heard Mr. A.M. Majumdar, learned Sr. Counsel for the Petitioner, Mr. K.N. Choudhury, learned Sr. Counsel assisted by Mr. I. Choudhury, for Respondent No. 4 and Miss R. Chakravorty, learned State Counsel for official Respondents.

3. It would be necessary at the outset to have a look at the bare facts having a bearing on the controversy. Both the Petitioner and the Respondent societies are registered fishery societies. The Petitioner was settled with Taporí Sonai Morisuti Group Fishery of which the fishery involved in the present proceeding was a part, long back in the year 1977. It is the case of the Petitioner that during its subsequent settlement period from 1986 there was extensive silting of the river Brahmaputra for which a substantial portion of the fishery could not be operated. On the prayer of the Petitioner, extension of the settlement period for two years was granted to it upto 1991. Then there were floods for which the Petitioner again prayed for extension of the term, which was sanctioned upto 1992. The Petitioner also prayed for remission of outstanding revenue payable to the Govt. The plea of the Petitioner is that a report was called for on such request which was submitted by the Deputy Commissioner, Morigaon on 30.6.92 reconunending grant of remission to the Petitioner society. It was thereafter that the present fishery was settled with the Petitioner for a period from 30.9.92 to 29.9.95. Subsequent thereto, the fishery was settled with some other societies. The Petitioner contends that a report was submitted on 29.11.99 by the Deputy Commissioner, Morigaon which mentioned that although the Petitioner had defaulted to pay Government dues earlier, but all dues were found to have been cleared thereafter by the society. By order dated 14.3.2000 the fishery was again settled with the Petitioner for a period of 3 years with effect from 14.3.2000 to 13.3.2003. This settlement was cancelled by the Govt. on 6.12.2000 on the ground that the Petitioner was a defaulter. Being aggrieved by the above order of cancellation, the Petitioner filed WP (C) No. 7191/2000 challenging the same. This Court issued notice of motion on 22.12.2000 and by an interim order directed the Respondents not to cancel the settlement order dated 14.3.2000. The Petitioner thereafter completed its terms of settlement. For the purpose of settlement for the next term, the Govt. invited applications and it was settled with the Petitioner on 23.4.03 for a period of 1.4.03 to 31.3.04 by the Minister of Fisheries, Assam. Apprehending cancellation of this settlement, the Petitioner has filed WP (C) No. 3496/03.

4. As would transfer from the records, this Court initially did not pass any interim order, as prayed for. On 4.8.03, however, an interim settlement of the fishery was made in favour of the Petitioner till a regular settlement was made.

5. To complete the chain of events, on 11.8.03 the fishery was settled with Respondent No. 4 for a period of 7 years with effect from 11.8.03 to 10.8.2010. The Petitioner, on the same date approached this Court with Misc. Case No. 1086/03 on which the interim order dated 12.8.03 was passed as noticed hereinabove directing that the interim settlement of the Petitioner would continue till a fresh settlement was made by calling tenders. Evidently, at the time of passing of the said order, this Court was not aware of the order dated 11.8.03 settling the fishery for a complete term with the Respondent No. 4. It was thereafter that the Respondent No. 4 got itself impleaded in WP (C) No. 3496/03 by filing Misc. Case No. 1210/03. An application for vacating the order

dated 12.8.03 was also filed which was rejected. The application filed by the Respondent No. 4 for reviewing the order dated 12.8.03 as mentioned hereinabove in Misc. Case No. 1146/03 pending disposal. It is the order dated 11.8.03 settling the fishery with Respondent No. 4 which has been challenged in WP (C) No. 7373/03. The situation as it exists today, is that inspite of the settlement order dated 11.8.03 subsequent to the interim settlement dated 4.8.03, the Respondent No. 4, in view of the order dated 12.8.03 of this Court has not been able to operate the fishery. It is in this background that the rival contentions of the parties will have to be weighed.

6. In course of the arguments Mr. Majumdar, has submitted that in view of the settlement order dated 11.8.03 in favour of the Respondent No. 4, the petition in WP (C) No. 3496/03 has lost most of its sting. He, therefore, concentrated his attack on the order of settlement dated 11.8.03. The principal argument of Mr. Majumdar in this connection is that while making the order of settlement dated 11.8.03, the case of the Petitioner has been rejected on the ground that it was a defaulter in payment of Govt. revenue to the tune of Rs. 2,69,672.00 and as such not eligible to get the settlement. He strenuously argued that the allegation of default is wholly baseless and is not supported by contemporaneous facts. According to him the Petitioner society was granted remission and it had duly cleared the arrear Government revenue and that it is not in default on that count. The learned Sr. Counsel has drawn the attention of this Court to the report of the Deputy Commissioner dated 29.11.99 and two Bakijai Clearance Certificates issued by the said authority in the year 1998. He submitted on the basis thereof that the said documents proclaimed that the Petitioner had cleared the arrear Govt. revenue and was not in default and therefore its claim for settlement of the fishery on regular basis was wrongly rejected by the Respondent. Learned Sr. Counsel maintained that had the Petitioner been a defaulter after the year 1992, it would not have been favoured with the settlement of fishery for the periods subsequent thereto. He dubbed the impugned order of settlement dated 11.8.03 as per-se arbitrary and mechanical. Mr. Majumdar also contended that the impugned settlement is in violation of the principles of natural justice inasmuch as while rejecting the case of the Petitioner, on the ground of default relying on purported reports to the said effect, no prior opportunity of hearing was granted to it. He therefore urged that the matter be sent back to the settling authority for fresh consideration after affording due opportunity to the Petitioner to represent against the alleged default.

7. Mr. Choudhury, on the other hand while strongly refuting the arguments advanced on behalf of the Petitioner has supported the impugned action. He contended that the reports to the effect that the Petitioner was a defaulter in payment of Govt. revenue depicted the correct state of affairs and the settling authority was fully justified in acting on the same while rejecting the case of the Petitioner. He insisted that as the latest report demonstrated that the Petitioner was a defaulter, it was rightly held to be not suitable to be settled with the fishery.

The learned Sr. Counsel also questioned the bonafide of the Petitioner society in obtaining the order dated 12.8.03 passed by this Court. He contended that even before the order was passed interim settlement in favour of the Petitioner had already been superseded by the settlement order dated 11.8.03 in favour of Respondent No. 4. According to him a process for settlement of the fishery was earlier initiated by issuing NIT on 12.1.03. The process was preempted at the instance of the Petitioner society and it was thereafter that the interim settlement was obtained by it on 4.8.03. The learned Sr. Counsel argued that as the interim order of settlement clearly mentioned that it was to continue till settlement on regular basis was made, the Petitioner society has no subsisting claim in the fishery for challenging the settlement order in favour of the Respondent No. 4. Though the Petitioner's society is otherwise not entitled to operate the fishery, it is on the strength of the order dated 12.8.03 passed by this Court that it is doing so. In the above premises Mr. Choudhury urged that the petitions besides being without merit also lack in bonafide and are liable to be dismissed.

8. Miss Chakravorty, learned state counsel has produced the relevant records before this Court. Having regard to the facts, as noticed hereinabove, in my view, the core question to be answered by this Court is whether the rejection of the Petitioner society in the matter of settlement of fishery on the ground of default is sustainable in law as well as on facts. If the answer is in the negative, the matter has to be remanded for a fresh consideration.

9. The Petitioner in support of its contention that it is not a defaulter has heavily relied on the report dated 29.11.99 submitted by the Deputy Commissioner, Morigaon as well as the two Bakijai Clearance Certificates issued by the same authority in the year 1998. The said report which has been annexed to the writ petition had been submitted in connection with the application made by the Petitioner for settlement of the fishery in the year 1999. It mentioned, inter alia, that though the Petitioner had defaulted to pay Govt. revenue earlier, by then all dues were cleared and the Petitioner was free from payment of any dues in the form of fishery revenue. The two certificates issued also indicated that no Bakijai Case against the Secretary of the Petitioner's society was pending on the date of issue thereof and that no outstanding fishery revenue was payable by the Petitioner society.

10. The relevant reports which were taken note of by the settling authority while making the impugned settlement may now be referred to from the Govt. records. The impugned order of settlement refers to three reports, all dated 26.3.03. Out of those reports, one bearing No. MRF. 8/94/165 dated 26.3.03, which deals with the Petitioner society is of relevance so far as the aspect of the default is concerned. It transpires therefrom that the reporting authority i.e. the Deputy Commissioner, Morigaon has mentioned that an amount of Rs. 2,69,579.00 is due and outstanding for the previous settlement years from 1987-88 to 1991-92 and a proposal for remission was pending for disposal by the Govt. in connection

with which a notice was issued to the Secretary of the Petitioner society, but there has been no response from his side. The impugned order refers to the another report dated 5.8.03, which has been submitted in connection with some allegations levelled against the Respondent No. 4. The report mentions that the allegations were not based on facts and also referred to another report dated 5.6.03 on the aspect of the default of the Petitioner society. In course of hearing, learned State counsel was requested to produce the relevant document dated 5.6.03, which was complied with. This report sets out in details the sequence of facts with regard to default, of the Petitioner society in payment of arrear Govt. revenue. The report reflects the particulars of payment made by the Petitioners society against the Govt. revenue payable for the entire period/settlement since 1986 and records that an amount of Rs. 2,69,579.00 is due and payable by the Petitioner as arrear Govt. revenue as on date.

11. It would thus appear from the above reports that the clear and categorical stand of the state Respondents is that the Petitioner society is a defaulter in the matter of payment of arrear Govt. revenue to the tune of Rs. 2,69,579.00. The reports relied upon by the settling authority have been submitted by the same authority which had submitted the earlier report dated 29.11.99 certifying that the Petitioner had cleared all its dues. This report dated 29.11.99 is however not as exhaustive as the report dated 5.6.03, which contains detailed facts and particulars pertaining to the issue. It would thus be difficult to hold only on the basis of the earlier report dated 29.11.99 and the certificates issued by the Deputy Commissioner, Morigaon in the year 1998 that the Petitioner is not a defaulter in payment of arrear Govt. revenue. In the absence of any material furnished by the Petitioner in support of the payment made by it towards the arrear revenue clearing the same it is not possible to discard the recent reports to the contrary and hold that the Petitioner is not a defaulter. The contention that had the Petitioner been a defaulter, the fishery would not have been settled with it, after 1992 and therefore it has to be accepted that the ground of default was non-existent cannot be upheld. To entertain such a plea would amount to acting on inferences by ignoring tangible and substantial materials contained in contemporaneous records to the contrary. It would be relevant to notice that while granting settlement to the Petitioner in the year, 1992, the same was made subject to payment of 50% of total arrear revenue amounting to Rs. 1,18,672.92. Even, thereafter the settlement made in favour of the Petitioner for the period 14.3.2000 to 13.3.2003 was cancelled on 6.12.2000 on the ground of default. The order of cancellation however was stayed by this Court in WP(C) No. 7191/2000 and the Petitioner would complete its terms on the strength thereof. The issue of default, however, remained undecided. Thus, on an over all consideration of the materials on record, more particularly, the overwhelming reports referred to above, I am not inclined to accept that the Petitioner's claim for settlement of the fishery was wrongly rejected on the ground of default.

12. The argument with regard to violation of principles of natural justice may now be dealt with. The learned Sr. Counsel for the Petitioner in support of the

contention that the Petitioner was not a defaulter had extensively argued on the basis of the documents on record. On a query made by the court as to whether there was any evidence at the disposal of the Petitioner to suggest that the arrear Govt. revenue had been cleared by it, as claimed, the learned Sr. Counsel on instructions answered in the negative that the Petitioner had been in default in payment of Govt. revenue in the year 1992 is not disputed by it. The latest reports as referred to above proclaim that it continues to be a defaulter, no convincing evidence to the contrary could be produced on its behalf at the time of hearing. No document has been annexed showing payment of the entire amount said to be in arrear. It is therefore, not understandable as to what purpose will be served, if the matter is remanded to the settling authority for a fresh consideration of the issue as insisted upon on behalf of the Petitioner. I am therefore not inclined to concur with Mr. Majumdar on this count.

13. The interim order dated 12.8.03 had been passed by this Court to protect the interim settlement in favour of the Petitioner till a regular settlement of the fishery was made in terms of the Rules. While passing the stay order this Court did not intend to make it obligatory on the part of the concerned authority to settle the fishery by the tender process alone. It only intended that the regular settlement should be made as prescribed by the Rules. It has not been argued by Mr. Majumdar and rightly so that the settlement of the fishery could not have been made under proviso to Rule 12 of the Rules i.e. by direct settlement. The order of settlement dated 11.8.03 therefore, cannot be construed to be opposed to the letter and spirit of the order dated 12.8.03 passed by this Court. As a matter of fact, the settlement was made prior to passing of the order dated 12.8.03.

14. In view of the foregoing discussion, I am of the considered opinion that the Petitioner has failed to make out a case warranting interference with the impugned order of settlement dated 11.8.03. The reliefs prayed for in the writ petitions having regard to the attending facts and circumstances, thus cannot be granted. The impugned action of the official Respondents does not display any illegality, arbitrariness or unfairness so much so, to condemn it as illegal and unconstitutional justifying interference therewith in exercise of power under Article 226 of the Constitution of India. As a result, the writ petitions are dismissed. The Misc. Case referred to above is disposed of accordingly. The interim order dated 12.8.03 stands vacated.

No. costs.