(1967) 05 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 137 of 1966

Krishna Ram Medhi APPELLANT

Vs

Deputy Commissioner and Others RESPONDENT

Date of Decision : 29-05-1967

Acts Referred:

Fisheries Rules, 1953 — Rule 12

Citation : (1967) 05 GAU CK 0003

Hon'ble Judges : C. Sanjeeva Row Nayudu, C.J;P.K. Goswami, J

Bench : Division Bench

Advocate : S.K. Ghose, J.P. Bhattacharjee and S.N. Medhi, for the Appellant; A.H. Mazumdar, for Respondent No. 1, S.S. Ray, J.C. Medhi and D.C. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

C. Sanjeeva Row Nayudu, C.J.—In this Civil Rule the validity of the order passed by the Slate Government ordering direct settlement of a fishery on 16-3-1966 in favour of the fifth Respondent in exercise of powers under Rule 12 of the Fishery Rules is questioned.

2. The facts of the case may be briefly noticed. The fishery in question was advertised for sale by tender, notice having been issued on 31-12-1965. The tender was for three years from 1966-67 to 1968-69. In response to the tender notice, tenders were submitted by the Petitioner, the fifth Respondent, the sixth Respondent and some others. The highest tender was that of the fifth Respondent, which was for Rs. 33,125. The Petitioner had made an offer of Rs. 31,200. The sixth Respondent''s tender was for Rs. 26,625. On 15-2-1966 the tenders were apparently opened and considered and on the sixth Respondent offering to and agreeing to pay the amount equivalent to what the highest tender offered, namely, Rs. 33,125, the Deputy Commissioner settled the fishery with him.'' But thereafter, within the time allowed, the sixth Respondent failed to make the deposit of one-fourth of the amount offered by him. On "account of

this default the fishery had to be resold in accordance with Clause 6 Of the sale notice by tender, which is as follws:

If the successful tenderer fails to fulfil the conditions 4 and 5 of'' this notice (in the instant case, condition 4) the fishery shall be resettled at his risk after calling for fresh tenders and if the subsequent highest tender be less than his tender, he shall be bound to make good the difference calculated on the whole period of settlement.

As the default had been committed by the sixth Respondent, as pointed out above, the fishery had to be resold and notice had to issue, which is Annexure ''D'' to the petition, fixing 24-2-1966 (SIC) the date for the resale. The last date for submission of the tenders was fixed as 18-3-1966. Meanwhile on 16-3-1966 the State Government would appear to have settled the fishery directly with the fifth Respondent and a telegram to that effect was issued on l7-3-l966. There was also a notification issued by the Deputy Commissioner on 17-3 1966, to the effect that the notice of resale of the fishery in- question on 18-3-1966 is hereby vacated as the same had been settled with the tenderer for the term of three years commencing from 1-4-1966 and it was also, further notified that no tenders for this fishery will be required on 18-3-1966.

3. The Petitioner contends that'' once a fresh sale by tender had been ordered in compliance with condition 6 of the sale notice the Government would have no jurisdiction to make a direct settlement in exercise of their powers under Rule 12 of the Fishery Rules. Rule 12 of the Fishery Rules gives power to the State Government to make settlement directly with the person concerned. This rule is as follows:

12 No fishery shall be settled otherwise than by sale except by the State Government.The order of settlement passed by the State Government shall be final:

Provided that the State Government introduce the tender system of settlement of fishery in place of sale by auction system when ever it is considered necessary.

Analysing this rule, the following conclusions may be reached : (i) the State Government has the power to settle fisheries otherwise than by sale and in such a case the order of settlement as passed by the State Govt. shall be final, and (ii) the State Government may introduce the tender system of settlement of fishery whenever (sick) considers it necessary in place of sale by auction system which is assumed to be the rule. In this context, the scope of this section has been examined by their Lordships of the Supreme Court in the case of Ganga Ram Das Vs. Tezpur Kaibarta Co-operative Fishery Society Ltd., their Lordships observed as follows:

No limitation is placed on this power which is thus vested in the State Government (dealing with the powers of the State Government under Rule 12) and if the State Government is empowered to settle fishery rights otherwise than by sale, it can do so by adopting the tender system if it thought it desirable to do so or even by entering into individual settlements if the circumstances of the case so warranted. Apart from the adoption of the tender system in place of the auction system, circumstances may conceivably arise where either by reason of the cancellation or relinquishment of fishery lease before the expiration of the period thereof and having regard to the situation then obtaining, it may not be feasible or desirable to sell fishery rights for the unexpired portion of such a lease either by public auction or by inviting tenders and the State Government may, under these circumstances, consider it desirable to enter into individual settlement of the fishery rights so as to earn for the State as much of revenue as possible. No letter can be placed on the discretion of the State Government in this behalf and the State Government would he the best judge of the situation and would be in a position to determine what procedure to adopt in the matter of the settlement of fishery rights oilier wise than by sale.

4. In this connection there are a number of decisions of this Court which followed the observations of their Lordships of the Supreme Court. Reference may be invited to the two cases of Birendra Nath Barman v. Deputy Commissioner Goalpara ILR (1963) Gau 288, and Barada Kanta Bishva v. Assam Board of Revenue AIR 1967 G&N 22 But what Mr. Ghose contends is that although on a plain reading of Rule 12 the discretion given to the State Government appears to be unfettered in a situation where the requirements of condition 6 of the sale notice had to be complied with, that requirement being a mandatory one, the State Governments power must be regarded as subordinate to the compliance with that condition and therefore in a case like the present one where there has been default by successful tenderer in the first instance and consequently the fisher had to be resold in obedience to the mandatory provision contained in condition 6 of the sale notice the power of the State Govt. must be deemed to have been held over We are unable to accept this broad proposition If it was intended by the rule makers that the power of the State Government has to be hedged in with this condition or subordinate to certain circumstances, it would have been made plain In the rule itself, As it is, there are no such conditions laid down. The mere fact that a fresh sale notice had been issued because of the default committed by the earlier successful tenderer, in our opinion, should make no difference. In fact, the purport of the observations of their Lordships of the Supreme Court supports this view also. We see no objection to the action taken in this case by the State Government in effecting a direct settlement. We are assured by Mr. Ghose that it was never him intention to aver or allege that the object of the State Government in making direct settlement was with any motive. Such being the position, the case is very clear and calls for no interference by us.

5. We accordingly discharge the rule and dismiss the petition, but in the circumstances we make no order as to costs

