

(1992) 08 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 995 of 1992

Kusumpara Pakaria Min Samabai Samity Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 31-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Fisheries Act, 1897 — Section 6

Citation : AIR 1993 Guw 95

Hon'ble Judges : Sangma, J; Manisana, J

Bench : Division Bench

Advocate : Pathak and R.N. Choudhury, for the Appellant; D.P. Chaliha, Government Advocate, D.N. Choudhury, A.K. Phukan and Manojit Bhuyan, for the Respondent

Judgement

Manisana, J.—In this application under Article 226 of the Constitution, the petitioner M/s. Kusumpara Pakaria Min Samabai Samity Ltd. has challenged the order of the Government of Assam dated 25 May, 1992 settling the Fishery No. 129 Haria Dublong Fishery (which we shall refer to as the "Fishery") with the fifth respondent M/s. Jagirroad Matsyababasaya Samabay Samity.

2. Facts, -- The Fishery was settled with the petitioner for a period of 3 years expiring on 31-3-92. However, the period of settlement was extended to 31-3-93 by the Government of Assam under order dated 27-12-90. But the order of extension was revoked by the order dated 25-5-92 and the Fishery was settled with the fifth respondent. The order of settlement with fifth respondent was stayed by this Court on 27-5-92.

3. The order revoking the extension of the period of settlement with the petitioner before its expiry involves civil consequences as well as pecuniary and evil consequences. Therefore, before revoking the order of extension of the term of settlement before its expiry the minimum principle of natural justice of notice and opportunity to represent one's case is a must. But it is found that the

revocation order was made without observing the rules of natural justice. For the non-compliance with audi alteram partem rule of natural justice at a pre-decisional stage, the order of revocation of the extension of the term of settlement of the Fishery is liable to be struck down. However, on the facts in the circumstances of the case, we propose to give the parties a post-decisional opportunity of hearing without striking down the impugned order.

4. At this stage it will be helpful to refer to the following cases. In *HL Trehan v. Union of India* AIR 1969 SC 568 a two-Judge Bench of the Supreme Court has held that post-decisional opportunity of hearing does not subserve the rules of natural justice for, once decision has been taken, there is a tendency to uphold it and a representation may not really yield and fruitful purpose, and, therefore, any post-decisional hearing would not be any compliance with the rules of natural justice and cure the defect of not" affording pre-decisional hearing. However, a five-Judge Bench of the Supreme Court has, in *Charan Lal Sahu Vs. Union of India*, observed that if the statute conferring the power is silent with regard to the giving of pre-decisional hearing to the person affected, the administrative decision after post-decisional hearing is good.

5. The decision of the Constitutional Bench of the Supreme Court indicates that post-decisional hearing has not been made obsolete and the "principle in an individual case" shall apply. The learned counsel for the parties also have agreed to the proposed post-decisional hearing. Therefore, the matter is sent back to the State Government to give the parties a full, fair and effective hearing (oral hearing) with the following directions:

(i) Till disposal of the matter by the State Government, status quo as regards the possession of the Fishery as of today shall be maintained;

(ii) The parties shall appear before the second respondent Deputy Secretary to the Government of Assam (Fisheries Department) on 11-9-92 for the purpose of receiving direction as to further proceeding in the matter; and

(iii) After hearing both the parties, the Government may cancel or affirm its order dated 25-5-92 (impugned order) by giving reasons.

6. With the aforesaid observations and directions, the petition is closed. No costs.