

(1993) 09 GAU CK 0008
In the Gauhati High Court
Case No : Writ Appeal No. 583 (T) of 1993

Lalit Kumar Das

APPELLANT

Vs

Nimati Anchalik Koibarta Sampradai Thika Aru Min Samabai
Samity Ltd.and Another

RESPONDENT

Date of Decision : 03-09-1993

Acts Referred:

Fisheries Rules, 1953 — Rule 12, 12

Citation : (1994) 1 GLJ 285

Hon'ble Judges : U.L.Bhat, C.J. and R.K.Manisana Singh, J

Bench : Division Bench

Advocate : N.C.Phukan, M.P.Pathak, K.N.Choudhary, B.Choudhary, Advocates
appearing for Parties

Judgement

U.L.Bhat, C.J.—The appellant is President of a fishery cooperative society at Nimatighat and the first respondent is another cooperative society also at Nimatighat. The dispute in the case relates to settlement of No. 11 Kokila Fishery under Jorhat District. The appellant society was a lessee for the period from 1.4.88 to 31.3.91. The lease was extended for two years ending 31.3.93. Before the expiry of the period the appellants submitted an application to the State Government for extension But the State Government without acting on the application, by order dated 17.4.93 settled the fishery with the first respondent society as seen at Annexure 8 to the writ petition. Appellant filed Civil Rule No. 956 of 1993 challenging the order. This Court disposed of the writ petition on 7.5.93 setting aside the settlement in favour of first respondent and directing the Government to consider the appellant's application for extension while considering the matter of settlement. The judgment of this Court is Annexure 9 in the writ petition. Thereafter, the State Government considered the appellant's application for extension and rejected the same and confirmed the earlier settlement granted in favour of first respondent. It appears, the appellant submitted a representation to the State Government allegedly setting forth facts to indicate that first respondent is not eligible for settlement and praying that his

application for extension must be allowed. Appellant also filed Civil Rule No. 1^89 of 1993 seeking to set aside the Government order rejecting his application for extension and confirming the settlement in favour of first respondent. It was argued before the learned Single Judge that first respondent society is not a fishery cooperative society but a society intended to do contract business with the Government and perhaps to do trade in fishing also and, therefore, is not eligible for settlement under proviso to Rule 12 of the Fisheries Rules. First respondent submitted before the learned Single Judge that there is a omission of two words, viz. "Aru Min" in the name of the society and the same was omitted inadvertent The learned Single Judge declined to go in this question as it was a disputed question of fact and because this point was not urged in the earlier writ petition. Learned Single Judge found that the State Government while considering the application for extension filed by the appellant has complied with the direction in the earlier writ petition and, accordingly, dismissed the writ petition. Hence this appeal.

2. We have been taken through the writ petition and the counteraffidavit. Learned counsel for the first respondent has placed before us a copy of the amended byelaws of the first respondent society. The original name of the society was "Nimati Anchalik Koibarta Sampradai Thika Samity Limited." This means that the society was a contract society. Bylaws produced before us by the learned counsel for first respondent show the name of the society as "Nimati Anchalik Koibarta Sampradai Thika Aru Min Samabai Samity Limited." The object of the society has been read before us. The object of the society, as indicated in the byelaws, is to take up contract works from the Government and to do business or trade in fishing.

3. We do not think any case has been made out for interfering with the rejection of appellant's application for extension. The appellant society enjoyed the benefit of the fishery initially for a period of 3 years and subsequently for an additional period of two years. Even assuming that the appellant society suffered loss that itself cannot be a ground for continued extension even after an initial extension. We are not satisfied that the State Government committed any error requiring correction, in rejecting the application for extension. Learned counsel for the appellant further contended that the first respondent society is wholly ineligible to obtain settlement under the proviso to Rule 12 of the fisheries Rules and, therefore, the Government order settling the fishery with the first respondent is unsustainable. This contention is rebutted by the learned counsel for the first respondent.

4. Amended Rule 12 states "No fishery shall be settled otherwise than by sale except by the State Government and the order of settlement passed by the State Government is final." Proviso to Rule 12 reads thus :

"Provided that the State Government may settle any registered fishery otherwise than under tender system with Fishery Cooperative Society formed with 100 per cent actual fishermen of the fishing population in the neighbourhood of the

fishery concerned and belonging to the Scheduled Caste of the State or Maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time."

The proviso can apply only in relation to a fishery cooperative society provided the society satisfies the other conditions stipulated, namely it must be formed with 100 percent actual fishermen of the fishing population in the neighbourhood of the fishery and all the members must belong to Scheduled Caste of the State, etc. The appellant contends that all the members of first respondent society are not actual fishermen. Learned Single Judge indicated that this is a disputed question of fact.

5. More important contention urged before us is that the Government committed a serious error in proceeding on the basis that first respondent society is a fishery cooperative society and that the learned Single Judge did not advert to this aspect. We have already referred the original name of the first respondent society and the change introduced in the name of the society as well as the main object of the society. It is significant that first respondent has no case that the object as stated in the byelaws has been amended, what is amended is only the name of the society. The original name of the first respondent society spells out contract cooperative society, that is society for the purpose of obtaining contracts from the Government or other bodies. From the amended name of the society, it is clear that it is a society for taking up contract works as well as to undertake fishing trade. The name itself does not spell out that the society is a fishery cooperative society in the sense that the main object of the society is to attend to fishing activity. Objects as stated in the byelaws indicates that one of the two objects of the society is to attend to fishing trade and not to fishing activity. There is a difference between fishing activity and trade in fish. It may be that a person or institution which attends to fishing activity may also trade in fish. But a society whose object to is trade in fish cannot be regarded as a society whose object is to attend fishing activity. Byelaws are clear enough to indicate that first respondent is not a fishery cooperative society. Proviso to Rule 12 requires a society to be a fishery cooperative society. The expression "fishery" cannot be understood as taking in its fold trade in fish. The expression "fishery" can only connote fishing activity. This is further supported by requirement of the proviso that all the members must be actual fishermen. The Government did not apply its mind to these material aspects arising in the dispute. The circumstances clearly warrant inference that the first respondent society is not a fishery cooperative society and it is a society for the purpose of entering into contract and for the purpose of attending to trade in fish. It does not attract the proviso to Rule 12. The Government therefore has no jurisdiction to settle the fishery on the first respondent in exercise of the power under the proviso to Rule 12. This aspect was not considered or brought to the notice of the learned Single Judge.

6. In the result, we set aside the impugned judgment of the " learned Single Judge passed in Civil Rule No. 1189 of 1993 on 27 8.93, set aside the impugned

order passed by the State Government and allow the writ appeal. We make it clear that the rejection of extension application of the appellant stands. The Government will now proceed to settle the fishery in question in accordance with law.

Appeal is, accordingly, allowed but without costs.