
(1996) 08 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 2997 of 1996

Luhit Erasutimach Mahal Samabaisamity Ltd.

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 14
Fisheries Rules, 1953 — Rule 12, 12

Citation : (1997) 1 GLJ 436 : (1997) 1 GLT 276

Hon'ble Judges : D.N.Chowdhury, J

Bench : Single Bench

Advocate : R.Ali, H.K.Sharma, U.Bhuyan, D.R.Gogoi, B.D.Das, Advocates
appearing for Parties

Judgement

1. The legality and validity of the order of settlement of No. 17 Luhit Erasuti Fishery of Majuli Sub Division issued vide No.FISH.83/8 I/PT/43 dated 20.6.96 is tinder challenge. By the aforesaid order of settlement the Govt of Assam settled fisheries with the respondent No.3 under proviso to Rule 12 of the Fishery Rules for a period of 5 (five) years with effect from 7.6.96 to 6.6.2001. Sri BD Das, the learned counsel for the petitioner has questioned the validity of the settlement as being arbitrary and violative of Article 14 of the Constitution of India. Mr. Das persuade me to his point brought my attention to an order of settlement in respect of No.23 Garamur Jogipathar Ghuli Fishery in Majilu Sub Division dated 6.1.1996. By the aforesaid order the fishery of Garamur Jogipathar Ghuli was settled with the respondent No.3 for a period of 5 years with effect from 3.9.95 to 2.9.2000. According to Mr. Das while settling the fishery in the aforesaid matter the authority though found M/s Pokajora Min Silpa Samabai Samitee Ltd is an eligible one, the said society was not favoured with settlement on the ground that the aforesaid society has already been favoured with a settlement for 5 years and the respondent society was preferred because of the fact that the fishery lease in respect of other fishery, which the respondent was holding, was about to expire shortly. The reasoning for selecting the respondent No.3 in

respect fo Garamur Jogipathar Ghuli Fishery in Majuli Sub Division was undoubtedly, in conformity with the principles of distributive justice.

Mr. Das thus submits that the similar consideration did not come forth in the present settlement by the same setting authority. Mr. U. Bhuyan, the learned counsel appearing on behalf of the respondent No.3 submits that the settling authority took all the relevant considerations while passing the impugned order and in the absence of any extraneous consideration the settlement cannot be faulted.

2. In the instant case there were 5 contenders for the settlement of the fishery. The authority, out of the 5 contenders, found both the societies namely the petitioner society as well as the respondent No.3 are eligible for settlement since both these society fulfills the requirements of all the proviso of Rule 12. The settling authority, however, favoured respondent No.3 on the following grounds:

"The society is not a defaulter and no bakijati case is pending against the society. The society sustained loss in the previous as reflected shown in records. The Sub Divisional Officer (Civil) recommends the society for settlement to compensate the loss sustained by the society during the previous term."

"Taking all the above grounds into consideration Govt constrained to reject the prayers of the respective contenders except the prayer of Chilakola Hohaiya Pohoniya Fishery Samabai Samittee Ltd on the ground that the loss incurred by them during the previous term."

3. I have perused the report dated 15.2.96 submitted by the Sub Divisional Officer (Civil), Majuli. The report contained in Column Nos.8 and alongwith a similar report dated 8.2/7.2.96 of the SDO (C) in respect of the petitioner and the respondent N6.3, both are extracted below:

M/s Luhit Erasuti Mash Mahal SS Ltd, Majuli

"8. If the society has sustained loss in the: Yes, sustained loss during previous previous terms, detail accounts of the terms, detail accounts enclosed as same may be given reported by ARCS, Majula

9. Does the society deserve settlement: May be settled with the society for extension according to your opinion ? livelihood of the SC people of the Please offer your specific view. society. M/s Chilakola Hphoiya Pohonia Fishery SS Ltd :

"8. If the society has sustained loss in the : Yes, sustained loss during previous, previous terms, detail accounts of the terms, as reported by ARCS, Majuli. same may be given Detail accounts enclosed.

9. Does the society deserve settlement: May be settled to compensate the extension according to your opinion ? losses sustained by the society during Please offer your specific view. . previous terms and for their livelihood.

4. From the report it appears that in respect of petitioner society also the SDO

(C) reported that it has sustained loss during the previous term and the said officer also recommended the petitioner society for settlement for the livelihood of the SC people of the society. Therefore the consideration which operated in the mind of the settling authority for settling fisheries with that of the respondent No.3 was also discernible in the case of the petitioner. The SDO (C), in the case of the petitioner society, also recommended their case for settlement of fisheries, with that of the petitioner society for the livelihood of the members of the society.

5. The Preamble of the Constitution charged an obligation upon the States to secure to all its citizens social, economic and political justice and to promote among the citizens fraternity assuring the dignity of the individual. After assuring the fundamental rights the makers of the Constitution delineated the State policy in Part IV of the Constitution. The Indian Constitution by this part charged the States with the responsibility to promote the welfare of the people by minimising inequalities in income and to secure the distribution of material resources of the community, by allowing to operate the economic system equitably as not to result in concentration of wealth. It also obligates the States to make effective provision for securing the right to work within the economic limits. The social justice as sought to be ushered by the makers of the Constitution is to be in conformity with the principle of distributive justice. Justice and fair play in the distribution of national wealth is, the essence of this theory. The theory of distributive justice" is more particularly applicable in the distribution of public largessee. The proviso to Rule 12 must also conform to the policy laid down in Part IV of the Constitution. The Full Bench of this Court upheld the validity of the proviso to Rule 12 of the Rules keeping in mind the constitutional provisions referred to above (Arabinda Das vs. State of Assam & others reported in AIR 1981 Gauhati 18). This Court in Civil Rule No.477 of 1996 M/s Jahnobi Matchyajibi Samabai Samiti Ltd vs. State of Assam & others, disposed on the 21st day of August 1996 (1997 (1) GLJ20) also observed that the proviso to Rule 12 must also conform to the principle of distributive justice.

6. From the discussions made above, it is apparently clear that the settling authority failed to take note of the relevant considerations in not taking into consideration the case of the petitioner in the light of proviso of Rule 12 of the Rules. The proviso to Rule 12 is meaningful in its object and it was introduced by the Rule making authority to secure livelihood of the members of the cooperative society having 100 percent actual fishermen belonging to the SC only, who are in the neighbourhood of the petitioner. The settling authority also failed to take into consideration the relevant considerations about the effect of the settlement of No.23 Garamur Jogipathar Ghuli Fishery in Majuli Sub Division with the respondent No.3 by the order dated 6.1.96. In view of the facts as stated above the impugned order of settlement dated 20.6.96 as contained in the Annexure 3 of the petition is set aside. The petition is accordingly allowed.

Rule made absolute.