
(2003) 03 GAU CK 0032
In the Gauhati High Court
Case No : Writ Petition (C) No. 1801 of 2000

Makh Mod Ali

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:

Citation : (2003) 3 GLR 255

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : A. Hai, for the Appellant; H.K. Handiya and N.H. Choudhury, for the Respondent

Judgement

B.B. Deb, J.—This writ petition pertains to settlement of No. 41 Roko River Fishery. The respondent No. 3, Sub-Divisional Officer (Civil), Lakhipur, Cachar floated tender inviting quotations for setting 41 Roko River Fishery vide Memo No. LRF.1/97/42 dated 15.1.2000 for 3 years. Pursuant to the NIT the petitioner offered his bid. Other persons also participated. Among eligible bidders, the petitioner's bid was highest at Rs. 11,000/-while the private respondent No. 4 offered a bid of Rs. 4,711/-. Without any valid reason whatsoever the authority settled the said fishery with the respondent No. 4 for a period of 3(three) years from 1.3.2000 to 28.2.2003 by the impugned settlement order bearing No. LRF.1/2K/SA dated 7th March, 2000. The petitioner made a representation on 28.3.2000 seeking for an enquiry into the matter but in vain. Hence he filed this writ petition seeking cancellation of settlement granted in favour of respondent No. 4 and for a mandamus commanding the respondents to settle the said fishery in his favour.

2. Neither the State/official respondent nor the private respondent No. 4 filed any counter affidavit though the learned Government Advocate and the learned counsel for the private respondent participated in the hearing.

3. The learned counsel for the private respondent No. 4 raised a preliminary

objection contending, inter alia, that since the period of settlement has already expired, this court should not take up the matter for adjudication. According to the learned counsel, after expiry of settlement period there remains nothing to be adjudicated and as such academic deliberation and resolution should be avoided. The learned counsel for the petitioner submits that though he filed the case in April, 2000 but the matter could not be heard for this or that reason and as such unless a decision is rendered the recurrence of such omission and arbitrary action on behalf of the authority concerned cannot be prevented. It is experienced that in a good number of litigations the relief sought for or the grievance raised has become infructuous due to lapse of time inviting complications in future. If a unless the question raised in a writ petition which is of public importance is not decided on the plea of being infructuous repetition of the same could not be avoided and as such in my considered opinion such type of public important grievance deserves to be addressed even the main relief sought for, has become infructuous by lapse of time, otherwise there would be feeling of deprivation of justice in the mind of the litigants in general while issue of public importance has been put under challenge and thus I am inclined to decide the case.

4. The settlement of fisheries belonging to the State Government or an instrumentally under the Government is governed by the Rules framed under the Indian Fisheries Act. The Governor of Assam framed the Rules & published in Official Gazette of the State Government dated 22nd April, 1953. Pursuant to that Fishery Rules the Deputy Commissioner or the Additional Deputy Commissioner in case of Sadar Sub-Divisions and the Sub-Divisional officers in case of other Sub Divisions are the settling authorities. Fisheries could also be settled with Fisheries Co-operative Societies under Rule 13. No procedure has been prescribed to be followed in granting settlement of fisheries and as such the authorities are supposed to adopt a well informed procedure to ensure the transparency. Firstly, it is best to adopt the procedure of floating notice inviting tender/quotation informing all persons interested to participate in bid. Secondly, by negotiation among the eligible bidders. Of course, preference should always be given to the Fisheries co-operative Societies of the locality. Regarding extension of the settlement granted in previous year, there is a clause under Rule 8(6) of the Rules which envisages that the initial settlement is to be for 3 years but in case of natural calamities or any unavoidable reasons beyond the control of the lessees if the authority is satisfied that the lessees could not rear and catch the fish for some period incurring heavy loss the authority may extend the existing lease period, with the approval of the State Government for a further period but in doing so, the authority is to take care of the interest of the State revenue and accordingly in granting extension authority may impose other, further or additional terms and conditions. In absence of any reasoned order spelling out the compelling grounds, normally the authority shall not grant or allow extension of settlement of fisheries.

5. In the present case, apparently it reveals that the petitioner was the highest

bidder who offered Rs. 11,000 while the authority settled the fishery with the private respondent No. 4 at an amount of Rs. 4,711 and no justification could be traceable from the impugned settlement order and in such situation the impugned order of settlement appears to be an outcome of arbitrary decision of the authority which falls to pass the test of transparency. Since the period has already been expired, the prayer for cancellation of the settlement has become infructuous. However, the Deputy Commissioner, Cachar is directed to cause an enquiry into the matter and appropriate departmental action be taken against the erring officials.

6. The writ petition is accordingly disposed of.