

(2004) 03 GAU CK 0081
In the Gauhati High Court
Case No : WP (C) No. 6768 of 2003

Managing Committee, Ujan Lohit Kherkatia Suti Min Samabai
Samiti Ltd. and Another

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Fisheries Rules, 1953 — Rule 12

Citation : (2004) 3 GLR 548 : (2004) 2 GLT 1155

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : K.K. Mahanta, S. Singha, R. Duarah and D. Deka, for the Appellant;
Dr. Y.K. Phukan, G.A. and M. Das, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—By this writ application, the petitioners have made a challenge to Annexure-8 order dated 8.4.2003 by which the settlement of No. 5 Uzan Lohit Kherkatia Suti Min Fishery in the District of Lakhimpur with the petitioners has been cancelled. By the same order the fishery has been settled with the respondent No. 2 for a period of five years with immediate effect. Such settlement has been made purportedly under Rule 12 of the Assam Fishery Rules, 1953 and the same is at 10% enhanced rate over the existing annual revenue of Rs. 30,951/-. In the impugned order it has been stated that no other society has applied for settlement of the fishery.

2. Adverting to the facts of the case giving rise to the situation warranting filing of the instant writ petition are that the respondent No. 2 was the Secretary of the Managing Committee of the petitioner's Samabai Samiti for a period of three years commencing from 1999. Prior to that also he was the Secretary of the Managing Committee for about 8-10 years. According to the petitioners the said respondent No. 2 had indulged in malpractices towards running the society. It was during his tenure the fishery in question was settled with the petitioner's

society for five years with effect from 8.9.98 to 7.9.2003 by an order dated 8.9.98. According to the petitioners, the respondent No. 2 used the fishery as his own property and defaulted towards payment of kist money etc. Upon representation to the authorities of the Co-operative department and upon enquiries the said authority being satisfied dissolved the Managing Committee of the petitioner's society by an order dated 8.5.2000.

3. The respondent No. 2 made a challenge to the said order by filing WP(C) No. 2584/2000 and this court passed an interim order in respect of the said order on the basis of which the respondent No. 2. continued to be the Secretary of the Managing Committee till the term of the Managing Committee got expired. As per the averments made in this writ petition the respondent No. 2 even after expiry of the term continued without holding any Annual General Meeting. Eventually the writ petition was dismissed being infructuous. It is the case of the writ petitioner that on failure on the part of the respondent No. 2 to deposit the kist money in respect of the fishery, the society became a defaulter. As per report dated 10.6.2002 furnished by the Assistant Registrar of Co-operative Society and as per letter dated 1.2.2002 issued by the Government nominated officer, guilt was attributed to the respondent No. 2 for non-holding of Annual General Meeting and non-submission of audited accounts. By an order dated 1.8.2003, an ad hoc Managing Body of the society with the petitioner No. 2 as the Chairman was constituted on automatic dissolution of the earlier Managing Committee of which the respondent No. 2 was the Secretary.

4. By the impugned order dated 8.4.2003, the settlement of the fishery which was made in favour of the petitioner's society for the period from 8.9.98 to 7.9.2003, was cancelled on ground of failure to deposit kist money. By the same very order the fishery was settled with the respondent No. 2 in his individual capacity purportedly under Rule 12 of the Assam Fishery Rules, 1953 at an enhanced rate of 10% above the existing Government annual revenue of Rs. 30,951/-. The order stated that no other society had applied for settlement of the fishery.

5. The respondent No. 2 has filed affidavit-in-opposition justifying the action of the official respondent in issuing the said order dated 8.4.2003 to which the petitioners have filed their rejoinder affidavit. In the rejoinder affidavit the stand in the writ petition relating to purported illegalities committed by the respondent No. 2 in managing the affairs of the petitioner's society during his tenure as Secretary have been highlighted and reiterated.

6. I have heard Mr. K.K. Mahanta, learned counsel appearing for the petitioner and Dr. Y.K. Phukan, learned senior counsel, appearing for the Respondent No. 2. I have also heard Ms. R. Chakraborty, learned Government advocate who also produced the records of the case. The short question involved for determination is as to whether under the fact and circumstances the authorities of the official respondents were justified in passing the impugned order dated 8.4.2003. Mr. Mahanta, learned counsel appearing for the petitioner focused his arguments

towards assailing the order dated 8.4.2003 on the following points -

(a) The principle of natural justice has been violated inasmuch as before cancellation of the settlement, no notice was given to the petitioner's society.

(b) The fishery in question could not have been settled with the respondent No. 2 in his individual capacity and ought to have been settled with the Co-operative Society as envisaged under Rule 12 of the Assam Fishery Rule, 1953.

(c) Even if there was some outstanding dues, the petitioner society should have been given some more time to clear the same, more particularly when such a situation was the creation of the respondent No. 2. In any case the petitioner society has already cleared the dues as reflected in the rejoinder affidavit.

(d) The statement made in the impugned order dated 8.4.2003 that there was no other applicant other than the petitioner for settlement of the fishery is utterly perverse inasmuch as there was no occasion for submission of application for settlement of the fishery inasmuch as the petitioner society was running the fishery and it was with the cancellation of the settlement by the same very order the respondent No. 2 was settled with the fishery.

7. Dr. Y.K. Phukan, learned senior counsel appearing for the respondent No. 2 on the other hand questioned the very locus standi of the petitioners to continue with the writ proceeding in view of the dissolution of the Managing Committee of the petitioner's society making a challenge to which a writ petition being WP(C) No. 10165/2003 has been filed. However, he fairly submitted that interim protection has been provided in the said writ petition. He submitted that the respondent No. 2 was not at any kind of fault and it was his own creation of the petitioner's society, which attracted the impugned action by way of cancellation of the settlement made in their favour. Ms. R. Chakraborty, learned Government Advocate appearing for the official respondents supported the action towards issuance of the impugned order.

8. Mr. Mahanta, learned counsel for the petitioner in his reply submitted that the petitioner society being constituted with 100% fishermen, the settlement ought to have been made in their favour. Reacting to the argument of locus standi on the part of the petitioners, Mr. Mahanta submitted that it is actually the society which is before the court invoking writ jurisdiction and not the office bearers of the society and that the change of office bearers will not render the writ petition infructuous. In any case, he submitted that the dissolution of the committee being under challenge in another writ proceeding in which interim protection has been provided, the instant writ petition is otherwise also maintainable. He relied upon two decisions as reported in 1982 (1) GLR 280 (Sri Arabinda Das v. State of Assam and Ors.) and Sushil Kumar Vs. Rakesh Kumar,

9. There is no denial of the fact that the term of settlement in favour of the petitioner society would have otherwise also expired with effect from 7.9.2003. However, its period of settlement was curtailed by the impugned order dated

8.4.2003. It is also an admitted position that before curtailing the period of settlement by way of cancelling the settlement, the petitioner society was not given any opportunity of being heard. On this score alone that part of the order dated 8.4.2003 is not sustainable. A Division Bench of this court in the case of S. B. Fishery Co-op. Society v. State of Assam and Ors. as reported in 1988 (1) GLR (NOC) 12 held that an order of cancellation of settlement of a fishery must be in conformity with the principles of natural justice. Same view has been expressed in the case of B M Samabari Samiti v. State of Assam and Ors. as reported in 1998 (3) GLT 318. However, with the expiry of the term of settlement with effect from 7.9.2003, it has really become an academic issue. Nonetheless, this will have a bearing in judging the other part of the order, which is now the real and only issue to be decided in this proceeding.

10. The respondent No. 2 has been settled with the fishery in question by the said impugned order dated 8.4.2003 in his individual capacity by way of direct settlement. Such a power is available under proviso to Rule 12 of the Assam Fishery Rules, 1953. Thus in case of any direct settlement other than by tender system, same can only be done with Fishery Co-operative Society formed with 100% actual fishermen of the fishing population in the neighbourhood of the fishery belonging to the Scheduled Caste community of the State. The settlement of fishery by tender system is the rule. However, the State Government can make an exception to the same by way of direct settlement with Fishery Co-operative Society only. It is in this context the case of Sri Arabinda Das (supra) has been pressed into service to emphasise that the pre-requisites for settlement of a fishery as laid down in Rule 12 must be satisfied before resorting to such settlement. The Full Bench of this court in the said case held that the power under Rule 12 is not arbitrary and the prerequisites are demonstrative of the fact that the State Government can directly settle the fishery within the four corners of the provisions contained in the proviso and unless these conditions are in existence, the power of settlement under the proviso would never be available to the State. The Full Bench further observed that the purpose behind the incorporation of the proviso to Rule 12 was to give opportunity to the deserving actual fishermen of the locality and that the proviso is really very wholesome, pragmatic and meaningful.

11. Thus on the face of it the settlement made in favour of the respondent No. 2 in his individual capacity is in wholesome violation of Rule 12 of the said Rules. This court in various cases after noticing the provisions as contained in Rule 12 of the said Rules has held that direct settlement of fishery be it 60% or 40% as envisaged under Rule 13 of the said Rules in favour of an individual must be by tender system. Only exception is available in the proviso to Rule 12. In such case also the four requisites must be complied with one of which is that the settlement holder must be a Co-operative Society. One may refer to the decisions of this court as reported in 1998 (4) GLT 49 (Ganesh Das v. State of Assam) and (S.K. Sarkar v. State of Assam and Ors.), 1999 (2) GLT 210. On the face of it, there has been violation of Rule 12 in making the settlement in favour

of the respondent No. 2 who is an individual.

12. There is another aspect of the matter. The impugned order dated 8.4.2003 by which the settlement has been made in favour of the respondent No. 2 has been so made inter alia on the ground that no other society had applied for settlement of the fishery. Such a reasoning is ex facie arbitrary and illegal. On the date of passing of the impugned order, the petitioner's society was the settlement holder. Along with cancellation of their settlement by order dated 8.4.2003, the respondent No. 2 was settled with the fishery in his individual capacity by the same very order. Naturally there could not have any occasion for any Cooperative Society and for that matter any other party to make any application for settlement of the fishery. It was a simultaneous action. In one hand the settlement earlier made in favour of the petitioner's society was cancelled and on the other hand settlement was made in favour of the respondent No. 2, both by the same order. In such a situation it is nothing but an arbitrary exercise of power and that too in violation of Rule 12 of the aforesaid Rules to settle the fishery in favour of respondent No. 2 holding that there was no other contender, when naturally there could not have been any.

13. The settling authority made the settlement in favour of the respondent No. 2 in his individual capacity, which is impermissible under Rule 12. It is the same very authority who had earlier furnished reports against the respondent No. 2 alleging his involvement in irregularities in managing the affairs of the petitioner's society, but yet settled the fishery with him. On the face of the impugned order one gets an impression that everything was pre-determined and the entire action was to favour only one person i.e. the respondent No. 2. In the process the official respondents violated all cannons of rules. It is in this context, a submission was made that the respondent No. 2 should not be permitted to take advantage of his own wrong and the learned counsel for the petitioner pressed into service the aforesaid decision of the Apex Court, i.e., *Sushil Kumar v. Rakesh Kumar* (supra).

14. The petitioners have asserted that there's is a Co-operative Society composed of 100% actual fishermen belonging to Scheduled Caste community (fishermen) of Assam and are entitled to settlement of the fishery by application of proviso to Rule 12. They have also stated that they have already made application before the appropriate authority for settlement of the fishery. It will be open for the competent authority to consider their claim in accordance with Rules. The submission that the petitioners have no locus standi to continue with the writ proceeding also merits rejection. It is the petitioner No. 1 Society which is before the court. It will have to be necessarily represented by the office bearer which keeps on changing. That by itself will not and cannot render the petitioner Society remediless.

15. For the foregoing reasons, I have no hesitation to hold that the impugned order dated 8.4.2003 is illegal and not sustainable. Accordingly I set aside and quash the same. The official respondents are directed to settle the fishery in

accordance with rules immediately, not later than two months from today. It will be open for the said respondents to consider the claim of the petitioner as well in accordance with rules. For the intervening period the official respondents shall manage the fishery. They may also consider to allow the petitioner's society to manage the fishery during the intervening period considering the fact that their earlier term was curtailed by an arbitrary action.

16. Writ petition stands allowed. There shall be no order as to costs.