(1999) 09 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (C) No. 2608 of 1999

Manu Ram Das — APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. and Others — RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Regulation 156
Fisheries Act, 1897 — Section 6
Fisheries Rules, 1953 — Rule 15

Citation : AIR 2000 Guw 75 : (2000) 1 GLT 41

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

Bench : Single Bench

Advocate : S.N. Bhuyan, N.D. Sharma, U. Bhuyan and S.M. Das Bhuyan, for the Appellant; A. Hazarika, Stg. Counsel (A.F.D.C.L. Ltd.) and K.N. Choudhury, for the Respondent

Judgement

D.N. Choudhury, J.—The legality and validity of the order/communication dated 17-4-99, selecting the respondent No. 4. Tiken Das, for management of Charan Meen Mahal, is the subject-matter of this proceeding which arises in the following circumstances.

Charan Meen Mahal in the district of Morigaon is under the control and management of the Assam Fisheries Development Corporation Ltd., hereinafter referred to as the Corporation. The fishery-in-question was settled by the Corporation for the period 1995-1999 with some other party, but on the default of the lessee, the lease was cancelled and the respondent No. 4 was allowed to operate the fishery-in-question for the remaining period of the lease, i.e., for a period of three months at the revenue of Rs. 43,700/- vide order bearing No. AFDC.40/94/3887 dated 12-1-99. An application seeking settlement of the fishery-in-question in favour of the Baghara Kaitaguri Meen Palan Samity dated 17-3-99, was made before the Minister of Fisheries, Assam, by the Secretary of the petitioner/Society after expiry of the lease on 31-3-99. The Managing Director of the Corporation by an order dated 17-4-99 under No.

AFDC.40/94/247 dated 17-4-99, on consideration of the application of the respondent No. 4 dated 6-3-99, received through the Government, informed the respondent No. 4 that he was selected for management of the Charan Meen Mahal for five years from the financial year 1999-2000 to 31-1-2004 at an annual revenue of Rs. 1.92.280/- (Rupees one lakh ninety two thousand two hundred and eighty) only. By the aforesaid communicate dated 17-4-99, it was also informed that if respondent No. 4 was agreeable to the proposal, he should take possession of the fishery-in-question after depositing ten percent of the annual revenue as surety and fifteen percent of the revenue as the first kist of the revenue through a Bank draft executed in favour of the Corporation and in execution of a lease deed in favour of the Corporation. The respondent No. 4 was further directed to bring Non-Judicial Stamp Paper worth of Rs. 7 for executing the lease. He was also advised to deposit the balance amount or Rs. 150/- which was payable by him as outstanding dues towards the revenue for the fishery-in-question. According to the respondents Nos. 1 and 2, the Corporation and the Managing Director of the Corporation, respectively, the respondent No. 4 failed to respond to the offer made vide communication dated 17-4-99 and accordingly, by its order bearing No. AFDC. 40/94/754 dated 20-5-99, informed the said respondent about cancellation of the said proposal. Coming to know about the order dated 20-5-99, the writ petitioner submitted an application before the Minister, Fisheries, for settlement of the fishery-in-question in favour of the petitioner/society. The Minister forwarded the said application to the Managing Director of the Corporation for consideration. However, by an order under No. AFDC.40/94/904 elated 1-6-99, issued by the Managing Director, the respondent/ Corporation withdrew and revoked its order dated 20-5-99 and further, advised the respondent No. 4 to take follow-up actions. Hence this writ petition assailing the legality and validity of the order of settlement in favour of respondent No. 4 as being arbitrary, capricious and discriminatory.

2. The respondents contested the case. Besides, the respondent No. 4 also submitted its affidavit denying and disputing the claim of the petitioner. The respondent No. 4 in its affidavit stated that on coming to know about the offer of the respondent/Corporation vide the Corporation''s communication dated 17-4-99, allowing him lo operate the fishery-in-question for a period of five years, he submitted a representation before the Managing Director of the Corporation for extending the time for deposit of the first kist money of the revenue for the Charan Meen Mahal. In the said representation, the respondent No. 4 intimated the Corporation about his financial constraints and sought for one month''s time to make financial arrangements. The respondent in his affidavit further stated that he deposited a sum of Rs. 15,228/- by a Bank draft in favour of the Corporation towards the security deposit, on 11-5-99. That for operating the Mahal for a period of three months pursuant to the order of the Corporation dated 12-1-99, he had also ready a sum of Rs. 4.370/- for the financial year 1998-99 which was lying with the Corporation. By a letter dated 25-5-99, the respondent No. 4 requested the respondent No. 2 for adjusting the

previous security money of Rs. 4, 370/- against the current year of 1999-2000. Respondents Nos. 1 and 2, considering all the aspects of the matter, exercised its discretion lawfully and revoked the order of cancellation of the lease. The respondent No. 4 in his affidavit, did not dispute about the agreement dated 12-4-99, entered into with one Jagat Saikia for management/running of the fishery-in-question; but stated that the said agreement was made on wrong advice and on coming to realise the same, the respondent cancelled the said agreement vide the deed of dissolution dated 18-6-99.

The Corporation though did not submit any affidavit, contested the case through its standing counsel and placed the entire records pertaining to settlement of the fishery-in-question. According to the Corporation, there was no infirmity in the order of settlement requiring interference from this Court in a proceeding under Article 226 of the Constitution of India.

3. Mr. S.N. Bhuyan, learned senior counsel, appearing on behalf of the petitioner, assailed the impugned orders/communications allowing the respondent No. 4 to manage the fishery, i.e., Charan Meen Mahal, on numerous grounds. Firstly, the learned senior counsel submitted that respondent No. 4 was only a name lender with whom the settlement was made. The learned counsel for the petitioner referred to the agreement dated 12-4-99 which was mentioned earlier and submitted that the conduct of the respondent No. 4 in introducing others in the management and running of the fishery-in-question by itself disentitled the respondent No. 4 to operate the fishery. However, Mr. K.N. Choudhury, learned senior counsel appearing on behalf of respondent No. 4, stoutly opposed Mr. Bhuyan, the learned senior counsel appearing on behalf of the petitioner, and submitted that the alleged deed of agreement (partnership) was executed due to some mistaken view which was later on amended by cancelling the aforesaid deed.

Whether the aforesaid conduct of the respondent No. 4 by itself would disentitle him from operating the fishery, is an issue which requires to be gone into on evaluation of numerous factors like examination of the lease agreement with the Corporation, interpretation of the partnership deed, the facts and circumstances leading to the withdrawal of the partnership deed apart from the bona fide of the transaction. The materials those are made available before this Court are not adequate enough for adjudication of the issue in this forum and, therefore, I refrain from going into this issue any further, leaving it open for adjudication in the appropriate forum on appropriate occasion.

4. Mr. Bhuyan, the learned senior counsel for the petitioner, questioned the procedures adopted by the respondents/authorities in settling the fishery-in-question on entertaining application directly without resorting to the tender system. The learned senior counsel submitted that in the matter of distribution of State largesse, the authorities must maintain transparency and adhere to the policy of inviting tenders in the matter of settlement wherein all the interested parties can participate and submit their respective bids to augment the revenue.

Mr. K.N. Choudhury, the learned senior counsel for the respondent No. 4, on the other hand, pointed to the conduct of the petitioner who himself sought settlement in its favour and made an attempt to get similar benefits by making an application before the Minister of Fisheries. Mr. Choudhury, the learned senior counsel for the respondent No. 4, submitted that the conduct of the petitioner disentitles him to raise the issue of settlement of the fishery-in-question by tender system.

Disposal/distribution of State largesse by inviting open tenders, is a mark of maturity and good administration. When tenders are invited by giving wide publicity, all the eligible persons can offer their bids which enables/will enable the authorities to ascertain the real worth of the State largesse. When the matter pertains to fishery, the authority can limit the competition amongst the actual fishermen belonging to the listed classes to avoid the speculative bids keeping in mind the economic and financial status of the bidders. However, it is a mailer relating to the discretionary area of the administration. The action of the respondent/authorities in the present case under the said circumstances, cannot be invalidated on this ground alone.

5. Mr. Bhuyan, the learned senior counsel appearing on behalf of the petitioner, further, attacked the order of settlement of the Charan Meen Mahal in favour of the respondent No. 4 as being arbitrary and discriminatory. The learned senior counsel submitted that the petitioner also made applications for settlement of the fishery in its favour. The application in fact was endorsed to the respondent/ Corporation by the Minister; but the said application was not considered by the respondents/authorities. Mr. Bhuyan further submitted that in the instant case, the respondents/authorities instead of taking any independent decision of its own, surrendered its discretion to the fiat of the Minister concerned and settled the fishery with the respondent No. 4. Mr. K. N. Choudhuiy, the learned counsel appearing on behalf of the respondent No. 4, however submitted that the petitioner also submitted application before the Minister for settlement and, therefore, the action of the respondent No. 2, Managing Director of the Corporation, cannot be faulted on that ground. Mr. Choudhury, the learned counsel, submitted that the Minister forwarded the application of the petitioner as well as that of the respondent No. 4 for consideration. The respondents Nos. 1 and 2, however, considered the case of the respondent No. 4 and settled the fishery-in-question with him and, therefore, the same cannot be said to be discriminatory and/or arbitrary.

6. Mrs. A Hazarika, the learned standing counsel appearing on behalf of the Corporation, submitted that the application of the respondent No. 4 for settlement of the fishery-in-question with him was considered and the authority thereafter took its own decision and passed the order of settlement. Mrs. Hazarkia, the learned counsel for the Corporation, submitted that the respondent No. 4 initially failed to take necessary steps/actions by paying the entire dues to the Corporation as per the order of settlement dated 17-4-99. The respondent

No. 4 sought for time and the Corporation initially turned down its plea and cancelled the settlement vide its order dated 20-5-99. Subsequently, considering all the aspects of the matter, the respondent/authority thought it fit to withdraw its earlier order of cancellation. Mrs. A. Hazarika, the learned counsel for the Corporation, submitted that the Corporation was within its jurisdiction to revoke its earlier order of cancellation of the settlement order on consideration of all the relevant aspects of the matter. That the respondent No. 4 duly discharged its obligation as a lessee during the short stint of lease for three months; the respondent No. 4 took some time to make arrangement of the finance, and keeping in mind the status and economic condition of the party, the respondents/ authorities thought it fit to withdraw its order of cancellation of the lease. The learned counsel for the Corporation submitted that in the matter of settlement, the Corporation is sole authority so far as the fisheries under its control and management are concerned. That the Minister of the Department who is supposed to conversant with the interests/conditions/status of the fishermen community, was within his right to forward the applications with his own comments. The Corporation considered the application of the respondent No. 4 along with the note of the Minister and exercised its discretion/jurisdiction and settled the fishery-in-question in favour of the respondent No. 4. Mrs. Hazarika, the learned counsel for the Corporation, submitted that at all the relevant time, the Corporation exercised its own independent discretion. That the Corporation was within its right to take note of the respective views of the parties including the view of the Minister without abandoning its independent discretion, Mr. K. N. Choudhuiy, the learned senior counsel appearing on behalf of the respondent No. 4, also sailed in the same direction with Mrs. A. Hazarika, the learned counsel for the Corporation, on this count.

Mr. Bhuyan, the learned senior counsel appearing on behalf of the petitioner, on the other hand, submitted that the Corporation is an independent body and is not a subordinate authority under the State Government. In the instant case, the Corporation since acted as per dictation of the Minister, the said order suffers from the vice of non-application of mind.

7. In the case in hand, the records disclose that an application dated 21-2-99, was addressed to the Hon''ble Minister of Fisheries, Assam by the respondent No. 4 for extension of the settlement of the lease in respect of the fishery-in-question from 1-4-99 to 31-3-99 (sic) (should have been 31-3-2004). In the said application, the respondent No.4 narrated as to how the successfully operated the fishery during the last three months. The respondent also stated that despite the loss that he incurred in operating the fishery, he assiduously complied with the terms of the settlement and timely made payment of the revenue dues. The said application was received in the office of the Minister of Fisheries on 5-8-99 (sic) (perhaps should have been 5-3-99), which was docketed as Dy. No. 12/99 dated 5-8-99 (sic). The Minister seemingly accepted the assertions of the respondent No. 4 and made the following endorsement to the Deputy Secretary, FISH:

"PI. take urgent necessary steps for giving extension of lease term of the Fishery as applied for.

Sd/-Illegible 5-3-99 Minister Fisheries Assam, Dispur, Guwahati-6."

The Deputy Secretary in turn addressed a letter to the Managing Director of the Corporation vide No. FISH.46/99/12 dated 5-3-99 enclosing the application dated 21-2-99 of the respondent No. 4 in original along with the enclosures as received from the respondent No. 4, the sitting lessee of the fishery-in-question, and conveyed about the direction, requesting the Managing Director of the Corporation to take necessary action for extending the lease period of the fishery-in-question to the said person. The matter was received by the Corporation and the General Manager in his note indicated that subject to payment of revenue, appropriate action may be taken as per Government direction and that there was no decision of the Board of Directors for extension of the term of the lease of the fishery-in-question. He also suggested about reasonable enhancement of the rate of revenue. The Managing Director in his turn, endorsed the same to the Chairman and the Chairman by his note dated 9-4-99, ordered to settle the fishery as per the proposal on 10% enhancement of the revenue over the previous rate. The Chairman further directed that the settlement was to be made after clearance of the outstanding dues.

From the facts narrated above, it thus appears that the authority took the decision solely on the direction of the Minister concerned. As mentioned earlier, the Minister immediately on receipt of the application of the respondent No. 4, ordered the authorities to take urgent, necessary steps for giving extension of the term of the lease of the fishery-in-question without even verification of the facts Indicated in the application. The order of the Chairman and the subsequent order of settlement, made it clear that the said respondent No. 4 on the date of the decision/settlement, did not clear its outstanding dues. From the order of settlement dated 17-4-99, it appears that there was an outstanding due of Rs. 150/- of the previous year. The respondent No. 4 could not act within the period mentioned/stipulated and consequently, the order of settlement was withdrawn vide order dated 20-5-99.

The petitioner''s application was also forwarded by the Minister for consideration on 21-5-99. From the records, it appears that on 24-5-99, the respondent No. 4 made an application before the Managing Director of the Corporation informing him that he was going to deposit 15% of the Kist money of the annual revenue after cancellation and requested the Managing Director to allow him to enter into agreement. The said communication was forwarded by the Minister, Fisheries, Assam to the Managing Director with the following endorsement :

"Pl. allow to deposit kist money and make arrangement for Agreement."

By another application dated 25-5-99, the respondent No. 4 requested the Managing Director of the Corporation to adjust the previous security money for the Charan Meen Mahal amounting to Rs. 4,370/- which was lying with the

Corporation. The said application of the petitioner dated 21-5-99 with the endorsement of the Minister to take necessary action on the application, also reached the Managing Director.

In the note dated 29-5-99, the officer Indicated about the absence of positive direction from the Government whereas there was clear cut instruction from the Government for settling the Fishery in the case of Tiken Das. It was further noted that the Hon''ble Minister only endorsed for necessary action. The Managing Director in turn endorsed the file to the General Manager with the note "please discuss". In the meantime, the aforesaid development took place. This time also the matter was finally put up before the Managing Director indicating about the direction of the Minister. The Managing Director endorsed and approved the note and accordingly, the cancellation order of settlement was withdrawn.

From the above conspectus it thus turn up that the Corporation instead of action on its own, knuckled under the direction of the Minister and abdicated its own authority. Mrs. Hazarika, the learned counsel for the Corporation was right when she argued that in the decision making process, it was always open to the Corporation to lend its ear to the views expressed by the Government as well as by the Minister. But there is distinct dissimilarity between "not shutting its ears" and acting mechanically at the direction of another thereby allowing that body to exercise the discretion. In such case, the authority docs not apply its mind and act as per its own judgment but abdicates its discretion to an unanimous agency to decide and consequently, the decision is ultra vires and void. In the case in hand, the Corporation was acting under the directions from the Minister whereas the decision making power relating to the management as well as the disposition of the Corporation property was vested on the Corporation. The Government as well as the Minister did not possess the power in the matter of dispensation of the Corporation property as was done in the case. This is a clear cut instance of unlawful decision as well as of usurpation of power which affected the decision making process of the Corporation. Citing the decisions in Lavender and Sons Ltd. v. Minister of Housing and Local Government reported in (1970) 1 WLR 1231 and Simms Motor Units Ltd. v. Minister of Labour, reported in (1946) 2 All ER 201, as also R. v. Home Secretary ex p. Walsh, reported in (1991) The Times 18 Dec., Sir William Wade and Christopher Forsyth in their treatise "Administrative Law" (7th Edn. Pp. 358-359) and adverted in this regard in the following passage :

"Ministers and their departments have several times fallen foul of the same rule, no. doubt equally to their surprise. The Minister of Housing and Local Government made it a rule to refuse planning permission for gravel-working on top-class agricultural land whenever the application was opposed by the Minister of Agriculture. The Court held that this was to put the decisive power into the hands of the wrong minister and that a decision so taken must be quashed. Similarly the Court invalidated a reinstatement order made under wartime labour regulations by a national service office, who was empowered to direct reinstatement of workers dismissed for misconduct. For the office was acting under directions from the minister, whereas he was a statutory authority in his own right and should have exercised his personal discretion. The minister''s directions were merely that there should be reinstatement wherever the appeal board was unanimous. But in fact that minister had no power to lay down any such rule, however, reasonable. A decision of the Home Secretary that a prisoner should serve a term of at least 20 years was quashed because he acted as a rubber stamp on the advice of the Judge or of the parole board without making his own decision. ....."

8. From the facts as discussed above, it thus appears that the order of settlement was made at the instance of the Minister and the cancellation order of settlement of the fishery-in-question, had also to be withdrawn at the interference of the Minister.

The Corporation is an Independent body having its own Corporate existence. A decision of the Corporation is to be made in conformity with the Corporate norms keeping in mind the Corporate democracy. The order of settlement of the fishery-in-question vide communication dated 17-4-1999 issued by the Managing Director of the Corporation is, therefore, vitiated by non application dated 1-6-1999 issued by the Managing Director. Accordingly , the impugned communications/orders settling/withdrawing order of cancellation of settlement dated 17-4-1999 and t-6-1999, respectively, are set aside. The writ petition is allowed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

