

(2014) 02 GAU CK 0072
In the Gauhati High Court
Case No : W.P. (C) No. 977/2014

Mayong Hit Sadhani Fishery Samabai Samity Ltd. APPELLANT
Vs
The State of Assam and Haria Dablong Meen Samabai Samity RESPONDENT
Ltd.

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2014 Guw 65 : (2014) 2 GLT 172

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A. Sharma, Advocate for the Appellant; N. Upadhyay, Learned State Counsel and Mr. M. Bhuyan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Biplab Kumar Sharma, J.—Heard Mr. A. Sarma, learned counsel for the petitioner and Mr. N. Upadhyay, learned State Counsel. I have also heard Mr. M. Bhuyan, learned counsel representing the respondent No. 4.

2. The challenge in the writ petition is the Annexure-V order dated 18.02.2014 passed by the Government of Assam in the Fishery Department under the signature of the Secretary. By the said order, the Fishery, namely, No. 21 Nekara Nekeri Fishery of Morigaon district has been settled with the respondent No. 4 at its bid value of Rs. 6,55,000/- as against the petitioner's bid value of Rs. 8,81,000/-. According to the petitioner, the impugned order is bad in law inasmuch as the settlement has been made ignoring all other parameters and yardsticks including the bid value and considering the irrelevant only ground of the respondent No. 4's society being at a distance of 2.5 KM from the fishery as against the petitioner's society being at a distance of 5.9 KM. The petitioner has also challenged the findings recorded in the impugned order that it is at a distance of 5.9 KM from the fishery.

3. As per the requirement of the Fishery Rules holding the field, the societies are required to be within the neighbourhood of the fishery. As has been held by the Division Bench of this Court in *Brahmaputra Par II Mach Mahal Samabai Samity Ltd. Vs. State of Assam and Others*, , that no mathematical formula has been devised to define and measure neighbourhood. In paragraphs 15 and 16 of the judgment it has been held thus:-

15. Thus, no mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word as above, there is evidently an element of flexibility and, therefore, while dealing with the proviso to Rule 12 as above, it would, in our opinion, neither be permissible nor desirable to ascertain the neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery co-operative society is in the vicinity and proximity of the fishery as is understood in common parlance, they are deemed to be in the neighbourhood thereof. Any attempt to measure the neighbourhood in terms of inches, feet, yards or centimeters and meters, would render the proviso otiose in a given fact situation.

16. It would be appropriate at this stage to extract the observations of this Court on the aspect of neighbourhood as contained in its decision in *Majorati Min Samabai Samity Ltd.* (supra) wherein, this Court observed as follows:

The question of neighbourhood and area of operation has been the subject matter of debate and discussions in several judgments and even the learned Single Judge has also made a reference to it, towards end of the judgment indicating as to what is meant by neighbourhood in the context of Rule 12. Without disputing the proposition, here again, the question that falls for consideration in case of the extent and scope of judicial review whether this Court in exercise of its power under Article 226 examine the question of neighbourhood with such minutest factual details as to measure every inch of the distance at which a Society is situated.

It is not something to the measured in foot and inches, all that this Court extending the writ jurisdiction such an extent would be nothing sort being violent to the Article 226 of the Constitution, all the Court can examine as to whether the condition and requirements of neighbourhood, as prescribed under the rules, it was present to the mind of the settling authority. It is not expected that the Writ Court would be the Surveyor and measure the distance in meter and centimeter. If the Settling Authority is alive to the requirements of the rules and the same is reflected in the order of settlement of a fishery, the writ Court will not be justified an undertaking and exercise of measuring the distance between two competent claimants. After all "neighbourhood" is a relative term which is to be taken into account along with other conditions. It is not the intend of rules to treat neighbourhood with geometrical altitude and procedure.

4. Mr. Sarma, learned counsel for the petitioner submits that the impugned order having been passed only with the determination of the distance of the co-

operative society from the fishery towards analysing the term "neighbourhood" coupled with the fact that the distance indicated in respect of the petitioner's society is also not correct, the impugned order is not sustainable in law.

5. On the other hand, Mr. M. Bhuyan, learned counsel representing the respondent No. 4 referring to the decision of this Court dated 09.09.2013, passed in WP(C) No. 986/2013 (M/s. Khoraghat Gulihara Fishery Co-Operative Society Ltd. And Another vs. The State of Assam and Ors.) submits that the distance between the society and the fishery has a relevance in making the settlement of fishery and that this Court will be reluctant to interfere with the impugned order as the same has been issued exercising the power reasonably and not arbitrarily.

6. Mr. Bhuyan, learned counsel representing the respondent No. 4 has particularly referred to paragraphs 15 and 21 of the said judgment, which are quoted below:-

15. As per the Fishery Rules, for the purpose of settlement of 60% Government running fishery by tender system, one of the main requirements and criteria is that the settlement is to be made to the society comprising of 100% actual fishermen of SC Community engaged in fishing only and residing in the neighbourhood of the fishery. For effective implementation of the said condition, one of the conditions specified in the NIT is that the tenderer society must be from the same district from which tender is floated. As stated in the counter affidavit filed by the respondent No. 5, the Government of Assam in the Fishery Department vide circulars dated 19.08.2008 and 29.11.2010 requested the authority to enquire the distance of the tenderer society from the fishery. In the instant case, after opening of the tenders, the authority made the enquiry as to the neighbourhood issue on the basis of the certificates submitted by the tenderers. If upon making the said enquiry, it was reported that the petitioner society was not within the neighbourhood of the fishery compared to other tenderers, no fault can be attributed in passing the impugned order. If the concept relating to neighbourhood for the purpose of settlement of a fishery is not adhered to, the particular prescription of the Rule and its object would get frustrated. In the report of the Deputy Commissioner dated 25. 01.2013, it has been stated thus:

M/s. Khoraghat Gulihara Fishery Co-Operative Society Ltd., Khoraghat offered the 3rd highest rate of Rs. 76,65,000.00 for 7 years. It is seen from the enquiry report submitted by Circle officer, Bogribari Revenue Circle vide letter No. BBC.11/99/450 dated 10.12.2012 that members of the Society are not reside in the neighbourhood of the fishery as because the distance of the area of operation village Khoraghat and Gulihara is about 10 KM to 12 KM away from the fishery and it is also reported that the said village wherefrom the distance was defined are falls under BTAD in Kokrajhar District. Hence, the Society does not fulfil the criteria of Rule-12 of Assam Fishery Rule, 2005 (as amended) as we as the tender condition of the NIT and moreover the Society do not belong to the

Tender Invited District (i.e. Dhubri Dist.) as stipulates in terms of clause II of the NIT.

21. On perusal of the entire materials on record and upon hearing the learned counsels for the parties, it cannot be said to be a case of exercising the particular power in making impugned settlement of the fishery with the respondent No. 5 arbitrarily, irrationally and/or the decision is founded on mala fide exercise of power and/or misuse of any statutory power. The bid amount cannot be sole criterion for settlement of a Fishery. Various other factors are to be considered in reference to the Rules.

7. I have considered the submissions made by the learned counsel for the parties and have also perused the entire materials on record.

8. As noted above, the only ground on which the settlement has been made is that the respondent No. 4's society is located at a distance of 2.4 KM and that of the petitioner's society at a distance of 5.9 KM. No other ground has been assigned towards non acceptance of the tender of the petitioner.

9. As noted above, the Division Bench of this Court has held the term "neighbourhood" cannot be interpreted with any measuring rod. Once it is held that the societies responding to the NIT are within the neighbourhood of the fishery, they will be entitled to get consideration applying the yardsticks and parameters laid down in the terms and conditions of the NIT. A similar question arose in WP(C) No. 908/2014 decided on 19.02.2014, in which it has been held that the neighbourhood cannot be decided with any scientific precision applying any measuring rod and that once the societies are found to be in the neighbourhood of the fishery, their bids will have to be considered as per the tender conditions. The decision on which Mr. Bhuyan, learned counsel for the respondent No. 4 has placed reliance is in respect of settlement of a fishery that was made in favour of respondent No. 5 involved in the writ petition. In the writ petition, the challenge in respect of the settlement made in favour of the respondent No. 5 was on the following grounds:-

1. Not being in the neighbourhood,
2. Society not belonging to the district in question i.e. Dhubri and
3. Violation of Clause- 2 of the NIT.

10. It was the case of the petitioner that it was in the neighbourhood of the fishery and that the term "neighbourhood" is not required to be measured with mathematical precision and needs to be interpreted so as to advance the object and purpose of the relevant Rules i.e. the Assam Fishery Rules, 1953.

11. It was taking note of the aforesaid grounds the judgment was delivered with the observations made in Paragraphs 15 and 21 of the judgment quoted above.

12. In the instant case, the term "neighbourhood" having been interpreted by a measuring rod irrespective of the fact that both the societies are in the

neighbourhood of the society and without referring to any other yardsticks and parameter, I am of the considered opinion that the order impugned in this writ petition is not sustainable in law.

13. Accordingly, the writ petition is allowed by setting aside and quashing the said order dated 18.02.2014. The matter shall now go back to the settling authority for a re-assessment, taking note of all the attending facts and circumstances and in accordance with law and also interpreting the term "neighbourhood" as per the aforesaid Division Bench's Judgment.

14. The settling authority shall now pass fresh order in terms of this order as expeditiously as possible, preferably within 15.03.2014.