(2001) 04 GAU CK 0027

In the Gauhati High Court

Case No : W.A. No. 260 of 1999

M/s 129 Haria Dablong Min Mahal Samabat Samity Ltd. APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. and Others RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12, 8
Assam Land and Revenue Regulation, 1886 — Regulation 155, 16, 155, 156, 16
Constitution of India, 1950 — Article 12

Citation : AIR 2001 Guw 139

Hon'ble Judges : N.C. Jain, C.J;P.G. Agarwal, J;A.H. Saikia, J

Bench : Full Bench

Advocate : Mr. S.N. Bhuyan and Mr. U. Bhuyan, for the Appellant; Mr. A. Hazarika, Mr. A.K. Goswami and Mr. D. Goswami, for the Respondent

Judgement

P.G. Agarwal, J.—The matter has been placed before the Full Bench pursuant to the order of Reference dated 9.8.1"999 passed by a Division Bench of this Court in Writ Appeal No. 260/99.

2. We have heard Mr. N.M. Lahiri, Mr. S.N Bhuyan, Mr. A.K. Phukan, Mr. K.N. Choudhury, learned Senior Advocates, Mr. B.C. Das,.Govt. Advocate, Mr. M.A. Sheikh and Mr. K. Agarwal learned counsel for the parties.

3. The matter in hand relates to settlement of fisheries by the Assam Fisheries Development Corporation, for short ''AFDC''. Regulation 16 of the Assam Land & Revenue Regulation, 1886, for short ''the Regulation'' reads as follows:

"Right in fishery''. The Deputy Commissioner, with the previous sanction of the State Government, may, by proclamation published in the prescribed manner, declare any collection of water, running or still to be a fishery; and no right in any fishery so declared shall be deemed to have been acquired by the public or any person, either before or after the commencement of this Regulation, except as provided in the rules made under S. 155 :

Provided that nothing in this section shall affect any express grant of a right to fish made by or on behalf of the Government or on any fishery rights acquired by a proprietor before the commencement of this Regulation, or the acquisition by a proprietor of such rights in any fishery forming after the commencement of this Regulation in his estate."

Regulation 155(f) reads as follows :

"(1) the granting of licenses, or the forming of the right, to work mines, stones, and lime quarries, salt-wells and oil-wells, to fish in fisheries proclaimed under S.16, and to carry on gold washing operations".

In exercise of the powers u/s 155 and 156 of the Regulation the Fishery Rules were made. Rule 8 of the Fishery Rule, for short ''the Rule'', provides for settlement of fisheries. In this reference we are concerned particularly with Rule 8(c)(ii), which reads as follows:

"(ii) The State Government may, at any time after constitution of the Assam Fisheries Development Corporation by notification in the Official Gazette, vest management of any registered fishery with the Assam Fisheries development Corporation as considered necessary for the purpose of its development and management. On publication of such notification, the Deputy Commissioner, Sub-Divisional Officers and the Director of Fisheries, Assam, as the case may be, shall hand over such fisheries to the Corporation."

Clause (c)(ii) of Rule 8 was inserted vide notification dated 5.6.1976.

4. The AFDC was incorporated as the Govt. Corporation and the Govt. of Assam has 100% share in the Corporation and the aims and objectives are detailed in the Memorandum of Association of the Corporation. After the AFDC came into existence and in view of the provisions contained in Rule 8(c)(ii), as quoted above, the State Govt. vide the notification issued from time to time, transfer certain fisheries to AFDC, for their development and management. The AFDC thereafter started setting these fisheries in favour of private individual or the co-operative societies.

5. In the case of M/s Agragati Matsyajibi Samabai Samity Ltd. v. State of Assam & Ors., Civil Rule No.5408/96, Hon''ble Chief Justice V.K. Khanna, Hon''ble Mr. Justice A.K. Patnaik held as follows:

"If that be so, we are of the opinion that it is the AFDC Ltd. which has to exercise the power of settling the Fishery in accordance with the guidelines which may be laid down by the Board of Directors of the aforesaid Corporation and in accordance with the objects of the aforesaid Corporation as laid down in the memorandum of association of that Corporation."

6. In Writ Appeal No. 161/95, 248/95, 171/95 decided on 26.11.1996 a Division Bench of this Court comprising Hon''ble the Chief Justice Mr. V.K. Khanna and Hon''ble Mr. Justice A.K. Patnaik held that the AFDC has the power to make

settlement in respect of the fisheries transferred to them and the Board of Directors of AFDC has the necessary power and jurisdiction to make such settlement and lay down the policy decision for making such settlement. However, in Review Petition No. 30/97 arising out of Writ Appeal No. 373/96 another Division Bench of this Court comprising Justice Smt. M. Sharma and Justice Patnaik held that the AFDC cannot settle the fishery and the power to settle the fishery lies with the Govt. who is the final authority under the Rules. In view of the conflicting opinions of the difference Division Bench of this Court the mater was referred to a Full Bench with the following observations:

"In our view, the matter requires further consideration more particularly in view of the decisions of the Division Bench taking contrary view. A clear decision on the point may be necessary as to whether after transfer of the management of the fisheries to the Corporation the statutory Rules namely the fishery Rules will continue to be applicable even in the settlement made by the Corporation or not.

Let the papers be laid down be-fore the Chief Justice for constituting a Full Bench to decide the question arising out of two conflicting decision of the Division Benches."

7. Before proceeding further we may at this stage refer to the various submissions made by the learned counsel for the parties.

8. Shri K.N. Choudhury, learned Senior Advocate for the appellant has supported the decision of this Court rendered in the Review Petition No.30/97 arising out of Writ Appeal No. 373/96. According to the learned counsel the AFDEC have not been conferred with any power of settlement under rule 8(c)(ii) of the Rules. It is also stated that the Memorandum of Association of the AFDC is silent in the matter.

9. Shri N.M. Lahiri, learned Senior Advocate, on the other hand, submits that in view of the transfer of the fisheries to AFDC, the later has also power to make settlement but in view of the Fishery Rules, as they stand, the State Govt. has got power to settle directly or to extend and in proper cases to cancel the settlement made by it or by AFDC. It is also stated that the Govt. is not divested of its power merely due to vesting of these fisheries with AFDC under Rule 8(c)(ii).

10. Shri S.N. Bhuyan, learned Senior Advocate, on the other hand, submits that after vesting, the AFDEC can exercise powers for settlement of these fisheries. Although the State remains the owner but the responsibility is of the AFDC to settle and manage these fisheries till they are taken back or they are withdrawn by the Govt. It is also suggested that the AFDC should settle the fisheries by way of tenders only and that too to the highest bidder.

11. Shri M.A. Sheikh, learned counsel adopts the submission of Shri Bhuyan and submits that the ''Management'' includes leasing out by AFDC. Shri A.K. Phookan, learned counsel for the Corporation has referred to the original

notification issued by the Govt. vesting these fisheries to the AFDC and submits that the Management of fisheries includes the power to lease out.

12. Shri K. Agarwal learned counsel supports the contention raised by Shri A.K Phookan and submits that once the fisheries are vested with the AFDC there is no power with the State Govt. to make any direct settlement in- respect of the above fisheries. It is also submitted that when the AFDC has got the power to settle its fishery, the AFDC has also power to grant extension.

13. There is no dispute at the bar that after the incorporation of the AFDC the State Govt. has transferred number of fisheries to AFDC. The question that arises for determination is as to what are the powers of the Corporation in respect of these fisheries. Shri K.N. Choudhury, learned Senior Advocate submitted that these fisheries were vested with the AFDC for the purpose of development only and as such the Corporation has no power to make any settlement in favour of a third party as AFDC is a delegate, it can not further delegate its power to a third party, i.e. the lessee. Referring to the rule 8(c)(ii) it is contended that no power to make settlement has been conferred on the AFDC and when the Rule are silent or there is no explicit provisions, the AFDC has not derived any power to make settlement. In the case of The State of Assam Vs. Keeshab Prasad Singh and Another, the Apex Court held that in view of the provisions contained in Section 16 of the Regulation, the sales have to be made in accordance with the Rules framed u/s 155 of the Regulation. The Apex Court further observed that the Rule making authority can not override the statute and as such the law requires the sale to be in accordance with the Rules. The decision in Keshab Das Singh (Supra) was considered by the Apex Court in Ganga Ram Das Vs. Tezpur Kaibarta Co-operative Fishery Society Ltd., and the ratio laid down was that the power to settle the fisheries must arise from the Rules framed under Regulation 155 of the Land & Revenue Regulation. Fishery Rules were framed under the above pro visions of law. It may however be mentioned her that the provisions of Rule 8(c)(i) and (ii) were not the subject matter for consideration in the above cases, as a matter of fact Rule 8(c}(ii) was brought on statute much afterwards. The question that needs for determination is whether by virtue of Rule 8(c)(ii} whether any powers have been conferred on the AFDC to settle the fisheries which were transferred to it. Referring to Rule 8(c)(ii) it is submitted that the Director of Fisheries have been merely empowered to call tenders and submit their recommendations to the Govt. for approval; Admittedly under the above Rule no power has been vested with the Director of Fisheries to make any settlement. He has been given the power to invite tenders and submit his recommendation only. Rule 8(c)(i) reads as follows:

"(c)(i) Development of Fisheries and their consequential - settlement. The State Government on expiry of the terms of settlement, may at any time, by a notification in the official Gazette, stop any fishery from further settlement under tender system and vest management of such a fishery with the Director of Fisheries for development. On publication of such notification, the Deputy

Commissioner or Sub-Divisional Officer, as the case may be, shall hand over the fishery to the Director of Fisheries :

Provided that the Director of Fisheries may call for tenders consistent with the relevant provisions of these rules for settlement of such a fishery and submits the same with his views thereon within fifteen days of date of opening the tenders to Government for approval. The decision of the State Government in this behalf shall be final :

Provided further that such settlement shall not interfere on conflict with the work of development of such a fishery and that the provisions of R.50 of the Fishery Rules will not apply in case of such settlement."

14. Admittedly no such power has been given to AFDC for calling of tenders or for making any settlement in respect of the fisheries. Relying on Ganga Ram Das (Supra) it is therefore submitted that when the Rules are silent it is to be held that no such power was given. The Court need not consider the intention as because the delegation of power must be specific. The heading of Rule (c) as quoted above, shows development of fisheries and their consequence settlement and in sub-clause (c)(i) the Management of such fisheries is vested with the Director of Fisheries for development (only), whereas under sub-clause (c)(ii) the registered fisheries are vested with the Corporation for the purpose of its development and management. Thus there is clear-cut distinction between the vesting with the Director of Fisheries and the vesting with the Corporation. If the Rules were intended to convey same meaning, there was no need to use different words or language. At this stage we may refer to the aims and objectives of the AFDC. Clause 5 of the Memorandum of Association of the AFDC Ltd. Reads as follows:

To erect Cold Storage, Ice factories, processing plants in suitable places in the State for preservation and processing of fish and to undertake sale within and outside the State."

15. Clause A provides for the object and ancillary for the attainment of main object. Clauses (1), (2), (3), (4), (5), (9), (11), (26), (27), (28), (29) and (32) reads as follows:

"A MAIN OBJECTS:

1. To undertake development of Fisheries in the State and ensure increased production offish.

2. To improve the socio-economic condition of actual Fishermen of Scheduled Castes of the State and Maimal Community of Cachar District, dependent on fishing and fish trade.

3. To support by financial grants, loans, purchase of equipments and vehicles and by training programmes, consulting services and other means, the development and operation of State and Central agencies for promotion of increased fish

production and fish marketing.

4. To introduce fish breeding, fish culture, boat and net making and other sources of income among the actual fishermen of Scheduled Casts of Assam and Maimal community of Cachar District to ensure whole-time employment for them.

5. To undertake procurement of fish and other products from the fisheries under its control and from other sources within and outside the State and make arrangement for their transport, storage, preservation, processing and carrying on marketing of such products either directly or through agencies with a view to ensure fair price to the producers.

11. To enter into agreement with the Govt. of India or any local or State Govt./ Govts. In India or within any authorities local or otherwise or other firms or persons that may seem conducive to the Corporation''s objects or any of them and to obtain from them any rights, and privileges, licensee, grants and concessions which the Company may think it desirable to obtain or to carry out, exercise and comply with any such arrangements, rights, privileges and concession.

26. To undertake, assist and/or collaborate with suitable parties in or outside India in the procurement/manufacture of equipments for desilting, deweeding, fishing and any other ancillary equipments for the purpose of fishing operation and development of fisheries.

27. To carry on all or any of the business usually carried only fish tenders in all their several branches and take steps for promotion of fish marketing activities in general and provision of incentives for increased production and supply -of fish to principal fish consuming centres in the State.

28. To undertake formulation of plans in consultation with State/ Central Govt. for the development of fisheries, growth of industries and marketing of fish for internal consumption or export outside the State and for this purpose to undertake and implement any scheme or collaborate with suitable parties in or outside India.

29. To carry on the business of consulting and management services for individual Co-operative Societies, Companies, Corporation, Govt. agencies or others who are engaged in any phase of fishery activities.

32. To arrange and extend facilities to the people of the State to undertake fish farming, fish breeding and fish trade for their employment."

16. From the above it is seen that the AFDC was formed with the avowed object of doing away with the middle men in fishery/fishing trade and to provide stimulus in fish production, development and sale.

17. Govt. notification No. VFF 48/79/32 dated 24th March, 1979 also reflects the Govt.''s intention/resolve in the matter. It provides that:

"In supersession of this Deptt''s notification No. VFF. 48/79/6 dtd. 1.3.1979 the Governor of Assam is pleased to include the following 6(six) Fisheries settled by the Deputy Commissioners and Sub-Divisional Officers and 15(fifteen) Fisheries managed by the Director of Fisheries, Assam from further settlement under tender system and from management by the Director of Fisheries Assam after expiry of the present term of settlement and vest their management with the Assam Fisheries Development Corporation Ltd. For development and consequent settlement under Rule 8(c} of the Fishery Rules with effect from 1st April, 1979."

[n the Memorandum to the Deputy Commissioner or S.D.O., it is further provided:

"3. The Deputy Commissioner ..../the Sub-Divisional Officer.............. He is requested not to settle those fisheries and to cancel the sale notice if already issued. The Fisheries which are not transferred to Assam Fisheries Development Corporation Ltd. may be settled by him accordingly to the normal procedure."

18. Thus, we find that at the time of transfer of some of the fisheries to the AFDC the Govt. has made it very clear that the State has ceased to exercise any power of settlement of these fisheries and it will be the AFDC who shall manage the same. An arguments has been raised stating that under Rule (c)(ii) The fisheries were given for the purpose of development and management for the limited purpose of development only and the State continue to have the ownership and the power to make settlement of these fisheries. There is no dispute at the Bar that the State continues to be the owner of these fisheries which are transferred to AFDC and they also have the power to recall or withdraw these fisheries from AFDC. We are however unable to accept the submission that the AFDC did not acquire any power or jurisdiction under Rule 8(c)(ii) to let out or lease out the fisheries to a third party. It will be something like handing over the management of a Joint Venture Hotel to Assam Tourism Development Corporation for management, while retaining the power of letting or renting out the rooms. In other words, the Tourism Development Corporation will have the power to manage the Hotel but they will not be able to let out the rooms to the intending customers and the Sate Govt. shall have the right to choose to whom the room to be let out and at what price. Such arrangement instead of solving the problem or advancing the cause for which the Corporation is constituted will add to the chaos. As stated above, the AFDC is 100% Government Corporation and as such the State retains the control over it. The Directors are all nominated by the Govt.

19. Moreover, Article 143 of the Memorandum and Articles of Association provides the rights of the Governor to issue directives. It reads as follows:

3. Notwithstanding anything contained in any of these articles the Governor may, from time to time issue such directives or instructions as may be considered necessary in regard to the finances, conduct of business and affairs of the Company, the company shall give immediate effect to the directives or

instructions so issued."

20. Thus we find that in case of any mismanagement or any other exigency the Governor can intervene and the directives issued by him shall have to be complied with.

21. Vide Rule 8(c)(ii), the Fisheries are vested with the AFDC for the purpose of management. Hence let us examine what does this word "Management" signify. In Corpus Juris Secundum, Vol. 35, the Word has been defined:

"MANAGEMENT. A word of comprehensive meaning, usually signifying positive, rather than negative, conduct, and relating to guidance and control.

It is variously defined as administration, care, conduct, control, direction, guidance, physical or manual handling or guidance; superintendence; government; carrying on.

The term has also been defined as meaning having the general management, conduct, or direction or something; the act or art of managing; the act of managing by direction or regulation; the manner of treating, directing, carrying on, or using for a purpose; an exercise of conduct in carrying on a business; judicious use of means to accomplish ''Management'' has been held synonymous with, or equivalent to, ''control'' see IS C.J.S. p.30 note 51, ''disposal'' see 27 C.J.S. p.345 note 66, and ''regulation''."

In Words and Phrases, Permanent Edition, Vol.26 the word ''Management" generally signify positive rather than the negative conduct.

" ''Manage'' is defined by Webster to mean to conduct; to carry on: to direct the concerns of, as to manage a concern, or to manage the affairs of a family. As used in Laws Conn. 1885c. 110 84 which provides that conservators shall manage the estates of their wards, it would include the leasing of the estates. Palmer v. Cheseboro, 10 A 508, 509, 55 Conn. 114."

"Management is defined as government, control, superintendence, physical or manual handling or guidance, the act of managing by direction or regulation, or administration, as the management of a family, or of a household, or of servants, or of great enterprises or of great affairs."

22. Although the learned counsel appearing for the appellant have stated that no power is vested with the AFDC to settle their fisheries there is no submission whatsoever that in view of the provisions contained in sub-clause (c)(ii) the Corporation can not operate or manage the Fisheries transferred to it by themselves, if the AFDC can manage the fisheries by themselves they have the implied authority to manage the same through party except that they can not create a charge over it. Further we find that at I lie time of transferring these fisheries to the Corporation a clause was added to protect the interest of the existing lessees by providing that the transfer of the fisheries to AFDC will not disturb the existing lessees who shall have the liberty to operate the same as per

the existing terms and conditions.

23. Considering the aims and objectives of the Memorandum and Articles of Association of the AFDC, the order and notifications regarding the transfer/ vesting of fisheries to AFDC and the language of sub-clause (c)(ii) of Rule 8 of the Fishery Rules, we are of the considered view that the fisheries which have been transferred or vested with the AFDC shall .be managed by the AFDC and the State Govt. shall have no power or jurisdiction to interfere in the management of these fisheries till the fisheries remain with the AFDC. As quoted above, the Govt. has power to take back the fisheries from AFDC,

24. Now regarding the application of the Fishery Rules in the matter of settlement by AFDC, we hold that although AFDC is a State under Article 12 of the Constitution and it is 100% Govt. enterprises, the provisions of the Assam Fishery Rules are not applicable in the matter of settlement to be made by the AFDC. Thus the AFDC does not have the power to make any direct settlement of fisheries as the State has got in view of the proviso to Rule 12 of the Assam Fishery Rules. We are in full agreement with the following observations of a Division Bench of this Court in Writ Appeal No.161/95.

"In our considered opinion, the real power lies with the Board of Directors and it is for the Board of Directors to lay down the policy while awarding settlement. The apex Court has settled the law that as far as the Government Companies which the Assam Fisheries Development Corporation is, the same will be governed by the definition of ''State'', as defined under Article 12 of the Constitution and while awarding settlement of Fisheries it can not act arbitrarily and will have to act on definite guidelines."

25. We also hold that the decision rendered by a Division Bench of this Court in Review application No. 30/97 arising out of Writ Appeal No. 373/96 has not laid down the correct law.

26. In view of our foregoing discussion and decisions, we answer the question raised as follows:

(1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rules 8(c)(ii) if the Assam Fishery Rules.

(2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose define guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency need not be reemphasized in view of the catena of decisions of the Apex Court on the point.

(3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged

with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Maino community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.

(4) As the AFDC has been found to have powers'' to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out give relief to the lessee in proper and suitable cases.

(5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3.1.1994 were produced before us and the said resolution'' provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too the highest bidder.

27. In view of what has been stated by us as above, the AFDC is directed to lay down the guidelines and the policy decisions in the matter as early as possible preferably within a period of six months by convening a meeting of the Directors and other experts in the matter. The Reference stands disposed of as above.