

(2003) 07 GAU CK 0004
In the Gauhati High Court
Case No : Writ Petition (C) No. 1708 of 2003

Nekara Nekeri Min Samabaya Samiti Ltd. and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12
Constitution of India, 1950 — Article 226, 39
General Clauses Act, 1897 — Section 13

Citation : (2004) GLT 109 Supp

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : K.N. Choudhury, I. Choudhury and A. Baruah, for the Appellant;
Govt. Advocate, S.N. Bhuyan and A.K. Goswami, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—I have heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. I Choudhury, the learned Counsel appearing for the Petitioners and Mr. S.N. Bhuyan, learned Sr. Counsel assisted by Mr. A.K. Goswami, learned Counsel appearing for the Respondent No. 5. Also heard Ms. R. Chakraborty, learned State Counsel appearing for the State Respondents.

2. The correctness and legality of the W.T. Message dated 27/28.2.2003 (Annexure-C to the writ petition) by which the settlement of No. 29 Nekara Nekeri Fishery (for short, "the fishery") settled earlier with the Petitioners vide order dated 26.2.2003 (Annexure-"A" to the writ petition) has been cancelled, is the subject matter of challenge in the writ petition.

3. The fishery was initially settled with the Respondent No. 5 for a period of three years ending by 4.2.2003. Thereafter an application was preferred by the Petitioners jointly for direct settlement of the fishery after expiry of earlier fishery right with the Respondent No. 5. In the meantime, the Respondent No. 5 also made an application for extension of the fishery in their favour and accordingly

fishery was settled with Respondent No. 5 by way of extension for a further period of 2 years with effect from 5.2.03 to 4.2.05. Subsequently, the Govt. vide order dated 26.2.2003 cancelled the said extension granted to the Respondent No. 5 and settled the fishery in favour of the Petitioner holding that since another beel namely Dighal Narayan Beel was already settled with the Respondent No. 5 who were enjoying the fishery right therein and no other fishery was settled with the Petitioners, the fishery was settled with the Petitioners. Be it mentioned that, by the order dated 26.2.03 the Govt. settled the fishery jointly in favour of the Petitioners both being the co-operative societies and this order has not been challenged by the Respondent No. 5 before this Court. Pursuant to such joint settlement of the fishery right in favour of the Petitioners, they have deposited their security money. But to the utter surprise and dismay, the Respondent No. 3, sent the impugned W.T. Message to the Deputy Commissioner, Morigaon, the Respondent No. 4 with a direction that since the Respondent No. 5 had already deposited their dues, the earlier settlement order dated 24.2.03 made in favour of the Respondent No. 5 be treated as valid and the subsequent order of settlement dated 26.2.03 made in favour of the Petitioners be treated as cancelled. Hence this writ petition challenging the impugned W.T. Message.

4. Mr. K.N. Choudhury, learned Sr. counsel appearing on behalf of the Petitioners has strenuously argued that the impugned W.T. Message ex-facie suffers from arbitrariness and favouritism inasmuch as the impugned order does not indicate any cogent or plausible reason for cancelling the settlement order dated 26.2.03 made in favour of the Petitioners. According to him, it is bounden duty of the settling authority to not fairly and reasonably in exercising its discretionary power under Rule 12 of the Assam Fishery Rules, 1953 (for short, "the Rules"). It is contended that the fishery has been duly and legally settled with the Petitioners in terms of Rule 12 of the Rules cancelling the earlier settlement order dated 24.2.2003 passed in favour of the Respondent No. 5 by way of extension taking into consideration the factual position that since the Respondent No. 5 has already been settled with another fishery and the present Petitioners have not yet been settled with any fishery, this fishery needs to be settled with the Petitioners. But suddenly the Govt. has cancelled the same by the impugned W.T. Message without rhyme or reason and only to accommodate the Respondent No. 5 favourably.

5. Supporting the impugned order of cancellation of settlement, Mr. Bhuyan, the learned Sr. Counsel, has advanced threefold argument. Firstly, it is contended that the earlier settlement order dated 26.2.2002 has been passed without any authority of law as Rule 12 of the Rules does not permit to settle the fishery in favour of two cooperative societies jointly. In the instant case, the Govt. settled the fishery jointly in favour of the two Petitioners when both are separate and independent co-operative societies. Hammering on this point, Mr. Bhuyan, learned Sr. Counsel has referred to the provision of Rule 12 of the Rules which may be noticed as under.

12. ... Provided that the State Government may settle any registered fishery otherwise than under tender system with Fishery Co-operative Society formed with 100 percent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Castes of the State or Maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time.

6. According to him, the expression "Fishery Co-operative Society" occurred Rule 12 clearly indicates that the settlement of registered fishery may only be made with one Co-operative society. The legislature has never intended to make provision for settlement of a fishery with more than one co-operative society. The word "society" cannot be read as "societies". As such there is no scope for the Govt. to settle the fishery to the Petitioners jointly. This Court is not impressed a wee bit with such submission of the learned senior counsel. By the ordinary rule of construction, the singular in this Rule would include plural and accordingly the word "Society" in the Rule 12 has to be read to mean "societies". Since there are two Petitioners in the instant case, this Rule would be read to in-elude more than one Petitioner. Such a construction has been envisaged in the provisions of Section 13 of the General Clause Act, 1897 itself the relevant provision of which may be read as under:

13. Gender and number: In all Central Acts and Regulations, unless there is anything repugnant in the subject or context.

(1)

(2) words in the singular shall include the plural, and vice versa.

7. In his second submission, Mr. Bhuyan has submitted that if the impugned order which is on the face of it itself illegal one to settlement of the fishery with the Petitioners jointly, is now interfered with, the same would amount to validate or revive the earlier illegal order dated 26.2.2002. Accordingly, the Govt. has corrected the earlier illegal order of settlement by passing the impugned order by cancelling the fishery right of the Petitioner. Reliance has been placed by Mr. Bhuyan, learned Sr. counsel on a decision of this Court reported in 1991 (2) GLR 384 (Haren Hazarika v. State of Assam and Ors.) wherein this Court observed that in exercise of extra ordinary power under Article 226, the High Court should refuse to exercise such power and quash an order, if it had the effect of restoring an illegal order. This Court is disinclined to approve this submission also. Since settlement to "Societies" is permissible as discussed hereinabove, I do not see any illegality in the order dated 26.2.2002. Admittedly the order of settlement dated 26.2.2002 has not been impugned before any legal forum.

8. Advancing his third contention Mr. Bhuyan, learned Sr. Counsel has emphatically argued that the Petitioners obtained the interim order dated 7.3.2003 at the time of admission of this writ petition by suppressing material and relevant facts because the Petitioners have approached this Court without disclosing the material facts that prior to approaching this Court, they

approached the Board of Revenue and obtained a favourable order therein. Hence this writ petition needs be dismissed in limine on this count alone. The learned Sr. Counsel has relied on a full Bench decision of the Punjab and Haryana High Court reported in AIR 1995 PH 216 (Harbhajan Kaur v. State of Punjab and Ors.). In this cited case, the High Court held that since the Petitioner obtained favourable orders in the writ petitions by concealing the material facts and making a false representation, the conduct of the Petitioners itself prima facie amounts to gross contempt of Court. Relying on the pith and substance of the said decision, it is contended that apart from outright dismissal of this writ petition, the Petitioners herein are also liable for contempt because they have obtained the interim order by way of concealment of material facts as referred above.

9. Countering this submission of suppression of material facts, Mr. Choudhury, the learned Sr. Counsel for the Petitioner, has emphatically urged that the Petitioners have not acted in any manner in order to suppress the material facts so as to influence the Court to obtain a favourable order. In the case at hand, the Petitioners have challenged the W.T. Message dated 27/28.2.2003 by which the Petitioners' earlier settlement has been cancelled. It is submitted that they approached the Board of Revenue prior to coming to the Hon'ble High Court challenging the order dated 28.2.2003 issued by the Deputy Commissioner, Morigaon restraining the Circle Officer, Mayang Circle from handing over the possession of the fishery to the Petitioners which was only stayed by the Revenue Board on 3.2.2003 as reflected in Annexure-IH annexed by the Respondent No. 5 to their affidavit-in-opposition. Since cause of action involved before the Board of Revenue is different and independent to the present cause of action before this Court, it would be not correct to say that the writ Petitioners have obtained the interim relief from this Court by suppressing material facts. At best it maybe a case of availing two remedies before two different forums having two distinct cause of action. The Court does find enough force in this submission of the learned Counsel for the Petitioners. From the ordinary perusal of the records available, it appears that the Petitioners have not suppressed any material facts as alleged. Before the Board of Revenue, the cause of action raised appears to be quite different and independent to the present one in this writ petition though pertaining to the same fishery.

10. Refuting the argument that Rule 12 of the Rules prohibits the settlement of a fishery to more than one society canvassed on behalf of the private Respondent, Mr. Choudhury, learned Sr. counsel has emphatically urged that the joint settlement in favour of the Petitioners have been made primarily keeping in view the Constitutional mandate enshrined in Article 39(b) of the Constitution which provides that the ownership and the control of the material resources of the community are so distributed as best to subserve the common good. In a case of distribution of public largesse, it is obligatory on the part of the State to minimize the accumulation of the material resources in any individual/private entrepreneurs. According to him, the present settlement has been effected

simply following the principle of distributive justice and as such, no illegality as alleged has been committed by the authority concerned. To clinch this submission, Mr. Choudhury has relied on a decision reported in 1997 (1) GLT 276 (M/s Luhit Erasuti Mach Mahal Samabaya Samity Ltd. v. State of Assam and Ors.). In paragraph 5 of the said case this Court observed as follows:

The Preamble of the Constitution charged an obligation upon the State to secure to all its citizens social, economic and political justice and to promote amongst the citizen fraternity assuring the dignity of the individual. After assuring the fundamental rights the makers of the Constitution delineated the State policy in part IV of the Constitution. The Indian Constitution by this part charged the States with the responsibility to promote the welfare of the people by minimizing inequalities in income and to secure the distribution of material resources of the community, by allowing to operate the economic system equitably as not to result in concentration of wealth. It also obligates the State to make effective provision for securing the right to work within the economic limits. The social justice as sought to be ushered by the makers of the Constitution is to be conformity with the principle of distributive justice. Justice and fair play in the distribution of national wealth is the essence of this theory. The theory of "distributive justice" more particularly applicable in the distribution of public largesse. The proviso to Rule 12 must also conform to the policy laid down in Part IV of the Constitution. The full Bench of this Court upheld the validity of the proviso to Rule 12 of the Rules keeping in mind the constitutional provisions referred to above (Arabinda Das and etc. Vs. State of Assam and Others, This Court in Civil Rule No. 477 of 1996 - M/s Jahnobi Matchyajibi Sambai Samiti Ltd. v. State of Assam and Ors. reported in 1997 (1) GLT 124, disposed on the 21 day of August, 1996 also observed that the proviso to Rule 12 must also conform to the principle of Distributive justice.

11. Referring the Full Bench decision of this Court reported in Arabinda Das and etc. Vs. State of Assam and Others, it is further contended by Mr. Choudhury that under the Rules, being the delegated legislation, the Govt. has the power to spell out certain steps if there appears to be any lack of clarity in a statute and that too, keeping in view the clear legislative intend in making proviso of Rule 12 which aims at to afford the best benefit to the backward classes for their livelihood in carrying out their fishing activities. Hence Rule 12 may be well read to construe that the settlement of fishery to more than one society is permitted with the purpose to carry out the Constitutional imperative ordained for the welfare and betterment of Scheduled Caste community who primarily depends on fishing activities for their livelihood. The relevant portion of paragraph 22 of the fore-cited decision may be also referred as follows-

... We are of the firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to exercise that power even though those steps may not be clearly spelt in the statute. Where the rule making authority gives power to certain authority to do anything of public

character such authority should get the power to take intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the Rule making authority.

12. I have minutely gone through the rival pleadings of the parties and also given my anxious consideration to the elaborate submissions advanced on behalf of the parties and also perused the records so produced by Ms. Rekha Chakraborty, learned State counsel. On overall consideration of the factual situation of the case at hand, it appears that the fishery in question was settled with the Petitioners on 26.2.2002 by cancelling the earlier settlement order dated 24.2.03 made in favour of the Respondent No. 5 only on the ground that the Respondent No. 5 has already been settled with another fishery and the Petitioners have not been settled with any other fishery. It is also seen that the earlier settlement dated 24.2.2003 in favour of the Respondent No. 5 was made by Govt. by way of extension, only for a period of two years in exercise of its administrative discretion. It is stated at the bar on query that the term of the other fishery which has been settled with the Respondent No. 5 is for 5 (five) years commencing from 20.7.2000 to 19.7.2005. Since the Petitioners have not been settled with any other fishery, the fishery in question has been settled with the Petitioners for the period 7(seven) years from 25.2.03 to 24.2.2010 in terms of Rule 12 of the Rules. But when the Petitioners have taken steps for running the fishery by depositing the requisite kist money etc., suddenly the impugned W.T. Message has been issued by cancelling their settlement right. It appears from the impugned order that no good reason has been assigned for the impugned cancellation save and except that since the Respondent No. 5 has already deposited their dues the order of settlement dated 24.2.03 settling the fishery with them may be treated as valid. The reason shown is obviously irrational and unacceptable and smacks arbitrariness and favouritism. The State in exercise of administrative discretion pertaining to settlement under Rule 12 of the Rules must maintain fairness, reasonableness and transparency and as such the impugned order has no leg to stand in the eye of law.

13. Having regard to the judicial authorities cited on the point of distributive justice and approving the painstaking argument of Mr. Choudhury in this regard, it may be said that our Constitution with the prime objective of building a welfare State and an egalitarian social order in our country, swears to render economic justice through the distribution of material resources of the community as contemplated in Article 39(b) of the Constitution. It can only be achieved when the State in discharging its constitutional obligation, would ensure such equal distribution of national wealth amongst the communities including the economically backward classes for their welfare and betterment in their enjoyment of social justice. The fishery for the purpose of Article 39(b) maybe treated as "material resource. Thus the present joint fishery right in favour of the Petitioners maybe accepted as an attempt to secure the Constitutional directive of "distributive justice" in the State largesse. Consequently the Court has no

hesitation to declare the impugned W.T. message as illegal and bad in law and the same is hereby quashed and set aside.

14. At this stage, Mr. Goswami, learned Counsel for the Respondent No. 5 has submitted that when the Respondent No. 5 has been settled with the other fishery for five years, the present Petitioners have been settled with the fishery in question for seven years. Since it is a case of distribution of public largesse in order to afford equal treatment to all the Societies, it is also the duty of the Govt. to maintain uniformity in case of such settlement. Accordingly, the period of settlement in favour of the Petitioners has been truncated to a period of 5 years i.e. w.e.f. 25.2.2003 to 24.2.2008, to which the learned Counsel for the Petitioners has no objection.

15. In the result, this writ petition is allowed to the extent indicated above. However, considering the facts situation of the case, there would be no orders as to costs.