

(2001) 02 GAU CK 0040
In the Gauhati High Court
Case No : Writ Petition (C) No. 3489 of 1999

No. 7 Bothagathia Dipling Meen Samabai Samity Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:

Citation : (2001) 1 GLT 306

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : Mr. G.N. Sahewalla, Mr. A.K. Goswami, Mr. P. Bora, Ms. S. Senapati and Md. Aslam, for the Appellant; Govt. Advocate, Ms. A. Hazarika, Mr. R.K. Nath and Ms. N. Saikia, for the Respondent

Judgement

1. The matter relates to settlement of No. 7 Bothabeel fishery, hereinafter referred to as "the Fishery", in favour of the respondent No. 4. Petitioner No. 7 Bothagathia Dipling Meen Samabai Samity Ltd., for short "the Society" has challenged the impugned order of settlement of fishery in favour of the Private respondent No. 4. The case of the society is that it consists of 100% actual fisherman and its members reside in the neighbourhood of the fishery. The settlement of the above fishery during the earlier periods has a chequered history. In the year, 1988 the fishery was settled with the respondent No. 4 but subsequently it was cancelled and it was settled with the petitioner's society. The said order of settlement was challenged by the private respondent No. 4 in Civil Rule No. 1792/1999 and subsequently Writ Appeal No. 290/98. The said Writ Appeal was disposed of on compromise providing that the respondent No.4 will be entitled to operate the fishery till 31.3.1999. On 16.3.1999, the Assam Fisheries Development Corporation Ltd., for short "AFDC" invited fresh tenders. The respondent No.4, however, prayed for extension of the lease for another five years and the Minister-in-Charge of the Fisheries Department of the Govt. of Assam vide D.O.No.MF 1.99.49 dated 30.3.1999 allowed the extension to the respondent No. 4 but the said order was not acted upon by the AFDC. The private respondent therefore approached this Court again in Writ Petition No.

WP(C) No. 1792/99 and this Court vide order dated 1:6.1999 directed the AFDC to take a decision in the matter whether to allow the extension or finalise the tender process. The AFDC vide the impugned order settled the fishery" in favour of the respondent No. 4 for a further period of 5 years. Hence the present petition.

2. The respondents have filed affidavit-in-opposition supporting the action taken by the AFDC. The respondent AFDC has also produced relevant records. Vide order dated 1.6.1999 passed in W.P.(C) No. 1792/99 this Court gave the following directions:

"In the circumstances, therefore, I dispose of this writ petition with a direction that within 15 days from the date of receipt of the certified copy of this order from the petitioner, the respondent No. 2 Corporation will take a final decision in accordance with law as to whether or not it will allow the extension in favour of the petitioner as ordered by the Minister in his D.O. letter dated 30.3.1999 or will proceed to finalise the tender in the tender process in favour of any of the parties who have submitted their tenders. Till such decision is taken up by the Corporation, the interim order passed by this Court on 9.4.1999 will continue."

3. The above order was not challenged by other parties and it shows that the AFDC was given a choice either to allow the extension or to proceed with the tender process. Learned counsel for the petitioner has submitted that the impugned order was passed by the AFDC without applying its mind independently and at the dictates of the Minister of Fisheries. In the case of Garjan Bullutjan Matchyajibi Samabai Samity Ltd. Vs. State of Assam and Others, this Court observed:

The Corporation as indicated above, is an Independent authority and Is not subordinate to the Government. The respondents in this case acted mechanically in withdrawing the fishery-in-question from the tender process and thereafter settling the same with respondent No. 4 at the behest of the Minister. Respondent No. 4 was a lessee under the Corporation/respondent No. 2, who also defaulted in the payment of the kist money. It was for the respondent No. 2 to come to its own decision as whether the fishery was to be settled by tender system or otherwise. Similarly, it was again for the respondent No. 2 to make an independent decision of its own as to whether the fishery was to be at all settled-with respondent No. 4 in the facts and circumstances of the case. It was also for the respondent Nos. 2 and 3 to decide as to whether there was any scope for extension of the lease of the fishery-in-question after expiry of the lease period on 31.3.2000 Extension Implies existence of something to be extended, here it was a case of prolongation of the lease. Extension indicate that the lease continues in force during the additional period upon performance of some stipulated act. The question of extension after expiry of the period of lease was not called for. Respondent No.4 was a defaulter till expiry of his lease and his outstanding dues were cleared only on 7.4.1999."

4. A similar view was taken by- this Court In the case of 129 Haria Dablong Min Mahal Samabai Samity Limited Vs. Assam Fisheries Development Corporation Limited and Others,

5. I have perused the record produced by AFDC and on perusal of the impugned order it is seen that the matter was placed before the sub-committee and the decision was taken by the Managing Director himself. The relevant portion of the order read as follows:

"After examining all aspects and as per the directions given by the State vide their letter dated 6.4.1999, the fishery settled in favour of the respondent Jaraband Das for a period of 5 years."

6. The above note shows that the concerned authority, i.e. the AFDC had abdicated its power and did not take any independent view of the matter after considering the pros and cons and the interest of the Corporation as such and choose to comply with the direction of the Minister in spite of the specific directions of this Court that the AFDEC will take a decision in the matter whether the extension is to be allowed or the tender process is to be taken to its logical end. As a matter of fact, the note put up by the Corporation also makes a disturbing reading. It has been stated that in case the Corporation takes a decision against the private respondent Jaraband Das, in that case the latter may approach the Court again. The apprehension that a party may approach the Court challenging the decision, cannot be a ground to favour a party so that the Court is not approached. The decision is required to be taken on merit only keeping in view the interest of the Corporation. The Corporation is required to act not at the dictates of others. Learned counsel for the private respondents submits that under the Rules, the State has power to give direction to the Corporation. The power to give direction does not mean that the Corporation has no legal standing or that it is to follow each and every direction of the Minister concerned whether legal or illegal. The State Govt. can no doubt communicate their policy decision on the particular subject but so far the day-to-day work is concerned it is the Corporation who will have to take its own decision and will stand by it. It can not pass the buck by stating that the order was passed as per the direction of the Minister to the State Govt. and they are not responsible for it. In view of the materials available on record, it appears that the impugned order of settlement was made as per the direction of the State Govt. conveyed vide its letter dated 6.4.1999 and the tender process was terminated without giving any reasons whatsoever. The impugned order therefore suffers from the malice of non-application of mind and, as such, the same is hereby set aside. The matter is remitted back to the AFDC to take a proper decision in accordance with the rules and regulations and following the principles of fair play and reasonableness and keeping in view the public interest and the interest of the AFDC. The AFDC is at liberty to examine and verify the allegations and counter allegations made by the both, parties and pass fresh order of settlement as per law.