

(2009) 06 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 1851 of 2008

Ouguri Kataguri Bhurbandha Matshyajibi Samabai Samtty
Ltd. and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12, 8
Constitution of India, 1950 — Article 14

Citation : (2009) 4 GLT 753

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : A.K. Purkayastha and M.J. Baruah, for the Appellant; P. Roy, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—By filing the instant writ petition, the Petitioners have challenged the validity and propriety of the impugned extension order dated 22.04.2008 (Annexure-M to the writ petition), whereby and whereunder, the Respondent No. 2, the Deputy Secretary to the Government of Assam, Fishery Department extended the term of settlement order of fisheries in question in favour of the Respondent No. 5, M/s Navyug Matshyajibi Sanmabai Samity Ltd., for a further period of two years with effect from 16.05.2008 to 15.05.2010 violating the provisions of Rule 12 of the Assam Fishery Rules, 1953 as amended (for short, "Rules 1953").

2. Heard Mr. A.K. Purkayastha, learned Counsel appearing for the Petitioners assisted by Mr. M.J. Baruah, Advocate as well as Mr. P. Roy, learned Addl. Senior Govt. Advocate, Assam for the Respondent Nos. 1 to 4. None appears for the Respondent No. 5.

3. Facts needed to be discussed briefly for disposal of the instant writ petition are as follows:

4. The Petitioner No. 1 is a registered Cooperative Society having registration under the Assam Co-operative Registration Act, 1949 (for short, "Act 1949") and the Petitioner No. 2 is the President of the Petitioner No. 1 and it is contended in the writ petition that the Petitioner No. 1 and another similarly situated Fishery Co-operatives are entitled to participate in the tender settlement of Government Fisheries situated in the District of Morigaon in view of Rule 12 of the Assam Fisheries Rules, 1953 as amended.

5. But the state Respondent with fanciful manner flouting the provisions of Rule 12 of the Rules 1953 as amended, extended the term of the earlier order of extension by way of the impugned order in a discriminatory manner exercising the discretionary power conferred upon the State. It is also contended that the State Respondents without any verification and/or examination of the relevant records and also without determining or ascertaining the actual loss allegedly sustained by the Respondent Society during the last extension period mechanically extended the earlier order of extension for a further period of two years, which is totally unreasonable, unfair and also detrimental to the revenue of the State. Further allegation of the writ Petitioners as made in the writ petition, inter alia, is that since 1991 the Respondent No. 5 Society are being favoured by the Respondent authorities by allowing it to run the aforesaid fishery either by direct settlement or taking advantage of Rule 8 of the Rules 1953 and in this way the Respondent Society is allowed to get the benefit of the Fishery in question for last 20 years depriving the other Societies having equal status, and also flouting the fundamental rights of other Fishery Samabai Samity like the Petitioner No. 1 by way of depriving them from participating in the settlement process. As such, the action of the State Respondents is unfair, unjust and violative of Article 14, more so, a colourable exercise of power.

6. On filing of the writ petition, this Court initially issued notice of Motion and thereafter issued Rule and all the time the order was passed by this Court after hearing the learned State Counsel, Assam but the State Respondents did not file any counter affidavit. The Respondent No. 5 though filed counter affidavit, none of the lawyers appeared at the time of hearing to support the contention made by the Respondent No. 5 in their affidavit-in-opposition.

7. Mr. Purkayastha, learned Counsel for the Petitioners contended that the claim of the Petitioner is not that they are intended to operate the fishery in question as a matter of their right, but they are entitled to participate in the settlement process of the fisheries in question, and the State Respondents are legally bound to float tenders for settlement of all Govt. registered fisheries including the fishery in question under tender system of sale in place of auction sale, as per Rule 12 of the Rules 1953, as amended. He further contended that the State Respondents have the power to extend the period of settlement order in exceptional circumstances for a reasonable period, so as to enable such lessee to recover the loss, if any. However, in the instant case neither the Respondent No. 5 nor the government has narrated that the extension of the settlement was

passed for recovering the loss of the Respondent No. 5, rather it would be evident for the action of the state Respondent that the Respondent No. 5 was favoured not only for a reasonable period, but for a period of 20 years, which cannot be considered by a prudent person as a reasonable period. His further contention is that an elected Government ought to have acted fairly with some transparency with its citizen so as to understand the action of the Government as the same is supposed to act as a welfare Government. In the instant case, from the action of the State Respondents it can be easily understood that the Government is not treating the registered societies in the state equally as it has acted unfairly with the Petitioner and similarly situated societies and favoured the Respondent No. 5 without assigning any reason. His final contention is that the action of the Respondent is bad on the ground that the Respondent being a welfare Government favoured unduly a particular society like the Respondent No. 5 ignoring the claim of the Petitioner and other similarly situated societies which are situated near the neighbourhood of the Fishery in question and the said action of the Government is violative of Article 14 of the Constitution as well as violative of Rule 12 of the Rules 1953, as amended. Hence, the same is liable to be quashed and according to him, the instant case is fully covered by the decision of this Court in the case of M/s Pub Malaibari Mash Bebosayee Samabai Samity Limited and Anr. v. State of Assam and Ors. WP (C) No. 4429/2007.

8. Mr. Roy, learned Govt. Advocate conceded to the submissions of Mr. Purkayastha, so far as the judgment and order of this Court dated 15.02.2008 is concerned. He also contended that whether the period of 20 years is a reasonable period or not that may be considered by the Court while interpreting the statute but he is not in a position to make any submission on the factual aspect as the State Respondents have not filed any counter.

9. Though the Respondent No. 5 is not represented by any counsel before this Court today, but then also it is the duty of the Court to examine the affidavit-in-opposition filed by the Respondent No. 5. Accordingly, this Court takes the pain to examine the affidavit-in-opposition filed by the Respondent No. 5. From the affidavit-in-opposition filed by the Respondent No. 5, it appears that the Respondent No. 5 denied the statement of the Petitioner society stating, inter alia, that the Petitioners Society is not entitled to get any sort of settlement as claimed by them since most of the members of the Petitioner society are bogus and they are not residing within the neighbourhood of the Fishery in the district. Respondent No. 5 also denied that the Petitioner society is formed with 100% actual fishermen. Not only that the Petitioner society do not fall within the No. 5 Sonai Nadi Part-3 Fishery but only a small portion of the fishery falls within the village Oujari though there is no Scheduled Caste community in this particular village.

10. It is also contended by the Respondent No. 5 Society, that the deponent society has been operating since 1991 without break by way of getting settlement under Rule 12 of the Fishery Rules, the allegations of illegality as

raised by the writ Petitioners are not sustainable in law. The Respondent No. 5 also denied the statement of the Petitioner stating, inter alia, that at the time of giving settlement of fisheries in question i.e. from 01.03.1996 to 31.02.2001 the State Respondents did not consider the claim of the writ Petitioners.

11. Having heard the learned Counsel for the parties and on going through the judgment and order of this Court passed in W.P.(C) No. 4429 of 2007, this Court is of prima facie view that the submission of Mr. Purkayastha has some force. More so, the action of the State Respondents is contrary to the provisions of Rule 12 of the Rules 1953 as amended. It is the duty of the State Respondents to provide equal opportunities to all the registered Fishery Co-operative Societies within the State, more particularly in the district of Morigaon where the fisheries are situated so that all the societies can participate in the settlement process, but it appears from the record that one of the Society, i.e. Respondent No. 5 was allowed to continue to occupy the fishery in question as contended by the Petitioners. Though the case of the State Respondents is that order of extension of settlement in favour of Respondent No. 5 was passed for recovery of loss on the part of Respondent No. 5, but as the Respondent No. 5 was allowed to continue with the settlement of the fishery in question for about two decades depriving the other Fishery Cooperative Societies in the nearby area of the fishery in question, the same cannot be said to be an order of extension of settlement covered by the Rule 8(b) of the Fishery Rules, 1953 as amended, rather this is a case of discrimination between the societies and violation of Article 14 of the Constitution as well as colourable exercise of power, when it is necessary on the part of the State Respondents to be more transparent for public interest. This Court is of further opinion that the submission of Mr. Purkayastha, learned Counsel for the Petitioner has some force as stated supra and this case is also covered by the earlier decision of this Court in W.P. (C) No. 4429/2007 wherein this Court while discussing the Rule 8(b) of the Rules empowered the authorities to grant extension in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss. Though extension cannot be granted as a matter of course, but in the instant case neither the record nor the impugned order reveals recording of any reason for categorizing the case to be an exceptionally special case so as to require extension of the period of lease. The power and jurisdiction vested under Rule 8(b) of the Rules 1953 is to be exercised sparingly and cannot be made a tool for providing extension to a person like Respondent No. 5. As this Court has already observed that period of 20 years cannot be considered as a reasonable period for categorizing the case of the Respondent No. 5 as an exceptionally special case. Therefore, this Court has no hesitation to hold that the impugned order dated 22.04.2008 (Annexure-M to the writ petition) requires to be interfered with and accordingly the same is interfered with. In the result, the impugned order is quashed. The state Respondent is directed to settle the fishery in question by way of tender process following Rule 12 of the Rules 1953, as amended, within a period of six weeks from the date of receipt of the copy of this Order and till then

the Government will run the fishery in question with their officials.

12. The writ petition is allowed with no order as to costs.