

(1996) 12 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 4128 of 1996

Simlitola Toplakhowa Min Samabaisamitee Ltd.	APPELLANT
Vs	
State of Assam and Ors.	RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 14, 226, 226
Fisheries Rules, 1953 — Rule 12, 12

Citation : (1997) 1 GLJ 616 : (1997) 1 GLT 454

Hon'ble Judges : J.N.Sarma, J

Bench : Single Bench

Advocate : T.C.Chutia, S.N.Sharma, P.C.Deka, H.Sharma, A.K.Phukan,
Advocates appearing for Parties

Judgement

1. This writ application has been filed challenging the legality and validity of the order of settlement dated 9.8.96 settling No. 15/65 Gerua Komarpota Fishery in favour of respondent Np.4 at an annual revenue of Rs.44,180 for a period of 4 years wef 9.8.96 to 8.8.2000. The settlement was made by the authority hi exercise of the power under the proviso to Rule 12 of the Rules of settlement for fishery. That proviso to Rule 12 of the settlement rules is quoted below:

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

This proviso came up for consideration in AIR 1981 Gauhati 18 (Arabinda Das vs. State of Assam & others) wherein the Full Bench of this Court hi para 20 of the judgment held that 4 conditions/prerequisites must be present where the Govt decides to settle the fishery under the proviso to Rule 12. It was further pointed out that unless the above conditions/prerequisites are in existence, the power to

settle under the proviso would never be available to the State. It was also pointed out that these prerequisites are indicative of the fact that the rule making authority has given a guideline for the exercise of the power under the proviso, and has not been left to the arbitrary discretion of the State. Therefore, exercise of such power cannot be said to be naked, unguided or uncanalised. One of the prerequisites as mentioned in the proviso to Rule 12 as well as in the judgment of the Full Bench is that the society in question in whose favour the settlement is made, must be in the neighbourhood of the fishery and this question of neighbourhood also came up for consideration before the Division Bench of this Court in (1989) 1 GLR 263 (Babul Das vs. State of Assam & others) wherein the Division Bench in para 6 of the judgment pointed out as follows:

"In view of all the above, we have not felt inclined to interfere with the settlement order and we, therefore, dismiss the petition. We would, however, reiterate that in future while giving settlement under the proviso to Rule 12, the settling authority would apply its mind to the question whether the fishery is in the neighbourhood instead of trying to ascertain its area of operation."

This question also came up for consideration in (1996) 3 GLR 79: (1996 (2) GLJ 342 (M/s Mangaldai Pioneer Fishery Cooperative Society Ltd vs. State of Assam & others) wherein a Single Judge of this Court pointed out as follows:

"The actual fishermen residing in the neighbourhood of the fishery forming a fishery cooperative society is the first criterion for giving settlement."

This question of neighbourhood has also been considered in that judgment and it was considered that the expression "neighbourhood" means a region lying near: a near position: nearness etc.

2. I have heard Mr. PC Deka, learned counsel for the petitioner and Mr. AK Phukan, learned counsel for respondent No.4 and also Mr. TC Chutia, learned Govt Advocate appearing on behalf of respondents 1,2 and 3. No affidavit in opposition on behalf of respondents 1,2 and 3 nor any record has been produced. Mr. Deka, learned counsel submits that in the order of settlement the question of neighbourhood was never considered by the authority. That order of settlement is Annexure to the writ application. As the question of neighbourhood was not considered as submitted by Mr. Deka, this order of settlement was not passed in consonance with the law laid down by the Full Bench and later on followed by the other decisions as indicated above. This contention of Mr. Deka is not correct inasmuch as a bare reading of the order of settlement will show inter alia as follows:

"From the records available, it is seen that the M/s Simlitola Toplakhowa Min SS Ltd have all the requisites necessary for settlement except the past records of indulgence of subletting the fishery for which they face disqualification. In contrast regarding the other contender M/s Garoimari Min SS Ltd. It is seen that they had run the fishery successfully in earlier instances. They have all the

requisites necessary for getting settlement of a 60% category fishery.""

So, the Govt found that both the petitioner's society, well as respondent No.4 have all the requisites for getting direct settlement under the proviso to Rule 12 and once it is stated by the settling authority that both the petitioner's society and the respondent No.4 have the requisites for getting settlement, the submission of Mr. PC Deka, learned counsel that this aspect to the matter regarding the question of neighbourhood was not considered by the settling authority has no legs to stand upon. Further the question of nonconsideration of neighbourhood was never specifically pleaded in the writ application and only that has been taken up specifically in the affidavit in reply. That also shows that the petitioner's society was aware of the position that this question of neighbourhood and the other prerequisites necessary for settlement were taken to consideration by the authority at the time of settlement. Having arrived at the decisions that both the petitioner's society as well as respondent No.4 are eligible to get the settlement, the next question before the authority was to whom the settlement should be made. In refusing settlement to the petitioner's society, the authority took into consideration of the fact that earlier on two occasions when the settlement was given to this petitioner's society, this society used to sublet the fishery to other person and that aspect to the matter was taken into consideration by the authority. Taking this aspect into consideration is not a capricious exercise of the power, rather it is a bonafide, fair and reasonable approach to the matter and having adopted such procedure, this settlement was made in favour of respondent No.4.

3. Accordingly I do not find that this order of settlement has violated the touchstone of fairness and reasonableness. The measuring rod which must be applied to determine the legality and the Validity of the order of settlement is whether the Govt conducted itself in a fair manner and if the fairness has been adhered to in arriving at a particular decision, the writ Court may not be inclined to interfere with such an order. That is what I find in the instant case. Accordingly there is no merit in this writ application and the same is dismissed. However, I leave the parties to bear their own costs.