
(2013) 09 GAU CK 0028
In the Gauhati High Court
Case No : Writ Appeal No. 277 of 2013

Sri Manik Chandra Das

APPELLANT

Vs

Sri Tapan Barman and Others

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 GAU CK 0028

Hon'ble Judges : Arup Kumar Goswami, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : D. Das, for the Appellant; M. Choudhury for Respondent No. 1, Mr. S.R. Rajbongshi, Standing Counsel, AFDC for Respondent Nos. 3 and 4 and Mr. M. Bhagawati, State for Respondent Nos. 2 and 5, for the Respondent

Final Decision : Disposed Off

Judgement

Arup Kumar Goswami, J.—This Writ Appeal is presented against the Judgment and Order dated 27.08.2013 passed by the Learned Single Judge in W.P.(C) No. 4461/2013, whereby the order of settlement dated 30.07.2013 passed by the Managing Director, Assam Fisheries Development Corporation Ltd., settling the Sibasthan-Potakalang Fishery of Nagaon District, for short, fishery, with the appellant for a period of 7 years, commencing from financial year 2013-2014 to 2019-2020 at a total revenue of Rs. 1,96,28,000/-, was set aside. The writ petitioner, who is arrayed as respondent No. 1 in the Writ Appeal, the writ appellant and 3 other tenderers had submitted their tenders for settlement of the fishery in response to Tender Notice No. 3/2013 dated 25.06.2013. The writ petitioner emerged as the highest tenderer at his bid value of Rs. 33,33,333/- per annum (Rs. 2,33,33,331/- for 7 years). The writ appellant was the 2nd highest tenderer at his bid value of Rs. 28,04,000/- per annum (Rs. 1,96,28,000/- for 7 years).

2. The order of settlement dated 30.07.2013 indicates that the tender of the writ petitioner was regarded as not valid as in the Affidavit that was required to be submitted alongwith the tender documents, he had put the date of acceptance of

tenders instead of putting the date of notice inviting tender. Consequently, fishery was settled with the writ appellant, his tender being found valid in all respects.

3. The Learned Single Judge had recorded as follows

Mr. Choudhury, learned counsel for the petitioner submits that the same very authority of the AFDC, in respect of the tender process pertaining to another fishery, condoned the said mistake in the order of settlement and settled the fishery with the highest tenderer. However, in case of the petitioner, the same treatment was not given.

The date mentioned in the supporting affidavit as 12.7.2013 did not affect at all the tender conditions. Admittedly, the same is a typographical error and easily discernable. For that reason the respondent Corporation cannot afford to compromise with the revenue. The tender submitted by the petitioner being complete in all respects and he being the highest bidder, his tender could not have been rejected because of the said typographical error and the petitioner ought to have been treated at par with the aforesaid case in respect of another fishery settled under the same tender process. In view of the above, the impugned order of settlement dated 30.7.2013 (Annexure-5) stands set aside and quashed and the matter is remanded back to the respondent Corporation for reconsideration consistently with the observations made above and in accordance with law.

4. We have heard Mr. D. Das, learned Senior Counsel appearing for the appellant, Mr. M. Choudhury, learned counsel appearing for respondent No. 1, Mr. S.R. Rajbongshi, learned Standing Counsel, AFDC, representing respondent Nos. 3 and 4 and Mr. M. Bhagawati, learned State Counsel appearing for respondent Nos. 2 and 5.

5. Mr. Das has not challenged the correctness of the order of the learned Single Judge during the course of hearing. Thus, the writ appellant has accepted the quashing of the order of settlement. Only submission of Mr. Das is that as the counsel for the appellant did not appear before the learned Single Judge, certain factual aspects of the matter could not be pointed out. He submits that pursuant to the order of settlement dated 30.07.2013, the possession of the fishery was handed over to the appellant on 05.08.2013 and the appellant had also paid an amount of Rs. 9,28,500/- being the kist money for the year 2013-2014. It is also contended that the appellant had bought fingerlings worth Rs. 14,00,000/- and released them in the fishery and furthermore, had incurred incidental and ancillary expenses amounting to Rs. 12,00,000/-. According to him, an amount of Rs. 26,00,000/- in total was invested in the fishery. His limited prayer is for a direction to allow the writ appellant to continue to run the fishery for a period of 3 months in order to enable the writ appellant to recover at least some amount of investment made.

6. Mr. M. Choudhury, learned counsel for the respondent No. 1 submits that copy

of the writ petition was served on 05.08.2013 on the counsel for the writ appellant as the writ appellant had filed a Caveat. The learned Single Judge, on 08.08.2013, while issuing notice of motion making it returnable on 23.08.2013, had passed an order of status-quo. Learned counsel submits that that the writ appellant had made investment of Rs. 26,00,000/- within a period of less than 1 month, that too, after coming to know of filing of the writ petition on 05.08.2013 i.e. the date on which possession of the fishery was handed over to it, is not believable. Referring to the bills/cash-memos annexed by the writ appellant in the writ appeal showing purchase of fingerlings, learned counsel submits that all these bills/cash-memos are subsequent to passing of the order of status-quo dated 05.08.2013. It defies all business sense and the claim is grossly exaggerated, he submits.

7. We have considered the submissions of the learned counsel for the parties.

8. In view of the order of the learned Single Judge setting aside the order of settlement dated 30.07.2013 and directing the respondent corporation to reconsider the matter consistently with the observations made in the said order, the respondent corporation will now have to pass a fresh order of settlement. Such order will be passed within a period of 2 weeks from to-day. Without expressing any opinion on merits with regard to the plea of the appellant in respect of amount of investments made, which is seriously disputed by the counsel for the respondent No. 1, we deem it appropriate to direct the respondent corporation to also decide within a period of 10 days from to-day as to whether the writ appellant should be allowed to operate the fishery for some period because of investments made notwithstanding this Court having set aside his order of settlement. We make it clear that under no circumstances, the writ appellant shall be allowed to operate the fishery beyond a period of 3 months from to-day and the tenderer in whose favour the fresh order of settlement would be passed, shall invariably be put in possession of the fishery. In the event of the corporation deciding against allowing the writ appellant to operate the fishery any further, possession of the fishery shall be immediately delivered to the fresh settlement holder. We also make it clear that the writ appellant shall be paid back the kist money paid by him for the period 2013-2014 after pro-rata adjustment based on the period for which the writ appellant was in enjoyment of the fishery. With the aforesaid directions and observations, the writ appeal stands disposed of. No cost.