
(1985) 05 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 312 of 1985

Sri Prabin Kumar Das

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 15-05-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 1 GLR 516

Hon'ble Judges : K.M. Lahiri, Acting C.J.; K.N. Saikia, J

Bench : Division Bench

Advocate : P.K. Goswami and B.P. Borah, for the Appellant; S.N. Bhuyan, Ganeral, B. Agarwal and N. Deka, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, A.C.J.

1. By this application under Article 226 of the Constitution of India the Petitioner questions the validity of the telegraphic order dated 23.4.85 passed by the Government of Assam cancelling the order of settlement in favour of the Petitioner in respect of Brahmaputra Part III (A) Fishery, Jorhat. By order dated 22.9.84 the Government extended the term of lease of the fishery in favour of the Petitioner for a period of two years commencing from 1.4.85 to 31.3.87 at an annual revenue of. Rs. 65,196.00 "subject to observance of the usual terms and conditions laid down tin the Rules or settlement of Fishery". It was further stated in the said extension order that the lessee will have to abide by the terms and conditions laid down in the Fishery Settlement Rules. It was also ordered that necessary steps should be taken immediately to issue and deliver possession of the Fishery to the Petitioner after completion of all formalities. It is stated at the Bar that after the order had been passed a lease deed was duly executed after completion of all formalities. Large expenses have been made for the purpose of operation of the Fishery and the Petitioner has also paid the security money as required under the terms of the lease. However, in the meantime the

Government by a telegraphic order dated 23.4.85 (Annexure-C to the petition) "cancelled" the order of extension of the Fishery in favour of the Petitioner.

2. It is the common case of the parties that the order of cancellation was rendered without affording the Petitioner any opportunity to show cause and without furnishing him the reasons for cancellation. On the of it, it has been contended by the learned Counsel for the petitions that the very same authority settled the Fishery with Respondent No. 5 at the same annual revenue. However the form of settlement was form 1.4.85 to 31.3.88. This, order, if settlement in favour of Respondent No. 5 was rendered without (sic) the Petitioner any opportunity at all. The learned Advocate-General, Assam, appearing on behalf of the Respondent No. 5 fairly concedes that the order of cancellation of the case in favour of the Petitioner and the order of settlement in favour of Respondent No. 5 are bad in law for not affording any opportunity to the Petitioner to show cause. Admittedly the Petitioner acquired certain valuable rights and the order of cancellation was made without affording him any opportunity to know the reasons for cancellation of the extension of the term of the lease and/or without affording him any opportunity to show case against the proposed order of cancellation.

3. Various questions have been raised in the writ application with which we do not desire to deal with in this order. Suffice it to say that the Government vide telegraphic order issued coder Memo No. VFF. 95/82/131-A dated 23.4.85 cancelled the lease granted in favour of the Petitioner and by the immediate subsequent order under Memo No. VFF. 95/81/132 dated 23.4.85 settled the fishery with Respondent No. 5. Was the order of cancellation rendered at the instance of Respondent No. 5. ? Was the order of cancellation rendered to grant settlement to Respondent No. 5. Are the orders colorable ? These are the questions Which have been posed, but we do not like to answer the questions. In view of the common contentions of the learned Counsel of both the parties that the Impugned orders (vide Annexures C and D) are void for non-furnishing h the Petitioner any opportunity to show cause and/or the persons for cancellation of the urn of the lease, we set aside both the impugned orders.

4. In the result this petition is allowed. However, we make no order as to costs.

5. Before parting with the records, we observe that we are happy that learned Counsel for both the parties prayed for early disposal of this case. We record our appreciation.