

(2020) 11 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 4458 Of 2020

Sukumar Chandra Halдар

APPELLANT

Vs

Assam Fisheries Development Corporation Limited And 3 Ors

RESPONDENT

Date of Decision : 17-11-2020

Acts Referred:

Citation : (2020) 11 GAU CK 0015

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : B D Das

Final Decision : Disposed Off

Judgement

1. Heard Mr. B. D. Das, learned senior counsel assisted by Ms. R. Deka, learned counsel appearing for the writ petitioner. Also heard Mr. A. Sarma, learned Standing Counsel, AFDC, appearing for the respondent Nos.1, 2 and 3 and Mr. M. J. Baruah, learned counsel appearing for the respondent No.4.

2. Assailing the order dated 07.09.2020 issued by the respondent No.2 cancelling the extension of settlement of fishery granted to the petitioner by order dated 21.03.2020, the present petition has been filed.

3. The records produced by the learned departmental counsel has been perused. Having heard the submissions of learned counsel for the parties, this writ petition is being taken up for disposal at the stage of motion hearing with the consent of learned counsel for the contesting parties.

4. The essential facts, necessary for disposal of the writ petition, at the stage of motion hearing, may be briefly noticed as hereunder. The writ petitioner herein belongs to the fishermen community. Pursuant to a process

initiated on the basis of NIT dated 22.03.2013, by the respondent authorities had granted settlement of the Nali Beel Fishery in favour of the petitioner by order dated 08.09.2016 for a period of four years with effect from 31.03.2016 till 31.03.2020 at his quoted price of Rs.9,09,999/-. The writ petitioner had accepted the settlement and operated the lease. However, since the respondent No.2 had settled the other fisheries involved in NIT dated 22.03.2013 for a period of seven years, the writ petitioner, while operating the lease, had submitted a representation dated 21.08.2019 with a prayer for extension of settlement of the fishery upto 31.03.2023 by contending that similarly situated fishermen have been granted settlement for a period of seven years at a stretch and therefore, his case also deserves to be considered likewise. While the application for extension submitted by the petitioner was pending finalization, the AFDC authorities, viz., respondent No.2 had issued NIT No.1/2020 dated 18.02.2020 for fresh settlement of the fishery being operated by the petitioner. Being aggrieved thereby, the petitioner had approached this Court by filing WP(C) No.1471/2020 assailing the NIT dated 18.02.2020. After hearing the submission of learned counsel for both the parties, the learned Single Judge had disposed of the said writ petition vide order dated 03.03.2020 by making the following observations :-

â??Upon consideration of the materials before this court and submissions of the learned counsel, I am of the view that as the respondent no. 2 in order to consider the representation of the petitioner had already directed and obtained the report from the concerned Circle Officer which supports the fact, at least about the loss faced by the petitioners, as such before taking any decision in the NIT no. 1/2020 the respondent no. 2 shall dispose of the representation of the petitioner and while doing so the order of the respondent No. 2 passed in pursuance of the order passed by this court in WP(C) 2069/2014 shall also be considered. Meanwhile the tender process initiated vide NIT no. 1/2020 dated 18.2.2020 is directed to be continued leaving aside the fishery under the operation of the present petitioner till the representation of the petitioner dated 21.8.2019 is disposed of by a speaking order. The entire exercise shall be completed within a period of ten days from the date of receipt of the copy of this order.â??

5. In terms of the directions issued by this Court by the order dated 03.03.2020,

the petitioner's prayer for extension of the lease was considered and by order dated 21.03.2020, he was granted extension till 31.03.2023 at 10% above the annual revenue fixed for the year 2019-2020. As such, under the order of extension, the petitioner continued to operate the fishery whereas the NIT dated 18.02.2020 was allowed to proceed in respect of the other fisheries. Notwithstanding the same, by order dated 13.05.2020 issued by the respondent No.2, the order of extension dated 21.03.2020 was cancelled on the alleged ground that the petitioner had sublet the fishery and had also carried out fishing during the period of ban on fish breeding season thereby violating the terms and conditions of settlement.

6. Aggrieved by the order dated 13.05.2020 the petitioner had once again approached this Court by filing WP(C) No.2207/2020 assailing the said order inter-alia on the ground that no prior notice was served upon the petitioner nor was he heard before cancelling the order of extension. By order dated 28.05.2020 passed in WP(C) No.2207/2020 the writ petition filed by the petitioner was disposed of by setting aside the impugned order dated 13.05.2020 with a further direction upon the authorities to serve a show-cause notice upon the petitioner and give him an opportunity of hearing and only thereafter, pass a reasoned order on the question as to whether, the settlement made in favour of the petitioner is required to be cancelled or not.

7. Pursuant to the order dated 28.08.2020 passed by this Court, the respondent No.2 had issued show-cause notice dated 05.06.2020 upon the petitioner leveling two charges against him which are reproduced herein below :-

Charge No.1 :- That you have breached the terms and condition of the agreement entered with the Corporation regarding operation of the fishery.

It has been found that you have sublet the fishery and has thus seriously violated your condition of fishery lease for operation of the Lali Meen

Mahal.

Charge No.2 :- Where fishing is totally banned due to breeding of fishes from April 1st to 15th Jule of the year, you have operated random fishing in

the beel during this year of breeding period. You are thus charged of violation of statutory regulations.

8. Upon receipt of the show-cause notice, the petitioner has furnished his reply dated 09.06.2020 refuting the allegations brought against him.

Thereafter, certain communications were exchanged which are not very relevant

for the purpose of this case and therefore, need not be gone into in details.

9. Eventually, by the impugned order dated 07.09.2020 issued by the respondent No.2 whereby, the earlier order dated 21.03.2020 was cancelled by

the authorities on the ground that the said order was issued by the then Managing Director without obtaining approval of the Chairman or the Board of

Directors of the Corporation. Aggrieved by the order dated 07.09.2020, the instant writ petition has been filed alleging arbitrary exercise of

administrative power and discriminatory treatment being meted out to the petitioner.

10. From a perusal of the records produced by the learned departmental counsel, it transpires that the Corporation took note of the manner in which

the order dated 21.03.2020 was issued by the then Managing Director without obtaining the approval of the Chairman or the Board of Directors and

therefore, found the same to be illegal. It appears that the AFDC has also recommended disciplinary action against the erring official for violating the

departmental norms.

11. There can be no doubt about the fact that any order of the Corporation has to be issued by observing the required departmental norms lest the

same should be at the cost of invalidation of the order itself due to violation of the rules and procedure. Therefore, if the then Managing Director had

issued the order dated 21.03.2020 on his own accord, without obtaining the approval of the Chairman of the Corporation, then, in that event, such an

order would be liable to be declared non-est in the eye of law. Such being the position, in the opinion of this Court, no infirmity is seen in the order

dated 07.09.2020 warranting interference by this Court.

12. What would, however, be significant to note herein is that the defect in the order dated 21.03.2020 is attributable to the ex-Managing Director of

the Corporation and the writ petitioner did not have any role to play in that regard. Moreover, the issue pertains to an internal matter of the department

with which the petitioner is not concerned. It is clear that the impugned order dated 07.09.2020 has not been issued either on the merit of the

petitioner's application or on any of the grounds mentioned in the show-cause notice dated 05.06.2020. On the contrary, the ground on which the

impugned order dated 07.09.2020 has been issued is also not one of the grounds

reflected in the show-cause notice. Therefore, it is apparent that the petitioner did not have any opportunity to represent his case before the authorities so as to meet the ground on which the impugned order has been issued. From a plain reading of the impugned order dated 07.09.2020 it is evident that the same has been issued on a purely technical ground and not upon due consideration of the merit of the petitioners claim for extension.

13. Non-compliance of proper departmental procedure by the ex-Managing Director while issuing the order dated 21.03.2020 may have a vitiating effect on the order itself, but in view of the orders dated 03.03.2020 and 28.05.2020 passed by this Court, such technical deficiencies in the order dated 21.03.2020, in the opinion of this Court, would not automatically relieve the AFDC from its obligation to consider the prayer of the petitioner on merit and dispose of his representation by a speaking order, which exercise has evidently not been undertaken in this case till date. In view of the order dated 03.03.2020 passed by this Court as well as the subsequent order dated 28.05.2020 passed by the learned Single Judge, I am of the view that the petitioner's claim for an order of extension vis-à-vis his grievance against cancellation of the extension of lease granted by order dated 21.03.2020 deserves proper consideration on merit, more so, since there are materials on record to prima-facie indicate that similarly situated fishermen have been granted lease of their fisheries for a period of seven years at a stretch while the settlement granted to the petitioner was only for four years.

14. For the reasons stated above, I dispose of this writ petition with a direction to the respondent No.2 to examine the claim of the petitioner for extension of lease of the fishery afresh and dispose of the same on merit by a speaking order after giving an opportunity of being heard to the writ petitioner and by furnishing proper reasons, without being influenced by the order dated 07.09.2020. The aforesaid exercise be carried out and completed, after observing proper procedure, within a period of 30 days from the date of receipt of a certified copy of this order.

The records be returned back to the learned departmental counsel.

Writ petition stands disposed of accordingly.