(1972) 06 GAU CK 0005

In the Gauhati High Court

Case No : Civil Rule No. 486 of 1971

Surendranath Barman APPELLANT

Vs

The State of Assam and others RESPONDENT

Date of Decision : 22-06-1972

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 19(6), 46

Citation : AIR 1973 Guw 6

Hon'ble Judges : P.K. Goswami, C.J;R.S. Bindra, J

Bench : Division Bench

Advocate : S.K. Ghose, A.G., Nagaland, for the Appellant; J.C. Medhi, Advocate-General, Assam and G.K. Talukdar, Sr. Govt. Advocate, Assam, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Goswami, C. J.

1. This Rule was obtained on 24-8-1971 challenging the validity of Rule 13 of the Rules for Settlement of Fisheries published in the Assam Gazette Extraordinary dated 7th August, 1971, as violative of Article 14 and Article 19 (1) (g) of the Constitution and for quashing the notice of sale of fisheries dated 12th August, 1971 issued by the Deputy Commissioner, Goalpara.

2. The petitioner was settled with 1/87 Dharnad Brahmapuhia Part I fishery for the years 1968-69 and 1969-70. After expiry of the period, the lease was extended up to 31st May, 1971. The petitioner was informed, inter alia, while granting the last extension, that if in the meantime any new rules were framed, tenders would be invited in accordance with the said rules. The Fishery Rules were amended by a Notification of 7th August, 1971. By notice dated 12th August, 1971, the Deputy Commissioner, Goalpara, invited tenders for this fishery along with other fisheries for a period of 2 years 7 months from 1-9-71 to 31-3-74 and that tenders were to be submitted by 26th August, 1971. A list of registered fisheries of Dhubri sub-division showing the previous annual value and

the percentage in which such registered fisheries had been classified was also enclosed with the notice of sale. In this list, the previous annual value of this fishery is shown as Rs. 50,820 and it is included in the reserved quota of 60%. It is admitted, as also will appear from the list, that there are 29 registered fisheries in the Dhubri subdivision, out of which, 16 fisheries have been classified as falling under 60% and the remaining 13 as under 40%. The petitioner''s fishery falls under the 60% class.

3. The petitioner''s grievance is that the fishery in question which has been in his enjoyment for several years, has been classified under 60% group which debars him from even submitting tender for the same. Since classification has been made under Rule 13 (a), he contends that the same is violative of Article 14 and Article 19 (1) (g) of the Constitution. He there for prays that the notice of sale with the list attached should be quashed.

4. We will, therefore, read Rule 13:

"(a) With the prior approval of the State Government not more than 60 per cent of fisheries in a Subdivision available for settlement in a year shall be selected for sale under tender system only with the Co-operative Fishery Societies formed with 100 per cent share-holders from members of actual fishermen belonging to the Scheduled Castes of the State and/or Maimal Community of the District of Cachar and registered under the Assam Co-operative Societies'' Act, 1949. Settlement of all such fisheries tenders of which have been accepted under Rule 5 shall be with the highest tender.

(b) The remaining fisheries in the Subdivision available in that year under tender system of sale, shall remain open for settlement to all communities including Co-operative Societies as referred to in sub-rule (a) above.

(c) A Co-operative Fishery Society formed by members of actual fishermen belonging to the Scheduled Castes/Maimal Community/Scheduled Tribes/Other Backward Classes and registered under the Assam Co-operative Societies Act, 1949, shall be given option to accept settlement of fisheries of the category as mentioned in sub-rule (b) above at the highest tender, provided that their tender is within per cent of the highest tender.

(d) When the tenders for fisheries falling within the category referred to in sub-rule (b) above are below 7 1/2 per cent of the highest tender (i) Co-operative Societies as stated in sub-rule (c) above, (ii) Individual members of actual fishermen belonging to the Scheduled Castes and Maimal Community, (iii) individual members of the Scheduled Tribes and other Backward Classes who may offer tenders not less than 60 per cent of the highest tender may be given option to accept settlement of the fisheries at the highest tender, in order of preference stated above subject to suitability of the tenderers.

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5. The learned Advocate-General, Nagaland, appearing in support of the

petitioner, submits that Rule 13 (a) excludes all persons from the 60 per cent fisheries while conferring the right only upon the Co-operative Fishery Societies specified therein. He submits that a monopoly right is created under this Rule in favour of the co-operative fishery societies to the exclusion of every other person. Since no monopoly of this kind can be created in favour of any person other than the State, this rule is violative of Article 19 (1) (g) of the Constitution and is not saved by clause (6) of the Article. He submits that under clause (6) of Article 19, a Rule can be made permitting exclusion, complete or partial, of citizens from any occupation, trade or business, which is carried on by the State or by a Corporation owned or controlled by the State. But such a Rule conferring the right of monopoly in favour of the co-operative fishery societies cannot be made, as has been done in this case. Rule 13 (a) is, therefore, according to him, violative of the said Article.

6. We are unable to accept the above submission. Rule 13 (a) has not created any monopoly right with regard to all fisheries available for settlement in a subdivision in favour of the co-operative fishery societies. Not more than 60 per cent of the fisheries only are reserved for cooperative fishery societies formed with cent-per-cent shareholders from members of actual fishermen belonging to the Scheduled Castes of the State or the particular community mentioned therein. The remaining 40 per cent are open for settlement to all communities including the co-operative fishery societies. The rule with a ceiling of 60% is therefore made with the object of promoting the economic interests of the Scheduled Castes. This Rule is made in furtherance of the Directive Principles of State Policy as laid down in Article 46 of the Constitution. The petitioner has no vested right to settlement of any fisheries, much less to a particular fishery. That being the position, his fundamental right to carry on trade is not affected by this Rule, which cannot be said to be violative of Article 19 (1) (g) of the Constitution.

7. The learned Advocate-General, Nagaland, next contends that Rule 13 (a), so far as it gives right to the Settling Authority to select for sale under tender system not more than 60 per cent of fisheries without any guidance, is violative of Article 14 of the Constitution. It is contended that selection is bound to be arbitrary and there is inherent germ of discrimination in Rule 13 (a) for which it should be struck down. A perusal of the Rule will show that the Settling Authority is not the final authority in the matter of selection of 60 per cent fisheries under Rule 13 (a). It has to obtain the prior approval of the State Government. This would go to show that due consideration to the object underlying this Rule is finally given by the State Government. The object of this Rule is to safeguard the interests of the Scheduled Castes and the Maimal community of Cachar. Since, generally, the people of this class are less organised, a provision is made to help them by encouraging formation of co-operative societies of actual fishermen. These societies have to be registered under the Assam Co-operative Societies Act and their number and condition would be readily available to the Settling Authority in a subdivision.

By Rule 46, fisheries shall be settled to the best advantage and subject to this condition, the agency of the middleman assessee shall be done away with as far as possible. There is, therefore, sufficient guidance in these rules to enable the Settling Authority at the first instance and the Approving Authority finally to select the fisheries in a subdivision for classification under the 60 per cent category. It is difficult to provide in a rule particular and specific guidelines for selection and there is bound to be local variations in different subdivisions of the State. The selection has, therefore, to be left to the Settling Authority who is aware of local conditions not only of fishermen in general but also of their co-operative societies and necessarily, therefore, such a selection cannot be put in the straitjacket of a formula under the law. Some amount of discretion has to be left to the Settling Authority in these matters, when it is to obtain the prior approval of the Government in the matter. We do not, therefore, find any arbitrariness or germ of hostile discrimination in Rule 13 (a) to be hit by Article 14 of the Constitution.

8. The learned Advocate-General, Nagaland, drew our attention to a decision of the Supreme Court, Mannalal Jain Vs. The State of Assam and Others, . In that case, the Supreme Court was considering clause 5 (e) of the Assam Foodgrains (Licensing and Control) Order, 1961, which does not provide for a monopoly in favour of co-operative societies. The clause enumerates five matters and states that the licensing authority shall have regard to those matters in granting or refusing a license. It was found by the Supreme Court that a license has been denied to the petitioner in that case, proceeding on the footing that a monopoly must be created in favour of co-operative societies and this was considered as a discrimination which was not justified by the provisions of clause 5 of the Order. According to the Supreme Court, sub-clause (e) of Clause 5 enables the licensing authority to give preference to a co-operative society in certain circumstances but it does not create a monopoly in favour of a co-operative society. This decision is, therefore, of no avail to the learned Advocate-General in this case. The learned Advocate-General also referred to some other decisions of the Supreme Court with regard to Article 19 (6) of the Constitution, but these are of no help in support of his submission.

9. In the result, we hold that Rule 13 (a) is not violative of Article 14 nor of Article 19 (1) (g) of the Constitution of India. We also hold that the impugned notice is valid in law.

10. The application is, therefore, dismissed. The Rule Nisi is discharged We will, however, make no order as to costs.

R. S. Bindra, J.

11. I agree.

