

(1994) 09 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 1873 of 1994

Surjya Das

APPELLANT

Vs

Assam State Fisheries Development Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 GLR 408

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Advocate : D.N. Choudhury, N.C. Das, R.C. Das and K. Deka, for the Appellant;
A.R. Borthakur, B. Acharyya and A.K. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Baruah, J.—In this application under Article 226 of the Constitution the Petitioner has challenged the order of settlement dated 25.3.94 passed by the Managing Director, Assam State Fisheries Development Corporation Ltd. 3rd Respondent, giving settlement of Garjan Bullutjan Fishery with the 4th Respondent and has prayed for issuance of appropriate writ or direction.

2. The facts of the case, in brief are as follows:

The Petitioner is a permanent resident of village Bagta in the District of "Kamrup. He belongs to Scheduled Caste community and is an actual fisherman by profession and as such, he is entitled to a preferential treatment in the matter of employment and settlement. The 3rd Respondent issued notice dated 4.2.94 inviting tenders from the actual fisherman by profession belonging to the scheduled caste community and also from registered fishery cooperative societies formed with actual fishermen by profession and belonging to the scheduled caste community for giving licences to operate fisheries named in the said notice for a term of five years with effect from 1st of April, 1994. The notice inviting tenders

fixed 19.2.94 as the last date of submission of tenders. In pursuance of the said notice dated 4.2.94 inviting tenders, the Petitioner along with other persons submitted his tender in respect of the said Garjan Bullutjan Fishery under Guwahati Sub-division and he quoted a sum of Rs. 8,05,151/-. Along with the Petitioner, other persons also submitted tenders quoting their rates. Five persons including the Petitioner and the 4th Respondent submitted tenders. The 4th Respondent quoted a sum of Rs. 17,95,500/- and the Petitioner quoted Rs. 8,05,151/-. According to the Petitioner he was a sitting lessee in respect of the said fishery for the term 1993-94 and the said fishery was settled with him for the said term at an annual revenue of Rs. 1,00,500/-. The 3rd Respondent by his office letter dated 29.6.93 intimated the Petitioner about the aforesaid order of settlement and accordingly, directed him to deposit 25% of the annual revenue towards the first kist and also to deposit 10% of the amount of the annual revenue towards security. On such deposit the Petitioner executed an agreement with the Assam Suite Fishery Development Corporation Ltd, (for short the Corporation) in respect of settlement of the aforesaid fishery for the term 1993-94. The Petitioner, however, could not get possession as the 3rd Respondent could not deliver possession in respect of the said fishery as a writ petition was pending before this Court and accordingly, the Petitioner was deprived from making any fishing work in the said fishery for a considerable period.

Although the aforesaid Garjan Bullintjan fishery consists of Chengajan beel, Hatibhari beel and Chowmukha beel, the 3rd Respondent could not deliver possession in respect of the aforesaid three beels to the Petitioner. The Petitioner cleared all the revenue in respect of the said fishery for the term 1993-94 and complied with all the terms and conditions contained in the agreement and also operated the fishery with full satisfaction of the authority concerned. The 3rd Respondent issued a certificate dated 22.4.94 certifying that the Petitioner had cleared all the fishery revenue in respect of the said fishery for the term 1993-94.

According to the 3rd Respondent the minimum annual revenue in respect of the aforesaid fishery was - Rs. 1,35,000/- for 1994-95, Rs. 1,41,800/- for 1995-96 Rs. 1,48,900/- for 1996-97, Rs. 1,56,300/- for 1997-98, and Rs. 1,64,100/- for 1998-99. The total revenue as assessed by the 3rd Respondent comes to Rs. 7,46,100/-. Taking into consideration the aforesaid minimum revenue of Rs. 7,46,100/- for five years and also after taking into consideration of the annual revenue for the year 1993-94, the Petitioner in his tender offered a sum of Rs. 8,05,15/- and the offer made by the Petitioner was most reasonable and accordingly, he was legally entitled to get the order of settlement in respect of the aforesaid fishery in his favour.

However, against the minimum value of Rs. 7,46,100/- as assessed by the 3rd Respondent, the 4th Respondent quoted an excessive and exorbitant amount of Rs. 17,95,500/-. The next highest amount was offered by one Ananta Das who quoted Rs. 12,56,000/- and amounts of Rs. 11,00,000/- and Rs. 10,00,000/-

were offered by Nilamoni Malakar and Sisir Medhi respectively. On the face of it, the amounts quoted by others were absolutely exorbitant and excessive in comparison to the minimum revenue fixed by the 3rd Respondent for five years.

On receipt of the tender papers in pursuance of the notice inviting tenders by the 3rd Respondent, the 1st Respondent constituted a Board consisting of 11 members to consider the tenders and make recommendation for giving settlement in respect of the fisheries mentioned in the said notice, The Board after thorough scrutiny found that the amount quoted by the 4th Respondent i.e., Rs. 17.95.500/- in respect of the aforesaid fishery was 40% above the minimum revenue fixed by the 3rd Respondent for five years. In spite of the categorical finding of the Board about the amount quoted by the 4th Respondent, the 3rd Respondent by order dated 25.3.94 gave settlement of the said fishery to the 4th Respondent the price quoted by him. The 3rd Respondent while passing the order of settlement had mentioned that the Board after due deliberation decided to accept the offer of the 4th Respondent which according to the Petitioner was not borne out of records.

The Petitioner has further stated that the 4th Respondent as Chairman of another fishery cooperative society, namely, M/s Garjan Bullutjan Matsyajibi Samabai Samity Ltd. made default in payment of Government revenue to the extent of Rs. 20,000/- towards the principal and Rs. 8,400/- towards interest upto 31.3.92. The Assistant Registrar of Cooperative Societies, Guwahati by Annexure-VI letter dated 26.6.92 made a demand for payment of the aforesaid amount. However, the 4th Respondent as Chairman failed to pay the said due and the amount is still due. According to the Petitioner the order of settlement made by the 3rd Respondent in favour of the 4th Respondent at the bid amount of Rs. 17,95,500/- was not at all sustainable in the eye of law as the said order of settlement had been passed in Complete Violation of the definite finding arrived by the Board that the said offer made by the 4th Respondent was 40% above this minimum revenue fixed by the 3rd Respondent and the said order of settlement is liable to be set aside. The Petitioner has further stated that the 4th Respondent is also not entitled to get settlement of the said fishery inasmuch as the 4th Respondent is not an actual fisherman by profession. Copy of the certificate enclosed by the 4th Respondent along with his tender in respect of his claim to be a fisherman had no value at all inasmuch as the certificate had not been issued by a competent person. Besides, the 3rd Respondent while giving settlement to the 4th Respondent totally failed to take into consideration the observation of the Board. The Petitioner has further stated that he is entitled to get settlement because of his incurring loss as he could not operate in the fishery during the period of settlement as mentioned above. The Petitioner has also stated that the tender paper of the 4th Respondent not being valid, the settlement given in his favour is illegal, without jurisdiction and liable to be set aside. Hence the present petition.

3. The 3rd Respondent has filed an affidavit-in-opposition on his own behalf and

also on behalf of 1st and 2nd Respondents. In the said affidavit, the Respondents have denied the averments made in the petition. It has been pointed out that in terms of Clause 11 of the agreement a lessee is not entitled to fish during spawning period from April to June. Even if Petitioner would have been given possession before 1,4,93, he could not have been allowed to fish for violation of Clause 11 of the agreement. Therefore the question of financial loss does not arise at all. It has been further stated that the possession of the fishery was given to the Petitioner in time and the Petitioner managed the fishery since taking over possession. If at a subsequent date the possession had been taken away by any body else and the Petitioner could not fish because of inability and laxity and as that matter was not brought before the appropriate authority at the appropriate time, the Petitioner now cannot pray for redressal of his old grievances before this Court. It has been further stated in the affidavit-in-opposition that the Petitioner could not comply with the terms and conditions of the lease, such as, (1) he had not submitted a list of fisherman as required to be submitted under Clause 9 of the lease, (2) he had not insured the fisherman under Clause 15 and (3) he did not submit production return regularly in terms of Clause 21 of the lease agreement. The Respondents have further denied about the excessive amount quoted by the 4th Respondent. They have further stated that the Gorjan Bullutjan fishery is one of the most potential fisheries for pisciculture and the Board considered the revenue offered by the highest bidder to be quite reasonable. Hence it was accepted by unanimous decision. The Respondents have also denied that the 4th Respondent is not an actual fisherman in view of the fact that he was a chairman of the Gorjan Bulatjan Matsayajibi Samabai Samity which was registered by the Co-operative departments as Fisherman Co-operative Society constituted by actual fisherman. Therefore, according to the Respondents the allegations made in the writ petition are not at all tenable. The Respondents have further stated that the first kist of Rs. 33,525/- had already been paid by 4th Respondent, According to these Respondents the Petitioner's tender was rejected on the ground that he failed to submit list of fisherman as per Clause 9 of the agreement, insure the poor fisherman in terms of Clause 15 of the agreement, submit production return as required under Clause 21 of the agreement and also on the ground that the amount quoted by him was the lowest amongst the four valid tenderers. For all these, according to these Respondents, the writ petition is not maintainable and it is liable to be dismissed.

4. The 4th Respondent has also filed an affidavit-in-opposition. In his affidavit-in-opposition, the 4th Respondent has stated that the amount quoted by him was just and he quoted the said amount considering all the aspects of the matter and the feasibility. According to him, the amount quoted was just and proper. The amount offered by the Petitioner was on much lower side and if the Petitioner's tender would have been accepted, the 1st Respondent would have lost a substantial amount which is not in the interest of 1st Respondent as well as in the interest of pisciculture.

5. The Petitioner has also filed a reply affidavit. In the reply affidavit he has reiterated almost what has been stated in the petition. Besides, he has stated that the 4th Respondent submitted a petition on 17.3.94 and from the said petition it can very safely be said that the 4th Respondent submitted the said petition only to convince the Corporation that the offer made by him was not exorbitant and excessive. The Petitioner has also filed another reply affidavit where also except making certain allegation reiterated what has been stated in the petition. He has been only reiterating that the amount quoted by the 4th Respondent was excessive and exorbitant.

6. During hearing of the matter the learned Counsel for the Petitioner submitted that the minutes of discussion were relevant for the purpose of disposal of the case. The counsel for the 1st to 3rd Respondents had no objection for production of such minutes and, therefore, the Respondents were directed to produce the minutes of discussion. Accordingly, the minutes of discussion have been produced and, thereafter, the case is heard.

7. I have heard the learned Counsel for the Petitioner, learned Counsel appearing on behalf of the 1st to 3rd Respondent and also the counsel appearing on behalf of the 4th Respondent, I have also perused the affidavit-in-opposition, reply affidavits and also the records.

8. Learned Counsel for the Petitioner has submitted that the settlement given to the 4th Respondent by the 3rd Respondent was illegal and without jurisdiction inasmuch as the amount quoted by him was 40% above the minimum revenue fixed by the 3rd Respondent and, therefore, it can be very safely presumed that this amount is not feasible and the 4th Respondent would not be able to run the fishery at the amount and as a result, ultimately the 1st Respondent would suffer. The second contention is that the Petitioner sustained loss because of various reasons such as he could not operate the fishery in view of the difficulties mentioned in the petition. Therefore, in all fairness, the fishery ought to have been settled with the Petitioner. The third contention of the learned Counsel for the Petitioner is that the 4th Respondent as Chairman of another fishery co-operative society was a defaulter and, therefore, his tender ought not to have been considered by the Board. The last contention of the learned Counsel for the Petitioner is that the 4th Respondent not being an actual fisherman, his tender ought not to have been accepted. On the other hand Mr. A.R. Barthakur, learned Counsel appearing on behalf of the 1st to 3rd Respondents has supported the action of the authority. According to him the settlement given to the 4th Respondent was just and proper and in the interest of the 1st Respondent. The Petitioner quoted the lowest amount and under no circumstances the Petitioner is entitled to get any settlement of the said fishery. Besides, according to the learned Counsel, the fishery concerned though had been assessed at lower rate, actually it is; one of the most profitable fishery in the vicinity and the rate quoted by the 4th Respondent was found to be reasonable and, therefore, the Board constituted by the 1st Respondent unanimously decided to give settlement to the

4th Respondent and, therefore, no interference is called for. The 4th Respondent also supported the settlement.

9. On the rival contentions, now it is to be seen whether the settlement given to the 4th Respondent can sustain in law. On perusal of the record and also the affidavit-in-opposition and reply affidavits, I find that the fishery concerned is definitely a profitable one in the vicinity. Therefore, the amount cannot be said to be excessive. The Petitioner's tender was rejected mainly on the ground that he had quoted the lowest amount. Besides, on the earlier occasion he could not comply with the terms and conditions of the agreement, such as, insurance of the fisherman, etc. Regarding the status of the 4th Respondent as to whether he is an actual fisherman or not, this Court can come to the conclusion from the fact that the 4th Respondent was a Chairman of a fishery cooperative society registered with the Co-operative Department as Co-operative Society constituted by actual fisherman. That being the position, I have no hesitation to come to the conclusion that the 4th Respondent is an actual fisherman. Regarding default, assuming that the fishery cooperative society of which the 4th Respondent was a Chairman defaulted for that 4th Respondent is not individually Respondent if at all the society was a defaulter. From the record it appears also that the amount quoted by the 4th Respondent is not excessive and therefore, there cannot have any apprehension that the 4th Respondents would not be able to run the fishery at the rate quoted by him. This view finds support from the fact that the 4th Respondent paid the first kist immediately. Considering all these aspects of the matter I do not find any merit in the petition. Accordingly, the petition is dismissed.

10. In the facts and circumstances of the case I make no order as to costs.