(1975) 01 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule No. 34 of 1973

Thokchom Kulabidhu Singh — APPELLANT

Vs

The State of Manipur and others — RESPONDENT

Date of Decision : 09-01-1975

Acts Referred:
Fisheries Act, 1897 — Section 6

Citation : AIR 1976 Guw 43

Hon'ble Judges : M.C. Pathak, C.J;D.M. Sen, J

Bench : Division Bench

Advocate : A. Nilamani Singh, for the Appellant; Ibotombi Singh, Advocate-General, Manipur and A.J.C. Singh, for the Respondent

Final Decision : Allowed

Judgement

Pathak, C.J.—The facts leading to this Writ Petition are as follows. Government fishery, namely Fishery No. 160 Ikop with No. 161 Laidagon, was advertised for sale by issuing a notice dated 13-1-1972, which was published in the Manipur Gazette dated January 19, 1972. In the said notice the date for auction of the fishery in question was fixed on 19-2-1972. Auction was held by A. Ibohal Singh, Incharge Chief Fishery Officer. The petitioner Thokchom Kulabidhu Singh offered a bid of Rs. 45,150/- per year, which is found to be the highest bid offered on the date of sale. The Respondent No. 4, Ikop-Laidagon Fishing Co-operative Society Ltd. represented by its Secretary Abdul Latif, offered a bid of Rs. 40,635/- and the fishery was settled with the Respondent No. 4 i.e. the Co-operative Society, at Rs. 45,150/- per year for the period from 1-4-1972 to 31-3-1975. In the order of settlement dated 19-2-1972 it is stated that the fishery in question has been settled with the Co-operative Society with normal preference admissible under the Rules.

2. At this stage the relevant Rules may be quoted. The Manipur Fishery Rules 1971, which came into effect from 11-2-1972, have been framed by the Administrator in exercise of powers conferred by Sections 155 and 156 of the

Assam Land Revenue Regulation, 1886 (1 of 1886), as extended to Manipur, and Section 6 of the Indian Fisheries Act, 1897 (4 of 1897) read with Government of India, Ministry of States Notification No. 104-J dated 24-8-1950. The rules for auction sale of fishery lease and collection of fishery revenue are to be found in Part III of the Manipur Fishery Rules. 1971, hereinafter called the Rules. The relevant rules are quoted below:

25. Government fisheries shall be sold by public auction. Provided that the Administrator may in individual cases direct any other mode for sale or settlement of fisheries and specify the period thereof in special cases for reasons to be recorded in writing.

31. (1) The Deputy Commissioner, or the auctioning officer working on his behalf or under his order, will normally accept the highest bid unless there are special reasons for not doing so which shall be recorded in writing.

(2) A co-operative fishing society formed of genuine fishermen and registered under the Assam Co-operative Societies Act, 1949 (Assam Act I of 1950) as extended to the Union Territory of Manipur shall be given option of taking lease of a fishery at the highest bid offered by an individual, subject to the following conditions:

(a) the fishery falls within the area of operation of the Co-operative Society;

(b) before participating in the auction the representative of the Co-operative Society shall produce two resolutions of the society;

(i) authorising a representative to bid in the auction on behalf of the Co-operative Society.

(ii) intimating names of not more than two members of the society who will execute the agreement on behalf of the co-operative society in case the society is the successful bidder; and

(c) the final bid of the Co-operative Society is not less than 90% of the highest bid offered by the individual bidder.

39. When the sale of a fishery has been confirmed by the Government as per Rule 41 below, a lease and counterpart shall be executed and interchanged in Form Nos. II and III.

41. If. on the expiration of 30 days from the date of the sale of any fishery or of such further period as may be allowed by the Dy. Commissioner, no application has been made for setting aside the sale or, if any such application has been made for setting aside the sale and rejected, the Deputy Commissioner shall make a reference to the Government for confirmation and the Government may confirm the sale unless, for reason to be recorded, the Government set aside the sale notwithstanding that no application therefor has been made, and the sale shall not be final unless confirmed by the Government.

45. Appeals shall lie to the authority and in the manner prescribed below:

(1) Officer to whom appeals lie - Appeals shall lie under these Rules as follows:

(a) to the Administrator from any order original or appellate passed by a Deputy Commissioner;

(b) to the Deputy Commissioner, from any order passed by a Sub-Divisional Officer, an Assistant Commissioner or Extra Assistant Commissioner;

(c) to the Sub-Divisional Officer, from any order passed by a Sub-Deputy Collector.

Provided that no appeal shall lie against any order imposing a fine not exceeding one hundred rupees;

(2) Limitation of appeal - (a) Unless otherwise specially provided in these Rules,-

(i) no appeal under sub-rule (1)(d) shall lie after the expiration of thirty days from the date of the order appealed against;

(ii) No appeal under the sub-rule (1)(c) shall lie after the expiration of six weeks from the date of the order appealed against;

(iii) no appeal under the sub-rules (1)(a) and (b) shall lie after the expiration of two months from the date of the order appealed against.

* * *

48. These Rules supersede the Fishery Rules of Manipur published under Manipur Government Notification No. F/Fy/19/51-56 dated 8-4-1957 and any other existing rules issued in this behalf:

Provided that this supersession shall not affect any existing lease or anything done or omitted to have been done under the said Rules.

3. It may be mentioned here that the Fishery Rules of Manipur. 1957 have been superseded by these Rules of 1971. It may also be pointed out that on and from 21-1-1972 the Union territory of Manipur has attained Statehood and consequently the reference to Administrator in the aforesaid Rules should be read as reference to the State Government.

4. Mr. Nilamoni Singh, the learned Counsel appearing on behalf of the petitioner, submits that the settlement made in favour of Respondent No. 4 and confirmed by the State Government being in violation of the Rules, the settlement must be deemed to be made without jurisdiction and as such, is liable to be set aside. The precise submission of the learned Counsel is that the sale was knocked down on the highest bid of the petitioner at Rs. 45,150/- and after the knocking down of the sale at the highest bid of the petitioner, the auctioning officer allowed the Respondent No. 4 to raise the bid to 90 per cent, of the highest bid and then made the settlement with the Respondent No. 4 at the highest bid of the

petitioner, that is at Rs. 45,150/- which is clearly against Rule 31 of the Rules.

5. Before proceeding further we would like to dispose of the submission made by the learned Advocate-General, Manipur appearing on behalf of the Respondents that the Manipur Fishery Rules, 1957 along with the Government instruction, conveyed under Memo No. R/Fy/1/ 52-II dated 21-5-1958, are applicable to the instant case.

6. We have already quoted Rule 48 of the Rules, which provides that supersession of the 1957 Rules shall not affect any existing lease or anything done or omitted to have been done under the said Rules, i.e., the 1957 Rules. In the instant case, the sale notice dated 13-1-1972 was published in the Manipur Gazette dated 19-1-1972, that is to say, before the coming into effect of the 1971 Rules on 11-2-1972. On perusing the proviso to Rule 48, it is quite clear that the sale notice issued under the 1957 Rules will not be affected but the subsequent procedure, when the sale had been held on 19-2-1972, will be governed by the 1971 Rules, which are in force on that date. That being so, we are clearly of opinion that the instant settlement is governed by the 1971 Rules. On a consideration of Rule 31(1), it is found that normally the Deputy Commissioner or the auctioning officer has to accept the highest bid. He may not accept the highest bid if there are special reasons for not accepting the same and in that case he must record the reasons in writing. In the instant case, the auctioning officer did not state in his order that he refused to accept the highest bid of the petitioner under sub-rule (1) of Rule 31. On the other hand, he resorted to sub-rule (2) of Rule 31, which has already been quoted. Under sub-rule (2) of Rule 31, a Co-operative Society formed of genuine fishermen and registered under the Assam Co-operative Societies Act, 1949, shall be given option of taking lease of a fishery at the highest bid offered by an individual provided - (a) the fishery falls within the area of operation of the Co-operative Society (b) before participating in the auction the representative of the Co-operative Society produces two resolutions of the society, one authorising the representative to bid in the auction on behalf of the Co-operative Society and the other intimating names of not more than two members of the society who will execute the agreement on behalf of the Co-operative Society in case the society is the successful bidder, (c) and that the final bid of the Co-operative Society is not less than 90% of the highest bid offered by the individual bidder. The learned Counsel for the petitioner submits that the conditions (b) and (c) of sub-rule (2) of Rule 31 have not been fulfilled by the Co-operative Society. Respondent No. 4, in the instant case and, therefore, the question of offering option to the Co-operative Society for taking the lease of the fishery, as contemplated under Rule 31(2), does not arise.

Let us first consider whether clause (c) of sub-rule (2) of Rule 31 was complied with in the instant case. Conditions (a), (b) and (c) are found to be conditions precedent for the purpose of exercising the jurisdiction offering option under sub-rule (2) of Rule 31. Moreover from the language and scheme of the Rules, clause

(c) of Rule 31(2) is found to be mandatory. It is thus found that clause (c) of Rule 31(2) is not only a condition precedent but also a mandatory condition and therefore to exercise the jurisdiction of giving option under Rule 31(2) this condition (c) must first be fulfilled.

7. The petitioner has stated in paragraph 9 of his petition as follows:

That since the petitioner''s bid was the highest, the auction sale was knocked down in his favour by the said auctioning officer. But strangely enough, despite the objection of the petitioner, the auctioning officer then invited Md. Abdul Latif bidding on behalf of the Respondent No. 4-Society (whose first and final bid was Rs. 32,000/- only) to take the lease at 90% of the said highest bid of the petitioner. Thereupon, the said Md. Abdul Latif on behalf of his Society offered Rs. 40,635/- for taking the lease of the said fishery after the sale had been knocked down in the petitioner''s favour. The said auctioning officer then accepted illegally and arbitrarily the Respondent No. 4-Society''s offer of Rs. 40,635/- as against the petitioner''s highest bid of Rs. 45,150/- and the former would not listen to all protests and remonstrance of the petitioner.

8. Two parties are vitally interested in the contest for the settlement of the fishery in question, one being the petitioner and the other being the Respondent No. 4, the Co-operative Society represented by its Secretary Md. Abdul Latif. Respondent No. 4 has entered appearance in this case and an affidavit has also been filed, which has been sworn by Md. Abdul Latif, who is the Secretary of the Ikop Laidagon Fishing Co-operative Society Limited, and in paragraph 4 of the affidavit it has been stated as follows:

4. That as regards the averments made in paragraphs 8 and 9 of the said application of the petitioner. I state that I was the Secretary of the Respondent No. 4-Society on 19-2-1972 and participated in the bidding of auction-sale of Fishery No. 160 with 161 Ikop with Laidagon held by one Shri Ibohal Singh then in-charge Chief Fishery Officer, Government of Manipur. On behalf of the Society I made the first bid of Rs. 20,000/- and the second and final bid of Rs. 32,000/- only. But I had not made any bid of Rs. 40,635/-before the petitioner made the highest bid of Rs. 45,150/-.

After knocking down the sale of the said fishery in favour of the highest bidder (the Petitioner herein), the auctioning officer asked me if I was prepared to take the settlement at 10% below the highest bid in accordance with Fishery Rules, Accordingly I expressed my desire to take the settlement at Rs. 40,635/-, which is 10% below the highest bid of Rs. 45,150/-, and offered to take the settlement so. The auctioning officer then noted this reduced amount to be my last bid against my name and recorded his order for selling the fishery to my society at Rs. 45,150/- per year with normal preference admissible under the Fishery Rules which he declared to be 10% below the highest bid.

9. As against the statements made by the petitioner in paragraph 9 of the petition, in the affidavit sworn by the Under-Secretary (Revenue), Government of

Manipur it has been stated in paragraph 4 as follows:

Referring to paras. Nos. 8 and 9 of the petition, the Auction Sale of the Fisheries-"IKOP" and "LAIDAGON" was held on 19-2-1972. It is denied that the Society did not produce any resolution of the society as required by the Rules of 1972 and condition of sale notice. It is further denied that the petitioner or any person who participated in the auction sale raised objection or protest.

In paragraph 5 of the above affidavit-in-opposition it has been stated as follows:

The petitioner, Th. Kulabidhu Singh was, however, the highest bidder, his bid amount being Rs. 45,150/- per year. The Co-operative Society made a bid of Rupees 40,635/- which is 90% of the highest bid of the petitioner. The auctioning Officer sold the fishery at Rs. 45.150/- per year to the society by giving preference under the rules. The society lodged necessary security deposit on the spot.

In paragraph 11 of the Government affidavit it has been stated as follows:

Referring to para. No. 16 of the petition, it is denied that after the acceptance of the bid the petitioner''s offer was made by the Respondent Society. It is also denied that the confirmation is contradictory to the provisions of Fishery Rules or that the same was marginal one. It is also denied that the Respondent No. 4 never offered.

In paragraph 12 it has been stated as follows:

Referred to para. No. 17 of the petition, none of the grounds or contentions is tenable. It is denied that there was misconstruction on the Fishery Rules or supersession of the acceptance of the bid.

It is denied that there was a got up offer of the Respondent No. 4 or that non-acceptance of the bid of the petitioner is illegal or arbitrary. It is denied that Auctioning Officer cannot ask the representative of the society whether he would take a lease at 90% of the highest bid of the individual. It is submitted that the sale, acceptance and confirmation were made according to the fishery rule and as such the contention that the settlement of the Fishery ought to have been made to the petitioner is not sustainable in law.

* * *

10. The statements made in paragraphs 4, 5 and 11 of the Government affidavit have been sworn as based on relevant official records.

11. The point that arises for consideration is whether at the highest bid offered by the petitioner the sale was knocked down and at what stage the bid of Rs. 40,635/- was offered by the Respondent No. 4. From the statements made in the petition, sworn as true to knowledge, and also from the statements made in the affidavit-in-opposition filed on behalf of the Respondent No. 4, it appears clearly that the sale was knocked down at the highest bid of Rs. 45,150/- offered by the

petitioner and thereafter the Auctioning Officer asked the Respondent No. 4''s representative to raise the bid to 90% of the highest bid. The Respondent No. 4 is still holding the fishery and is in possession. Its Secretary Md. Abdul Tatif, who was the Secretary at the time of auction sale and who was present and took part in the auction sale on behalf of the Respondent No. 4, in his affidavit has clearly stated that the highest bid of the petitioner was accepted and the sale was knocked down and thereafter he was asked to raise the bid to 90% of the highest bid. Rule 31 specifically lays down that a Co-operative Society of the description given in Rule 31(2) shall be given option of taking lease of a fishery at the highest bid offered by an individual provided the final bid of the Co-operative Society is not less than 90% of the highest bid offered by the individual bidder. From the scheme of the Rules for sale of the fishery, we find that first the auction will be held and the intending bidders including the Co-operative Societies through their representatives will be allowed to bid and the highest offer will be determined by the Deputy Commissioner or the Auctioning Officer. In other words, the Deputy Commissioner or the Auctioning Officer shall declare the highest bid after recording all the bids and when no further higher bid is coming forth, and normally he will settle the fishery with the highest bidder unless there are special reasons for not doing so and in such a case he must record the reasons in writing. Under sub-rule (2) of Rule 31 a duty is cast upon the Deputy Commissioner or the Auctioning Officer that if in the bid list it is found that any Co-operative Society formed of genuine fishermen end registered under the Assam Co-operative Societies Act, as extended to Manipur, has offered a bid not less than 90% of the highest bid offered, the Deputy Commissioner or the Auctioning Officer shall give that Co-operative Society an option of taking lease of the fishery at fee highest bid offered by an individual. So, this option shall be given by the Deputy Commissioner or the Auctioning Officer if after determining the highest bid he finds feat any Co-operative Society''s offer is within 90% of the highest bid of the individual. After the highest bid of an individual is declared and it is found that the Co-operative Society''s bid is below 90% of the highest bid of the individual, the Deputy Commissioner or the Auctioning Officer cannot thereafter ask the Co-operative Society to raise the bid within the limit of 90% of the highest bid offered by an individual because that may open a flood-gate of nepotism and favouritism. The rule clearly lays down that first the highest bid should be determined and then if any bid of the Cooperative Society is found to be within 90 per cent, of the highest bid offered by an individual, then the Co-operative Society shall be given option of taking lease of the fishery at the highest bid. That shows that first the intention of the bidders including the Co-operative Societies will have to be determined at what amount they are genuinely agreeable to accept the fishery. If the procedure, as laid down by sub-rule (2) of Rule 31, is not followed strictly, there may be loss of Government revenue in some way or the other. We are clearly of opinion that clause (c) of sub-rule (2) of Rule 31 is mandatory and the Deputy Commissioner or the Auctioning Officer cannot by-pass that provision in giving option to a Co-operative Society. That being so, the confirming authority, that is the State

Government also will have to abide by Rule 31(2)(c) in confirming the settlement. Statutory rules are made to be obeyed in public interest and not to be violated or by-passed against public Interest.

12. The learned Advocate-General strenuously submits that the record shows that an offer of Rs. 40,635/- was made by fee Co-operative Society through Md. Abdul Latif its Secretary. We have examined the records in original. From the records it cannot be ascertained at what point of time the offer of Rs. 40,635/- was made by Abdul Latif on behalf of the Co-operative Society. On fee other hand, the affidavit sworn by Abdul Latif clearly states that he made this offer of Rs. 40,635/- on being asked by fee Auctioning Officer after the bid of Rs. 45,150/- offered by fee petitioner was accepted as the highest bid and this is the statement of fee petitioner also as stated in his petition on oath. The Government affidavit has been sworn as true to records. But in view of the affidavits sworn by the petitioner and Md. Abdul Latif, Secretary of the Respondent No. 4 society, with which the settlement of the fishery has been made, the presumption of correctness of official record to support the fact that the society''s bid was offered prior to the acceptance of the petitioner''s bid as the highest, as submitted by the learned Advocate General, cannot be availed of. In the circumstances we find that the Auctioning Officer as well as the confirming authority acted clearly in violation of Rule 31(2)(c) of the Rules and, therefore, the settlement in question is found to have been made without jurisdiction as the Government fisheries shall be sold by public auction according to the procedure laid down in these Rules.

13. In view of our above finding we are not required to go into other submissions made by the learned Counsel for the petitioner.

14. The learned Advocate-General also submits that there is provision for appeal under the Rules from an order passed by the learned Deputy Commissioner and the petitioner having not availed of that remedy, is not entitled to any relief under this writ petition.

15. It is, however, found that there is provision for filing an application for setting aside the sale before the Deputy Commissioner and if the Deputy Commissioner rejects that application then he will make a reference to the Government for confirmation of the sale and in the instant case the petitioner applied to the Deputy Commissioner for setting aside the sale and that application was rejected by the Deputy Commissioner and ultimately the sale was confirmed by the Government. That being the position, a further appeal to the Government in the same matter could not be an efficacious remedy and moreover, the order of the Deputy Commissioner as confirmed by the State Government has been challenged in the instant case as being without jurisdiction inasmuch as it is in violation of the statutory rules for sale of the fisheries. In the circumstances we hold that the learned Advocate General''s objection that since the alternative remedy has not been availed of the petitioner is not entitled to any relief under this writ petition has no substance.

16. In the result the petition is allowed and the impugned order of settlement made in favour of Respondent No. 4 is quashed. The appropriate authority will make settlement of the fishery afresh in accordance with law and the Rules. We make no order as to costs.

D.M. Sen, J.

17. I agree.

