

(2002) 03 GAU CK 0049
In the Gauhati High Court
Case No : Writ Petition (C) No. 4269 of 2001

Tribeni Matshy Ajibi Samabai Samittee Ltd.	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Citation : (2002) 2 GLT 180

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya, A.K. Goswami and A. Talukdar, for the Appellant; Govt. Advocate, K.N. Choudhury, D.K. Das and A. Baruah, for the Respondent

Final Decision : Allowed

Judgement

P.G. Agarwal, J.—Heard Mr. A.K. Bhattacharyya, learned Counsel for the Petitioner, and Mr. K.N. Choudhury, learned Counsel for the Respondent No. 3 and also Mr. A.C. Buragohain, learned Govt. Advocate.

2. The matter relates to settlement of No. 5 Sonai Nadi, Part-III Fishery in the District of Morigaon.

3. The facts in brief leading to the filing of the present petition are that No. 5 Sonai Nadi, Part-III Fishery in the district of Morigaon, for short, the fishery, is a 60 percent fishery and the said fishery was settled with the Petitioner for a period of five years from 1.4.2001 to 31.3.2006 vide order dated 31.3.2001. However, in view of the directions given by this Court in W.P.(C) No. 2292/2001, preferred by the Respondent No. 3 the said settlement was kept in abeyance and the matter was heard again. Thereafter vide order dated 10.4.2001 the said fishery was again settled with the Petitioner society. It may be mentioned here that the Respondent No. 3 was the sitting lessee in respect of the said fishery for long 14 years and their prayer for resettlement was rejected on certain grounds mentioned in the order. However, the Assistant Registrar of Co-operative Society

was directed to make an enquiry regarding the allegations levelled against the Respondent No. 3 society. Subsequently a report was submitted by the Deputy Registrar, Co-operative Society, Nagaon and basing on the said report Vide impugned order dated 14.6.2001, the settlement in favour of the Petitioner society was cancelled and the fishery was settled with the Respondent No. 3. Hence the present writ petition.

4. It is submitted by the learned Counsel for the Petitioner that the report of the Deputy Registrar of Co-operative Society was challenged by the Respondent No. 3 in W.P.(C) No. 2850/2001; but on perusal of the impugned order dated 14.6.2001 the said writ petition was withdrawn as an unlisted item.

5. Mr. A.K. Bhattacharyya, learned Counsel has challenged the impugned order mainly on the ground that it has been passed behind his back without affording any opportunity of hearing and thereby the valuable right of the Petitioner has been taken away without following the principles of natural justice.

6. On perusal of the impugned order it is seen that the order of settlement in favour of the Petitioner was cancelled on the basis of the report submitted by the Deputy Registrar of Co-operative Society and the report from the Managing Director Assam Fisheries Development Corporation. It has also been stated that the Petitioner society failed to hold the annual general meeting after 30.5.1997 and even in the co-operative year 2001-02. The question whether the AGM of the Petitioner society since 1997 were held or not, was known to the authority on 10.4.2001 when the order of settlement was passed. The assertion regarding non-holding of AGM during 2001-02 shows that there was non-application of mind on the part of the authority as the AGM was required to be convened on or before May, 2002 only.

7. Mr. Choudhury learned Counsel for the Respondent on the other hand submits that the case of the Respondent No. 3 was not considered on non-existing ground and as such the present settlement in favour of the Respondent No. 3 can not be found fault with. Even if the arguments are accepted, it can at best, be said that the Respondent No. 3 was also eligible for settlement and there were no impediments. However, an existing settlement cannot be cancelled on the basis of such subsequent reports.

8. Learned Government Advocate has produced the records and submits that no notice was issued to the Petitioner Society to show cause and the Petitioner society was never heard before cancellation of the settlement Vide the impugned order. Mr. K.N. Choudhury submits that the Petitioner society is not legal existing society consisting of 100 percent actual fishermen and as such the evidence on record clearly shows that the Petitioner society was not eligible for settlement. Hence, issuing of notice to comply with the requirement of principles of natural justice can be termed as "useless formality". Learned Counsel has placed reliance on a decision of the Apex Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, wherein the Apex Court observed:

The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also Views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some Ors. have said that there is no such absolute rule and prejudice must be shown. Yet, some Ors. have applied vice versa rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

9. In the circumstances of the case, we find that after receipt of the report from the Deputy Registrar, Co-operative Society, the valuable right of the Petitioner society was taken away by the authority concerned. It seems that the concerned authority proceeded with a view that what has been stated by the Deputy Registrar as truth and nothing but the truth and the Petitioner's society was not issued any notice to rebutt the claim or the findings of the Deputy Registrar. The statement as reflected in the impugned order shows that while cancelling the settlement, the concerned authority took cognizance of certain action or activities of the Petitioner Society for the period from 1994-95 to 1995-96 without mentioning whatsoever that those facts were not known to it at the time of settlement and prior to the passing of the impugned order. Hence, it can not be said that the impugned order has not caused any prejudice to the Petitioner Society by affording any opportunity of hearing. As such the impugned order is liable to be set aside, which we hereby do.

10. In the result, the writ petition is allowed and the impugned order dated 14.6.2001 is set aside.

11. As agreed upon by the learned Counsel for both sides, the Petitioner as well as the Respondent No. 3 may file their representation before the concerned authority within 15.3.2002 and thereafter the Respondent authority shall examine the matter and pass appropriate orders on or before 30.3.2002.

12. Mr. Choudhury learned Counsel submits that Respondent No. 3 is at present operating the fishery and he may be allowed to do so during the above period. The above claim is disputed by the learned Counsel for the Petitioner. We leave it to the State Government to manage the fishery during the intervening period as they deem fit and proper.