
(1998) 04 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 5459 of 1997

Unemployed Youth Firm

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Fisheries Rules, 1953 — Rule 12

Citation : (1998) 2 GLT 74

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : B.K. Bhattacharjee and C.B. Gogoi, for the Appellant; H.N. Sarma, Addl. Sr. Govt. Advocate, A. Hazarika, for Respondent No. 2, S. Sarma, A.N. Choudhury, R. Islam and S.J. Sarma, for the Respondent

Judgement

M. Sharma, J.—In this petition under Article 226 of the Constitution of India Petitioner has challenged the settlement of Teliadonga Krishnasiga Kur Fishery, Sibsagar sought to be made in favour of the Respondent No. 3, who is an individual.

2. Briefly stated the case of the Petitioner is that members of the Petitioner-society are educate unemployed youths formed an Association in the nature of a cooperative Society under the name of "Unemployed Youth Firm". This firm is a registered firm being registered No. 2248 of 1989-90. In the year 1994 Petitioner-firm applied for settlement of Teliadonga and Krishnasiga Kur Fishery and the said fishery was settled with the Petitioner by order dated 8.10.94 for a period of three years from 1.10.94 to 30.9.97 at an annual revenue of Rs. 97,900/-. The admitted position is that the term of settlement was already expired, and thereafter, the Petitioner applied for extension/settlement of the said fishery with diem. The first application for such settlement/extension was made on 8.9.97 before the Respondent No. 2 with a copy to the Minister of Fisheries, Assam routed through the Minister of Transport, Assam, who hails from the local Constituency. This application was forwarded to the Respondent No. 2

by die Minister (Fisheries) vide note dated 9.9.97, however, the Petitioner stated that the original application submitted before the authority has been misplaced and only the copy of the forwarding note has been annexed with the application as Annexure-C. Petitioner again submitted another application on 16.9.97 before the Respondent No. 2 with a prayer for consideration of their case as the livelihood of its members are involved.

3. Respondent No. 2 in a meeting held on 18.9.97 decided to settle the fish in question with the Respondent No. 3, for a period of five years. The allegation of the Petitioner is that the Petitioner's application for settlement/extension has not been considered by the Respondent No. 2. Petitioner further alleged that while the fishery in question was settled with the Respondent No. 3 no tender process for settlement was taken place, therefore, the Respondent-Corporation violated the procedure for settlement of the fishery in question. Petitioner again made application before the Respondent No. 2 on 4.10.97, however, nothing has been done to give settlement in favour of them. Hence this petition.

4. Respondents 2 and 3 have filed affidavit-in-opposition and the Petitioner filed affidavit-in-reply to these affidavits.

5. In the affidavit-in-opposition the Respondent No. 3 stated that none of the members of the Petitioner-society belongs to fisherman community and denied that the said society had been registered for doing fishery business.

6. This Court while issuing notice of motion on 21.11.97 passed an interim order directing the Respondent No. 2 not to settle the fishery in question to any one.

7. The admitted position is that the fishery in question was settled with the writ Petitioner w.e.f. 1.10.94 to 30.9.97 and thereafter the Respondent No. 2-Corporation by resolution dated 18.9.97 decided to settle the fishery in favour of Respondent No. 3. This decision has been challenged by this writ petition: After coming to know about the proposed settlement. the Petitioner-society submitted a quotation slightly higher rate than the rate quoted by the Respondent No. 3 along with the written recommendation of the Minister (Transport) and being aggrieved by this, the Respondent No. 3 approached this Court by filing writ petition (Civil Rule No. 5180/97) and this Court after hearing the counsel for the parties disposed of the said writ petition with a direction to the Respondents not to take cognizance of the letter written by the Respondent No. 3, Minister of Transport, Assam, and also not to interfere with the decision of the Board of Directors passed on 18.9.97.

8. I heard the learned Counsel for the parties at length. Respondent No. 3 also filed an application for modification/alteration of the interim order dated 21.11.97 passed by this Court on the grounds that the Petitioner society was the sitting lessee in respect of the fishery in question for a period of three years w.e.f. 1.10.94 to 30.9.97 at an annual revenue of Rs. 97,900/- and thereafter the said fishery was settled with the Respondent No. 3 for one year up to 31.3.98, however, no formal order was issued to him. Thereafter the Respondent

No. 2 by notice dated 8.10.97 imposed a complete ban on fishing in the said fishery. It has been further stated that by order dated 28.10.97 the matter of settlement of the fishery in question has been sought to be reviewed and being aggrieved the Respondent No. 3 filed a writ petition (Civil Rule No. 5180/97) and this Court by order dated 12.1.98 disposed of the said Civil Rule as stated above.

9. Petitioner has stated that their firm was formed for the purpose of earning livelihood for its members on a cooperative basis, so that a joint efforts would be initiated for mutual benefit of all members. I have perused the Registration Certificate (Annexure-A to the writ petition) of the firm. The name of the firm is written as "Unemployed Youth Firm (Govt., order supply/Contract/Carriage etc.)". Name of the partners are as follows:

1. Sri Jayanta Kr. Borah, 2. Sri Bhodreswar Kalita, 3. Sri Ripu Kumar Das, 4. Sri Amal Neog, 5. Sri Bipul Das, 6. Sri Hema Kanta Das.

10. From the above it is seen that the Petitioner-firm is not a Fishery Co-operative Society formed with 100% actual fisherman of the Scheduled Caste Community of Assam, so as to attract the provisions of Rule 12 of the Rules for Settlement of Fisheries.

11. In view of the above, the next point comes for consideration is that whether the Respondent-2 Corporation has the power or authority to settle the fishery in question under the proviso to Rule 12 of the Fishery Rules.

12. This position of law was decided by a Division Bench of this Court in Review Application No. 30/97 decided on 9.5.97 (arising out of W.A. 373/96). This writ appeal was heard by the Division Bench after remand of SLP (C) No. 6599/97. Moreover, this Court in a catena of decisions interpreted the provisions of Rule 12 of the Fishery Rules. Taking into consideration all these judicial pronouncements the Division Bench in the Review Application came to the finding that under Rule 12 of the Fishery Rules, the Corporation has no jurisdiction/authority to give direct settlement. The Petitioner, in the instant case, alleged that the Respondent No. 2-Corporation without following due process of law for settlement of fisheries by a resolution decided to settle the fishery in question with the Respondent No. 3, who is an individual. At the same time, it is also pertinent to note that the Petitioner firm is not a cooperative society to get direct settlement under the proviso to Rule 12 of the Fishery Rules. As stated above, the main object of the Corporation is to undertake development of Fisheries in the State to ensure increased production of fish. The proviso to Rule 12 makes it clear that the Government may directly settle a fishery with any registered Fishery Cooperative Society subject to fulfillment of the requirements as provided therein and this power of direct settlement has been solely vested with the State Government. It is seen that the settlement of the fishery in question was made with the Respondent No. 3, who is an individual up to the period 31.3.98 and not for five years as alleged by the writ Petitioner. The fishery in question could not be settled with anybody due to the ban as well as the stay order passed by this

Court. Moreover, the settlement sought to be made with the Respondent-3, who is an individual, has already been expired on 31.3.98.

13. In view of the above discussion, I remand the entire matter to the Respondent-Government to take necessary steps to settle the fishery in question strictly in accordance with the provisions of Rules. The authorities shall bear in mind the various judicial pronouncements while making the settlement and the law made therein.

14. With the above direction the petition is finally disposed of. In the facts and circumstances of the case, the parties shall bear their own costs.