

(2003) 07 GAU CK 0024

In the Gauhati High Court

Case No : Writ Petition (C) No's. 3745, 4244, 4579, 4812 and 4649 of 2003 and Misc Case No. 314, 442 and 443 of 2003

Zakir Hussain and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Assam Panchayat Act, 1994 — Section 109(6)

Citation : (2004) 1 GLR 31

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : M.A. Sheikh, A. Begum, M. Rahman, H.N. Sarma, A. Rashid, B.K. Sarma, D. Baruah, E. Sharma, N. Borah, A.M. Majumdar, H.N. Sarma, B. Rahman and T. Das, for the Appellant; G.A. Assam, H.N. Sarma, A. Rashia, A.K. Phookan, A.G. Assam, R.P. Kakati and A.K. Dutta, for the Respondent

Judgement

D. Biswas, J.—By this common judgment and order, W.P. (C) No. 4244/2003, W.P. (C) No. 4579/2003, W.P. (C) 3745/2003, W.P. (C) 4812/2003 and W.P. (C) 4649/2003 along with Misc. Case Nos. 442/2003, 314/2003 and 443/2003 are being disposed of.

2. The dispute in all these cases relates to the issue of tender notice for settlement of markets in the rural areas.

3. I have heard Mr. B.K. Sarma, learned senior counsel ; Mr. H.N. Sarma, learned senior counsel; Mr. M.A. Sheikh and Mr. T Das, learned counsel for the petitioners. I have also heard Mr. A.K. Phookan, learned Advocate General Assam.

4. The question to be answered in these cases is whether the Anchalik Panchayats are the authority for settlement of hats (markets) within the territorial jurisdiction of the Anchalik Panchayat irrespective of the annual value of the market.

5. The above question has cropped up in view of the provisions of Section 109

(6) or the Assam Panchayat Act, 1994 which provide for settlement of hats, ferries and fisheries falling under any Anchalik Panchayat within the jurisdiction of a Zilla Parishad by the Zilla Parishad.

6. The Assam Panchayat Act, 1994, hereinafter referred to as the "Act", provide for three-tier Panchayat system - the Gaon Panchayat, the Anchalik Panchayat and the Zilla Parishad. Chapter IV provides for the establishment and constitution of the Gaon Panchayat and Chapter V provides for the establishment and constitution of the Gaon Anchalik Panchayat, while Chapter VI provides for the establishment and constitution of the Zilla Parishad. Section 19 of the Act provides for the functions of the Gaon Panchayat which amongst others includes the powers of development of fisheries in villages. Nowhere in Chapter V, any provision has been made delegating the powers of settlement, of hats, ferries and fisheries situated within its jurisdiction except Section 107.

7. Section 49 in Chapter V of the Act specifies the functions and duties of the Anchalik Panchayat which amongst other functions includes powers for development of fisheries. The Chapter V does not delegate the powers of settlement of fishers and markets.

8. Chapter VI of the Act provides for establishment and constitution of the Zilla Parishad. Sections 89 and 90 in Chapter VI deal with the general powers of the Zilla Parishad. The provisions in Section 90 vest with the Zilla Parishad the powers of development and promotion of fisheries and regulated market and marketing yards. Nowhere in Chapter VI, any provision has been made vesting powers to the Zilla Parishad to settle hats, ghats and ferries etc. It is, therefore, clear that Chapters IV, V and VI which provide for establishment and constitution of Gaon Panchayat, Anchalik Panchayat and Zilla Parishad, do not contain any provision for settlement of the hats, ghats and fisheries. The powers of such settlement have been incorporated in Chapter VII of the Act. It is, therefore, necessary to refer to the provision of Chapter VII. The relevant provisions are quoted below :

"105. Settlement of Hats by Anchalik Panchayat. - (1) All Hats within the territorial jurisdiction of Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat financial year by inviting tenders at the office of the Anchalik Panchayat by its President.

(2) ...

(3) The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee referred to in Section 52 (1)(a).

(4) All settlement made under Sub-section (3) shall be subject to the confirmation of the Zilla Parishad :

Provided that in case of any dispute, the Anchalik Panchayat may refer such case to the Government and the aggrieved party may appear to Government whose decision in this regard shall be final.

106. Settlement of Public Ferries and distribution of sale proceeds thereof. - (1) All Public Ferries, other than Government ferries within the territorial jurisdiction of the Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat financial year by inviting tenders at the office of the Anchalik Panchayat by its President.

(2) ...

(3) The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee u/s 52(1)(a).

(4) All settlement made under Sub-section (3) shall be subject to the confirmation of the Zilla Parishad :

Provided that in case of any dispute the Anchalik Panchayat may refer such cases to the Government and the aggrieved party may appeal to Government whose decision in this regard shall be final:

Provided further that as and when deemed necessary, the Government may intervene in the matter of a particular settlement and its decision in this regard shall be final:

Provided further that the State Government may issue order to Anchalik Panchayat for the settlement of a public ferry falling within the jurisdiction of more than one Anchalik Panchayat or Zilla Parishad.

109. Settlement of Fisheries and distribution of proceed, thereof. - (1) Save as otherwise provided in this Act or Rules framed thereunder, all fisheries of an Anchalik Panchayat shall be settled by the Anchalik Panchayat in the manner prescribed for a period coinciding with or not exceeding one Panchayat financial year by inviting tender at the office of the Anchalik Panchayat by its President.

(2) ...

(4) All settlements made under Sub-section (3) shall be subject to the confirmation of the Zilla Parishad:

Provided that in case of any dispute, the Anchalik Panchayat may refer such cases to the Government and the aggrieved party may appeal before Government whose decision in this regard shall be final:

Provided further that as and when deemed necessary, the Government may intervene in the matter of a particular settlement and its decision on this regard shall be final.

(5) All sale proceeds, of public fisheries shall be deposited in the Anchalik Panchayat Fund and shall be distributed in the manner hereinafter provided -

(a) twenty per cent of the total sale proceeds of Anchalik Panchayat fisheries shall be made over the Zilla Parishad fund ;

(b) forty per cent of the total sale proceeds of the Anchalik Panchayat fisheries shall be retained with the Anchalik Panchayat Fund;

(c) forty per cent of the total sale proceeds of Anchalik Panchayat fisheries shall be distributed equally among the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayat.

(6) The Hats, Ferries and Fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad the yearly sale value of which is more than rupees one lakh shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as under Sections 105, 106 and 109 in the manner prescribed. The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee as u/s 81(i)(a). The distribution of sale proceeds shall be in the manner as prescribed in the foregoing sections."

9. Section 105 clearly provides that all hats within the territorial jurisdiction of Anchalik Panchayat shall be settled by inviting tenders by the Anchalik Panchayat. Section 106(1) provides for settlement of all public ferries other than Government ferries within the jurisdiction of Anchalik Panchayat by the Anchalik Panchayat by inviting tenders. Section 107 provides for settlement of private hats, ghats and fisheries by the Gaon Panchayat and Section 109(1) provides for settlement of fisheries by the Anchalik Panchayat.

10. Sub-section (6) of Section 109 appears to be an exception to the general powers vested with the Anchalik Panchayat by the Sections 105, 106 and 109. The language employed in Sub-section (6) of Section 109 clearly provides that the hats, ferries and fisheries, the value of which is more than Rs. one lakh shall be settled by the Zilla Parishad for a period not exceeding one Panchayat Financial year. The powers of examination and final acceptance of such tenders shall be with the General Standing Committee of the Zilla Parishad as provided in Section 81(a) of the Act. It is also provided that the distribution of sale proceeds shall be in the manner as prescribed in the foregoing sections. Sub-section (5) of Section 109 provides that all the sale proceeds of public fisheries shall be deposited in the Anchalik Panchayat Fund for distribution in the manner provided therein. As per scheme of the Act, 20 per cent of the total sale proceeds is to be transferred to the Zilla Parishad, 40 per cent is to be retained by the Anchalik Panchayat and 40 per cent is to be distributed equally amongst the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayat. This is so far the public ferries, are concerned.

11. A careful scrutiny of the above provisions clearly indicate that the Anchalik Panchayat has the absolute powers in respect of settlement of hats, public ferries and fisheries as provided in Sections 105, 106 and 109. Sub-section (6) of Section 109 is an exception to the above Sections which scuttles the powers of Anchalik Panchayat and restrict it to the settlement of hats, ferries and fisheries having the annual sale value of Rs. one lakh and less. The final orders of

settlement in respect of hats, ferries and fisheries will have to be made by the Anchalik Panchayat. Nowhere in Chapter VII, the Zilla Parishad has been vested with the powers of issuing settlement order in respect of such hats, ferries and fisheries.

The Act vests powers of initiating the process of settlement by inviting tenders with the Anchalik Panchayat only. It is primarily the duty of the Anchalik Panchayat to issue notice inviting tenders, and to forward the tender papers with its recommendation to the Zilla Parishad for confirmation as provided under Sub-section (4) of Section 105, Sub-section (4) of Section 106 and Sub-section (4) of Section 109 of the Act. If the value of the hats, ferries and fisheries is Rs. one lakh or less, the Zilla Parishad shall confine its exercise in according the confirmation only. The final order of settlement in respect of such hats, ferries and fisheries will be issued by the Anchalik Panchayat. In respect of hats, ferries and fisheries the value of which is more than Rs. one lakh, the Zilla Parishad after receipt of the tender papers from the Anchalik Panchayat shall get the same examined by the General Standing Committee and, thereafter, issue the final order of settlement. The only power under the scheme of the Act available to the Zilla Parishad is that the final order of settlement shall be issued by it after examination and scrutiny as provided in Sub-section (6) of Section 109 only in respect of hats, ferries and fisheries valued above Rs. one lakh.

12. Consequent upon above interpretation, W.P. (C) No. 4649/2003 is allowed and the NIT dated 9.6.2003 (Annexure-4) is hereby set aside. W.P. (C) 4579/2003 is dismissed. W.P. (C) No. 4812/2003 is allowed and the NIT dated 9.5.2003 (Annexure-B) is hereby set aside. W.P. (C) No. 3745/2003 is allowed and the NIT dated 10.4.2003 (Annexure-C) is hereby set aside. W.P. (C) No. 4244/2003 is dismissed.

13. Consequently Misc. Case Nos. 314/2003, 443/2003 and 442/2003 are also disposed of.

No costs.