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Court : Guwahati

Decided On : Jan-12-1995

Judge : M. Sharma, J.

Acts : Assam settlement of Fisheries Rules, 1953 - Rule 13

Appeal No. : Civil Rule No. 4904 of 1994

Appellant : Kachuya Matsyajibi Samabai Samity

Respondent : State of Assam and ors.

Advocate for Def. : A.R. Barthakur, A.K. Thakur, G.K. Bhattacharjee and B. Chkravorty, Advs.

Advocate for Pet/Ap. : A.M. Mazumdar and A. Hai, Advs.

Disposition : Petition dismissed

Judgement :

M. Sharma, J.

1. This Civil Rule has been preferred against the show cause notice dated 18-8-1994 issued to the writ petitioner by the Managing Director, Assam Fishery Development Corporation for cancelling the settlement of petitioner's fishery, namely, Rata Beel Min Mahal offered to the petitioner.

2. The petitioner is the Chairman of the M/s. Kachuya Matsyajibi Samabai Samity which was registered in the year 1969 consisting 171 actual 'Maimal' fishermen families. For settlement of the said fishery tender was called for from the intending tenderers by the respondent No. 1 Corporation and in pursuance to it the petitioner along with two other tenderers filed tenders. Petitioner was selected being found a Co-operative Society duly formed with 100% actual fishermen by profession, comprising 171 families who belongs to Scheduled Caste 'Maimal' community, in compliance of policy of the Government and the Rules, for the period from 1994 to 1999 at the rate of 1,70,000/- and possession was given on 31-3-1994.

3. The stand of the petitioner is that the fishery in question falls in the 60% fishery category (Annexure-F to the writ petition) for which Co-operative societies are entitled to be settled. Thereafter petitioner deposited first kist/dues till March, 1995. Petitioner, as claimed, invested a huge amount of money amounting to Rupees. 1,20,000/- towards the development of the fishery and incurred huge expenditures. But on 18-8-1994 the impugned show cause notice was issued on the petitioner's Society by the respondent No. 2 which the petitioner received on 6-9-1994, directing the petitioner to reply the show cause notice within a period of seven days failing which settlement made in his favour shall be cancelled. On 6-9-1994 written reply had been submitted and on enquiry the petitioner came to know that one Kalipada Das, respondent No. 4, had filed complaint against the petitioner for settlement of the petitioner and that on the basis of the said complaint the impugned show cause notice had been issued, though there is no allegation is that there is no much provision under the Fishery Rules; that the fishery in question belonged to. 60% category which is at S1 No. 12 of the sale notice dated 29-4-1983 (Annexure-F) which and this position and status of 60% category of the fishery is stilt in continuation which means that such 60% category fishery required to be settled with co-operative Societies constituted by 100% fishermen community only and same status regarding the fishery in question is still continuing. Admittedly both the parties were heard giving sufficient opportunity and the settlement was cancelled re-settling it in favour of the respondent No. 4.

4. Mr. A.R. Barthakur and Mr. Bhat-tacharjee, learned counsel on behalf of respondent Nos. 1 and 4, the caveator, strenuously took the stand that the

settlement made in favour of the petitioner was ab initio illegal and therefore the said settlement cannot stand on the face of record and that a careful examination of the record shall speak of volume of the illegal procedure adopted by the then Managing Director Mr. I Ali, who was on extension for three months after his retirement and the settlement in question was made during the extended period of his service that the fishery was settled unilaterally behind the back of the Board of Directors of the Corporation who is the ultimate authority to decide the settlement of fishery.

5. From the allegations and counter allegations the point for decision is whether the Fishery Rule provides for any show cause for cancellation or for review of the settlement order and that whether in absence of any such provision the concerned authority is estopped to set aside/review the settlement once given.

6. Admittedly after the settlement the respondent No. 4 filed objection to the Corporation challenging the settlement of the fishery in favour of the petitioner on some extraneous ground to his prejudice. The case of the respondent Corporation is that the then Managing Director Mr. I Ali was retired after his three month's extension after his superannuation and the present successor had to dispose of the appeal which he had done after proper appreciation of materials on record and the anomalies and irregularities were found on the face of the record and to give a proper opportunity to the petitioner the show cause notice was issued following the principle of natural justice and following the principle of administrative fairness and equity, though the respondent Corporation had the jurisdiction to set aside such illegal settlement; that as the earlier settlement in favour of the petitioner was found irregular and illegal the Corporation has jurisdiction, for administrative fairness and justice, to review and decide the settlement under the procedure.

7. From the above reason, in my view, though there is no provision for show cause or review, authority can recall the order of settlement when the aggrieved party, who was the highest bidder, objected the settlement on the ground of prejudice and arbitrariness. For the same reasons the respondent No. 1 cannot be estopped from taking action.

8. Respondent No. 4's tender was rejected on the ground of default and also that he has his business and had dealership in public distribution system. But as Mr. Mazumdar, learned counsel for the petitioner submitted the question of default has not been taken into consideration as discussed in impugned order. The condition in the tender notice in item No. 4 provides for submitting Bakijai clearnce certificate. From the other conditions of the tender notice it appears that there is no such provision for submission of Bank certificate for non default. The certificate alleged to be issued by the State Bank of India, Karimganj Branch, Bhanga Bazar has shown to be issued on 22-3-1994. The signatue of the issuing officer is not found in the certificate and only the photocopy of the letter is annexed with the application of the petitioner-Chairman. There is no explanation on what connection or at whose instance this Bank letter was issued. As it appears the Bank loan was taken in 1983 and Rs. 6,787.60/- is alleged to be outstanding and it is also surprising on what context the Bank had issued the letter or why Bank had come forward to issue the letter to the Managing Director of the Corporation to issue this certificate of its own. Did the Bank used to issue such certificate on its own initiatives The claim for entitlement of the petitioner's society for the settlement of the said fishery as 60% category fishery is also found disputable on the ground that, after the taking over of the fishery along with some other fisheries by the Fisheries Development Corporation this fishery has been categorised under 40% category fishery. Rule 13(a) of the Rules for the Settlement of Fisheries, 1953 is quoted below :---

'13(a) With the prior approval of the State Government not more than 60 per cent of Fisheries in a Sub Division available for settlement in a year shall be selected for sale under tender system only with the Co-operative Fishery Societies formed with 100 per cent shareholders from members of actual fishermen belonging to the Scheduled Caste of the State and/or Maimal Community of the District of Cachar and registered under the Assam Co-operative Societies' Act, 1949. Settlement of all such fisheries tenders of which have been accepted under Rule 5 shall be with the highest tender.'

9. The policy of the Government that 60% category fisheries are to be settled with the Co-operative Society is still continuing. An-nexure-I to the petition on which the

petitioner claims his fishery under 60% category has been revised. Record shows that (p. 31 of record) the fishery in question was under 60% category in 1983. But after creation of the Corporation this fishery along with some other fisheries have been handed over to the petitioner Corporation and declared as 40% category to make it open for all for settlement under the Rule 13(a). Evidently the Annexure B of the writ petition was relevant in 1983 and subsequently as stated above it was converted to 40% status fishery and, therefore it was made open to all. Tender notice also indicates that the fishery for settlement was 'open to all'.

10. Another submission of Mr. Mazumdar that the respondent No. 4 was found disqualified for settlement on the ground that he is a PDS dealership holder and a businessman. But the requirements of the tender notice have not put any such restrictions as being the 40% fishery (sic) have been made open to all, irrespectively.

11. The record shows that the respondent No. 4 was the highest bidder, whose bid amount was Rs. 1,70,000/-, the second bidder Mahibur Rahman offered Rs. 1,46,605/- and the petitioner's bid amount was Rupees 1,23,600/- which was the lowest. Respondent No. 4, as discussed above, was refused the settlement on the ground of default. Apparently in its meeting on 24-3-1994, as seen in the order of the then Managing Director dated 23-9-1994, the Board of Directors selected the highest bidder, i.e., respondent No. 4. On the basis of the letter from the State bank of India, Karimganj Branch, Bhanga-bazar, the then Managing Director who was on extension of service for three months after his retirement, took up the said disputed letter alleged to be issued by the bank and as discussed above he was found defaulter of an amount of Rs. 6,787/- which was taken as loan in 1983 and the Managing Director came to the unilateral conclusion that the financial condition of the highest bidder was not sound and there is risk involved in realisation of revenue if he be allowed to operate the beel. Apparently this decision was taken by the then Managing Director unilaterally and the settlement was cancelled accordingly behind the back of the Board of Directors who is the final body in settlement of the Corporation's fisheries. As the then Managing Director stated in his order that this fact of default came to light after the Board meeting was over; but there is no reason shown what prevented him to put the matter to the Board

subsequently when under the procedure of the Corporation, Managing Director has no authority to set aside the decision of the Board of Directors and substitute it by his own decision, whatever may be the ground for different decision. Even there was no attempt to call upon the proposed settlement holder to show cause, as a stigma was cast on him accusing him of swearing false affidavit stating that he had not taken any loan from any Bank. The relevant year for default amount was shown in 1983, and as stated above there was neither the signature of the issuing officer, nor any stamp of the Bank to support the authenticity of the document. The note made in the said Bank letter that -- 'We have to advise that Kalipada Das, S/o Ramlal Das had taken loan from our Bank in the year 1983 and the loan amount outstanding with us Rs. 6787/ 60. Therefore, we would 'request' you not to transact any business with him and help us if possible in realising the amount'. The photocopy of the letter can raise doubt in the mind of any reasonable man which was procured by Md. Abdur Rahman, Chairman of the petitioner society, alleged to be issued on 22-3-1994. It is to be noted that the alleged Bank letter was issued on 22-3-1994 but petitioner wrote a letter to the then Managing Director on 25-3-1994 and Board's meeting was held on 24-3-1994 and the affidavit regarding clearance of Bank loan etc. was filed along with the tender papers prior to that date. The petitioner got sufficient time to produce the Bank letter before the meeting of the Board of Directors. No chance was given to the respondent No. 4 the selected settlement holder to explain his case; as serious allegation was brought against him imputing the charge of 'hoodwinking the authority with false affidavit' and 'untrustworthy' and 'involved in crime'. The alleged Bank letter is not authenticated by signature of the Branch Manager and therefore the Bank letter can be held as fabricated one and procured for ulterior purpose. Mr. Bartha-kur, learned counsel for the respondents submits that Rules and procedure followed by the Corporation is that the Managing Director has no authority to raise the bid amount of the lowest bidder without the approval of the Board of Directors and cannot unilaterally settle the fishery as the Board is the ultimate authority for settlement.

12. The impugned order 8-12-1994 by which the petitioner's settlement was cancelled and settlement order made in the meeting of the Board of Directors in its meeting on 23-4-94 has been restored in view of my above discussions. Perusing

the impunged order I find that the present Managing Director discussed the emire points raised by both the parties. The allegations that the question of default of respondent No. 4 has not been considered by the present Managing Director is not sustainable on the ground that as discussed above, the alleged Bank letter, as examined from record, is not genuine and found manufactured as this was not a letter/certificate by Bank authority and the note clearly indicates that it was a procured document without any authenticity from the Bank record. Therefore, upon judicial scrutiny this Bank letter cannot be taken into consideration.

13. In view of the above discussion I find no materials to interfere with the impunged order and I am constrained to hold that the respondent Corporation was right in cancelling the settlement of the fishery which was settled with the petitioner on extraneous reasons not based on records.

14. In the result the petition is dismissed. Petitioner is directed to pay Rs. 500/- (five hundred) as to costs to the respondent No. 4.

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