

Gauhati High Court

No. 35 Pakaria Min Samabai Samity ... vs State Of Assam And Ors. on 18 July, 1996

Equivalent citations: AIR 1997 Gau 125

Author: D Chowdhury

Bench: D Chowdhury

ORDER D.N. Chowdhury, J.

1. This is an application for judicial review in respect of an order of settlement No. 35 Pakaria Min Mahal of Morigaon by the respondent No. 1, the Government of Assam with consultation with respondent No. 4, the Assam Fisheries Development Corporation Ltd. The respondent No. 4 rearranged 25 Nos. of beels located in different parts of the State. Accordingly Takarta beels, Dibrugarh is replaced by Pakaria Beels Morigaon along with 24 other Beels and Government of Assam notified the matter with a memo No. Fish-70/91/146 dated 27-11-1995 and in pursuance of the said notification the Deputy Commissioner, Morigaon informed the Circle Officer Morigaon vide Memo No. MR, F-24/91/ 140 dated 3-1-1996 about transfer of three fisheries in Morigaon Revenue Circle, four fisheries in Mayang Revenue Circle and one fishery in Laharighat Bhuragaon Circle to the Assam Fishery Development Corporation including the transfer of No. 35 Pakaria Min Mahal of Morigaon Revenue Circle to the respondent No. 4 . The Circle Officer was accordingly directed to hand over the Fishery, to the Officer-in-Charge, Assam Fishery Development Corporation. However by a W.T. Message dated 6-1-1996 the Deputy Commissioner, Morigaon was directed to stay the handing over the possession of the Beel Fisheries of Morigaon District transferred to Assam Fishery Development Corporation. By the said W.T. Message it was also directed to intimate the Govt. in detail as to whether the Beel Fisheries of Morigaon District so transferred to Assam Fishery Development Corporation (herein after referred as AFDC) are river fisheries or beels fisheries. By the said W.T. Message, Managing Director A.F.D.C. Ltd. was also requested to make a quick survey on the beels fisheries transferred to A.F.D.C. and intimate if in the process the river fisheries so transferred to A.F.D.C. vide letter No. FISH. 70/91/146 dated 27-11-1995 FISH. 174/95/4 dated 22-11-1995 however the said stay order in question was withdrawn vide the W.T. Message dated 23-2-1996. Pursuant to the application dated 28-11-1995 and 2-1-1996 received from the petitioner's Society during the interregnum informed its decision to the petitioner's Society that the terms of the Settlement of the Fisheries transferred to the Corporation has come to an end and the application of the Petitioner's Society was considered favourably and he was selected for the management of the society for the remaining period of the year up to 31 -3-1996 on payment of revenue of Rs. 27,5407-. If the offer is acceptable by the petitioner then he was directed to deposit 10% of the total revenue as Kist by Bank Draft within the specified time along with certificates and also advised to make an agreement, with the Corporation: In terms of the said decision of the Respondent No. 4 the petitioner's Society accepted the Settlement and deposited Rs. 16,525 on 3-1-1996. Petitioner was however not given the possession of the Fishery. The State Govt. thereafter by its order No. FISH. 57/86/pt/75 dated 8-3-1996 settled settlement the Fishery in question with respondent No. 5 M/s. Kusumpur Pakaria Min Samabai Samity Ltd. at an annual revenue of Rs. 1,10,154/- (Rupees one lakh ten thousand one hundred fifty four) only for a period of five years with effect from 12-3-1996 to 11-3-2001 subject to the observance of usual terms and conditions laid down in the rules for settlement of fisheries as per Annexure 6 of the Writ Petition.

The aforesaid order of settlement is the subject matter of this Writ Petition.

2. The main grievance of the petitioner in this Writ Petition is that though the petitioner's Society consists of 100% actual Fishermen of the neighbourhood of the Fishery and fulfils all the conditions of settlement the petitioner's Society was denied with a fair consideration of its case on merit and therefore the impugned order of settlement is unfair unjust, arbitrary and discriminatory. The writ petitioner also asserted that the respondent Society is not in the neighbourhood of the Fishery and in fact disentitled itself from the settlement in view of the Sub-letting of a part of the Fishery and the said aspect was overlooked by the Settling authority. Respondent Nos. 1, 2 and 3 which caused greater failure of justice. Petitioner alleges that the impugned order of settlement suffers both from vice of malice in fact and malice in law and therefore impugned order of settlement is liable to be set aside.

3. The respondent No. 5 with whom the settlement is made submitted a caveat and also made an application before the Court for vacating the stay order passed by this Court on 15-3-1996 and the said Mis. Case No. 391/96 and the said application contains detail statement of facts and the same is treated as affidavit-in-opposition on behalf of the said respondent.

4. Mr. A.K. Phukan, learned counsel, appearing on behalf of the petitioner mainly submits that the proviso 12 of the Assam Fishery. Rules is conditioned, it has not conferred power to settle the Fishery at the whim and caprice of the executive. Proviso to Rule 12 has a definite meaning submits Mr. Phukan. A Full Bench, decision of the Court in Arabinda Das v. State of Assam reported in AIR 1981, Guwahati 18 already culled down the requisite elements of settlements contends Mr. Phukan. In the absence of fulfillment of five conditions set out in the aforesaid decision the State Govt. is not authorised to exercise power. The proviso to Rule 12 is introduced by the Rule making authority to provide a positive assistance to the actual Fishermen living in the neighbourhood of the Fishery. The relevant consideration is the neighbourhood of the fishery concerned. The settling authority overlooking that salient aspect of the matter took into consideration irrelevant consideration by emphasising on the area operation, submits Mr. Phukan. Mr. Phukan, further submits that the petitioner's Society was denied from justice and fair play in action which in its train affected the livelihood of the Fisherman community represented by the petitioner's Society.

5. Mr. N. Dutta, learned counsel, appearing on behalf of the respondent, submits that the settling authority at all relevant time acted intravires and in consonance to the fair play in action and when the executive lawfully settled the matter the question of judicial review in this case is not called for. The authority while considering the respective cases took into consideration all the relevant considerations. Mr. Dutta argued that though the area operation is very liberally used, from the context, according to Mr. Dutta the word 'area of operation' in fact, is used as a synonym to "neighbourhood". Mr. Dutta also submitted that while considering all the aspect of the matter, the Authority found the respondent in equal footing with that of the petitioner and two other Societies and out of them the authority had good reasons not to settle the same with the petitioner and as such any impugned order of settlement cannot be said to be arbitrary or discriminatory.

6. I have perused the impugned order of the the authority dated 8-3-1996. Seven Societies including that of petitioner's Society and respondent No. 5 put their respective claim for the settlement of 35 Pakaria Min Mahal. The authority called for reports form the Deputy Commissioner concerned and the Deputy Commissioner, the Chief Revenue Officer of the District submitted its report in respect of six Fisheries. From the order it appears that the settling authority did not receive any report from No. 4. M/s. Mayang Matchyajibi Samabay Samittec Ltd. on or before passing the order of settlement. Out of six Societies M/s. Tetcliguri Matchyajibi S.S. Ltd. is found to be a defaulter by the authority and M/s. Bechamari Gaon Matchyajibi Min S.S. Ltd. was found by the authority not within the "area of operation" of the concerned Fishery. After excluding three fisheries, the authority is now left with the fourth fisheries including that of the petitioner and the respondent No. 5. The settling authority also considered the allegation put forward against the petitioner Society alleging the sub-lease of the Fishery to some unknown-person. On indepth study the authority rejected the complaint as not bona fide. The authority also refused to take into consideration the alleged photostat copy of the receipt as unreliable. The settling also took into consideration the initial enquiry wherein the persons alleged to have issued the receipt denied the existence of such receipt and accordingly the authority did not give any credence on the complaint. The reasons given by the settling authority in rejecting the allegations cannot be said to be arbitrary, capricious and perverse.

After consideration of the respective cases, the settling authority in its wisdom has selected the respondent No. 5 as most suitable among the remaining four. While selecting the respondent No. 4 the settling authority took into consideration good track record of the respondent No. 5 authority observed as follows :

".... So far M/s. Kusumpur Pakoria Min S.S. Ltd. is concerned they are in the position of Managing the fishery in the past and it is expected that in future they would prove the same and run the fishery as desired by the Govt. Recently, this Fishery has been transferred to A.F.D.C. for development purpose. It is expected that the Society would extend better service under extant principles of having it under AFDC for its development purpose. This is a chance to be afforded to the erstwhile sitting lessee as they are not disqualified under any provisions which has been reflected from the learned Commissioner's report....."

".....Other 3 Societies may have ingredients Under Rule 12 of the Fishery Rule but Govt. is to decide one among equals. The Govt. do not find any reason as to why the Government cannot go on settling the said fishery with the erstwhile sitting lessee who have paid the Govt. revenue regularly even during the most dry season of the last previous years. The opportunity has been considered to be given to the erstwhile sitting lessee M/s. Kusumpur Pakoria Min S. S. Ltd. and Govt. direct the A.F.D.C. to go with the programme of development without disturbing the very network development of this society in the entire fishery whose big establishment and Society will go a long way to keep the fishery development under the present system initiate at the instance of the A.F.D.C.

The settling authority fairly considered the case of the 7 contenders and thereafter limited its choice on four contenders. It is for the authority to choose either one out of four and the discretion to choose either of them is left with settling authority. It is for the settling authority to make its choice and accept one while rejecting the others. The settling authority does possess the elbow room and

play within the joint. The reasons assigned by the settling authority in picking out the Respondent No. 6 cannot be said to be so absurd that "so wrong that no reasonable person could sensibly take that view.

Article 226 of the Constitution has provided a mechanism to the High Courts in India by conferring the power of judicial Review to over see that the authority acts lawfully in accordance with legislative will. The Writ Court is concerned with the legality of exercise of power to see that the actions of the authority are taken lawfully, within the legal limits of the power, statutory provisions are lawfully construed; the discretion conferred on the authority is exercised properly and the decision making authority have acted justly, fairly and reasonably. Writ Court is concerned with the legitimacy with the process of the decision making measure that the authority acted within the parameter of its power. But the judicial review is not to ensure "that the authority after according fair treatment reaches on a matter which is authorised or enjoin by law to decide for itself a conclusion which is correct in the eye of law" --. Recalled Lord Chancellor Hailsham in the *Chief Constable of North Wales Police v. Evans*, (1982) 2 All ER 141. Judicial Review is distinguished from appeal and like an appeal Court, the Writ Court cannot re-appraise the facts. The administrative authority as alluded earlier is authorised to exercise its full discretion within its legal limit, and accept one of the courses available to it. In *Secretary of Education and Science v. Tameside Metropolitan Borough Council*, (1972) AC 1014 (1064) Lord Diplock observed -- "the very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold different opinion as to which is to be preferred. "The Rule making authority authorised only the settling authority the power to prefer the suitable person as its lessee. The settling authority was called upon in the instant case to exercise its discretion and sort out one from the four parties who were left in the field of choice by applying its objective test, the authority is to make up its mind and choose one from the range of the choices. From the equals, the settling authority found that the Respondent No. 5 as the most suitable party, taking into account the track record of the Petitioner. The said decision in this regard cannot be said to be extravagant.

Mr. A.K. Phukan, learned counsel for the Petitioner in his usual persuasive manner sought to impress upon me that the settling authority while exercising its discretion fell into serious error in not taking into consideration the most relevant consideration, viz., the assessment of suitability on the basis of the neighbourhood test. The test of "area of operation" is unknown and irrelevant and therefore the decision making process is vitiated by self misdirection hence absurd capricious submits Mr. Phukan. Not only there are obvious difference in the language of the wordings but conceptually there are perceptible distinction in the words "neighbourhood" and the "area of operation" asserts Mr. Phukan, Mr. Phukan, learned counsel for the Petitioner has brought my attention to a Division Bench of this Court in *Babul Das v. State of Assam* reported in (1989) 1 GLR 263 and submitted that "so called confusion" is now totally removed by the said decision and therefore, there cannot be any valid reasons on the part of the settling authority to intermingle in this direction. There cannot be any two opinions that the relevant consideration in the matter of settlement under the provision to Rule 12 is the "neighbourhood of the Fishery" and not the "area of operation".

On perusal of the materials on record and on examination of the decision making process it is apparent that in the instant case the settling authority used the word "area of operation" liberally as a synonym to the word neighbourhood of the fishery. The settling authority found that all the four fisheries which were taken up for consideration fulfilled the test of neighbourhood and found all the four societies in equal footing. The respective report of the Deputy Commissioner also led me to the same conclusion. No injustice is committed to any of the parties.

On consideration of all aspects of the matter, I do not find any infirmity in the impugned order requiring interference from this Court and in the result the Writ Petition is dismissed.

There shall be no order as to costs.