

(2004) 02 GAU CK 0020

Gauhati High Court

Case No: Writ Petition (C) No. 4558 of 2000

Keshkuri Pathar Meen Samabai
Samittee Limited and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Feb. 19, 2004

Acts Referred:

- Fisheries Rules, 1953 - Rule 12

Citation: (2005) 1 GLR 193 : (2004) 3 GLT 24

Hon'ble Judges: Ranjan Gogoi, J

Bench: Single Bench

Advocate: S.K. Katakai and A.J. Das, for the Appellant; P. Roy and U. Bhuyan, for the Respondent

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.

A question that had confronted the Courts earlier with regard to the relevant requirements for making a direct settlement under the proviso to Rule 12 of the Assam Fisheries Rules, has once again surfaced in the present case.

2. Both the writ petition and the respondent No. 4 were aspirants for direct settlement of the No. 31/33/41-Garli Turkijan Fishery. In response to the applications for direct settlement filed by the parties, the comments of the district authority were obtained by the State Government in whom the power to grant such settlement has been vested by the Rules. The comments/information sought for and furnished is in a prescribed format, which has been placed before the Court on behalf of the parties.

3. The queries under Sl. No. 4(a) and 4(b) and the response of the Deputy Commissioner to the said queries in the prescribed format in the case of the writ petition as well as the respondent No. 4 may be usefully extracted hereinbelow:

QUERY:

4.(a) Whether the fishery applied for the society is within the area of operation of all the members of the Society?

(b) If so, specifically indicate whether the members of the society reside in the neighbourhood of the fishery concerned. Please state the names of the villages covered by the society?

REPLIES :

PETITIONER

4.(a) Within the area of operation of the Society.

(b) Name of the Villages of the area of operation of the society are-

1. Keshkuri Pathar Gaon,
2. Nankaparakuchi Gaon,
3. Neularbitha.

Most of the members of the society reside nearest to the Fishery applied for."

RESPONDENT No. 4

"4 (a) Not within area of operation of the society. But the nearest society of the Fishery.

(b) Names of Villages covered by the area of operation of the Society.

- (1) Era Kacharipara Gaon
- (2) Eratarigaon
- (3) Eragaon."

4. After receiving the reports from the Deputy Commissioner, the settling authority by an order dated 9th August, 2000 thought it proper to settle the fishery in question in favour of the respondent No. 4 for a period of 5 years commencing from 23.7.2000. Aggrieved, the instant writ petition has been filed by the writ petitioner.

5. Mr. S. Kataki, learned counsel for the petitioner by placing reliance on a Full Bench judgment of this Court, in the case of [Arabinda Das and etc. Vs. State of Assam and Others](#), has contended that the crucial test as laid down by the Full Bench for determination of the eligibility of a Fishery Co-operative Society to obtain direct settlement, inter alia, is that the members of the cooperative society must actually reside in the neighbourhood of the fishery. Reference has also been made to a subsequent judgment of this Court in the case of Mangaldoi Pioneer Fishery Co-Op Society Ltd. Etc. v. State of Assam and Ors, reported in (1996) 3 GLT 547. Relying on the aforesaid judgment as well as another Division Bench Judgment of this Court in

the case of *Shri Babulal Das v. State of Assam and Ors.*, reported in 1989) 1 GLR 263, the argument advanced is that the crucial test of eligibility is not the closeness of the Society to the Fishery but it is the closeness of the residence of the members of the society to the fishery in question. Learned counsel has argued that as the power of direct settlement has been justified on the plank of the need to protect and uplift the status of the under-privileged and backward classes constituting a Fishery Co-operative Society, the requirement of residence of the members of Society in the neighbourhood of the Fishery, alone would ensure that the benefits of direct settlement would really flow to the members of such society. This, it is argued, is the rationale behind the several judgments of this Court referred to hereinabove. Arguing further, Mr. Kataki has submitted that a perusal of the impugned order dated 19.8.2000 discloses an attempt on the part of the authority to evade the real issue required to be considered prior to grant of settlement and, therefore, this Court should interfere with the impugned order and hold the petitioner society to be more eligible than the respondent No. 4 for grant of direct settlement.

6. The arguments advanced on behalf of the petitioner have been sought to be resisted by Mr. U. Bhuyan, learned counsel for the respondent No. 4 by contending that what has been found in the reports of the Deputy Commissioner is that the Respondent Co-operative Society is closest to the fishery in question and the said finding recorded by the Deputy Commissioner in his report would be determinative of the requirement of the co-operative society being in the neighbourhood of the fishery. The crucial test, according to Mr. Bhuyan is not whether the members reside in the neighbourhood of the fishery but whether the Society itself is situated in such neighbourhood. Arguing further, Mr. Bhuyan has contended that a perusal of the impugned order dated 19.8.2000 and the reports submitted by the learned Deputy Commissioner would indicate that both the petitioner and the respondent society would be more or less at par in so far as the requirement of location is concerned and the discretion vested in the settling authority to select one out of the two having been exercised by relying on certain relevant circumstances as mentioned in the impugned order, no interference of this Court would be called for.

7. The rival submissions advanced on behalf of the parties have been duly considered. In view of the several pronouncements of this Court, reference to which have been made in the earlier part of the judgment, there is no escape from the conclusion that it is the proximity of the residence of the members of a Society to the fishery, which is the crucial test of eligibility. A perusal of the reports of the Deputy Commissioner would go to show that the fishery in question has been found to be within the area of operation of the petitioner society and most of its members have also been found to be living close to the fishery. In the case of respondent No. 4, the finding recorded in the report submitted is that the fishery does not fall within the area of operation of the respondent society but the respondent society is closest to the fishery. What is the meaning of respondent society being closed to the fishery is something which cannot be easily deciphered but an attempt to understand what

the Deputy Commissioner is trying to convey would indicate that in so far as the respondent society is concerned, it is the office/seat of the respondent society, which is closest to the fishery in question. The report of the Deputy Commissioner does not clearly reflect any positive stand with regard to the closeness or proximity of the residence of the members of the respondent society to the fishery in question. In such a situation two courses of action were open to the settling authority. The first was to defer the settlement and to obtain a more concrete report from the Deputy Commissioner on the above aspect of the case. Alternatively, it was open to the authority concerned to grant settlement of the fishery in question in favour of the petitioner. Neither of the above courses of action were adopted by the settling authority and instead settlement has been granted to the respondent society. Such a settlement in favour of the respondent society in the face of the materials on record to the effect that most of the members of the petitioner society reside close to the fishery does not appear to be correct. The essential criteria of residence, on the materials available on record, were in favour of the petitioner society; yet it was overlooked and settlement was granted to the respondent No. 4. In such a situation and having regard to what has been recorded above, I am of the view that the settlement made by order dated 19.8.2000 is legally infirm and would call for interference of this Court. The said settlement is, therefore, set aside. As any operative finding by this Court with regard to the residence of the members of the respondent society and the proximity of such residence to the fishery would not be justified in the absence of requisite materials to the above effect, this Court considers it appropriate to refrain from recording any such finding and instead considers it expedient to leave the aforesaid matter for fresh determination by the settling authority. Such determination will be made by the settling authority within a period of 30 days from the date of receipt of a certified copy of this order. Further consequential action with regard to the settlement of the fishery for the remaining period of its term will follow thereafter.

8. Writ petition stands allowed to the extent indicated above.