

(2003) 02 GAU CK 0019

Gauhati High Court

Case No: Writ Appeal No. 61 of 2001

Jarban Das

APPELLANT

Vs

Bothagathia Dipling Meen
Samabai Samity Ltd. and OthersRESPONDENT

Date of Decision: Feb. 27, 2003**Acts Referred:**

- Fisheries Act, 1897 - Section 6

Citation: AIR 2004 Guw 30**Hon'ble Judges:** P.P. Naolekar, C.J; Ranjan Gogoi, J**Bench:** Division Bench**Advocate:** N. Saiki and A. Bora, for the Appellant; A. Hazarika, Addl. Sr G.A., G.N. Sahewalla and A.K. Goswami, for the Respondent

Judgement

Naolekar, C.J.

In pursuance of the tender notice Issued for settlement of No. 7 Bothabeel Fishery the tender submitted by the appellant was not accepted and he was not given the fishery right and it Was given to the second highest bidder viz. Sri Ganga Fishermen Co-operative Society. Thereafter, the settlement right given to the said Ganga Fishery Co-oparative Society was cancelled and the fishery right was settled with the appellant. This settlement was cancelled which gave rise to appellant approaching this Court and then before the Division Bench in Appeal No. 290/98. In appeal, settlement between the parties arrived at and the Division Bench directed the appellant to enjoy the fishery rights up to 31-3-99. On 5-3-99 the appellant filed application before the Managing Director of Assam Fisheries Development Corporation Ltd. (for short "the Corporation") praying for extension of the period of fishery lease right for the next five years. The Corporation has not decided the application filed by the appellant for extension of the period but has invited fresh tenders. The appellant filed appeal before the Government praying for extension of the settlement. On 6-4-99 the Government stayed the tender process and directed

the Corporation for extension of the lease of the fishery in question for another five years in favour of the appellant. In pursuance of the order issued by the Government the Corporation took up the matter for consideration of the application filed by the appellant for extension of the period of leased. On 13-7-99 the settlement period has been extended for another five years in favour of the appellant. Aggrieved by the said order the private respondent filed a writ petition (WP(C) No. 3489/99) before this Court challenging the order of extension issued in favour of the appellant and giving a go-by to the tender process initiated by the Corporation.

2. The learned Single Judge has found that the order issued by the Corporation extending the period of lease was only on the basis of the letter issued by the Minister concerned directing extension of the period for five years in favour of the appellant. The learned Single Judge was of the view that it is for the Corporation to decide and adjudicate upon whether the extension is to be granted or a normal procedure has to be adopted for giving settlement of the fishery right by inviting tenders and the Corporation is not to act upon the advice or directions given by the Government. Consequently the order of extension issued in favour of the appellant dated 13-7-99 was quashed with a direction to the Corporation to consider the matter afresh in accordance with the Rules and Regulations. Aggrieved by the said order the present appeal is filed.

3. Learned counsel for the appellant submits that the appellant having not been given possession of the fishery in question has sustained loss by not operating the fishery and taking into consideration those factors, the extension granted in favour of the appellant was just, fair and proper. Whereas, it is the submission of the learned counsel for the Private Respondent that the appellant was entitled to be in possession of the fishery for four months twenty days as per the order of the High Court, arrived at, with the consent of the parties in W.A. No. 290/98 as also of the original order of settlement. But because of the Court's Interim stay in proceeding the appellant remained in possession and enjoyed the fishery right from 1999, and therefore, loss if any sustained by appellant as alleged, has been sufficiently mitigated by allowing the appellant to continue in possession of the fishery in question.

4. We find that the extension of the period of fishery right was given to the appellant on 13-7-99 by the Corporation, solely on the basis of directions Issued by the Government, which in our opinion, could not have been done. The Corporation being an Independent body has to decide its right to give settlement of the fishery as per the Rules and Guidelines framed by the Corporation and not on the basis of the directions issued by the Government or any Minister in the Government. Normally the procedure which has to be adopted for grant of fishery right, is by Inviting tenders. The right of settlement of fisheries has been given to the Corporation with a view to enrich the financial condition of the Corporation and for

better management of these fisheries. In our view, it could only be achieved if the fisheries are settled by following the open tender process as per the Rules. Guidelines and Regulations. Until and unless there is compelling necessity this method has to be adopted. In the present case, we do not find any compelling reason to adopt another method than inviting tenders to give the fishery right of No. 7 Bothabeel Fishery. Accordingly, we uphold the order of the learned single Judge, with a direction to the Corporation to proceed with the tender process for settlement of the fishery in question as per the Rules. Guidelines and Regulations in force.

5. With the above directions the appeal shall stand disposed of. However, in the facts and circumstances of the case there shall be no order as to costs.