

(1981) 02 GAU CK 0007

Gauhati High Court (Imphal Bench)

Case No: Civil Rules No's. 156 and 595 of 1980

Ikop Laidakol Fishing
Co-operative Society Ltd.

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: Feb. 27, 1981

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 115
- Manipur Fisheries Rules, 1972 - Rule 35
- Manipur Fishery Rules, 1972 - Rule 14

Citation: AIR 1982 Guw 14

Hon'ble Judges: K.N. Saikia, J

Bench: Single Bench

Advocate: R.K. Nokulsana Singh, for the Appellant; R.K. Manisana Singh, General (for Nos. 1 to 3) and Th. Ibobi Singh, (for Nos. 4 and 5), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.N. Saikia, J.

In this Writ Application, the Ikop Laidakol Fishing Co-operative Society Ltd., (hereinafter referred to as the "petitioner-Society") impugns the order No. 14/2/77-Fy (Pt-1) dated 29-10-80 issued by the Commissioner (Fishery), Government of Manipur, cancelling the Government's previous order dated 31-10-1980, under which extension of lease term of the Ikop Fishery No. 160/ 161 in favour of Shri Maibam Konungjao Singh, Chairman of the petitioner-society for a period of one year from 1-4-80 to 31-3-81 was given; and also the order in Memo No. 14/3/77-FY (pt-1) (2) dated 29-10-80, issued by the Commissioner (Fishery) Government of Manipur, according sanction to the acceptance of the highest bid of Rs. 1,56,000/-

(Rupees one lakh fifty-six thousand) per annum being lease amount of Ikop Fishery No. 160/161, (hereinafter referred to as the "fishery") in favour of two individual highest joint bidders Shri Th. Badul Singh, respondent no. 4 and Shri Ksh. Shamu Singh, respondent No. 5, for the remaining period from 1-11-80 to 31-3-81.

2. The petitioner-society is a registered Co-operative Society with limited liability under the Assam Co-operative Societies Act, formed with the sole object of fishing and dealing in fish. The fishery was put to auction in 1977 for a period of three years from 1-4-1977 to 31-3-1980 whereat the petitioner-society offered Rs. 1,50,000/- per annum while the respondents 4 and 5 as individuals jointly offered Rs. 1,56,000/- per annum. Though, the individual bid was higher, yet, applying Rule 31 (2) (c) of the Manipur Fishery Rules (hereinafter referred to as the "Rules"), being not less than 90 per cent of the highest bid of the individual bidder, the fishery was settled, with the petitioner-society at Rupees 1,50,000/- per annum and the lease agreement was duly executed and revenue paid. It appears that the respondents 4 and 5 submitted representations against that settlement, but the Commissioner-cum-Secretary, Government of Manipur, finally informed them that the settlement with the petitioner-society for the period of three years from 1-4-77 to 31-3-80 would hold good.

3. The petitioner-society applied to the Government of Manipur, for extension of the lease for a period of one year on account of losses incurred due to drought in 1978-79. The Government was pleased to approve the extension of the lease for one year from 1-4-80 to 31-3-81 and it was conveyed by the Commissioner of Fishery in letter No. 14/3/77-Fy (Pt) dated 31-3-80. The petitioner-society, pursuant to the extension, executed a lease agreement and deposited the entire amount of Rupees 1,50,000/-.

4. The respondent No. 2 by Order No. 14/3/77-FY (Pt-1) dated 29-10-80, purported to cancel his previous order of extension dated 31-3-80 on the ground that the lessee "could not fulfil the condition given in the Government order referred to above. At the same time, the settlement of the amount is less than the highest bid and since the settlement in favour of the lessee society was illegal." By another order No. 14/3/77-Fy (Pt-1) (2) dated 29-10-1980, the Governor of Manipur was pleased to accord sanction to the acceptance of the highest bid of Rs. 1,56,000/- from the respondents 4 and 5, being individual highest bidders, for the remaining period from 1-11-80 to 31-3-1981.

5. Aggrieved by the aforesaid cancellation and purported settlement, the petitioner-society wrote a letter to the Government on 30-10-1980 demanding justice but got no reply. Hence, this petition.

6. Mr. R.K. Nokulsana Singh, the learned counsel for the petitioner-society, submits, inter alia, (1) that the impugned order of cancellation of the petitioner-society's extended lease is violative of the principles of natural justice, inasmuch as, it was not

given any notice to show cause; and that the petitioner-society never violated any terms and conditions of the lease and the extension was not illegal as alleged; (2) that the order of cancellation was passed on the basis of an application made by the respondents 4 and 5, as it appears from the order itself, without giving any opportunity to the petitioner-society; and (3) that the order of settlement with the respondents 4 and 5 for one year without holding any auction as prescribed by law is illegal, without jurisdiction, violative of the Rules and void.

7. The learned Advocate-General for the State of Manipur demurs that the extension order in favour of the petitioner-society at Rs. 1,50,000/- in face of the higher bid of Rs. 1,56,000/- offered by respondents 4 and 5 was palpably erroneous and not in conformity with Rule 31 (2) (c) of the Rules, that the Government had no power under the Manipur Fishery Rules to extend a lease and the extension was consequently illegal and void: that the order of settlement for one year from 1-4-80 to 31-3-1981 in favour of the petitioner-society at Rs. 1,50,000/- was an Executive Order, for violation of which alternative remedy is available and no writ petition is maintainable; that the Government has the power to revise its executive orders as it is done in this case; and that the settlement order in favour of respondents 4 and 5 amounts to a new settlement and the Government has power to make such a settlement.

8. The precise questions to be determined, therefore are (1) whether the Government has power to extend the fishery lease under the Fishery Rules; (2) if the Government has no such power whether any extension order so issued will be illegal and void; (3) whether there will be violation of the principles of natural justice if the extension order is cancelled without notice and opportunity to the lessee; and (4) whether the Govt. has the power to make settlement for one year as was sought to be done in favour of the respondents in this case.

9. Rule 31 (2) (c) of the Rules provides as follows:

"31. Highest bid to be accepted. (1) xx

xxx	xxx	xxx	xxx
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(2) A co-operative fishing society formed of genuine fishermen and registered under the Assam Co-operative Societies Act, 1949 (Assam Act 1 of 1950) as extended to the Union Territory of Manipur shall be given option of taking lease of a fishery at the highest bid offered by an individual, subject to the following conditions;

xxx	xxx	xxx	xxx
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(c) the final bid of the co-operative society is not less than 90 per cent of the highest bid offered by the individual bidder."

The learned Advocate-General submits that the petitioner-society's bid being no less than 90 per cent of the highest bid offered by the individual bidders respondents 4 and 5, the Society should have been given option of taking lease at the highest bid offered by the individuals and the settlement at the Society's own bid was illegal. This submission, though sound, does not apply to the facts of this case. The settlement was made for the period of three years which period had already expired without the settlement being set aside. Then there arose the question of extension. "Extension" means, the action of extending or state of being extended: a stretching out or stretching forth, a carrying forward. (Webster's Third New International Dictionary). To "extend" means, to stretch, pull, or straighten out, to strain, (The Shorter Oxford English Dictionary), By nature, therefore, "extension" must be of a thing already in existence. For extension of a lease, the lease is pre-requisite. In the instant case, therefore, in case of the petitioner-society, a sitting lessee, there could be an extension of the lease. In case of respondents 4 and 5, there could be no question of extension. It would be a case of a fresh lease.

10. The learned Advocate-General refers to Rule 14 of the Rules, which provides as follows;

"14. Lessee not entitled to remission or extension of lease.-- Fishery lessees will not be entitled to remission or extension of the lease because of flood, drought, want of fish or any accident;

Provided that the Administrator may remit if the refusal to remit will cause serious hardship to the lessee."

So under this Rule, a lessee will not be entitled to remission or extension of the lease, because of the grounds stated. But. the State Government may remit if the refusal to remit would cause serious hardship to the lessee. Reference has also been made to Form II, the prescribed form, of Fishery Lease under Rule 39, which reads:

"The undersigned on behalf of the President of India authorises you. s/o resident at to fish within the limits of the fishery known as fishery No. belonging to Government for a period of from to on payment by you of an annual sum of Rs. to be paid in the following instalments, and upon the dates named below subject to the conditions following:

XXX XXX XXXX

(ii) No allegation on your part of any losses incurred by inundation drought or scarcity of fish, or other accidental occurrence shall be of any avail to excuse you from payment in full of the revenue you have engaged to pay and no extension of lease should be given on any consideration whatever and if you suffer loss from any cause you will have to bear the loss.

XXX XXX XXX XXX "

From these, the learned Advocate-General, submits that the Government has no power at extension of fishery lease under these Rules and as such the extension order was illegal and Government has the right to cancel that order. Admittedly, there is no other Rule, dealing with extension of lease. It may, however, be noted that there is no Rule putting a specific bar on the State in the matter of extension of lease. These "provisions are with reference to the lessee and not with reference to the State. The State Or the Authority granting a lease in the absence, of prohibitory Rules may be said to have implied power to extend a lease. Rule 26 of the Rules, provided as follows:

"26. Lease to be for three years. The right of fishing in registered fisheries shall ordinarily be leased for not less than three years, unless decided otherwise" by the Administrator in individual cases in exceptional circumstances."

This Rule leaves scope for the State to decide in exceptional circumstances about the period of the lease. In face of this provision, it may not be permissible to hold that the Rules do not provide for any extension of lease.

11. Once the extension granted to the petitioner-society is held not to be ultra vires, the validity of its impugned cancellation has to be tested by statutory provisions and the principles of natural justice. Admittedly, no notice was given to the petitioner-society at the time of cancellation of the extension and re-sale to respondents 4 and 5. It is not denied that the petitioner-society deposited the revenue pursuant to the extension and remained in possession of the fishery. Under such circumstances, natural justice demanded that a notice be issued to the petitioner-society so that it could explain its position. There is clear violation of this principle wherefore the impugned order of cancellation is not sustainable. The petitioner's representation Annexure A/7, was also not replied to. The petitioner has rightly relied on [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), and [Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another](#),

12. Under Rule 35 of the Rules, should the lessee relinquish his lease during its tenure or default in any payment or infringe the terms of the lease in Form No. II, the lease may be terminated by the Deputy Commissioner after giving an opportunity to the lessee concerned to explain as to why such action should not be taken and the fishery may be put to re-sale, which shall be at the risk and on account of the lessee concerned. In case of such re-sale not less than 10 days" notice of sale shall be given. Admittedly, this rule was not complied with as there was no notice of re-sale and no opportunity was given to the lessee. The petitioner-society states that it did not violate any condition of the lease. This rule empowers the Deputy Commissioner to put the fishery to re-sale at the risk and on account of the lessee concerned under circumstances prescribed therein. There being clear violation of this rule, the impugned order of re-sale to respondents Nos. 4 and 5 has to be regarded as ultra vires and void.

13. As after the Government extended the lease of the petitioner-society, the latter changed its position to its prejudice by depositing the revenue and incurring expenditure in making fishing arrangements, the former may even be bound by promissory estoppel.

14. In the result, the petition succeeds. The impugned orders are quashed. The rule is made absolute. I leave the parties to bear their own costs.