
Alian Fishermen Co-operative Society Ltd. Vs State of West Bengal

W.P. No. 24821 of 2013

Court: Calcutta High Court

Date of Decision: Aug. 22, 2013

Citation: (2014) 1 CHN 750

Hon'ble Judges: S. Banerjee, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S. Banerjee, J.

The petitioners challenge an order of August 2, 2013 passed by the Managing Director of the State Fisheries Development

Corporation Ltd (SFDCL). The order finds that in view of the conduct of the petitioners, the SFDCL is at liberty to terminate the licence for the

violation of the terms and conditions thereof. The petitioners submit that the petitioner society is set up by small and poor fishermen who had made

several representations that they would not be able to pay the security deposit as demanded. The petitioners say that they also discovered that the

area of the water-body in Patashpur, Purba Medinipur was much less than what had been advertised.

2. The petitioners apprehend that by reason of the impugned order, the SFDCL would issue a letter terminating the petitioners' licence. The

petitioners suggest that the livelihood of many poor fishermen are at stake and the families of such fishermen would be seriously prejudiced if the

termination is allowed.

3. The impugned order of August 2, 2013 was preceded by a show-cause notice. The show-cause notice of April 1, 2013 indicated four serious

violations of the conditions of the licence by the petitioner society. The violations included the failure to deposit the security money of about Rs.

1.55 lakh within six months of the execution of the agreement; the failure on the part of the petitioner society to share the revenue with the SFDCL;

the failure of the license to maintain the water-body and the area around it; and, the failure on the part of the license to develop an eco-tourism

facility in the project area.

4. It is not the petitioners' case that the petitioners were not aware of what was required of the petitioners at the time that the petitioner society

applied for the licence.

5. While it is true that the Constitution mandates that some latitude be afforded to the weaker sections of the society and the marginalized, yet it

cannot be presumed that the members of the petitioner society deserve preferential treatment and there are no other similarly-placed societies. The

petitioners appeal to Court that the lives and livelihood of the poor fishermen who are members of the petitioner society should be saved. It would

be presumptuous on the part of the Court in its misplaced sympathy to assume that the petitioners are the poorest of the fishermen or that there is

no other Co-operative society of poor fishermen which would be capable of obtaining the licence and complying with the conditions thereof.

6. Ordinarily, sympathy would have no place in the exercise of judicial discretion unless due reasons for exercise of the sympathy are indicated and

the reasons are based on constitutional principles. Judges do not have unbridled authority to fall prey to their personal predilections and

preferences in exercise of sympathy or discretion without reference to the Constitution. The arbitrariness that the Constitution commands a

constitutional Court to guard against must apply to the exercise of discretion on the personal considerations of a judge.

7. Oftentimes Courts tend to lean towards a seemingly unfavourably circumstanced person without reference to the many others who are similarly

circumstanced and may be better qualified for the benefit than the one before Court. The exercise of discretion - sympathy is too condescending a

word - in favour of a person before Court on economic or social considerations would arise in a case where all the material is before Court for the

discretion to be exercised in an educated, informed manner. But where certain conditions are set in the terms of the licence, which do not appear

to be arbitrary and are not challenged as such, the Court cannot waive the conditions on its ipse dixit.

8. In a matter of the present kind where an executive authority has taken a decision on the basis of cogent material before it, in exercise of the

power of judicial review available in this jurisdiction, the writ Court has to assess the decision-making process rather than the decision itself. The

decision may be challenged and may be interfered with only if the decision-making process is found to be flawed or if the decision appears to be

perverse to the meanest mind.

9. The facts which form the basis of the Managing Director's opinion reflected in the impugned order of August 2, 2013 appear to be admitted by

the petitioners. It is not in dispute that the petitioners had failed to put in the security deposit within time and have subsequently sought the refund

thereof; the petitioners do not question that they have not shared the revenue with the SFDCL; the petitioners do not dispute that trees have been

felled from the project area which was in the petitioners' possession; and, the petitioners only say that they do not have the means to introduce the

eco-tourism facility in the project area.

10. There does not appear to be any infirmity in the decision or the decision making process that would prompt the Court to exercise any

discretion in favour of the petitioners notwithstanding the petitioners' assertion of their poor financial and social status.

11. W.P. No. 24821 (W) of 2013 is dismissed. The only discretion that may be exercised is in the petitioners not being required to pay any costs

for this rather unmeritorious cause. Certified website copies of this order, if applied for, be urgently made available to the parties, subject to

compliance with all requisite formalities.