

GAHC010090232022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3131/2022

TRIMURTI MULTIPURPOSE FARMING CO-OPERATIVE SOCIETY LTD.
A SOCIETY REGISTERED UNDER THE CO-OPERATIVE SOCIETIES ACT,
2007, REPRESENTED BY ITS SECRETARY NAMELY GOLAP BARUAH AGED
ABOUT 66 YEARS, S/O LATE S.N. BARUAH, R/O 606 REGAL MAJESTY,
NARKASUR, KAHILIPARA, GUWAHATI-19, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF FISHERY, JANATA BHAWAN, DISPUR-05, ASSAM

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR
CHACHAL
VIP ROAD
GUWAHATI
PIN-781036
KAMRUP(M)
ASSAM

3:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR
CHACHAL
VIP ROAD
GUWAHATI
PIN-781036
KAMRUP(M)
ASSAM

4:THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
CHACHAL
VIP ROAD
GUWAHATI
PIN-781036
KAMRUP(M)
ASSA

Advocate for the Petitioner : Mr. P. Mahanta, Advocate

Advocate for the Respondents : Mr. N. Goswami, Advocate
: Mr. P. Sharma, Advocate for AFDC

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (CAV)

Date : 28-07-2023

1. The instant writ petition has been filed by the Petitioner which is a Society registered under the Assam Co-operative Societies Act, 2007 challenging the order dated 26.04.2022 passed by the Managing Director, AFDC whereby the settlement pursuant to Ghorajan Fishery was cancelled.

2. It is the case of the Petitioner herein that the Petitioner which is the Co-operative Society registered under the Assam Co-operative Societies Act, 2007 is involved in the business of farming, fishing and other agricultural related activities. All the members of the Petitioner society are surrendered militants who have given up arms and have joined the mainstream and earning their bread and butter by way of the said Co-operative Society. It is the further case of the Petitioners that initially a portion of the Ghorajan Fishery including the Office established by the AFDC, quarters etc. were encroached by the Red

Cross Society and as the Respondent AFDC has invested a huge sum of money for the development of the fishery, a decision was taken to turn the fishery into a tourist attraction, model fishery etc. by removing the encroachment as the said portion centrally falls under Guwahati. In that view of the matter, a decision was taken to bifurcate a portion of the said fishery measuring 20 Hectares and manage it by way of PPP mode. Upon the approval of the Chairperson, the Managing Director of the AFDC vide an order dated 30.08.2019 had settled the bifurcated portion of the fishery measuring 20 Hectares in favour of the Petitioner society for a period of 7 years for an annual revenue of Rs.1,50,000/- which may be extended to another 4 (four) years. Thereupon, the Petitioner Society had entered into agreement with the Respondent Corporation on 17.09.2019 for management of the bifurcated portion of the Ghorajan Fishery for a period of 7 years and the same was valid up to 31.03.2026. It has been claimed that the Petitioner society had paid the security deposits and requisite kist money and thereupon, the Respondent Corporation had handed over the possession of the said fishery to the Petitioner society.

3. The further case of the Petitioner is that the Petitioner while running the said portion of Ghorajan Fishery, all of a sudden was served a copy of the order dated 26.04.2022 passed by the Managing Director of Respondent AFDC Ltd. by which the settlement of the Fishery with the Petitioner society as well as some other fisheries with other settlement holders were cancelled and the Project Managers of the said fisheries were asked to take possession of the said fisheries. A perusal of the said order dated 26.04.2022 would show that the reason for cancellation of the settlement including the settlement made in favour of the Petitioner society was that the stated tanks/ponds/lands were

bifurcated from the original beels and these tanks were settled directly to the respective lessees. It was mentioned that while bifurcating the said tanks/ponds/lands from the original beels, no approval from the Department of Fishery, Government Assam was obtained. Further to that, in the said order, it was mentioned that the said settlements so made directly with the lessee was contrary to the law laid down by the Full Bench Judgment of this Court in the case of ***M/S 129 Haria Dablong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Development Corporation Ltd. and Others*** without inviting any tender and accordingly, the Managing Director, AFDC Ltd. cancelled/recalled the settlement orders of the listed tanks/ponds/lands including the fishery settled with the Petitioner and the Project Manager of the stated tanks/ponds/lands were ordered to take possession of all the tanks/ponds/lands. The Petitioner therefore being aggrieved has filed the instant writ Petition challenging the cancellation vide impugned order dated 26.04.2022 insofar as their settled fishery is concerned. The said writ petition was filed on 10.05.2022 and this Court vide an order dated 13.05.2022 issued notice and in the interim this Court stayed the termination of the settlement made in favour of the Petitioner.

4. On 17.07.2023, when the matter came up before this Court, Mr. P. Sarma, the learned counsel appearing on behalf of the AFDC Ltd. submitted that various lessees have challenged similar cancellation of the fisheries in various writ petitions and vide a judgment and order dated 21.09.2022 passed by the Co-ordinate Bench of this Court in the case of ***Mahmud Hussain Vs. The Assam Fisheries Development Corporation Ltd. and 5 Others*** and various other writ petitions, the said cancellations have been upheld. The learned counsel appearing on behalf of the AFDC Ltd. therefore submitted that as the matter is squarely covered by a judgment of the Co-ordinate Bench of this Court, the

instant writ petition also requires to be dismissed.

5. On the other hand, Mr. P. Mahanta, the learned counsel appearing on behalf of the Petitioner submitted that the Petitioner society herein was settled on the basis of a special scheme for rehabilitation of surrendered militants as could be seen from the order dated 30.08.2019 and as such the said judgment passed by the Co-ordinate Bench of this Court dated 21.09.2022 in the case of ***Mahmud Hussain (Supra)*** shall not apply. Under such circumstances, this Court had directed the Fishery Department of the Government of Assam to file an affidavit as to whether there is any rehabilitation package for permitting settlement of fisheries under the Government of Assam, Fishery Department or under the AFDC Ltd. without any tender process to rehabilitate the surrendered ULFA militants and accordingly fixed the matter on 21.07.2023.

6. In pursuance to the said order, the Joint Secretary to the Government of Assam, Fishery Department had filed an affidavit on 21.07.2023 wherein it had stated that there is no such rehabilitation package for permitting settlement of fisheries under the Government of Assam, Fishery Department without any tender process for rehabilitation of surrendered militants. It was further mentioned that as regards fisheries under the Assam Fishery Development Corporation Ltd., the Government in the Fishery Department is not aware if such provision exists in case of fisheries under the Corporation which is a separate entity. In the said affidavit, it was further mentioned that from the Office records, it is seen that the proposal for a component for development of Beel Fisheries in Government khas land for community based management under RKVY-RAFTAAR, 2018-19 was submitted to the Government by the Director of Fisheries, Assam, vide letter No.AF(S)114/RKVY/2019-20/13188

dated 01.01.2021. It was further mentioned that the said proposal for rehabilitation package for surrendered ULFA militants under the name and style of Trimurty Multipurpose FCS Ltd. (the Petitioner) submitted to the Government by the Director of Fisheries with recommendations of the Zila Parishad as per RKVY norms was approved by the Government in the Fishery Department and conveyed to the Director of Fisheries vide letter which was approved vide Government letter No.FISH-65/2019/161 dated 15.02.2021.

7. This Court further made a query upon the learned counsel appearing on behalf of the AFDC Ltd. as to whether there is any rehabilitation package for permitting settlement of Fisheries under the Assam Fishery Development Corporation Ltd. without any tender process for rehabilitation of surrendered militants. The learned counsel appearing on behalf of the AFDC Ltd. submitted that there is no such rehabilitation package. This Court further finds it relevant to take note of that on 17.07.2023 as well as on 21.07.2023, the learned counsel appearing on behalf of the Petitioner was asked to show as to whether there exist any rehabilitation package for permitting settlement of fisheries under the Assam Fishery Development Corporation Ltd. without any tender process for rehabilitation of surrendered militants. The learned counsel appearing on behalf of the Petitioner failed to show any such rehabilitation package.

8. In the backdrop of the above, therefore the question which arises as to whether the Managing Director of the AFDC Ltd. had the authority to make settlement of the fishery in question in favour of the Petitioner society without calling for a tender. In this regard this Court finds it relevant to refer to the Full Bench Judgment of this Court in the case of ***M/S 129 Haria Dablong Min Mahal***

Samabai Samity Ltd. Vs. Assam Fisheries Development Corporation Ltd. and Others reported in **(2001) SCC Online GAU 17**. In paragraph No.31 of the said judgment, the Full Bench answered the reference made to it which is quoted as hereinunder:

“31. In view of our foregoing discussion and decisions, we answer the question raised as follows:

- 1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rule 8(c)(ii) of the Assam Fishery Rules;*
- 2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency need not be reemphasized in view of the catena of decisions of the Apex Court on the point.*
- 3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Mainao Community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.*
- 4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out to give relief to the lessee in*

proper and suitable cases.

5) *During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3-1-1994 were produced before us and the said resolution provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too to the highest bidder."*

9. This Court finds it relevant to take note of that the Coordinate Bench of this Court in the case of ***Mahmud Hussain (Supra)*** had opined that the only manner of making settlement by Respondent Corporation of the Fisheries vested with it, is to call for tenders by strictly following the principles of fairness and transparency which are the hallmarks in the matters of distribution of State largesse. It was further held that the concept of PPP in settlement of Fisheries is alien to Rules governing the field and settlement can be given only by means of a tender process strictly in accordance with the Rules. The Co-ordinate Bench further at paragraph No. 55 has also held that the law as explained by the Full Bench in the case of ***M/S 129 Haria Dablong Min Mahal Samabai Samity Ltd. (supra)***, the Respondent Corporation through its Managing Director could not have invented a new concept of PPP and thereafter attempt to settle the Fisheries in question to the exclusion of other eligible bidders. In fact, such settlements as per the Co-ordinate Bench would be in gross violation of Article 14 of the Constitution. Paragraph Nos. 51, 52 and 55 of the said judgment in the case of ***Mahmud Hussain (supra)*** are quoted hereinunder:

"51. *The Hon'ble Full Bench has clearly laid down that so far as the Fisheries which have been vested on the AFDC are concerned, such Fisheries cannot be settled by way of direct settlement which power is only given to the Government for those Fisheries which are not vested with the AFDC. Therefore, the only manner of making settlement by the AFDC of the Fisheries vested with it, is to call for tenders by strictly*

following the principles of fairness and transparency which are the hallmarks in matters of distribution of State largesse.

52. *In the instant case, what clearly transpires from the records is that the initial settlements done by the AFDC with the petitioners were, apparently not preceded by any procedure recognised by law. The concept of PPP, in settlement of Fisheries, is alien to the Rules governing the field and settlement can be given only by means of a tender process strictly in accordance with the Rules.*

55. *The law on this field being crystal clear, as has been explained by the Full Bench in the case of M/s. Haria Dablong Min Mahal Samabai Samity Ltd. (supra), the AFDC, through its Managing Director, could not have invented a new concept of PPP and thereafter, attempt to settle the Fisheries, in question, to the exclusion of other eligible bidders. In fact, such settlements would be wholly in gross violation of Article 14 of the Constitution of India."*

10. In view of the above and taking into account the decision of the Co-ordinate Bench in the case of **Mahmud Hussain (supra)** and the failure on the part of the Petitioner to show that there is any rehabilitation policy for settlement of fisheries directly to the lessees in the case of surrendered militants, this Court therefore is of the opinion that the observations made by the Co-ordinate Bench in the case of **Mahmud Hussain (supra)** squarely applies to the facts of the instant case.

11. This Court further finds it relevant to take note of another submission made by Mr. P. Mahanta, the learned counsel appearing on behalf of the Petitioner stating that the principles of natural justice have not been followed inasmuch as the Respondent AFDC Ltd. has cancelled the fishery in favour of the Petitioner society without affording any opportunity of hearing. In that regard, the learned counsel has also referred to an order dated 11.01.2022

passed by this Court in WP(C) No.205/2022 wherein this Court had directed the Respondent Authorities to issue notice upon the Petitioner therein, thereby giving him reasonable opportunity of hearing. This Court has perused the order passed by this Court on 11.01.2022 passed in WP(C) No.205/2022. In the said order, the learned counsel appearing on behalf of the AFDC Ltd. had consented that AFDC would give Show Cause notice and under such circumstances, this Court had passed this order on 11.01.2022 that an opportunity of hearing would be given and as such the order dated 11.01.2022 passed in WP(C) No.205/2022 is totally misplaced.

12. Be that as it may, this Court further finds it relevant to take note of the judgment passed by the Co-ordinate Bench of this Court in the case of **Mahmud Hussain (supra)** wherein a similar contention was also raised. The Co-ordinate Bench dealt with the said issue at Paragraph Nos. 56, 57, 58 and 59 and held that the exception to the Rule of following the principles of natural justice would squarely apply as it would come within the exception of useless formality. Paragraph Nos. 56 to 59 being relevant are quoted herienunder:

“56. Having held that the initial orders of settlement with the petitioners are bad in law, the question, which may arise, is that whether the cancellation of such settlement would require adherence to the principles of natural justice in the form of giving notice.

*57. There is no manner of doubt that the principles of natural justice are ingrained in the administrative system where fair play is a concomitant. The said principles are also one of the essential ingredients of a robust judicial system. However, the Hon'ble Supreme Court itself has laid down certain exceptions where such adherence would be an useless formality. In the case of **Aligarh Muslim University Vs. Mansoor Ali Khan**, reported in **(2000) 7 SCC 529** the Hon'ble Supreme Court has laid down*

as follows:

“24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade’s Administrative Law (5th Edn., pp. 472-75), as follows:

“[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.”

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma. In that case, the principle of “prejudice” has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P.

25. The “useless formality” theory, it must be noted, is an exception. Apart from the class of cases of “admitted or indisputable facts leading only to one conclusion” referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord

Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

58. *In the instant case, this Court in exercise of its power under Article 226 of the Constitution of India is undoubtedly a Court of Equity where, the conduct of the parties and the antecedents play a major role in the decision making process. As held above, the initial orders of settlement are absolutely without any sanction of law as, the Rules holding the field were given a total go-by. The then Managing Director of the AFDC had mooted an alien concept of PPP in the case of settlement of fisheries. Even assuming that the object of such attempt was bona fide, that itself, would not confer legal sanctity to the process.*

59. *When the initial settlement is palpably illegal, no object would be achieved by giving any opportunity to the petitioners, as there is no scope to justify the same. As held by the Hon'ble Supreme Court in the case of Aligarh Muslim University (supra) as well as Dharampal Satyapal Ltd. (supra), the same would only be a useless formality and therefore, this Court holds that the cancellation of the settlement with the petitioners is not liable to be interfered."*

13. Taking into account the above, this Court finds no reasons to differ with the observations so made by the Co-ordinate Bench of this Court in the case of **Mahmud Hussain (supra)** and as such, this Court further is of the opinion that there arises no reason to interfere with the impugned order of cancellation of settlement dated 26.04.2022 and accordingly, the instant writ petition stands dismissed.

14. Before parting with the records, this Court further finds it relevant to take note of another submission so made to the effect that the Petitioner Society has also invested huge sums of money for the purpose of development of the fishery in question. This very aspect was also taken into consideration by the Co-ordinate Bench in paragraph No.60 of the judgment in the case of **Mahmud Hussain (supra)** which is reproduced hereinunder:

“60. The petitioners have pleaded that pursuant to the initial settlements, they had made huge investments for development of the Fisheries, in question, and for their fishing activities. The said claims being disputed and otherwise constitute questions of fact, a Writ Court cannot embark into such an arena involving disputed questions of fact and the same can be resolved only by a competent Civil Court. The parties are, accordingly at liberty to approach the competent Civil Court for such relief, if permitted by law.”

15. Taking into account the above observations, the Petitioner herein would also be at liberty to approach the Civil Court for any claims they have as regards the investment and the loss which has occurred to them on account of the fault of the AFDC, if permitted under law.

16. The instant writ petition therefore stands dismissed save and except the observations made in paragraphs 14 and 15 above. No Costs.

JUDGE

Comparing Assistant