

Baghopuri M.M. Sambai Samiti

Vs

State of Assam

Civil Appeal Nos. 4672-74 of 1998

(S. Rajendra Babu, S.N. Phukan JJ)

30.03.1999

JUDGMENT

Rajendra Babu, J.

1. These appeals are filed against an order made by the Government of Assam by which certain fishery rights were settled in favour of the appellant by an order dated April 20, 1994. The said order was challenged in writ petitions. The learned Single Judge, who heard the matter, set aside the order of the Government and remanded the matter to the Government for settlement applying the correct principles of law. Again on April 5, 1995, the appellant society applied for settlement of fishery. The Deputy Commissioner, Darrang cancelled the settlement of fishery made with the appellant society and thereafter a writ petition was presented in the high Court of Gauhati challenging the settlement of fishery in favour of the appellant. The contention put forth before the High Court was that the appellant did not fulfil the requirements of direct settlement under the proviso to Rule 12 of the Fishery Rules inasmuch as the said society was formed with the members belonging to Maimal Community who are not entitled to direct settlement. This community had been recognised and notified for Cachar District only cannot be equated with the Scheduled Castes community for the purpose of getting settlement of the fishery under the proviso to Rule 12 in other parts of the State of Assam. The learned Single Judge disposed of the writ petitions and as regards the applicability of the proviso to Rule 12 to the Maimal Community observed that the appellant society was situated in Darrang district and was formed with persons belonging to Maimal Community and the members of Maimal Community in the Cachar District are backward and therefore, they need protection and economic help. The aim of proviso to Rule 12 is to give the benefit of a fishery to a cooperative society formed with 100% actual fishermen of the fishing population belonging to Scheduled Caste or maimal Community. Backwardness and economic deprivation were the main criteria for giving the benefit and not the place of residence and though the members of the appellant belonged to the Maimal Community of Cachar District now they were permanently residing in Darrang District and they could not be deprived of getting the benefit of proviso to Rule 12. However, the directed the government to consider and to give settlement of the fishery in question, after considering the following questions :

(i) Whether the claimant-fishery cooperative society is formed with 100% actual fishermen of the fishing population belonging to Scheduled Caste or Maimal Community of Cachar District;

(ii) Whether the members of the said society live in the "neighbourhood of the fishery in question; and

(iii) Whether the said society fulfils the others and conditions necessary for giving settlement.

2. Appeals were carried against the said order. The Division Bench of the High Court which considered the matter took the view that the Maimal Community of Cachar District had been put at par with other Scheduled Caste of the State as notified by the President by public notification under Article 341 of the Constitution. The list of Scheduled Casts as notified by Presidential order can neither be added nor subtracted by any other authority except Parliament.

3. The precise question that arose for consideration was whether the Maimal Community who settled outside the district of Cachar was entitled to any preferential treatment or protection. In other words, whether the benefit under proviso to Rule 12 is restricted to geographical limit of the Cachar District or it can be availed of even out of the Cachar District. On this aspect of the matter, the Division Bench held that while there could be no inhibition for a member of SC/ST migrating but a member of Scheduled Caste or Tribe when migrates does not and cannot carry any right or privileges attributed to him or granted to him in the original State and on parity of reasoning extended the same to the Maimal Community of the Cachar District. Even if the community is treated as backward, as has been observed by the learned Single Judge, and, therefore, in need of protection and economic help the members thereof cannot claim or carry the privileges outside the Cachar District and on that basis allowed the appeals filed by the respondents and dismissed the appeal filed by the appellant and took the view that the appellant was not eligible to claim fishery rights. It is against this part of the order that these appeals have been filed.

4. In order to correctly appreciate the issue involved in this case, we may set out the relevant provisions of the Rules. Rules 8, 12 and 13 read as follows:

"Rule 8:

"(a) *Settling Authority.* The Deputy Commissioner or the Additional Deputy Commissioner in case of Sadar Division and Sub-Divisional Officer in case of other Sub-divisions shall be the authorities for settlement of all registered fisheries under tender system of sale in their respective jurisdiction.

(b) *Extension of the term of lease.* (i) Where the period of lease of registered fisheries being ordinarily not less than three years is interfered with, due to any natural cause or for any unavoidable reasons beyond the control of the lessees, Government may extend the period of such lease supposed by official reports as to the nature of cause in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss.

(ii) The State Government may also, on the recommendation of the Director of Fisheries extend the period of lease of a fishery with an intending piscicultural who should invariably be the sitting lessee and who agrees to accept such an extension at a revenue and for such other additional terms and conditions as may be specified by Government:

(iii) Provided that one of the conditions of extension of lease against piscicultural plan shall invariably be the implementation of approved scheme or schemes of development and improvement of such a fishery at the lessee's own cost within a

target period to be fixed by Government.

The order of extension of lease on the aforesaid grounds, passed by the State Government shall be final and no appeal shall lie against such orders of extension.

(c).....

(d).....

(e) *Re-sale of fisheries.* When for default kist money or for violation of any of the conditions of the fishery lease including any of the provisions of these Rules by a lessee the fishery shall be put to re-sale shall be given as in the case of the original sale with the additional proviso that the re-sale shall be at the risk of and on account of the original lessee.

Provided that the question of such re-sale shall not be applicable where State Government permits extension of time for payment of kist money."

### *Rule 12*

"Except those referred to in sub-rule No. 8(b) above, all registered fisheries shall be settled under tender system of sale in place of sale by auction.

Provided that the State Government may settle any registered fishery, otherwise than under tender system, with a fishery cooperative society frame with 100 per cent actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to Scheduled Caste of the State of maimal Community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time."

### *Rule 13*

(a) "With prior approval of the State Government not more than 60 per cent of the fisheries in a sub-division available for settlement in a year shall be selected for sale under tender system only with the Cooperative Fishery Societies formed with 100 per cent share holders form members of actual fishermen belonging to the Scheduled Caste of the State and/or maimal Community of the District of Cachar and registered under the Assam Cooperative Societies Act, 1949. Settlement of all such fisheries tenders of which have been accepted under R.5 shall be with the highest tender.

(b) The remaining fisheries in the sub-division available in that year under tender system of sale, shall remain open for settlement to all communities including Co-operative Societies as referred to in Sub-R.(a) above.

(c) Cooperative Fishery Society by members of actual fishermen belonging to the Scheduled Castes/Maimal Community/Scheduled Tribes/other Backward Classes and registered under the Assam Cooperative Societies Act, 1949, shall be given option to accept settlement of fisheries of the category as mentioned in sub-R.(b) above at the highest tender; provided that their tender is within 7-1/2 per cent of the highest tender.

(d) When the tenders for fisheries failing within the category referred to Sub-R.(b) above are below 7-1/2 per cent of the highest tender (i) Co-operative Societies as stated in sub-R.(c) above, (ii) individual members of actual fishermen belonging to the Scheduled Castes/and other Backward Classes who may offer tenders not less than 60 per cent of the highest tender, may be given option to take settlement of the fishery at the highest bid, in the order of preference stated above subject to suitability of the tenderer.

(e) When a fishery referred in sub-R.(b) above fetching a tender not exceeding Rs. 50,000 per annum is settled with any individual member from actual fishermen belonging to the Scheduled Castes, Scheduled Tribes/Maimal Community or other Backward Classes the tenderer shall be entitled to a rebate of 7-1/2 per cent as concession. But when a fishery fetching a tender not exceeding Rs. one lakh (Rupees one lakh) per annum is settled with any Cooperative Fishery Society formed by members from communities as stated above, the tenderer society shall get a rebate of ten per cent as concession:

Provided that 100 per cent rebate as aforesaid shall not be available to Cooperative Fishery Society formed with 100 per cent shareholders from actual fishermen belonging to the Scheduled Casts of the State and the Maimal Community of the District of Cachar if they accept settlement of fisheries as stated in Sub-R.(a) above;

Provided further that such shall not be admissible in case any individual or Cooperative Fishery Society of any protected community offers the highest tender.

(f) Any tenderer claiming the concession provided in this rule shall indicate the same in his tender."

5. The validity of the said rules had been challenged in the Gauhati High Court in *Arabinda Das & etc. v. State of Assam & Ors., AIR 1981 Gauhati 18*. In that case, the background in which the said Rules were framed was considered and it was noticed that the Rules can be framed in terms of the Assam Land & Revenue Regulations and the successive amendments of the Rules made from time to time indicated the anxiety of the Government to give a better deal to deserving persons, namely, the cooperative societies formed by actual fishermen by settling more and more fisheries with them, the emphasis being that the Government was more concerned with providing work to the actual fishermen to improve their lot than deriving revenue to the exchequer. After analysing the various rules it was noticed as follows :

"On a careful perusal of the proviso to Rule 12 we find that the exercise of the power under it is not arbitrary. There are prerequisites which must be satisfied before the power of direct settlement can be exercised by the State Government under the proviso. These prerequisites are that :

- (a) a settlement of a registered fishery can only be made with a fishery cooperative;
- (b) formed with hundred per cent actual fishermen of fishing population;
- (c) in the neighbourhood of the fishery concerned;
- (d) belonging to the Scheduled Castes of the State or Maimal Community of the

Cachar District; and

(e) at a revenue calculated and for a period decided by the State Government from time to time."

6. If we bear these principles in mind, the interpretation of proviso to Rule 12 becomes easy. It is unnecessary to examine the question whether the appellants belong to any backward class or Scheduled Caste when specifically the rule stated that persons belonging to Maimal Community of the Cachar District become eligible to apply for settlement of the registered fishery. Now the interpretation of the said provision turns upon the exact language used by the Government. The fact that the appellant society consists of members belonging to Maimal Community of the Cachar District is not in dispute. Their case is that their members belong to the Mamal Community of the Cachar District and they fall into a class which is described in the relevant rules and thus become entitled to seek the registered fishery. The learned Single Judge did not indulge in any exercise in semantics as to the expression "Maimal Community of the Cachar District" and as to whether the operation of the said rule is confined only to Cachar District or outside but on the basis that the Maimal Community of the Cachar District were members of the society and the object of the rule being to help the backward classes they were entitled to the same even though such persons may be residing outside the district. The Division Bench of the High Court laid emphasis on the expression "of the Cachar District" and, therefore, took the view that they must belong to the Maimal Community and must reside within the district to become entitled to the benefit of the rule. Now we may advert to the policy adopted by the Government of Assam in the matter of backward classes in the communication NO. TAD/DC/268/75/37 dated November 27, 1975. We may notice that there are certain communities which are recognised only in a particular area geographically. In respect of others, all that is stated is "Kumar; Rudra Paul of Chachar" while in case of Rajbonshi or Koch (Koch of Goalpara and Garo Hills only). Specific mention is made as confined to a particular area. When area of operation of a notification is not confined to any particular geographical region the areas referring to persons belonging to a community of a particular district would only be the words of description and in such cases we will have to take the term "of" as denoting origin or descent of the persons belonging to a particular community of an area. Ultimately it means that they hail from a particular area and recognises them belonging to that particular district and no more. Therefore, the view taken by the learned Single Judge of the High Court appears to us to be more reasonable and appropriate than the view taken by the Division Bench of the High Court. During pendency of the matter before the competent authority the benefit of interim order granted by this Court shall continue until disposal of the matter.

7. On this reasoning, we allow the appeals filed by the appellant and set aside the order made by the Division bench and restore that of the learned Single Judge. The appeals are allowed accordingly. Considering the nature and circumstances of the case, there shall be no order as to costs.