

WP(C) 6024/2007

BEFORE

HON'BLR MR. JUSTICE B.K. SHARMA.

Heard Mr. N.C. Das, learned Sr. counsel assisted by Mr. P.C. Deka, learned counsel for the petitioner as well as Mr. A.K. Goswami, learned Sr. counsel assisted by Mr. S. Banik, learned counsel for the Respondent No.4. I have also heard Ms R . Chakraborty, learned State counsel.

The petitioner, who was settled with the fishery in question for a period of 5 years (4.6.2002 to 3.6.2007), is aggrieved by the order dated 21.11.2007 (Annexure-VIII to the writ petition) by which his prayer for extension of the lease period has been rejected by the Government in the Fishery Department.

The petitioner made the Annexure-II representation dated 9.10.2006 praying for extension of the period of lease. The jurisdictional Deputy Commissioner by his report dated 12.12.2006 (Annexure-III to the writ petition) favoured the case of the petitioner for extension. By a further report dated 21.5.2007 (Annexure-IV to the writ petition), the Deputy Commissioner, while reiterating the earlier report, indicated that the petitioner suffered loss of revenue.

When no action was taken on the application submitted by the petitioner seeking extension of the lease period he filed the writ petition being WP(C) No .2874/2007. The writ petition was filed on 12.6.2007 after expiry of the lease period on 3.6.2007. The writ petition was disposed of by the Annexure-V order dated 13.6.2007 directing the respondents

to consider the case of the petitioner in accordance with law as well as in the light of the report dated 21.5.2007.

When the desired extension was not granted to the petitioner, he once again approached this Court by filing another writ petition being WP(C) No.3479/2007, which was disposed of by order dated 20.7.2007 directing to dispose of the petitioner's representation by a speaking order. Thereafter, the Government in the Fishery Department passed the impugned order dated 21.11.2007 (Annexure-VIII to the writ petition) rejecting the prayer of the petitioner for extension of the period of lease.

Mr. Das, learned Sr. counsel for the petitioner submits that the impugned order dated 21.11.2007 is, prima facie, illegal inasmuch as while passing the said order, the authority did not take into account the subsequent report dated 21.5.2007, about which this Court made a mention in the order dated 13.6.2007 in WP(C) No.2874/07. He submits that the matter needs fresh consideration of the Government.

Countering the above argument, Mr. Goswami, learned Sr. counsel for the Respondent No.4 submits that the petitioner cannot claim extension of the lease period as a matter of course. He submits that there being no qualitative difference between the two reports, mere non-mentioning of the subsequent report in the impugned order, cannot give rise to the cause of action for the petitioner. He also submits that the direction of this Court being to act in accordance with law and the law relating to extension, as has been discussed in the decisions of this Court reported in (1985) 2 GLR 38 (Jagannath Urang v. State of Assam and others) and (2007) 4 GLT 231 (Prabin Kumar Das v. State of Assam and others) being not in favour of the petitioner, he cannot claim extension of the lease period.

I have considered the rival submissions made by the learned counsel for the parties. The short question which needs consideration of this Court is as to whether the Government in the Fishery Department has committed anything wrong in refusing to grant extension of the lease period to the petitioner. It is an admitted position that the earlier period of lease expired on 3.6.2007. While it is true that the petitioner made application for extension on 9.10.2006, but he approached this Court by filing the writ petition being wpcno.2874/2007 only on 12.6.2007 i.e. after expiry of the period of lease. It is in this connection, the learned counsel for the Respondent No.4 has placed reliance on the aforesaid two decisions, in which it has been held that there cannot be any extension of the period of lease after its expiry.

Mr. Das, learned counsel for the petitioner has strenuously argued that since the direction of this Court in the order dated 13.6.2007 passed in WP(C) No.2874/2007 was to consider the case of the petitioner taking into account the subsequent report dated 21.5.2007, it was incumbent on the part of the Government to take into account the said report. He submits that since the Government did not consider the said report, as will be evident from the impugned order, the same is liable to be set aside and quashed with a direction to re-consider the case of the petitioner.

The first and the second reports are more or less same with minor variations here and there. The Government on the earlier occasion also, was not satisfied with the first report dated 12.12.2006. If that be so, there is no question of deriving any satisfaction from the second report dated 21.5.2007. Further, the case of the petitioner was also to be considered in accordance with law. When the law is well settled that there cannot be any extension of the period of lease after its expiry and when admittedly by the time, the orders of this Court were passed, the period of lease stood already expired, the petitioner cannot claim any further extension. This aspect of the matter has been discussed in the impugned order dated 21.11.2007. Further, there being no qualitative difference between both the reports, non-mentioning of the second report in the impugned order dated 21.11.2007 will not make any difference.

In the matter of settlement of fishery etc., it is always desirable to settle the same through regular process of tender system, which also fetches better revenue to the State Exchequer. Further, the extension of the period of lease cannot be claimed as a matter of course. Nothing has been shown that the Government in the Fishery Department has passed the impugned order in violation of the statutory rules or in malafide exercise of power.

Above being the position, I do not find any merit in the writ petition and accordingly, it is dismissed. The interim order passed on 28.11.2007 stands vacated. It is hereby directed that the authorities in the Fishery Department shall settle the fishery in accordance with rules and procedure, as expeditiously as possible, for which necessary steps shall be taken immediately without any further delay. In the interregnum, the fishery may be run departmentally.

Writ petition is dismissed.