

GAHC010022072023



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

Case No. : WP(C)/573/2023

DAKHIN SALMARA MATSYAJIBI FISHERY CO-OPERATIVE SOCIETIES LTD
REP. BY ITS SECRETARY BINOY KRISHNA DAS, S/O- LATE GANESH CH
SARKAR, VILL- SOUTH SALMARA, BALADOBA, P.O AND P.S- SOUTH
SALMARA, DIST- SOUTH SALMARA, MANKACHAR, ASSAM, PIN- 783127

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
FISHERY DEPTT, DISPUR, GHY- 06

2:THE DIRECTOR OF FISHERIES
GOVT OF ASSAM
MEEN BHAWAN
GOPINATH NAGAR
GHY- 16

3:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
ASSAM
P.O- HATSINGIMARI
DIST- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135

4:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
DHUBRI
P.O AND P.S AND DIST- DHUBRI
ASSAM
PIN- 783301

5:THE EXECUTIVE OFFICER
JAMADARHAT ANCHALIK PANCHAYAT

CHIRAKUTI CUM BDO
JAMARHAT DEVELOPMENT BLOCK
P.O- JAMADARHAT
DIST- DHUBRI
ASSAM
PIN- 783127

6:RAM CH DAS
S/O- LATE MADAN CH DAS
VILL- FAKIRGANJ MILANPARA
P.O AND P.S- FAKIRGANJ
DIST- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 11-10-2023

Heard Mr. A.F.N.U. Mollah, learned counsel for the petitioner; Mr. M.D. Bora, learned Standing Counsel, Fishery Department for the respondent nos. 1 & 2; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent no. 3; and Ms. N. Bora, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 4 & 5.

2. As per the order dated 19.07.2023 of the Lawazima Court, there is presumed service of notice upon the respondent no. 6. Despite such service of notice, the respondent no. 6 has not appeared in the case when the case was listed thereafter, on 04.08.2023, on 11.08.2023, on 01.09.2023 & on 29.09.2023 respectively. The respondent no. 6 is found absent today also on call.

3. In this writ petition, the petitioner, a registered Fishery Cooperative Society, had assailed an order dated 25.01.2023 passed by the respondent no. 5, whereby, the respondent

no. 5 had settled a fishery named Airkata Bridge, Moirakuchi Pt-I Fishery on River Jinjiram in favour of the respondent no. 6 on temporary basis w.e.f. 26.01.2023 to 30.06.2023 for an amount of ₹ 25,100.00. This Court while issuing notice to the respondents, had stayed the operation of the impugned order dated 25.01.2023 till the returnable date.

4. In the course of the present proceedings, it has been noticed that two registered fisheries, [1] Fishery Group no. [I] 3/89 Bhangamore Jingiram Pt-I & Pt-II [‘the Fishery no. 1’, for short] & [2] Group no. 30/116 Soulia Gothla [‘the Fishery no. 2’, for short] were earlier settled with the petitioner society. After the term of those previous settlements were over, the Deputy Commissioner, South Salmara Mankachar by an order dated 30.01.2020, allowed the petitioner society to operate the two fisheries on daily-basis arrangement at a daily average revenue @ ₹ 183.00 and @ ₹ 13.00 respectively and such daily arrangements to operate two fisheries continued for more than 3 [three] years since 30.01.2020.

5. The primary ground for staying operation of the order dated 25.01.2023 was that the respondent no. 5 by the said order allowed the respondent no. 6 to collect revenue from the fishery named Airkata Bridge, Moirakuchi Pt-I Fishery [‘the Fishery no. 3’, for short] on River Jinjiram on temporary basis w.e.f. 26.01.2023 to 30.06.2023, on the contention of the petitioner society that the Fishery no. 3 was not a Government notified fishery and as such, the respondent no. 5 could not have settled the fishery no. 3 by the impugned order dated 25.01.2023 as the area of the fishery no. 3 had got overlapped with the areas of the Fishery no. 1 and the Fishery no. 2. Another ground for staying the operation of the order dated 25.01.2023 was that in view of sub-section [1] of Section 109 of the Assam Panchayat Act, 1994, any fishery under an Anchalik Panchayat is to be settled by inviting tenders whereas the respondent no. 5 without undertaking any tender process, had settled the Fishery no. 3 in favour of the respondent no. 6 by the impugned order dated 25.01.2023.

6. When it was noticed that the Fishery no. 1 and the Fishery no. 2 were being operated on daily-basis arrangement at meagre daily average revenue @ ₹ 183.00 and @ ₹ 13.00 respectively, an explanation from the respondent no. 3 was called for as to why the two fisheries had been settled by way of a tender process since 2020 as distribution of State

largesses for an indefinite period in such manner, without allowing all the interested bidders to participate in a tender process, is not contemplated in the Assam Fishery Rules, 1953. When the writ petition was listed on 04.08.2023, it was found that as the validity of the impugned order was only upto 30.06.2023, the writ petition was found to have become infructuous on the aspect of legality and validity of the impugned order dated 25.01.2023, by efflux of time.

7. When despite repeated directions made by orders dated 09.06.2023 and 04.08.2023, as regards providing explanation about the matter of settlement on daily-basis of the two registered fisheries viz. [1] Fishery Group no. [I] 3/89 Bhangamore Jingiram Pt-I & Pt-II [Fishery no. 1] & [2] Group no. 30/116 Soulla Gothla [Fishery no. 2] for a prolonged period, no instructions were placed by the District Administration, South Salmara Mankachar District, the presence of the District Commissioner, South Salmara Mankachar District was called for and the said authority appeared in person on 01.09.2023. The District Commissioner had submitted that dereliction of duties on the part of the two officials of the District Commissioner's office viz. [1] Shri Nilambar Choudhury, Junior District Administrative Assistant and [2] Shri Motiur Rahman, Section Assistant, was found as they despite receipt of various communications from the office of the Senior Government Advocate, Assam, did not bring the matter to the knowledge of the of the competent authorities in the District Administration, South Salmara Mankachar District. The District Commissioner had further submitted that a Show Cause Notice dated 12.08.2023 had been served upon the said officials asking them to show cause as to why disciplinary action should not be initiated against them under the provisions of the Assam Services [Discipline and Appeal] Rules, 1964. The District Commissioner had further submitted that the two fisheries were not settled by way of tender process since 2020 due to various reasons including outbreak of Covid-19 in the meantime and the matter relating to said two fisheries were sub judice in a writ petition, W.P.[C] no. 5766/2020.

8. Subsequent to 01.09.2023, the District Commissioner, South Salmara Mankachar had submitted two affidavits on 29.09.2023. It is stated in one of the said two affidavits that a Notice Inviting Tender [NIT] for settlement of the two fisheries, that is, Fishery no. 1 &

Fishery no. 2, has already been published on 13.09.2023 for their settlement for a period of 7 years from 2023-2024 to 2029-2030. It is further averred that regular settlement would be made within a reasonable time period. In the other affidavit, also filed on 29.09.2023, the District Commissioner has averred that a Show Cause Notice dated 12.08.2023 have already been served upon the two delinquent officials asking them to show cause as to why disciplinary action should not be initiated against them under the provisions of Assam Services [Discipline and Appeal] Rules, 1964. The two delinquent officers were given 1 [one] week's time to submit their replies to the Show Cause Notice. It is further mentioned that a Departmental Proceeding Committee [DPC] has been formed vide an order dated 07.09.2023 appointing the Additional Deputy Commissioner, South Salmara Mankachar as the Enquiry Officer and an Assistant Commissioner, South Salmara Mankachar as the Presenting Officer. With such averments, the District Commissioner has stated that the disciplinary proceedings against the two delinquent officers are in progress.

9. Taking note of such statements and averments made by the District Commissioner, South Salmara Mankachar [the respondent no. 3], this Court is of the considered view that there is no necessity to keep this writ petition pending for any period and the same can be disposed of with appropriate directions. As the tender processes have been already been initiated for settlement of the two fisheries viz. [1] Fishery Group no. [I] 3/89 Bhangamore Jingiram Pt-I [Fishery no. 1] & Pt-II & [2] Group no. 30/116 Soulla Gothla [Fishery no. 2] by publication of a Notice Inviting Tender on 13.09.2023 to settle those fisheries for a period of 7 [seven] years from 2023-2024 to 2029-2030, it is directed that the respondent no. 3 and the other respondents shall bring the said two tender processes initiated for settlement of the two fisheries with logical conclusion, as expeditiously as possible, preferably within a period of 1 [one] month from today. As regards the disciplinary proceedings initiated against the two delinquent officials, it is expected that the disciplinary proceedings so drawn, should also be brought to logical conclusion as expeditiously as possible, on conclusion of the same, a status report be forwarded to the office of the Registrar General of this Court. It is further observed that there shall not be any continuance of daily-basis arrangement, which continued since 30.01.2020, beyond 31.10.2023.

10. With the observations made and directions given above, the writ petition stands disposed of.

JUDGE

Comparing Assistant