

GAHC010111352023



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

Case No. : WP(C)/3018/2023

NAZIM UDDIN @ NASIM UDDIN
S/O- AZAHAR ALI, D/O- LT. HATEM ALI, VILLAGE- KUSHBARI PT-II, P.O.
KUSHBARI, DIST.- BONGAIGAON (ASSAM)

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, TRANSPORT
DEPTT., DISPUR, GHY-06

2:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GHY-07

3:THE ASSTT. EXECUTIVE ENGINEER
INLAND WATER TRANSPORT
GOALPARA SUB-DIVISION
GOALPARA- 783101

4:THE COMMISSIONER
P AND RD
ASSAM
PANJABARI
JURIPAR
GHY-37

5:THE CHIEF EXECUTIVE OFFICER
BONGAIGAON ZILLA PARISHAD
BONGAIGAON
ASSAM- 783380

6:THE BLOCK DEVELOPMENT OFFICER AND EXECUTIVE OFFICER
TAPATTARI ANCHALIK PANCHAYAT
ABHAYAPURI
BONGAIGAON
ASSAM- 783384

7:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM- 783380

8:THE SUB-DIVISIONAL OFFICER
NORTH SALMARA
ABHAYAPURI
BONGAIGAON
ASSAM- 783384

9:NAJIRA JESMIN
CEO
BONGAIGAON ZILLA PARISHAD
BONGAIGAON
ASSAM- 78338

Advocate for the Petitioner : MD S HOQUE

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 29.05.2023

Heard Mr. S. Haque, learned counsel for the petitioner. Also heard Ms. M.D. Bora, learned standing counsel for the Transport Department, representing respondent nos. 1 and 2, Mr. P. Handique, learned counsel appearing on behalf of Mr. K. Konwar, learned senior standing counsel for the Panchayat Department, representing respondent nos. 4, 5 and 6 and Mr. K. Gogoi, learned Govt. advocate appearing for respondent nos. 7 and 8.

2. The learned counsel for the petitioner has submitted that the petitioner was settled with Dubachuri-Dangipara Parghat for the year 2018-19. However, by an order dated 07.09.2018, the authorities of Inland Water Transport had suspended the plying of all private mechanized boats in all ferry services within the State of Assam. Accordingly, the petitioner claims that he was able to operate the Parghat only for about one and half months. It is submitted that although the respondent authorities in the Panchayat Department were aware that the petitioner could not operate the Parghat for the entire tenure, they had initiated a certificate proceeding (Bakijai Proceeding) before the Court of Certificate Officer, Addl. Deputy Commissioner, Bongaigaon, which is registered as Bakijai Case No. BONGA/LBD/5/2022. The petitioner on receipt of a notice dated 08.04.2022 in Form No. 3, under the provisions of the Bengal Public Demand Recovery Act, 1913 (BPDR Act for short), requiring deposit of Rs.1,05,000/- on account of demand and interest of Rs. 6.25% per annum on account of cost of the realization. In this regard, the learned counsel for the petitioner has submitted that the Bakijai proceeding was not sustainable.

3. Having heard the learned standing counsel for the Panchayat Department, the Court is of the considered opinion that in respect of the claim made by the Zila Parishad for recovery of kist money, the petitioner has two alternative remedies. Firstly, the petitioner can approach the competent authority under section 49 of the Assam Panchayat Financial Rules, 2002 and pray for remission of the kist money. Secondly, the petitioner can contest the certificate proceeding by filing an appropriate application under section 9 thereof of BPDR Act, by denying liability.

4. There is no material on record to show that because of the reasons

assigned by the petitioner, it can *prima facie* be held that the claim of the respondents for recovery of kist money is illegal. Hence, it would be appropriate to relegate the petitioner to approach the competent authority to avail either of the two alternative remedies available to him as indicated above.

5. For the purposes of enabling the petitioner to contest the matter before the Certificate Officer, the Court is inclined to observe that this writ petition was filed on 25.05.2023 and therefore, from the date of filing till the order passed today, the petitioner would be entitled to claim extension of period of limitation on the ground of approaching this Court, which is a wrong forum.

6. Accordingly, with the aforesaid observation, this writ petition stands closed.

JUDGE

Comparing Assistant