

GAHC010134472023



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

Case No. : WP(C)/3699/2023

M/S DIBRU DANGARI RIVER PART-I MEEN SAMABAY SAMITY LTD
VILLAGE- DIGHALTARANG,
P.O.- DIGHALTARANG, P.S.- BAGHJAN,
DISTRICT- TINSUKIA, PIN- 786170,
REPRESENTED BY ITS SECRETARY,
SRI SRI BIKASH DAS.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
FISHERY DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER
TINSUKIA.

5:THE DISTRICT FISHERY DEVELOPMENT OFFICER

TINSUKIA.

6:DIVISIONAL FOREST OFFICER

TINSUKIA WILDLIFE DIVISION
TINSUKIA

Advocate for the Petitioner : MR. I CHOWDHURY SR ADV

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28.06.2023

Heard Mr. A.B.T. Haque, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned Additional Senior Govt. Advocate appearing for the respondent nos.1 to 5, and Mr. R.R. Gogoi, learned standing counsel for the Forest and Environment Department.

2. In this case, one Devid Boruah has filed a caveat with respect of the subject matter of this writ petition. Although the said person is not arrayed as a respondent in this writ petition, heard Mr. P.J. Saikia, learned senior counsel, assisted by Mr. S. Banik, learned counsel for the caveator.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 29.05.2023, issued by the Joint Secretary to the Govt. of Assam, Fishery Department (respondent no.2), in view of which an earlier order dated 21.12.2021 was issued, whereby the petitioner was allowed to sell the catch fishes at Dholla Bazar, Dighaltarang Ghat, Silikha Ghat, Guijan Ghat and Dinjan under Tinsukia District by following the Assam Fishery Rules, 1953. The petitioner has also assailed the order dated 30.05.2023, passed by the District Fishery Development Officer, Tinsukia (respondent no.5), by which the passage to sale point of fish in the Bazar/Ghat

referred above through vendors with passage through Maguri Metapung Wetland was withdrawn. The petitioner has also assailed the order dated 06.06.2023, by which the respondent no.2 had rejected the representation of the petitioner.

4. In brief, the case projected by the petitioner is that the petitioner society was settled with the Brahmaputra Part-I and Dibang Nadi Fishery for a period of 7 (seven) years vide order dated 26.12.2019. Subsequently, by order dated 21.12.2021, permission was granted to one Bikash Das to sell fishes caught in the said two fisheries at five numbers of notified sale point/market places within Tinsukia district. By a separate order dated 03.01.2022, the Joint Secretary to the Govt. of Assam, Fishery Department has permitted the petitioner society for daily basis settlement of Dibru Part-I Fishery in Tinsukia district till regular settlement is made. By communication dated 23.05.2023, the Divisional Forest Officer, Tinsukia Wildlife Division wrote to the Deputy Commissioner, Tinsukia that the boundary of the fishing area was redefined vide notification dated 08.10.2018 and also expressed that the original stream was the same except that the western boundary was falling short of 1 km from Dibru Saikhowa National Park Eco Sensitive Zone boundary near Maguri Metapung Beel (Wetland) and further opined that the status on the ground was for the Dibru Nadi Part-I Fishery was not viable for commercial fishing and reasons to arrive at the said conclusion was also discussed in the said communication.

5. It may be mentioned that the Divisional Forest Officer, Tinsukia Wildlife Division had requested the Deputy Commissioner, Tinsukia to look into the matter prior to floating of NIT and to do a re-verification on the ground of viability and veracity of the present status of the stream and take into consideration the proximity of the Eco Sensitive Zone of Dibru Saikhowa

National Park, where there is every possibility of breach of peace if any attempt to trespass is made into the Eco Sensitive Zone for fishing in that area on the plea of fishing in Dibru Nadi Part-I Fishery Mahal. As already indicated above, by order dated 29.05.2023, the respondent no.2 withdrew the order dated 21.12.2021 to sell fish at the notified sale points and similarly by another communication dated 30.05.2023, the District Fishery Development Officer had withdrawn the passage to sell fish through the Maguri Metapung Wetland.

6. The learned Additional Senior Govt. Advocate has submitted that if the anxiety of the petitioner is that he has no passage to go to the fish sale point. It is submitted that the said issue can be settled by the competent authorities in the Fishery Department to earmark a route to enable the petitioner to travel from the fishing area to the market. It is submitted that the anxiety of the respondent authorities are genuine that in the name of fishing in the settled fishery area, there is every likelihood that a trespass would be committed by the fishermen into the Eco Sensitive Zone, which would prejudicially affect the public at large.

7. Similar view is expressed by the learned standing counsel for the Forest Department as well as the learned senior counsel for the caveator.

8. It *prima facie* appears that in respect of the fishery in question, there is a lot of litigations pending in this Court. An impression is gathered from the series of litigations that a regular settlement cannot be made because of the series of litigations. It appears that because of one reason or the other, the respondent authorities have not been able to settle several fisheries in that area by way of a regular lease. Therefore, on a consideration of facts which was before the Court in the proceedings of WP(C) 520/2022 – *Dibru Part-I Meen Samabai Samiti Ltd. & Anr. v. The State of Assam & Ors.*, this Court by order

dated 15.05.2023 and other connected cases, issued a direction upon the State respondents to make regular settlement of fishery within one month and to complete the entire settlement process by issuing NIT and selecting the successful tenderer within a further period of one month and it was made clear that the current arrangement of running the fishery shall continue only till 15.07.2023.

9. Therefore, the view of the Court is that as the Coordinate Bench of this Court had issued a direction for a regular settlement to be made, the said order has to be respected at all cost. In the present case in hand, it is observed that in respect of the Dibru Part-I Fishery, the petitioner is being allowed to run the said fishery on daily basis. Therefore, as per the mandate of the order passed in WP(C) 520/2022, the right to carry on fishing on daily basis can only be up to 15.07.2023 and by that time, the competent respondent authorities would be duty bound to allow the fishery to be tendered for regular settlement/sale/lease.

10. In connection with another writ petition being WP(C) 3457/2023 - *Dibru Part-I Meen Samabai Samittee Ltd. & Anr. Vs. State of Assam & Ors.*, this Court by an order dated 23.06.2023 had referred to the issues raised in the said writ petition and reiterated the directions contained in order dated 15.05.2023, passed in WP(C) 520/2022. It was observed that as against the said order, which have attained finality, none of the respondents therein had applied before the Court for modification of the order. Under such circumstances, this Court had made the following observations:

“9. It is also noted that while the Deputy Commissioner was arrayed as respondent no.6 in the said writ petition, the Divisional Forest Officer, Tinsukia Wildlife Division, Tinsukia was also arrayed as respondent no.7 in the said writ petition. None of the respondents therein had moved this Court for modification of the order of this Court

dated 15.05.2023 passed in WP(C) 520/2022, and the said order has not been questioned in appeal. Therefore, for all intents and purposes, the directions contained in order dated 15.05.2023 passed in WP(C) 520/2022 and other connected cases have attained finality.

10. Therefore, the Court is unable to accept that the respondent no.7 has any statutory power or authority to form an opinion that the commercial fishing was not viable. If he had that opinion, he could have moved this order for modification of the order dated 15.05.2023 passed in WP(C) 520/2022, which was not done. Therefore, the Court is unable to hold that the enquiry as required by the impugned letter dated 23.05.2023 is permissible as it would amount to overreach the orders of this Court. Accordingly, the Court has no hesitation to stay the operation of the letter under memo No. B-TWL/G-17/Dibru-Pt.I/2023/530-531 dated 23.05.2023, issued by the respondent no.7.

11. As the Court has no doubt that the Eco-sensitive Zone must be restricted and protected at all cost, it is provided that in the event, any of the respondents are able to demonstrate that any boundary of the Eco-sensitive Zone of Dibru-Saikhowa National Park is overlapped with the boundary of the Dibru Nadi Part-I Fishery Mahal, such respondents would have the right to apply for modification of this order.

12. This order would not prevent the respondent no.7 to take appropriate lawful measure against any person who is found to breach the Eco-sensitive Zone without any lawful authority.”

11. The Court finds that there is an apprehension in the mind of the authorities concerned with fishery as well as the Forest Department that in guise of selling fish in the markets referred above, there is every likelihood that the Eco-Sensitive Zone could be breached. In respect of the said apprehension, the Court is inclined to provide that all the authorities are duty bound to maintain and protect Eco-Sensitive Zone and therefore, unauthorized entry into the said Eco-Sensitive Zone of Dibru Saikhowa National Park should be protected at all cost.

12. From the impugned communication issued by the DFO, Tinsukia dated 23.05.2023, it does not appear that any part of the said fishery is

overlapping the boundary coordinates of the Eco-Sensitive Zone of Dibru Saikhowa National Park.

13. Nonetheless, as the petitioner has demonstrated that the petitioner society has the fishing rights over the two fisheries named hereinbefore, it is natural that the petitioner would also have a right to take his product to the market. Therefore, till such time the petitioner society has a right to operate the two fisheries referred above, the Deputy Commissioner, Tinsukia, in consultation with the DFO, Tinsukia Wildlife Division shall earmark a road by which the petitioner society can take the yield of the said fishery to the market and a decision to that effect shall be taken within 10 (ten) from the date of receipt of certified copy of this order or 12.07.2023, whichever is earlier.

14. It is reiterated that this order would not prevent the respondent authorities to take an appropriate lawful measure against any person who is found to breach the Eco-Sensitive Zone without any lawful authority.

15. This order shall also not prevent the respondent authorities to take an appropriate decision as to whether to continue with any of the fisheries within the vicinity of Dibru Saikhowa National Park. However, it is made clear that the temporary arrangement of fishery shall not be extended beyond 15.07.2023, the time prescribed by the order dated 15.05.2023 passed in WP(C) 520/2022.

16. Before parting with the records, it would be appropriate to mention that the learned counsel for the petitioner had referred to the order dated 15.11.2017, passed by the Division Bench of this Court in IA(Civil) 3537/2017 in WA 94/2017. Nothing contained in the present order would have the effect of overriding the order passed by the Division Bench of this Court. However, it may

be mentioned that the issue relating to the Eco-Sensitive Zone was not raised in the said writ appeal proceeding and therefore, as the Eco-Sensitive Zone has been ordered to be protected by the Supreme Court of India in the case of *T.N. Godavarma Thirumulkapad v. Union of India & Ors. (1997) 2 SCC 267*, any right which may have accrued to the petitioner by virtue of the order of the Division Bench of this Court, shall have to give way to the directions issued by the Supreme Court of India and to that effect, the judgment of the Supreme Court of India would have to be give its precedence insofar as Eco-Sensitive Zone is concerned.

17. Subject to above, the existence of the impugned order would not be a bar for the respondents to take a decision on making a specifically earmarked road available to the petitioner to sell fishes that are caught by them from within their settled fishery.

18. Accordingly, this writ petition stands disposed of at the 'motion' stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant