

GAHC010137122023



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

Case No. : WP(C)/3650/2023

DAULAT MIAH
S/O- MD. JANAB ALI,
VILL- SAGOLIA PART-II,
P.O.- SAGOLIA,
P.S.- GOLAKGANJ,
DIST- DHUBRI, ASSAM,
PIN- 783335.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF ASSAM,
DISPUR, GHY-6.

2:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-6.

3:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-6.

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

PIN- 783301.

5:THE EXECUTIVE OFFICER
AGOMONI ANCHALIK PANCHAYAT
P.O. AND P.S. AGOMONI

DISTRICT- DHUBRI
ASSAM

PIN- 783335

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 26.06.2023

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Govt. Advocate appearing for respondent no.1, and Mr. S. Dutta, learned standing counsel for the P&RD Department.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenge the legality of NIT dated 30.05.2023, issued by the Agomoni Anchalik Panchayat under Dhubri Zilla Parishad under two grounds. Firstly, that the petitioner was settled with balance settlement period of 29.04.2023 to 30.06.2023. However, by virtue of notification dated 03.05.2023, there was a total ban on fishing activity from 01.04.2023 to 15.07.2023 and accordingly, the petitioner could not enjoy the limited settlement period of the said fishery. Secondly, it is projected that the tender was not floated 45 days prior to the period of settlement which is in violation of Rule 47(2) and 49 of the Assam Panchayat (Financial) Rules, 2002 (for short '2002 Rules'). Hence, it is submitted that till the respondents consider the prayer

of the petitioner for extension of lease period or for remission, the tender process is liable to be stayed.

3. Upon hearing the learned counsel for the petitioner as well the learned standing counsel for the P&RD Department, the Court is of the considered opinion that as the petitioner could not undertake fishing activity during his lease period from 29.04.2023 to 30.06.2023 owing to ban on fishing activities, purportedly vide order dated 03.05.2023, issued by the Managing Director, Assam Fisheries Development Corporation Ltd., the petitioner has a right to move the authorities for remission of the kist money deposited for the said period.

4. Moreover, if there has been a violation of Rule 47(2) and 49 of the 2002 Rules, it is expected that the authorities of the P&RD Department shall consider the fishery settlement for the actual period by excluding 45 days from the date of floating of the tender. Accordingly, the respondent authorities shall consider the actual period that is legally available for the fishery taking into account the provisions of Rule 47(2) and 49 of the 2002 Rules.

5. Nonetheless, on both the counts, no case has been made out for interference of the Court under Article 226 of the Constitution of India as the petitioner has an alternative remedy of applying before the competent authority i.e. the Principal Secretary, P&RD, Govt. of Assam to consider prayer for remission for not being able to enjoy the fishery due to the ban in fishing activity vide hereinbefore referred order dated 03.05.2023.

6. Even on violation of the Rule 47(2) and 49 of the 2002 Rules, as the period of fishery can be regulated, no case is made out for interference by the writ Court in respect of subsequent tender process.

7. The Court does not find the tender process to be vitiated only on the aforesaid two counts.

8. Accordingly, the Court is disinclined to entertain this writ petition. As the petitioner has already submitted his representations dated 03.06.2023 and 13.06.2023 before the Principal Secretary, P&RD Department, Govt. of Assam, the said authority is directed to dispose of the said representations of the petitioner within an outer period of 4 (four) weeks from the date of receipt of certified copy of this order.

9. With the aforesaid observation, this writ petition stands closed.

JUDGE

Comparing Assistant