

GAHC010172022023



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

Case No. : WP(C)/4490/2023

BISHNULAL DAS
S/O- LATE NABA KISHOR DAS ,
VILLAGE- KARCHUBORI (SHIMLUTOLA),
P.O- JHARGAON,
P.S- JAGIROAD,
DIST- MORIGAON, ASSAM, PIN-782411

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF ASSAM, FISHERY
DEPARTMENT, DISPUR, GUWAHATI-06,
ASSAM

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
REP. BY THE MANAGING DIRECTOR
CHACHAL
VIP ROAD
GUWAHATI- 36

3:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
CHACHAL
VIP ROAD
GUWAHATI- 36

4:THE GENERAL MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED

CHACHAL
VIP ROAD
GUWAHATI- 36

5:THE DEPUTY COMMISSIONER
P.O
P.S AND DIST- MORIGAON
ASSAM

PIN-782105

6:THE ADDL. DEPUTY COMMISSIONER
P.O, P.S AND DIST- MORIGAON, ASSAM
PIN-782105

7:THE SUPERINTENDENT OF POLICE
MORIGAON,
P.O
P.S AND DIST- MORIGAON, PIN-782105

8:THE CIRCLE OFFICER
MAYONG REVENUE CIRCLE

P.O AND P.S- MAYONG
DIST- MORIGAON
ASSAM
PIN-782411

9:THE OFFICER IN CHARGE
MAYONG POLICE STATION , P.O AND P.S- MAYONG
DIST- MORIGAON, ASSAM, PIN-782411

10:THE OFFICER IN CHARGE
JAGIROAD POLICE STATION
P.O AND P.S- MAYONG, DIST- MORIGAON
ASSAM, PIN-78241

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 07-08-2023

Heard Mr. M.K. Hussain, learned counsel for the petitioner; Mr. S.S. Roy, learned Junior Government Advocate for respondent nos. 1, 5, 7, 8, 9 & 10; and Mr. P. Sarma, learned Standing Counsel, AFDC for respondent nos. 2, 3 and 4.

2. The respondent AFDC published a Notice Inviting Tender [NIT] being NIT no. 1/2022, for settlement of a fishery named 129 No. Haria Dablong Fishery, District–Morigaon [‘the Fishery’, for short]. When the petitioner emerged as the successful bidder, in the tender process initiated by the NIT an offer for settlement of the Fishery for a period of 7 [seven] years was extended to him by a letter dated 11.07.2022, issued under the hand of respondent no. 3. As per the Offer of Settlement dated 11.07.2022, the Fishery was to be settled with the petitioner for a settlement amount of ₹ 32,52,559/- for the Financial Year : 2022-2023, that is, from 01.04.2022 to 31.03.2023. The settlement amount for the next 6 [seven] years, that is, from the financial year: 2024-2025 to the financial year: 2028-2029 has been fixed @ Rs. 32,52,559/- per year. The petitioner was asked to deposit an amount of ₹ 8,13,140/- towards first instalment for the Financial Year : 2022-2023 and another amount of ₹ 8,13,140/- towards 25% of the yearly settlement amount as security deposit. The petitioner was further directed to deposit an amount of ₹ 19,01,200/- by way of a bank guarantee and to execute a Contract-Agreement. According to the petitioner, he had deposited the amounts, as asked for by the offer letter of settlement dated 11.07.2022 and executed a Contract-Agreement on 09.08.2022. It was on 23.08.2022, the respondent no. 3 vide his letter of even date had conveyed the decision of the respondent AFDC to finally settle the Fishery in favour of the petitioner. According to the petitioner, it was on 23.08.2022, the possession of the Fishery was handed over to him. But Mr. Sarma, learned Standing Counsel, AFDC has submitted that the possession of the Fishery was handed-over to the petitioner on 09.08.2022.

3. The petitioner has claimed that before the possession of the Fishery was handed over to him, there was some illegal fishing in the Fishery by public in the month of August, 2022. The matter of illegal fishing was reported by the respondent no. 3 to the Deputy Commissioner, Morigaon by a letter dated 18.08.2022. As per the said letter, about 600/700 people by illegal fishing in the Fishery had committed extended damage in the Fishery. The Deputy Commissioner, Morigaon was thereby, requested to take steps for stopping such illegal fishing through the Circle Officer, Mayang Revenue Circle.

4. On 20.06.2023, the respondent no.3 had served a letter upon the petitioner whereby the petitioner had *inter alia* been informed that the petitioner would be required to deposit an amount of ₹ 25,66,847/- towards settlement amount of the Fishery for the Financial Year : 2022-2023. As the petitioner had been asked to deposit an amount of ₹ 25,66,847/- for the Financial Year : 2022-2023, the petitioner submitted a Representation before the respondent no. 3 on 16.09.2022 stating *inter alia* that as the possession of the Fishery was handed over to him only in the month of August, 2022 with the issuance of the final settlement order on 23.08.2022, the petitioner should be granted exemption from depositing any amount for the period from 01.04.2022 till the date of handing over of possession of the Fishery. Prior to his Representation dated 26.10.2022, the petitioner has submitted another Representation on 16.09.2022 before the respondent no. 3 wherein he made a prayer for granting him concession in respect of deposit of instalment amounts by taking into account the extensive damage caused to the Fishery as a result of illegal fishing made by 600/700 people on 16.08.2022 and 17.08.2022. As the said two Representations are yet to be disposed of by the respondent no. 3, the petitioner has approached this Court by this writ petition.

5. Mr. Sarma, learned Standing Counsel, AFDC has submitted that as the said two Representations, dated 16.09.2022 & dated 26.10.2022, are stated to be pending, the writ petition can be disposed of at this stage with a direction to the respondent no.3 to take both the Representations on board and to dispose of the same after due consideration and after giving an opportunity of hearing to the petitioner.

6. Mr. Hussain, learned counsel for the petitioner has agreed to the above submission of Mr. Sarma, learned Standing Counsel, AFDC. Mr. Hussain has submitted that since it is an admitted position that the petitioner was not handed over the possession of the Fishery from 01.04.2022 till the month of August, 2023, the respondent AFDC authorities should not have insisted for deposit of any amount for the said period. *Prima facie*, the said contention of Mr. Hussain has force. Be that as it may.

7. As both the Representations of the petitioner are yet to be disposed of, the Court does not want to make any observations on the merits of the petitioner's claim. Therefore, this Court is of the considered view that the writ petitioner, in view of the broad consensus arrived at by the parties can be disposed of, without advert to the merits of the claims of the petitioner at this stage, with a direction to the respondent no.3 to take both the Representations submitted by the petitioner on board and to dispose of the same by a speaking order by giving due considerations to the grievances raised by the petitioner and after affording an opportunity of hearing to the petitioner within a reasonable period of time.

8. Mr. Sarma, learned Standing Counsel, AFDC has submitted that a period of 1 [one] month would be a reasonable period for the respondent no. 3 to dispose of the same. Accordingly, it is observed that the respondent no. 3 shall pass the speaking order within a period of 1 [one] month from the date of receipt of a certified copy of this order. To facilitate such consideration, the petitioner shall submit a certified copy of this order at the office of the respondent no. 3.

9. It is further observed that till the disposal of the Representations by a speaking order, the respondent AFDC authorities shall not insist for deposit of any instalment amount pertaining to the Financial Year : 2022-2023.

JUDGE

Comparing Assistant