

GAHC010179742015



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

Case No. : WP(C)/7113/2015

M/S BISWANATH KOIBORTA CO-OPERATIVE FISHERY SOCIETY LTD.
REP. BY ITS SECY., SRI KANTHI RAM DAS, S/O LT. DHANESWAR DAS, R/O
PURANIGAON, P.O. BISWANATH GHAT, P.S. BISWANATH CHARIALI, DIST-
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, FISHERY DEPTT.,
DISPUR, GHY-6

2:THE ACCOUNTANT GENERAL AandE
ASSAM
MAIDAMGAON
BELTOLA
GHY-29
DIST- KAMRUP METRO
ASSAM

3:THE DY. COMMISSIONER
SONITPUR
TEZPUR
ASSAM

4:THE DY. COMMISSIONER
BISWANATH
ASSA

Advocate for the Petitioner : MRS.A BORAH

Advocate for the Respondent : SC, AG

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 24-05-2023

Heard Mr. R.C. Saikia, learned counsel for the petitioner; Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent nos. 1 & 3.

2. The petitioner herein is a cooperative registered society under the provisions of the Assam Cooperative Societies Act, 1949/2007. The Society consists of members belonging to Scheduled Caste community and 100% actual fishermen as per the provisions as provided under the Assam Fishery Rules, 1953. The petitioner Society was settled with a fishery named 'Biswanath Bhangmara Fishery', District – Sonitpur ['the Fishery', for short] under the provisions of the Assam Fishery Rules, 1953 for a period of 7 [seven] years in the manner indicated in the order of settlement dated 03.02.2007 passed by the Deputy Commissioner, Sonitpur. Claiming that the petitioner Society suffered losses while operating the Fishery due to factors beyond its control, had submitted a prayer for remission of revenue. The prayer for remission submitted by the petitioner Society was considered by the State Government in the Fishery Department and by an order dated 21.06.2010, the State Government in the Fishery Department conveyed its sanction of revenue for an amount of Rs. 3,16,364/- for a period of 4 years i.e. from 2007 to 2010 in respect of the Fishery as per the provisions of the Assam Fishery Rules, 1953. The order dated 21.06.2010 had reflected about the concurrence of the Finance Department dated 03.06.2010. Despite such sanction as far back as in the year 2010 for the

amount of Rs. 3,16,364/-, the said amount was not disbursed in favour of the petitioner Society till the year 2015. Aggrieved thereby, the petitioner Society had instituted the instant writ petition seeking *inter alia* for a direction to the State respondents to release the said amount of remission.

3. On 16.03.2022, the Fishery Department, Government of India has submitted a counter affidavit stating *inter alia* that it is found after discussion with the Finance Department that the sanction accorded earlier for the amount of Rs. 3,16,364/- had lapsed due to expiry of 10 years of sanction for non-drawal. It is averred that a factual report is being called from the Deputy Commissioner, Sonitpur for non-drawal of the amount with a non-drawal certificate from the concerned Treasury and with justification for fresh sanction to the Fishery Department, Government of Assam so that the Government can take steps for fresh sanction with budgetary provision with concurrence of the Finance [EC-I] Department.

4. Mr. Gogoi, learned Additional Senior Government Advocate, Assam has submitted that the Deputy Commissioner, Sonitpur [the respondent no. 3] vide his communication bearing no. SRF-17/High Court/2015/566 dated 17.05.2023 has informed the respondent no. 1 that the amount of Rs. 3,16,364/- has not yet been released in favour of the lessee of the Fishery i.e. the petitioner Society. By forwarding a non-drawal certificate from the Treasury Officer, Sonitpur, Tezpur, the Deputy Commissioner, Sonitpur has requested the respondent no. 1 to issue a fresh sanction order so that the amount can be paid to the petitioner Society.

5. The provisions of Rule 12 of the Assam Fishery Rules, 1953 has provided for settlement of 60% Category Fishery in favour of the registered cooperative

society, consisting of members belonging to the Scheduled Caste community and 100% actual fisherman. The incorporation of such provision in the Assam Fishery Rules is with the objective to uplift the economic conditions of the persons who are 100% actual fisherman and belong to the Scheduled Cast community as they otherwise, belong in the lower economic strata in the Society. Retaining the amount of Rs. 3,16,364/- for a period of about 13 years even after sanction of the said amount as far back as in the year 2010 is an act *prima facie* suggestive of arbitrariness.

6. In view of the above and having regard to the contents of the communication dated 17.05.2023 of the Deputy Commissioner, Sonitpur, this writ petition is disposed of with a direction to the respondent no. 1 and the respondent no. 3 to release the amount of Rs. 3,16,364/- in favour of the petitioner Society as early as possible, but not later than a period of 1 [one] month from today.

7. This order disposes of the writ petition.

8. A copy of this order is to be furnished to Mr. Gogoi, learned Additional Senior Government Advocate, Assam for taking necessary steps from his end for compliance of the direction given above.

JUDGE

Comparing Assistant