

GAHC010184142023



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

Case No. : WP(C)/4789/2023

M/S BORAMARI MIN SAMABAI SAMITTEE LIMITED
A REGISTERED CO-OPERATIVE SOCIETY HAVING ITS OFFICE AT
VILLAGE- BORAMARI, P.O. BURAGAON, DISTRICT- MORIGAON, ASSAM,
REPRESENTED BY ITS SECRETARY- SRI BUDHESWAR MANDAL, AGED
ABOUT 52 YEARS, SON OF LATE NANI GOPAL MANDAL, RESIDENT OF
VILLAGE- BORAMARI PAM, P.O. BURAGAON, P.S. MAYONG, DISTRICT-
MORIGAON, ASSAM, PIN- 782411

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
MORIGAON
DISTRICT- MORIGAON
ASSAM
PIN- 782105

3:THE DISTRICT FISHERY DEVELOPMENT OFFICER
MORIGAON DISTRICT
DISTRICT- MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. P P BARUAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 23-08-2023

Heard Mr. R. Sarma, learned counsel for the petitioner and Mr. S.R. Baruah, learned Junior Government Advocate, Assam for all the respondents.

2. The petitioner is a cooperative society, registered under the provisions of the Assam Cooperative Societies Act, 1949/2007. The petitioner has claimed that the members of the petitioner's society are actual fishermen by profession and the society is in the neighbourhood of 25/28/103/104 Dhijupijan/Garanga/ Garsag/Maliapunja Min Mahal ['the Fishery', for short]. The Deputy Commissioner, Morigaon published a Tender Notice on 28.01.2021 whereby bids were invited for settlement of the Fishery for a period of 7 [seven] years. The last date of submission of bids in response to the Tender Notice dated 28.01.2021 was 02.02.2021. In response to the Tender Notice, the petitioner society submitted its bid. The Tendering Authority after evaluation of the bids of the participant bidders including that of the petitioner, had settled the Fishery in favour of the successful bidder by passing an order of settlement. The petitioner though participated in the bidding process, was unsuccessful to get the settlement of the Fishery. The petitioner had submitted an amount of ₹ 1,75,000/- in favour of the Deputy Commissioner, Morigaon i.e. the Tendering Authority as required by the terms and conditions of the Tender Notice dated 28.01.2021 towards the Earnest Money Deposit [EMD] after the tender process got concluded with the emergence of a successful bidder. As the petitioner was an unsuccessful bidder in the tender process, the Tendering Authority is required to refund the Earnest Money Deposit [EMD] the petitioner society had deposited along with its bid.

3. Mr. Sarma, learned counsel for the petitioner has drawn attention to Clause 17 of the Tender Notice wherein it is indicated that the Earnest Money Deposit [EMD] of an unsuccessful bidder would be returned after finalisation of the tender process. As the Earnest Money Deposit [EMD] deposited by the petitioner in the form of Call Deposit was not

refunded even after completion of the tender process for settlement of the Fishery, the petitioner society submitted representations before the Deputy Commissioner, Morigaon on 11.08.2021, on 29.09.2021 & on 02.11.2021 respectively. It is stated that it is when no discernible action was found to have been taken from the office of the Deputy Commissioner, Morigaon despite elapse of substantial period of time, the petitioner is constrained to prefer the instant writ petition seeking a direction to the respondent authorities, more particularly, the Deputy Commissioner, Morigaon to release the Earnest Money Deposit [EMD] of ₹ 1,75,000/- which the petitioner society had deposited at the time of submitting its bid for settlement of the Fishery in response to the Tender Notice dated 28.01.2021.

4. Mr. Baruah, learned Junior Government Advocate, Assam has submitted that since it appears that the petitioner society has already submitted a number of representations at the office of the Deputy Commissioner, Morigaon [the respondent no. 2], the writ petition can be disposed of at this stage by directing the Deputy Commissioner, Morigaon [the respondent no. 2] to examine and consider the case of the petitioner for refund the Earnest Money Deposit [EMD].

5. Having regard to the case projected on behalf of the petitioner and the submissions made by the learned counsel for the parties, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of with a direction to the respondent authorities, more particularly, the respondent no. 2 to take the representations stated to have been submitted by the petitioner society on 11.08.2021, on 29.09.2021 & on 02.11.2021 on board as regards refund of Earnest Money Deposit [EMD] amounting to ₹ 1,75,000/- and after due examination and consideration of those representations consideration after hearing the authorised representatives of the petitioner society, if found necessary, and to dispose of the same by passing a speaking order. It is observed that such speaking order is to be passed within a period of 4 [four] weeks from the date of receipt of this order a copy of this order along with a copy of the writ petition with annexures from the petitioner at his office. It is, however, made clear that this Court has not made any observation on the merits of the claim of the petitioner society and the respondent authorities, more particularly, the respondent no. 2 shall consider the case of the petitioner

society on its merits and in accordance with law.

6. This order disposes of the writ petition.

JUDGE

Comparing Assistant