

GAHC010011602024



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

Case No. : WP(C)/264/2024

M/S NO. 10 KOLONG NODI PART-IV, MIN SAMABAI SAMITI LTD
A REGISTERED COOPERATIVE SOCIETY REPRESENTED BY ITS
SECRETARY, SHRI PRAMOD CHANDRA DAS, AGED ABOUT 55 YEARS, S/O
LATE BHUBAN CHANDRA DAS, R/O VILL- BAMUNIAGAON, P.O.-
HARIAMUKH, P.S.-ROHA, DIST-NAGAON, ASSAM, PIN-782103

VERSUS

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

2:THE DISTRICT COMMISSIONER
NAGAON
ASSAM
PIN-782001

3:THE ADDITIONAL DEPUTY COMMISSIONER
NAGAON
PIN-78200

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, FISHERY

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

16.02.2024

1. Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. H.R. Das,

learned counsel for the petitioner. Also heard Mr. P. Sarma, learned counsel for the Fishery Department and Mr. K. Gogoi for the respondent no.2 & 3.

2. The petitioner is a Registered Cooperative Society consisting of 100% schedule caste actual fisherman community. Pursuant to an NIT dated 01.09.2023 for settlement of the No.14/15 Nishari Haria Meen Mahal under Raha and Kampur Revenue Circle for a period from 2023-2030, the petitioner had participated and its offer was found to be the third highest. However, there was a communication to the petitioner to enhance its bid by 10% yearly, from the 1st year to the 7th year, which was not agreed to by the petitioner and accordingly the said offer was not accepted. However, by the impugned order dated 30.12.2023, issued by the District Commissioner, Nagaon, not only has the tender process been cancelled, even the Call Deposit of the petitioner has been forfeited.

3. Questioning the jurisdiction and authority of the District Commissioner, the learned Senior Counsel has submitted that the prescription in the Rules does not vest any powers with the District Commissioner, as the powers of settlement and to take ancillary steps is vested with the Government.

4. Mr. P. Sarma, learned counsel for the Fishery Department and Mr. K. Gogoi, learned counsel for the respondent no.2 & 3 submit that the Deputy/District Commissioner has the power to cancel an NIT in terms of Rule 48 of the Assam Fishery Rules, 1953 (hereinafter referred to as "the 1953 Rules"), if there are no tenderers who have submitted their bids in terms of the NIT. However, the power to forfeit the Call Deposit is absent in the 1953 Rules. They submit that though the power to forfeit the Call Deposit is provided in "term and condition" no.4 of the NIT, the basis for forfeiture of the petitioner's Call Deposit does not come within the "term and condition" no.4 of the NIT.

5. At this stage, the petitioner's counsel submits that the only issue being pressed is with regard to forfeiture of the call deposit.

6. On considering the fact that the only question to be decided in the present case is with regard to the forfeiture of the Call Deposit of the petitioner, this Court finds that as per the NIT, the security deposit can be forfeited only in terms of condition no.4 of the NIT dated 01.09.2023, which is as follows:

“4. If the bidder fails to execute Kabulatnama within a period of one month from the date of settlement or fails to comply the terms and conditions as mentioned above, the district commissioner will pass an order to forfeit his entire security deposit amount or a part of it.”

7. The 1953 Rules does not provide for forfeiture of Call Deposit and as the terms and conditions no.4 of the NIT dated 01.09.2023 has not been violated, this Court is of the view that the forfeiture of the Call Deposit on the ground that the petitioner had not made a correction of his quotation, as communicated to him by the respondents, is arbitrary. Consequently, the respondents are directed to release the Call Deposit of the petitioner immediately.

8. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant