

GAHC010067442023



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

Case No. : Cont.Cas(C)(Suo Moto)/1/2023

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XXXXXXX

VERSUS

IN RE- MS. KAVYASHREE MAHANATA
SECRETARY, FISHERY DEPARTMENT, GOVT. OF ASSAM, JANATA BHAWAN,
GUWAHATI-781006

Advocate for the Petitioner : SC, GHC

Advocate for the Respondent : MR. D NATH

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

10.06.2024

- 1.** Heard Mr. H.K. Das, learned counsel for the petitioner. Also heard Mr. D. Nath, learned counsel for the sole respondent.
- 2.** This Court on 17.03.2023 upon noticing that the order passed by this

Court on 21.12.2022 in the connected writ petitions to the effect that “the Department however should ensure that there should not be any fishing activity by any third party in the meantime” was not followed, took suo-moto cognizance by registering a suo-moto contempt case against the petitioner. In the meantime, affidavits have been filed by the respondent. It appears that after the suo-moto cognizance, the respondent cancelled the order dated 28.02.2023, whereby interim fishing activity were permitted, against the order dated 21.12.2022. The aforesaid order reads as hereunder :

“ORDER

Perused: The order of the Hon'ble High Court dated 17.3.2023 in WP(C) No.1478/2023 (No11 Part V Kalong Nadi Anchalik MSS Ltd VS SOA & Others)

Perused: Govt order vide eCF No 269020/438 dated 28.2.2023

Examined: The order of the Hon'ble High Court dated 21.12.2022 in WP(C) No.4463/2022

This is regarding status of No 11 Part V Kalong Nadi Fishery in Morigaon district. The said fishery was allowed to be temporarily run by Matshya Gandha Mashya Bebosayee SS Ltd on daily basis vide Govt order eCF No 269020/438 dated 28.2.2023 at their own bid value Rs 9,31,000.00 PA awarded to them in the settlement order vide Govt order No FISH 67/2021/319 dated 17.6.2022 in the interim till regular settlement through tender system in the light of order of the Hon'ble High Court dated 21.12.2022 in WPO No 4463/2022.

But the Hon'ble High Court vide order dated 17.3.2023 in WP(C) No 1478/2023 expressed the view that the said order was in clear violation of the earlier order dated 30.6.2022 & 21.12.2022 in WP(C) 4463/2022.

Following the verdict of the Hon'ble Court, the order of lease on daily basis in favour of Matshya Gandha Mashya Bebosayee SS Ltd passed vide Govt order eCF No 269020/438 dated 28.2.2023 is hereby cancelled with immediate effect.

Consequently, DC, Morigaon is hereby directed to take over possession of the Fishery from the temporary lessee and keep it as Khas after clearing all constructions by the lessee immediately until further order from the Hon'ble High Court and report compliance to Govt forthwith so that the Compliance report may be submitted to the Hon'ble High Court through the Senior Govt Advocate, Assam.

Signed by Kavyashree Mahanta

Date : 27-03-2023 11:44:04

Secretary to the Govt. of Assam,
Fishery Department”

3. A bare perusal of the aforesaid order would indicate that post suo-moto cognizance, the order of the Court has been complied with by cancelling the order dated 28.02.2023, issued contrary to the order passed by this Court earlier. This Court further take note of the averments made in the affidavit and the additional affidavit of the respondents. Paragraph nos.3 & 4 of the affidavit dated 03.04.2023 is reproduced hereunder for ready reference:

“3. That the deponent begs unconditional apology before this Hon'ble Court before explaining the circumstances under which the Order dated 28.2.2023 was inadvertently issued. The deponent states that there was no deliberate or intentional attempt on her part to violate the Hon'ble Court Orders dated 30.6.2022 and 21.12.2022 and/or to circumvent the aforesaid Hon'ble Court Orders. The inadvertent mistake occurred on her part in issuing the order dated 28.2.2023 due to wrong understanding of the entire matter in the Department.

4. That the deponent respectfully states that she has joined as the Secretary to the Govt. of Assam, Fishery Department on 23.12.2022. It is stated that prior to settlement order dated 17.06.2022 made in favour of 1st highest bidder Matshyagandha Matshya Bebosayee S.S. Ltd, another society namely Mayong Hit Sadhini FSS was allowed to run the fishery on daily basis as stop gap arrangement. By the settlement order dated 17.06.2022 the said arrangement

was withdrawn by the Government. Even thereafter, the said society had been operating the fishery. The order of settlement dated 17.06.2022 was under challenge by 2nd highest bidder M/S Dhipujijan, Garsag & Malia Min Palan CS and 3rd bidder No 11 Part V Kalong Nadi Anchalik MSS Ltd. by filing W.P.(c) No. 3975/2022 and W.P.(C) No. 4463/2022 respectively before the Hon'ble High Court. In both the cases the Hon'ble Court was pleased to pass interim order directing to maintain status quo by the parties. Consequent upon passing of the said interim order although Matshyagandha Matshya Bebosayee S.S. Ltd. was settled with the fishery substantively possession could not be handed over to them. Since Mayong Hit Sadhini was neither a tenderer nor parties to the proceedings pending before the Hon'ble High Court and had been enjoying the fishery on the strength of the interim order passed by the Hon'ble court at the instance of 2nd and 3rd highest bidder as stated above, M/s Matshyagandhya Matchya Bebosayee SS Ltd. had preferred two Interlocutory applications being I.A.(C) No. 2058/2022 and I.A.(C) No. 1850/2022 for vacating the interim orders. The Hon'ble Court while taking the Writ Petitions for admission by order dated 21.12.2022 was pleased to provide that the Department should ensure that there should not be any fishing activity by any third party till disposal of the case. Further, it was provided that the interim order passed earlier to maintain status quo by the parties shall continue till the next date. M/s Matshyagandhya Matchya Bebosayee SS Ltd. being the valid highest bidder was settled with the fishery and not being a third party had filed a representation to the Government apprising about the order passed by the Hon'ble Court and further prayed for allowing them to run the fishery temporarily on daily basis.

The department had thoroughly examined the matter and thereafter was under the view that the status quo order which was passed by the Hon'ble court on 20.06.2022 and 30.06.2022 respectively to maintain status quo was relating to the substantive possession pursuant to the settlement order dated 17.06.2022 only. As such, they were debarred from handing over the possession to M/s Matshyagandhya Matchya Bebosayee SS Ltd. despite the fact that they are the settlement holder and valid 1st highest bidder. Thereafter, it was the understanding of the department that the Hon'ble Court has specifically directed not to allow any third party to run the fishery and in view of the aforesaid specific directions there may not be any embargo to allow any of the

participants in the tender process and/or the parties of the aforesaid writ proceedings. Since amongst the above noted 3 societies Matshyagandha Matchya Bebosayee SS Ltd. has quoted highest bid, the department in the interest of earning revenue had decided to pass the order dated 28.2.2023 allowing the Society to run the fishery purely on temporarily basis providing that the settlement order can be withdrawn without assigning any reasons thereof if situation warrants and without any prejudice to the parties to the pending writ petitions.

In this context it is most humbly and respectfully stated that there was no wilful intention to violate the order of this Hon'ble Court in issuing the order dated 28.02.2023 and allowing M/s Matshyagandhya Matchya Bebosayee SS Ltd. to run the fishery temporarily and that the order dated 28.2.2023 was issued bonafide only with the aforesaid understanding for not to lose the Government revenue by the State. However, immediately, after passing of the order dated 17.03.2023 in W.P.(C) No 1478/2023, the order dated 28.2.2023 has been withdrawn by an order vide eCF No. 269020/445 dated 27.03.2023 and the same has been intimated and communicated to the respective parties."

4. Paragraph-3 of the additional affidavit dated 04.04.2024 is also reproduced hereunder for ready reference :

"3. That the deponent respectfully states that she begs unconditional apology before the Hon'ble Court for issuance of the Order dated 28.02.2023 and prays that the Hon'ble Court may not take an adverse view in the matter. The deponent begs apology for whatever has happened and assures the Hon'ble Court that nothing of this sort will happen in future."

5. In view of the above, more particularly, considering that the order of this Court has been complied post registration of the suo-moto contempt case vis-à-vis, unconditional apology tendered this Court is of the considered view that the contempt petition can be closed.

- 6.** Ordered accordingly.
- 7.** The contempt petition stands disposed of.

JUDGE

Comparing Assistant