

GAHC010069022023



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

Case No. : WA/141/2023

M/S SAIKHOWA SADIYA MIN SAMABAI LTD
A REGISTERED FISHERY CO-OPERATIVE SOCIETY HAVING ITS
REGISTERED OFFICE AT HATIGHULI, DHOLA, IN THE DISTRICT OF
TINSUKIA, ASSAM, REP. BY ITS CHAIRMAN, RAICHAN BISWAS, AGED
ABOUT 45 YEARS.

VERSUS

THE STATE OF ASSAM AND 13 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, FISHERIES DEPTT.,
GOVERNMENT OF ASSAM, DISPUR, GUWAHATI- 781006

2:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM.

3:THE DEPUTY COMMISSIONER
SIVASAGAR
ASSAM.

4:THE DEPUTY COMMISSIONER
LAKHIMPUR
ASSAM.

5:THE DEPUTY COMMISSIONER
DHEMAJI
ASSAM.

6:THE SUPERINTENDENT OF POLICE
DIBRUGARH
ASSAM.

7:THE SUPERINTENDENT OF POLICE
SIVASAGAR

ASSAM.

8:THE SUPERINTENDENT OF POLICE
LAKHIMPUR
ASSAM.

9:THE SUPERINTENDENT OF POLICE
DHEMAJI
ASSAM.

10:THE SUPERINTENDENT OF POLICE
SADIYA
ASSAM.

11:THE CHIEF WILDLIFE WARDEN
ASSAM
ARAYNA BHAWAN
PANJABARI
GUWAHATI- 781037.

12:THE DIVISIONAL FOREST OFFICER
TINSUKIA WILDLIFE DIVISION
TINSUKIA
ASSAM.

13:THE MISSING AUTONOMOUS COUNCIL
REP. BY ITS PRINCIPAL SECRETARY
GOGAMUKH DHMAJI
ASSAM.

14:THE DIBRUPORIA PART II AND PART III PISCICULTURE SOCIETY LTD
REP. BY ITS SECRETARY
CHANDAN KUMAR DAS S/O LATE UPENDRA DAS R/O VILL.- TENGABARI
P.O.- MAKUM
PIN- 786189
DIST.- DIBRUGARH
ASSAM

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : MR. D.K. SHARMA,
ADDL. SENIOR GOVT ADVOCATE, ASSAM.
MR. P.H. KONWAR, STANDING COUNSEL,
MISING AUTONOMOUS COUNCIL.
MR. M.K. CHOUDHURY, SENIOR ADVOCATE
ASSISTED BY MR. S. KHOUND, ADVOCATE.

**BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT (ORAL)

Date : 23-01-2024.
(Kardak Ete, J).

Heard Mr. M. Dutta, learned counsel for the appellant. Also heard Mr. D.K. Sharma, learned Addl. Senior Government Advocate, Assam for the respondent Nos.1—10, Mr. P.H. Konwar, learned Standing Counsel, Missing Autonomous Council for the respondent No.13 and Mr. M.K. Choudhury, learned Senior Advocate assisted by Mr. S. Khaund, learned counsel for the respondent No.14.

(2) This intra Court appeal is directed against the judgment and order dated 02.03.2023, passed by the learned Single Judge in WP(C) No.998/2023, alongwith batch of Writ Petitions, whereby all the Writ Petitions were disposed of with the following observation and directions:-

“(i) The period of settlement of the petitioner in respect to the schedule fishery i.e. Dibru Brahmaputra Part III, IV and V Fishery would for a period of 7 years from 22.11.2013 to 21.11.2020 thereby affirming the order dated 24.02.2017. Taking into consideration that by virtue of the orders passed by this Court and the order dated 06.02.2023, the period of settlement for the reasons above discussed would deemed to have come to an end on 06.02.2023.

(ii) The Respondent State shall take steps forthwith for sale of the Schedule Fishery or so much of the Schedule Fishery after redefining within a period of one month from today and complete the said process as early as possible. The entire exercise be completed within three months from today.

(iii) During this interregnum, the Respondent State is given the liberty to

run the fishery by adopting an acceptable mode on daily basis.

(iv) The order dated 06.02.2023 is only interfered with to the extent indicated hereinabove i.e. the specific observations and findings to the effect that the petitioner is a defaulter and liable to pay Rs.64,98,306/- as Revenue. The entitlement of the Respondent State have been specifically dealt with in paragraph No.35 herein above.

(v) The petitioner is given the liberty to submit a representation within 15 days from the date of this judgment to the Commissioner and Secretary to the Government of Assam, Department of Fisheries seeking remission of such amount(s) on the grounds and reasons for which the petitioner could not run the Schedule fishery during the period of settlement. The said Authority shall give the petitioner an opportunity of hearing so that the petitioner is able to project its case and thereupon pass a reasoned order in accordance with law. It is made clear that if the petitioner fails to file the representation within the period as stipulated hereinabove, the Order dated 06.02.2023 in so far as holding the petitioner a defaulter and liable to pay Rs.64,98,306/- subject to certain adjustments shall revive. It is also clarified that the petitioner shall not cause any hindrance and/or cause delay in the adjudication to be made.

(vi) It is further directed that if the Authority to whom the representation is submitted fails to pass any order prior to 10 days from the last date of submission of tender for the Schedule fishery or so much of the Schedule fishery after redefining, the petitioner in the peculiar facts of the case would not be treated as a defaulter.

(vii) It is further made clear that the question of the entitlement for remission by the petitioner shall not in any manner effect and/or forestall the Respondent Authorities to proceed with the directions made in

paragraph 36(ii) hereinabove.”

(3) The appellant is only aggrieved by the observation and direction at Serial No.(i) (Supra).

(4) The case of the appellant, shorn of unnecessary details, is that pursuant to the NIT dated 08.06.2011, the appellant was settled with the Dibru Brahmaputra Part-III, IV & V Fishery of Dibrugarh District (hereinafter referred to as 'the Schedule Fishery') for a period of seven (7) years from the date of handing over of possession. The order of settlement was issued on 22.11.2013. On institution of various litigations against the settlement order dated 22.11.2013, the settlement with the appellant for the Schedule Fishery could not be made operationalized. After withdrawal of the various Writ Petitions, which had challenged the order dated 22.11.2013, the Deputy Commissioner, Dibrugarh had issued an order thereby granting the settlement rights to the appellant/Writ Petitioner for a period of seven (7) years w.e.f. 16.01.2017 to 15.01.2024. Thereafter, on 17.01.2017, the appellant was handed over the possession of the Schedule Fishery. However, the said order dated 16.01.2017 was cancelled on the ground that it is the Government which is competent to issue the order and not the Deputy Commissioner, Dibrugarh, which was challenged and the said order was interfered with in WP(C) No.420/2017, vide order dated 15.02.2017.

(5) The Government has issued an order on 24.02.2017, limiting the period of lease/settlement till 21.11.2020, on the ground that if the settlement period is enlarged, the question of enhancement of rate as well as the question of re-tender would arise. Such order was put to challenge in the WP(C) No.1354/2017.

(6) The main issue in the Writ Petition was as to whether the appellant has a right to continue with the settlement beyond the period from 21.11.2020 and/or as to whether the action of the respondent authorities, in limiting the period only upto 21.11.2020, is an arbitrary exercise of power.

(7) The main contention of the appellant is that the settlement of the Schedule Fishery was for a period of seven (7) years which would encompass seven years from the date of actual possession i.e. 17.01.2017. According to the appellant, settlement of the Schedule Fishery ought to have been extended and allowed upto 16.01.2024.

(8) The learned Single Judge, on such contention, has held that such a contention of the petitioner that the seven years of settlement would encompass seven years from the date of actual possession, in the facts and circumstances of the case, would be giving a premium to the petitioner for the time spent on account of litigation. It further held that this would not only result in deprivation of the revenue to the State for a period under which the settlement could not be put in effect due to litigations but would also result in double deprivation if the period is enlarged beyond the original stipulated period, as subsequent to seven years, the revenue was not freezed in contemplation of the State as well as the petitioner. Accordingly, the learned Single Judge was of the opinion that the decision in the order dated 24.02.2017 that further enlargement would lead to enhancement of the revenue and without there being any written order, it would not be proper to do so, cannot be said to be an exercise of power arbitrarily, unreasonably, irrationally and perverse. Thus the learned Single Judge had refused to interfere with the order dated 24.02.2017 and concluded that the settlement period for the petitioner/appellant has to be construed for a period of seven years from

22.11.2013 to 21.11.2020.

(9) We noticed that vide order dated 06.02.2023, the Respondent authorities had terminated the settlement period on the ground of being defaulter by the appellant. It is also noticed that there was another issue which relates to redefining/demarcation of the boundaries of the Schedule Fishery. There were issues of overlapping and alleged disturbance created by some persons at Brahmaputra Fishery Part-III of the Schedule Fishery too.

(10) Mr. M. Dutta, learned counsel for the appellant submits that since the settlement was for period of seven years from the date of handing over of possession and the possession was given on 17.01.2017, the settlement with the appellant for the said Schedule Fishery ought to have been extended upto 16.01.2024, in as much as it was due to litigation by third parties, the appellant was deprived of the settlement w.e.f. 22.11.2013, without any fault on the part of the appellant. Mr. Dutta further submits that not only due to litigations, even after issuance of the settlement order dated 22.11.2013, there were certain other problems like overlapping of the Brahmaputra Part-III of the Schedule Fishery and disturbance created by respondent No.13, which ought to have been settled by the respondent authorities. Therefore, at this stage, justice demands that another period of one year be extended by enlarging the settlement upto November, 2024.

(11) Mr. D.K. Sharma, learned Addl. Senior Government Advocate, Assam representing the respondent Nos.1—10, during the course of hearing, placed the communication dated 20.01.2024, issued by the Under Secretary to the Government of Assam, Fishery Department. The learned Addl. Senior Government Advocate, Assam, referring to the communication dated 20.01.2024 submits that the Deputy Commissioner, Dibrugarh has already submitted the

joint survey and demarcation of boundary in respect of four numbers of River fisheries, namely, (1) Dibru Brahmaputra Fishery, (2) Brahmaputra Part-III, (3) Brahmaputra Part-IV & (4) Brahmaputra Part-V Fishery of Dibrugarh District, to the Government of Assam through the Commissioner and Secretary to the Government of Assam, Fishery Department, Assam at Dispur on 12.01.2024, for consideration and notification of the said boundary of river fisheries in terms of the Government Rules by cancelling the boundary of the existing fisheries/mahals. Mr. Sharma further submits that it is expected that the Government of Assam would notify the said demarcation of the boundary of fisheries/mahals within three weeks. The learned Addl. Senior Government Advocate, Assam also submits that at present the appellant is allowed the Schedule Fishery on daily basis, as a stopgap arrangement, which the appellant is continuing as on date.

(12) Mr. M.K. Choudhury, learned Senior Counsel representing the respondent No.14 has pointed out that the prayer made in the Writ Petition is for a direction to allow the petitioner/appellant to continue the settlement upto 16.01.2024 and in the Writ Appeal, a totally different prayer is made that the appellant be allowed to continue upto 16.11.2024, which is not permissible in as much as the appellant cannot make a different prayer in the intra Court Appeal, as the intra Court Appeal is a continuation of the Writ Proceedings. In any case, since the appellant has been allowed to continue as on date and considering that the prayer made in the Writ Petition was to allow the appellant to continue to operate the Schedule Fishery upto 16.01.2024, by efflux of time, nothing survives for adjudication. Therefore, Mr. Choudhury, the learned Senior Counsel prays for dismissal of the Writ Appeal and further prayed for a direction for fresh tender, so as to enable the parties to have level playing field.

(13) Having considered the submissions of learned counsel for the parties and on perusal of the impugned judgment and order dated 02.03.2023, as well as considering the facts and circumstances of the present case, we are of the view that there is hardly any issue which needs to be adjudicated/determined, as the respondent authorities have taken a decision to redefine/demarcate the Schedule Fishery/Mahals for which a joint survey and the demarcation have already been carried out and submitted for consideration and notification before the Government of Assam. We also noticed that the main thrust of challenge made by the appellant in this intra Court Appeal is the rejection of the grievance of the appellant for allowing the appellant to continue upto 16.01.2024. By efflux of time, such a grievance has already spent its force which is beyond consideration. That apart, the appellant is being allowed to run the Schedule Fishery as on date, though the learned counsel for the appellant has made a vain attempt to dispute the same by submitting that the actual possession has not been given to the appellant. We also find from the record that the appellant has accepted to run the Schedule Fishery on daily basis on his own volition by participating in the process adopted by the respondent authorities for running the Schedule Fishery in the interregnum.

(15) As held by the learned Single Judge, the question of redefining/demarcation of the boundaries of the Schedule Fishery is within the exclusive domain of the State/Executive and the parameters of interference are very limited, except on the grounds of arbitrariness, irrationality, perversity and *malafide*, to which we are fully concurred with.

(16) Having regard to the submission of the learned Senior Counsel Mr. M.K. Choudhury that the appellant has made a totally different prayer in this intra Court Appeal by departing from the one in the Writ Petition to the effect that

the appellant be allowed to continue till 16.11.2024, on a pointed query, the learned counsel for the appellant has categorically stated that the prayer for a direction to allow the appellant to run the Schedule Fishery for a term of seven years upto 16.11.2024, is a typographical mistake, rather it should have been 16.01.2024. In view of such undisputed fact, we are of the firm view that no issue is left to be determined in this intra Court Appeal.

(17) Apart from above, on careful perusal and consideration of the impugned judgment and order dated 02.03.2023, on its merit, we find no infirmity. Thus, we declined to interfere with the judgment and order dated 02.03.2023.

(18) However, in the facts and circumstances of the present case, the present intra Court Appeal is disposed of with a direction to the respondent authorities to notify the demarcation in respect of four numbers of river fisheries, namely, (1) Dibru Brahmaputra Fishery, (2) Brahmaputra Part-III, (3) Brahmaputra Part-IV & (4) Brahmaputra Part-V Fishery of Dibrugarh District and settled the said Fisheries/Mahals by way of tender, in accordance with the law. Till then, the appellant may be allowed to run the same on daily basis, as may be permissible under the existing Rules.

(19) Writ Appeal stands disposed of with the above directions. No order as to costs.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant

B.