

GAHC010075202022



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

Case No. : WP(C)/2920/2022

DINABANDHU NAYAK AND ANR
(STAKE HOLDER MANAGEMENT)
S/O- LT. LAYON CH. NAYAK
R/O- VILL. AND P.O.- AMRIKHOWA
DIST.- BARPETA
PIN- 781307
ASSAM.

2: ARUN DAS
(STAKE HOLDER FISHING OPERATION)
S/O- DINESH DAS
R/O- VILL. BAMPARA
P.O.- CHAUNGA
DIST.- BARPETA
P.S.- TARABARI
PIN- 783015.
VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION AND 3 ORS
REP. BY ITS MANAGING DIRECTOR
CHACHAL
VIP ROAD
GUWAHATI
PIN- 781036
DIST.- KAMRUP(M)
ASSAM.

2:THE CHAIRMAN
THE ASSAM FISHERIES DEVELOPMENT CORPORATION
REP. BY ITS MANAGING DIRECTOR
CHACHAL
VIP ROAD
GUWAHATI
PIN- 781036

DIST.- KAMRUP(M)
ASSAM.
3:THE MANAGING DIRECTOR
THE ASSAM FISHERIES DEVELOPMENT CORPORATION
CHACHAL
VIP ROAD
GUWAHATI
PIN- 781036
DIST.- KAMRUP(M)
ASSAM.
4:THE PROJECT MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
BARPETA DIST.
PIN-
ASSAM.

Advocate for : MR. B K MAHAJAN
Advocate for : SC
AFDC appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION
AND 3 ORS

Linked Case : WP(C)/3966/2022

DINABANDHU NAYAK AND ANR.
(STAKE HOLDER MANAGEMENT)
S/O. LT. LAYON CH. NAYAK
VILL. AND P.O. AMRIKHOWA
DIST. BARPETA
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ASSAM.

2: ARUN DAS
(STAKE HOLDER FISHING OPERATION)
S/O. DINESH DAS
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THE ASSAM FISHERIES DEVELOPMENT CORPORATION AND 3 ORS.
REP. BY ITS MANAGING DIRECTOR
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2:THE CHAIRMAN

ASSAM FISHERIES DEVELOPMENT CORPORATION REP. BY ITS MANAGING
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KAMRUP (M)
ASSAM.
4:THE PROJECT MANAGER

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
BARPETA DISTRICT
PIN-781301
ASSAM.

Advocate for : MR. B K MAHAJAN
Advocate for : SC
AFDC appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION
AND 3 ORS.

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the petitioners : Mr. P. Mahanta

For the respondents : Mr. P. Sarmah
SC, AFDC

Dates of hearing : 13.06.2024

Date of Judgment : 18.06.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. P. Mahanta, learned counsel for the petitioners. Also heard Mr. P. Sarmah, learned counsel for the AFDC.

2. Both the writ petitions are being disposed of by this common judgment and order, inasmuch as, the subject matter in issue is same in both the cases. The petitioners are also the same in both the cases.

3. The petitioners have prayed for setting aside and quashing the impugned order dated 15.12.2021 and the consequential order dated 08.04.2022 issued by the Managing Director, AFDC Ltd, who is the respondent No.3, by which the settlement of 44 fisheries, including the fishery run by the petitioners, have been cancelled. The petitioners have also prayed for setting aside the tender No.2/2022 and the impugned revised tender notice No.4/2022 issued by the respondent No.3, by which fresh settlement of the fisheries were to be made.

4. The petitioners' case in brief is that pursuant to an NIT dated 07.07.2015, for settlement of the Borkona Fishery of Barpeta District for 7 years, a settlement order dated 28.08.2015 was issued by the respondent No.3, settling the Borkona Fishery with the petitioners from the financial year 2015-16 to the financial year 2021-2022, i.e., till 31.03.2022, for a total consideration amount of Rs.94,71,000/-.

5. During the settlement period, an order was issued on 05.12.2020 by the

respondent No.3 with the approval of the Chairman of the AFDC, i.e., the respondent No.2, directing the management of the beel/fishery for 4 years, by way of Direct Management System, by engaging the petitioner No.1, namely Dinabandhu Nayak as Stakeholder Management and the petitioner No.2, namely Shri Arun Das - M/s Bampara Fishermen Cooperative Society Ltd. The order dated 05.12.2020 also stated that the management of the fishery/beel may be extended for another 7 years, subject to satisfactory management of 4 years against the target value of Rs.14,88,300/- per year. The order also stated that the Society had requested to merge the period of their settlement which was till the year 2021-2022 into the Direct Management System, for better management and enhancement of the livelihood of the poor fishermen of the Society, to compensate the loss incurred during Covid-19 pandemic and the loss incurred during the last 3 years. It was also stated that the arrangement made in the order dated 05.12.2020 was due to the norms and status of Covid-19 pandemic and financial crisis of the AFDC Ltd.

6. A Deed of Agreement for management of the Borkona Fishery in Public Private Partnership mode (in short 'PPP mode') was executed on 01.07.2021, between the petitioners and the AFDC Ltd.

7. Thereafter, vide the impugned order dated 08.04.2022 issued by the respondent No.3, 44 fisheries which had been settled under the PPP mode without inviting tender, were cancelled, as it was in violation of Section 254 of the Assam Financial Rules, which mandates settlement of a contract only through a tender process and the decision of the Full Bench of this Court in ***M/s 129 Haria Dablong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Development Corporation Ltd. & Ors.***, reported in ***(2001) 2***

GLR 333.

8. The petitioners being aggrieved by the impugned order dated 08.04.2022 passed by the respondent No.3 put the same under challenge in WP(C) 2920/2022, along with the tender notice No.02/2022 issued by the respondent No.3 for fresh settlement of the Borkona fishery. This Court passed an interim order of status quo dated 09.05.2022 in WP(C) 2920/2022. Subsequent to the above events, the respondent No.3 issued revised tender notice No.4/2022 for settlement of the same fishery, which was again put to challenge in the present writ petition. This Court, in its order dated 17.06.2022, directed the respondents not to finalize the tender pursuant to the revised tender notice.

9. The petitioners' counsel submits that the petitioners challenge to the impugned order dated 08.04.2022 issued by the respondent No.3 had been tagged along with a number of other cases, wherein the same impugned order had been challenged. However, the present case was segregated from the other writ petitions, on the ground that the petitioners' case was slightly different from the other cases. Thus, though the Coordinate Bench had dismissed the bunch of writ petitions which had put to challenge the impugned order dated 08.04.2022, the same could not be made applicable to the petitioner's case, as the petitioners' case had been segregated from the bunch of cases that had been dismissed, the leading case being WP(C) 2192/2022.

10. The petitioners' counsel submits that the petitioners' fishery settlement period of 7 years was due to end on 31.03.2022. However, a decision was taken by the respondent Nos.2 and 3, for extension to the settlement of the fishery with the petitioners for a further period of 4 years under the PPP mode, on the

basis of the order dated 05.12.2020 and the Agreement dated 01.07.2021. He submits that the petitioner had been settled with the fishery under the PPP mode without call of tender, by way of an extension of the earlier settlement made in the year 2015. He submits that the petitioners were also given permission by the respondent No.2, vide letter dated 28.01.2021, to dig four ponds within the Borkona Fishery and as the petitioners had incurred huge expenditure for the development of the fishery, the respondents could not have cancelled the settlement of the fishery on PP mode with the petitioners, without issuance of a prior notice. He also submits that the doctrine of promissory estoppel is attracted in the case of the petitioners and that the PPP extension order not being a fresh settlement, no tender notice was required to be issued, prior to settlement of the fishery in PPP mode with the petitioners.

11. The petitioners counsel further submits that there was no loss of revenue incurred by the AFDC in extending the settlement of the fishery, as there was an enhancement of revenue payable by the petitioners for the extended period of the fishery. The petitioners counsel submits that notice had to be given to the petitioners, prior to cancellation of the settlement of their fishery, in terms of the judgment of the Supreme Court in the case of ***Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati***, reported in **(2015) 8 SCC 519** and ***Aligarh Muslim University Vs. Mansoor Ali Khan***, reported in **(2000) 7 SCC 529**. He submits that the doctrine of promissory estoppel is attracted to the case in hand and in this regard, he has relied upon the judgment of the Supreme Court in ***Union of India vs. Anglo Afghan Agencies (AIR 1968 SC 718)***.

12. Mr. P. Sarmah, learned counsel for the AFDC, on the other hand, submits

that while the settlement of the fishery had been made in the year 2015 with one Ramesh Chandra Das, Secretary Bampara Fishermen Cooperative Society Ltd, the present writ petitions have been filed by Sri Dinabandhu Nayak (Stakeholder Management) and Sri Arun Das (Stakeholder Fishing Operation). There is nothing to show that they are representing the Bampara Fishermen Cooperative Society Ltd., as the cause title does not indicate that they are representing the said Society. The affidavit of the petitioner No.1, namely Sri Dinabandhu Nayak also does not indicate that he is representing the Society.

13. The learned counsel for the AFDC further submits that the impugned order dated 08.04.2022, which cancelled the fisheries settled under the PPP mode, had been put to challenge in a batch of writ petitions, the leading case being WP(C) No.2192/2022, which was disposed of on 21.09.2022. In the said judgment and order dated 21.09.2022, this Court had examined whether the settlement of the fisheries under the PPP mode had been done in accordance with law. This Court had held that the general principles of distribution of State largesse, namely, maintenance of transparency and fairness have to be strictly adhered to and such settlement has to be preceded by a procedure recognised by law. It further held that the concept of PPP in settlement of Fisheries was alien to the Rules governing the field and settlement could only be given by means of a tender process, strictly in accordance with the Rules. However, as the settlement of fisheries under the PPP mode was not preceded by a tender notice, the cancellation of the settlement of the fisheries under the PPP mode was not interfered with by this Court.

14. The learned counsel for the AFDC further submits that as the subsequent settlement of the fishery in the year 2021 with the petitioners under the PPP

mode had not been done in accordance with any rules or procedures and without following the tender process, the judgment and order dated 21.09.2022 passed in the batch of writ petitions covered the present case. He also submits that prior notice was not required to be issued to the petitioners before cancelling their fishery, as held by this Court in the judgment and order dated 21.09.2022 passed in the batch of writ petitions, which was upheld by the Division Bench. He further submits that as the normal settlement period of the fisheries for 7 years with the petitioners ended on 31.03.2022, the impugned order dated 08.04.2022 did not suffer from any infirmity.

15. Counsel for the AFDC submits that the Division Bench of this Court in a batch of writ appeals, the leading case being W.A. No.366/2023, had to decide as to whether the learned Single Judge in the batch of writ petitions, the leading case being WP(C) No.2192/2022, had taken a correct decision with regard to whether an opportunity of hearing had to be provided to the persons, who had been settled with fisheries under the PPP mode, prior to cancelling the same. The Division Bench held that the same would be a futile exercise, as the appellants had failed to make out a case that the AFDC had rightly settled the fishery in their favour. The Division Bench held that they were of the firm opinion that the settlement of the fishery in their favour was illegal *void ab initio*. He accordingly submits that no prior notice was required to be given to the petitioners in terms of the principles of natural justice. He also submits that the extension of settlement of the fishery given to the petitioners is a fresh settlement under the PPP mode without call of tender and as such, this case is a covered case.

16. The learned counsel for the AFDC also submits that the respondent No.3

has been suspended and departmental proceedings has been initiated against him due to making fresh settlement of fisheries under the PPP mode, without call of tender.

17. I have heard the learned counsels for the parties.

18. The issue to be decided in this case is whether the judgment and order dated 21.09.2022 passed in a batch of writ petitions, the leading case being WP(C) 2192/2022, wherein the Coordinate Bench had dismissed the challenge made to the order dated 08.04.2022 issued in pursuance to an earlier order dated 15.12.2021, cancelling the settlement of various fisheries without call of tender, including the petitioner's Borkana fishery, would be applicable to this case. Secondly, whether the non-issuance of a notice prior to the impugned order dated 08.04.2022 being issued, caused prejudice to the petitioner. Thirdly, whether the settlement of fishery in PPP mode vide agreement dated 01.07.2021, pursuant to the order dated 05.12.2020 issued by the respondent no.3, could be said to be an extension of the settlement of the fishery which had been made in the year 2015 or whether the same was a fresh settlement without call of tender. Fourthly, whether the digging of four ponds by the petitioners within Borkana fishery, would attract the doctrine of promissory estoppel and thereby bind the AFDC to give extension of settlement of the fishery with the petitioner.

19. As can be seen from the foregoing paragraphs, the Borkana fishery had been settled with the petitioners for 7 years till 31.03.2022. However, prior to completion of the settlement period of 7 years, a deed of agreement for management of the fishery in PPP mode was made on 01.07.2021, on the basis

of an order issued on 05.12.2020. There was no tender issued on the basis of which the settlement of the fishery was made on PPP mode.

20. In the judgment and order dated 21.09.2022 passed in a batch of writ petitions, the leading case being WP(C) 2192/2022, the Coordinate Bench of this Court has held that the only manner of making settlement by the AFDC of the Fisheries vested with it, is to call for tenders by strictly following the principles of fairness and transparency which are the hallmarks in matters of distribution of State largesse. It also held that the concept of PPP in settlement of fisheries is alien to the Rules governing the field and settlement can be given only by means of a tender process, strictly in accordance with the Rules.

21. In paragraph no. 55 of the said judgment, the Coordinate Bench has held that the AFDC through its Managing Director could not have invented a new concept of PPP mode and thereafter attempted to settle the fisheries to the exclusion of other eligible bidders. Such settlement would be in gross violation of Article 14 of the Constitution of India. Paragraph nos.50 and 55 of the judgment and order dated 21.09.2022 passed in WP(C) 2192/2022 is reproduced hereinbelow, as follows :

“50. The Assam Fishery Development Corporation Ltd. is especially incorporated to look into the aspect of Fishery business in the State. The role and functions of the AFDC were the subject matters of dispute which were finally decided by a Full Bench of this Court in the case of M/s. Haria Dablong Min Mahal Samabai Samity Ltd. (supra). In paragraph 31 of the said judgment, the following has been laid down:

“31. In view of our foregoing discussion and decisions, we answer the question raised as follows:

1) Assam Fisheries Development Corporation has the sole authority and

jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rule 8(c) (11) if the Assam Fishery Rules;

2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency need not be reemphasized in view of the catena of decisions of the Apex Court on the point.

3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Maimal Community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.

4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out to give relief to the lessee In proper and suitable cases,.

5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3-1-1994 were produced before us and the said resolution provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too, to the highest bidder."

55. The law on this field being crystal clear, as has been explained by the Full Bench in the case of M/s. Haria Dablong Min Mahal Samabai Samity Ltd. (supra), the AFDC, through its Managing Director, could not have invented a new concept of PPP and thereafter, attempt to settle the Fisheries, in question, to the exclusion of other eligible bidders. In fact, such settlements would be wholly in gross violation of Article 14 of the Constitution of India.

22. What is clear from the judgment and order dated 21.09.2022 is that the AFDC through its Managing Director, could not have invented a new concept of PPP to settle fisheries to the exclusion of other bidders. In the present case, the petitioners' settlement for 7 years would have ended on 31.03.2022. Keeping in view paragraph 55 of the judgment and order dated 21.09.2022 in WP(C) 2192/2022, it is clear that the settlement under the PPP mode, made by way of a deed of agreement dated 01.07.2021 and the respondent no.3's order dated 05.12.2020 was patently illegal, as no tender had been called for settlement of the fishery by way of the PPP mode. In fact, the agreement for settlement of the fishery in PPP mode for 4 years, i.e., during the original 7 year settlement period, amounted to illegally extending the settlement of the fishery for another 2 years. The deed of agreement dated 01.07.2021 had a provision for further extension for 7 years, which would enable the petitioners to operate the fishery for 16 years, in total violation of the terms and conditions of the NIT dated 07.07.2015, wherein the settlement of the fishery was to be for a period of 7 years only. In that view of the matter, this Court is of the view that the colour of extension given to the 7 year settlement period vide the agreement dated 01.07.2021 is patently illegal. This Court is accordingly of the view that the agreement dated 01.07.2021 is a fresh settlement made under the PPP mode, as the original settlement was not under the PPP mode. Thus, tender had to be issued for settling the fishery under the PPP mode, which was not done.

23. The Coordinate Bench of this Court in the judgment and order dated 21.09.2022 passed in a batch of writ petitions, the leading case being WP(C) 2192/2022 had held that as the initial orders of settlement were without any sanction of law, as the Rules holding the field for settlement had been given a

go-by and that the Managing Director of AFDC had mooted an alien concept of PPP in the settlement of fishery, no objective could be achieved by giving opportunity of hearing prior to cancellation, to the persons who had been illegally settled with the fisheries on PPP mode. This Court is also of the same view. Further, in terms of the judgment in ***Dharampal Satyapal Ltd. (supra)*** and ***Aligarh Muslim University (supra)***, the issuance of a notice to the petitioners would be useless formality, as their regular terms of settlement had ended on 31.03.2022 and the cancellation of their fishery had been made subsequently, i.e. on 08.04.2022. Also, no tender was issued prior to settling the fishery in PPP mode.

24. In the case of ***Dharampal Satyapal Ltd. (supra)***, the Supreme Court has held that even when there is an infraction of principles of natural justice, a further question would have to be addressed as to whether any purpose would be served in remitting the case to the authority to issue notice. In the above case the Supreme Court found that issuance of notice would be totally futile.

25. In the case of ***Aligarh Muslim University (supra)***, the Supreme Court has held that prejudice must also be proved and not mere violation of natural justice. It also held that the requirement of natural justice must depend on the facts and circumstances of the case, the nature of the injury, the rules, the subject matter to be dealt with, and so on. Thus the Supreme Court held that issuance of notice would depend on the facts of a particular case, keeping in view whether prejudice has been caused to the person concerned. In the present case, no prejudice can be said to have been caused to the petitioners just because prior notice was not issued to them.

26. Further, in Writ Appeal No.366/2022 and others, which were appeals against the judgment and order dated 21.09.2022 passed in a batch of writ petitions, the lead case being WP(C) 2192/2022, the Division Bench of this Court, while dismissing the appeals, has held that issuance of notice prior to cancelling of the settlement of the fishery vide order dated 08.04.2022 would be a futile exercise. Paragraph 12 of the said judgment and order dated 06.05.2024 passed in a batch of writ appeals, the leading case being Writ Appeal No.366/2022 is reproduced below, as follows :

“12. So far as the question of cancellation of the fisheries settled in favour of the appellants without providing an opportunity of hearing to them is concerned, we find it as a futile exercise because the appellants have failed to make out a case before this Court that the AFDC has rightly settled the fisheries in their favour and we are of the firm opinion that the settlement of the fisheries in their favour was illegal and void ab initio. Providing an opportunity of hearing to the appellants would be nothing but a futile exercise.”

27. In view of the reasons stated above, the settlement of the fishery in PPP mode with the petitioners during the original settlement period of 7 years, cannot be said to be an extension of the settlement period, as the Coordinate Bench has rightly held that the Managing Director of the AFDC could not have invented an alien concept of PPP mode, for settlement of fisheries and in violation of the Full Bench judgment of this Court in ***M/s 129 Haria Dablong Min Mahal Samabai Samity Ltd. (supra)***.

28. With respect to the stand taken by the petitioners that they had been given permission by the respondent no.2, vide letter dated 28.01.2021 to dig 4 ponds within the fishery, which resulted in huge expenditure on the part of the petitioner for development of the fishery, this Court is of the view that the

doctrine of promissory estoppel is not attracted because of the petitioners digging 4 ponds. It is not the case of the petitioners that the petitioners had been directed to dig 4 ponds by the AFDC, with a promise made to the petitioners, that if they dug 4 ponds, the petitioners would be given extension of settlement of the fishery.

29. In the case ***Anglo Afghan Agencies (supra)***, the Supreme Court has held that the Government is not exempted from its liability to carry out a promise solemnly made by it.

30. In the case of ***Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P.***, reported in ***(1979) 2 SCC 409***, the Supreme Court has held that if on the basis of a promise made by a Government, an entity changes its legal position to its detriment, the State cannot be permitted to rescind from the said promise. The Supreme Court further held that whether a Government makes a promise knowing or intending that it would be acted upon by the promisee and the promisee alters his position by acting upon the promise, the Government will be bound by the promise.

31. In the present case, no promise has been given by the AFDC to the petitioners that if they dug 4 ponds, they would be given extension of settlement of the fishery. In fact, the letter dated 28.01.2021 relied upon by the petitioners shows that the AFDC had given no-objection to the petitioners for digging of 4 ponds within the fishery area, subject to the following conditions :

- “1. *All expenditures must be beard by the Stake Holder.*
2. *No claim would be accepted in future for the said works.*
3. *The plan of the construction of the ponds has to be certified by the*

A.E.E., I/C, Central Assam Zone.

4. Works will be supervised by the Field Officials of AFDC Ltd."

In view of the above conditions stipulated in the letter dated 28.01.2024, this Court finds that the doctrine of promissory estoppel is not attracted to the facts of this case.

32. In view of the reasons stated above, this Court finds that the present case is covered by the judgment and order dated 21.09.2022 passed in WP(C) 2192/2022, as the settlement of the fishery in PPP mode was a fresh settlement sans call of tender. Further, the petitioners normal settlement period ended on 31.03.2022. Accordingly, there being no merit in these writ petitions, the same are dismissed. Interim orders passed earlier stand vacated.

JUDGE

Comparing Assistant