

GAHC010104742024



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

Case No. : WP(C)/2751/2024

DIBRUGARH FISHERY CO OPERATIVE SOCIETY LIMITED
DIBRUGARH, DISTRICT- DIBRUGARH, ASSAM, REPRESENTED BY ITS
CHAIRMAN, SRI BIKASH DAS, AGED ABOUT 53 YEARS, SON OF LATE
BOPUL DAS, RESIDENT OF NORTH AMOLAPOTTY, DIBRUGARH TOWN,
DISTRICT- DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
DIBRUGAR

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

13.06.2024

1. Heard Mr. S. Banik, learned counsel for the petitioner and Mr. P. Sarmah, learned counsel for the Fishery Department.
2. The petitioner's grievance is with regard to the order dated 18.05.2024 issued by the District Commissioner, Dibrugarh, whereby the Sessa Nadi Fishery has been declared khas from 17.05.2024.
3. The petitioner's case is that in terms of the order dated 12.04.2024 issued by the Fishery Department pursuant to the order dated 09.04.2024 passed in WP(C) 1911/2024, settlement of fishery on daily basis had been stopped. However, the petitioner had been settled with the Sessa Nadi Fishery of Dibrugarh District on daily basis till a regular NIT was issued, on the basis of a Court order dated 21.11.2019 passed in WP(C) 8467/2019. The Fishery Department having realized that settlement of fisheries on daily basis had been made not only on the basis of the orders issued by the government, but also on the basis of the orders issued by the Court, had issued a subsequent direction vide letter dated 04.05.2024, whereby fisheries running on a daily basis on the orders of the Court need not be taken over immediately, in terms of the order dated 12.04.2024 passed by the Fishery Department. The learned Counsel for the petitioner thus submits that till a regular NIT is issued by the Fishery Department, in terms of the order dated 21.11.2019 passed in WP(C) 8467/2019, the petitioner should be allowed to run the fishery on a daily basis.
4. Mr. P. Sarmah, learned counsel for the Fishery Department submits that in

terms of the direction passed by this Court vide order dated 21.11.2019 in WP(C) No.8467/2019, the entire matter was remanded back to the government to take a fresh decision on two counts. Firstly, on the question of issuance of a fresh NIT and secondly, on the question of which of the two parties, i.e., the writ petitioner or the respondent No.4 in WP(C) No.8467/2019 (Dehing Part I Fishery Cooperative Society Ltd) should be allowed to operate the fishery on a daily basis pending finalization of the NIT.

5. Mr. P. Sarmah submits that the above direction passed by this Court in WP(C) No.8467/2019 clearly shows that the decision as to whether the petitioner or the Dehing Part I Fishery Cooperative Society Ltd should operate the fishery on a daily basis till finalization of the NIT was left to the discretion of the government. The government thereafter took the decision to allow the petitioner to run the fishery on a daily basis, till a fresh NIT was issued. As such, the letter dated 04.05.2024 issued by the Commissioner & Secretary to the Government of Assam, Fishery Department would not be attracted to the case of the petitioner herein.

6. Mr. P. Sarmah has also submitted a letter dated 11.06.2024 issued by the Addl. Secretary to the Govt. of Assam, Fishery Department, which is to the effect that the District Commissioner, Dibrugarh has been requested to ensure the publication of the NIT by 15.06.2024, for regular settlement of the Sessa Nadi Fishery and for taking follow up action for settlement of the fishery.

7. The letter dated 11.06.2024 issued by the Addl. Secretary to the Govt. of Assam, Fishery Department is made a part of the record and marked as Annexure-X.

8. Ms. U. Das, learned counsel appears for the respondent No.3, i.e., the District Commissioner, Dibrugarh and submits that the respondent No.3 will take prompt action in terms of the letter dated 11.06.2024 issued by the Addl. Secretary to the Govt. of Assam, Fishery Department.

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

10. The question to be decided is whether the running of the Sessa Nadi Fishery on a daily basis had been made on the basis of a Court order or on the basis of a Government order. If the fishery has been running on a daily basis on the basis of a Court order, the directions contained in the letter dated 04.05.2024 would apply and if it is based on a Government order, the order dated 12.04.2024 would apply.

11. To clarify the said issue, the relevant portion of the order dated 21.11.2019 passed in WP(C) 8467/2019 is reproduced below, as follows :

“.....I am of the view that instead of entertaining this writ petition, the entire matter should be remanded back to the Government to take a fresh decision both on the point of issuance of a fresh NIT and also on the question as to which of the two parties i.e. the writ petitioner or the respondent No.4 should be allowed to operate the fishery on a daily basis pending finalization of the NIT. Whatever be the decision, the same be communicated to the parties as expeditiously as possible, preferably within a period of 10 days from the date of receipt of a certified copy of this order.

.....”

12. A careful perusal of the operative portion of the order shows that the entire matter was remanded back to the Government and a fresh decision was

to be taken on both the points regarding (i) issuance of a fresh NIT and (ii) also on the question as to which of the two parties, i.e. the petitioner or the respondent no.4 should be allowed to operate the fishery on a daily basis pending finalisation of the NIT.

13. As can be seen, this Court had directed the Government to take a decision as to whether the writ petitioner or the respondent no.4 should be allowed to operate the fishery on a daily basis pending finalisation of the NIT. A reading of the above shows that though the decision to operate the fishery on a daily basis was made in favour of the petitioner, the same had been made due to the direction passed by this Court. As such, this Court is of the view that the basis for operating the fishery on a daily basis had been made on the basis of a Court order and as such, the letter dated 04.05.2024 would be attracted in the present case. The order of this Court had directed the settlement of the fishery on a daily basis, till finalisation of the NIT was made. The State respondents were only to decide which of the two parties were to be given the settlement on daily basis. Accordingly, the writ petitioner should be allowed to continue to operate the fishery on a daily basis, till finalisation of the NIT. However, the State respondents are given the liberty to enhance the rate for settlement of the fishery on daily basis. The operative part of the letter dated 04.05.2024 is reproduced hereinbelow, as follows :

“However, it appears from records that some such fisheries are running as per specific order(s) of Hon'ble High Court. Govt is of the view that the possession of such fisheries need not be taken over immediately in terms of order of the Hon'ble Court dated 9.4.2024 and status of such fisheries may be submitted so that Govt can take up the matter of such fisheries with the Hon'ble Court for further order/instruction in this regard. In this connection a format for submitting report on all such fisheries now

running on daily basis including those with specific order of the Hon'ble Court against each such fishery is enclosed herewith.

You are requested- to submit status report of all such fisheries as per enclosed format immediately for submission of Action Taken Report (ATR) before the Hon'ble Court on next date in compliance of order of the Hon'ble Court dated 9.4.2024 as well as instructions in respect of fisheries running on daily basis as per specific order against each such fisheries as stated above."

The letter dated 04.05.2024 is made a part of the record and marked as Annexure-Y.

15. The direction passed for allowing the petitioner to operate the fishery on a daily basis till finalisation of the NIT having been made on the basis of the direction passed in WP(C) 8467/2019, each case would have to be seen on the basis of the facts and circumstances of that particular case.

16. Mr. P. Sharma, learned counsel for the Fishery Department has also submitted a letter dated 11.06.2024 issued by the Additional Secretary to the Government of Assam, Fishery Department, which has requested the District Commissioner, Dibrugarh to publish the NIT for settlement of the fishery by 15.06.2024, for regular settlement of the fishery. The contents of the letter dated 11.06.2024 is reproduced hereinbelow, as follows :

"Sir,

With reference to above, I am directed to inform you that it appears from the correspondences above that the possession of Sessa Nadi Fishery has been taken over by you and kept as Khas in compliance of Govt order under reference.

In the meantime the process of regular settlement of the fishery has been initiated with assessment of Annual Lease value of the Fishery through

DFDO, Dibrugarh vide letter dated 22.5.2024.

In view of urgency of the matter for compliance of the order of the Hon'ble Court in matter of regular settlement of all 60% Govt Fisheries in a time bound manner, Govt has instructed to complete the process of issue of NIT with assessment of Annual Lease value of all 60% Govt Fisheries U/R 48 of Assam Fishery Rules, 1953 vide order dated 3.6.2024. You are therefore requested to expedite the matter to ensure completion of the process of publication of NIT by 15th June, 2024 positively for taking further follow up action leading to regular settlement of the fishery.

This is for favour of information and necessary action."

17. In view of the above letter, the respondents are directed to make regular settlement of the fishery in terms of the NIT to be published at the earliest and preferably within a period of 45 days from today.

18. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant