

GAHC010118912024



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

Case No. : WP(C)/2591/2024

MAHIR ALI AND ANR
S/O- DUDU MIYAH
VILLAGE- KAREA PAHAR
P.O- ASHOK PAPER MILLS
P.S- JOGIGHOPA
DIST- BONGAIGAON
ASSAM PIN-783388

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM DISPUR
GUWAHATI- 781006.

2:THE DISTRICT COMMISSIONER
P.O P.S AND DIST- BONGAIGAON
ASSAM PIN-783380

3:THE BONGAIGAON ZILLA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
BONGAIGAON ZILLA PARISHAD
P.O P.S AND DIST-BONGAIGAON ASSAM. PIN- 783380.

4:THE CHIEF EXECUTIVE OFFICER
BONGAIGAON ZILLA PARISHAD
P.O P.S AND DIST-BONGAIGAON ASSAM. PIN- 783380.

5:THE BOITAMARI ANCHALIK PANCHAYAT
REP. BY THE EXECUTIVE OFICER
BOITAMARI ANCHALIK PANCHAYAT
P.O- BOITAMARI
DIST- BONGAIGAON
ASSAM PIN-783384

6:THE EXECUTIVE OFFICER
BOITAMARI ANCHALIK PANCHAYAT
P.O- BOITAMARI
DIST- BONGAIGAON
ASSAM
PIN-783384

7:RANJIT MALO
S/O- PATIT PAWAN MALO
VILL- KAREA PAHAR
P.O- ASHOK PAPER MILLS
P.S- JOGIGHOPA
DIST- BONGAIGAON
ASSAM
PIN-783388

Advocate for : MR. M K HUSSAIN
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : **I.A.(Civil)/1973/2024**

RANJIT MALO
S/O- PATIT PAWAN MALO,
VILL- KAREA PAHAR,
P.O- ASHOK PAPER MILLS,
P.S- JOGIGHOPA, DIST- BONGAIGAON, ASSAM, PIN-783388

VERSUS

MAHIR ALI AND 7 ORS
S/O- DUDU MIYAH, VILLAGE- KAREA PAHAR, P.O- ASHOK PAPER
MILLS,P.S- JOGIGHOPA, DIST- BONGAIGAON, ASSAM, PIN-783388

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM DISPUR GUWAHATI- 781006.

3:THE DISTRICT COMMISSIONER
P.O P.S AND DIST- BONGAIGAON ASSAM PIN-783380

4:THE BONGAIGAON ZILLA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
BONGAIGAON ZILLA PARISHAD
P.O P.S AND DIST-BONGAIGAON ASSAM. PIN- 783380.

5:THE CHIEF EXECUTIVE OFFICER
BONGAIGAON ZILLA PARISHAD
P.O P.S AND DIST-BONGAIGAON ASSAM. PIN- 783380.

6:THE BOITAMARI ANCHALIK PANCHAYAT
REP. BY THE EXECUTIVE OFICER
BOITAMARI ANCHALIK PANCHAYAT
P.O- BOITAMARI
DIST- BONGAIGAON
ASSAM PIN-783384

7:THE EXECUTIVE OFICER
BOITAMARI ANCHALIK PANCHAYAT
P.O- BOITAMARI
DIST- BONGAIGAON
ASSAM PIN-78338

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 27.06.2024

Heard Mr. M. K. Hussain, learned counsel for the petitioner and Mr. U. Sarma, learned counsel appearing on behalf of Mr. S. Dutta, learned counsel for the respondent Nos. 1, 3, 4, 5 & 6. Mr. M. Chetia, learned counsel appears for the respondent No. 2, while Mr. M. Khan, learned counsel appears for the respondent No. 7.

2. This writ petition and the application for vacating the interim order are being disposed of by this common order.

3. The petitioner's grievance is that the Kotai Beel (fishery) was settled with

the respondent No. 7, without floating any tender for the period from 01.06.2023 to 31.05.2024 @ Rs. 1,10,000/-. The petitioner, on coming to know that the authorities were trying to extend the settlement of the fishery with the respondent No. 7, without resorting to any tender notice, has approached this Court.

3. This Court passed an interim order on 20.05.2024, directing the respondents not to extend the settlement of the Kotai Beel with the respondent No. 7.

4. The respondent No. 7, being aggrieved with the interim order dated 20.05.2024 has filed I.A.(Civil) 1973/2024, praying for vacating/modification of the said interim order passed in WP(C) 2591/2024.

5. The respondent No. 7's counsel submits that the respondent No. 7 had been allowed to operate the fishery from 01.06.2023 to 31.05.2024 @ Rs. 1,10,000/-. He submits that in view of an order dated 01.04.2024 issued by the Sub-Divisional Officer (C), North South Salmara, wherein fishing was prohibited/banned from 01.04.2024 to 15.07.2024, to protect the breeding and spawning of fishes for a period of two months, i.e., 31.05.2024, the petitioner could not operate the fishery for two months, i.e. from 1st of April, 2024 to 31st of May, 2024.

6. The counsel for the respondent No. 7 submits that the respondent No. 7 has applied for extension of the settlement of the fishery for a period of seven years and that the State respondents have not taken a decision on the same till date. He submits that the respondents should take a decision on the same and

till then, the respondent No. 7 should be allowed to operate the fishery, as the respondent No. 7 has not completed the period of settlement by two months.

7. The petitioner's counsel, on the other hand, submits that when the initial settlement has been made in violation of the statutory provisions provided under the Assam Panchayat Act, 1994, the extension of an illegal act cannot be allowed. He further submits that the settlement of a fishery has to be done in terms of Section 105 of the Assam Panchayat Act, 1994, i.e., by inviting tenders from a would be tenderer.

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

9. The admitted position is that the fishery had been illegally settled with the respondent No. 7, in violation of Section 105 of the Assam Panchayat Act, 1994, which requires the settlement of ghat/hat/ferry etc., by inviting tenders.

10. Section 105 and Section 109 (1) & (2) of the Assam Panchayat Act, 1994 states as follows:-

“105. Settlement of hats by Anchalik Panchayats :

(1) All hats within the territorial jurisdiction of the Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat financial year by inviting tenders at the office of the Anchalik Panchayat by its President.

(2) Detailed procedure for inviting and submission of such tenders shall be such as may be prescribed.

(3) The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee referred to in Section 52 (1) (a).

(4) All settlement made under sub-section (3) shall be subject to the confirmation of the Zilla Parishad :

Provided that in case of any dispute, the Anchalik Panchayat may refer such case to the Government and the aggrieved party may appeal to Government whose decision in this regard shall be final.

(5) Failure to settle any Hat for want of adequate value, the Anchalik Panchayat, as may be decided by the Zilla Parishad, may be entrusted with the direct management of such flat by the Anchalik Panchayat.

(6) All sale proceeds of hats shall be deposited in the Anchalik Panchayat fund and distributed in the manner hereinafter prescribed :

(a) an amount equivalent to twenty percent of the total sale proceeds of hats shall be made over to the Zilla Parishad funds ; and

(b) an amount equivalent to forty percent of the sale proceeds of Hats shall be equally distributed to all the Gaon Panchayats under the Anchalik Panchayat and remaining forty percent retained in the Anchalik Panchayat Fund :

Provided that the amount due, if any, on account of annual instalment for repayment of the loan with interest incurred by the erstwhile Mahkuma Parishad, Anchalik Panchayat and Gaon Panchayat for improvement of hats falling within the jurisdiction of the Anchalik Panchayat and Gaon Panchayat concerned shall be paid out of the forty percent share of sale proceeds of hats made over to the Anchalik Panchayat or Gaon Panchayat, as the case may be."

.....

"109 : Settlement of fisheries and distribution of proceeds thereof

(1) Save as otherwise provided in this Act or rules framed thereunder, all fisheries of an Anchalik Panchayat shall be settled by the Anchalik Panchayat in the manner prescribed for a period coinciding with or not exceeding one Panchayat financial year by inviting tender at the office of the Anchalik Panchayat by its President.

(2) Detailed procedure for inviting and submission of such tenders shall be such as may be prescribed."

11. There was no tender notice issued by the respondents and the respondent

No. 7 was allowed to operate the fishery without going through any selection process. In view of the illegality in settling the fishery with the respondent No. 7, there is no question allowing the respondent No. 7 to be given extension of the settlement, when the initial settlement has been done by violating the law. The petitioner's prayer for extension for operating the fishery amounts to perpetuating a fraud on the system in violation of the law.

12. In the case of ***Kosheswar Bharali vs. State of Assam and others***, reported in ***2000 (3) GLT 528***, this Court has held that on the reading of the different provisions of Sections 105 and 106 of the Assam Panchayat Act, 1994, it appears that there is no provision for extension of a settlement, either of hats/public ferries etc. This Court has further held that any settlement made beyond the Panchayat Financial Year has to be made by inviting tenders, as expressly provided in Section 106 of the Assam Panchayat Act, 1994. The above decision is also applicable to fisheries.

13. In the case of ***Ali Akbar vs. State of Assam and others***, reported in ***2009 (2) GLT 553***, this Court has held that in respect of hat/ghat/ferry etc., when there is no provision made in the Assam Panchayat Act, 1994 for granting extension of the period of settlement and when the said Act makes it clear that the settlement shall be for one Panchayat financial year, it is not possible for the Panchayat to extend the period of settlement, even though the settlement holder or lessee might have sustained loss.

14. In view of the illegality committed by the State respondents in allowing the respondent No. 7 to operate the fishery without tender notice, there is no question of allowing the writ petition to perpetuate the illegality committed by

the State respondents, by giving him an extension without issuing any tender.

15. In view of the reasons stated above, the settlement order dated 30.05.2023 issued by the then Chairman of Bongaigaon Zilla Parishad settling the Kotai Beel under the Boitamari Anchalik Parishad with the respondent No. 7 for the period from 01.06.2023 to 31.05.2024 is hereby set aside. The State respondents shall issue notice inviting tender and settle the fishery in terms of Section 109 of the Assam Panchayat Act, 1994, when they decide to settle the fishery on a regular basis. However, in view of the fact that the respondent No. 7 has not been able to operate the fishery from 1st April, 2024 to 31.05.2024, the respondent authorities shall take a decision with regard to whether the respondent No. 7 is liable to be returned the proportionate amount of the revenue for the month of April and May, 2024 from the bid amount of Rs. 1,10,000/- that has been settled for operating the fisheries. The same should be done within a period of one month from the date of receipt of a certified copy of this order.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant