

GAHC010130442024



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

Case No. : WP(C)/3371/2024

ABDUL JALIL
S/O- NASIB ALI,
R/O- KANGTAR,
P.O.- JADHUTILLA,
DIST.- KARIMGANJ,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF FISHERY,
DISPUR, GUWAHATI-6.

2:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
V.I.P. ROAD
CHACHAL
GUWAHATI-36.

3:THE ASSISTANT EXECUTIVE ENGINEER
AFDC LTD.
BVR
VIP ROAD
RANGPUR
SILCHAR-9.

4:THE ASSISTANT PROJECT MANAGER
KANGTAR BEEL

KARIMGANJ

PIN- 788710.

5:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O. AND DIST.- KARIMGANJ

ASSAM
PIN- 788710.

6:THE OFFICER-IN-CHARGE
KARIMGANJ POLICE STATION
KARIMGANJ
PIN- 788710

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : SC, AFDC

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

27.06.2024

Heard Ms. S.B. Choudhury, learned counsel for the petitioner.

2. The petitioner's counsel submits that despite the order dated 25.08.2023 passed by this Court in WP(C) No.4756/2023, the respondents without complying with the direction passed by this Court, has issued the NIT dated 13.06.2024.

3. The petitioner's counsel submits that the petitioner was initially settled with the Kangtar Fishery in Karimganj District pursuant to a tender notice for a period of 7 years, i.e., from 01.04.2013 to 31.03.2020. Thereafter, on expiry of the period of operating the fishery, the petitioner was given an extension for operating the fishery for a further period of 3 years, without call of tender,

which ended on 31.03.2023. The petitioner thereafter, prayed for a further extension for a period of 1 year. The petitioner's counsel submits that the representation dated 20.01.2023 submitted by the petitioner, for further extension of operating the fishery, has not been decided by the respondents in spite of the direction passed by this Court in the order dated 25.08.2023 passed in WP(C) No. 4756/2023. She further submits that as there is a boundary dispute with regard to the said fishery from the year 2021, the State respondents should not be allowed to settle the fishery with any person, unless the boundary dispute is resolved.

4. Mr. P. Sarmah, learned counsel for the AFDC submits that the representation of the petitioner, for further extension of the fishery, has been rejected vide speaking order dated 02.09.2023 passed by the Managing Director, AFDC Ltd.

5. To a query raised by this Court to the petitioner's counsel, as to whether the petitioner has any boundary dispute with the AFDC with regard to the fishery, the petitioner's counsel submits that the petitioner has got no boundary dispute. The petitioner's counsel submits that the petitioner has got no land dispute with regard to the fishery in question. She also submits that she has received the speaking order dated 02.09.2023 today only in the Court.

6. Para 8 of the order dated 25.08.2023 passed in WP(C) No.4756/2023 states as follows-

“8. Having regard to the issues raised in this writ petition and the broad consensus arrived at by the learned counsel for the parties in the afore-stated manner, the writ petition instead of keeping it pending, is

disposed of with a direction to the respondent authorities, more particularly, the Managing Director, AFDCL to take the Representation dated 20.01.2023, submitted by the petitioner, on board and thereafter, to dispose of the same, upon due consideration, by passing a speaking order within a period of 7 [seven] days from today. It is further observed that the bidding process initiated by the NIT dated 07.08.2023 for the Fishery will abide by the decision taken by the respondent authorities in the AFDCL, as per the speaking order to be passed."

7. As the petitioner's representation dated 20.01.2023 had been disposed of, this Court finds that the direction passed by this Court in the order dated 25.08.2023 passed in WP(C) No. 4756/2023 has been complied with. Further, there is no challenge to the speaking order dated 02.09.2023 as on date.

8. As it is the categorical submission of the petitioner's counsel that the petitioner has got no boundary dispute with regard to the fishery in question with the AFDC, this Court fails to understand how any fundamental or legal right of the petitioner has been violated. As held by the Supreme Court in the case of ***Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others, reported in (2013) 4 SCC 465***, only an aggrieved person can approach this Court for redressal of his grievance. In the present case, no enforceable right of the petitioner has been violated. In fact, the petitioner has been given an illegal extension for operating the fishery for 3 years, beyond the period of 7 years from 01.04.2020 till 31.03.2023.

9. 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. As the said Section 105 is also applicable to fisheries, in view of Section 109, the said decision would also apply to the facts of this case. Thus, any extension of settlement to be made, has to be made by inviting tenders, as expressly provided in Section 109(1) & (2) of the Assam Panchayat Act, 1994, which is as follows-

“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.”

10. 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.

11. In view of the reasons stated above, this Court does not find any reason to proceed with the writ petition, as no right of the petitioner has been violated. The writ petition is accordingly dismissed.

12. The speaking order dated 02.09.2023 is made a part of the record and marked as Annexure-X.

JUDGE

Comparing Assistant