

GAHC010264622022



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

Case No. : WP(C)/8281/2022

M/S SARESWAR MEEN SAMABAI SAMITY LTD
REP. BY ITS PRESIDENT SRI SURESH BISWAS, AGED ABOUT 61 YEARS S/O-
LT. MONESWAR BISWAS, R/O- VILL- DAOBHANGI, P.O. RUPSI, P.S.
GAURIPUR, DIST.- DHUBRI, ASSAM, PIN- 782411

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FISHERY
DEPTT., DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-06

3:THE DY. SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-06

4:THE DY. COMMISSIONER
DHUBRI
DHUBRI DISTRICT
ASSAM
PIN- 783301

5:THE CIRCLE OFFICER
DHUBRI REVENUE CIRCLE
DIST.- DHUBRI
PIN- 783301
ASSAM

6:THE DISTRICT FISHERY DEVELOPMENT OFFICER
DHUBRI
P.O. AND DIST.- DHUBRI
PIN- 783301

7:M/S CHANDAKHOLA BEEL FISHERY CO-OPERATIVE SOCIETIES LTD.
A COOPERATIVE SOCIETY HAVING ITS REGD. OFFICE AT DHARMASALA
REP. BY ITS SECY.
SRI GOUR CHOUDHURY
P.O. DHARMASALA
PIN- 783384
DHUBRI DISTRICT
ASSA

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/8310/2019

M/S. CHANDAKHOLA BEEL FISHERY CO-OPERATIVE SOCIETIES LTD.
A CO OPERATIVE SOCIETY REGD UNDER THE ASSAM CO OPERATIVE
SOCIETIES ACT
1949
HAVING ITS REGD OFFICE AT DHARMASALA
P.O- DHARMASALA
DIST- DHUBRI
ASSAM
REP. BY ITS SECRETARY SRI GOUR CHOUDHURY

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
FISHERIES DEPTT
DISPUR
GUWAHATI- 6
DIST- KAMRUP
ASSAM

2:THE DEPUTY COMMISSIONER
DHUBRI
P.O- DHUBRI
DIST- DHUBRI

ASSAM
3:THE CIRCLE OFFICER
DHUBRI REVENUE CIRCLE
DHUBRI
ASSAM
4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
DHUBRI
P.O AND DIST- DHUBRI
ASSAM

Advocate for : MR. D SARMA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

12.02.2024

1. Heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. D.J. Medhi, learned counsel for the petitioner in WP(C) No.8281/2022. Also heard Mr. K.N. Choudhury, learned Senior Counsel for the respondent no.7 in WP(C) No.8281/2022 and the petitioner in WP(C) No.8310/2019. Mr. D. Nath, learned Additional Senior Government appears for the State respondents in both the writ petitions.

2. The issues raised in both the writ petitions being intertwined and in respect of the Gr.2/88 Dharnad Brahmaputra Part-II & III Fishery of Dhubri District., both the writ petitions are being disposed of by this common judgment and order.

3. For easy disposal of both the writ petitions, the placement of the parties in

WP(C) No.8281/2022 is being used.

4. At the very outset, Mr. K.N. Choudhury, learned Senior Counsel for the petitioner in WP(C) No.8310/2019 submits that he does not wish to press WP(C) No.8310/2019.

5. The writ petitioner in WP(C) No.8281/2022 is aggrieved by the non-issuance of a fresh NIT, for fresh settlement of Gr.2/88 Dharnad Brahmaputra Part-II & III Fishery in Dhubri District, hereinafter referred to as "the fishery". He submits that a direction should be issued to the respondent authorities to issue a fresh tender in respect of the above fishery and to set aside the order dated 23.12.2019 issued by the Deputy Secretary to the Government of Assam, Fishery Department and all consequential orders allowing the respondent no.7 to operate the said fishery on a daily basis.

6. The brief facts of the case is that pursuant to an NIT dated 25.11.2010 for running the said fishery, the fishery was settled with the respondent no.7, on the State respondents accepting the respondent no.7's bid amount of Rs.56,00,707/-. Vide settlement order dated 15.12.2012, the said fishery was settled with the respondent no.7 for 7 (seven) years, i.e., for the period from 19.12.2012 to 18.12.2019.

7. On expiry of the settlement period of the fishery, the respondent no.7, submitted an application dated 23.09.2019 for extension of the settlement of the fishery for a period of 2 (two) years. However, as no decision was forthcoming from the State respondents, the respondent no.7 filed WP(C)

No.8310/2019 before this Court, with a prayer to issue a direction to the State respondents, to grant extension of the lease period of the fishery for two years and not to issue a fresh NIT for settlement of the fishery. However, the State respondents published a fresh NIT dated 15.11,2019 for settlement of the fishery. The same was put to challenge by the respondent no.7 in WP(C) No.8310/2019, praying for a direction to be issued to the State respondents to grant extension of the lease of the fishery for a period for two years and not give effect to the impugned NIT dated 15.11.2019.

8. WP(C) No.8310/2019 & WP(C) No.8736/2019 were taken up together by this Court and vide order dated 16.12.2019, this Court directed that though the respondent authorities could go ahead with the NIT dated 15.11.2019, no final order of settlement should be passed without the leave of the Court. The authorities were also directed to consider the application of the respondent no.7, for extension of the lease of the fishery and to pass appropriate orders.

9. Consequent to the order dated 16.12.2019 passed in WP(C) No.8310/2019 & WP(C) No.8736/2019, the Deputy Secretary to the Government of Assam, Fishery Department issued order dated 23.12.2019, stating that the Government was pleased to allow the respondent no.7 to run the fishery on a daily basis @Rs.3080/- per day, based on the existing revenue of Rs.56,00,707/- for seven years as a stopgap arrangement, till the matter was disposed of by this Court in WP(C) No.8310/2019.

10. The respondent no.7 has thus been running the fishery till date, i.e. for last 12 years. The first seven years being on the basis of the NIT dated

25.11.2010 and the remaining five years, on the basis of the extension given by the State respondents on a day to day basis. It may be mentioned here that the extension of the lease on the fishery given to the respondent no.7 by the State respondents has been made on the basis of the rate provided by the petitioner, pursuant to the Tender Notice dated 25.11.2010, i.e., Rs.56,00,707/-, which works out Rs.3080/- per day. It may be stated here that the respondent no.7 had submitted his bid amount of Rs.1,61,00,707/- for settlement of the said fishery, in pursuant to the subsequent NIT dated 15.11.2019. However, the State respondents, in their wisdom vide the order dated 23.12.2019 have given extension of the lease of the fishery to the respondent no.7 on the basis of the rate provided by him, in pursuant to the NIT dated 25.11.2010.

11. The counsel for the petitioner submits that the respondent no.7 has been given undue benefit by the State respondents as can be seen from the facts stated above. He submits that the respondent no.7 had made a challenge to the NIT dated 15.11.2019, so that he could continue to have control over the fishery without going through a fresh tender process, as sought to be done vide NIT dated 15.11.2019. He submits that though the rates provided by the tenderers pursuant to the NIT dated 15.11.2019 is higher than the rates provided for the same fishery, pursuant to the NIT dated 25.11.2010, as four years have elapsed since the NIT dated 15.11.2019, the rates as on date would naturally increase due to various reasons. He accordingly submits that a fresh NIT should be issued for a fresh settlement of the fishery, so that the State Government can get the best possible rates for settlement of the fishery.

12 The learned Senior Counsel for the respondent no.7, on the other hand,

submits that the extension of the lease of the fishery had been given by the State respondents for seven years, on the basis of the order dated 16.12.2019 passed in WP(C) No.8310/2019 & WP(C) 8736/2019. As the extension order had been issued on 23.12.2019, the respondent no.7 should be allowed to look after the fishery till 22.12.2026. In the alternative, he submits that the NIT dated 15.11.2019 should be taken to its logical conclusion, wherein the respondent no.7 is the highest bidder.

13. Mr. D. Nath, learned Additional Senior Government Advocate for the State respondents submits that the extension of the fishery with the respondent no.7 was done on a day to day basis, as a stopgap arrangement. Due to the Pandemic, the Government could not take any follow-up action. However, the State Government now intends to initiate action for regular settlement of the fishery through a fresh tender process, as the rates quoted pursuant to the NIT dated 15.11.2019 are not commensurate with the prevailing market rates, after a gap of so many years. He submits that the tenders submitted in respect of the NIT dated 15.11.2019 have no relevance with the market value prevalent today and as such, the department has already decided to go for a fresh tender.

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

15. As can be seen from the facts stated above, the petitioner herein prays for a fresh tender to be issued for settlement of the fishery on account of the fact that the settlement of the fishery with the respondent no.7 had ended in the year 2019. Further, the extension of the fishery with the respondent no.7 on a daily basis was subject to the decision of this Court in WP(C) No.8310/2019.

16. Though the counsel for the respondent no.7 has tried to make out a case that the lease on the fishery had been extended for seven years till 2026, the same is not borne out by the order dated 23.12.2019, issued by the Deputy Secretary, Fishery Department. Interestingly, while the respondent no.7 had quoted Rs.1,61,00,707/- as its bid amount pursuant to the Tender Notice dated 15.11.2019, which works out to Rs.6301/- per day, the State respondents have granted extension of the lease of the fishery with the respondent no.7, vide order dated 23.12.2019, at @ Rs.3080/- per day. The above clearly shows that the Public Exchequer has made a great loss, for reasons best known to the State respondents, who had given extension of the lease to the respondent no.7 on the basis of a rate given in terms of the Tender Notice dated 25.11.2010. It is further interesting to note that the respondent no.7 had made a challenge to the NIT dated 15.11.2019 in WP(C) No.8736/2019, by praying for a direction not to give effect to said NIT dated 15.11.2019. However, the counsel for respondent no.7 has now made an alternative prayer to consider the bid of the respondent no.7, in terms of the NIT dated 15.11.2019 and to give effect to the NIT dated 15.11.2019. The conflicting stands taken by the respondent no.7 is not permissible in law, as a person cannot be allowed to blow hot and cold, approbate and reprobate at the same time.

17. The extract of the order dated 23.12.2019 passed by the Deputy Secretary to the Government of Assam, Fishery Department states as follows :

“Perused the petition dated 11.12.19 of Secretary, Chandakhola Beel FCS Ltd, lessee of No 2/88 Dharnad Brahmaputra Part II & III & others Fishery in Dhubri district for temporary settlement as well as consideration of the representation for extension of lease.

It appears that the said Fishery was settled with the petitioner society vide Govt order No FISH 230/86/Pt-1/852 dated 15.12.12 for a period of 7 years. The lease of the fishery has already expired on 18.12.19.

As regards regular settlement, the lessee filed a case before the Hon'ble High Court vide WP(C) No 8310/2019 alleging non consideration of the representation by Respondent for extension of lease. The said case is pending before the Hon'ble High Court. Thus, Govt is not in a position to take steps for regular settlement through Tender process till disposal of the writ petition. Further, the status of issue of NIT as well as receipt of tenders for regular settlement of the Fishery by DC, Dhubri is not known to the Govt.

In view of above, Govt is pleased to allow the existing lessee M/S Chandakhola Beel FCS to run No 2/88 Dharnad Brahmaputra Part II & III & other Fishery on daily basis Rs 3080/- per day based on existing revenue of Rs 56,00,707.00 for 7 years as a stop gap arrangement till the matter is disposed of by the Hon'ble High Court in WP(C) 8310/2019.

The Deputy Commissioner, Dhubri will take necessary steps to hand over possession of the fishery, if already taken over after completion of required formalities as per provision of Assam Fishery Rules, 1953(As amended).

The lessee will take all steps for conservation and production of quality fish in Dhoparghat 'Beel which is part of the fishery.

This order is issued with the approval of highest competent authority of Fishery Department and without prejudice to the pending writ petition vide WP(C) No 8310/2019.

This order is purely temporary and can be withdrawn at any time without assigning any reason thereof, if the situation so warrants. Further the above temporary arrangement does not confer any right /claim on the lessee for regular settlement of the fishery."

18. The above order dated 23.12.2019 and specifically paragraph 4, shows

that the extension of the lease of the fishery in favour of the respondent no.7 has been made on a day to day basis, as a stopgap arrangement, till WP(C) No.8310/2019 is disposed of by this Court. The extension has been given on the basis of rate given by the respondent no.7, when the fishery had been settled with him for 7 years. The extension is not for seven years, as is sought to be projected by the learned counsel for the respondent no.7. As the counsel for the respondent no.7 has stated that he would not be pressing WP(C) No.8310/2019, the said writ petition is dismissed as not pressed. This Court, on considering the fact that the respondent no.7 has been given extension of the lease of the fishery on a daily basis, i.e. on the basis of the rate based on the NIT dated 25.11.2010 and keeping in view the fact that the respondent no.7 in WP(C) No.8310/2019 has made a prayer for extension of the lease of the fishery for a period of 2 years vide representation dated 23.09.2019, which expired on 23.09.2021, the prayer of the respondent no.7 in WP(C) No.8310/2019 for extension has become infructuous.

19. The above being said, the earlier WP(C) No.8736/2019 had been withdrawn by the respondent no.7, vide order dated 29.01.2021. Keeping in view the fact that the interest of the Public Exchequer will be best served if a new tender notice is issued by the State respondents and a fresh settlement of the fishery is made which should be commensurate with the prevailing market rates, the State respondents are given the liberty to initiate a fresh Tender Notice for settlement of the fishery.

20. Due to the reasons stated above, WP(C) No.8310/2019 is dismissed as withdrawn. As nothing survives in WP(C) No.8310/2019, the impugned order

dated 23.12.2019 issued by the Deputy Secretary to the Government of Assam, Fishery Department is set aside. Consequently, WP(C) No.8281/2022 is allowed.

JUDGE

Comparing Assistant