

GAHC010027672024



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

Case No. : WA/55/2024

SAMITI DAS

W/O- PHANIDHAR DAS, SECY., GOHAINGAON, BAHUMUKHI MAHILA
SAMABAI SAMITTEE LTD., DHEMAJI, R/O- VILL- BAMGAON, P.O.
GOHAINGAON, DIST.- DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.

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

2:DISTRICT FISHERY DEVELOPMENT OFFICER
DHEMAJI
ASSAM
PIN- 787057

3:THE DY. COMMISSIONER
DHEMAJI ASSAM PIN- 787057

4:THE ADDL. DY. COMMISSIONER (FISHERY)
DHEMAJI ASSAM PIN- 787057

5:TUSIL DAS
SECRETARY OF SEUJI BANANA GROWERS COMMITTEE
S/O- DURESWAR DAS (KALIA)
R/O- VILL- SOLMARA
P.O. JURKATA
DIST.- DHEMAJI
ASSAM PIN- 78705

Advocate for the Petitioner : MR A ALI, MS. M KHATUN

Advocate for the Respondent : GA, ASSAM, MS N SHYAM(R-5),MR DEBA SARMAH (R-5),MS.
M D BORAH, FISHERY DEPTT.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 20.11.2024
(Vijay Bishnoi, CJ)

Heard Mr. Ahammad Ali, learned counsel for the appellant. Also heard Mr. R. K. Borah, learned Addl. Senior Government Advocate, Assam, and Mr. Deba Sarmah, learned counsel, appearing on behalf of their respective respondents.

The appellant, herein, has approached the writ Court by way of instituting a writ petition being WP(C)2422/2020, being aggrieved with the action of the respondent authorities vide order, dated 19.05.2020, whereby, the No. 22 Liapulia Meen Mahal, was settled in favour of the private respondent No. 5, herein.

The case of the appellant before the learned Single Judge was that the respondent No. 5, herein, has not furnished 100% Actual Fishermen Certificate issued by the Assistant Registrar of Cooperative Societies, Government of Assam, in terms of Clause 1 of the Notice Inviting Tender(NIT), in question.

It is submitted by the learned counsel that the Tender Evaluation Committee has recommended for settling the Meen Mahal, in question, in favour of the appellant, herein, but, later on, the State Government has illegally settled the same in favour of the private respondent No. 5, herein.

The learned Single Judge after taking into consideration, the facts and circumstances of the issue arising in the said writ petition being WP(c)2422/2020; has come to the conclusion that there is no illegality in the action of the State Government in settling the Meen Mahal, in question, in favour of the respondent

No. 5 since the said respondent No. 5 has furnished a certificate issued by the District Fishery Development Officer(DFDO), Dhemaji, verifying that the respondent No. 5, herein, is a 100% Actual Fishermen.

The learned Single Judge has decided the said writ petition vide judgment & order, dated 11.01.2024, by observing, as under:

“9. This Court has duly taken note of Rule 12 of the Assam Fishery Rules, 1953 (for short, “Fishery Rules”), which stipulates that except those referred to in Sub-Rule 8(b), all registered fisheries shall be settled under the tender system of sale in place of sale in auction. It further stipulates that the Government shall settle 60% category of fishery with special category of co-operative societies, non-governmental organisations and self-help groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by tender system. The Explanation to Rule 12 stipulates that the words “special category” means and includes co-operative societies, self-help groups, non-governmental organisations comprising of 100% actual fishermen of the Scheduled Caste community or Maimal community of the erstwhile Cachar District who cannot participate in competitive bidding because of poor financial condition due to famine, flood, draught, epidemic or any other circumstances which are beyond the control of the society, non-governmental organisation or self-help group, as the case may be. Therefore, from the above Rule it is clear that the settlement of the 60% category of fishery can be made with the co-operative societies, non-governmental organisations and self-help groups.

10. Now, the question therefore arises as to whether the Assistant Registrar of Cooperative Societies has the power or authority to issue 100% Actual Fishermen Certificate to a non-governmental organisations or self-help group? This Court, at this stage finds it relevant to take note of the Assam Co-operative Societies Act, 2007 (for short, “Act of 2007”), which is an Act enacted to consolidate and amend the law relevant to co-operative societies in the State of Assam and to facilitate the voluntary formation and democratic functioning of Co-operative Societies as people’s institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment. Section 2(j) defines the term “co-operative society” to mean a cooperative Society registered under the Act of 2007 and includes a society formed after amalgamation of such two or more societies or by division of an existing society. This Court further finds it relevant to take note of Section 3 of the Act of 2007, which stipulates that the State Government may appoint an officer to be the Registrar of Cooperative Societies for the State or any portion of it for the registration, supervisions, assistance, counsel and for the all-round development of the Co-operative movement in the State with such other powers and responsibilities as may be provided under the Act of 2007, or Rules or Bye-laws framed under the Act of 2007. Sub-Section (2) of Section 3 of the Act of 2007 stipulates that the State Government may also appoint any other person or persons to assist the Registrar and may, by general or special order in writing, delegate to any such person or persons all or any of the powers and responsibilities of the Registrar under the Act of 2007. Therefore, from a perusal of Section 3 of the Act of 2007 it would be clear that the power to be exercised by the Registrar of Co-operative Societies or any other person to assist the Registrar of Cooperative societies would only be in relation to a co-operative society as defined under Section 2(j) of the Act of 2007.

11. This Court had also put a query upon Ms. U. Das, learned Additional Senior Government Advocate, appearing on behalf of the State respondents, as to whether any power has been vested upon the Registrar or Assistant Registrar of Co-operative Societies to give certification in respect of any organisation or group of persons, who do not come within the ambit of “co-operative society” as defined in Section 2(j) of the Act of 2007. Ms. U. Das submits that from a perusal of the Act of 2007, it becomes clear that there is no power vested upon the Registrar or any other person appointed to assist the Registrar of Co-operative Societies by the Act of 2007 to issue a certificate to any organisation or group of persons other than those which fall within the ambit of “co-operative societies” as defined in Section 2(j) of the Act of 2007.

12. In the backdrop of the above analysis, the question therefore arises as to whether the respondent No. 5 which, admittedly, is not a co-operative society, could have been issued a certificate by the Assistant Registrar of Co-operative Societies. This Court has duly taken note that in the impugned order dated 19.05.2020 it is mentioned that the tendering authority had duly taken note that the respondent No. 5 is a Pathar Parichalona Samity, which is registered under the District Agriculture Officer, Dhemaji. In the affidavit filed by the respondent No. 1 it is also categorically mentioned that a Pathar Parichalona Samity cannot be granted any certificate by the Assistant Registrar of Co-operative Societies. The consequential question, therefore, is whether the respondent authorities were justified in disregarding the non-submission of the 100% Actual Fishermen Certificate by the respondent No. 5, issued by the Assistant Registrar of Co-operative Societies?

13. This Court has duly taken note that as per Rule 12 of the Assam Fishery Rules, 1953 settlement can be made in favour of a co-operative society, self-help group or NGO. However, a self-help group or NGO cannot apply for a certificate from the Assistant Registrar of Co-operative Societies if it does not come within the meaning “co-operative society” as defined under Section 2(j) of the Act of 2007. This Court has also duly taken note that in the Notice Inviting Tender it has been categorically mentioned that not only a co-operative society but also a self-help group as well as non-governmental organisation can also apply. Under such circumstances, in the opinion of this Court, the respondent No. 5 was not in a position to obtain the requisite certificate from the Assistant Registrar of Co-operative Societies, which the respondent authorities, more particularly, the tendering authority knew and therefore have waived the said condition by specifically taking note that the 100% Actual Fishermen Certificate issued by the DFDO, Dhemaji, was in compliance to the requirements. To the opinion of this Court, the said action on the part of the respondent authorities in passing the impugned order dated 19.05.2020 cannot be said to be illegal, arbitrary or unreasonable as the bid so submitted by the respondent No. 5 was in substantial compliance of the NIT.

14. This Court also finds it pertinent to take note that the respondent No. 5 society had not only quoted higher bid amount but also its members reside within the radius of 300 meters from the fishery in question, which is a finding of fact, whereas the petitioner society is located at a distance of 9 KM from the fishery in question. Thus, the awarding of the settlement to the respondent No. 5 on the ground of location of the petitioner society is also in consonance to Rule 12 of the Assam Fishery Rules, 1953.”

The learned counsel for the appellant has failed to persuade us to take a contrary view as has been taken by the learned Single Judge in the aforesaid writ petition being WP(C)2422/2020.

Hence, we do not find any merit in this writ appeal and the writ appeal, accordingly, stands dismissed. There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant