

GAHC010044262022



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

**Case No. : WP(C)/1599/2022**

M/S MARAJAN MEEN PALAN ATMA SAHAYAK GOT  
A SELF HELP GROUP HAVING ITS OFFICE AT BAMGAON, DHEMAJI,  
ASSAM, REPRESENTED BY ITS PRESIDENT, SHRI PABITRA SAIKIA, AGED  
ABOUT 51 YEARS, S/O LATE MURULI SAIKIA, R/O BAMGAON, P.O.-  
GAOHAIGAON, P.S.-DHEMAJI, DIST-DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,  
FISHERY DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM  
FISHERY DEPARTMENT  
GUWHAATI-781006

3:THE DEPUTY COMMISSIONER  
LAKHIMPUR  
ASSAM

4:THE SUB-DIVISIONAL OFFICER  
DHAKUAKHANA  
LAKHIMPUR  
ASSAM

5:KARHAPARIYA ANCHALIK KOIBARTA SURAKHYA SAMITY  
REPRESENTED BY ITS SECRETARY  
SHRI CHITRA DAS  
S/O CHANDA DAS  
BATAMARI  
GHILAMARA  
P.O. AND P.S.-GHILAMARA

SUB-DIVISION- DHAKUAWAKHANA  
DIST- LAKHIMPUR  
PIN-787053  
ASSAM

6:M/S KARHA FISHERY SAMABAI SAMITY LIMITED

BATAMARI  
DHAKUAKHANA  
DISTRICT- LAKHIMPUR  
ASSAM  
PIN- 787055

**Advocate for the Petitioner : MR. S BANIK**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**26.02.2024**

1. Heard Mr. S. Banik, learned counsel for the petitioner and Mr. M. Chetia, learned counsel for the respondent nos.1 to 4. No one appears for the respondent nos.5 & 6.
  
2. As per the order dated 09.08.2023 passed by this Court, notice is deemed to be served upon the respondent no.6.
  
3. The petitioner is aggrieved by the Tender Notice dated 20.11.2021 issued by the Sub-Divisional Officer, Dhakuwakhana Lakhimpur, whereby tenders were invited for settlement of Koha Part-2 Meen Mahal. By the said Tender Notice it was indicated that the tenders would be received till 2 p.m. on 08.12.2021 and

that it would be opened at 2:30 p.m on the same day.

4. Alleging violation of Rule 43 of the Assam Fishery Rules, 1953 (hereinafter referred to as "the 1953 Rules"), Mr. Banik, learned counsel for the petitioner submits that under the 1953 Rules, there is a clear stipulation that there would be a 30 days period between issuance of the Tender Notice and the settlement of the tender with the successful bidder. He submits that in the instance case, the period for submission of tender has been made only for 18 days, while a minimum of 30 days should have been provided for submission of tender. He submits that the same is apparent from a reading of Rule 43 and the Appendix-A of the 1953 Rules.

5. Mr. Banik submits that as the 30 days time was not given for submission of tenders, great prejudice has been caused to the petitioner, as he could not submit his tender within the time period provided, which was less than 30 days.

6. On the other hand, Mr. M. Chetia, learned counsel for the respondent nos.1 to 4 submits that the interpretation given by the petitioner to Rule 43 of the 1953 Rules, is not a correct interpretation and that 30 days time is not required to be given for submission of a tender. He submits that the 30 days time period given under Rule 43 of 1953 Rules pertains to the minimum days required for completion of a tender process from the date of the issuance of a NIT till settlement of the fishery. He submits that in most cases 15 days to 20 days is required for submission of tender and in the present case, 18 days was construed to be sufficient time for submission of tender/bids, as it was in

respect of a small Sub-Division. He further submits that there was wide publication of the Tender Notice and 4 tenderers had participated in the selection process.

7. The learned counsel for the respondents further submits that the petitioner's Self-Help Group did not have proper records and monthly savings in their bank account with Assam Gramin Vikash Bank, Moridhal Ghat Branch, which is a mandatory requirement. Their registration was accordingly cancelled and as such, the writ petitioner has no *locus standi* as a Self-Help Group to participate in the tender process pursuant to the NIT dated 20.11.2021, in terms of Rule 12 of the 1953 Rules.

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

9. Rule 43 of the 1953 Rules states as follows :

*"43. On receipt of Government's instruction in any particular year the Deputy Commissioner or the Sub-Divisional Officer shall fix a date not later than the 5th February, on which the settlement of the registered fisheries selected by the Government will be made by him after calling for tenders from the public. The date fixed shall be proclaimed by the Deputy Commissioner or Sub-Divisional Officer at least a month in advance by a written notice in the form in APPENDIX A posted at the Sadar and Sub-Divisional Cutchery and at the Munsiff and Police Station within the local limits of which the fishery or nay part of it is situated. The notice shall state the name of the fishery the Mouza or Pargana within which it is situated and any other particulars that may be necessary for its identification, the term and price for which it was last settled he term for which it will now be settled and the date, place and conditions of*

*settlement. The contents of the notice should also (if possible) be made known by beat of drum at the Bazaar nearest to the fishery.*

10. A perusal of Rule 43 and Appendix-A only provides that there should be a month for settlement of a fishery, to be made from the date of issuance of a Tender Notice and the settlement of the fishery with the successful tenderer. The same does not bar the authorities to open a tender/bid prior to the completion of 30 days, from the date of issuance of a Tender Notice. Further, a Coordinate Bench of this Court in the case of ***Bilasipara Mahkhuma Fishery Co-operative Society Ltd. & Others vs. State of Assam & Others***, reported in ***2016 (2) GLT 274*** has also held that the time frame in Rule 43 is only in respect of fixing the date on which settlement would be made and nothing beyond. There is no prescription in the said Rule 43 specifying any period and/or limiting the time by which a tender has to be submitted. Paragraph 7 of the judgment and order passed in ***Bilasipara Mahkhuma Fishery Co-operative Society Ltd. (supra)*** is reproduced below as follows :

*“7. A bare reading of Rule 43 makes it clear that the Deputy Commissioner or the Sub-Divisional Officer must specify a date only with regard to the date when settlement will be made. It further enjoins that the date that may be fixed for making settlement must be proclaimed at least a month in advance by a written notice in the form as in APPENDIX-A, which is the Sale Notice inviting tenders for settlement of fisheries. The time frame is only in respect of fixing the date on which settlement would be made and nothing beyond. There is no prescription in the said Rule 43 specifying any period and/or limiting the time by which tenders have to be submitted. In other words, there is no prescription of any definite period between the date of issuance of the NIT and the last date for submission of the tenders. Clause 1 of the Sale Notice (APPENDIX 'A') conforms to the prescription.”*

11. The above being said, the averments made by the State respondents in paragraph 3 of the affidavit-in-opposition filed by the respondent no.1, regarding registration of the petitioner's Self Help Group having been cancelled, has not been denied by the petitioner by any subsequent affidavit. In that view of that matter, the averments made by the State respondents would have to be deemed to be admitted by the petitioner.

12. In the case of ***Smt. Naseem Banu vs. State of UP & Others***, reported in **1993 supple 4 SCC 46**, the Supreme Court has held that averments are deemed to be admitted if not controverted. As such, the petitioner could not have participated or be selected in terms of Rule 12 of 1953 Rules in respect of the Tender Notice dated 20.11.2021. Rule 12 of the 1953 Rules states as follows :

“Rule 12. Except those referred to in sub-rule No. 8(b) above, all registered fisheries shall be settled under the tender system of sale in place of scale by auction]

[Provided that the Government shall settle a 60% category fishery with special category of co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.]

13. In the case of ***Raunaq International Limited vs. I.V.R. Construction Limited*** reported in **(1999) 1 SCC 492**, the Supreme Court has held that any judicial relief at the instance of a party who does not fulfill the requisite criteria,

seems to be misplaced.

14. In view of the reasons stated above, this Court does not find any merit in the writ petition. The writ petition is accordingly dismissed.

**JUDGE**

**Comparing Assistant**