

GAHC010034222024



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

Case No. : WA/58/2024

M/S CHANDAKHOLA BEEL FISHERY CO-OPERATIVE SOCIETIES LTD.
A CO-OPERATIVE SOCIETY, REGISTERED UNDER THE ASSAM
CO-OPERATIVE SOCIETIES AVT, 1949, HAVING ITS REGISTERED OFFICE
AT DHARMASALA, P.O.- DHARMASALA, DIST.- DHUBRI, ASSAM,
REP. BY ITS SECRETRAY SRI GAUR CHOUDHURY.

.....**Writ Appellant**

- VERSUS -

1. THE STATE OF ASSAM AND 6 ORS.
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPTT., DISPUR, GUWAHATI- 6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM, FISHERY DEPTT., DISPUR, GUWAHATI- 6.

3:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPTT., DISPUR, GUWAHATI- 6.

4:THE DEPUTY COMMISSIONER, DHUBRI
DHUBRI DISTRICT, ASSAM, PIN- 783301.

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

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

7:M/S SARESWAR MEEN SAMABAI SAMITY LTD.
REP. BY ITS PRESIDENT SRI SURESH BISWAS
S/O LATE MONESWAR BISWAS
VILL.- DAOBHAGI, P.O.- RUPSI, P.S.- GAURIPUR
DIST.- DHUBRI, ASSAM, PIN- 782411

.....**Respondents**

– BEFORE –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI

HON'BLE MR. JUSTICE SUMAN SHYAM

For the Appellant : Mr. K.N. Choudhury, Senior Advocate assisted by Ms. A. Talukder, Advocate.

For the respondent(s) : Ms. M.D. Borah, Standing Counsel, Fishery Department.
: Ms. R.B. Bora, Junior Government Advocate, Assam for respondent Nos.4 & 5.

: Mr. B.D. Das, Senior Advocate assisted by Mr. D.J. Medhi, Advocate for respondent No.7.

Date of Hearing : **23.02.2024.**

Date of Judgment : **28.02.2024**

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

This intra-Court appeal is preferred by the appellant Society being aggrieved with the order dated 12.02.2024 passed by the learned Single Judge in WP(C) No.8281/2022 and WP(C) No.8310/2019.

2. WP(C) No.8281/2022 was filed by the respondent No.7 herein whereas WP(C) No.8310/2019 was filed on behalf of the appellant Society. The learned Single Judge, vide order dated 12.02.2024 has dismissed WP(C) No.8310/2019 as withdrawn whereas has allowed WP(C) No.8281/2022.

3. The brief facts of the case are that the Gr.2/88 Dharnad Brahmaputra Part-II and III Fishery of Dhubri District was settled in favour of the appellant Society

vide settlement order dated 15.12.2012 for a period of 7(seven) years. Before expiry of the said settlement, the appellant Society had moved an application for extension of settlement of the Fishery for 2(two) years. However, when no decision was taken on the said representation filed by the appellant Society, it had filed WP(C) No.8310/2019 before this Court seeking a prayer to issue a direction to the respondent Government authorities to grant extension of the lease period of the Fishery for a period of 2(two) years and not to initiate a fresh process of settlement.

4. The said writ petition, WP(C) No.8310/2019 was pending. However, in the meantime, the respondent Government authorities had issued a fresh NIT dated 15.11.2019 with regard to settlement of the Gr.2/88 Dharnad Brahmaputra Part-II and III Fishery.

Being aggrieved with the same, the appellant Society had preferred a writ petition, being WP(C) No.8736/2019 before this Court seeking a prayer to issue a direction to the respondent Government authorities to grant extension of the Fishery in question to it for a period of 2(two) years with the further direction not to give effect to the NIT dated 15.11.2019 for settlement of the Fishery in question till its application for extension is decided.

5. WP(C) No.8736/2019 and WP(C) No.8310/2019 came up before the learned Single Judge on 16.12.2019 and the learned Single Judge had passed an order to the effect that till the next date, i.e. 20.12.2019, though the respondent Government authorities may go ahead with the NIT dated 15.11.2019, but no final order(s) of settlement be passed without the leave of the Court. Further, taking into consideration the submission of the learned counsel for the appellant Society in WP(C) No.8736/2019 and WP(C) No.8310/2019 that the appellant Society had already filed an application for

allowing it to run the Fishery in question on day-to-day basis, a direction was issued by the learned Single Judge that the authorities are directed to consider the aforesaid application and pass appropriate order(s) on the same expeditiously. The aforesaid writ petitions were again ordered to be listed on 20.12.2019.

6. Pursuant to the direction given by the learned Single Judge vide order dated 16.12.2019 passed in WP(C) No.8736/2019 and WP(C) No.8310/2019, the Deputy Secretary to the Government of Assam, Fishery Department, vide order dated 23.12.2019 had allowed the appellant Society to run the Fishery in question on daily basis for 7(seven) years as a stop-gap arrangement till disposal of WP(C) No.8310/2019 at the rate of Rs.3080/- per day. Later on, WP(C) No.8736/2019 was disposed of as withdrawn by the learned Single Judge vide order dated 29.01.2021.

7. Being aggrieved with the extension of the Fishery in question in favour of the appellant Society by the Deputy Secretary to the Government of Assam, Fishery Department, vide order dated 23.12.2019, the respondent No.7 herein, had preferred writ petition, being WP(C) No.8281/2022, which was allowed by the learned Single Judge vide order dated 12.02.2024 and challenging the same, the present intra-Court appeal is filed by the appellant Society.

8. Mr. K.N. Choudhury, learned Senior Counsel appearing for the appellant Society has submitted that the learned Single Judge had erred in taking into consideration WP(C) No.8736/2019 filed by the appellant Society with a prayer that the respondent Government authorities to grant extension of lease of the appellant Society for a period of 2(two) years along with the further direction not to give effect to the fresh NIT dated 15.11.2019 till consideration of the case of the appellant Society. It is submitted that in the said writ petition, the

appellant Society had nowhere prayed for quashing of the NIT dated 15.11.2019 but only had prayed that till it's case for extension is considered, no proceedings be initiated in respect of the NIT dated 15.11.2019. It is contended that the learned Single Judge has altogether ignored this aspect.

9. It is further argued that the respondent No.7, being the second highest bidder pursuant to the NIT dated 15.11.2019, has no right to seek a direction from the Court that while ignoring the NIT dated 15.11.2019, fresh NIT be issued for settlement of the Fishery in question. It is contended that in pursuance to the NIT dated 15.11.2019, the appellant Society had submitted its bid and as it was the highest bidder and in any circumstances, the learned Single Judge ought to have issued a direction to process the NIT dated 15.11.2019 and to issue license in favour of the appellant Society for Fishery in question instead of giving a direction to issue a fresh NIT for settlement of the fishery in question.

It is also submitted by the learned Senior Counsel for the appellant Society that at the time of hearing, the appellant Society has not prayed for a direction of settlement of the Fishery in question in its favour for a period of 7(seven) years from today but only prayed that the appellant be allowed to operate the Fishery in question till December, 2026 pursuant to the NIT dated 15.11.2019.

10. The learned Senior Counsel for the appellant Society has further submitted that the reasoning given by the learned Single Judge to the effect that the interest of the Public Exchequer will be best served if a new tender notice is issued, is without any basis. It is contended that in the fresh NIT dated 15.11.2019, the Government has fixed the value of the Fishery in question as Rs.8,00,101/- whereas the rate offered by the appellant Society pursuant to the fresh NIT is Rs.1,61,00,707/- and as such, it is clear that the rate offered by the

appellant Society is much higher than the rate fixed by the Government. It is submitted that the said rate is certainly higher than the prevailing market rate and therefore, it is appropriate in all respects to direct the Government authorities to process the tender proceedings pursuant to the NIT dated 15.11.2019 and issue the settlement of the Fishery in question in favour of the appellant Society being the highest bidder.

11. It is contended that the learned Single Judge had erred in appreciating the submission made on behalf of the appellant Society and had illegally passed the impugned order. It is therefore prayed that the intra-Court appeal be allowed and the impugned order dated 12.02.2024 passed by the learned Single Judge be set aside and a direction be issued to the respondent Government authorities to settle the Fishery in question in favour of the appellant Society, being the highest bidder, pursuant to the NIT dated 15.11.2019.

12. *Per contra*, learned counsel appearing for the State respondents and Mr. B.D. Das, learned Senior Counsel appearing for the respondent No.7 have opposed the appeal and have argued that there is no illegality in the impugned order passed by the learned Single Judge and therefore, the present intra-Court appeal be dismissed as devoid of merit.

13. Ms. M.D. Borah, learned Standing Counsel, Fishery Department has produced a copy of the communication dated 22.02.2024 sent to her by the Additional Secretary to the Government of Assam, Fishery Department and has submitted that the Government is also of the view that as the NIT issued in the year 2019 is almost 5(five) years old, it has no relevance with the existing conditions and therefore, the Government intends to go for a regular settlement of the Fishery in question by inviting fresh tender if necessary with reassessment of annual revenue of the Fishery under Rule 48 of the Assam

Fishery Rules, 1953.

14. Heard the learned counsel appearing for the parties and perused the material available on record.

15. From the perusal of the aforesaid writ petition, WP(C) No.8736/2019, it appears that in the writ petition, the appellant Society has prayed that the respondent Government authorities be directed to grant extension of the Fishery in question for a period of 2(two) years with a further direction not to give effect to the NIT dated 15.11.2019 for settlement of the Fishery in question till its application for extension is decided.

It seems that the said aspect has escaped notice of the learned Single Judge. However, that has not affected the merits of WP(C) No.8281/2022 filed on behalf of the respondent No.7. Therefore, there is no need to offer any comment on it.

16. So far as the contentions of the appellant Society that the respondent No.7, being the second highest bidder pursuant to the NIT dated 15.11.2019, has no right to seek a direction from the Court for issuance of the fresh NIT is concerned, it is noticed that essentially the respondent No.7 had filed WP(C) No.8281/2022 being aggrieved with the order dated 23.12.2019 issued by the Deputy Secretary to the Government of Assam, Fishery Department whereby the appellant Society was allowed to run the Fishery in question on daily basis for 7(seven) years as a stop-gap arrangement till disposal of WP(C) No.8310/2019 at the rate of Rs.3080/- per day, with a prayer for setting aside the same along with a prayer to issue a fresh NIT. It is also to be noticed that pursuant to the interim order passed by the learned Single Judge dated 16.12.2019 in WP(C) Nos.8736/2019 and 8310/2019, the appellant Society was

allowed to run the Fishery in question vide order dated 23.12.2019 on day to day basis and the said arrangement was going on till the year 2022, when WP(C) No.8281/2022 was preferred by the respondent No.7 herein and in such circumstances, the prayer made by the respondent No.7 for issuing fresh NIT cannot be termed as unreasonable.

17. So far as the observation made by the learned Single Judge in the impugned order dated 12.02.2024 to the effect that the interest of Public Exchequer will be best served if a new tender notice is issued by the State respondents and a fresh settlement of the Fishery in question is made, is concerned, we do not find any illegality in the same.

True it is that in the year 2019 the Government has fixed the value of the Fishery in question at Rs.8,00,101/- but in all probabilities, the said rate is not the present rate of the Fishery in question and with the efflux of time, the rate might have enhanced.

18. One thing which cannot be ignored is that pursuant to the NIT dated 15.11.2019, the appellant Society had quoted Rs.1,61,00,707/- as its bid amount for settlement of the Fishery in question which works out to Rs.6301/- per day but the extension of lease of the Fishery in question was granted to the appellant Society vide order dated 23.12.2019 at the rate of Rs.3080/- per day and the appellant Society is running the Fishery at that rate till date.

In view of the above noted facts, the findings recorded by the learned Single Judge that the Public Exchequer was put to great loss cannot be said to be unwarranted.

19. Having taken note of the sequence of events, in our view, the respondent Deputy Secretary to the Government of Assam, Fishery Department in the garb

of the interim order dated 16.12.2019, passed by the learned Single Judge in WP(C) Nos.8736/2019 and 8310/2019, allowed the appellant Society to run the Fishery in question on day to day basis at a very lower rate in arbitrary manner. In such circumstances, the learned Single Judge has rightly interfered in the matter and has not committed any illegality in allowing the writ petition filed by the respondent No.7.

20. In view of the above facts and circumstances of the case, we are of the considered opinion that the impugned order dated 12.02.2024 passed by the learned Single Judge in WP(C) No.8281/2022 and WP(C) No.8310/2019 is not liable to be interfered with. Hence, the present intra-Court appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant