



GAHC010232912018

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

Case No. : WP(C)/7322/2018

BODOLAND TRIBAL PLANTATION RUBBER GROWERS ASSOCIATION
REP. BY ITS PRESIDENT SHRI AJIT RAMCHIARY, AGED 51 YEARS AND
SECRETARY SHRI RWNKUNGUR BASUMATARY AGED 47 YEARS, OFFICE
SITUATED AT KOKRAJHAR, DISTRICT- KOKRAJHAR, BTC, ASSAM- 783370.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF COMMERCE AND INDUSTRY, GOVT. OF INDIA, SHASTRI BHAWAN,
TILAK MARG, NEW DELHI-1.

2:THE RUBBER BOARD
REP. BY ITS CHAIRMAN
PB. NO. 1122
SUB JAIL ROAD
KOTTAYAM- 686002.

3:THE RUBBER PRODUCTION COMMISSIONER

THE RUBBER BOARD
PB. NO. 1122
SUB JAIL ROAD
KOTTAYAM- 686002.

4:THE RUBBER BOARD
ZONAL OFFICE

REPRESENTED BY THE ADDITIONAL RUBBER PRODUCTION
COMMISSIONER
HOUSEFED COMPLEX
DISPUR



GUWAHATI- 781006.

5:THE RUBBER BOARD
REP. BY THE DEPUTY RUBBER PRODUCTION COMMISSIONER
REGIONAL OFFICE
KAJALGAON
JINGIRI
NEAR HATHORKI MOTORS
P.O. CHAPAGURI- 783380
DIST. CHIRANG B.T.C. (ASSAM).

6:THE STATE OF ASSAM
REP. BY CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6
ASSAM.

7:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
MINISTRY OF COMMERCE AND INDUSTRY
GOVT. OF ASSAM
DISPUR
GUWAHATI-6
ASSAM

Advocate for the Petitioner : MR A DASGUPTA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT

Date : 22-03-2022

Heard Mr. A Dasgupta, learned senior counsel for the petitioner assisted by Md. JU Ahmed, learned counsel. Also heard Ms. A Gayan, learned counsel for respondent No.1, Mr. D Nath, learned counsel for respondent Nos.2, 3, 4 & 5 and Ms. S Sharma, learned counsel for respondent Nos.6 & 7.

2. The instant writ petition has been filed by a Society registered under the provisions of the Societies Registration Act 1860. The grievance of the petitioner is as regards the entitlement of its members in terms with not granting the subsidy to the members of the petitioners in terms with the scheme as notified by the Rubber Board vide Reference No.ARPC/GTY/34(b)/2014-2015 dated 08.07.2014.

3. It is the case of the petitioners that as per the 12th plan scheme there is a component for Tribal Development planting which is a special programme for Economic Rehabilitation of Tribal People with 90% assistance. The said programme was scheduled to be implemented with the assistance of the respective State Governments Beneficiaries and the Rubber Board in the sharing pattern of the Rubber Board share being 40%, the State Government share being 50% and the beneficiary's contribution being 10%. In this regard the bone of contention pertaining to the instant matter relates to the entitlement of the scheme of the subsidy. It is relevant to quote the pertinent portion of the said scheme as notified vide the circular dated 08.07.2014 which is herein under:

“In this connection, it is brought to the attention that the total cost of making of Tribal Planting as per the scheme is costing Rs.5,11,500 per ha. The 40% of the cost the Rubber Board intends to spend is Rs.2,04,600 per ha. The total costing is inclusive of additional staff and other administrative expenditures.

For North East costing of 1 ha planting by individual growers is approved as Rs.2,14,500 only excluding administrative costs.

A target of 1800 ha is fixed for the scheme for the NE with a costing of rs.17.00 crore.”

4. A further perusal of the said scheme as notified vide the circular dated 08.07.2014 stipulates the various suggestions for implementation of the scheme by utilising own resources and personal were made. Relevant for the purpose of the instant dispute is clause 2 which stipulates that the 40% share may be permitted to expend in the scheme for planting materials, boundary protection, planting and soil conservation, fertilizer/plant protection etc. The maintenance cost will be met by the beneficiaries and the beneficiaries who are willing to offer all the required labour for the maintenance part will only be selected. It has also been mentioned that wherever the State assistance is not available, the Tribal Rubber Plantation scheme should be permitted to be implemented.

5. The case of the petitioner further is that in terms with the Scheme, a set of rules were framed and it is relevant to take note of the definition of the associating agency which stipulates to mean any Central/State Government Departments / agencies/ NGOs/ companies/ financial institutions (National/international) approved by the Rubber Board who are willing to associate with the project with financial support. Clause V(4) which relates to the mode of operation stipulating therein that the scheme will be operated in a collaborative project mode by the Rubber Board,

respective associating agencies and beneficiaries with the fund sharing of 40:50:10 in which the beneficiary contribution is only by way of the labour. Clause V(5) of the said set of Rules further stipulates that for operational efficiency, the Rubber Board and the concerned associating agency will enter into an MOU defining terms and the scope of cooperation before undertaking the project. The MOU shall cover apportioning of the additional cost due to the possible extension of immature phase and possible general increase in wages and material cost. The MOU shall also include a contingency head that can be used in the case of unexpected expenses. At this stage it may be relevant to take note of the stand of the respondent Rubber Board, taken in the affidavit in opposition stating inter alia, that as the State Government has not collaborated with the project, the Rubber Producer Society (RPS) who are the beneficiaries agreed with the Rubber Board that they can act as the associating agencies as defined in the scheme for implementing the project and accordingly the Board entered into MOU with the respective RPS. The various memorandums entered into between the Rubber Board and the RPS have been annexed with the writ petition as Annexure-4 series.

6. Relevant herein is to take note that a perusal of the said MOU entered into would show the scope of the work of the Rubber Board as well as the scope of the work of the Rubber Producer Society. The further case of the petitioner in the instant writ petition is that after execution of the MOU for the financial year 2014-15, ten Rubber Producer Societies (RPS)

executed MOU under the Kajalgaon Regional Office and for the financial year 2015-16, nine Rubber Producer Societies executed MOU. In terms of the said MOU and the scheme for the financial year 2014-15, ten Rubber Producer Societies (RPS) had carried out plantation of rubber in an area of 110.11 hectares, and for the financial year 2015-16, nine Rubber Producer Societies (RPS) had carried out rubber plantation of an area of 102.55 hectares. It is the specific case of the petitioners that in terms with the scheme dated 08.07.2014 the Rubber Board share of the subsidy to be paid was Rs.2,25,28,506 for the financial year 2014-15 and Rs.52,35,808/- was paid. In respect to the financial year 2015-16, the Rubber Board subsidy share came to Rs.2,08,34,418 and out of that an amount of Rs.27,70,633 was paid. The further case of the petitioner is that the petitioner have represented before the authority time and again but the same having not fructified in any result, the petitioner had invoked the extra ordinary jurisdiction of the Court under Article 226 of the Constitution of India.

7. This Court vide an order dated 29.08.2018 issued notice making it returnable by 6 (six) weeks. Thereupon, the respondent Nos.2, 3, 4 & 5 had filed an affidavit in opposition. In the said affidavit in opposition the respondent authorities took a preliminary objection as regards the maintainability of the writ petition on the ground that the petitioner had no *locus standi* to file the instant writ petition. Apart from the said, the respondent authorities specific case as stated in the affidavit in opposition is that in Annexure – 2 i.e., the circular dated 08.07.2014 it was

mentioned “for North East costing of 1 ha. planting by individual growers is approved at Rs.2,14,500/- only excluding administrative costs and as such, the cost of planting and maintenance of 1 ha plantation in northeast region for a period of 6 years came to Rs.2,14,500 only and the same has to be disbursed proportionately for a period of 6 years. It was also mentioned that the total cost of rubber planting as estimated at Rs.5,11,500/- per ha is inclusive of Rs.2,14,500 (planting and maintenance cost for six years) plus Rs.2,97,000 (administrative cost which includes administrative expenditure, infrastructure development, fencing road etc). It was also mentioned that as the total cost approved for one ha planting by individual growers was Rs.2,14,500/- therefore the beneficiaries can only claim 40% of Rs.2,14,500/- from the Rubber Board which comes to Rs.85,500/- per ha and this amount will become due only within a span of 6 years from the year of planting the rubber tree and subject to satisfactory completion of the work in each year. It was also mentioned in the said affidavit in opposition that as per the 12 plan scheme (2012-2017) the Government of India fixed the target not exceeding to 1800 ha under the scheme of “Scheme for Tribal Rehabilitation Planting” with a financial outlay of Rs.17 crores. Although the target was fixed for 1800 ha, only 471.61 ha plantation has been done during the 12th plan period due to financial constraint and during 2014-15 and 2015-16, 240.77 ha and 230.84 ha plantation has been done respectively. It was also stated that due to fund constraint, the Rubber Board had reduced the original target of 1800 ha to

471.61 ha and the total commitment towards the Rubber Board comes to Rs.4.04 crores as per the scheme. It was mentioned that the said amount has to be disbursed subject to satisfactory completion of the work in the plantation within a span of 6 years and the Rubber Board has already disbursed Rs.2.12 crores for the cost of planting and for the maintenance of the plantation of 471.6 ha. It was also mentioned that the Rubber Board have not invited application nor given any advertisement to find out the beneficiaries as per the scheme the beneficiaries themselves has to do the planting and maintenance work in their plantation and subsequent to the completion of their stipulated work they have to submit an application for reimbursing the expenses incurred for the stipulated work and thereupon the officer of the Rubber Board would inspect the area and based on his recommendation the eligible amount fixed for the stipulated work would be reimbursed. To the said affidavit in opposition it may also be relevant herein to mention that a chart pertaining to the estimated cost of developing one ha of rubber plantation in North East was enclosed as Annexure-I.

8. The respondent No.7 had also filed an affidavit in opposition. In the said affidavit in opposition it was mentioned that a proposal was undertaken by the Rubber Board of India to frame a scheme for Rubber Plantation Development amongst the Schedule Tribe Community in North East Region during the 12th plan period and consequently Scheme Rules for Tribal Rehabilitation Planting were issued wherein its objectives, eligibility conditions and the Mode of Operation were listed.

Accordingly the scheme was to be operated in a collaborative project mode by the Rubber Board, respective associating agencies and the beneficiaries with fund sharing of 40:50:10 ratio. Furthermore, as per Rules framed under the Scheme and more particularly, Clause V(5), a MOU was required to be executed between the Rubber Board and the concerned Associating Agencies defining the terms and scope of the corporation before undertaking the project. It was specifically mentioned that the State Government is not a signatory to the said MOU and hence the State Government has no obligation as such nor obliged to fulfil any contractual liability as the State Government had not entered into any contract with any other parties to the writ petition and consequently the State of Assam including the Department of Industries and Commerce had no role to play.

9. The petitioners thereupon filed an affidavit in reply to the affidavit in opposition filed by the respondent Nos.2, 3, 4 & 5. Controverting the preliminary objection taken as regards that the petitioner does not have the *locus standi*, the petitioner enclosed the authorisation letter dated 31.08.2018 as well as the registration certificate of the petitioner. On merits it was specifically stated that on 08.07.2014 the plantation cost was estimated at Rs.5,11,500/- per hectare, 40% of the said amount comes to Rs.2,04,600/- and this amount includes cost of additional staff and other expenditure. It was further stated that the circular dated 08.07.2014 further indicated that for Rubber Boards of North East Region there shall be special concession,



inasmuch as the rubber growers were entitled for the 40% of the plantation cost per hacter which would be Rs.2,14,500/- only and there was a further concession to the effect that this 40% cost is excluding the administrative cost. On the basis thereof the petitioner had stated in their affidavit in reply that the Rubber Board had completely misconstrued the scope and ambit of the circular dated 08.07.2014 in denying the benefit of the subsidy to the petitioner. To the said effect the petitioner had also enclosed certain documents which have been received under the Right to Information Act. Amongst the said documents relevant herein is to take note of the communication issued by the Joint Rubber Production Commissioner to the Additional Rubber Production Commissioner dated 06.08.2014 wherein it has been mentioned that in view of the non cooperation of the State Government the target proposed under the cluster planting is for covering 1000 ha in North East Region within a period of 6 years commencing from 2014-15. The Rubber Board contribution will be limiting to 40% of the total cost per ha i.e., Rs.2,04,600/- per ha covering six instalments. The remaining expenditure has to be borne by the individual concerned. The beneficiaries who were taking part in the planting programme should be given clear instruction about the sharing of the expenditure. It was also mentioned in the said communication that the action also has to be taken to keep in touch with the State Government concerned with a view to get 50% of the cost of planting and the total expenditure for covering 1000 ha (40% for a period of 6 years will be Rs.20.46 crores). Subsequent thereto,

vide another communication dated 12.10.2015 the Joint Rubber Production Commissioner issued a note. Relevant portion of the same is quoted herein below:

“A Scheme for Tribal Development planting in North East with a physical target 1800 ha with financial outlay of Rs.17 cr. Is under implementation as per the approved EFC of XII plan. The proposal was to implement the programme in collaboration with concerned State Government having funding pattern of 50:40:10 between State Govt., Rubber Board and Beneficiary. Total cost of raising 1 ha plantation is estimated to be Rs.5,11,500/-.

But lack of fund sharing support of State Governments and non-availability of contiguous land were the major constraints for implementation of the programme. Meanwhile the then chairman has approved a suggested proposal to overcome these constraints by restricting the expenditure to Rubber Board contribution of 40% share limiting to Rs.2,04,600/ha and the rest to be borne by the beneficiary (60%) till the State Government share of support is sanctioned.”

10. It further transpires from the Annexure – F of the affidavit in reply that the Additional Rubber Production Commissioner have also written a letter dated 16.08.2016 to the Chairman Rubber Board Kottayam wherein it has also been mentioned that the Chairman Rubber Board had accorded sanction to implement a special scheme for Tribal Development Planting in the North East with a physical target of 1000 ha and financial outlay of Rs.17 cr as per approval of the EFC of the XII plan. The share

for fund contribution for one ha was given as Rubber Boards share 40%, State Government Share 50% and Beneficiary share 10%. The implementation of the scheme, as per the said pattern was not possible as it was difficult to get the State Government Share and modification was made for share pattern which was the Rubber Board share being 40% and Beneficiary share 60%. It was also mentioned that year wise break-up of the Board share came to Rs.2,04,600/-. In the said communication the plantation in reference to the instant proceedings have been duly referred to for the financial years 2014-2015 and financial years 2015-2016. Vide another similar communication dated 17.03.2017 the Executive Director Rubber Board Kottayam was requested by the Additional Rubber Production Commissioner to treat the Tribal Scheme under RPD and to release the pending subsidy to avoid complaints from the tribals as a relief and for peaceful functioning of the officials both in the office and in the field.

11. Pursuant to the said communication dated 17.03.2017, it further reveals that the Executive Director had written a communication dated 30.06.2017 to the Additional Rubber Production Commissioner wherein it was mentioned that the project was planned to be implemented jointly by the Rubber Board and the Respective State Government with the cost sharing of 50:40 and the remaining part by the beneficiary by way of labour. But the State Governments have not joined in this project and the Rubber Board has released its due share for 2014 and some 2015 plantings. Since it is a collaborated project

of the Rubber Board and the respective state Government a detailed statement of expenditure in respect of each tribal planting is essential to claim the share from the concerned state government and as such, directed to forward the details immediately after proper scrutiny, verification and certification at the level of the Additional Rubber Production Commissioner.

12. This Court after hearing the parties on 11.01.2022 had asked Mr. D Nath, learned counsel appearing on behalf of the Rubber Board to take instructions as regards the documents enclosed in the affidavit in reply and posted the instant writ petition for further hearing on 25.01.2022. On 25.01.2022 Mr. Nath, the learned counsel appearing on behalf of the Rubber Board sought for an additional period of 2 (two) weeks to obtain instructions. Now when the matter has been taken up again for hearing Mr. Nath, the learned counsel submits that in spite of various communications he has not received any instructions as regards the documents enclosed as Annexures, which forms part of the affidavit in reply filed by the petitioner

13. I have heard the learned counsel for the parties and given my anxious consideration to the matter.

14. The question which is involved in the instant proceedings is whether the Rubber Board's liability as per the scheme dated 08.07.2014 for the North East is 40% of Rs.2,14,500/- or Rs.2,14,500/- excluding administrative cost. A perusal of the relevant portion of the scheme dated 08.07.2014 as quoted herein above reveals that the total cost for making of tribal

planting as per the scheme has been worked out at Rs.5,11,500/- and 40% of the cost the respondent Rubber Board intends to spend is Rs.2,04,600/- per ha. The said cost of Rs.5,11,500/- is inclusive of additional staff and other administrative expenditures. At this stage it may also be relevant herein to take note that the affidavit in opposition filed by the respondent Nos.2, 3, 4 & 5 wherein it has been mentioned that, Rs.2,97,000/- is the administrative cost which includes administrative expenditure, infrastructure development, fencing, road etc. The interpretation so given by the respondents to that effect that for all other areas in India the total cost for making of tribal planting per pa is Rs.5,11,500/- whereas for North East is Rs.2,14,500/- and on the basis thereof the Rubber Board is going to pay only 40% of the said amount of Rs.2,14,500/- seems to be misconceived for the following reasons:

First, it is inconceivable on what basis the respondent Rubber Board claims that for all other parts of India the cost of Tribal planting is Rs.5,11,500/- per ha whereas, for the North East it is only Rs.2,14,500/-. In this regard it is also relevant to take note of Annexure-I to the said affidavit in opposition on the basis of which the Rubber Board seems to justify the amount of Rs.2,14,458 as the total cost for developing one ha of Rubber plantation in North East. However, it is relevant to take note of that the respondent Rubber Board however, has not placed on record on what basis that they had arrived



at Rs.5,15,500/- in respect to the other parts in India. A further perusal of Annexure-I to the Affidavit in opposition shows it includes items like clearing, terracing plants, cow dung, manuring, repair of fencing, drainage and other miscellaneous works etc. However, a perusal of Annexure-IV series which are the Memorandums of understanding entered into between the Rubber Board and the Rubber Production Society shows the works of the Rubber Production Society includes initiating appropriate steps for raising/arranging good quality planting materials; providing fencing and required protection of the plantation; liability to pay all wages and other expenditures on raising and maintenance of plantations. This Court fails to understand if as per the MOU the Rubber Production Society is to take into account the aforesaid duties which comes within the ambit of the Rubber Production Society, the break-up which have been placed before this Court in the form of Annexure-I cannot be said to be correct. The said aspect of the matter if it is viewed from another angle would show that the chart enclosed as Annexure-I on the basis of which the total amount to be spent for each ha Rs.2,14,448 does not include fencing, but only includes repair of fencing does not include the labour component and as such, to arrive at that the entire amount would include that Rs.2,14,458 for developing one ha of Rubber plantation in north East cannot be correct.



Secondly, as per the 12 Plan Scheme, there was component for Tribal Development Planting which is a special programme for Economic Rehabilitation of Tribal people with 90% assistance. As it is specifically stated in the circular dated 08.07.2014, that the total cost for each ha was Rs.5,11,500/- including administrative cost, it is not conceivable how the respondent Rubber Board can claim that their share would be a petty amount of Rs.85,500/- and not Rs.2,14,500/- excluding administrative costs or Rs.2,04,600/- including administrative costs.

Thirdly, it is relevant to take note that the State Government having not collaborated with the Scheme, the RPS and the Rubber Board agreed that the RPS shall be the Associating Agency and for the various documents enclosed to the affidavit in reply, it appears that the Rubber Board authorities nowhere disputes the payment of 40% subsidy to the RPS. The stand taken before this Court that while the Rubber Board would pay Rs.2,04,600/- including administrative costs to other states in India but would only pay 40% of Rs.2,14,500/- in the case of the North Eastern States is not only discriminatory but also arbitrary and unreasonable inasmuch as the Rubber Board cannot discriminate in payment of subsidy to Rubber Producers in other states with the Rubber Producers of North East.



15. Consequently, in view of the above this Court therefore is of the opinion that the Rubber Board share in plantation of each ha of Rubber would be Rs.2,04,600/- to be paid over a period of 6 years and which shall be paid to the beneficiaries upon submission of application for reimbursement of the cost incurred for the stipulated work and upon inspection by the officials of the Rubber Board and their recommendation.

16. With the above observation the instant petition stands disposed of.

JUDGE

Comparing Assistant