



GAHC010147332019

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

Case No. : WP(C)/4495/2019

SUBUDH DAS

S/O- SRI NILCHARAN DAS, R/O- VILL- KUSUMPUR, P.O. BURABURI, PIN- 782411, DIST- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, FISHERY DEPTT.,
DISPUR, GHY-6, KAMRUP (M) DIST., ASSAM

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
BEING REP. BY ITS MANAGING DIRECTOR
CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM

3:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM

4:THE DY. COMMISSIONER
MORIGAON DISTRICT
PIN- 782105
ASSAM



5:THE CIRCLE OFFICER
MAYONG REVENUE CIRCLE
PIN- 782411
MORIGAON DISTRICT
ASSA

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : SC, AFDC

WP(C)/5952/2019

DHARMESWAR DAS
S/O LT. GHANAKANTA DAS
R/O VILL. DAKHIN DA CHIKABARI
P.O. UDARI
P.S. MARIGAON
DIST. MARIGAON
ASSAM
PIN-782105

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
FISHERIES DEPTT. DISPUR
GUWAHATI-6

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
ADD. VIP ROAD
CHACHOL
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781036

REP. BY ITS MANAGING DIRECTOR
3:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. ADD. VIP ROAD
CHACHOL
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781036
4:THE PROJECT MANAGER



UPPER ASSAM AND MIDDLE ASSAM REGION

ADD. HEAD QUARTER

MORIGAON REGIONAL OFFICE

DIST. MARIGAON

ASSAM

PIN-782411

5:AKAN DAS

S/O JIBAN DAS

R/O VILL. BASABARI

P.O. UDARI

P.S. MARIGAON

DIST. MARIGAON

ASSAM

PIN-782105

6:BOWALGURI CHIKABARI BANGALPARA MATCHAJIBI SANTHA

ADD. UDURI

MORIGAON

DIST. MARIGAON

ASSAM

PIN-782105

REP. BY ITS SECRETARY

Advocate for : MR. K N CHOUDHURY

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

Cont. Case(C)/516/2019

SUBUDH DAS

S/O- SRI NILCHARAN DAS

R/O- VILL- KUSUMPUR

P.O. BURABURI

PIN- 782411

DIST- MORIGAON

ASSAM

VERSUS

NAREN CHANDRA BASUMATARY

ACS AND 2 ORS.

MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.

CHACHAL

VIP ROAD



GHY-36
KAMRUP (M) DISTRICT
ASSAM

2:RAMA KANTA DEORI
CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM
3:SAYED TAHIDAR RAHMAN
S/O LT. SAFED ALI
ADDITIONAL DEPUTY COMMISSIONER
O/O THE DEPUTY COMMISSIONER
MORIGAON
ASSAM
PIN-782105

Advocate for : MR. D DAS SR. ADV
Advocate for : MRS. B GOGOI appearing for NAREN CHANDRA BASUMATARY
ACS AND 2 ORS.

WP(C)/6541/2019

SUBUDH DAS
S/O- SRI NILCHARAN DAS
R/O- VILL- KUSUMPUR
P.O. BURABURI
PIN- 782411
DIST- MORIGAON
ASSAM

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 5 ORS.
CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM

2:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.



CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM
3:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL

VIP ROAD
GHY-36
KAMRUP (M) DISTRICT
ASSAM
4:BHOHIRATH DAS
PROJECT MANAGER
UPPER ASSAM/MIDDLE ASSAM REGION
HEAD QUATER
MORIGAON REGIONAL OFFICER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. P.O. MORIGAON
DIST MORIGAON
ASSAM
PIN-782411
5:PRADIP PRAMANIK
REP. BURABURI HUMAN DEVELOPMENT SOCIETY
P.O. BURABURI
DIST MORIGAON
ASSAM
PIN-782411
6:MAHARAJ DAS
REP. 36/38 TEPARI SONAI MORISUTI MIN SAMABAY SAMITY LTD. P.O.
BURABURI
DIST MORIGAON
ASSAM
PIN-782411
7:SUPERINTENDENT OF POLICE
CM'S VIGILANCE CELL
Srimantapur
Chilarai Nagar

Guwahati
Assam 781007

Advocate for : MR. D DAS SR. ADV
Advocate for : SC
AFDC appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION
LTD. AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

JUDGMENT

Date : 12-03-2021

Considering the subject matter in dispute and as agreed to by the respective parties, these writ petitions along with the Contempt Petition are taken up for disposal at the admission stage itself. Since, the challenge is broadly based on similar grounds, the petitions are being disposed of by this common judgment and order. Suffice it to mention that the challenge pertains to the mode of settlement of Fishery, which according to the petitioners, have been done in total disregard of the Rules and the law holding the field of distribution of State largesse.

2. At the outset, it would be relevant to place on record the basic facts of the cases. WP(C) 4495 / 2019 and WP(C) 6541 / 2019 are instituted by one Shri Subudh Das which pertains to No. 32 Doipara Beel of Morigaon district. The petitioner contends that as per an order dated 12.07.2012 issued by the Assam Fisheries Development Corporation Ltd. (herein after AFDC), he being an actual fisherman belonging to the Scheduled Caste community was settled with the said Fishery for a period of 7 years w.e.f. 2012-2013 till 31.03.2019. It is the case of the petitioner that during the aforesaid period, he had suffered heavy loss for various reasons for which he had submitted an application dated 24.01.2019 before the AFDC praying for extension of the lease. The AFDC had called for a report from district authorities and accordingly such a report was furnished by the Circle Officer, Mayong Revenue Circle on 24.07.2019. Since, no action was taken thereafter, the petitioner had instituted the first writ petition being WP(C) 4495 / 2019. This Court vide order dated 27.06.2019 had directed the learned Standing Counsel of the Corporation to obtain instructions on the issue of grant of extension to the petitioner. However, while the aforesaid matter was pending consideration, an order dated 29.07.2019 was issued by the Managing Director, whereby, the Fishery in question was handed over to Pradip Pramanik and Maharaj Das as stakeholder for a period of 4 (four) years which was to be extended up-to 7 (seven) years. The petitioner alleges that the impugned order was not sustainable in law as the settlement was done without undergoing a tender process. It has further been contended that though a semblance of notice was claimed to be issued in an issue of a newspaper 'Aami Axomor Janagan' dated 14.06.2019, the same was vitiated by fraud inasmuch as only certain selected

copies of the issue of the said newspaper had the advertisement whereas such advertisement was not published in the regular issue. It is further been submitted that the said newspaper is hardly circulated and therefore, there was no wide publicity. The petitioner has accordingly prayed for setting aside the impugned arrangement with the private respondent. In connection with the first Writ Petition, the petitioner had also filed Contempt Case No. 516 / 2019 alleging wilful and deliberate violation of the order dated 27.06.2019. By the aforesaid order, this Court had observed that though *prima facie* the claim for extension of the term of the settlement with the petitioner may not be permissible in law as the settlement period had already expired, there was no restraint on the part of the respondent authorities for issuing fresh NIT. The petitioner alleges that the impugned order was issued without taking leave of this Court which amounted to wilful and deliberate disobedience.

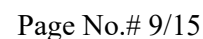
3. So far as the WP(C) 5952 / 2019 is concerned, the petitioner Dharmeswar Das, who belongs to the Scheduled Caste and is an actual fisherman, was an aspirant to participate in the settlement process of Udari Meen Mahal and had submitted an application dated 10.07.2019 before the Managing Director, AFDC for a total period of 11 (eleven) years at an annual revenue of Rs.12,00,000/- (Rupees Twelve Lakhs) only. However, without considering the offer of the petitioner, vide the impugned order dated 15.07.2019, the said fishery was settled in favour of the respondent nos. 5 & 6 for 7 (seven) years at an annual revenue of Rs.7,00,000/- (Rupees Seven Lakhs) only for the year 2019-20 and 2020-21 and at the rate of Rs.8,40,000/- (Rupees Eight Lakhs Forty Thousand) only from the third year onwards. It is contended that such settlement is in gross violation of the Rules and also the law laid down by a Full Bench of this Court. It is specifically contended that the impugned settlement was done without any publication. As in the earlier petition, though in the affidavit filed by the Corporation, publication in a newspaper 'Aami Axomor Janagan', dated 14.06.2019 has been claimed, the petitioner contends that such publication was a sham publication.

4. I have heard Shri D Das, learned Senior Counsel assisted by Shri DJ Medhi, learned counsel for the petitioner in WP(C) 4495 / 2019 and 6541 / 2019. I have also heard Shri KN Choudhury, learned Senior Counsel assisted by Shri DJ Das, learned counsel for the petitioner in WP(C) 5952 / 2019. The AFDC is represented by Shri A Sarma, learned counsel whereas Shri SN Sarma, learned Senior Counsel has appeared for the respondent no. 5 in WP(C) 5952 / 2019. The materials placed before this Court has also been carefully examined.

5. The issue which arises for determination is the legality and validity of the impugned orders by which the Fisheries in question have been settled with the private respondents without any proper publication / NIT and as to whether the publication made in 'Aami Axomor Janagan' dated 14.06.2019 can be regarded to be a notice at all as per law.

6. Shri D Das, learned Senior Counsel as well as Shri KN Choudhury, learned Senior Counsel have submitted in tandem that any attempt by the AFDC to make direct settlement of a Fishery without going through the tender process is in gross violation of the Rules holding the field and also the law laid by a Full Bench of this Court in the case of **M/S 129 Haria Dablong Min Mahal Samabai Samity Ltd. vs. Assam Fisheries Development Corporation Ltd. & Ors.**, reported in **AIR 2001 Gau 139** [equivalent to **(2001) 1 GLT 454**]. It has been submitted that no NIT was floated and the notice appearing in the 'Aami Axomor Janagan' dated 14.06.2019 cannot be termed as a notice in the eyes of law. The learned Senior Counsel has placed before this Court two issues of the said newspaper of the same date from which it appears that while a notice (Janoni) was appearing in one issue on the 5th page, the same was not appearing in the other issue. It is submitted that only to show compliance of the law requiring issuance of tender notice, certain selected copies of the newspaper contained the said notice whereas the rest did not have the same. The learned Senior Counsel has also submitted that the internet version of the said newspaper of the same date, i.e. 14.06.2019 does not contain the said notice. In any case, the aforesaid newspaper 'Aami Axomor Janagan' is an obscure newspaper which is wholly unknown to the general public and without any history of wide circulation. Though the requirement is for publication in any two widely circulated newspapers, the aforesaid newspaper was selected with an oblique intention to show compliance and that too, by indulging in fraud whereby only selected few copies of the issue of the newspaper had the said publication. Reliance has also been placed on Rule 254 of the Assam Financial Rules which lays down the guidelines for issuance of notice before settlements which require publication in the most open and public manner possible, by advertisement in the Government Gazette or the Press or by public notice in English and vernacular.

7. Shri Choudhury, the learned Senior Counsel has also placed before this Court an order dated 08.08.2019 passed by this Court in WP(C) 5620 / 2019 wherein this Court in similar circumstances has interfered with such decision with a further direction to initiate appropriate measures for issuing NIT.



“31. In view of our foregoing discussion and decisions, we answer the question raised as follows:

- 1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rule 8(c) (11) if the Assam Fishery Rules;*
- 2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency need not be reemphasized in view of the catena of decisions of the Apex Court on the point.*
- 3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Mainao Community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.*
- 4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out to give relief to the lessee In proper and suitable cases,.*
- 5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3-1-1994 were produced before us and the said resolution provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too to the highest bidder.”*

12. Apart from the aforesaid interpretation of the law holding the field by the Hon'ble Full Bench, so far as the Assam Financial Rules is concerned, Rule 254 thereof mandates that settlement of the present nature has to be done by inviting tenders in the most open and public manner possible. For ready reference, the relevant part of Rule 254 is extracted hereinbelow:

“254. Sealed tenders should invariably be invited in the most open and public manner possible, by advertisement in the Government Gazette or the Press or by public notice in English and the vernacular; tender should have free access to the contract document.”

Though the said Rule is in connection with Chapter-XII with regard to execution of works in the PWD, the same spirit has to be followed for distribution of State largesse in other Departments also. In any case, the law in this field is well settled by a catena of decisions of the Hon'ble Supreme Court wherein, it has been laid down that in matters of distribution of State largesse, a fair, transparent and reasonable mode has to be adopted so as to enable to arrive at a best offer by giving opportunity to all eligible bidders.

13. In the above backdrop of the Full Bench judgment in ***Haria Dablong Meen Mahal*** (supra) as well as the settled law regarding distribution of State largesse, the present issue is required to be examined. The categorical case of the petitioners is that the impugned settlement was granted without resorting to any advertisement. The response to such allegation by the Corporation that there was an advertisement in the issue of 'Aami Axomor Janagan', dated 14.06.2019 does not appear to be a convincing one for more than one reason. Firstly, the aforesaid newspaper is admittedly an obscure one without any known circulation. Secondly, the said fact of publication is also disputed inasmuch as only in certain selected copies, the notice was published wherein in other copies of the same issue dated 14.06.2019, there was no such notice (Janoni) in the 5th page. That apart, the requirement is of wide publication in more than one widely circulated newspaper, which admittedly was not done in the instant case.

14. The Hon'ble Supreme Court, way back in the case of ***Ramana Dayaram Shetty Vs. The International Airport Authority of India***, reported in **(1979) 3 SCC 489**, while dealing with the mode of distribution of State largesse had held as follows:

“21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974 SC 555) and Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-

discriminatory : it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.”

15. The aforesaid observations were followed in all later decisions including the one in ***Ram and Shyam Company Vs. State of Haryana and Ors.***, reported in **(1985) 3 SCC 267**, the relevant paragraphs are extracted hereinbelow:

“13. Approaching the matter from this angle, can there be any doubt that the appellant whose highest bid was rejected by the Government should have no opportunity to improve upon his bid more so when his bid was rejected on the ground that it did not represent adequate market consideration for the concession to extract minor mineral. A unilateral offer, secretly made, not correlated to any reserved price, made by the fourth respondent after making false statement in the letter was accepted without giving any opportunity to the appellant either to raise the bid or to point out the falsity of the allegations made by the fourth respondent in the letter as also the inadequacy of his bid. The appellant suffered an unfair treatment by the State in discharging its administrative functions thereby violating the fundamental principle of fair play in action, When he gave the highest bid, he could not have been expected to raise his own bid in the absence of a competitor. Any expectation to the contrary betrays a woeful lack of knowledge of auction process. And then someone surreptitiously by a secret offer scored a march over him. No opportunity was given to him either to raise the bid or to

controvert and correct the erroneous statement.

14. What happened in this case must open the eyes both of the Government as well as the people at large. How an uncontrolled exercise of executive power to deal with socialist property in which entire community's interest was sacrificed so as to cause huge loss to the public exchequer would have gone unnoticed but for the vigilance of the appellant who no doubt is not altruistic in its approach but its business interests goaded it to expose the unsavoury deal. Conceding that on weighty and valid considerations, the highest bid can be rejected by the State, one such which can be foreseen is that the highest bid does not represent the adequate market price of the concession, yet before giving up the auction process and accepting a private bid secretly offered, the authority must be satisfied that such an offer if given in open would not be outmatched by the highest bidder. In the absence of such satisfaction, acceptance of an offer secretly made and sought to be substantiated on the allegations without the verification of their truth, which was not undertaken, would certainly amount to arbitrary action in the matter of distribution of State largesse which by the decisions of this Court is impermissible. Even though repeatedly, this Court has said that the State is not bound to accept the highest bid, this proposition of law has to be read subject to the observation that it can be rejected on relevant and valid considerations, one such being that the concession is to be given to a weaker section of the society who could not outbid the highest bidder.”

16. The importance of maintaining fairness in distribution of State largesse has been reiterated by the Hon'ble Supreme Court in the case of ***Kasturilal Lakshmi Reddy Vs. State of Jammu and Kashmir***, reported in **(1980) 4 SCC 1** wherein it has been held that the State or its agencies are not private bodies. The relevant paragraph is extracted hereinbelow: -

“11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the

matter of giving largesse. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner, it has to be exercised for the public good. Every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.”

17. When the law requires a thing to be done in a particular manner, that thing must be done in that manner alone and all other modes are forbidden. The Hon'ble Privy Council, in the case of **Nazir Ahmed Vs. King Emperor**, reported in **AIR 1936 253 PC (II)** held as follows:

“The rule which applies is a different and not less well recognized rule—namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

18. In view of the aforesaid facts and circumstances, there is only one conclusion for this Court to arrive at, namely, that the impugned settlements of the two Fisheries in question have been done without following the due process of law. This Court is of the view that the



requirement of maintaining fairness and transparency in matters of distribution of State largesse has been totally done away with in the present case whereby beneficiaries appears to have been chosen without there being any competition. This Court is also of the view that the mere fact that the application for extension of the petitioner in case of WP(C) No.6541 / 2019 is pending or that the petitioner in WP(C) No.5952 / 2019 had submitted an application for settlement of the Fishery in question shall not debar the petitioner from making the present challenge which relates to favouring certain selected individuals at the risk and cost of the State exchequer. Accordingly, the writ petitions are allowed by interfering with the impugned action. While the impugned action has been interfered with, the respondent Corporation is directed to take steps for settlement of the Fisheries in question strictly in accordance with law and by following the observation made by this Court above. In case, such action is initiated, the same be completed within an outer limit of three months from today. It is needless to state that fresh process which may be initiated has to be strictly in accordance with law.

19. Writ petitions are accordingly disposed of.

20. In view of the final disposal of the writ petitions, the contempt petition is also closed.

JUDGE

Comparing Assistant