



GAHC010114062020

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

Case No. : WP(C)/3379/2020

M/S GERAMARI GAON PANCHAYAT MEEN SAMABAY SAMITY LTD.
GERAMARI, REP. BY ITS SECY. SRI ANIL CH. BARMAN, AGED ABOUT- 60
YEARS, S/O- LT. MUKUNDA BARMAN, R/O- VILL- ASHARIKANDI, P.O.
ASHARIKANDI, P.S. GAURIPUR, PIN- 783331, DIST.- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM, FISHERY
DEPTT., DISPUR, GHY-6

2:THE JOINT SECRETARY
GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
DHUBRI
P.O. AND DIST.- DHUBRI
PIN- 783301
ASSAM

4:THE ADDL. DY. COMMISSIONER
(REVENUE FISHERY DEPTT.) DHUBRI
P.O. AND DIST.- DHUBRI
PIN- 783301
ASSAM

5:THE CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE
DHUBRI



DIST.- DHUBRI
ASSAM
PIN- 783301

6:JOY SANKAR SARMA
CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE AND DHUBRI REVENUE CIRCLE
DIST.- DHUBRI
ASSAM
PIN- 783301

7:NAMEZ UDDIN AHMED
LAT MANDAL
GAURIPUR REVEUE CIRCLE
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

8:THE ASSTT. REGISTRAR OF CO.OP. SOCIETIES
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

9:M/S GAURIPUR FISHERY CO. OP. SOCIETY LTD.
HAVING ITS REGD. OFFICE AT WARD NO. 2
P.O. GAURIPUR
PIN- 783331
DIST.- DHUBRI
ASSAM

Advocate for the Petitioner : MR. D K SARMAH

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/5216/2020

M/S GAURIPUR COOP FISHERY LTD
GAURIPUR
DIST DHUBRI
ASSAM. 783331
REPRESENTED BY ITS PRESIDENT SRI SHIBEN NAMASUDRA



VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF
ASSAM
CO OPERATION DEPARTMENT
DISPUR GUWAHATI 781006

2:THE REGISTRAR OF CO OPERATIVE SOCIETIES
ASSAM

KHANAPARA
GUWAHATI 781022
KAMRUP M ASSAM

3:THE ADDITIONAL REGISTRAR OF COOPERATIVE SOCIETIES (G)
KHANAPARA

GUWAHATI 781022
KAMRUP M ASSAM

4:THE ASSISTANT REGISTRAR OF CO OPERATIVE SOCIETIES
DHUBRI

DIST DHUBRI
ASSAM

783301

5:M/S GERAMARI GAON PANCHAYAT MIN SAMABAY SAMITY LIMITED.
VILLAGE BAGURAPARA

PO ASHARIKANDI
DIST DHUBRI

ASSAM
783331

Advocate for : MR S KHOUND

Advocate for : SC

CO OP appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/3051/2020

M/S. GAURIPUR COOP. FISHERY SOCIETY LTD.

GAURIPUR

P.O- GAURIPUR

DIST- DHUBRI

ASSAM

PIN- 783331

REP. BY ITS PRESIDENT

SRI SHIBEN NAMASUDRA

R/O- WARD NO. 2



VILL- GAURIPUR
P.O AND P.S- GAURIPUR
DIST- DHUBRI
ASSAM
PIN- 783331

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE ADDL CHIEF SECRETARY TO THE GOVT OF ASSAM
FISHERY DEPTT
DISPUR
GHY- 06

2:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
FISHERY DEPTT
DISPUR
GUWAHATI- 06

3:THE DEPUTY COMMISSIONER
DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

4:THE ADDL DEPUTY COMMISSIONER
DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

5:THE CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE
DIST- DHUBRI
ASSAM

6:M/S GERAMARI GAON PANCHAYAT MIN SAMABAY SAMITY LIMITED
VILL- BAGURAPARA
P.O- ASHARIKANDI
DIST- DHUBRI
ASSAM
PIN- 783331

Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.



Linked Case : WP(C)/2562/2020

M/S. GAURIPUR COOP. FISHERY SOCIETY LTD.
GAURIPUR
P.O- GAURIPUR
DIST- DHUBRI
ASSAM
PIN- 783331
REP. BY ITS PRESIDENT
SRI SHIBEN NAMASUDRA
R/O- WARD NO.2
VILL- GAURIPUR
P.O AND P.S- GAURIPUR
DIST- DHUBRI
ASSAM
PIN- 783331

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT OF ASSAM
FISHERY DEPTT
DISPUR
GUWAHATI- 06

2:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
FISHERY DEPTT
DISPUR
GUWAHATI- 06

3:THE DEPUTY COMMISSIONER
DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

4:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 22

5:THE ASSTT REGISTRAR OF COOPERATIVE SOCIETIES
DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783331

6:M/S GERAMARI GAON PANCHAYAT MIN SAMABAY SAMITY LTD
VILL- BAGURAPARA
P.O- ASHARIKANDI



DIST- DHUBRI
ASSAM
PIN- 783331

Advocate for : MR D DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/2343/2020

M/S GERAMARI GAON PANCHAYAT MEEN SAMABAY SAMITY LTD
A CO-OPERATIVE SOCIETY
REGD. UNDER THE ASSAM CO-OPERATIVE SOCIETIES ACT
1949
HAVING ITS REGD. OFFICE AT ASHARIKANDI (BAGURAPARA)
P.O. ASHARIKANDI
DIST.- DHUBRI
ASSAM
REP. BY ITS SECY. SRI ANIL CH. BARMAN
AGED ABOUT- 60 YEARS
S/O- LT. MUKUNDA BARMAN
R/O- VILL- ASHARIKANDI
P.O. ASHARIKANDI
P.S. GAURIPUR
DIST.- DHUBRI
ASSAM
PIN- 783331

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERIES DEPTT.
DISPUR
GHY-6
DIST.- KAMRUP
ASSAM

2:THE DY. COMMISSIONER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
3:THE CIRCLE OFFICER
DHUBRI REVENUE CIRLCE
DHUBRI



4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
5:M/S GAURIPUR FCS LTD.
GAURIPUR
P.O. AND P.S. GAURIPUR
PIN- 783331
DIST.- DHUBRI
ASSAM

Advocate for : MR. D K SARMAH
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/4434/2020

M/S GAURIPUR COOP FISHERY SOCIETY LTD
GAURIPUR
P.O.-GAURIPUR
DIST-DHUBRI
ASSAM
PIN-783331
REPRESENTED BY ITS PRESIDENT SRI SHIBEN NAMASUDRA

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6

2:THE DEPUTY COMMISSIONER
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301
3:THE ADDITIONAL DEPUTY COMMISSIONER
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301
4:THE ASSISTANT REGISTRAR OF COOP. SOCIETIES



DHUBRI
DIST-DHUBRI
ASSAM
PIN-783
5:THE CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE
DIST-DHUBRI
ASSAM
6:M.S GERAMARI GAON PANCHAYAT MIN SAMABAY SAMITY LTD.
VILL-BAGURAPARA
P.O.-ASHARIKANDI
DIST-DHUBRI
ASSAM
PIN NO.

Advocate for : MR. M K CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT AND ORDER (Oral)

Date : 11-02-2021

Heard Mr. M. K. Choudhury, learned senior counsel assisted by Mr. S. Khound, learned counsel appearing on behalf of the writ petitioner M/S Gauripur Cooperative Fishery Society Ltd. in WP(C) Nos.2562/2020, 3051/2020, 4434/2020 and 5216/2020. Also heard Mr. D. K. Sarmah, learned counsel appearing on behalf of the writ petitioner M/S Geramari Gaon Panchayat Meen Samabay Samity Ltd. in WP(C) Nos.3379/2020 and 2343/2020.

Ms. M. Bhattacharjee, learned Addl. Senior Govt. Advocate, Assam, is present on behalf of the official respondents. Mr. G. Bordoloi, learned Standing Counsel, Cooperation Department is also present.

2. The dispute in this batch of writ petitions relates to regular settlement of the Group No.1/87 Dharnad Brahmaputra Pt-I & Satakuri Nadi Fishery situated in the district of Dhubri. The aforesaid fishery was earlier settled with M/S Gauripur Cooperative Fishery Society Ltd. for a period of 7 years with effect from 04.03.2013. The lease was due for expiry on 03.03.2020. As such, the Deputy Commissioner, Dhubri had issued Notice Inviting Tender (NIT) dated 27.02.2020 inviting fresh bids for regular settlement of the aforesaid fishery for a further period of seven years. In response to the aforesaid NIT both the rival societies, besides three other tenderers have submitted their bids. After evaluating the bids, the Deputy Commissioner, Dhubri had forwarded his recommendation vide letter dated 29.09.2020 addressed to the Commissioner and Secretary to the Govt. of Assam, Fisheries Department, Dispur, recommending the tender of M/S Geramari Gaon Panchayat Meen Samabay Samity Ltd. for settlement of the fishery viz., Group No.1/87 Dharnad Brahmaputra Pt-I & Satakuri Nadi Fishery, by treating it as the highest bidder. It also appears that, on the basis of the order dated 27.02.2020 issued by the authorities, the sitting lessee viz., M/S Gauripur Cooperative Fishery Society Ltd. was allowed to operate the aforesaid fishery on daily basis until regular settlement of the same.

3. Aggrieved by the order dated 27.02.2020 M/S Geramari Gaon Panchayat Meen Samabay Samity Ltd. (for short "Geramari") had approached this Court by filing WP(C) No.2343/2020 with a prayer to set aside the order dated 27.02.2020. By order dated 25.06.2020 passed by the learned Single Judge, the respondents were restrained from issuing any final order of settlement pursuant to the NIT dated 27.02.2020.



4. Thereafter, M/S Gauripur Cooperative Fishery Society Ltd. (for short "Gauripur") had also approached this Court by filing WP(C) No.2562/2020 praying for a direction to dispose of the representations dated 16.03.2020 and 17.03.2020 submitted by it before the Additional Deputy Commissioner and Assistant Registrar of Cooperative Societies (ARCS) respectively, alleging that M/S Geramari Gaon Panchayat Meen Samabay Samity Ltd. had enrolled 48 nos. of members falling within the jurisdiction of the petitioner society and thereby, illegally obtained the distance certificate. On such ground a prayer was also made to reject the tender submitted by "Geramari".

5. Due to the pendency of the aforementioned writ petitions and the interim order operating therein, the process of regular settlement of the fishery could not progress. Situated thus, "Gauripur" had filed WP(C) No.3051/2020 and by relying upon the order dated 23.06.2020, whereby the distance certificate of "Geramari" was cancelled, praying for a direction upon the respondents to take a final decision in the matter of settlement of the fishery by taking into account the fact that "Geramari" was not entitled to the settlement of the fishery.

6. During the pendency of WP(C) No.3051/2020, "Geramari" had also approached this Court by filing WP(C) No.3379/2020 assailing the order dated 23.06.2020, by means of which, the Circle Officer had cancelled the distance certificate earlier issued to the said society.

7. Soon thereafter, "Gauripur" had filed another writ petition being WP(C) No.4434/2020 assailing the recommendation dated 29.09.2020 of the Deputy Commissioner, Dhubri for settlement of the fishery in favour of "Geramari" by treating

it as the highest valid bidder. The main contention of the petitioner in the aforesaid writ petition is to the effect that in view of the order dated 23.06.2020 cancelling the distance certificate of "Geramari" the Deputy Commissioner could not have recommended the settlement of the fishery in favour of the said society by ignoring the order dated 23.06.2020.

8. It appears that the Assistant Registrar of Cooperative Society (ARCS) had also made an enquiry into the allegations and counter-allegations made by the rival societies regarding the area of operation of both the societies and thereafter, submitted a report dated 07.07.2020 which prima facie goes to negate the allegation made by "Gauripur" against "Geramari". Aggrieved by the report of the ARCS dated 07.07.2020, "Gauripur" had preferred an appeal before the Registrar of Cooperative Societies, Assam on 14.09.2020 which is pending disposal. As per the averments made in the writ petition, the appeal was heard by the Additional Registrar of Cooperative Societies, Assam, on 30.09.2020 but no order has been passed till date. As such, a prayer has been made in WP(C) No.5216/2020 to issue a direction for early disposal of the appeal preferred before the RCS.

9. It is in aforesaid factual backdrop that these writ petitions are being taken up for final disposal at the stage of admission hearing with the consent of learned counsel appearing for all the parties.

10. Mr. D. K. Sarmah, learned counsel appearing for "Geramari" submits that the representations dated 16.03.2020 and 17.03.2020 submitted by the writ petitioner already having been disposed of by the concerned authorities, WP(C) No.2562/2020

has become infructuous. Likewise, submits Mr. Sarmah, since a recommendation has already been made by the Deputy Commissioner, Dhubri vide order dated 29.09.2020 forwarding the decision to the Government for issuing the order of settlement, WP(C) No.3051/2020 has also become infructuous, more so, in view of the fact that by the subsequent order dated 28.08.2020 the concerned Addl. Deputy Commissioner has recorded a finding that there was no illegal inclusion of members in the Geramari Gaon Panchayat Meen Samabay Samity Ltd. According to Mr. Sarmah, the order dated 28.08.2020 issued by the Additional Deputy Commissioner, Dhubri, for all practical purposes, cancels and revokes the earlier order of the Circle Officer dated 23.06.2020 cancelling the distance certificate of "Geramari".

11. In so far as the writ petition being WP(C) No.5216/2020 is concerned, Mr. Sarmah submits that he would have no objection if a direction is issued to the concerned authority to dispose of the appeal preferred by the appellant "Gauripur" but the aforesaid appeal would not have any bearing on the question of regular settlement of the fishery. Therefore, the pendency of the appeal before the Registrar of Cooperative Societies, Assam, cannot be a ground to delay the regular settlement of the fishery through the tender process.

12. It is also the submission of Mr. Sarmah that having operated the fishery for 7 long years M/S Gauripur Cooperative Fishery Society Ltd. is continuing to run the same on daily basis at a nominal price thereby not only causing huge loss of the revenue for the Government but also by depriving genuine fishery cooperative societies such as the petitioner from deriving benefits under a regular process of

settlement. Referring to the facts and circumstances of the case, Mr. Sarmah therefore, submits that these writ petitions be disposed of directing the Govt. of Assam to issue final order of settlement of the fishery by vacating the order dated 25.06.2020 passed by this Court in WP(C) 2343/2020.

13. Mr. M. K. Choudhury, learned senior counsel appearing on behalf of "Gauripur" on the other hand, contends that the appeal pending before the Registrar of Cooperative Societies (RCS) would have a relevant bearing on the question of validity of the tender submitted by "Geramari" and therefore, unless the aforesaid appeal is disposed of, no final order of settlement of the fishery can be passed by the authorities. Mr. Choudhury has also argued that the order dated 28.08.2020 does not expressly revoke the earlier order of cancellation of distance certificate of "Geramari" issued on 23.06.2020. Therefore, until such time, the distance certificate of "Geramari" is restored by following the due process of law, the tender submitted by the aforesaid bidder shall have to be treated as invalid. In such view of the matter, submits Mr. Choudhury, the recommendation dated 29.09.2020 issued by the Deputy Commissioner is ex-facie illegal and is therefore, liable to be interfered with by this Court. Mr. Choudhury has, however, fairly submitted that the representations dated 16.03.2020 and 17.03.2020 submitted by his client having been disposed of by the concerned authorities, nothing survives for adjudication in WP(C) No.2562/2020.

14. Ms. M. Bhattacharjee, learned Addl. Sr. Govt. Advocate, Assam, appearing for the official respondents, submits that before issuing any final order of settlement of the

fishery, the Govt. of Assam will examine all the issues carefully and only thereafter take appropriate decision, if liberty is granted by this Court. Therefore, it is the submission of learned Additional Sr. Govt. Advocate that the matter be remanded to the Government for taking an appropriate decision in the matter.

15. Mr. G. Bordoloi, learned Standing Counsel, Cooperation Department, Assam, also submits that the appeal preferred by "Gauripur" has been heard by the Additional Registrar of Cooperative Societies but no final order has been passed till date due to the pendency of these proceedings before this Court. However, if leave is granted to that effect, final order would be issued within a period of 10 days from today.

16. It is to be noted herein that the earlier lessee i.e. M/S Gauripur Cooperative Fishery Society Ltd., has continued to operate the fishery on daily basis even after the expiry of the seven years lease period granted in its favour in the year 2013. Although the NIT was issued on 27.02.2020 inviting tenders for regular settlement of the fishery on the basis of fresh bids, the said process could not be taken to its logical end due to the pendency of these proceedings and the interim order operating therein.

17. Regular settlement of fishery, through tender process, is not only the mandate of the statute but the same is also required to be done so as to protect the interest of Government revenue. Moreover, delay in regular settlement of fisheries through proper tender process would also prejudicially affect the rights and interests of the fishery cooperative societies. Viewed from that angle, this Court is of the opinion that the NIT dated 27.02.2020 should be brought to its logical end by issuing final order of

settlement as expeditiously as possible.

18. A perusal of the order dated 29.09.2020 issued by the Deputy Commissioner, Dhubri goes to show that there were five tenderers who had submitted their bids pursuant to the NIT dated 27.02.2020 out of which, "Geramari" has quoted Rs.1,90,05,000.00 for seven years, whereas its rival "Gauripur" has quoted Rs.1,09,04,299.00. In terms of the prices quoted by the bidders "Geramari" is the highest bidder. The second highest bidder appears to be Milanpur Anusuchita Jati Kalyan FCS Ltd. which had quoted Rs.1,70,10,707.00. Taking note of the price quoted by the different bidders the Deputy Commissioner, Dhubri had recommended settlement of the fishery with "Geramari". However, even if a recommendation goes from the Deputy Commissioner, the Government of Assam, in the Fisheries Department, would have a duty to verify the eligibility of each of the bidder and only thereafter, take a final decision in the matter. Such power and duty is cast upon the Government under Rule 42 of the Assam Fishery Rules, 1953. The mandate of the Fishery Rules is to award the settlement in favour of the "highest valid bidder" and not merely the highest bidder. If the tender submitted by "Geramari" is found to be technically valid then only the highest price quoted by it would be relevant.

19. Although there are claims and counter-claims regarding the validity of the tender submitted by "Geramari" I am of the view that there would be no need for this Court to embark on a process of adjudication of such claims, more particularly when those are based on factual realities existing at the ground level. Rather, this Court is of the opinion that the departmental authorities would be the best judge to

figure out whether the bid submitted by the tenderers are technically valid or not.

20. In view of the above, without expressing any opinion on the claims and counter-claims of the parties, I dispose of all these writ petitions by granting leave to the Government of Assam, Fishery Department, to examine the recommendation dated 29.09.2020 issued by the Deputy Commissioner, Dhubri and thereafter, approve the settlement of the fishery in favour of the "highest valid bidder" after taking into account all the relevant facts and circumstances of the case pertaining to the eligibility of the bidders. The said exercise be carried out and completed within two weeks from today.

21. In so far as the appeal filed by M/S Gauripur Cooperative Fishery Society Ltd. before the Registrar of Cooperative Societies, Assam, is concerned, it would now be open for the concerned authority to pass appropriate order disposing of the appeal within 10 days from today.

The interim order dated 25.06.2020 passed by this Court in WP(C) No.2343/2020 shall stand modified accordingly.

The writ petitions are disposed of.

JUDGE

Comparing Assistant