



GAHC010080512020

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

**Case No. : WP(C)/2422/2020**

SAMITI DAS  
W/O- PHANIDHAR DAS, SECY., GOHAINGAON, BAHUMUKHI MAHILA  
SAMABAI SAMITTEE LTD., DHEMAJI, R/O- VILL- BAMGAON, P.O.  
GOHAINGAON, DIST.- DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FISHERY  
DEPTT., DISPUR, GHY-06

2:DISTRICT FISHERY DEVELOPMENT OFFICER  
DHEMAJI  
ASSAM  
PIN- 787057

3:THE DY. COMMISSIONER  
DHEMAJI  
ASSAM  
PIN- 787057

4:THE ADDL. DY. COMMISSIONER (FISHERY)  
DHEMAJI  
ASSAM  
PIN- 787057

5:TUSIL DAS  
SECRETARY OF SEUJI BANANA GROWERS COMMITTEE  
S/O- DURESWAR DAS (KALIA)  
R/O- VILL- SOLMARA  
P.O. JURKATA  
DIST.- DHEMAJI



ASSAM  
PIN- 78705

**Advocate for the Petitioner** : MR. T. K. BHUYAN, MR A ALI

**Advocate for the Respondent** : MS. U. DAS, ADDL. SR. GA, ASSAM  
MR. D. SARMA, ADVOCATE

**– BEFORE –**

**HON'BLE MR. JUSTICE DEVASHIS BARUAH**

**Date of Hearing & judgment** : **11.01.2024**

**JUDGMENT & ORDER**  
**(ORAL)**

Heard Mr. T.K. Bhuyan, learned counsel appearing on behalf of the petitioner. Ms. U. Das, learned Additional Senior Government Advocate, Assam appears on behalf of respondent Nos. 1 to 4 and Mr. D. Sarma, learned counsel appears on behalf of respondent No. 5.

2. The instant writ petition has been filed by the petitioner being aggrieved by the action of the respondent authorities in settling the No. 22 Laipulia Meen Mahal with the respondent No. 5 vide the impugned order dated 19.05.2020 and also seeking a direction to settle the said Meen Mahal in favour of the petitioner society.

3. The facts, which can be discerned from a perusal of the pleadings, are that the petitioner herein is the Secretary of a society in the name and style of M/s Gohaingaon Bahumukhi Mahila Samabai Samittee Ltd. in the district of Dhemaji. A Notice Inviting Tender (NIT), being NIT No. DRF.8/Pt-II/2014-15/57 dated 23.10.2019 was issued by the Additional Deputy Commissioner, Revenue, Dhemaji, inviting bids for settlement of various fisheries including No. 22 Laipulia Meen Mahal (for the sake of convenience referred to as "fishery in question"). In pursuance to the said NIT, the petitioner along with various other bidders had duly participated in the said tender process. Before

proceeding further, this Court finds it relevant to take note of some of the conditions of the said NIT. From a perusal of the said NIT, it reveals that the public in general were notified about the bid documents and, in addition to the various documents mentioned in the NIT was the PAN Card issued by the Income Tax Department in the name of the Co-operative Society/Self Help Groups/NGOs. It was made clear that PAN Card issued in the name of any individual/office bearer of the Co-operative Society/Self Help Group/NGO would not be accepted. Amongst the various conditions which had been stipulated in the said NIT, it was mentioned that a Certificate of 100% Actual Fishermen, issued by the Assistant Registrar of Co-operative Societies (ARCS) to the Fishermen Co-operative Society/Self Help Group/NGO should be submitted along with the tender application. It was also mentioned that the members of the bidding fishermen co-operative society/Self Help Group/NGO must be of Schedule Caste Community or the Maimal Community of Cachar District of erstwhile Assam, which should be mentioned in the said certificate issued by the ARCS. Apart from the Certificate of 100% Actual Fishermen, there was also a requirement of submission of "Neighbourhood Certificate" issued by the concerned Revenue Circle Officer to the Fishermen Co-operative Society/Self Help Group/NGO with clear indication of the specific distance of the Fishermen Co-operative Society/Self Help Group/NGO from the fishery in question. In terms with Clause 3 of the NIT, the bidding Fishermen Co-operative Society/Self Help Group/NGO was also required to submit a Fishermen Experience Certificate issued by the DFDOs indicating that all the members of the Fishermen Co-operative Society/Self Help Group/NGO have ample experience in fishing and related activities and they are fully involved in such activities. There are various other conditions in the NIT which, however, being not so pertinent for the purpose of disposal of the instant writ petition, this Court for the sake of brevity is not referring to the same. Be that as it may, the record reveals that in response to the NIT in question as many as five bidders, including the M/s Gohaingaon Bahumukhi Mahila Samabai Samittee Ltd., duly submitted their bids.

4. A perusal of the minutes of the Tender Advisory Committee meeting held on 29.11.2019 reveals that the Tender Advisory Committee opined that three bidders did not submit various documents as stipulated in the NIT. However, as regards the respondent No. 5, it was mentioned that the 100% Actual Fishermen Certificate issued by ARCS was not submitted. In case of the petitioner, it was opined that the documents which were submitted by the petitioner society were in order. Accordingly, the Tender Advisory Committee recommended the tender submitted by the petitioner for settlement and to forward all the tender papers and documents to the Government for further necessary action.

5. The record reveals that thereupon, being aggrieved by the actions of the respondent authorities in not granting the settlement of the fishery in question, in spite of the fact that the Tender Advisory Committee had duly recommended the settlement to be made in favour of the petitioner society, the petitioner filed a writ petition before this Court, which was registered and numbered as WP(C) No. 1619/2020. When the said writ petition was taken up on 04.03.2020, this Court directed the matter to be listed again on 20.03.2020 and also directed the learned counsel appearing on behalf of the respondent authorities to obtain instructions in the meantime. However, while the said writ petition was pending, on 19.05.2020, an order was issued by the Joint Secretary to the Government of Assam, Fishery Department, whereby the fishery in question was settled with the respondent No. 5 on the ground that the respondent No. 5 had quoted Rs. 10,99,007.00 for 7 years, which was the 3<sup>rd</sup> highest rate, whereas the petitioner had quoted Rs. 8,47,000.00 for 7 years, which was the 5<sup>th</sup> highest rate. It was also mentioned in the order that from the scrutiny of the documents submitted by the bidders, it revealed that the respondent No. 5 was the only bidder within the neighbourhood of the fishery in question, which is located within 300 meters from the fishery in question, than the petitioner society which is located at a distance of 9 KM from the fishery in question, for which the bid of the respondent No. 5, being higher was more acceptable and also was in conformity with



Rule 12 of the Assam Fishery Rules, 1953. This Court also finds it pertinent to take note of the order dated 19.05.2020 wherein the authority concerned had also duly taken note that though the respondent No. 5, which is a Self Help Group, had not submitted 100% Actual Fishermen Certificate issued by ARCS, Dhemaji, in terms of Clause (1) of the NIT, but the respondent No. 5 had furnished a certificate issued by the DFDO, Dhemaji, which covers both 100% Actual Fishermen Certificate as well as Experience Certificate, which was accepted. As regards the petitioner, it was mentioned that the Experience Certificate issued by the DFDO, Dhemaji did not specifically mention the word "experience" although from the activities described in the Certificate it could be construed as Experience Certificate. It was further mentioned that as per the report of the Circle Officer, the petitioner society is located at a distance of 9 KM from the fishery in question. The petitioner, therefore, being aggrieved by the order dated 19.05.2020, has approached this Court by filing the present petition.

6. The record reveals that this Court, vide order dated 15.06.2020, issued notice making it returnable by four weeks. Be that as it may, it is relevant to take note that there was no order passed staying the order dated 19.05.2020. The record further reveals that an affidavit-in-opposition was filed by the respondent No. 1 on 13.06.2022. From a perusal of the said affidavit-in-opposition, it transpires that the tender documents of each of the 5 bidders were examined and the authorities in the Government were of the view that the bid offered by the respondent No. 5 was in order and its bid was higher than the rate quoted by the petitioner society. As regards the objection raised by the petitioner against non-submission of ARCS certificate by the respondent No. 5 society, it was stated that the Government considered the certificate issued by the DFDO, Dhemaji to be the Experience Certificate and the certificate of 100% Actual Fishermen of the SC community as valid, as the respondent No. 5 society was registered as Pathar Parichalona Samity under the Agriculture Department and because of that the 100% Actual Fishermen Certificate was not

issued by the ARCS on the ground that the Pathar Parichalona Samity is not registered under the ARCS. It was also stated that the authorities in the Government had also taken into consideration the neighbourhood issue in terms of Rule 12 of the Assam Fishery Rules, 1953 (as amended) and found that the members of the respondent No. 5 society reside within the neighbourhood of the fishery in question and, that too, within a radius of 300 meters, whereas the members of the petitioner society reside at a distance of 9 KM from the fishery. Further to that, it was also stated that the Experience Certificate submitted by the petitioner along with the bid documents was without the word "experience" but was accepted by the authority as the content of the certificate could be construed to be the Experience Certificate. Moreover, amongst the two valid bids, the bid offered by the respondent No. 5 was higher than that of the petitioner society and, that apart, the members of the respondent No. 5 society were the immediate neighbourhood of the fishery, residing within a radius of 300 meters only, whereas the members of the petitioner society reside at a distance of 9 KM from the fishery.

7. This Court has also duly perused the affidavit-in-opposition filed by the respondent No. 5, which is in *peri materia* in content with the affidavit filed by the respondent No. 1, for which this Court, for the sake of avoiding prolixity, is not repeating the same. The record however, reveals that there has been no reply filed by the petitioner to the affidavit-in-opposition filed by the State respondents as well as the respondent No. 5.

8. I have considered the submissions advanced by the learned counsel appearing on behalf of the petitioner as well as the learned counsel appearing on behalf of the respondents. Upon hearing the learned counsel for the parties, the points which arise for determination are:

- (i) Whether the respondent authorities could have granted the settlement in favour of the respondent No. 5 vide the impugned order dated

19.05.2020 without submission of the 100% Actual Fishermen Certificate issued by the Assistant Registrar of Co-operative Societies?

- (ii) If the settlement granted in favour of the respondent No. 5 is set aside, can this Court direct granting of the settlement in favour of the petitioner?

9. This Court has duly taken note of Rule 12 of the Assam Fishery Rules, 1953 (for short, "Fishery Rules"), which stipulates that except those referred to in Sub-Rule 8(b), all registered fisheries shall be settled under the tender system of sale in place of sale in auction. It further stipulates that the Government shall settle 60% category of fishery with special category of co-operative societies, non-governmental organisations and self-help groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by tender system. The Explanation to Rule 12 stipulates that the words "special category" means and includes co-operative societies, self-help groups, non-governmental organisations comprising of 100% actual fishermen of the Scheduled Caste community or Maimal community of the erstwhile Cachar District who cannot participate in competitive bidding because of poor financial condition due to famine, flood, draught, epidemic or any other circumstances which are beyond the control of the society, non-governmental organisation or self-help group, as the case may be. Therefore, from the above Rule it is clear that the settlement of the 60% category of fishery can be made with the co-operative societies, non-governmental organisations and self-help groups.

10. Now, the question therefore arises as to whether the Assistant Registrar of Co-operative Societies has the power or authority to issue 100% Actual Fishermen Certificate to a non-governmental organisations or self-help group? This Court, at this stage finds it relevant to take note of the Assam Co-operative Societies Act, 2007 (for short, "Act of 2007"), which is an Act enacted to consolidate and amend the law relevant to co-operative societies in the State of Assam and to facilitate the voluntary formation and democratic functioning of Co-operative Societies as people's institutions

based on self-help and mutual aid and to enable them to promote their economic and social betterment. Section 2(j) defines the term "co-operative society" to mean a co-operative Society registered under the Act of 2007 and includes a society formed after amalgamation of such two or more societies or by division of an existing society. This Court further finds it relevant to take note of Section 3 of the Act of 2007, which stipulates that the State Government may appoint an officer to be the Registrar of Co-operative Societies for the State or any portion of it for the registration, supervisions, assistance, counsel and for the all-round development of the Co-operative movement in the State with such other powers and responsibilities as may be provided under the Act of 2007, or Rules or Bye-laws framed under the Act of 2007. Sub-Section (2) of Section 3 of the Act of 2007 stipulates that the State Government may also appoint any other person or persons to assist the Registrar and may, by general or special order in writing, delegate to any such person or persons all or any of the powers and responsibilities of the Registrar under the Act of 2007. Therefore, from a perusal of Section 3 of the Act of 2007 it would be clear that the power to be exercised by the Registrar of Co-operative Societies or any other person to assist the Registrar of Co-operative societies would only be in relation to a co-operative society as defined under Section 2(j) of the Act of 2007.

11. This Court had also put a query upon Ms. U. Das, learned Additional Senior Government Advocate, appearing on behalf of the State respondents, as to whether any power has been vested upon the Registrar or Assistant Registrar of Co-operative Societies to give certification in respect of any organisation or group of persons, who do not come within the ambit of "co-operative society" as defined in Section 2(j) of the Act of 2007. Ms. U. Das submits that from a perusal of the Act of 2007, it becomes clear that there is no power vested upon the Registrar or any other person appointed to assist the Registrar of Co-operative Societies by the Act of 2007 to issue a certificate to any organisation or group of persons other than those which fall within the ambit of "co-operative societies" as defined in Section 2(j) of the Act of 2007.



12. In the backdrop of the above analysis, the question therefore arises as to whether the respondent No. 5 which, admittedly, is not a co-operative society, could have been issued a certificate by the Assistant Registrar of Co-operative Societies. This Court has duly taken note that in the impugned order dated 19.05.2020 it is mentioned that the tendering authority had duly taken note that the respondent No. 5 is a Pathar Parichalona Samity, which is registered under the District Agriculture Officer, Dhemaji. In the affidavit filed by the respondent No. 1 it is also categorically mentioned that a Pathar Parichalona Samity cannot be granted any certificate by the Assistant Registrar of Co-operative Societies. The consequential question, therefore, is whether the respondent authorities were justified in disregarding the non-submission of the 100% Actual Fishermen Certificate by the respondent No. 5, issued by the Assistant Registrar of Co-operative Societies?

13. This Court has duly taken note that as per Rule 12 of the Assam Fishery Rules, 1953 settlement can be made in favour of a co-operative society, self-help group or NGO. However, a self-help group or NGO cannot apply for a certificate from the Assistant Registrar of Co-operative Societies if it does not come within the meaning "co-operative society" as defined under Section 2(j) of the Act of 2007. This Court has also duly taken note that in the Notice Inviting Tender it has been categorically mentioned that not only a co-operative society but also a self-help group as well as non-governmental organisation can also apply. Under such circumstances, in the opinion of this Court, the respondent No. 5 was not in a position to obtain the requisite certificate from the Assistant Registrar of Co-operative Societies, which the respondent authorities, more particularly, the tendering authority knew and therefore have waived the said condition by specifically taking note that the 100% Actual Fishermen Certificate issued by the DFDO, Dhemaji, was in compliance to the requirements. To the opinion of this Court, the said action on the part of the respondent authorities in passing the impugned order dated 19.05.2020 cannot be said to be illegal, arbitrary or unreasonable as the bid so submitted by the respondent



No. 5 was in substantial compliance of the NIT.

14. This Court also finds it pertinent to take note that the respondent No. 5 society had not only quoted higher bid amount but also its members reside within the radius of 300 meters from the fishery in question, which is a finding of fact, whereas the petitioner society is located at a distance of 9 KM from the fishery in question. Thus, the awarding of the settlement to the respondent No. 5 on the ground of location of the petitioner society is also in consonance to Rule 12 of the Assam Fishery Rules, 1953.

15. Under these circumstances, as the first point arising in this proceeding for determination has been determined in the affirmative, the question of determination of the second point does not arise.

16. In view of the above, this Court finds no merit in this writ petition for which the same stands dismissed.

**JUDGE**

**Comparing Assistant**