



GAHC010075972022

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

Case No. : WP(C)/2764/2022

TRIMURTI ANUSUSHITA JATI SIKHITA NIBONUWA SELF HELP GROUP AND ANR
BEARING REGISTRATION NO.GDB/DHK/67 AND HAVING ITS REGD.
OFFICE AT VILL. TELIADUNGA, PUKHURIPAR, P.O. BHARALUWA TINALUI,
P.S. GAURISAGAR, DIST. SIVASAGAR, ASSAM, PIN-785664 AND REP. BY ITS
SECRETARY SHRI DILIP HAZARIKA.

2: DILIP HAZARIKA
S/O. LT. JHURAM HAZARIKA
SECRETARY OF TRIMURTI ANUSUSHITA JATI SIKHITA NIBONUWA SELF
HELP GROUP
VILL. TELIADUNGA PUKURIPAR
P.O. BHARLUA TINALI
P.S. GAURISAGAR
DIST. SIVASAGAR
ASSAM
PIN-785664

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECRETARY TO THE GOVT. OF ASSAM, FISHERY
DEPTT., HAVING ITS OFFICE AT DISPUR, GUWAHATI-781006, DIST.
KAMRUP (M), ASSAM.

2:THE SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT.
HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM.

3:THE JOINT SECRETARY



TO THE GOVT. OF ASSAM
FISHERY DEPTT.
HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM.

4:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT.
HAVING ITS OFFICE AT DISPUR
GUWAHATI-781006
DIST. KAMRUP (M)
ASSAM.

5:THE DY. COMMISSIONER

SIVASAGAR
HAVING ITS OFFICE AT SIVASAGAR TOWN
DIST. SIVASAGAR
ASSAM.

6:THE ADDL. DEPUTY COMMISSIONER

REVENUE FISHERY BRANCH
SIVASAGAR
HAVING ITS OFFICE AT SIVASAGAR TOWN
DIST. SIVASAGAR
ASSAM.

7:THE CIRCLE OFFICER

SIVASAGAR REVENUE CIRCLE
SIVASAGAR
HAVING HIS OFFICE AT SIVASAGAR TOWN
DIST. SIVASAGAR
ASSAM.

8:BIPUL DAS

SECRETARY ROWMARI PHUKAN FADIA
SELF HELP GROUP
R/O. NATUN GOTANGA
SANTIPUR
SIVASAGAR
ASSAM
PIN-785667



Advocate for the Petitioner : MR. H. BURAGOHAIN
Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

20-02-2024

Heard Mr. H. Buragohain, learned counsel for the petitioners. Also heard Mr. M. Chetia, learned counsel for the respondent nos. 1 to 7 and Mr. B. D. Das, learned Senior Counsel for the respondent no. 8 assisted by Mr. H. R. Das, learned counsel.

2. The petitioners have assailed the order dated 10.09.2020 issued by the Commissioner Secretary to the Govt. of Assam, Fishery Department, wherein extension of the lease of the Brahmaputra Part-II Fishery in Sivasagar district for 3 years *w.e.f.* from the hiring of the existing bids as per date of handing over possession in terms of the Government Orders dated 05.11.2014 and 01.12.2017 has been allowed. The petitioner has also made a challenge to the order dated 06.02.2021 issued by the Joint Secretary to the Government of Assam, Fishery Department, by which the lease of the Fishery has been extended for 3 years @ Rs. 2,58,300/- per annum *w.e.f.* 07.12.2017 till 04.11.2021 and from 04.11.2021 to 04.11.2024.

3. The petitioners case in brief is that pursuant to NIT dated 03.07.2014, for settlement of the Brahmaputra Part-II Fishery (hereinafter refer to as a Fishery) for a period of 7 years, the petitioners and the respondent no. 8 amongst others had submitted their bids. The Fishery was settled with the respondent no. 8 on 05.11.2014 as per the bid value of the respondent no. 8, which was Rs. 12,05,000/- per annum.

4. One Jewti NGO made a challenge to the settlement of the Fishery with the respondent no. 8 by filing WP(C) No.5734/2014. *Status quo* order dated 10.11.2014 was issued by this Court in WP(C) No. 5734/2014. As there was a *status quo* order issued by this Court with regard to the Fishery in question, the State respondents allowed the respondent no. 8 to look after the Fishery on a daily basis @ Rs.1165/- per day. Being aggrieved, Jewti NGO filed another writ petition, i.e. WP(C) No. 6308/2014 challenging the order dated 01.03.2014, allowing the respondent no. 8 to look after the Fishery on a daily basis. This Court thereafter passed a stay order dated 09.12.2015 in WP(C) No. 6308/2014. This Court disposed of WP(C) No. 5734/2014 and 6308/2014 by a common judgment and order dated 02.08.2017. “Jewti NGO Vs State of Assam”, **2017 SCC Online GAU 643**. By holding that the decision of the State respondents to reject the higher price offered by the bidders in respect of the said Fishery suffered from the vice of total non-transparency and was therefore vitiated by complete arbitrariness. The same was accordingly declared as illegal and unsustainable in law. The above being said, this Court in the common judgment and order dated 02.08.2017, directed the State respondents to make a fresh decision for granting permanent settlement of the Fishery, in the light of the observations made in the said judgment & order and also set aside the settlement made in favour of the respondent no. 8 herein.

5. The relevant paragraph numbers 23 to 25 in the above two cases which is **Jewti NGO Vs State of Assam** reported in **2017 SCC Online Gau 643** is extracted herein below as follows:-

“ 23. It is settled law that in the matter of Government contract, the court would examine the decision making process but not the merit of the decision. For the reasons stated above, this court is of the considered opinion that the impugned

decision to reject the higher price offered by the bidders suffers from the vice of total non-transparency and, therefore, is vitiated by complete arbitrariness. The same is accordingly declared as illegal and un-sustainable in law.

24. *There is another aspect of the matter which deserves herein. The bid of the fourth highest bidder quoting a price of Rs.15,25,999 was also refused by the order dated 5.11.2014 on grounds which are not tenable on the face of the record. In the order dated 5.11.2014, although it has been mentioned that the fourth highest bidder had not submitted fishing experience certificate, yet, from the record, I find that a fishing experience certificate dated 15.7.2014 issued by the DFDO produced by the said bidder is available on record. If the bid of the fourth respondent was otherwise, technically valid, the settlement order could not have been issued in favour of the respondent No. 5 by ignoring the higher price offered by the H4, which offer was admittedly found to be acceptable by the authorities.*

25. *Coming to the question of relief that can be granted in this case, this court has noticed that the highest bidder quoting the price of Rs.50,00,599 is not a party to this proceedings. In the absence of the highest bidder, no writ of mandamus can be issued in favour of the petitioner. That apart, the NIT was also issued on 03.07.2014, i.e., more than two years back and considerable amount of time has elapsed since then. Such being the position, while setting aside the settlement made in favour of respondent No. 5, the matter is remanded back to the authorities to take a fresh decision on the question of granting permanent settlement of the fishery, in the light of the observations made herein above."*

6. Subsequent to the decision of this Court in **Jewti NGO** (supra), which has not been put to challenge till date, the impugned orders were issued by the State Government, wherein the respondent no. 8 has been settled with the Fishery again, though with a lesser/smaller boundary area than before, at the lesser rate than what was quoted by him in his bid pursuant to the NIT dated 03.07.2014.

7. The respondent no. 8 had quoted Rs.12,05,000/- as his bid amount in pursuant to the NIT dated 03.07.2014. However, the Fishery has now been settled with the respondent no. 8 by the impugned order, at a lesser rate than

what was quoted by him earlier i.e. Rs.2,58,300/- per annum.

8. The learned counsel for the petitioners also submits that in terms of the judgment of this Court in the case of **29 No. Nekera Lekera Min Samabay Samity Limited Vs State of Assam** reported in **2022 SCC Online Gau 1084**, extension of a 60% fishery can be granted by the State respondents, only after the State Government has an official report regarding the loss sustained by the lessee and only after ascertaining the extent of loss, the government may extend the period of lease for a reasonable period, to enable such lessee to make good the loss. This Court thus held that the quantum of loss is an important criteria for determining the period of extension and if the conditions referred to in Rule 8 (b) of the **Assam Fishery Rules, 1953** did not exist, the authority has no power to grant extension. He submits that in view of the judgment of this Court in **Jewti NGO** (supra) and as there is no official report regarding the loss sustained by the lessee, the extension given to the lease of the Fishery to the respondent no. 8 should be set aside and a direction should be issued to the State respondents, to issue a fresh NIT for the said Fishery.

9. Mr. M. Chetia, the learned counsel for the State respondent has brought the records and submits that there is no official report of the State Government, regarding the official loss sustained by lessee. However, the District Fishery Development Officer Report provides a calculation, as to the basis for coming to a new rate payable by the respondent no. 8 per annum for operating the fishery, which is Rs.2,58,300/- per annum.

10. Mr. B. D. Das, learned Senior Counsel for the respondent no. 8 submits that in terms of the paragraphs 3 & 4 of the order dated 06.02.2021 issued by the

Joint Secretary to the Government of Assam, Fishery Department, the Deputy Commissioner (DC), Sivasagar was instructed to re-assess the Annual Revenue of the Fishery as per norms with the existing boundary and to also propose the grant of remission to the lessee, based on the above re-assessment for the period the Fishery was operated by the lessee. He submits that Rule 8 (b) of the **Assam Fishery Rules, 1953** has been followed, as the District Fishery Development Officer has made a calculation with regard to the yearly revenue payable by the respondent no. 8. The calculation has a forwarding letter dated 25.11.2020. He further submits that as the extended period of the Fishery is going to end in November, 2024, no adverse orders may be passed against the respondent no. 8. He further submits that the writ petition should be dismissed, as there is no infirmity with the extension of the lease of the Fishery with the respondent no. 8.

11. I have heard the learned counsels for the parties.

12. The calculation made by the District Fishery Development Officer, wherein the yearly revenue payable by the respondent no. 8 has been reduced from Rs.12,05,000/- to Rs.4,87,500/- does not show the date when it was made. However, it is a part of the letter dated 25.11.2020 issued by the District Fishery Development Officer.

13. Be that as it may, it is not understood as to how the rate fixed on November, 2020 could be applied retrospectively from the year 2017, while the respondent no. 8 had given his bid amount for the Fishery @ Rs.12,05,000/ per annum. In any event, the respondent no. 8 has been asked to pay Rs.2,58,300/- per annum on the basis of the impugned letter dated.



06.02.2021. The official records do not contain any official report regarding the loss sustained by the respondent no. 8 in terms of Rule 8 (b) of the **Assam Fishery Rules, 1953**, to have enabled the State respondents to have extended the lease of the Fishery in favour of the respondent no. 8. The above being said, this Court while deciding the present issue in **Jewti NGO** (supra) has categorically stated in paragraph 23 that the decision to reject the higher price offered by the bidders suffers from the vice of total non-transparency and therefore is vitiated by the complete arbitrariness. This Court also accordingly declared the entire selection of the respondent no. 8 as the settlement holder as illegal and un-sustainable in law.

14. In view of the above, this Court finds that the impugned orders have been passed in total violation of the direction passed by this Court in **Jewti NGO** (supra), inasmuch as, the authorities were "to take a fresh decision on the question of granting permanent settlement of the fishery, in the light of the observations made herein above".

15. Accordingly, the impugned orders dated 10.09.2020 and 06.02.2021 and all consequential orders being arbitrary, the same are set aside.

16. The State respondents are directed to take steps for issuance of a fresh NIT to settle the Fishery. It is also made clear that the State respondents shall not settle the said Fishery on a daily basis with the respondent no. 8, till final settlement is made by the State respondents.

17. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant