



GAHC010236542022

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

Case No. : WRIT PETITION (C) No. 7442/2022

Sri Ghana Das, President, Kumatia Group Fishery
Cooperative Society Ltd., Son of Late Loknath Das, Resident
of Village – Bhebeli Kaibarta, P.O. – Nanadi, District –
Dhemaji, Assam, PIN - 787034.

.....Petitioner

-Versus-

1. The State of Assam represented by the Commissioner & Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati - 6.
2. Managing Director, Assam Fisheries Development Corporation Ltd. V.I.P. Road, Chachal, Guwahati-36.
3. District Fishery Development Officer, Dhemaji, Assam, PIN – 787057.
4. The Deputy Commissioner, Dhemaji, Assam, PIN – 787057.
5. The Additional Deputy Commissioner [Fishery], Dhemaji, Assam, PIN – 787057.
6. Sri Naba Kumar Das, S/o Sri Haren Das, Village – Bhebeli Koibarta, P.O. – Na-Nadi, P.S.- Gogamukh, Dhemaji, Assam, PIN – 787034.

.....Respondents



Advocates :

Petitioner : Mr. R.M. Choudhury, Advocate.
Respondent nos. 1, 3, 4 & 5 : Mr. M. Chetia, Junior Government Advocate.
Respondent no. 2 : Mr. P. Sharma, Standing Counsel,
Assam Fisheries Development Corporation Ltd.
Respondent no. 6 : Mr. T.J. Mahanta, Senior Advocate
: Ms. P. Bhattacharya, Advocate

Date of Hearing, Judgment & Order : 26.09.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The present writ petition under Article 226 of the Constitution of India is preferred by the petitioner in his capacity as the President of M/s Kumatia Group Fishery Cooperative Society Ltd., a society registered under the provisions of the Assam Cooperative Societies Act, 1949/2007, as amended. The writ petition has been preferred assailing an Order dated 09.06.2022 whereby the respondent Assam Fisheries Development Corporation [AFDC] Ltd. has made an offer to settle a fishery viz. Kumatia Group Fishery, situate within the district of Dhemaji, in favour of the respondent no. 6. The petitioner has also made a prayer for a direction to the respondent AFDC Ltd. to continue the settlement of Kumatia Group Fishery with M/s Kumatia Group Fishery Cooperative Society.

2. From the pleadings, that is, the writ petition, the affidavits-in-opposition and the affidavits-in-reply, it has emerged that in the year 2011, the respondent AFDC Ltd. published a Tender Notice no. 1/2011 on 07.05.2011 inviting tenders for settlement of the fishery named 'Kumatia Group Fishery' [hereinafter referred to as 'the Fishery', for short] and after completion of the said tender

process, the Fishery came to be settled in favour of M/s Kumatia Group Fishery Cooperative Society Ltd., Dhemaji for a period of 7 [seven] years. After expiry of the period of settlement of 7 [seven] years, the period of settlement made in favour of M/s Kumatia Group Fishery Cooperative Society Ltd. was extended till 31.03.2022 by the respondent AFDC Ltd. by an Office Order dated 29.05.2019. It is projected that as M/s Kumatia Group Fishery Cooperative Society Ltd. was unable to deposit a certain installment amount, it made a prayer for extension of the settlement period to enable the Society to pay the remaining balance amount. But without giving any extension in favour of M/s Kumatia Group Fishery Cooperative Society Ltd., the respondent AFDC Ltd. published a Tender Notice no. 1/2011 on 14.03.2022 whereby tenders were invited for settlement of 54 nos. of fisheries including 'Kumatia Group Fishery' [the Fishery]. It is pertinent to mention that when the tender process was undertaken in the year 2011, the minimum annual revenue for the Fishery was fixed @ Rs. 1,38,000/-. By the Tender Notice no. 1/2022 dated 14.03.2022, the minimum annual revenue for the Fishery was fixed @ Rs. 11,35,420/-.

3. The tender process initiated by the Tender Notice no. 1/2022 for settlement of the Fishery had resulted in the Order dated 09.06.2022 issued under the hand of the respondent no. 2 whereby the respondent AFDC Ltd. offered the settlement of the Fishery to the respondent no. 6 for a period of 7 [seven] years at his offered bid value of Rs. 1,33,00,000/-. By the Order dated 09.06.2022, the respondent no. 6 was asked to complete the requisite formalities like deposit of 25% of the annual revenue towards first installment, 25% of the annual revenue as security deposit and a bank guarantee, within a stipulated period of time for execution of the lease agreement. The respondent

no. 6 had accordingly submitted two demand drafts, both dated 15.06.2022, for amounts of Rs. 1,10,000/- and Rs. 4,75,000/- respectively and a bank guarantee towards compliance of the requisite formalities. After compliance of the formalities by the respondent no. 6, as directed by the respondent AFDC Ltd., the final Order of Settlement dated 05.07.2022 has been issued under the hand of the respondent no. 2 whereby the Fishery has been settled in favour of the respondent no. 6 for a period of 7 [seven] years from the period from : 2022-2023 to 2028-2029 at a total price of Rs. 1,33,00,000/- for the said period of 7 [seven] years. After the final Order of Settlement, the respondent no. 6 took over the possession of the Fishery and on date of institution of the writ petition, the respondent no. 6 was running the Fishery.

4. Heard Mr. R.M. Choudhury, learned counsel for the petitioner; Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1, 3, 4 & 5; Mr. P. Sharma, learned Standing Counsel, AFDC Ltd. for the respondent no. 2; and Mr. T.J. Mahanta, learned Senior Counsel assisted by Ms. P. Bhattacharya, learned counsel for the respondent no. 6.

5. Mr. Choudhury, learned counsel for the petitioner has strenuously contended that Naba Kumar Das, that is, the respondent no. 6 is also known as Deba Das. It is Deba Das who impersonating as Naba Kumar Das, had submitted the tender in response to the Tender Notice no. 1/2022 and was actually offered the settlement of the Fishery by the respondent AFDC Ltd. Mr. Choudhury by drawing attention to an extract of the Voters' List of M/s Kumatia Group Fishery Cooperative Society Ltd. [the Society', for short], annexed as Annexure-III to the writ petition, has contended that Deba Das, son of Haren

Das, resident of Village – Bhebely is a member of the Society. It is his contention that as per Clause 4.10 of the Tender Notice no. 1/2022, a member of a cooperative Society is not eligible to submit any tender individually in response to the Tender Notice no. 1/2022 and if for some reason, it is proved that the bidder, despite being a member of a cooperative society, has submitted a tender then his tender would be rejected. Mr. Choudhury has further referred to a Representation, stated to have been submitted on behalf of M/s Kumatia Group Fishery Cooperative Society Ltd. with signatures of a number of its members before the respondent AFDC Ltd., wherein it has complained to the effect that since Naba Kumar Das @ Deba Das, son of Haren Das, despite being a member of the Society submitted a tender in response to the Tender Notice no. 1/2022 individually, the Order of Settlement made in favour of the respondent no. 6 should be rejected. It has been projected therein that one Haren Das has 4 [four] sons viz. [i] Deba Das @ Naba Kumar Das, [ii] Ranjit Das, [iii] Sagar Das and [iv] Bikash Das. With such projections, Mr. Choudhury has contended that the prayers made on behalf of the petitioner in the present writ petition are to be allowed. Mr. Choudhury has further referred to some other documents annexed to the pleadings, to buttress his such submissions. Mr. Choudhury has contended that the respondent no. 2 can very well examine and determine the aspect about the act of impersonation committed by Deba Das as Naba Kumar Das [the respondent no. 6] in getting the settlement of the Fishery fraudulently.

6. In response, Mr. Sharma, learned Standing Counsel, AFDC Ltd. has submitted that the facts contended by the petitioner have given rise to a number of disputed questions of fact, more particularly, a dispute regarding



impersonation by one person as another person and the respondent no. 2 is not best positioned to adjudicate upon such disputed questions of fact which require determination with the leading of evidence by the parties. He has submitted that the respondent no. 6 while submitting his tender in his individual capacity, submitted the requisite documents to establish his credentials/eligibility in terms of the Tender Notice no. 1/2022 and, as such, there does not arise any question of cancelling of the Order of Settlement made in favour of the respondent no. 6 on the basis of such projections made by the petitioner.

7. Mr. Mahanta, learned counsel for the respondent no. 6 has submitted that the allegation of impersonation is clearly baseless and misconceived. The Tender Notice no. 1/2022 and the Tender Document had clearly mentioned the eligibility criteria for a person for getting the settlement of the Fishery and a number of documents/certificates were required to be submitted by a participant bidder along with his tender. In response to the Tender Notice no. 1/2022, the respondent no. 6 had submitted all the requisite documents/certificates towards fulfillment of the eligibility criteria, as mentioned in the Tender Notice no. 1/2022. The allegation about impersonation, made by the petitioner, is in the realm of allegations only and unless the same is proved, there is no question of interfering with the Order of Settlement made in favour of the respondent no. 6. Mr. Mahanta has further referred to a number of documents annexed to the pleadings in support of his submission that the respondent no. 6 has not resorted to any kind of impersonation. Mr. Mahanta has further raised the issue of maintainability of such a writ petition, instituted at the instance of such a petitioner, who neither in his individual capacity nor as the President of M/s Kumatia Group Fishery Cooperative Society Ltd. whom he

purportedly represents, had participated in the tender process initiated by the Tender Notice dated 1/2022. He has also referred to the Resolution adopted by M/s Kumatia Group Fishery Cooperative Society Ltd. in its Meeting dated 20.08.2022 to contend that the petitioner was never authorized to raise the issue, as has been raised in the present writ petition.

8. I have given due consideration to the rival submissions made by the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

9. At first, reference can be made to the contentions made by the petitioner as regards impersonation of Deba Das as Naba Kumar Das. It is alluded that Haren Das, a resident of Village – Bhebely, has four sons viz. [i] Deba Das @ Naba Kumar Das, [ii] Ranjit Das, [iii] Sagar Das and [iv] Bikash Das. The documents mentioned as an extract of the Voters' List of M/s Kumatia Group Fishery Cooperative Society Ltd. for the year : 2020 – 2021 has reflected that the Society has a member named Deba Das, son of Haren Das. In the Representation dated 09.09.2022, the same allegation was made in that it was claimed that Deben Das and Naba Kumar Das were one and the same person. In the Minutes of the Meeting of M/s Kumatia Group Fishery Cooperative Society Ltd., held on 12.10.2022, the same kind of claim regarding impersonation was made. In the affidavit-in-reply, the petitioner has annexed the Minutes of the Meeting of M/s Kumatia Group Fishery Cooperative Society Ltd., held on 20.08.2022, wherein it was resolved that the Society would make a request before the AFDC Ltd. for extension of the period of settlement for another 1 [one] year. Though the Society submitted an application for extension of the

period of settlement for another one year before the AFDC Ltd., the AFDC Ltd. had settled the Fishery in favour of an individual and therefore, it was inter alia resolved to authorize the petitioner to institute proceedings before the Gauhati High Court as well as before the Hon'ble Supreme Court of India. In support of the petitioner's contention regarding impersonation, [i] a certificate dated 13.11.2022 from a Ward Member, No. 10 Bhabali Pathar Ward, Bhabali Gaonpanchayat; [ii] a certificate dated 14.10.2022 of an Executive Member, M/s Kumatia Group Fishery Cooperative Society Ltd.; and [iii] a certificate of one former President, M/s Kumatia Group Fishery Cooperative Society Ltd. have been annexed.

10. As rebuttal to the contentions made by the petitioner regarding impersonation, the respondent no. 6 has submitted [i] a Certificate of Birth issued on 12.03.2007 by the Registrar of Births & Death, Directorate of Health Services, Government of Assam; [ii] an Admit Card issued by the Board of Secondary Education, Assam for the purpose of appearing in the High School Leaving Certificate [Compartmental] Examination, 1997; [iii] an Aadhar Card issued on 24.01.2020; and [iv] an extract of the Voters' List published in respect of Village :- Part 2 – Bhebeli Koibarta under Dhemaji [Scheduled Tribe] LAC to repel the contention of impersonation as those documents have clearly reflected about existence of a person named Naba Kumar Das, son of Haren Das separate from Deba Das, from a time much earlier to the allegations made by the petitioner.

11. The core issue which has fallen for consideration is whether there is impersonation of one Deba Das by one Naba Kumar Das [the respondent no. 6].

The tendering authority, that is, the respondent AFDC Ltd. is required to consider the responsiveness or non-responsiveness of the tenders received by it in response to the Tender Notice no. 1/2022 which it had published for settlement of the Fishery. The Tender Notice as well as the Tender Document mentioned a number of documents/certificates which were required to be submitted by a participant bidder at the time of submission of tender to satisfy the eligibility criteria. It is not the case of the petitioner that the respondent no. 6 did not submit the requisite documents/certificates with the tendering authority, as required by the Tender Notice/Tender Documents. The petitioner has not raised any question about responsiveness of the tender submitted by the respondent no. 6. What the petitioner has disputed is the alleged impersonation of one Deba Das by the respondent no. 6 as Naba Kumar Das.

12. The documents which have been annexed by the petitioner do not go to prove that Deba Das and Naba Kumar Das are one and the same person as such allegation has not been proved in the manner required by law, meaning thereby, the allegation made by the petitioner is in the realm of allegation only. One affidavit has been sworn by Haren Das on 19.05.2022 stating that he has four sons viz. [i] Naba Kumar Das; [ii] Ranjit Das; [iii] Sagar Das; and [iv] Majit Das. The statement sworn in the said affidavit is at variance with the allegation made by the petitioner to the effect that Haren Das has four sons viz. [i] Deba Das; [ii] Ranjit Das; [iii] Sagar Das; and [iv] Bikash Das. A Certificate dated 02.04.2022 from the Secretary of M/s Kumatia Group Fishery Cooperative Society Ltd. is found annexed to the affidavit-in-opposition wherein the said Secretary has certified that Naba Kumar Das [the respondent no. 6] is not a member/shareholder of M/s Kumatia Group Fishery Cooperative Society Ltd. The

Birth Certificate issued by the Registrar of Birth & Death, Directorate of Health Services, Government of Assam has recorded that Naba Kumar Das with date of birth, 01.01.1979, is the son of Haren Das and the said Birth Certificate was registered on 12.03.2007. The Admit Card issued by the Board of Secondary Education, Assam [SEBA] has also recorded that Naba Kumar Das who was to appear in the High School Leaving Certificate [Compartmental] Examination, 1997, is the son of Haren Das. The allegation made by the petitioner regarding impersonation would require leading of negative evidence by the respondent no. 6 to rebut the petitioner's allegation whereas such allegation requires leading of positive evidence by the person who has made the allegation. Clause 4.10 has stipulated that it is only in the event it is proved that a member of the Society has submitted a tender in his individual capacity his tender would be rejected. It is not the case of the petitioner that Naba Kumar Das is a member/shareholder of M/s Kumatia Group Fishery Cooperative Society Ltd. What the petitioner has claimed is that Deba Das is a member/shareholder of M/s Kumatia Group Fishery Cooperative Society Ltd. The facts that Deba Das has impersonated as Naba Kumar Das who submitted the tender in response to the Tender Notice no. 1/2022 and his settlement have to be proved in accordance with law. It is only when such facts are proved as per law, Clause 4.10 will get operational and till the time the said facts are not proved, Clause 4.10 contained in the Tender Notice no. 1/2022 does not become operational.

13. It is noticed that the respective contentions of the petitioner and the respondent no. 6 have given rise to a number of disputed questions of facts. Though in a writ petition under Article 226 of the Constitution of India, the High Court has the jurisdiction to try issues both of fact and law, but such jurisdiction

being discretionary and extra-ordinary, has to be exercised only after consideration as to what facts are in dispute and what facts are not in dispute. Such a stage comes only after completion of the exchange of pleadings in the form of affidavits among the parties as the writ petition is ordinarily decided on the basis of affidavits. If in a writ petition, disputed questions of facts arise requiring appreciation of evidence, both oral and documentary, and for determination of such disputed questions of fact, examination of witnesses are found necessary then it may not be convenient to decide such disputes in a proceedings under Article 226 of the Constitution of India and in such a case, the Court may decline to entertain the writ petition. It is settled that the High Court in its jurisdiction under Article 226 of the Constitution of India does not generally enter upon a determination of questions of fact which demand an elaborate examination of evidence to establish the right to enforce which the writ is made. The present one is such a case which would require determination of several disputed questions of facts of both oral and documentary evidence with examination of witnesses from the parties in a full-fledged trial. In such view of the matter, the present writ petition is found to be not the proper and appropriate proceedings to determine such disputed questions of facts.

14. There is another aspect which has been raised on behalf of the respondent no. 6. It is an admitted position, as emerged from the averments made in the writ petition, that at the time of expiry of the settlement period after extension, which ended on 31.03.2022, the Society, that is, M/s Kumatia Group Fishery Cooperative Society Ltd. had balance amount to be deposited towards revenue fixed by the Order of Extension dated 29.05.2019 whereby the period of settlement of the Fishery in favour of the Settlement of Society was

extended up to 31.03.2022.

15. The Tender Notice no. 1/2022 contained a condition that if the bidder was a defaulter then a tender submitted by such a bidder would not at all be accepted. It is not in dispute that M/s Kumatia Group Fishery Cooperative Society Ltd. did not submit any tender in response to the Tender Notice no. 1/2022 nor the petitioner herein who has claimed that he has been authorized to institute the writ petition, has submitted any tender in response to the Tender Notice no. 1/2022. Being not a participant in the tender process initiated by the Tender Notice no. 1/2022, it cannot be said that the petitioner falls in the category of aggrieved person as due to his non-participation of in the tender process initiated by the Tender Notice no. 1/2022, no legal right of the Society is found to have been infringed.

16. It is not the case of the petitioner that after initiation of the tender process for the Fishery by the Tender Notice no. 1/2022, the respondent AFDC Ltd. had relaxed any of the terms and conditions in the Tender Notice/tender document subsequently in order to make the respondent no. 6 a valid tenderer. Had it been a case that relaxation of the terms and conditions by the tendering authority, that is, the respondent AFDC Ltd. after the initiation of tender process in favour of some bidders including the respondent no. 6, has denied a level playing field to the petitioner, thereby, resulting in denial of the privilege of the benefit of participation in the tender process to the petitioner, the petitioner would have the locus to institute a writ petition as a person aggrieved, as envisaged in the case of *Ramana Dayaram Shetty vs. International Airport Authority of India and others*, reported in [1979] 3 SCC 489. It is also not a

case, as envisaged in Central Coalfields Limited and another vs. SLL-SML [Joint Venture Consortium] and others, reported in [2016] 8 SCC 622, that the goalposts had been rearranged during the bidding process providing relaxation in some way or the other to the respondent no. 6, thereby, affecting the rights of others including the petitioner who was ineligible at the time of initiation of the bidding process, had become eligible in view of the relaxed criteria but failed to participate in the bidding process because of relaxation occurred in the mid-stream. Such is not the case here and as such, it cannot be said, by any stretch, that the petitioner falls in the category of persons aggrieved as no legal right of his is found to have been infringed by the Order of Settlement dated 05.07.2022 made in favour of the respondent no. 6. Thus, this Court is of the considered view that the petitioner has no locus to prefer the writ petition. The decision referred to by Mr. Choudhury, learned counsel for the petitioner, that is, Biswanath Kumalia Meen Samabai Samity Ltd. vs. State of Assam and another, reported in [1998] 1 GLR 129, is found not applicable to the facts and circumstances obtaining in the case and as such, the same is not discussed for the sake of brevity.

17. In view of the discussion made above and for the reasons assigned, this writ petition is found to be lacking in merits and is liable to be dismissed. It is accordingly dismissed. There shall be no order as to cost.

JUDGE

Comparing Assistant