



GAHC010231792023

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

Case No. : I.A.(Civil)/3136/2023 In
WP(C)/5210/2023

M/S SREEGANGA FISHERMAN SAMABAI SAMITY LTD.
HAVING ITS OFFICE AT P.O. AND P.S.-KHARUPETIA, DIST-DARRANG,
ASSAM, PIN-784115 REPRESENTED BY ITS SECRETARY SRI SANJAY DAS

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE JOIN SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-781006

3:DEPUTY COMMISSIONER
DARRANG
P.O.-MANGALDAI

4:M/S BAGHPORI MAIMAL MEEN SAMABAY SAMITY
A REGISTERED FISHERY CO-OPERATIVE SOCIETY VIDE REGISTRATION
NO. M1/1978-79
HAVING ITS REGISTERED OFFICE AT VILL- BAGHPORI
P.O.-MANGALDOI
DIST- DARRANG
ASSAM
REPRESENTED BY ITS PRESIDENT
MD. KAJIMUDDIN
65 YEAR



Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : GA, ASSAM

WP(C)/5210/2023

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PIN-784115 REPRESENTED BY ITS SECRETARY SRI SANJAY DAS

Advocate for : MR. M NATH

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS



BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri M Nath, Sr. Advocate;
 Shri A Bhattacharjee, Advocate.

For the Respondents : Shri P Sarma, SC, AFDC;
 Shri KK Mahanta, Sr. Advocate, R/4;
 Ms. N Begum, Advocate.

Date of Hearing : 13.12.2023.

Date of Judgment : 13.12.2023.

13.12.2023.

Judgment & Order

Heard Shri M Nath, learned Senior Counsel assisted by Shri A Bhattacharjee, learned counsel for the petitioner. Also heard Shri KK Mahanta, learned Senior Counsel assisted by Ms. N Begum, learned counsel for the private respondent no.4. Shri P Sarma, learned Standing Counsel, AFDC is also heard.

2. The respondent no. 4 has also filed IA(C)/3136/2023 for vacation/modification of the interim order dated 08.09.2023. Both the writ



petition and the interlocutory application have been heard together and are being disposed of by this common order.

3. The facts projected in the writ petition are that the petitioner was settled with a fishery, namely, No. 2 Sootea Brahmaputra Fishery (hereinafter the Fishery) vide an order dated 27.06.2016 for a period of 7 years. There has been history of litigation between the petitioner and the respondent no. 4 and it is only after such litigation that the aforesaid order dated 27.06.2016 was passed. The lease period was to expire on 05.07.2023. However, due to certain change in circumstances, including the fact that part of the Fishery was included in the Orang National Park, the Fishery in question was not able to be given for fresh settlement. Accordingly, vide an order dated 22.06.2023, the petitioner was allowed to operate the Fishery on daily payment basis at the rate of Rs.2100/-. The said order was passed by the Deputy Commissioner, pursuant to which, the petitioner was operating the Fishery without any blemish. The grievance of the petitioner pertains to an order dated 01.09.2023 whereby the respondent no. 4 has been allowed to operate the Fishery on daily basis at the rate of Rs. 3000/-. The said order supersedes the earlier order dated 22.06.2023. It is the validity and legality of the order dated 01.09.2023 which is the subject matter of challenge in this writ petition.

4. Shri Nath, learned Senior Counsel for the petitioner has submitted that the earlier order dated 22.06.2023 by which the petitioner was permitted to operate the Fishery on daily basis was cancelled without giving any opportunity and therefore, there was gross violation of the principles of natural justice. He submits that a right had accrued upon the petitioner to operate the Fishery by

virtue of the said order which has been superseded by the aforesaid impugned order. He submits that the petitioner is agreeable to offer a same rate and therefore, an opportunity was required to be given to the petitioner.

5. With regard to the issue of the right of the petitioner Society to be granted the settlement of the Fishery in question *vis-a-vis* the statute holding the field, namely, Proviso to Rule 12 of the Fishery Rules, he submits that the issue has been settled in the earlier round of litigation wherein a Division Bench of this Hon'ble Court vide order dated 02.06.2016 passed in WA/347/2013 has held that the members can be belonging to those of the Maimal community of erstwhile Cachar district.

6. *Per contra*, Shri Mahanta, learned Senior Counsel for the respondent no. 4 has submitted that the term of the earlier settlement with the petitioner having admittedly come to an end on 05.07.2023, the initial order dated 22.06.2023 by which extension was granted to the petitioner was itself illegal. It is submitted that though the aforesaid order was said to be a temporary arrangement on a daily basis, a reading of the same would reveal that the same is nothing but an extension as there is a contemplation of enhancement of the rate after a year. It is submitted that even if the process of demarcation and fixation of new boundaries would have taken time, the temporary arrangement also required to be done fairly. The issue of lack of jurisdiction and powers on the part of the Deputy Commissioner (presently District Commissioner) has also been raised by contending that under the Fishery Rules, power of settlement is vested only with the Government.

7. Justifying the order dated 01.09.2023, Shri Mahanta, learned Senior Counsel has submitted that the order has been passed by the authority having jurisdiction and upon an application made by the respondent no. 4. It is submitted that even the rate at which the respondent no. 4 has been allowed to operate the Fishery temporarily is higher than that which was fixed with the petitioner. It may be mentioned that while the rate fixed with the petitioner was Rs. 2100/- per day, that which has been fixed with the respondent no. 4 is Rs.3000/- per day and therefore, public interest has been served.

8. Shri P Sarma, learned Standing Counsel of the Department has, however, defended the impugned order dated 01.09.2023. He submits that the order has been passed by the competent authority by taking into consideration the requirement of public interest.

9. The rival submissions have been duly considered.

10. It is, however, required to record in this order that the learned counsel for the contesting parties as well as the learned Standing Counsel for the Department are not in dispute to the proposition that the Rules in question as well as interest of justice would require settlement of the Fishery in question in a regular manner by calling for bids.

11. Though the Rules holding the field do not vest any power with the Deputy Commissioner to make any settlement of Fishery, this Court is of the view that the order dated 22.06.2023 was passed to meet an exigency as part of the Fishery was included in the Orang National Park and without ascertaining the

boundary, a fresh process of settlement was not able to be initiated. At the same time, the contemplation of enhancement of the rate by 10% per annum may also give rise to an apprehension that the arrangement, though said to be temporary in nature, would continue for at least a year. Such arrangement would be wholly in contravention of the Rules. As noted earlier, the Deputy Commissioner of a district is not the prescribed authority to make any such settlement of Fishery as it is a power vested with the Government.

12. Juxtaposed, the order dated 01.09.2023 by which the respondent no. 4 has been allowed to operate the Fishery by a temporary arrangement on a daily basis is passed by the Department. A reading of the said order also does not lead to a conclusion that there was any contemplation to continue the arrangement perennially. The rate in which the arrangement has been done on daily basis with the respondent no. 4 is also more.

13. Though an argument has been made on behalf of the petitioner regarding alleged violation of the principles of natural justice, this Court is not inclined to accept the same as the petitioner itself was the beneficiary of such action which was manifested vide order dated 22.06.2023 wherein the petitioner was allowed to operate the Fishery on daily basis even after expiry of its term. Under those circumstances, this Court is of the opinion that the petitioner will not have the *locus* to take the ground of violation of the principles of natural justice while challenging the order dated 01.09.2023.

14. In view of the above, this Court is of the opinion that the interim order dated 08.09.2023 is liable to be vacated and is accordingly done.

15. Having held so, this Court cannot be oblivious of the fact that the procedure of settlement of a fishery is laid down in the Rules which do not contemplate any temporary arrangement. It is true that a given situation/exigency may require a temporary arrangement but such arrangement cannot be converted into a permanent arrangement. The earlier term of the settlement had expired on 05.07.2023 and by this time, more than five months have elapsed. Therefore, the exercise for ascertaining the boundaries of the Fishery in question after inclusion of parts of the same in the Orang National Park is required to be completed as early as possible.

16. In view of the above, this Court while vacating the interim order dated 08.09.2023 is also of the opinion that the order dated 01.09.2023 cannot be allowed to operate in perpetuity. Therefore, the writ petition is disposed of with the following directions:

- i) The exercise for ascertaining the boundaries of the Fishery in question be completed expeditiously and in any event within a further period of a month from today as more than five months have already passed from the date of expiry of the earlier settlement;
- ii) Immediately on completion of the aforesaid exercise, the Fishery in question may be settled strictly by following the procedure prescribed in law;



- iii) The order dated 01.09.2023 by which the respondent no. 4 has been allowed to operate the Fishery on daily basis would continue for a period of one month by which time, the exercise of demarcation has been directed to be completed.
- iv) In the event, the exercise for demarcation is not completed within the prescribed period of one month, the Fishery may be operated on temporary arrangement for a further period which may extend to a further maximum period of two months and no further. Such temporary arrangement, however, is to be made after a notice whereby all intending eligible parties may offer their rates and keeping in mind the public interest.

17. Both the writ petition and the interlocutory application stand disposed of.

JUDGE

Comparing Assistant