

GAHC010161412023



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

Case No. : WP(C)/4296/2023

BIREN MAJUMDAR
SON OF NARESH MAJUMDER,
RESIDENT OF VILLAGE- KASHARIJAN,
P.O.- KARATIPAM, P.S.- MORIGAON,
MOUZA- GHAGUA,
DIST.- MORIGAON, ASSAM,
PIN- 782105.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
FISHERY DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
REPRESENTED BY ITS CHAIRMAN

VIP ROAD
CHARIALI
GUWAHATI- 781036

ASSAM.

3:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL
V.I.P. ROAD

GUWAHATI- 781036
DISTRICT- KAMRUP(M)

ASSAM.

4:THE MANAGING DIRECTOR
ASSAM FISHERIES DEPARTMENT CORPORATION LTD.
VIP ROAD
CHACHAL
GUWAHATI- 781036

ASSAM.

5:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI- 781022.

6:THE PROJECT MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
D CHACHAL TO THE GUWAHATI- 781006

KAMRUP(M)
ASSAM.

7:THE DISTRICT FISHERY DEVELOPMENT OFFICER
MORIGAON
DISTRICT- MORIGAON
ASSAM

PIN- 782105.

8:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
MORIGAON
DISTRICT- MORIGAON
ASSAM

PIN- 782105

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, AFDC

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

31.07.2023

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Ms. R.R. Kakati, learned counsel for the petitioner and Mr. P. Sarmah, learned Standing Counsel, AFDC for all the respondents.

2. Pursuant to a tender process called for by the Assam Fishery Development Corporation by NIT dated 14.03.2022 for settlement of 54 nos. of beels [fisheries], the petitioner participated in the process for settlement of Udari Meen Mahal in the district of Morigaon. The bids were invited from Schedule Caste individuals and registered Fishery Co-operative societies from Schedule Caste community having 100% actual fishermen by profession for settlement of fishery. The petitioner submitted his bid amounting to Rs. 28,61,150/- [Rupees twenty eight lakh sixty one thousand one hundred fifty] along with all supporting documents. After scrutiny, the Tender Evaluation Committee found the petitioner as the highest valid bidder with the bid value of Rs. 28,61,150/- [Rupees twenty eight lakh sixty one thousand one hundred fifty]. Accordingly, the petitioner was recommended for being granted the settlement for a period of 7 [seven] years by order no. AFDC-06/2022/3702 dated 27.07.2022. In terms of the settlement order dated 27.07.2022, the petitioner was required to enter into an agreement with the respondent corporation by depositing an amount of Rs. 7,15,288/- [Rupees seven lakh fifteen thousand two hundred eighty eighty] i.e. 25% of the annual revenue of Rs. 28,61,150/- [Rupees twenty eight lakh sixty one thousand one hundred fifty] for the current year : 2022-23 as the first installment and another amount of 25% as the earnest money, to be deposited through bank draft of any nationalized bank drawn in favour of the respondent corporation as security. Further, Rs. 19,73,000/- [Rupees nineteen lakh seventy three thousand] as Bank Guarantee is to be offered in favour of the respondent corporation for a period of 3 years.

3. The learned senior counsel for the petitioner submits that out of the total amount Rs.

19,73,000/- [Rupees nineteen lakh seventy three thousand] to be deposited, petitioner deposited an amount of Rs. 10,90,000/- [Rupees ten lakh ninety thousand] till date and as of now, the petitioner is required to deposit an amount Rs. 8,83,000/- [Rupees eight lakh eighty three thousand]. The respondents in the meantime, in view of the fact that the petitioner did not deposit the entire amount as required in terms of the settlement order dated 27.07.2022, issued the impugned order dated 07.07.2023 whereby the settlement proposal in favour of the petitioner was cancelled and the fishery was transferred to the respondent corporation. That apart, the earnest money deposited by the petitioner earlier, was ordered to be forfeited in terms of Clause 7 of the terms and conditions of the NIT. Being aggrieved, the petitioner represented before the respondent authorities by filing representations, which according to the petitioner, were not attended to in a correct perspective. Being aggrieved, the present writ petition is filed praying for appropriate writ direction/order.

4. Mr. Sarmah, learned Standing Counsel, AFDC submits that the settlement order was issued in favour of the petitioner as far back as on 27.07.2022 and till date, the petitioner has not been able to run the fishery and give revenue to the respondent corporation as required. Under such circumstances, the respondent authorities has no option but to issue order of cancellation of the settlement order. Mr. Sarma, however, submits on instructions, that if the petitioner deposits the balance amount within a period of 10 [ten] days from today, the respondent authorities will re-consider the order of cancellation and thereupon, the petitioner can proceed to operate the fishery.

5. The learned counsel for the parties have been heard and the case records have been perused.

6. Considering the fact that the petitioner was shortlisted as the highest bidder; an amount of Rs. 10,90,000/- [Rupees ten lakh ninety thousand] have already been deposited and the balance amount of Rs. 8,83,000/- [Rupees eight lakh eighty three thousand] is required to be deposited; and since the Department has also expressed its desire to recall the cancellation order if the petitioner deposits the balance amount within a period of 10 [ten] days, without entering into the merits of the case, this Court is of the view that the writ

petition can be disposed of at this stage with a direction to the petitioner to deposit the balance amount within a specific period of time. If the amount is deposited by the petitioner, then the respondent authorities will recall the cancellation order dated 07.07.2023 and will permit the petitioner to proceed with the settlement of Udari Meen Mahal in the district of Morigaon.

7. Considering the issues involved in the matter and also taking into account the fact that more than 50% had already been deposited by the petitioner and also keeping in mind the Fishery Rules which governs the settlement of fishery and mahals, this Court is of the view that the petitioner can be permitted to deposit the balance amount by 11th September, 2023. If the petitioner is able to deposit the balance amount by 11th September, 2023, the respondent authorities will recall the impugned order dated 07.07.2023 whereby the proposal for settlement of Udari Meen Mahal in the district of Morigaon in favour of the petitioner was cancelled. If the petitioner, however, is unable to deposit the amount as directed by 11th September, 2023, the respondent authorities are at liberty to proceed in any manner as permissible under the law. In the event of failure on the part of the petitioner to deposit the balance amount, the conditions in the tender will govern the rights of the respective parties.

8. The writ petition is disposed of in the aforesaid terms.

JUDGE

Comparing Assistant