

GAHC010177742021



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

Case No. : WP(C)/5867/2021

SARESWAR MEEN SAMABAY SAMITY LTD AND ANR
A REGISTERED FISHERY COOPERATIVE SOCIETY HAVING ITS
REGISTERED OFFICE ADDRESS AT VILL. RUPSHI, P.O. RUPSHI,
P.S.KAZIGAON,DIST. KOKRAJHAR, ASSAM, REGISTERED UNDER THE
PROVISIONS OF THE ASSAM COOPERATIVE SOCIETIES ACT 1949 (ASSAM
ACT NO. 1 OF 1950) BEARING REGISTRATION NO. D-4/75 OF 1975
REPRESENTED BY SRI BINAY HALDAR, SECY. OF THE SAID FISHERY
SAMABARY SAMITY.

2: BINAY HALDAR

S/O SRI BISWANATH HALDAR
SECY. OF THE SARESWAR MEEN SAMABAY SAMITY LTD.
R/O VILL. DUKHISUKHI PART-I
P.S. GOLOKGANJ SUB DIVISION PARBATJHORA
DIST. KOKRAJHAR
PIN 783334
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, FISHERY DEPTT., HAVING ITS OFFICE AT DISPUR, GUWAHATI
781006, DIST. KAMRUP (M), ASSAM.

2:THE SECY. TO THE GOVT. OF ASSAM

FISHERY DEPTT.
HAVING ITS OFFICE AT DISPUR
GUWAHATI 781006
DIST. KAMRUP (M)
ASSAM.

3:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

DEPTT. OF WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES
HAVING ITS OFFICE AT D BLOCK
3RD FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI 781006
ASSAM.

4:THE PRINCIPAL SECY. TO THE BODOLAND TERRITORIAL COUNCIL

HAVING ITS OFFICE AT THE BODOLAND TERRITORIAL COUNCIL
SECRETARIAT
BODOFA NAGAR
KOKRAJHAR
PIN 783370
ASSAM.

5:THE SECY.

FISHERY DEPTT.
BTC
KOKRAJHAR
PIN 783370
ASSAM.

6:THE DEPUTY COMMISSIONER

KOKRAJHAR
HAVING ITS OFFICE AT KOKRAJHAR TOWN
DIST. KOKRAJHAR
PIN 783370
ASSAM.

7:THE JOINT DIRECTOR CUM CHD

FISHERY DEPTT.
BTC KOKRAJHAR
GOVT. OF ASSAM
KOKRAJHAR

8:THE DIST. FISHERY DEVELOPMENT OFFICER

KOKRAJHAR
ASSAM.

9:SONTOSH KUMAR BRAHMA

S/O SI TANU RAM BRAHMA
VILL. PAGLIJHORA PART-II
P.O. BASHBARI
PIN 783337
DIST. KOKRAJHA

Advocate for the Petitioner : MR. H. BURAGOHAIN

Advocate for the Respondent : MR. N. GOSWAMI
: MR. R. DHAR
: MS. R. B. BORAH

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 31-05-2023

Heard Mr. H. Buragohain, the learned counsel appearing on behalf of the petitioners and Mr. N. Goswami, the learned Standing counsel appearing on behalf of the respondent Nos. 1, 2 and 6. I have also heard Mr. R. Dhar, the learned Standing counsel appearing on behalf of the respondent No.3 and Ms. R. B. Borah, the learned Standing counsel appearing on behalf of the 4, 5, 7 and 8.

2. The instant writ petition has been filed challenging the order bearing No. JDF/BTC/29/2021-22/744-A dated 18.08.2021 issued by the respondent No.7 to the respondent No.9. The limited point on which the instant writ petition has been filed is that the Notice Inviting Tender dated 10.06.2021 was nothing but an eyewash in order to allot the settlement to the respondent No.9 inasmuch as it is the case of the petitioners that vide a communication dated 13.07.2021, the In-charge, Joint Director cum CHD, Fishery Department had cancelled the

settlement for Sareswar Beel Fishery in Kokrajhar District with the existing settlement holder on account of breach of trust for non-payment of outstanding lease amount of Rs.9,58,500/- and thereupon immediately on 19.07.2021, one Bashbari Anchalic Committee, ABSU was given a temporary settlement until further orders by the said official. It is therefore the case of the petitioners that when there was an existing settlement, there was no reason for issuance of NIT on 10.06.2021. Further to that, it is also the case of the petitioners that the documents enclosed to the affidavit-in-opposition i.e. the tender notice dated 10.06.2021 which was followed by an advertisement issued in a Newspaper which was not widely circulated violates the right of the petitioners under Article 14 and 19(1)(g) of the Constitution.

3. It is further seen on records that pursuant to the filing of the instant writ petition, this Court has not passed any interim orders however the settlement made in favour of the respondent No.9 was made subject to the outcome of the writ petition. It further appears on record that the respondent No.5 who is the Secretary, Fishery Department, BTC had filed an affidavit-in-opposition and to the said affidavit-in-opposition various documents were enclosed. Amongst the various documents, in the document dated 17.02.2021 issued by the Secretary, Bodoland Territorial Council to the Joint Director cum CHD, Fishery Department thereby directing the said official to invite tenders of various Departmental Fish Seed Farms and Registered Revenue Fisheries. The fishery in question can be seen at Serial No.8 of the document. It further appears that on 10.06.2021, the Joint Director cum CHD Fishery Department issued a detailed Notice Inviting Tender of as many as 16 fisheries of which the fishery in question appears at Serial No.2. The same was followed by newspaper publication being made on 22.06.2021 in a vernacular newspaper "Hayenni Radhab". It further appears

that on 13.08.2021, the Secretary, BTC issued a communication to the Joint Director cum CHD, Fishery Department whereby the BTC had accorded approval of 14 numbers of comparative statements for Settlement of Revenue Beel Fisheries under the BTC area. It appears at Serial No.2 of the said document that in respect to the fishery in question, the respondent No.9 was the approved holder. The comparative statement amongst the 3 persons who have participated in the said bidding process was enclosed as Annexure-6 to the affidavit-in-opposition. It further appears that in pursuance thereto, the Deed of Agreement for leasing of the fishery was entered into on 18.08.2021 between the respondent No.7 and the respondent No.9 and on the same date, the impugned notification dated 18.08.2021 enclosed as Annexure-8 to the writ petition was issued.

4. Upon hearing the learned counsel for the parties and upon perusal of the materials on record, let this Court analyze the contentions so raised by the writ petitioners.

5. The first of such contentions which was raised was as regards the issuance of the tender on 10.06.2021 during the pendency of the settlement in respect to the said fishery as well as when after the cancellation of the earlier settlement, for a temporary period, another committee in the name of Bashbari Anchalic Committee was allowed to run the fishery which as per the petitioners, the entire tender process was an eyewash. In the opinion of this Court taking into account that the materials on record as referred to hereinabove i.e. the document dated 17.02.2021 wherein permission was duly accorded by the Secretary of the BTC for going ahead with the tender process and thereupon the tender process having been initiated on 10.06.2021 and in consequence thereto,

it was only on 18.08.2021, the settlement was awarded to the respondent No.9, this Court does not find any reason to interfere with the same merely on the ground that the tender was issued during the pendency of the earlier settlement period. In fact, a perusal of Annexure-6 to the writ petition which is the main document on which the petitioners bolster their contention also shows that the earlier settlement period was from 06.07.2018 for a period of 3 years and therefore the period would have ended on 05.07.2021 and as such calling for a tender earlier taking into account the administrative convenience would not in any manner violate the provisions of Article 14 and 19 of the Constitution.

6. The second contention so made by the learned counsel for the petitioners is that the paper notification which was issued in a Newspaper is not widely circulated. This Court put a specific query upon the learned counsel for the petitioners as to whether the said Newspaper is circulated in the area where the fishery is to be advertised. The learned counsel with due fairness submitted that the said Newspaper is circulated in the BTAD area.

7. This Court taking note of Annexure-2 of the writ petition wherein it is mentioned that the petitioners society is confined in BTAD area, this Court does not find any justifiable reason to interfere with the said settlement so made on the basis of the said contention made by the learned counsel for the petitioners.

8. Considering the above, this Court does not find any ground for interference in the instant writ petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant