

GAHC010157912023



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

Case No. : WP(C)/4064/2023

NATUN MELANG MIN SILPA SAMABAI SAMITY LTD
REPRESENTED BY ITS SECRETARY,
ACHINTA DAS, AGED ABOUT 43 YEARS,
SON OF NOMAL DAS,
R/O- VILLAGE NATUN MELENG CHAPORI,
P.S.- TEOK, SUB-DIVISION JORHAT,
DISTRICT- JORHAT, ASSAM, PIN- 785112.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
FISHERY DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:JOINT SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
JORHAT
DISTRICT- JORHAT
PIN- 785001

ASSAM.

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
JORHAT

GARMUR
DISTRICT- JORHAT

ASSAM
PIN- 785001.

5:THE PRESIDENT/SECRETARY
NAYANJYOTI SELF HELP GROUP
NATUN MELENGGON

P.O.- BORKHELIA

DISTRICT- JORHAT
ASSAM

PIN- 785101

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/4002/2023

KUMAR KAIBARTA GAON MEEN SILPA SAMABAI SAMITY LTD.
NIMATIGHAT
JORHAT
ASSAM

REPRESENTED BY ITS SECRETARY
SRI LALIT KUMAR DAS
AGED ABOUT 53 YEARS

SON OF LATE BEPAI DAS

RESIDENT OF BHITOR KOKILA KOIBARTA GAON
NIMATIGHAT

DISTRICT- JORHAT
PIN- 785111
ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

FISHERY DEPARTMENT
DISPUR

GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR

GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER
JORHAT
ASSAM.

5:NAYANJYOTI SELF HELP GROUP
REPRESENTED BY ITS SECRETARY SMTI ARCHANA DAS

NATUN MELENGGAON

P.O.- BORKHELIA

DISTRICT- JORHAT
PIN- 785101.

6:NATUN MELENG MEEN SILPA SAMABAI SAMITY LTD
REPRESENTED BY ITS SECRETARY SRI ACHINTA DAS

NATUN MELENG CHAPORI GAON

P.O.- BORKHELIA
DISTRICT- JORHAT

PIN- 785101.

Advocate for : MR. K N CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocates for the petitioner : Mr. K.N. Choudhury, Sr. Advocate
Mr. R.M. Deka [in WP(C) 4002/2023]

Mr. R.P. Sharma, Sr. Advocate
Ms. T. Som [in WP(C) 4064/2023]

For the respondents : Mr. M.K. Choudhury, Sr. Advocate
Mr. D.J. Medhi

Mr. P. Sarmah, Advocate
Ms. U. Das, Advocate

Dates of hearing : 12.03.2024

Date of Judgment : 18.03.2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. K.N. Choudhury, learned Sr. Counsel appearing for the writ petitioner, Kumar Kaibarta Gaon Meen Silpa Samabai Samity Ltd. (hereinafter referred to as the 'Kumar SS') in WP(C) No.4002/2023, assisted by Mr. R.M. Deka. Also heard Mr. R.P. Sharma, learned Sr. Counsel assisted by Ms. T. Som, learned counsel for the writ petitioner, Natun Melang Min Silpa Samabai Samity Ltd (hereinafter referred to as 'Natun SS') in WP(C) No.4064/2023. Mr. M.K. Choudhury, learned Sr. Counsel appears for the private respondent, Nayanjyoti Self Help Group (hereinafter referred to as the 'NSHG'), assisted by Mr. D.J. Medhi in both the writ petitions. Mr. P. Sarmah, learned counsel appears for the Fishery Department, while Ms. U. Das, learned counsel appears for the respondent No.4.

2. The two writ petitions are being disposed of by this common judgment & order, inasmuch as, both the writ petitioners, i.e., Natun SS and Kumar SS, have prayed for setting aside the order dated 15.07.2023, by which the fishery has been settled with NSHG.

3. The Kumar SS, NSHG and Natun SS had participated in the tender process for settlement of No.11 Kokila Part(A) Fishery in Jorhat District vide NIT dated 17.03.2023. On opening the bids of the three bidders, their bids were found as below:-

i) NSHG - Rs.6,51,101/-

ii) Natun SS - Rs.5,10,101/-

iii) Kumar SS - Rs.4,51,000/-

4. As the fishery was settled with NSHG, being the highest bidder, the same was put to challenge by Kumar SS and Natun SS, vide WP(C) Nos. 4002/2023 and 4064/2023 respectively.

5. In view of the challenge made to the settlement of the fishery with NSHG, stay orders had been issued in both WP(C) Nos. 4002/2023 and 4064/2023, in respect of the settlement order of the fishery with NSHG. However, the Deputy Commissioner, Jorhat settled the fishery with Natun SS on a daily basis in the interregnum period, in terms of Rule 8(b) of the Assam Fishery Rules, 1953.

6. The learned Sr. Counsel Mr. K.N. Choudhury, appearing for the Kumar SS in WP(C) No.4002/2023 submits that in terms of Rule 13 of the Assam Fishery Rules, 1953 (hereinafter referred to as the '1953 Rules'), the members of the

self help group are to be actual fishermen/fisherwomen, belonging to the scheduled caste community or of the Maimal Community. He submits that as per term and condition No.14(C) of the NIT, fishing experience certificate has to be issued by the concerned District Fishery Development Officer. In terms of term & condition No.15 of the NIT, in respect of 60% category fishery, the tenderers have to submit actual fisherman certificate. However, a perusal of the fishing experience certificate submitted by the NSHG shows that the members of the NSHG are not actual fishermen/fisherwomen, though they belong to the fishermen community. The fishing experience certificate dated 04.04.2023 issued by the District Fishery Development Officer, Jorhat in respect of the NSHG shows that the husbands and other family members of the "members of the NSHG" are involved in fishing activity and dependant on fishing for their livelihood. The said certificate does not state that the members of the NSHG, who are the wives of fishermen, are actual fisherwomen. He submits that as the NSHG has not submitted the fishing experience certificate as required under Rule 13 of the 1953 Rules read with term and condition No. 14(C)/15 of the NIT, the tender submitted by the NSHG be disqualified and the settlement order should be set aside.

7. The learned Sr. Counsel appearing for the Kumar SS submits that the Full Bench of this Court in the case of ***Arabinda Das and etc. Vs. State of Assam and Ors.***, reported in ***1982 1 GauLR 280***, has held that the purpose of settlement of fisheries was not only to derive revenue, but also to help the weaker sections of the society, vis-a-vis, the members of the SC and ST community. It further held that the emphasis in the 1953 Rules indicated that the government was more concerned about providing work to the actual fishermen, to improve their lot than deriving revenue for the Exchequer. He has

also relied upon the judgment of this Court in the case of ***Purana Sonai/Sola/Goranga/Sukraj Matsyajibi Samabai Samity Vs. State of Assam and Ors***, reported in ***(2020) 6 GLR 107***, wherein it was held that the fishing experience certificate and certificate regarding 100% actual fishermen being members of scheduled caste/Maimal community, undoubtedly fell within the essential criteria for settlement of a 60% category fishery and non-submission of such document rendered the bid of a bidder society invalid.

8. Mr. K.N. Choudhury, learned Sr. Counsel appearing for the Kumar SS further submits that the 2nd highest bidder, i.e., Natun SS is a defaulter, as can be seen from the letter No. Rev-13/230/2023-REV-JRT dated 16.06.2023 issued by the Deputy Commissioner, Jorhat, which is to the effect that Natun SS had only deposited Rs.13,05,250/- as annual revenue and they were liable to pay Rs.9,58,558/-, which was to be adjusted from their security deposit, which they had submitted at the time of their bid in the year 2013. He further submits that in view of the stay orders being passed in WP(C) Nos. 4002/2023 and 4064/2023, Natun SS has been allowed to continue operating the concerned fishery illegally by the District Commissioner, as it was the earlier settlement holder since the year 2013. He submits that as Natun SS was a defaulter and as defaulters cannot be settled with a fishery, in terms of Clause 4 of the Notification No.FISH-19/65/2017-FISHERY/1 (eCF No.50022) dated 18.01.2018, the settlement of the fishery with NSHG would have to be set aside.

9. The learned Sr. Counsel appearing for the Kumar SS thus submits that the bid submitted by the NSHG should be declared invalid, as the members of NSHG were not actual fisherwomen. He accordingly submits that the settlement of the fishery should be done with Kumar SS or in the alternative a fresh tender should

be issued for settlement of the fishery.

10. Mr. R.P. Sharma, learned Senior Counsel appearing for Natun SS, besides reiterating the submission of Mr. K.N. Choudhury regarding NSHG, submits that Natun SS is not a defaulter and this is made clear from the Order eCF No.324802/182 dated 15.07.2023, issued by the Joint Secretary to the Government of Assam, Fishery Department. He also submits that due to the Covid-19 pandemic, where there was a lockdown, Natun SS could not work and due to which, the outstanding revenue amount of Rs.9,58,558/- was to be adjusted against the call deposit submitted by the Natun SS from the previous lease period for the fishery. He further submits that as on date, approximately Rs.2,26,000/- is pending against Natun SS, which will be adjusted from the call deposit/earnest money deposited with the State respondents, which are to be released. Mr. P. Sharma, learned Senior Counsel thus submits that Natun SS should either be settled with the fishery or in the alternative a fresh tender should be issued for settlement of the fishery.

11. Mr. M.K. Chodhury, learned Sr. Counsel appearing for the NSHG, on the other hand, submits that in terms of the judgment of the division Bench of this Court in the case of ***Raidak Burarchora Fishery Co-Op Society Ltd. Vs. State of Assam and Ors.***, reported in (2018) 2 GauLR 19, a higher bid is in the interest of government revenue and as such, a deserving tenderer would always have to be considered in terms of the highest bid submitted by a tenderer. He submits that in terms of Rule 12 of the 1953 Rules, a fishery can be settled with a self help group. He further submits that though term and condition No. 14(A) of the NIT required the 100% actual fishermen certificate to be issued by the Assistant Registrar of Cooperative Societies, the same was

issued by the District Fishery Development Officer, as there was no provision for an Assistant Registrar of Cooperative Societies (ARCS) to issue such a certificate to a self help group. The ARCS could only issue such a certificate to a cooperative society. He submits that as the members of the NSHG belong to the fishermen community, whose husbands and other family members are involved in fishing activities by profession, there was no infirmity with the settlement of the fishery with the NSHG. He submits that the members of the NSHG are the wives of the fishermen, who are also involved in fishing.

12. The counsels for the Kumar SS and NSHG submit that the fishery is presently being run by the Natun SS, on the basis of the settlement made by the Deputy Commissioner in favour of the Natun SS. They submit that there is no provision in the 1953 Rules for allowing the Deputy Commissioner to settle a fishery with any person or society etc. The 1953 Rules only gives power to the Deputy Commissioner to sell a fishery and does not give him any power to give the fishery on lease to any person. They accordingly submit that the temporary settlement of the fishery by the Deputy Commissioner with the Natun SS should be set aside.

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

14. The question that has to be decided in this writ petition is whether the members of the NSHG are fisherwomen.

15. Rule 12 of the 1953 Rules provides that a 60% category fishery can be settled with self help groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned. Rule 12 of the 1953 Rules is

reproduced hereinbelow as follows-

“[12. Except those referred to in sub-rule No. 8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale auction:]

[Provided that the Government shall settle a 60% category fishery with special category of co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.]

Explanation 1:- For the purpose of this rule, the words "special category" means and includes the Co- operative Societies, Self-Help Groups, Non-Governmental Organisations comprising of 100% actual fishermen of the Scheduled Caste community or Maimal community of erstwhile Cachar district. Who cannot participate in competitive bidding because of poor financial condition due to famine, flood, draught, epidemic of any other circumstances which are beyond control of the society, non-Governmental Organisation or Self Help Groups as the case may be;

Explanation 2:- For the purpose of this rule "a 60% category fishery" means 60% of registered fisheries available in a Civil Sub-Division eligible for settlement in a particular year.]”

A perusal of Rule 12 of the 1953 Rules shows that the Self Help Group, such as the NSHG is to comprise of 100% actual fishermen/fisherwomen. Thus, this Court has to see whether all the members of the NSHG are actual fisherwomen.

16. The certificates dated 04.04.2023 and 06.03.2024 issued by the District Fishery Development Officer, Jorhat are to the following effect-

“ **To whom it may concern** Dated 04.04.2023

Certified that the members of the Nayanjyoti Self Help Group of Natun Meleng Gaon, 27 No. Madhya Chowkhat Gaon Panchyat are belongs to

Fishermen community. Their husband and other family members are involve in fishing activities and dependent on fishing for livelihood.

The certificate made based in the report of field official.”

“To whom it may concern Dated 06.03.2024

Certified that the members of the Nayanjyoti Self Help Group of Natun Meleng Gaon, 27 No. Madhya Chowkhat Gaon Panchyat are belongs to Fishermen community. According to survey report of field official and Gaon Pradhan Certificate 100% member of the Self Help Group are belongs to actual Fishermen Community. Their Husband and other Family members are involve in fishing activities by profession and dependent on fishing for livelihood.”

17. In the present case, the members of the NSHG all belong to the SC community. The only question that remains to be decided is whether the members of the NSHG are all actual fisherwomen, inasmuch as, they are all the wives of the fishermen of the village.

18. The cases of all the parties herein is that in terms of Rule 12 of the 1953 Rules, 100% of the members of the self help group have to be fishermen/fisherwomen. However, a perusal of the two certificates issued in the year 2023-2024 does not indicate that the members of the NSHG, who are the wives of fishermen, are actually fisherwomen. They no doubt belong to the fishermen community, as reflected in the certificates. However, there is no categorical statement made in the certificates that they are actual fisherwomen, though they may be the wives and relatives of persons involved in the profession of fishing. Though the counsel for the NSHG has tried to impress upon the Court that the members of the NSHG are actual fisherwomen, as they belong to the fishermen community, this Court is not amenable to the said

submission. If belonging to a fishermen community makes a person an actual fisherman, then there was no requirement for the certificates to separately certify/clarify that the husbands and other family members of the NSHG members were involved in fishing activities by profession and were dependent on fishing for livelihood. The certificate could have easily stated that the members of the NSHG, their husbands and family members, all belong to the fishermen community. However, as stated earlier, there being no specific certification made in the two certificates dated 04.04.2023 and 06.03.2024, that the members of the NSHG were actual fisherwomen vis-a-vis the certification made against their husbands and other family members, this Court is of the view that the said certificates dated 04.04.2023 and 06.03.2024 do not prove that the members of the NSHG are 100% actual fisherwomen. In light of the findings of this Court that the members of the NSHG are not fisherwomen, the fishery could not have been settled with them vide the impugned order dated 15.07.2023, in violation of Rule 12 of the 1953 Rules. Consequently, the settlement of the fishery vide the impugned order dated 15.07.2023 issued by the Fishery Department in favour of the NSHG is hereby set aside.

19. The other question pertains to whether Natun SS is a defaulter, inasmuch as, Natun SS purportedly still owes an amount of Rs.2,26,000/- to the Fishery Department. However, Natun SS has tried to explain the said non-payment of money on account of Covid-19 pandemic. Further, as Natun SS was the earlier settlement holder of the fishery in question, it appears that the call deposit/earnest etc. has not been released back to Natun SS. Be that as it may, the said question whether Natun SS is a defaulter is best left to be decided by the authorities concerned.

20. It is noticed that Natun SS is still running the fishery on a daily basis on the basis of the permission given to it vide order dated 20.06.2023 issued by the District Commissioner, Jorhat. The order dated 20.06.2023 issued by the District Commissioner, Jorhat has apparently been made under Rule 8(b) of the 1953 Rules, which is as follows-

“8(b) Extension of the term of lease.- (i) Where the period of lease of registered fisheries being ordinarily not less than three years is interfered with, due to any natural cause or for any unaviodable reasons beyond the control of the lessees, Government may extend the period of such lease supported by official reports as to the nature of cause in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss;

(ii) The State Government may also on the recommendation of the Director of Fisheries extend the period of lease of a fishery with an intending pisciculturist who should invariably be the sitting lessee and who agrees to accept such an extension at a revenue and for such other additional terms and conditions as may be specified by Government :

Provided that one of the conditions of extension of lease against piscicultural plan shall invariably be the imple-mentation of approved Scheme or Schemes of Development and improvement of such a fishery at the lessee's own cost within a target period to be fixed by Government.

The orders of extension of lease on the aforesaid grounds, passed by the State Government shall be final and no appeal shall lie against such orders of extension.”

21. A perusal of Rule 8(b) of the 1953 Rules shows that it is only the government, who can extend the period of a lease which has been interfered with and not the Deputy Commissioner. In the present case, the settlement of the fishery with Natun SS in the year 2013 for 7 years had run its course and there was no reason for application of Rule 8(b). Even if Rule 8(b) was to be

applied, then also the District Commissioner had no competence to issue any order, extending the period of the fishery on a daily basis in favour of the Natun SS in terms of Rule 8(b) of the 1953 Rules. Accordingly, the order of the District Commissioner, Jorhat dated 20.06.2023 being in excess of his jurisdiction, the same is set aside. The State respondents shall ensure that no settlement of the fishery shall be made with any person or group on a daily basis or otherwise, except through a tender process.

22. The question that is to be decided is what should be the next step to be taken in relation to the NIT dated 17.03.2023. On considering all the issues, this Court is of the view that as the bid submitted by the parties had been made in relation to an NIT dated 17.03.2023, the rates for the fishery would have increased by now due to inflation. As such, this Court is of the view that a fresh NIT should be issued for the said fishery. The State respondents are accordingly directed to issue a fresh NIT for settlement of the fishery within a period of 3(three) weeks, from the date of receipt of a copy of this order.

23. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant