(2023) 10 GAU CK 0032

In the Gauhati High Court

Case No : Writ Appeal No. 144 Of 2022

Pub- Jaluguti Co-Operative Fishery Society Ltd APPELLANT

Vs

Kuji Satra Mashmora Samabai Samitee Ltd. RESPONDENT

Date of Decision : 19-10-2023

Acts Referred:

Citation : (2023) 10 GAU CK 0032

Hon'ble Judges : Sandeep Mehta, CJ;Kardak Ete, J

Bench : Division Bench

Advocate : A. Sarma, K. Kalita, D.K. Das, D.K. Sarmah

Final Decision : Allowed

Judgement

1. Heard learned counsel representing the parties and perused the material placed on record.

2. The instant intra-Court writ appeal is directed against the judgment and final order dated 08.01.2022 passed by the learned Single Judge in a batch of writ petitions including WP(C) No.6152/2017 filed by the respondent No.1 herein.

3. Brief facts relevant and essential for disposal of the writ appeal are noted hereinbelow:

Notice Inviting Tender (in short, "NIT"), dated 13.02.2017, was issued by the Deputy Commissioner, Nagaon for settlement of No.4 Sonai Nadi Part-II Fishery (Min Mahal), Nagaon. The appellant herein and 6(six) other bidders participated in the tender process. The competent authority, upon objective consideration of the bid documents submitted by the 7(seven) bidders, found the documents of 6(six) bidders defective and only the documents of the appellant society were found to be in order. Accordingly, vide order dated 24.08.2017, the Additional Secretary to the Government of Assam, Fishery Department, on the basis of the report submitted by the Tender Committee as well as the Deputy Commissioner, Nagaon settled the No.4 Sonai Nadi Part-II Fishery, Nagaon in favour of the appellant herein.

4. Two writ petitions, being WP(C) No.5561/2017 and WP(C) No.6152/2017 came to be filed before the Single Bench of this Court questioning the award of fishery settlement to the appellant herein. The learned Single Judge accepted the writ petitions and vide order dated 18.01.2022, directed the respondent authorities to settle the fishery in question to the new settlement holder i.e. the respondent No.1 herein. The ground, as set out in the evaluation process for rejecting the tender of respondent No.1, was that the Society was a defaulter of the Government revenue as per the observation of the Tender Committee and hence, it’s bid was rejected.

5. The learned Single Judge, upon examination of the material available on record, found that the said observation of the authority was unsubstantiated by corroborative material.

The relevant findings of the learned Single Judge on this aspect are recorded at paragraph 14 of the impugned order, which is reproduced hereinbelow for the sake of ready reference:

“14) Although there is a mention in the settlement order that the petitioner in W.P.(C) 6152/2017 is a defaulter, but in the affidavit-in-opposition, no document has been annexed to cement such statement with record. The report of the Three-Member Tender Committee dated 29.03.2017, signed by (i) Additional Deputy Commissioner (Fishery), Nagaon, (ii) District Fishery Development Officer, Nagaon, and (iii) Treasury Officer, Nagaon is available at Annexure –IV of W.P.(C) 5561/2017 and the same is also available in the records produced by the learned Government Advocate. From the contents of the said report dated 29.03.2017, the learned Government Advocate could not show mentioning of any relevant particulars regarding the amount of Government revenue due, the date when it became due, the account on which any revenue became due. The learned Government Advocate has also not been able to show any document from the record which discloses Government revenue due from the petitioner. In para-12 of W.P.(C) 6152/2017, the petitioner had specifically denied any liability against Government revenue, and that the said assertion by the petitioner has not been specifically denied by the respondent no. 2 in the affidavit-in-opposition. Therefore, by applying doctrine of non-traverse, the allegations that the petitioner in W.P.(C) 6152/2017 was a defaulter in paying Government Revenue hopelessly falls flat. Moreover, in the absence of record and material particulars, the Court is inclined to draw presumption under Section 114 Ill.(g) of the Evidence Act that document, if produced, would have been unfavourable to the respondent authorities.”

In continuation, the learned Single judge also found the decision to award the fishery settlement to the appellant herein to be seriously flawed holding that the authorities concerned had utterly disregarded the aspect of the paramount public interest of getting highest revenue for the State. Accordingly, the writ petitions were allowed and the settlement in question was directed to be made in favour of the respondent No.1.

6. During pendency of this writ appeal, an Interlocutory Application, being I.A. (Civil) No.3802/2022 came to be filed by the appellant with a specific assertion that the private respondent, i.e. M/s Kuji Satra Mashmora Samabai Samitee Ltd. was a defaulter towards the Government revenue right from the year 2006 onwards towards earlier fishery settlements. This submission was based on the letter dated 26.09.2022, issued from the office of the Deputy Commissioner, Nagaon (Revenue Fishery Branch).

7. A perusal of the aforesaid letter would indicate that a total amount of Rs.21,71,500/- was default outstanding in respect of respondent No.1 with effect from 12.07.2006 to 05.09.2017.

8. The learned counsel representing the respondent No.1 had been given opportunity for explaining the said communication. It is noteworthy to state that the respondent No.1 seems to have accepted his position as a defaulter and deposited a sum of Rs.4,00,000/- against the outstanding dues. A fresh notice dated 15.07.2023 has been issued to such respondent for depositing the balance amount.

9. During the course of submissions, learned counsel Mr. D.K. Das, representing the respondent No.1, vehemently and fervently urged that the respondent No.1 had filed an appeal/representation against the said demand notice. But the said representation has not been responded to till date. However, Mr. Das was not in a position to dispute the fact that his client has deposited the amount of Rs.4,00,000/- against the default attributed to it without any protest.

10. Having considered the submissions advanced by learned counsel representing the parties and after going through the record, we are of the firm view that unimpeachable material is available on record which establishes that the respondent No.1 was in default of the Government dues on the date of submitting its tender in subject settlement process.

11. The learned Single Judge seems to have been swayed by the fact that the appropriate record was not presented by the State respondents in support of the assertion that the respondent No.1 was a defaulter of government dues. However, we feel that the matter should not have been brushed aside in such a light manner by the observations made in paragraph 14 (reproduced supra) and the authorities should have been given more time and opportunity to establish the fact that the respondent No.1 was a defaulter.

12. It seems that the Government Counsel concerned was not provided proper information because the defaulter status of the respondent No.1 had been flagged way back in the year 2018 when the audit objections were received. It seems that the details available to the Government officials at the time of settling the fishery may have been sketchy but as of now, it cannot be denied

that the respondent No.1 is in default and thus, is not entitled to hold the fishery settlement in question.

13. Nearly 6(six) years, out of the total period of 7(seven) years of the fishery settlement, have passed since the original settlement was made and thus, at this belated stage, it would not be justified to award the fishery settlement to anyone else.

14. Thus, while reversing and setting aside the impugned judgment dated 18.01.2022 and the direction to award the fishery settlement to the respondent No.1, it is hereby directed that a fresh tender process shall forthwith be initiated for awarding the fishery settlement in question.

15. The settlement process as directed above, will be completed within a period of 45(forty five) days from today. Till such process is completed, the Department shall manage the fishery operations at its own level.

The writ appeal is allowed in the above terms. No order as to cost.