

## **Parghat Kaibarta Min Silpa Samabai Samity Ltd. and Another Vs State of Assam and Others**

**Court:** Gauhati High Court

**Date of Decision:** April 9, 2007

**Citation:** (2007) 2 GLT 334

**Hon'ble Judges:** B.K. Sharma, J

**Bench:** Single Bench

### **Judgement**

B.K. Sharma, J.

While the first two writ petitions have been filed by the petitioner making a challenge to the settlement of the particular fishery in favour of the private respondent, the private respondent has filed the third writ petition making a challenge to the order passed by the

authority pursuant to interim order passed in the second writ petition, i.e., W.P.(C) No. 4900/06. In the first two writ petitions, the petitioner is one

and the same and is a Cooperative Society registered under the Cooperative Societies Act, 1949. For the purpose of making settlement of the

fishery called Karha Fishery (Part-I) for a period of five years w.e.f. 23.11.05 to 22.11.10, the Deputy Commissioner, Dhemaji floated notice

dated 14.10.05 notifying tenders from the interested parties. The petitioner's society responded to the same by submitting its tender quoting the

amount at Rs. 6,51,100/- per annum. Six other tenders including the private respondent had also submitted their tenders.

2. The tenders were opened on 29.10.05 in presence of the authority of the Dhemaji Zila Parishad and it was found that the rate/bid offered by the

petitioner was the highest and the rate offered by the private respondent was the second highest at Rs. 6,50,621/-. According to the petitioner, the

tender submitted by the private respondent was incomplete and defective, inasmuch as it did not submit yearly return from the Assistant Registrar

of the Cooperative Societies nor did it submitted income tax clearance certificate. It also failed to submit the Bakijai clearance certificate issued by

the competent authority. Be it stated here that as per Clause-12 of the notice inviting bids, the tenderer is required to produce the certificate as

proof of his not being defaulter in respect of any Govt. dues. Further as per Clause-2 of the notice, income tax/sales tax clearance and Bakijai

clearance certificate also required to be submitted along with tenders.

3. After the tenders were received, the Deputy Commissioner, Dehmaji who had issued the tender notice, prepared the comparative statement

showing the particulars of the bids offered by the tenderers and the same was forwarded to the Govt. by letter dated 09.11.05. A copy of the

letter dated 09.11.05 along with the comparative statement has been annexed as Annexure-B to the writ petition. In the letter it was indicated that

on scrutiny of the documents submitted by the tenders, the bid offered by the petitioner was found to be the highest and accordingly approval for

settlement was sought for. The statements reveal that while the petitioner's society submitted all the required documents, the private respondent did

not submit the certificate from the bank, yearly return from the Assistant Registrar of the Cooperative Society and the income tax certificate. The

bid offered by the petitioner was the highest, while that of the private respondents was the second highest.

4. While the petitioner was expecting the settlement of the fishery with necessary follow up action, the private respondent approached the Minister

of Parliamentary Affairs, Water Resources & W.P.T & B.C. for favouring with the settlement and the said Minister in turn directed the Secretary

to the Govt. of Assam in the Fishery Department to settle the fishery with the private respondent. From the letter, it appears that a process was

initiated for retendering the fishery.

5. Being aggrieved by the aforesaid development, the petitioner approached this Court by filing the writ petition being W.P.(C) No. 8388/2005

and this Court while entertaining the writ petition passed the interim order in favour of the petitioner. Thereafter, the writ petition was finally

disposed of by order dated 20.03.06 issuing direction to the authorities to decide the matter relating to settlement of the fishery on merit by offering

reasonable opportunity of hearing to the parties. It was further provided that endorsement made by the Minister to the Secretary of the Department

shall be avoided.

6. After the aforesaid order of this Court, the Secretary to the Govt. of Assam in the Fishery Department, i.e., the respondent No. 2, passed the

impugned order dated 25.05.06 settling the fishery with the private respondent at his bid of Rs. 6,50,621/-. The primary ground assigned for

making the settlement in favour of the private respondent is that the private respondent is very nearer to the fishery although the petitioner's society

is also within the neighbourhood of the fishery. Secondly, the difference of price bid between the petitioner and the private respondent being only

Rs. 470/- is not substantial. Another ground assigned is that the petitioner's society has already been settled with another fishery and as per the

policy decision of the Govt., two major fisheries should not be settled with one fishery Cooperative Society.

7. According to the petitioner, the finding recorded by the respondents towards settlement of the fishery in favour of the private respondent are

utterly perverse. As regards the purported policy not to settle two fisheries with one Cooperative Society, the petitioner has contended that no

such policy is in existence and even if any, being a hidden one, cannot be applied. In this connection, the petitioner has placed reliance on the

decision of the Apex Court reported in Dutta Associates Pvt. Ltd. Vs. Indo Merchantiles Pvt. Ltd. and Others,

8. The petitioner has also contended that no settlement can be made on ground of being very nearer to the fishery as the same is not contemplated

in the Rule-12 of the Fishery Rules. According to the petitioner, the NIT never specified that a Cooperative Society being more nearer to the

fishery would be preferred and that a Cooperative Society having settlement of one fishery would not be considered for settlement of another

fishery. Thus, according to the petitioner these two purported criteria adopted by the respondent No. 2 are opposed to the principle laid down in

Dutta Associate's Case. The petitioner has also contended that the private respondent having not submitted the required certificates including the

Bakijai certificate contrary to the requirement of the NIT, could not have been settled with the fishery to the deprivation of the petitioner.

9. The first writ petition being W.P.(C) No. 2714, was entertained by order dated 02.06.06 and an interim order was passed staying operation of

the impugned order dated 25.05.06 on condition that if the fishery was not officially handed over to the private respondent.

10. The occasion for the petitioner to file the second writ petition, i.e., W.P.(C) No. 4900/06 arose when the Circle Officer of the revenue circle

passed the order dated 18.09.06 purportedly modifying the boundary of the fishery which was purportedly handed over to the private respondent

earlier. However, in the order no indication has been given as to when the fishery was handed over to the private respondent. In the impugned

order dated 18.09.06 the position of the fishery has been shown as, taken over and handed over. Thus, according to the petitioner in view of the

earlier interim order dated 02.06.06 passed in W.P.(C) No. 2774/06, the order dated 18.09.06 could not have been issued by the Circle Officer

in the name of modification of the boundary and handing over possession of the same to the private respondent.

11. Pursuant to the aforesaid interim order passed by this Court, the authorities issued WT message and signals both dated 05.06.05 issuing

direction for stay of operation of the impugned settlement order. Referring to the WT message and Signal, it is the case of the petitioner that till

issuance of the order dated 18.09.06 by the Circle Officer, the fishery was never handed over to the private respondent.

12. The order passed by the Circle Officer was on the basis of the order dated 1.09.06 passed by the Deputy Commissioner in the matter of

redetermination of the boundary of the fishery. It was observed that the boundary of the fishery would remain the same until further order from the

competent authority and the direction was issued to the Circle Officer to hand over the possession of the same with the boundary as indicated in

the order. From this order also, it has been contended by the petitioner that even after issuance of the order dated 01.09.06 by the Deputy

Commissioner, the fishery in question was not handed over to the private respondent. But it is only after the order of the Circle Officer dated

18.09.06, the fishery was sought to be handed over to the private respondent. The second writ petition being W.P.(C) No. 4900/06 was

entertained by order dated 22.09.06 and it was provided that status quo as regards the possession of the fishery as was existing and interpreted

and taken into account by the Official respondents on the date of passing the interim order dated 02.06.06 in W.P.(C) No. 2714/06, shall be

maintained.

13. The private respondent has filed the 3rd writ petition being W.P.(C) No. 5201/06 making a grievance against the order dated 03.10.06

passed by the Deputy Commissioner directing the Circle Officer who had passed the aforementioned order dated 18.09.06 to maintain the status

quo as regards the possession of the fishery in terms of the earlier order of this Court passed on 02.06.06. As per the own showing of the

respondent No. 5, the kist money in respect of the settlement of the fishery was deposited on 25.07.06 and a copy of the challan has been

annexed to the writ petition as Annex-ure-2. In terms of the interim order dated 02.06.06, the impugned order of settlement dated 25.05.06

passed by the respondent No. 2 settling the fishery with the private respondent was to remain stayed if the fishery in question, in the meantime, was

not officially handed over to the respondent No. 5. No materials have been brought to the notice of this Court that the possession of the fishery

was handed over to the private respondent before passing the interim order dated 02.06.06.

14. The aforesaid interim order will have to be understood in the context of the observation of the Court in the order that as per communication

dated 01.06.06 indicated in the order, same did not show deposit of any kist money. Needless to say that the deposit of kist money is the sine qua

non for official handing over of possession. Mere forceful occupation of the fishery backed by no legal authority cannot amount to official handing

over of the fishery as contemplated in the interim order dated 02.06.06. However, it has been all along a case of the private respondent who is the

writ petitioner in W.P.(C) No. 5209/06 that prior to passing of the interim order dated 02.06.06, it had already taken over the fishery. The official

respondents are silent as to whether the fishery in question has officially been handed over to the private respondent.

15. If the fishery was officially handed over to the private respondent there could not have been any occasion for the said respondent to file the

writ petition being W.P.(C) No. 5209/06 making a grievance against the order dated 03.10.06 by which the Deputy Commissioner directed the

Circle Officer to maintain status quo as regards the possession of the fishery in terms of the earlier interim order dated 02.06.06. If before passing

the interim order dated 02.06.06 the private respondent was officially handed over the possession of the fishery, same would not have been

disturbed by the impugned order dated 03.10.06 in W.P.(C) No. 5209/06 by which only a direction was issued to maintain the status quo as

regards the possession of the fishery in terms of the earlier order dated 02.06.06.

16. The filing of the writ petition by the private respondent, i.e., W.P.(C) No. 5209/06, gives an impression that same has been filed to camouflage

the situation which has arisen in view of the writ proceeding initiated by the petitioner's Society by way of W.P.(C) No. 2714/06 and W.P.(C)

No. 4900/06 and the interim orders passed therein.

17. The private respondent has not filed any counter affidavit to the writ petitions filed by the petitioner's society. However, the petitioner's society

has responded to the writ petition filed by the private respondent by filing counter affidavit. Thus, the private respondent has not denied the specific

plea raised by the petitioner that there was default on the part of the private respondent in submitting its tender by not annexing income tax/sales tax

clearance and Bakijai clearance certificates and so also the proof of being not defaulter as regards the Govt. dues. In the comparative statement

prepared by the Deputy Commissioner, it has been indicated that the private respondent did not submit no dues certificate from the bank, yearly

return from the Assistant Registrar of the Cooperative Society and certificate of income tax. If that was the position relating to the tender submitted

by the private respondent, its tender was liable to be rejected being not in conformity with the requirements of the NIT.

18. I have heard Mr. I. Choudhury, learned Counsel for the petitioner in W.P.(C) No. 2714/06 and 4900/06 as well as Mr. N.C. Das, learned

Sr. counsel assisted by Mr. P.C. Deka, learned Counsel appearing for the private respondent who is also the writ petitioner in W.P.(C) No.

5209/06. I have also heard Ms. R. Chokraborty, learned State counsel representing the state respondents.

19. The fact material for the purpose of determining the issue raised have been noted above. There is no dispute that the petitioner's Society was

the highest bidder and the private respondent was the second highest bidder. While the petitioner's society complied with all the requirements of

the tender notice, the private respondent failed to do so as will be evident from the comparative statement prepared by the Deputy Commissioner.

The comparative statement was forwarded to the Govt. by letter dated 09.11.05 specifically recommending the case of the petitioner for

settlement, it being the highest bidder. In the comparative statement it was clearly indicated that the tender submitted by the private respondent was

defective due to non submission of no dues certificate from the bank, yearly return from ARCS and the certificate of income tax. According to the

petitioner, the private respondent also did not submit the Bakijai clearance certificate.

20. The above aspect of the matter has not been denied by the private respondent by filing any counter affidavit to both the writ petitions filed by

the petitioner. In the counter affidavit filed by the petitioner to the writ petition filed by the private respondent, this aspect of the matter has been

highlighted to which there is no denial on the part of the private respondent by way of filing any affidavit in reply. If that be so, on this ground alone

the tender submitted by the private respondent ought to have been rejected, but instead the official respondent decided to favour the private

respondent with the settlement. Such decision of the respondent No. 2 will have to be considered in the context of the recommendation made by

the Minister of Parliamentary Affairs unconnected with the Fishery Department. Even if the said Minister is connected with the Fishery Department,

he could not have arbitrarily issued direction to the respondent No. 2 to make the settlement in favour of the private respondent. The tender

process is initiated and finalized within the parameters and the principles underlying settlement through tender process. It is the Deputy

Commissioner who had invited the tenders and on receipt of the same, he prepared the comparative statement and on that basis made the

recommendation in favour of the petitioner. However, the respondent No. 2 without following the same, passed the impugned order dated

25.05.06 making settlement in favour of the private respondent.

21. The grounds on which the settlement has been made in favour of the private respondent have been noted above. There is no whisper in the

impugned order as to the default on the part of the private respondent in not submitting the required documents, as noticed above, along with its

tender. A strange reason has been given in the impugned order that the private respondent is in the more neighbourhood of the fishery than that of

the petitioner. It has not been denied that the petitioner is in the neighbourhood of the fishery. The relevant rules do not contemplate anything like

more neighbourhood"". If both the Cooperative Societies are in the neighbourhood of the fishery, they fulfill the requirement of being in the

neighbourhood of the fishery. The distinction cannot be curved out in the name of being in the more neighbourhood when such distinction is not

contemplated in the rules.

22. As regards the purported policy decision dated 14.06.82, undoubtedly same is an unsigned guidelines and without any indication as to

circulation and applicability. Such purported guideline cannot override the provisions of the Assam Fishery Rules, 1953. Nothing could be shown

from the rules that a Cooperative Society even on fulfillment of the requisite criteria for getting settlement of a fishery and also having been found

more suitable for settlement, cannot be settled with the same merely because it has also been settled with another fishery judging suitability. In the

case of Shri Ganga Fisherman Samabay Samity Ltd. Vs. State of Assam and Others, disposed of by judgment and order dated 18.08.06 dealing

with the same question regarding applicability of the purported guidelines dated 14.06.82, it has been held that such purported guidelines has no

applicability and cannot override the provisions of the Assam Fishery Rules, 1953. This decision has been upheld by the Division Bench of this

Court by judgment and order dated 07.12.06 passed in W.A. No. 384/06 and has been reported in Shri Ganga Fisherman Samabay Samity Ltd.

Vs. State of Assam and Others,

23. As regards the plea of the respondent No. 2 towards passing the impugned order, that difference in price bid is very nominal same is not

sustainable, firstly because such a finding has been given after recording the finding in respect of the concept of ""being in the more neighbourhood

and the aforesaid policy guidelines dated 14.06.82. There is no dispute that the petitioner with its valid tender is the highest tenderer. It is

immaterial as to by what margin.

The consideration on which the fishery has been settled with the private respondent are immaterial once it is found and held that the tender

submitted by it was defective in view of non submission of the required documents about which discussions have been made above. The

respondent No. 2 in his impugned order has not stated anything as to how the tender submitted by the private respondent could be entertained

even to the extent of making the settlement ignoring the fact that the tender submitted by the said respondent was defective being not accompanied

by the required documents.

24. For the forgoing reasons and discussions, there is no escape from the conclusion that the impugned order dated 25.05.06 (Annexure-E) to the

writ petition being VV.P.(C) No. 2714/06 is not sustainable. Likewise, the impugned order dated 18.09.06 (Annexure-K) to the writ petition

being W.P.(C) No. 4900/06 is also not sustainable as the same amounts to overreaching the interim orders passed by this Court. Even otherwise

also, in view of the finding arrived at in this judgment, there is no question of any handing over the possession of the fishery to the private

respondent. The challenge made to the order dated 03.10.06 (Annexure-10) in the writ petition being W.P.(C) No. 5209/06 filed by the private

respondent is totally misconceived. The said order dated 03.10.06 has been passed in terms of the orders passed in the writ proceedings initiated

by the petitioner and the same being only consequential order pursuant to the orders passed by this Court, cannot be interfered with.

25. In view of the above, the first two writ petitions, i.e., W.P.(C) No. 2714/06 and 4900/06 are allowed. The third writ petition, i.e., W.P.(C)

No. 5209/06 is dismissed. There is no question of reconsideration of the case of the petitioner vis-a-vis the private respondent as it has been held

that the tender submitted by the private respondent is defective. Even otherwise also, the said respondent is not entitled to get the settlement on the

reasons assigned in the impugned order. The petitioner being the highest bidder, it should now be settled with the fishery. Appropriate order in this

regard shall be passed by the competent authority without any further delay, at any rate, not later than 30th April, 2007. This target has been fixed

considering the State revenue.

26. The writ petitions, i.e., W.P.(C) No. 2714.06 and 4900/06 are allowed. The writ petition being W.P.(C) No. 5209/06 is dismissed.

However, there shall be no order as to costs.