



GAHC010267142022



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

Case No. : WP(C)/8360/2022

ABU SAYED MONDAL
S/O- LATE ABDUR RAHMAN MANDAL,
RESIDENT OF VILLAGE ABRARBHITA,
P.O.- BALARBHITA,
DISTRICT- GOALPARA, ASSAM,
PIN- 783129.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
TRANSPORT DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR
INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI- 781007
KAMRUP(M).

3:EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
CHANDMARI
T.V. STATION ROAD
TARAPUR
SILCHAR
PIN- 788003
DIST- CACHAR.

4:ASSISTANT EXECUTIVE ENGINEER



INLAND WATER TRANSPORT SUB-DIVISION
DHUBRI
PIN- 783301.

5:SECTIONAL OFFICER
BUDURCHAR-BASANTAPUR FERRY SERVICE
INLAND WATER TRANSPORT
ASSAM
PIN- 782135

Advocate for the Petitioner : MR. P MAHANTA
Advocate for the Respondent : SC, TRANSPORT

Linked Case : **WP(C)/6521/2023**

ABU SAYED MONDAL
S/O- LATE ABDUR RAHMAN MANDAL

R/O- VILLAGE ABRARBHITA

P.O- BALARBHITA
DIST- GOALPARA
ASSAM
PIN-783129

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI- 781006.

2:THE DIRECTOR
INLAND WATER TRANSPORT
DEPARTMENT
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ULUBARI
GUWAHATI- 7
KAMRUP (M)
3:THE EXECUTIVE ENGINEER

INLAND WATER TRANSPORT DIVISION
CHANDMARI



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4:THE ASSISTANT EXECUTIVE ENGINEER
INLAND WATER TRANSPORT SUB-DIVISION
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5:SECTIONAL OFFICER
BUDURCHAR-BASANTAPUR FERRY SERVICE

INLAND WATER TRANSPORT
ASSAM
PIN-782135

Advocate for : MR. P MAHANTA
Advocate for : SC
IWT appearing for THE STATE OF ASSAM AND 4 ORS

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri P. Mahanta, Advocate.

Advocates for the respondents : Ms. M. D. Borah, SC, Transport.

Date of hearing : **08.04.2024**

Date of Judgment : **08.04.2024**

JUDGMENT & ORDER

Heard Shri P. Mahanta, learned counsel for the petitioner. Also heard Ms. M. D. Borah, learned Standing Counsel, Transport Department for all the respondents.

2. Both these writ petitions which are filed by the same petitioner and being connected, are disposed of by this common judgment and order. The facts



involved may be narrated in brief in the following manner.

- 3.** Pursuant to an NIT dated 28.06.2022, the petitioner had participated in the process which was for settlement of the Budachar-Basantapur Ferry Service in the district of Goalpara. The Ferry was accordingly settled with the petitioner at his bid price of Rs.53,98,650 (Fifty Three Lakhs Ninety Eight Thousand Six Hundred Fifty) vide an order dated 09.08.2023.
- 4.** It is the case of the petitioner that immediately on starting the operations, the petitioner could find that the Goalpara Zilla Parishad and Matia Anchalik Panchayat had given settlement of ferry services to four persons which were operating within 3.2 kms. of the petitioner's ferry service. Alleging violation of Rule 35 of the ***Control and Management of Ferries Rules, 1968*** (hereinafter called the Rules), the petitioner was compelled to suspend his ferry service and had also constructed a two foot bamboo bridge and another wooden bridge for which expenditures were incurred.
- 5.** The petitioner had accordingly approached this Court vide the first writ petition being WP(C) No. 8360/2022.
- 6.** This Court, after considering the facts and circumstances had passed an order dated 19.07.2023 by directing the Director, Island Water Transport (IWT) to take a call regarding the entitlement to remission as well as for reimbursement of the cost incurred in construction of the bamboo/wooden foot bridge.
- 7.** Consequent upon the aforesaid direction, the petitioner had submitted a representation on 24.07.2023. The aforesaid representation however has been



rejected by the Director, IWT vide an order dated 09.08.2023 which is the subject matter of challenge in the second writ petition being WP(C) No. 6521/2023.

8. Shri Mahanta, the learned counsel for the petitioner by relying upon the Rule 35 of the Rules has submitted that the embargo to claim compensation or remission or refund of *kist* money is only for recognized non-transfer ferry and certain other ferries and not for illegal operation within the zone of 3.2 km of the area of operation of the ferry allotted to the petitioner. The learned counsel has also referred to an order dated 22.03.2018 passed by the Director, IWT in similar circumstances whereby the loss was ascertained and remission made. He has also placed on record the order dated 30.10.2017 passed in WP(C) No. 6393/2017 which has been referred in the order dated 22.03.2018 and accordingly prays for a similar direction.

9. *Per contra*, Ms. Borah, the learned Standing Counsel has, at the outset submitted that the order impugned dated 09.08.2023 has been passed pursuant to the direction of this Court dated 19.07.2023 in the first writ petition i.e. WP(C) No. 8360/2022 and the said order is inconsonance with the observations made by this Court. It is further submitted that the impugned order has taken into consideration all the relevant factors which are germane to the issue and has come to the conclusion that the petitioner is not entitled to remission. The learned Standing Counsel has also submitted that Rule 35 which has been relied upon by the petitioner does not envisage payment of any remission.

10. The rival submissions have been duly considered and the materials placed before this Court have been examined.



11. The first writ petition being WP(C) No. 8360/2022 which was also on the issue of a claim for remission was dealt with by this Court and in the order dated 19.07.2023, an observation for consideration was made. The said observation made in the paragraph 6 is extracted herein below for the sake of convenience:-

“6. This Court upon taking into consideration the respective contentions and more particularly taking into consideration the communications dated 13.12.2022 and 15.12.2022 issued by the Sectional Officer, Buduchar Basantapur Ferry Service as well as the Assistant Executive Engineer, Inland Water Transport, Dhubri Sub-Division respectively is of the opinion that it would be in the interest of justice that the Director, IWT takes a call as to whether the Petitioner would be entitled to remission as well as for reimbursement of the cost incurred in construction of the foot bamboo/wooden bridge. Under such circumstances, this Court again fixes the matter again on 11th of August, 2023.”

12. Consequent thereupon, the petitioner had filed a representation dated 24.07.2023 wherein justification for his claim has been made. In that representation, reference to the order dated 22.03.2018 passed by the Department in case of the Mukalmua-Bhanganmari ferry service was also mentioned.

13. A perusal of Rule 35 of the Ferries Rules would show that within a radius of 3.2 kms. of a public ferry, no other recognized ferry is authorized to run. However, certain recognized non-transport ferry along with some more specified categories are allowed to run for which no claim for compensation or remission or re-fund is envisaged by the said Rules. The claim for seeking remission has to be on the basis of an enabling provision and the contention made by the petitioner to rely upon Rule 35 for the said claim does not appear to be a correct interpretation of the said Rules. Having observed that, an examination of the impugned order dated 09.08.2023 would show that while disposing of the



representation, certain factors have been taken into consideration which in the opinion of this Court are not relevant to the purpose of such consideration. The fact that the petitioner had quoted a price which is five times higher than the government estimated price has got nothing to do with the claim for remission which is on account of illegal running of ferries by the concerned Zilla Parishad and Anchalik Panchayat admittedly within the radius of 3.2 kms from the area of operation of the ferry allotted to the petitioner. The order in fact states that four of such ferries had to be stopped by passing necessary orders which were found to be operating in violation of Rule 35. The observation of this Court towards reimbursement of the cost incurred in construction of the wooden/bamboo foot bridge though was directed to be considered, the same has been linked with the claim for remission which is not the purpose of such remand.

14. This Court has also taken into consideration the Office Order dated 22.03.2018 of the Directorate in the case of Mukalmua-Bhanganmari ferry service in which, in more or less similar circumstances, an order of remission was made. Though this Court has noticed that in the order dated 30.10.2017 passed in WP(C) No. 6393/2017 there was no direction to make any such exercise, nonetheless, an exercise was done to assess the law suffered for the illegal plying of ferries in the area of operation by the petitioner.

15. In view of the above, though this Court is of the opinion that there is no enabling provision in the Rules of 1968 for payment of remission, since a precedent has been cited in the form of an order dated 22.03.2018 in the case of Mukalmua-Bhanganmari ferry service and also the aspect that the relevant factors have not been taken into consideration in the order dated 09.08.2023 which is the subject matter of challenge in the second writ petition, the issue is



remanded back to the Director, IWT to take a fresh decision.

16. This Court has already noticed, as indicated above that in the representation filed dated 24.07.2023, reference to the Office Order dated 22.03.2018 pertaining to Mukalmua-Bhanganmari ferry service has already been taken. Thereafter while considering the present case, the earlier order may also be taken into consideration.

17. Let the aforesaid exercise be completed and the consequential order be passed within a period of 60 (sixty) days from the date of receipt of the certified copy of this order.

18. The consideration as directed above would be done strictly in accordance with the Rules.

19. Writ petitions stand disposed of.

JUDGE

Comparing Assistant