



GAHC010246222018

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

Case No. : WP(C)/7691/2018

NAMAH SUDRAH FISHERY CO-OPERATIVE SOCIETY LTD.
VILL- PARLY, REP. BY ITS SECY. SRI BHUPEN CHANDRA DAS, AGED
ABOUT 77 YEARS, S/O- LT BHOGIRAM DAS, R/O- VILL- PARLY NOTUN
BASTI, P.O. PALASHBARI, DIST- KAMRUP PIN- 781128

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE ADDL. CHIEF SECY., FISHERIES DEPTT., GOVT. OF ASSAM,
DISPUR, GHY-6

2:THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR, GHY-6

3:THE ADDL. SECY.
FISHERIES DEPTT.
GOVT. OF ASSAM
DISPUR, GHY-6

4:THE SPIO
FISHERIES DEPTT.
GOVT. OF ASSAM
DISPUR, GHY-6

5:THE DIRECTOR OF FISHERY ASSAM
MIN BHAVAN
BIRUBARI, GHY-16

6:THE DY. COMMISSIONER
KAMRUP
AMINGAON, PIN- 781031

7:THE BAHARI RESERVE GAON MIN SAMABAI SAMITTEE LTD.
BAHARI HAT



DIST- BARPETA
REP. BY SRI RAMPRASAD MALODAS
S/O- LT SUREN MALODAS
R/O- BAHARI RESERVE
P.O. BAHARIHAT
P.S. TARABARI
DIST- BARPETA
ASSAM.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri K. K. Mahanta, Sr. Advocate.
Shri M. H. Ansari, Advocate

Advocates for the respondents : Shri D. Das, Sr. Advocate.
Shri K. Mohammad, Advocate (R-7),
Shri S. S. Roy, GA, (R-1 to 6)

Date of hearing : **07.03.2024**
Date of Judgment : **27.03.2024**

JUDGMENT & ORDER

The extra ordinary jurisdiction conferred by Article 226 of the Constitution of India is sought to be invoked by filing this writ petition pertaining to the settlement of a fishery namely, 3-A Lower Brahmaputra Min Mahal *aka* 3-Ka Lower Brahmaputra Min Mahal (hereinafter the Fishery). The petitioner has specifically challenged an order dated 08.10.2018 whereby such settlement has been made in favour of the respondent no. 7 and some adverse comments have been made with regard to the bid of the petitioner.

2. There is a chequered history in this case and the background facts are narrated in brief for the sake of convenience.

3. The projected case in the petition is that the petitioner is a registered cooperative society in the district of Kamrup consisting of 100% fisherman belonging to the Schedule Caste and is represented by its Secretary, Shri Bhupen Chandra Das.

4. Pursuant to a Notice Inviting Tender dated 29.06.2017 for settlement of the Fishery in question for 7 (seven) years, the petitioner society had submitted its bid along with 5 (five) other bidders including the respondent no. 7. Consequently, a comparative statement was prepared in which the bid of the petitioner was held to be valid and the bid of the respondent no. 7 was held to be incomplete. However, vide a communication dated 10.08.2017, there was a direction to issue a fresh tender notice for the said Fishery by the Fishery Department as some anomalies were found in the proposal submitted with a further stipulation that the existing lessee would run the Fishery at 10% enhanced rate.

5. The aforesaid action in the form of the communication dated 10.08.2017 was the subject matter of challenge by the petitioner in WP(C)/ 5001 of 2017. The respondent no. 7, through its Secretary had also instituted WP(C)/ 4896 of 2017 challenging its disqualification pursuant to the NIT dated 29.06.2017. Another writ petition was instituted by the respondent no. 7 being WP(C)/ 7934 of 2017.

6. All the aforesaid 3 (three) writ petitions were disposed of by this Court vide a common order dated 29.05.2018. It was directed that a fresh decision be taken by the State respondents on the basis of the records available as to whether the petitioner in that case (respondent no. 7 herein) had submitted the documents fulfilling the requirements of Experience Certificate in the name of the Society as well as Caste Certificate. It was further observed that with regard

to the Bakijai Certificate, no further consideration was required to be made by the State respondents as the said Bakijai Certificate was part of the records which was mixed up with the tender papers of another bidder.

7. Subsequently, the petitioner herein has instituted another writ petition WP(C)/ 5185 of 2018 for registering a criminal case against an official of the Department and not to settle the Fishery in question with the respondent no. 7. The said writ petition was disposed of vide an order dated 30.08.2018 whereby it was observed that since as per the records, settlement order was yet to be issued, interference at that stage was not justified. Accordingly, the authorities were directed to finalize the settlement process of the fishery in question in accordance with law.

8. Subsequent to the aforesaid directions of this Court, the Fishery Department has passed an order dated 08.10.2018 as per which, the bid of the respondent no. 7, on re-examination was found to be valid and considering its financial bid which was Rs. 1,48,47,777/- (One Crore Forty Eight Lakh Forty Seven Thousand Seven Hundred Seventy Seven) only the settlement was made in its favour for a period of 7 (seven) years. The bid of the petitioner was however held to be invalid as the Bakijai Certificate and Fishing Experience Certificate were held to be not issued by the competent authority. Consideration of the financial bid of the petitioner which was Rs.36,47,000/- (Rupees Thirty Six Lakh Forty Seven Thousand) only was also made and there is an observation that in case of acceptance of said bid, there would be huge loss of Government revenue to the tune of more than Rs.1,12,00,777/-(Rupees One Crore Twelve Lakh Seven Hundred Seventy Seven) only. Reference to the order dated 30.08.2018 of the High Court was also made whereby a direction was given to finalize the settlement.



9. It is the legality and validity of the aforesaid order dated 08.10.2018 of the Department which is the subject matter of challenge in the present writ petition. The petitioner has further prayed that a direction be issued for settling the fishery with the petitioner on the basis of its "highest valid bid". This Court vide order dated 12.11.2018 while issuing notice had however, declined to accede to the prayer for stay.

10. During the pendency of this writ petition, the petitioner had filed Review Petition No. 25/2020 against the order dated 29.05.2018 of this Court whereby the earlier three writ petitions were disposed of. This Court however vide order dated 27.09.2021 had dismissed the aforesaid review petition. Upon such dismissal, the petitioner had preferred a writ appeal being WA No. 53 of 2022. The Hon'ble Division Bench however vide order dated 18.02.2022 had however dismissed the appeal by observing that since the challenge to the settlement in favour of the respondent no. 7 was pending before the Single Judge, all the relevant factors and aspects would be examined in the writ petition.

11. I have heard Shri K. K. Mahanta, learned Senior Counsel for the petitioner assisted by Shri M. H. Ansari, learned Counsel. Also heard Shri D. Das, learned Senior Counsel for the respondent no. 7 assisted by Shri K. Mohammad, learned counsel and Shri S. S. Roy, learned Government Advocate for respondent nos. 1 to 6. The records of the case have also been produced by the learned Government Advocate.

12. Shri Mahanta, the learned Senior Counsel for the petitioner has assailed the impugned order dated 08.10.2018 by contending that the observation holding the bid of the petitioner to be defective on the ground that the Bakijai Certificate and the Fishing Experience Certificate were not issued by the Competent Authority is perverse. It is submitted that the remand order dated

30.08.2018 had directed that no new documents were to be considered. It is submitted that the aspect of re-examining the bid of the petitioner was not even the ambit of the order dated 30.08.2018 of this Court and therefore, such action of the authorities is wholly without jurisdiction and is liable to be interfered with. It is also submitted that the authorities had exceeded their jurisdiction by taking into consideration the report with views and comments of the ARCS, Barpeta which was communicated to the Deputy Commissioner, Kamrup on 07.06.2018 wherein it was stated that the respondent no. 7 was composed of 100% actual fisherman belonging to the Schedule Caste Community and that fishing is the main source of livelihood of the members of the respondent no. 7 Society. It was also noted that the caste certificate was available in the records.

13. The learned Senior Counsel for the petitioner, by referring to the order dated 29.05.2018 of this Court has submitted that though the aspect of Experience Certificate was directed to be considered, the impugned order does not clarify the said aspect. Similarly, the aspect of the members belonging to SC/Maimal Community has also not been discussed.

14. The learned Senior Counsel strenuously contends that extraneous factors were taken into consideration while passing the impugned order dated 08.10.2018. It is also submitted that though a decision was to be arrived at on the basis of the documents on record, reports were called for which was not permissible.

15. Shri Mahanta, learned senior counsel further submits that the document to establish that all the members of the respondent no. 7 belong to SC Community is a certificate by the ARCS, Barpeta as per which such certificate is only given to Shri Ram Prashad Malo Das, who is the Secretary of the respondent no. 7. It is submitted that the same would not meet the requirement of all the members

of the Society belonging to the SC Community.

16. Shri Mahanta, the learned Senior Counsel further submits that though the price offered by the respondent no. 7 is higher than that of the petitioner, the said aspect would not be the deciding factor and the quantum would come into consideration only when the bid of a party is a valid bid. It is contended that since the bid of the respondent no. 7 was not valid, the aspect of price would not come into consideration at all. In the alternative, it is submitted that the price offered by the respondent no. 7 is an exorbitant one which will adversely affect the public interest. He accordingly submits that the writ petition be allowed by interfering with the impugned order dated 08.10.2018 and to settle the fishery with the petitioner.

17. *Per contra*, Shri S. S. Roy, the learned Government Advocate representing the official respondents has defended the impugned order dated 08.10.2018. He submits that the order has been passed by taking into consideration all the relevant factors whereby transparency has been maintained and the public interest has been kept into consideration. It is submitted that the decision to settle the fishery with the respondent no. 7 has been done by following the due process of law. It is also submitted that even if the finding regarding holding of the bid of the petitioner as invalid is interfered with, the price offered by the petitioner cannot match the price of the respondent no. 7 and the difference which has been taken into consideration in the impugned order itself is a huge difference of Rs.1,12,00,777/-(Rupees One Crore Twelve Lakh Seven Hundred Seventy Seven) only. It is also submitted that from the records, the challenge towards the eligibility of the respondent no. 7 is not substantiated as the ARCS, Barpeta has clarified that all the members of the respondent no. 7, Society are actual fishermen belonging to SC Community. He has also informed this Court

that the respondent no. 7 has not defaulted in payment of the *kist* amount of the settlement in question.

18. Strenuously opposing the writ petition, Shri D. Das, the learned Senior Counsel for the respondent no. 7 has submitted that no case, whatsoever has been able to be made out by the petitioner for any interference. He submits that the first three writ petitions being WP(C)/ 4896, 5001 and 7934 of 2017 were all disposed of vide a common order dated 29.05.2018 wherein a fresh decision was directed to be taken. Accordingly, in compliance with the said direction and the further direction dated 30.08.2018 the impugned order has been passed on 08.10.2018 by due application of mind and by taking into consideration all relevant factors whereby the decision has been arrived at in a fair and transparent manner.

19. The conduct of the petitioner has also been criticized by Shri Das, the learned senior counsel for the respondent no. 7 by contending that while the order dated 08.10.2018 has been impugned in the present proceeding, a review petition no. 25 of 2020 was filed in respect of the order dated 29.05.2018 which was already acted upon. The said review petition was dismissed on 27.09.2021 and WA No. 53/ 2022 preferred by the petitioner was also dismissed on 18.02.2022. He submits that when the initial order of this Court dated 29.05.2018 was complied with leading to the passing of the impugned order dated 08.10.2018 which is the subject matter of this petition filed in the year 2018 itself, the approach of the writ petitioner by filing review of the original order and the subsequent writ appeal which were both dismissed would establish the inconsistent and wavering stand of the petitioner and therefore the petitioner would not be entitled to the equitable relief under Article 226 of the Constitution of India.

20. Shri Das, the learned senior counsel by referring to the Certificate of the respondent no. 7 issued by the ARCS, Barpeta pertaining to the aspect of Schedule Caste and actual fishermen has contended that there is no ambiguity in the said certificate as there are distinctly two parts in the certificate. While in the first part, the registration of the respondent no. 7 Society and the name of the Secretary have been mentioned, the second part is the actual certification regarding Schedule Caste and actual fishermen of the members. He submits that use of the expression "member" instead of "members" will not be crucial and the actual meaning can be easily deciphered from the said certificate. He further submits that by the impugned order only the truth has been arrived at and the same cannot be said to be an arbitrary exercise.

21. Shri Das, the learned senior counsel has also vehemently argued that the difference in price offered by his client and the petitioner is huge. He submits that the impugned order dated 08.10.2018 itself records that the difference is Rs.1,12,00,777/-(Rupees One Crore Twelve Lakh Seven Hundred Seventy Seven) only. In this connection, reliance has been placed upon the case of **Malegarh Gobindopur Fishery Co-operative Society Ltd. Vs State of Assam & Ors.**, reported in **2021 (5) GLT 107** wherein it has been held that revenue is of paramount importance and is a facet of public interest. He has informed this Court that the aforesaid decision of **Malegarh** (supra) has been upheld by a Division Bench vide judgment and order dated 27.04.2022 in WA No. 306 of 2021 (**Pub Goalpara Fishery Co-operative Society Vs State of Assam & Ors.**). Lastly, it is submitted that the period of settlement which was seven years is almost over and there is no complaint regarding the operation of the fishery by the respondent no. 7 or on the aspect of payment of the *kist* money.

22. The rival submissions of the learned counsel for the parties have been duly considered and the materials placed before this Court including the records in original have been carefully examined.

23. It is not in dispute that the impugned order dated 08.10.2018 has been passed pursuant to an order dated 30.08.2018 of this Court in WP(C)/ 5185 of 2018. The earlier order dated 29.05.2018 in the bunch of three writ petitions also would be a relevant consideration in considering the present challenge. In the first order dated 29.05.2018 while disposing of the three writ petitions it was directed that a fresh decision be taken by the Department on the basis of the records available as to whether the respondent no. 7 herein had submitted the documents fulfilling the requirements of fishing experience in the name of the Society as well as the members belonging to Schedule Caste. With regard to the Bakijai Certificate, it was observed that no further consideration was required to be made by the State respondents as the said Bakijai Certificate was part of the records which was mixed up with the tender papers of another bidder. In the subsequent order dated 30.08.2018, this Court had come to a finding that no case for interference was made out in the challenge made by the petitioner as final order of settlement was yet to be issued. Accordingly, a direction was issued to finalize the settlement process.

24. A perusal of the order dated 08.10.2018 which is the subject matter of challenge would reveal that both the orders dated 29.05.2018 and 30.08.2018 of this Court have been taken into consideration and to arrive at a just and proper finding, a report from the Deputy Commissioner, Kamrup along with the views and comments of the ARCS, Barpeta was sought for. Accordingly, the ARCS, Barpeta vide communication dated 07.06.2018 informed the Deputy Commissioner, Kamrup that the respondent no. 7 comprised of 100% actual

fishermen belonging to SC Community and fishing was their main source of livelihood. The caste certificate was also found available in the records.

25. With regard to the submission that new documents were considered in examining the bid of the respondent no. 7, in the opinion of this Court, no new documents were introduced by any of the parties and the documents which were considered were only the reports of the Deputy Commissioner Kamrup and the views and comments of the ARCS, Barpeta.

26. This Court is of the view that the exercise to be carried out by the authorities on the remand order dated 30.08.2018 as well as the earlier order dated 29.05.2018 by which the initial three writ petitions were disposed of cannot be a mechanical exercise and to maintain transparency and fair play, calling for reports from the Deputy Commissioner, Kamrup with the views and comments of the ARCS, Barpeta cannot be termed as either exceeding of jurisdiction or taking into consideration extraneous factors. This Court is also of the view that the aspect of experience and caste, unlike academic degrees are not obtained on a particular date and therefore this Court is unable to accept the submission made on behalf of the petitioner that any documents of a date subsequent to the last date of submission of tender cannot be considered. Though the aforesaid contention may hold good in a given case, such contention cannot have universal application.

27. With regard to the challenge on the Caste Certificate, this Court has made a minute examination of the said Certificate which is at page 71 of the writ petition. The Certificate has two parts. In the first part, Shri Ram Prashad Malo Das is recognized to be the Secretary of the respondent no. 7 Society which was registered on 04.02.1972 and the second part is that member of the Society belong to SC and actual fisherman. Though the formation of the sentence may

not be grammatically correct, it cannot be contended that the certification of Schedule Caste and actual fisherman pertains only to the said Shri Ram Prashad Malo Das. In fact a harmonious construction and logical conclusion would be that such certification of Schedule Caste and being actual fishermen is for all the members of the respondent no. 7 Society. In any case, this Court has noted the submission of Shri S. S. Roy, the learned Government Advocate that there is a clarification from the ARCS, Barpeta that all the members of the respondent no. 7 Society are actual fishermen.

28. This Court has also noticed that the difference of price offered by the petitioner and that of the respondent No. 7 is huge. While the respondent no. 7 had offered its bid of Rs.1,48,47,777/- (Rupees One Crore Forty Eight Lakh Forty Seven Thousand Seven Hundred Seventy Seven) only, the bid of the petitioner was Rs.36,47,000/- (Rupees Thirty Six Lakh Forty Seven Thousand) only. The difference is a major one of Rs.1,12,00,777/-(Rupees One Crore Twelve Lakh Seven Hundred Seventy Seven) only. This Court is of the opinion that the authorities have genuinely considered the said aspect which concerns Government revenue. It is a settled position of law that a price is one of the paramount factors in determining a tender process. In this connection, one may gainfully referred to the decision of this Court in the case of ***Dhaniram Gogoi Vs. State of Assam*** reported in **1998 (4) GLT 37** wherein it has been held that public interest is of paramount consideration for settlement. This Court in the case of ***Tarun Bharali Vs. State of Assam & Ors.*** reported in **(1991) 2 GLR 296**, has categorically held that in matters of settlement which earns revenue for the Government the paramount factor is public interest. The case of ***Malegarh*** (supra) which has been upheld by the Hon'ble Division Bench in WA No. 306/2021 vide judgment dated 27.08.2022 would also support the aforesaid

position of law.

29. Having held that the challenge made to the order dated 08.10.2018 is not sustainable *qua* the bid of the respondent no. 7 and the consequent settlement made in its favour, this Court is however of the view that the observation towards declaring the bid of the petitioner as invalid does not appear to be a correct observation for more than one reason. Firstly, the remand order was only to re-examine the bid of the respondent no. 7 and therefore there was no occasion for re-examining the bid of the petitioner. Secondly, though there is an order dated 10.08.2017 to issue a fresh tender process, the comparative statement in the earlier process reflects that the bid of the petitioner was complete. However, having said that, this Court is of the view that the aforesaid observation is rendered otiose inasmuch as the bid of the respondent no. 7 is held to be correctly declared valid and the financial bid of the respondent no. 7 is significantly higher than the financial bid of the petitioner. This Court has also taken into consideration that there is no complaint against the respondent no. 7 in operating the fishery and till now there is no default in payment of the *kist*, as submitted by the learned Government Advocate.

30. The conduct of the petitioner is also to be taken into consideration. As recorded above, when the initial three writ petitions were disposed of vide judgment dated 29.05.2018 and the matter was pending consideration before the authorities, the petitioner had filed another writ petition WP(C)/ 5185 of 2018 which was dismissed on 30.08.2018 reiterating the earlier direction to finalize the settlement. Even after filing of the present writ petition in the year 2018 challenging the settlement order dated 08.10.2018, in the year 2020, the petitioner had filed review petition being Review Petition No. 25 of 2020 against the order dated 29.05.2018 which was dismissed vide order dated 27.09.2021.



The appeal preferred thereafter by the petitioner being WA No. 53 of 2022 was also dismissed on 18.02.2022. This Court finds force in the contention raised on behalf of the respondent no. 7 that the conduct of the petitioner has been inconsistent and wavering and would also stand as an impediment in seeking equitable relief under Article 226 of the Constitution of India.

31. Under the aforesaid facts and circumstances, this Court is of the opinion that the petitioner has not been able to make out a case for interference with regard to the order dated 08.10.2018 of the Fishery Department. Accordingly, the writ petition is dismissed.

32. No order as to cost.

33. Let the records of the case be returned to Shri S. S. Roy, learned Government Advocate, Assam.

JUDGE

Comparing Assistant