



GAHC010277272018



THE GAUHATI HIGH COURT

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

WRIT PETITION (C) No. 8195/2017

M/s No. 5 Sonai Nadi Part-III Fishery Co-operative Society Limited, represented by its President Shri Santosh Barman, S/o Late Suresh Chandra Barman, Resident of Vill – Bardubatup, P.O. & P.S. Bhuragaon, District – Morigaon, Assam, Pin – 782121.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the Commissioner & Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati – 781006.
2. The Additional Chief Secretary to the Government of Assam, Fishery Department, Block F, Ground Floor, Assam Secretariat, Dispur, Guwahati – 781006.
3. The Additional Secretary to the Government of Assam, Fishery Department, Block F, Ground Floor, Assam Secretariat, Dispur, Guwahati – 781006.



4. The Deputy Commissioner, Morigaon, District – Morigaon, Assam.
5. The Additional Deputy Commissioner, Morigaon, District – Morigaon, Assam.
6. The Registrar of Co-operative Societies, Assam, Khanapara, Guwahati – 781022.
7. The Assistant Registrar of Co-operative Societies, Morigaon, Assam.
8. M/s No. 151/152 Karmari Nandini Meen Samabai Samity Ltd. Represented by its President/Secretary, Shri Pradip Sarkar, Son of Maniram Sarkar, Vill – Chotogarajan, P.O. Karatipam, P.S. Mayong, District – Morigaon, Assam, Pin – 782105.

.....Respondents

WITH
WRIT PETITION (C) No. 8674/2018

M/s Tribeni Matchyajibi Samabai Samitee Limited, Bhakuakaripam, P.O. Phalihamari Pathor, P.S. Bhuragaon, District – Morigaon, Assam, represented by its President Sri Bala Ram Malo, Son of Late Kalipada Malo, aged about 45 years, resident of Bhakuamari Gaon, P.S. Buragaon, District – Morigaon, Assam.

.....Petitioner

-Versus-



1. The State of Assam, Represented by the Commissioner & Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati – 781006.
2. The Additional Chief Secretary to the Government of Assam, Fishery Department, Block F, Ground Floor, Assam Secretariat, Dispur, Guwahati – 781006.
3. The Additional Secretary to the Government of Assam, Fishery Department, Block F, Ground Floor, Assam Secretariat, Dispur, Guwahati – 781006.
4. The Deputy Commissioner, Morigaon, District – Morigaon, Assam.
5. The Additional Deputy Commissioner, Morigaon, District – Morigaon, Assam.
6. The Registrar of Co-operative Societies, Assam, Khanapara, Guwahati – 781022.
7. The Assistant Registrar of Co-operative Societies, Morigaon, Assam.
8. M/s No. 151/152 Karmari Nandini Meen Samabai Samity Ltd. Represented by its President/Secretary, Shri Pradip Sarkar, Son of Maniram Sarkar, Vill – Chotogarajan, P.O. Karatipam, P.S. Mayong, District – Morigaon, Assam, Pin – 782105.

.....Respondents

Advocates :

Petitioner in W.P.[C] no. 8195/2017 : Mr. M.K. Choudury, Senior Advocate



Mr. M. Sarma, Advocate

Petitioner in W.P.[C] no. 8674/2018

: Mr. J.I. Borbhuiya, Advocate.

Respondents

: Mr. D.K. Sharma,

Addl. Senior Govt. Advocate, Assam.

: Mr. S.K. Talukdar, Standing Counsel,
Cooperation Department

: Mr. K.N. Choudhury, Senior Advocate

Mr. T. Islam, Advocate

Date of Hearing, Judgment & Order

: 15.06.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

In both the writ petitions – W.P.[C] no. 8195/2017 and W.P.[C] no. 8674/2018 – preferred under Article 226 of the Constitution of India, the main subject-matter of challenge is settlement of a fishery named 'No. 5 Sonai Nadi Part-III Fishery', located in Morigaon District in favour of the cooperative society, M/s No. 151/152 Karmari Nandini Meen Samabai Samity, impleaded as party-respondent no. 8 in both the writ petitions [hereinafter referred to as 'the respondent society', at places, for easy reference].

2. The Settling Authority i.e. the State Government in the Fishery Department had settled the fishery named No. 5 Sonai Nadi Part-III Fishery, a 60% category fishery, [hereinafter referred to as 'the Fishery', for short] in favour of the respondent society for a period of 7 [seven] years w.e.f. the date of delivery of possession of the Fishery to the respondent society by an Order of Settlement dated 22.09.2017. Apart from the Order of Settlement dated 22.09.2017, the petitioner society in the writ petition, W.P.[C] no. 8195/2017 has also assailed an Order dated 14.11.2017 passed by the Additional Chief Secretary to the Government of Assam, Fishery Department,



whereby, the Representation submitted by the said petitioner society on 03.10.2017 was rejected, thereby, affirming the Order of Settlement dated 22.09.2017. The petitioner society in the writ petition, W.P.[C] no. 8195/2017 has also sought for a direction in the nature of mandamus to settle the Fishery in its favour on the premise that the respondent society's bid was non-compliant and the petitioner society was the highest eligible bidder in the tender process initiated for settlement of the Fishery by a Tender Notice dated 04.04.2017.

2.1. The petitioner society in the writ petition, W.P.[C] no. 8674/2018 was also a participant in the tender process initiated for settlement of the Fishery by the Tender Notice dated 04.04.2017. In the writ petition, W.P.[C] no. 8674/2018, challenges are also made to the Order of Settlement dated 22.09.2017 and the subsequent Order dated 14.11.2017. A relief in the nature of mandamus is also sought by the said petitioner society as like the petitioner society in the writ petition, W.P.[C] no. 8195/2017.

3. For proper appreciation of the issues raised in these two writ petitions, it is apposite to exposit the necessary facts, in brief, sans the unnecessary details. By the Tender Notice dated 04.04.2017, the Deputy Commissioner, Morigaon as the Tender Inviting Authority invited sealed bids for settlement of the Fishery, 'No. 5 Sonai Nadi Part-III Fishery' [the Fishery] for a period of 7 [seven] years. The Fishery is a 60% category fishery, which is to be settled in terms of the provisions of the Assam Fishery Rules, 1953. The Tender Notice mentioned that sealed bids would be received at the office of the Tender Inviting Authority i.e. the Deputy Commissioner, Morigaon upto 02-00 p.m., 12.04.2017. As per terms and conditions of the Tender Notice, a number of documents were required to be submitted by the bidders along with their respective bid in sealed form. Amongst the certificates/documents which were required to be submitted along with the sealed bids by a bidder, the documents viz. [i] earnest money

in the form of call deposit, amounting to 15% of the annual revenue of the first year as fixed by the Government; [ii] a photocopy of the PAN Card issued from the Income Tax Department; and [iii] a Bakijai Clearance Certificate from the office of the Deputy Commissioner; were included. The Tender Notice had further stipulated that the bids could be submitted by a co-operative society comprised of 100% members belonging to Scheduled Caste and actual fisherman and such bidder society should be in the neighbourhood of the Fishery.

4. In response to the Tender Notice dated 04.04.2017, 7 [seven] nos. of bidders had submitted their bids quoting different bid values for the total period of 7 [seven] years as well as year-wise. After expiry of the time for submission of the bids, the bids were opened at the end of the Tender Inviting Authority. After scrutiny of the tender papers submitted by all the 7 [seven] participant bidders, the Tender Committee constituted by the Deputy Commissioner, Morigaon prepared a comparative statement keeping in view of the terms and conditions of the Tender Notice dated 04.04.2017. The following Table indicates the bid values offered by the 7 [seven] participant bidders, in descending order, :-

Sl. No.	Name of Tenderer	Offered bid value [for 7 years]
1	M/s 151/152 Karmari Nandini M.S.S. Ltd. [the respondent society]	Rs. 1,29,60,885/-
2	M/s No. 5 Sonai Nadi Part-III FCS Ltd. [the petitioner in W.P.[C] no. 8159/2017]	Rs. 1,21,24,000/-
3	M/s Ouguri Katahguri Bhurbandha M.S.S. Ltd.	Rs. 1,19,78,847/-
4	M/s Pub Jaluguti Co-operative Society Ltd.	Rs. 1,05,00,707/-
5	M/s Tribeni Matsyajibi S.S. Ltd. [the petitioner in W.P.[C] no. 8674/2018]	Rs. 96,27,450/-
6	M/s Nabajug Matsyajibi S.S. Ltd.	Rs. 87,57,777/-

7	M/s Satgaon Jalgotha Matsyajibi S.S. Ltd.	Rs. 77,77,777/-
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5. From the above Table, it can be noticed that the respondent society had offered the highest bid value of Rs. 1,29,60,885/- for a period of 7 [seven] years. While the petitioner society in the writ petition, W.P.[C] no. 8195/2017 offered the 2nd highest bid value of Rs. 1,21,24,000/-, the petitioner society in the writ petition, W.P.[C] no. 8674/2018 offered the 5th highest bid value of Rs. 96,27,450/-. When the tender papers along with the comparative statement stood forwarded from the Tender Inviting Authority to the Tender Settling Authority, that is, the Fishery Department, Government of Assam, the Fishery Department, Government of Assam after examining the tender papers and the Reports submitted on the aspect of neighbourhood by the Deputy Commissioner, Morigaon, dated 02.08.2017 & dated 06.09.2017, passed the impugned Order of Settlement on 22.09.2017 whereby the Fishery came to be settled in favour of the respondent society at its offered bid value of Rs. 1,29,60,885/- for a period of 7 [seven] years treating the respondent society as the highest valid bidder in the tender process initiated for settlement of the Fishery. By the Order of Settlement, possession of the Fishery was directed to be delivered to the respondent society, subject to observance of all requisite formalities. Subsequent to the Order of Settlement dated 22.09.2017, the petitioner society in the writ petition, W.P.[C] no. 8195/2017 submitted one Representation, dated 03.10.2017, highlighting certain alleged deficiencies in the bid of the respondent society with a prayer to re-verify the documents/certificates submitted by the respondent society along with its bid and to cancel the Order of Settlement dated 22.09.2017 issued in favour of the respondent society. When the Representation was not disposed of within a reasonable time period, the petitioner society in the writ petition, W.P.[C] no. 8195/2017, M/s No. 5 Sonai Nadi Part-III Fishery Co-operative Society Limited preferred a writ petition, W.P.[C] no. 6266/2017 before this Court. The writ petition, W.P.[C] no. 6266/2017 came up for consideration on

17.10.2017 and the Court after hearing the parties, disposed of the writ petition by an Order of even date with a direction to the respondent no. 2 therein, that is, the Additional Chief Secretary to the Government of Assam, Fishery Department to give due consideration to the Representation submitted by the said petitioner society on 03.10.2017 and to pass an appropriate order thereon. The Representation dated 03.10.2017 [supra] came to be disposed of by the Additional Chief Secretary to the Government of Assam, Fishery Department by an Order dated 14.11.2017 wherein it was observed that no ground for disturbing the Order of Settlement dated 22.09.2017 made in favour of the respondent society could be found.

6. I have heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. M. Sarma, learned counsel for the petitioner in the writ petition, W.P.[C] no. 8195/2017; and Mr. J.I. Borbhuiya, learned counsel for the petitioner in the writ petition, W.P.[C] no. 8674/2018. I have also heard Mr. D.K. Sharma, learned Additional Senior Government Advocate, Assam for the State respondents; Mr. S.K. Talukdar, learned Standing Counsel, Co-operation Department; and Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. T. Islam, learned counsel for the respondent society in both the writ petitions.

Submissions of the petitioner in the writ petition, W.P.[C] no. 8195/2017 :-

7. Mr. M.K. Choudhury, learned Senior Counsel for the petitioner has submitted that it was on 17.03.2017, the Board of Directors of the respondent society authorized its President and Secretary to submit the respondent society's bid in respect of the tender process for the Fishery in question. When the Board of Directors of the respondent society authorized its President and Secretary to submit such bid, it was a period which was anterior to the Tender Notice dated 04.04.2017. Due to failure to hold the Annual General Meeting [AGM] for the Co-operative Year : 2016-2017 in



terms of the provisions contained in Section 32 of the Assam Co-operative Societies Act, 2007 [‘the 2007 Act’, for short], the Board of Directors of the respondent society came to be dissolved under Section 32 of the 2007 Act by an Order dated 27.03.2017 passed by the Zonal Joint Registrar of Co-operative Societies, Assam. With the dissolution of the Board of Directors of the respondent society, an Officer from the Co-operation Department was also appointed by the Order dated 27.03.2017 to perform all the functions of the Board of the respondent society; to convene the Annual General Meeting [AGM] & hold the Election of the respondent society; and also to constitute the Board of the respondent society within a period of 90 days therefrom. It was only after dissolution of the Board of Directors of the respondent society, the tender process for settlement of the Fishery in question was initiated by the Tender Notice dated 04.04.2017 with 12.04.2017 as the last date of submission of bids. Thus, during the tender process starting from 04.04.2017 and ending on 12.04.2017, there was no Board of Directors of the respondent society, which made it ineligible to submit any bid in response to the Tender Notice dated 04.04.2017. The AGM/Election of the respondent society was held much after on 24.06.2017 and it was only with the approval of the Assistant Registrar of Co-operative Societies on 04.07.2017, a new Board of Directors of the respondent society pursuant to the AGM, took over charge of the affairs of the respondent society.

7.1. By projecting the above undisputed facts, Mr. Choudhury, learned Senior Counsel for the petitioner society has submitted that apart from the ineligibility of the respondent society to submit bid in response to the Tender Notice dated 04.04.2017 on the aforesaid count, two other deficiencies in the bid of the respondent society were highlighted in the Representation dated 03.10.2017. In the said Representation, it was pointed out that the respondent society towards security deposit, had submitted a Term Deposit instead of a call deposit, as required by the Tender Notice. It was further pointed out therein that the bid of the respondent society was liable to be



declared non-compliant due to non-submission of a photocopy of the PAN Card issued by the Income Tax Department, which condition was also a mandatory condition. Reference has been made to the provisions of the 2007 Act including the provisions contained in Section 39, Section 41[6], Section 42[1] and Section 49[2] thereof. He has assailed the reasoning assigned in the impugned Order dated 14.11.2017 on the premise that when the bid was submitted by the respondent society, it was an Officer of the Co-operation Department who was In-Charge of the affairs of the respondent society and not an elected Board of Directors of the respondent society. Absence of a Board of Directors in the respondent society on the date of submission of bid, had made the respondent society ineligible to submit any bid in response to the Tender Notice dated 04.04.2017. He has submitted that in the Representation dated 03.10.2017, three grounds were urged while seeking invalidation of the bid of the respondent society. In the impugned Order dated 14.11.2017, though all the three grounds urged in the Representation were dealt with, but the reasoning assigned therein, according to him, are totally arbitrary and unsatisfactory. He has, however, fairly submitted that in the writ petition, the petitioner has laid the challenge only on the ground regarding absence of a Board of Directors in the respondent society during the period of the tender process from the Tender Notice dated 04.04.2017 and to the last date of submission of bids on 12.04.2017, which ground is enough to declare the bid of the respondent society non-compliant.

Submissions of the petitioner in the writ petition, W.P.[C] no. 8674/2018 :-

8. Mr. Borbhuiya, learned counsel for the petitioner has made three-fold submissions, firstly, the bid of the respondent society ought to have been rejected on the ground that the respondent society is not in the neighbourhood of the Fishery; secondly, the respondent society did not submit a Bakijai Clearance Certificate in proper form in terms of Clause [kha]



of the Tender Notice dated 04.04.2017; and thirdly, the respondent society did not deposit its earnest money amounting to 15% of the annual revenue for the first year as fixed by the Government, in the form of call deposit, as stipulated in Clause [unga] of the Tender Notice dated 04.04.2017. Mr. Borbhuiya, learned counsel for the petitioner has strenuously urged that the bid of the respondent society was non-compliant to the terms and conditions of the Tender Notice on the aforesaid three counts, which entailed rejection of its bid but the Tender Settling Authority in clear ignorance of the essential terms and conditions of the Tender Notice, proceeded erroneously to settle the Fishery in favour of the respondent society by the impugned Order of Settlement dated 22.09.2017. As per the comparative statement prepared by the Tender Inviting Authority, the respondent society did not submit any neighbourhood certificate along with its bid. It is submitted by him that in the same comparative statement, it was mistakenly shown that the petitioner also did not submit the neighbourhood certificate along with its bid. By relying upon a decision of a Division Bench of this Court in a **Writ Appeal no. 284/2011 [Gojen Ch. Choudhury vs. the Assam Fisheries Development Corporation and others]**, decided on 27.09.2011, he has submitted that if a condition is laid down in the Tender Notice to the effect that a bidder has to submit its earnest money in the form of call deposit, deposit of earnest money in any other form entails rejection as submission of the earnest money in the prescribed form is to be considered as an essential condition to be fulfilled by the bidder.

Submissions of the respondent society in both the writ petitions :-

9. Mr. K.N. Choudhury, learned Senior Counsel appearing for the respondent society has submitted that since out of the three grounds agitated in the Representation dated 03.10.2017, two of the grounds have not been pleaded and agitated by the petitioner in the writ petition, W.P.[C] no. 8195/2017, he would confine his submissions on the only ground urged



as regards ineligibility of the respondent society to submit bid in response to the Tender Notice dated 04.04.2017, as the other two grounds are not open for the petitioner society to argue in view of the proposition laid down in **Bharat Singh and others vs. State of Haryana and others**, reported in [1988] 4 SCC 534. To put forward his submissions, he has also referred to various provisions of the 2007 Act, more particularly, to the provisions contained in Section 35, Section 38, Section 39, Section 41[6], Section 49, Section 117 and Section 125 of the 2007 Act. It is contended by him that there has to be a Board for management of every co-operative society registered under the 2007 Act and the Board consists of Directors elected in accordance with the provisions of the bye-laws. As per Section 35, the management of every registered co-operative society is ordinarily vested in the Board of Directors of a registered cooperative society and in case of dissolution of the Board of Directors of the cooperative society under Section 41[6], all functions of the Board are performed by the Officer appointed by virtue of the provision contained in same Section 41[6] of the 2007 Act. A co-operative society is formed for the benefit of its members and the prime objective is to safeguard the interests including economic interests of its members. Solely on the ground that there was no Board of Directors of the respondent society at the time of submission of the bid, the benefits which are likely to be flown from the distribution of State largesses in the form of settlement of a fishery like the one in question, cannot be denied to the members of the society for which the society is formed. The wrath of dissolution was incurred by the elected Directors in the Board who had failed to perform the obligations cast on it under the 2007 Act, not by the shareholders/members of the respondent society. With the dissolution of the Board of Directors by the Order dated 27.03.2017, the respondent society was not dissolved. The Officer on Management appointed by the Order dated 27.03.2017 was competent to perform all the functions on behalf of the society which definitely includes submission of the bid in response to the Tender Notice dated 04.04.2017 as it was for the purpose of securing benefits for all the



members of the respondent society. In such view of the matter, the grounds urged on behalf of the petitioner in the writ petition, W.P.[C] no. 8195/2017 is a misconceived one, which is not sustainable in law.

9.1. He has drawn attention to the difference in the bid values offered by the 7 [seven] participants bidders to contend that the grounds urged by the petitioner in the writ petition, W.P.[C] no. 8674/2018 do not deserve consideration at all as no public element is found to be involved. It is contended that there was a difference of more than 33 lakhs between the bid values offered by the respondent society and the petitioner society. Drawing attention to the terms and conditions of the Tender Notice dated 04.04.2017, it is submitted by him that submission of any document on the aspect of neighbourhood was not a stipulation in the Tender Notice dated 04.04.2017. The Tender Notice had stipulated that a bidder society had to be in the neighbourhood of the Fishery. The said aspect was examined by the Deputy Commissioner, Morigaon who submitted a Report on the neighbourhood status on 02.08.2017. From the Order of Settlement dated 22.09.2017, it is clearly discernible that the Tender Settling Authority considered the Report submitted by the Deputy Commissioner, Morigaon on neighbourhood and thus, it is not open for the petitioner to assail the Order of Settlement on the ground that the respondent society is not in the neighbourhood of the Fishery. In so far as the issue regarding submission of earnest money in the form of call deposit is concerned, the Tender Settling Authority had already dealt with the issue in its Order dated 14.11.2017 when the said aspect was highlighted by the petitioner in the writ petition, W.P.[C] no. 8195/2017 in its Representation dated 03.10.2017. By drawing attention to the reasoning assigned by the Tender Settling Authority in the Order dated 14.11.2017, it is contended that it is only when the reasoning assigned by the Tender Settling Authority is found to be so irrational and absurd that no prudent reason would have arrived at such a decision, then only an interference on that count could have been made. As the Tender



Settling Authority had assigned good reason for accepting the term deposit submitted by the respondent society instead of call deposit, it does not call for any interference at this stage of settlement process when about 6 [six] years out of the 7 [seven] years of the settlement period have elapsed in the meantime and, that too, at the behest of a bidder whose bid value @ Rs. 96,27,450/- was about 33 lakhs less than the respondent society @ Rs. 1,29,60,885/- and who did not even implead the other three highest bidders as party-respondents in the writ petition preferred by it. In so far as the matter of PAN Card is concerned, he has submitted that the same issue was also raised by the petitioner in the writ petition, W.P.[C] no. 8674/2018 through its Representation dated 03.10.2017 and the same was also considered by the Tender Settling Authority while passing the Order dated 14.11.2017. Once the said issue raised by another bidder and the issue was dealt with showing cogent and valid reasons, it is not open for the another bidder to raise the same ground at a belated stage by filing a writ petition subsequently. He has submitted that in any view of the matter, the respondent society has possessed PAN Card in its name, which is annexed as Annexure-R3 to the affidavit-in-opposition filed by the respondent society in the writ petition, W.P.[C] no. 8195/2017. In so far as the matter of non-submission of the Bakijai Clearance Certificate is concerned, Mr. Choudhury, learned Senior Counsel has submitted that the said aspect has been clarified in the affidavit-in-opposition filed by the respondent no. 1 on 01.09.2022 annexing a copy of the Bakijai Clearance Certificate dated 29.03.2017 issued from the office of the Deputy Commissioner, Morigaon.

Submissions of the official respondents :-

10. Mr. Sarma, learned Additional Senior Government Advocate, Assam has submitted that the aspect of neighbourhood to the Fishery is a condition stipulated in the Tender Notice dated 04.04.2017. The aspect of neighbourhood is required to be considered by the Deputy Commissioner,



Morigaon as the Tender Inviting Authority, who had submitted a Report stating that the respondent society is in the neighbourhood of the Fishery. It is further submitted by him that it is not the case of the petitioner in the writ petition, W.P.[C] no. 8674/2018 that there was any bakijai case pending against the respondent society on the date of submission of its bid. Even if the Bakijai Clearance Certificate dated 29.03.2017 was in the name of a person who was the Secretary or President of the respondent society, the same would not be of any assistance to the other bidders in the absence of pendency of any bakijai case against the respondent society. It is contended by him that submission of a Bakijai Clearance Certificate is not an essential condition, as held in a catena of decisions rendered by this Court. He has relied upon the decision of this Court in **Enjil Choudhury vs. Assam Fisheries Development Corporation and others**, reported in 2011 [5] GLT 49, which was rendered relying upon the decision of the Hon'ble Supreme Court of India in **Poddar Steel Corporation vs. Ganesh Engineering Works and others**, reported in [1991] 3 SCC 273. The decision in **Enjil Choudhury** [supra] was affirmed by the Division Bench in Writ Appeal no. 284/2011 [**Gojen Ch. Choudhury vs. the Assam Fisheries Development Corporation Limited and others**]. He has submitted that when the matter was taken to the Hon'ble Supreme Court of India, the Hon'ble Supreme Court of India dismissed the special leave petition.

11. I have given due consideration to the submissions advanced by the learned counsel for the parties and I have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the decisions cited by the learned counsel for the parties in support of their respective submissions.

Analysis and reasons for decision :-

12. In so far as the challenge made in respect of the alleged defect in the bid submitted by the respondent society due to non-submission of a Bakijai



Clearance Certificate in the proper form with its bid at the time of submission is concerned, this Court finds that it is not the case of the petitioner society in the writ petition, W.P.[C] no. 8674/2018 that there was any bakijai case pending against the respondent society at the time of submission of the bid in response to the Tender Notice dated 04.04.2017 or on the last date of submission of bid, 12.04.2017. Though a submission is made that the settlement made in favour of the respondent society in respect of another fishery was canceled by the Assam Fisheries Department Cooperation [AFDC] Limited at a date subsequent to the Order of Settlement dated 22.09.2017, the same cannot make the bid of the respondent society non-complaint submitted in response to the Tender Notice dated 04.04.2017 or on the last date of submission of bid on 12.04.2017, which were earlier to such alleged cancellation of settlement by the Assam Fisheries Development Corporation [AFDC] Limited, alleged to have been passed on 07.09.2018.

12.1. A Division Bench of this Court in a writ appeal, **W.A. no. 294/2011 [Abu Talib vs. The Assam Fisheries Development Limited and others]**, decided on 29.09.2011, has observed that the requirement of submission of a Bakijai Clearance Certificate was not a rigid requirement. The relevant parts of the said order is extracted hereinbelow :-

After considering the rival contentions we are of the view that the requirement of submitting Bakijai Clearance Certificate could not be taken as a rigid requirement. It is not a case where level playing field has been denied nor a case where loss has been caused to public revenue.

Another Division Bench of this Court in **Khoraghat Gulihara Fishery Cooperative Society Limited vs. State of Assam and others**, reported in [2014] 1 GLR 723, has followed the decision in **Abu Talib** [supra] by observing that non-submission of Bakijai Clearance Certificate was rightly held to be not an essential qualification criterion. The decisions rendered in **Gangadhar Fishery Co. Op.**



Society Ltd. vs. State of Assam and others, reported in [2018] 1 GLR 168, and **Malegarh Gobindapur Fishery Cooperative Society vs. State of Assam**, reported in [2021] 5 GLT 107, are in similar lines. The decision rendered by the Single Bench in **Malegarh Gobindapur Fishery Cooperative Society** [supra] has been affirmed by the Division Bench in **Writ Appeal no. 306/2021 [Pub Goalpara Fishery Co-operative Society vs. The State of Assam and others]**, decided on 27.04.2022.

12.2. In view of such authorities, more particularly, in the absence of any materials indicating that the respondent society had any bakijai case pending on the date of submission of its bid, the ground urged as regards non-submission of a Bakijai Clearance Certificate in the proper form does not deserve acceptance.

13. A submission is advanced on behalf of the petitioner society in the writ petition, W.P.[C] no. 8674/2018 that the respondent authorities had examined the neighbourhood aspect only in respect of the respondent society and the petitioner society in the writ petition, W.P.[C] no. 8195/2017. The Tender Notice did not prescribe, in specific terms, for submission of any certificate by a bidder on the aspect of neighbourhood.

13.1. It has emerged from the case records that neighbourhood status of all the 7 [seven] participant bidders who had responded to the Tender Notice dated 04.04.2017, were examined by the Deputy Commissioner, Morigaon and a Report to that effect was submitted by the Deputy Commissioner, Morigaon to the Additional Chief Secretary to the Government of Assam, Fishery Department on 02.08.2017. The Report indicated as under :-

Sl.	Name of Societies	Neighbourhood Distance from the Fishery
1	Secretary M/s Nabajyug Somobai Somiti Ltd., Vill. No. 2 Batalimari,	2.5 k.m.

	P.O. Sonduba, P.S. Bhuragaon, Dist. Morigaon [Assam]	
2	Secretary M/s Ouguri Katahguni Bhurbondha Machyajibi S.S. Ltd., Vill. Bhurbondha, P.O. Bhurbondha, Dist. Morigaon [Assam]	1.5 k.m.
3	Secretary M/s 151/152 No. Karmari Nandini Meen Samobai Samity Ltd., Vill. Satgaon, P.O. Jalugoti, P.S. Mikirbheta, Dist. Morigaon [Assam]	1 k.m.
4	Secretary M/s Satgaon Jalgotha Machyajibi Samabai Samiti Ltd., Vill. Satgaon, P.O. Jalugoti, P.S. Mikirbheta, Dist. Morigaon [Assam]	6 k.m.
5	President M/S No. 5 Sonai Nadi Part-II Fishery Co-operative Society Ltd., Vill. Bordubatop, P.O. Bhuragaon, Dist. Morigaon [Assam]	2.5 k.m.
6	President M/s Triveni Machyajibi Somobai Samity Ltd., Vill. Bhokumari, P.O. Phalihamari Pathar, Dist. Morigaon [Assam]	2.5 k.m.
7	Secretary M/s Pub-Jalugoti Co-operative Fishery Society Ltd., Vill. Pub-Jalugoti, P.O. Jalugoti, Dist. Morigaon [Assam]	5 k.m.

13.2. At this juncture, decisions rendered by two Division Benches of this Court on the aspect of neighbourhood can be referred to. On the aspect of neighbourhood, a Division Bench of this Court in **Majorati Min Samabai Samity Ltd. [M/s] vs. Sukhraj Min Samabai Samity Ltd. and others**, reported in 1998 [1] GLT 405, has observed that all that the Court can in its ambit of jurisdiction under Article 226 of the Constitution of India, examine is as to whether the condition and requirements of neighbourhood, as prescribed under the Fishery Rules, was present in the mind of the settling authority or not. It is not expected that the writ court would be the surveyor and measure the distance in metres and centimetres. If the settling authority is alive to the requirements of the Fishery Rules and the same is reflected in the order of the settlement, the writ court will not be justified in undertaking an exercise of measuring the distance between two competing claimants. The term 'neighbourhood', according to the Division Bench, is a relative term which is to be taken into account along with other conditions and it is not the intent of the Fishery Rules to treat neighbourhood with geometrical exactitude and procedure. Another Division Bench of this Court in **Brahmaputra Part II Mach Mahal Samabai Samity Ltd. vs. State of Assam**, reported in 2003 [1] GLT 155, has observed that the term 'neighbourhood' does not express any definite idea of distance. No mathematical formula has been devised to define and measure

neighbourhood. Within the meaning attributed to the word, there is an element of flexibility and, therefore, while dealing with the proviso to Rule 12 of the Fishery Rules, it would neither be permissible nor desirable to ascertain the neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery cooperative society is in the vicinity and the proximity of the fishery as is understood in common parlance, they are deemed to be in the neighbourhood thereof. Any attempt to measure the neighbourhood in terms of inches, feet, yards or centimetres and metres, would render the proviso otiose in a given fact situation.

13.3. From the case records, more particularly, from the Report dated 02.08.2017 of the Deputy Commissioner, Morigaon and the Order of Settlement dated 22.09.2017 wherein the Report dated 02.08.2017 on the aspect of neighbourhood has been referred to, it is found that attention was duly paid on the aspect of neighbourhood by the Tender Inviting Authority as well as by the Tender Settling Authority, prior to issuance of the Order of Settlement. In view of such position, the challenge made on the aspect of neighbourhood by the petitioner in the writ petition, W.P.[C] no. 8674/2018 cannot be countenanced. The members of the two fishery cooperative societies, who were bidders in the tender process for settlement of the Fishery and are the petitioners here, are situated, as per the Report dated 02.08.2017 of the Deputy Commissioner, Morigaon, at a distance of 2.5 KM from the Fishery whereas as per the same Report, the members of the respondent society are inhabitants of localities which are at a distance of neighbourhood of 1 KM from the Fishery.

14. The Tender Settling Authority in its order dated 14.11.2017 had dealt on the issue of non-submission of earnest money by the respondent society in the form of call deposit. The Tender Settling Authority had recorded that the respondent society had submitted its earnest money amounting to 15% of the yearly value fixed by the Government in the form of a term deposit



drawn in favour of the Deputy Commissioner, Morigaon, instead of a call deposit as stipulated in Clause [unga] of the Tender Notice dated 04.04.2017. The Tender Settling Authority had recorded that the term deposit, which was submitted by the respondent society in favour of the Deputy Commissioner, Morigaon i.e. the Tender Inviting Authority was an interest bearing instrument which can be encashed by the Tender Inviting Authority after a period of one year. With such reasoning, the ground taken in the Representation dated 03.10.2017 by the petitioner society in the writ petition, W.P.[C] no. 8195/2017 was found to be not a substantial ground to disturb the status quo in the matter of settlement of the Fishery in question. The same ground has been agitated by the petitioner in the writ petition, W.P.[C] no. 8674/2018 which was filed with noticeable delay on 13.12.2018. A question has, thus, also arisen as to whether the settlement of Fishery which was made for a period of 7 [seven] years by the Order dated 22.09.2017, is to be interdicted with at this stage of the settlement period which is about 6 [six] years from the date of such settlement.

15. In *Enjil Choudhury* [supra], the process of settlement of a fishery was initiated by the Assam Fishery Development Corporation [AFDC] Limited by issuing a Notice Inviting Tender [NIT] dated 06.04.2010 fixing 22.04.2010 as the last date of submission of tenders. Certain conditions were stipulated in the NIT and amongst others, requirements to deposit of 15% of the minimum value fixed by the AFDC Limited for the first year as earnest money and deposit of the earnest money in the form of call deposit were conditions. The petitioner therein made the earnest money deposit in the form of a demand draft whereas the respondent no. 3 therein, another bidder deposited the earnest money in the form of call deposit. The order of settlement was made in favour of the respondent no. 3 by an order dated 07.06.2010 rejecting the offer of the petitioner on the ground that his bid was found to be defective for making earnest money deposit in the form of demand draft. It has been observed that the purpose of taking the earnest

money deposit is to ensure the sincerity of a bidder to perform the contract in case of awarding the same to him and in case he makes any default in carrying out his part of the contract, the said amount is to be forfeited so that the authority awarding the contract does not suffer any loss for such default of the tenderer. The earnest money is held to be a part of the purchase price and the same is forfeited when the transaction falls through by reason of default or failure on part of the tenderer. The purpose of taking the earnest money is to ensure faithful completion of the contract. Thus, it has been held that it is not significant whether the earnest money deposit is made in the form of call deposit or demand draft, though the periods of validity may be different. The action on the part of the AFDC Limited in rejecting the bid submitted by the petitioner on the ground of non-furnishing the earnest money in the form of call deposit was found to be arbitrary and the writ petition was allowed. When the respondent no. 3 took the matter before the Division Bench by way of an intra-court appeal, **Writ Appeal no. 284/2011 [Gojen Ch. Choudhury vs. The Assam Fisheries Development Corporation and others]**, the Division Bench while dismissing the appeal, had observed as under :

11. It is no doubt true that if the authority stipulates any condition in the NIT, those are required to be fulfilled and it cannot deviate from such conditions unless of course those are essential conditions of eligibility and not merely ancillary or subsidiary with the main object to be achieved by such condition. In case any condition stipulated in the NIT is merely ancillary or subsidiary with the main object to be achieved by such condition, it is open to the authority to deviate from and not to insist upon the strict compliance of the condition in appropriate cases, as opined by the Apex Court in **G.J. Fernandez** [supra] [(1990) 2 SCC 488] and **Poddar Steel Corporation** [supra] [(1991) 3 SCC 273].

12. In the case in hand, as discussed above, there is no stipulation in the detailed terms and conditions of the NIT supplied to the petitioner as well as to the respondent No. 3 and other bidders that the earnest money has to be deposited only in the form of call deposit and not in any other form. The prescribed form supplied by the respondent Corporation, in which the offer has to be submitted by the tenderer, also does not stipulate that such earnest money has to be furnished in the form of the call deposit though it requires furnishing certain information relating to the call deposit. Such information as sought for in the form cannot be treated as terms and conditions of the NIT, having not stipulated so in the detailed terms and conditions supplied to the tenderers, more so, when there is no stipulation that non-furnishing of the earnest money in the form of call deposit entails disqualification.

16. Reverting back to the facts in hand, it is found that the earnest money was submitted by the respondent society in the form of a term deposit for an amount equal to 15% of the annual fixed value determined by the Government for the Fishery. It is observed by Hon'ble Supreme Court of India in a catena of decisions starting from **Jagdish Mandal vs. State of Odisha and others**, reported in [2007] 14 SC 517, to the effect that a Court before interfering in a matter of contract in exercise of powers of judicial review should pose to itself two questions :- [i] whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'; and [ii] whether public interest is affected. If the answers to the two questions are in the negative, there should not be any interference under Article 226 of the Constitution of India. It is held in **Jagdish Mandal** [supra], that the purpose of judicial review of administrative

action is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. A contract is a commercial transaction and principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, the court shall restrain itself while exercising the power of judicial review from interfering with an administrative decision even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review is not permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. One of the main objectives of distribution of State largesses in the form of settlement of a Fishery is to garner revenue for the State while fulfilling the socio-economic objectives. If the case in hand is examined from such perspectives and in the context of two questions above, this Court does not find any public element to interfere with the Order of Settlement dated 22.09.2017 which was subsequently, confirmed by the Order dated 14.11.2017 on the ground raised by the petitioner in the writ petition, W.P.[C] no. 8674/2018 as regards non-deposit of earnest money in the form stipulated by the Tender Notice dated 04.04.2017 for the above-stated reasons and also for the additional reasons discussed hereinbelow.

17. Responding to the Tender Notice dated 04.04.2017, 7 [seven] bidders participated in the tender process and as per the comparative statement, the respondent society offered the highest bid value whereas the petitioner society in the writ petition, W.P.[C] no. 8195/2017 offered the 2nd highest bid value. The petitioner society in the writ petition, W.P.[C] no. 8674/2018 offered the 5th highest bid value, meaning thereby, there were three other bidders apart from the respondent authority, who had offered higher bid values than the petitioner society in the writ petition, W.P.[C] no. 8674/2018. Though the petitioner society who had offered the 2nd highest bid value had

independently instituted the writ petition, W.P.[C] no. 8195/2017, the other two bidders who were in between the 2nd highest bidder and the 5th highest bidder are not made parties in the writ petition, W.P.[C] 8674/2018. In **Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another**, reported in [2016] 16 SCC 818, when the High Court had recorded an opinion that the eligible bidders were not entitled to be either impleaded in the writ petition filed in the High Court by the ineligible bidder or were not entitled to be heard, the Hon'ble Supreme Court of India has observed that the same is not an appropriate view to take in matters relating to a tender process. One of the reasons cited for requirement to implead the other bidders in the fray in a challenge made to a tender process is that there could be occasions where an eligible bidder can bring to the notice of the tendering authority that the ineligible bidder was ineligible for additional reasons or reasons which were not within the contemplation of the tendering authority. It is to avoid such a situation that it would be more appropriate that all the eligible bidders are made parties to the proceedings filed by an unsuccessful or an ineligible bidder. But, the petitioner society in the writ petition, W.P.[C] no. 8674/2018 has not impleaded the three higher bidders in the writ petition, making the writ petition to suffer from non-impleadment of necessary parties. A process to implead such bidders at this stage of the writ proceeding would delay the process of adjudication, when the Court has already found absence of any element of public interest in that a period of about 6 [six] years out of the settlement period of 7 [seven] years have already been over and the petitioner society's bid value was about Rs. 33,00,000/- lesser than the settlement amount.

18. In view of the discussions made above and for the reasons assigned therein, this Court finds that the grounds urged by the petitioner society in the writ petition, W.P.[C] no. 8674/2018 as regards

non-deposit of earnest money in the form of call deposit for setting aside of the settlement of the Fishery made in favour of the respondent society do not deserve any intervention at this stage of the settlement period.

19. In a cooperative society registered under the provisions of the Assam Co-operative Societies Act, 2007 [‘the 2007 Act’, for short], the General Assembly of the cooperative society which consists of all the members of such cooperative society, is the supreme body in respect of such cooperative society, where the State Government does not have any stake. It is laid down in Section 29 of the 2007 Act to the effect that the subject to the provisions of the 2007 Act and the bye-laws, the ultimate power of a cooperative society shall vest in the General Assembly. As per the then existing provisions of sub-section [2] of Section 35 of the 2007 Act, there had to be a Board for the management of every cooperative society registered under the 2007 Act and such Board had to consist of fifteen numbers of Directors and the Directors were to be elected in accordance with the provisions of the bye-laws. The management of every cooperative society constituted in accordance with the provisions of the 2007 Act and the bye-laws shall vest in the Board. Section 36[1] of the 2007 Act has prescribed that the Directors to the Board of the Societies are to be elected in an Election to be held in an Annual General Meeting [AGM] of the society in terms of the provisions of Section 39 and Section 41 of the 2007 Act. As per Section 42[1], the tenure of an office of elected members of the Board and its office bearers shall be five years from the date of Election and it has further provided that the tenure of the office bearers shall be co-terminus with the tenure of the Board. As per Section 31, the term of the Board of a society shall be five cooperative years. The powers and functions of the Board of a registered cooperative society have been laid down in Section 38 of the 2007 Act. The Board of a cooperative society

are empowered to discharge such functions, perform such duties and exercise such powers as may be specified by the bye-laws and in accordance with the terms, conditions and procedure laid down therein. Section 39 has provided for Annual General Meeting [AGM] and it states that an Annual General Meeting [AGM] to be termed as Annual General Assembly of a registered cooperative society shall be held at least once in every cooperative year within a period of six months of close of the financial year to transact the business as provided in the 2007 Act. It further stipulates that the Board of the society shall automatically stand dissolved for not holding the Annual General Meeting [AGM] in accordance with the provisions of the 2007 Act and bye-laws within six months from the expiry of the every financial year. Section 32 of the 2007 Act has inter alia prescribed that one General Meeting in every cooperative year must be convened by the Board of the society.

20. Reverting back to the facts of the case, it is found that the Zonal Joint Registrar of Cooperative Societies, Guwahati Zone by the Order dated 27.03.2017 dissolved the Board of Directors of the respondent society for its failure to hold the Annual General Meeting [AGM] for the Cooperative Year : 2016-2017 as required under Section 32 of the 2007 Act resulting in automatic dissolution of the Board of Directors of the society under Section 39 of the 2007 Act. The Zonal Joint Registrar of Cooperative Societies, Guwahati Zone by the same Order dated 27.03.2017 appointed an officer of the Cooperation Department in the rank of Junior Inspector of Cooperative Societies to perform all functions of the Board and to convene the Annual General Meeting [AGM]/Election of the respondent society and to constitute the Board of Directors within ninety days at the cost of the respondent society. As such appointment of an officer of the Cooperation Department is stated to be made in exercise of the powers conferred under Section 41[6] of the 2007 Act, it is apt refer to the said provisions

at this stage. As per sub-section [6] of Section 41, where a Board of a cooperative society fails to arrange for holding election before the expiry of the term of the Board of a society or delegates or where there are no Directors remaining on the Board, the Registrar can convene a General Meeting by appointing an Officer of the Cooperation Department for constitution of the Board within ninety days from the date of such appointment and the officer so appointed shall perform all functions of the Board during the said period of ninety days at the cost of the Society.

21. A conjoint reading of the provisions contained in Section 31, Section 39 and Section 41[6] of the 2007 Act makes it evident that in case of dissolution of the Board of Director of a Cooperative Society for its failure to hold an Annual General Meeting [AGM] in a cooperative year within the period of six months from the expiry of every financial year, such Board stands automatically dissolved and with the automatic dissolution of Board of Director, the power is vested in the Registrar to convene a General Meeting by appointing an officer of the Cooperation Department for constitution of the Board within ninety days from the date of such appointment. The officer so appointed, is empowered to perform all functions of the Board during the said period of ninety days at the cost of the society. In the absence of a Board in a particular society due to its automatic dissolution with the consequent appointment of an officer of the Cooperation Department to perform all the functions of the Board during the interim period of ninety days, this Court is of the considered view that the officer so appointed can discharge the functions, perform the duties and exercise the powers as are vested in the Board of that particular society. The Court is persuaded to take such a view for the reason that as per Section 117 of the 2007 Act, every cooperative society shall be deemed to be a body corporate by the name under which it is registered, with perpetual



succession and a common seal, and with power to enter into contracts and to do all things necessary for the purpose for which it was constituted. With the automatic dissolution of the Board of Director of a particular society for its failure to hold the Annual General Meeting [AGM] within the stipulated time period, it is only the Board of Directors of which gets dissolved but the registered cooperative society which is a body cooperate, does not get dissolved. Till the next Annual General Meeting [AGM] and Election of a new Board of Directors of the society is completed within a period of ninety days, the officer appointed under Section 41[6] can discharge the functions, perform the duties and exercise the powers that are vested in the Board of a registered cooperative society. In the case in hand, the Board of Directors of the respondent society was dissolved on 27.03.2017 and the Tender Notice for settlement of the Fishery was published on 04.04.2017 with 12.04.2017 as the last date of submission of bids. The Annual General Meeting [AGM]/Election of the respondent society was held on 24.06.2017 and the Directors to the new Board were elected in that AGM/Election. The proceedings of the AGM/Election was approved by the jurisdictional Assistant Registrar to Cooperative Societies on 04.07.2017. For the view taken by this Court in the manner above, the Officer In-Charge of the Management of the Society, appointed by the Order dated 27.03.2017 of the Zonal Registrar of Cooperative Societies, Guwahati Zone, was found competent and duly empowered to discharge the functions, perform the duties and exercise the powers as are vested in the dissolved Board during the period from 27.03.2017 to 04.07.2017. Such functions, duties and powers include competence to submit a bid on behalf of the respondent society in response to a Tender Notice for settlement of a Fishery like the one here. In the affidavit-in-opposition filed on behalf of the Cooperation Department, the Registrar of Cooperative Societies, Assam has portrayed a similar view.

22. Rule 12 of the Assam Fishery Rules, 1953 has prescribed that a 60% category fishery is to be settled with special category of Cooperative 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 to Rule 12 has provided that the word 'special category' means and includes the Cooperative Societies, Self-Help Groups, Non-Government Organisations comprising of 100% actual fishermen of the Scheduled Caste community or Maimal community of erstwhile Cachar district. There is nothing in Rule 12 of the Assam Fishery Rules, 1953 which stipulates that a registered fishery cooperative society comprising of 100% actual fishermen of the Scheduled Caste community will not be eligible to participate in a tender system initiated by the Government for settlement of a 60% category fishery if such society does not have any Board of Directors at the time of submission of its bid. During the period of ninety days, that is, from the date of automatic dissolution of the Board of society and till assumption of office by a duly elected new Board of the society after the next AGM/Election, there is nothing either in the Assam Fishery Rules, 1953 or in the Assam Cooperative Societies Act, 2007 which prohibits or debars such a cooperative society from submitting its bid if there is an officer of the Cooperation Department appointed under Section 41[6] of the 2007 Act to discharge the functions, perform the duties and exercise the powers that are vested in the Board of a registered cooperative society. In such view of the matter, this Court has not found any valid reason to hold that the bid submitted by the respondent society in response to the Tender Notice dated 04.04.2017 can be held to be defective on that count. Consequently, the ground urged by the petitioner in the writ petition, W.P.[C] no. 8195/2017 has no merit and as a result, the writ petition deserves to be dismissed.



23. In view of the discussion made above, the findings arrived at and the reasons assigned, both the writ petitions are found bereft of any merits and therefore, the same are dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant