



GAHC010149522020

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

Case No. : WP(C)/439/2019

NO. 11 PART-V KALONG NADI ANCHALIK MEEN SAMABAI SAMITY LTD.
AND ANR.

A REGD FISHERY CO OPERATIVE SOCIETY
NIZ GOBARDHAN
P.O- CHANDRAPUR
DIST- KAMRUP
ASSAM

REP. BY ITS SECRETARY SRI JAGADISH BARMAR
S/O- LATE JAY GOBINDA BARMAN
NIZ GOBARDHAN
P.O- CHANDRAPUR
DIST- KAMRUP
ASSAM

2: JAGADISH BARMAN
S/O- LATE JAY GOBINDA BARMAN
SECRETARY OF NO. 11 PART V KALONG NADI ANCHALIK MEEN SAMABAI
SAMITY LIMITED
R/O- NIZ GOBARDHAN
P.O- CHANDRAPUR
DIST- KAMRUP
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
FISHERIES DEPTT
DISPUR
GUWAHATI- 06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FISHERIES DEPTT



DISPUR
GUWAHATI- 06
3:THE SECRETARY
TO THE GOVT OF ASSAM
FISHERIES DEPTT
DISPUR
GUWAHATI- 06
KAMRUP (M)
ASSAM
4:THE ADDITIONAL SECRETARY
TO THE GOVT OF ASSAM
FISHERIES DEPTT
DISPUR
GUWAHATI- 06
KAMRUP (M)
ASSAM
5:THE DEPUTY COMMISSIONER
MORIGAON
DIST- MORIGAON
ASSAM

Advocate for : MR. J I BORBHUIYA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT AND ORDER (Oral)

Date : 20-01-2021

Heard Mr. J. I. Barbhuiya, learned counsel appearing for the writ petitioners. Also heard Ms. K. Phukan, learned Govt. Advocate, Assam, appearing for the respondent Nos.1 to 5.

2. In this writ petition, the NIT dated 09.01.2019 issued by the respondent No.5, inviting bids for settlement of No.11 Kalong Nadi Part-V Fishery has been challenged by the petitioner. For a just decision on the controversy raised in the writ petition it



would be necessary for this Court to briefly refer to the factual background of this case.

3. It appears from the record that sometime in the month of August-September, 2015, the authorities had issued an NIT for settlement of No.11 Kalong Nadi Part-V Fishery for a period of seven years. However, since only two bidders had responded to the said NIT, the tender process was cancelled and the Deputy Commissioner of the District i.e. the respondent No.5 had issued re-tender notice dated 23.12.2015 inviting fresh bids for settlement of the aforesaid fishery. In response to the NIT dated 23.12.2015 altogether six bidders including the writ petitioner herein had participated. Upon opening the bids, comparative statement was prepared and the same was forwarded to the Government of Assam, Fishery Department, for necessary approval. As per the comparative statement prepared by the department, the writ petitioner No.1 herein having quoted Rs.5,51,001/- as annual revenue, had emerged as the 5th highest bidder. Taking note of the quote submitted by the bidders, the fishery in question by issuing order dated 27.02.2017 the fishery was settled with the highest bidder i.e. Pub Malaybari Maach Byabosayee S. S. Ltd. at the annual rate of Rs.8,55,555/-. Aggrieved by the said decision the present petitioner had approached this Court by filing WP(C) No.1820/2017 assailing the order of settlement inter-alia contending that the authorities did not properly verify the issue of neighbourhood and location of the aforesaid society before issuing the order of settlement dated 27.02.2017. After hearing the arguments advanced by learned counsel for the parties, by order dated 29.08.2018 passed in WP(C) No.1820/2017, the learned Single Judge



had allowed the writ petition by making the following observations :-

“14. From the aforesaid discussion as one of the vital conditions of the tender document with respect to the issue of the neighbourhood and location of the Society in “the district” wherein the fishery is located is not decided, in my opinion, this writ petition has merit. The same is in clear violation of Clause-2 of the tender notice and under such circumstances, the impugned settlement order dated 27.2.2017 under Memo No. FISH 105/2008/Vol-I/1090 issued by the Additional Secretary to the Government of Assam, Fishery Department in favour of respondent No. 5 Society is liable to be set aside and quashed which I accordingly, do. The fishery has since long remained unsettled, under such circumstances, the Government is to apply its discretion in taking a decision for arriving at a logical conclusion of the tender or in else may take steps as per law for the settlement of the fishery. However, it is made clear Page No.# 9/9 that the respondent No.5 shall not possess the fishery as per the settlement order which is impugned in this writ petition inasmuch as the same is set aside and quashed.

15. The records produced by Sri S.R.Barua, the learned Govt. Advocate be returned back to him.”

4. Dissatisfied with the judgment and order dated 29.08.2018, the settlement holder viz., Pub Malaybari Maach Byabosayee S. S. Ltd. had preferred Writ Appeal No.265/2018 before this Court which was disposed by order dated 26.09.2018



whereby, the Hon'ble Division Bench had declined to interfere with the judgment and order dated 29.08.2018 passed by the learned Single Judge. In the order dated 26.09.2018, the Division Bench had, however, observed that the settling authority was to take the tender process to its logical end on the basis of the materials already on record. The operative part of the judgment and order dated 29.08.2018 passed in W.A. No.265/2018 is extracted herein below :-

“Upon due consideration, we find no good ground to interfere with the order assailed by the writ appellant. However, we observe that the settling authority will take the tender process to its logical end on the basis of materials already on record.

At this stage, Mr. Banik has further submitted that as the appellant was handed over possession of the fishery on 04.03.2017, though the possession of the appellant was taken back subsequent to the passing of the impugned Judgment, till such consideration takes place, the appellant should be allowed to continue.

As the possession of the Fishery is already handed over and lying khas, we are not inclined to allow the appellant to run the Fishery. We, however, direct the respondent authorities to pass appropriate order (s) with regard to settlement of the Fishery in question on or before 31.10.2018.

With the above observations and directions, the writ appeal is dismissed.”



5. In the wake of the order dated 26.09.2018 passed by the Division Bench, the Fishery Department had examined the matter and obtained opinion from the Judicial Department. As per the opinion of the Judicial Department, which is available on record, the bids submitted by the first four bidders were found to be deficient on one ground or the other. In so far as the 5th highest bidder i.e. the present petitioner is concerned, although all documents were apparently submitted by the bidder, yet, the price quoted by the petitioner was found to be below the minimum Government revenue i.e. Rs.6,08,656.59/-. Therefore, the Judicial Department had recommended that if the valid bidder (i.e. the petitioner) agrees to pay the highest bid value then its case can be considered. Alternatively, the department was also given the option to go for fresh tender by rejecting all the bids.

6. It appears that based on the opinion rendered by the Judicial Department, the Deputy Secretary to the Government of Assam had issued the NIT dated 09.01.2019 inviting fresh bids for settlement of No.11 Kalong Nadi Part-V Fishery for a period of seven years. The petitioners have assailed the NIT dated 09.01.2019 in this writ petitioner No.1 primarily on the ground that the observation made in the Division Bench order dated 26.09.2018 directing the respondents to take the process to its logical end would essentially lead to only one outcome i.e. to consider the bid submitted by the writ petitioner No.1 (5th highest bidder) and to issue the order of settlement in its favour. The learned counsel for the petitioners has argued that by issuing the NIT dated 09.01.2019, the respondents have acted in deviation to the directions passed by the Division Bench of this Court.



7. It is to be noted herein that the fishery in question could not be settled since the year 2015 due to a series of litigations pending before this Court. It is no doubt correct that the bid submitted by the petitioner pursuant to the NIT dated 23.12.2015 was adjudged to be technically valid. However, it is also to be noted herein that the amount quoted by the petitioner being the 5th highest bidder was found to be much below the minimum Government revenue fixed at Rs.6,08,656.59/-.

8. Mr. Barbhuiya submits that even if the amount quoted by his client was below the Government revenue, there is already a recommendation that the petitioner be allowed to quote the price of the highest bidder and accordingly his client had offered an amount which was 10% higher than the quoted price. Under the circumstances, there was no valid ground for the authorities to issue the impugned NIT dated 09.01.2019.

9. After a careful perusal of the materials on record, I am unable to agree with the submission made by learned counsel for the petitioners. Firstly, the Hon'ble Division Bench has not issued any direction to the respondents to settle the fishery with the petitioner No.1 at its quoted rate. The direction, if any, was to take the tender process to its logical end. In the order dated 26.09.2018 the Division Bench had also directed the authorities to pass appropriate orders with regard to the settlement of the fishery in question on or before 31.10.2018. Thereafter, the matter was examined at the Government level by making reference to the Judicial Department and a per the opinion of the authorities available on record, allowing the petitioner to offer higher amount for bagging settlement of the fishery was one of the options



contemplated by keeping the option for issuance of a fresh tender open by rejecting all the tenders. In view of the NIT dated 09.01.2019 it is apparent that the department has opted for the option of issuing fresh NIT and accordingly, issued the NIT on 09.01.2019. Such being the position, I am of the unhesitant opinion that the NIT dated 09.01.2019 has been issued after following proper procedure and in due deference to the directions contained in the order dated 26.09.2018 passed by the Division Bench of this Court.

10. It is also to be noted herein that the price quoted by bidders way back in the year 2015 cannot be said to be valid after lapse of more than five years since in the meantime, the price index for all commodities have substantially gone up. This Court cannot lose sight of the fact that one of the the basic purpose of issuing NIT for settlement of fishery is to protect the interest of Government revenue and therefore, if the Government is of the opinion that the proper course of action would be to issue a fresh NIT, I do not find any valid ground to interfere with such a decision of the Government. Moreover, merely because the bid submitted by the petitioner No.1 was found to be technically valid that by itself cannot be a ground to compel the Government to issue the order of settlement in its favour. It would still be open for the department to issue re-tender notice if there are valid grounds for doing so. The writ Court would be justified in interfering with such decision only if it is found that the same is vitiated by arbitrariness or has been actuated by malice so as to met out discriminatory treatment to one of the bidders. From the materials available on record, I am of the opinion that the decision to issue re-tender notice dated 09.01.2019 cannot be held to be arbitrary or unreasonable. Such being the position, it



is held that there is no merit in this writ petition.

The writ petition is accordingly dismissed.

The respondents are granted liberty to proceed with the NIT dated 09.01.2019 or to issue fresh notice and finalise the same in accordance with law as expeditiously as possible, preferably within a period of 30 days from the date of receipt of a certified copy of this order.

JUDGE

Comparing Assistant