



GAHC010109882019

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

Case No. : WP(C)/3314/2019

MALEGARH GOBINDAPUR FISHERY COOPERATIVE SOCIETY LTD.
REP. BY ITS SECRETARY, SRI PARESH CHANDRA DAS, AGE ABOUT 67 YEARS,
S/O LT. MOTILAL DAS, R/O MALEGARH, GOBINDAPUR, P.O.- MALEGARH, P.S.
JOGIGHOPA, DIST.-BONGAIGAON, PIN-783383, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPTT. DISPUR, GUWAHATI-781006

2:THE SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT. DISPUR
GUWAHATI-781006

3:THE DEPUTY SECRETARY
FISHERY DEPTT. GOVT. OF ASSAM
DISPUR
GUWAHATI-781006

4:THE DIRECTOR OF FISHERIES
ASSAM
MEEN BHAWAN
SARABBHATTI
GUWAHATI-781016

5:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM
PIN-783101



6:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
PIN-783380

7:THE DISTRICT FISHERY DEVELOPMENT AUTHORITY
GOALPARA
ASSAM

8:PUB GOALPARA FISHERY CO-OPERATIVE SOCIETY
REP. BY SECRETARY
SRI RANJIT KR. DAS
R/O VILL. NO. 1 BOLADMARI CHAR
P.O. BOLADMARI CHAR
DIST.-GOALPARA
PIN-7833101
ASSA

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **24.09.2021**
Date of Judgment : **02.11.2021**

JUDGMENT & ORDER (ORAL)

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, 1/77 Didgdar Brahmaputra Fishery (the Fishery). The petitioner which is a Cooperative Society, apart from challenging the settlement of the Fishery to the respondent No. 8, the 4th higher bidder also claims settlement of the Fishery in question in its favour.

2. The brief facts of the case can be narrated as follows:
3. The petitioner is a registered cooperative society in the district of Bongaigaon with registration No. D-101/1958-59 dated 09.02.1959 consisting of 100% Fisherman belong to the



Scheduled Caste. The area of operation of the petitioner society, amongst others, are Malegarh, Gobindapur, Jitikibari, Goalpara Baluchar, all under the earlier Goalpara Sub-Division which are presently under the Bongaigaon district. The petitioner society claims to have adequate fishing experience.

4. Pursuant to a notice inviting tender dated 24.05.2018 for settlement of the Fishery in question for 7(seven) years, the petitioner society which was eligible in all respects had submitted his bid. Amongst others, there was a requirement of Bakijai Clearance Certificate, Neighborhood Certificate, Experience Certificate, Annual Statements of Returns etc. On opening of the bids, the price bid of the petitioner was found to be Rs.21,03,225/- whereas that of by the respondent No. 8 was Rs.11,11,111/-. It was however held that the petitioner society was not within the jurisdiction of the Goalpara district and therefore not entitled to submit the tender. The said information was communicated to the petitioner, vide a letter dated 30.06.2018.

5. Subsequently, vide an order dated 20.12.2018, the respondent No. 8 was issued the settlement order at the price offered. The order further disclosed that rejection of the bid of the petitioner on the ground of an inappropriate Fishing Experience Certificate, improper Bakijai Clearance Certificate and also a Neighborhood Certificate.

6. It is the contention of the petitioner that none of the aforesaid grounds are valid and correct. On the other hand, it is contended that the authorities while making the settlement lost sight of a vital aspect of the matter namely, the huge difference in the price offered by the petitioner and that by the respondent No. 8 which was about Rs.10(ten) lacs. Accordingly, it is prayed that due interference be made by this Court in exercise of its extra ordinary jurisdiction.

7. I have heard Shri D. Das, learned Senior Counsel for the petitioner assisted by Shri S. Khound. I have also heard Shri M.K. Choudhury, learned Senior Counsel assisted by Shri P. Bhardwaj. The State is represented by Shri B.J. Talukdar, the Additional Senior Government Advocate, Assam. The records of the case have also been furnished by Shri Talukdar.

8. Shri Das, the learned Senior Counsel for the petitioner submits that the impugned action is not sustainable in law *inasmuch as* it suffers from non consideration of the relevant factors and is based on irrelevant and extraneous factors. The Senior Counsel has contended that the rejection of the bid of the petitioner society are on non existing grounds and even if it is



assumed that certain grounds have been assigned, those are wholly irrelevant and without any basis.

9. By drawing the attention of this Court to the impugned order dated 20.12.2018 passed by the Fishery Department, more particularly the discussions against paragraph 6 pertaining to the petitioner society, the Senior Counsel for the petitioner has submitted that the authorities have come to a conclusion that the bid of the petitioner suffers from the following shortcomings-

- i. The fishing experience certificate issued by the DFDO, Bongaigaon in the name of the President of the society which does not cover all the members of the society.
- ii. The Bakijai clearance certificate has been issued by the Bakijai Officers, North Salmara and not by the authority under the Deputy Commissioner, Bongaigaon.
- iii. The neighborhood certificate submitted by the petitioner society is not valid, as the same has not been issued by the concerned Circle Officer of the district under which the Fishery falls.

10. Accordingly, the Fishery was settled with the private respondent No. 8 at its offered price of Rs.11,11,111/- per annum whereas the bid offered by the petitioner was Rs.21,03,225/-.

11. The Senior Counsel for the petitioner has contended that none of the aforesaid three grounds are valid grounds and cannot be sustained in law. So far as the first ground is concerned, namely, the Fishery experience certificate, no doubt from a bare reading of the certificate it appears that the same has been issued to Gobind Chandra Das but it has been specifically stated in the said certificate that Gobind Chandra Das is the President of the petitioner society which was registered on 09.02.1959.

So far as the second ground is concerned pertaining to Bakijai clearance certificate, it is contended that the certificate submitted dated 09.04.2018 has been issued by the Bakijai Officer, North Salmara, Abhayapur under whose jurisdiction the petitioner society situated and is the competent authority. Therefore, no fault can be attributed regarding the said certificate. Alternatively, it is submitted that a Division Bench of this Court, vide an order dated 29.09.2011 passed in **W.A./294/2011 (Abu Talib Vs. AFDC)** has clearly laid down that the requirement submitting Bakijai clearance certificate could not be taken as rigid requirement as it will not have any role in the level playing field.

So far as the third ground is concerned namely neighborhood, the competent authority namely the Circle Officer, Shrijangram Revenue Circle, Ahbaypuri whereby it has been categorically stated that after perusal of the report of the Lat Mondal the petitioner society has been certified to be adjacent to the Fishery in question namely, 1/77 Digdhar Brahmaputra Meen Mahal.

12. The Senior Counsel, Shri Das for the petitioner has further drawn the attention of this Court to the audited balance sheet of the petitioner as there was also some objection, though not reflected in the impugned order regarding the same.

13. The Senior Counsel for the petitioner has also drawn the attention of this Court to the official communication dated 09.01.2013 issued by the Deputy Commissioner, Goalpara to the Fishery Department in connection with an order of this Court passed in a writ petition pertaining to the same Fishery namely, 1/77 Digdhar Brahmaputra Meen Mahal which was settled with the petitioner society as per an earlier order dated 07.09.2007 passed in WP(C)/1509/2007. In the said order dated 09.01.2013 the Deputy Commissioner, Goalpara himself has come to a categorical finding that the Fishery in question is covered both by Bongaigaon and Goalpara district and therefore the societies belonging to Goalpara and Bongaigaon districts are equally eligible to submit the tenders. The said communication has also stated that the petitioner society was registered on 09.02.1959 prior to bifurcation of the erstwhile Goalpara district and consist of 100% actual Fisherman.

14. Apart from the decision of the Division Bench cited to buttress the argument regarding the Bakijai certificate, reliance is also made on a decision of this Court reported in **(2019) 8 GLR 372 (Dimbeshwar Das Vs. State of Assam)**. Dealing with a similar clause regarding the requirement of being a resident of the same district this Court has held such clause can lead to an unforeseen complication as in a hypothetical case the Fishery may cover more than one district. This court has further laid down the requirement of the Rules is to be neighborhood and not be in the same district.

15. The Senior Counsel for the petitioner accordingly submits that the present is a fit case for interference by this Court and to pass appropriate directions giving the relief to the petitioner society.



16. Countering the stand of the petitioner, Shri B.J. Talukdar, learned Additional Senior Government Advocate, Assam has submitted that no case for interference has been made out and the order dated 20.12.2018 impugned in this writ petition is not liable for any interference.

17. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondent Nos. 1 to 3 on 24.07.2019, more specifically, the averments in paragraph 5 thereof, the learned State Counsel has submitted that the bid of the petitioner society was defective as being violative of clause 4(ga), 4(gha), 4(Kha) and 4(Ta) of the NIT. The aforesaid clauses relate to the Fishery experience, Bakijai dues, neighborhood and Clause 4(ta) is in connection with audited balance sheet for the year 2017-18. Though, the impugned order does not make any whisper regarding violation of clause 4(ta), the said point has been taken into affidavit.

18. The respondent No. 8 which is the beneficiary, represented by Shri M.K. Choudhury, learned Senior Counsel has submitted that firstly none of the clauses of the NIT are the subject matter of challenge and from the materials furnished by the petitioner with the bids, the authorities have come to a finding that the bid of the petitioner was defective for non fulfillment of clauses 4(ga), 4(gha), 4(Kha) and 4(Ta) of the NIT. It is contended that having submitted to the tender process, it was incumbent upon the petitioner to submit the requisite documents as required by the NIT. The Senior Counsel submits that all the grounds taken up in the impugned order by which the bid of the petitioner has been rejected are germane and therefore, it cannot be said that there has been any arbitrariness in the matter.

19. Rejoining the submissions on behalf of the petitioner it is submitted that the petitioner has, without any ambiguity, demonstrated that the grounds taken in the impugned order are not sustainable in law. As regards the ground of non submission of the audited balance sheet for the year 2017-18 the same has taken up in the affidavit-in-opposition of the respondent Nos. 1 to 3. Apart from the fact that such plea cannot be taken up for the first time in the affidavit when the same is not reflected in the impugned order, even on facts, the said allegation is incorrect as such audited balance sheet were furnished by the petitioner. In this regard, the petitioner has relied upon the landmark case of **Commissioner of Police Vs. Gordhandas Bhanji** reported in **AIR 1952 SC 16**.

20. 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.

21. The impugned order dated 20.12.2018 by which the bid of the petitioner has been rejected lays down the three grounds for such rejection. The first ground pertains to the Fishing experience certificate. The petitioner in support of the fishing experience certificate has annexed a certificate issued by the District Fishery Development Officer, Bongaigaon on 20.06.2018. Though apparently the said certificate appears to be in the name of one Gobind Chandra Das, it is clearly mentioned in the certificate that the said Gobind Chandra Das is the President of the society. The certificate is also required to be read along with the certificate dated 05.05.2018 issued by the competent authority which certifies that the petitioner society consist of 100% Scheduled Castes actual Fishermen by birth and duly registered. The further fact which would have a material bearing in this case is that on many prior occasions, the petitioner society has been allotted fisheries on lease including the present Fishery wherein the same condition was prevailing. In this connection, immediate reference can be made to the communication dated 09.01.2013 issued by the Deputy Commissioner, Goalpara to the Department stating the fact that the petitioner society was earlier settled with the same Fishery in the year 2007 and that the same consist 100% actual Fishermen belonging to the Scheduled Castes Community. The relevant statements of the communication dated 09.01.2013 is extracted hereinbelow-

"With reference to the subject noted above, I am to inform you that the 1/77-Digdhar Brahmaputra Fishery was settled with the Malegarh, Gobindapur Fishery Co-operative Societies as per Gauhati High Court order directed. 7.9.2017 in WP(C)/1509/2007 and as per Govt. Order No. FISH.4/2007/219 dated. 7.4.2017/219 dated. 7.4.2017.

The Malegarh Gobindapur Fishery Cooperative Society was registered on 9.2.1959 prior to bifurcates of earst while Goalpara District. The members of the society consisted 100% actual fishermen belonging to schedule caste community. The society also consisting equally 5076 members of Goalpara district and 50% from Bongaigaon District.

It is mention here that the No. 1/77 Digdhar Brahmaputra Fishery is covered by the

Goalpara and Bongaigaon District. Hence the societies belong to the Goalpara and Bongaigaon District are equally eligible to submit the tenders."

22. As regards the second ground of rejection namely non furnishing of Bakijai certificate, this Court has noticed that the said certificate has been produced by the petitioner which was issued by the Bakijai Officer, Cooperative Society, North Salmara dated 09.04.2018. The said Officer being the competent officer having jurisdiction over the matter with relation to the locality of the registered address of the petitioner, the rejection on the aforesaid grounds is not sustainable in law, in any case, this Court is bound by the law laid by the Hon'ble Division Bench in the order dated 29.09.2011 passed in **W.A./294/2011 (Abu Talib Vs. AFDC & Ors.)**. For ready reference, the relevant paragraph 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."

23. As regards the third ground, namely to be a resident of the district, the same apart from being a requirement in deviation of the Rules, is wholly irrelevant. What is relevant as per the Rules is the requirement in the neighborhood in the Fishery. In this connection, it is again required to revert back to the communication dated 09.01.2013 of the Deputy Commissioner, Goalpara which is in categorical terms lays down that the Fishery in question namely, 1/77 Digdhar Brahmaputra Meen Mahal is covered by the Goalpara and Bongaigaon district and the Societies belonging to both the districts are equally eligible to submit the tenders. This Court has also taken into consideration the case law submitted by the petitioner on this point. This Court in the case of **Dimbeshwar Das (Supra)** has held as follows:

"10.1. This clause can lead to unforeseen complications. In a hypothetical case, a Fishery may cover more than one district, which is the position in respect of quite a few large fisheries in the State of Assam. It may also happen that though a fishery is situated in one district it may be situated near the border of another neighbouring district. Despite being in the relative neighbourhood of the Fishery, a prospective tenderer of the other district would stand debarred from submitting tender for the Fishery, whereas a

prospective tenderer residing far away from the Fishery, but within the same district may be eligible to bid for the Fishery. Rule 12 of the Assam Fishery Rules, 1953, which deals with settlement of 60% category of fisheries by the State Government, mentions neighbourhood as one of the relevant criteria for settlement. After the amendment w.e.f. 04.02.2005, Rule 12 says that all registered fisheries shall be settled under the tender system provided that Government shall settle 60% category fishery with special category of cooperative fisheries, non-government organizations and self help groups consisting of 100% actual fishermen in the neighbourhood of the Fishery concerned.

11. Though Assam Fishery Rules, 1953 may not be applicable in respect of settlement of fisheries by the Corporation, nonetheless, what can be deduced from the above is that in respect of settlement of fisheries, the relevant criteria is neighbourhood of the fishery or nearness of the tenderer to the fishery. Therefore, instead of insistence on neighbourhood, insistence on tenderer having residence in the same district as the fishery may lead to a situation where deserving tenderers who are otherwise in the neighbourhood of the fishery would be excluded from the tender process only on the ground of being a resident of another district. This is an artificial distinction brought in by the Corporation having no nexus with the object of settlement of fishery. As a matter of fact, such clause may be offensive of Article 14 of the Constitution of India.

24. As regards the fourth grounds taken up for the first time in the affidavit-in-opposition, this Court is of the view that the impugned order being silent, the authorities are precluded from taking up the said point as it is in violation of the settled law laid down by the Hon'ble Supreme Court in the landmark case of the **Gobardhandas Bhanji (Supra)**, the Hon'ble Supreme Court in paragraph 13 has clearly laid down as follows:

“13. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed



and must be construed objectively with reference to the language used in the order itself.

25. The said decision is consistently followed and has reiterated in a number of cases including the case of ***Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.***, reported in ***(1978) 1 SCC 405***, wherein the following was laid down:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself"

Orders are not like old wine becoming better as they grow older."

26. However, since the records of the case produced gives an indication about the said ground, though not communicated, this Court has perused the audited balance sheets which have been annexed in the writ petition. The requirement in the NIT is for submission of audited balance sheet for three consecutive years without specifying the last year and the records would indicate that the audited balance sheet for three years up to 2016-17 have been submitted by the petitioner society along with the bid. This Court is further of the opinion that in case, the authorities wanted to have the audited balance sheet for the current period i.e. 2017-18 of the petitioner, the same could have been intimated to the petitioner, as the same is directory



requirement.

27. What further intrigues this Court is that the petitioner society is not a new society but a society registered in the year 1959 and there are materials on record to establish that not only the petitioner was considered for settlement of the Fishery in question, there has been instances of the Fishery being settled with the petitioner society. The communication dated 09.01.2013 of the Deputy Commissioner, Goalpara which has been mentioned above with slight details would bring us to an inevitable conclusion that the none of the principal three grounds for rejection of the bid of the petitioner would be applicable. If the petitioner society was held eligible and was indeed settled with the Fishery in question on earlier occasions, there is no scope for rejecting the bid of the petitioner on the cited grounds.

28. This Court has also noticed that the difference of price offered by the petitioner and that of the respondent No. 8 is huge. While the petitioner had quoted a price of Rs.21,03,225/-, the bid of the respondent No. 8 is Rs.11,11,111/- whereby the difference is about Rs.10 lacs. 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.

29. Under the aforesaid facts and circumstances, this Court would left with no other option but to hold that the impugned order dated 20.12.2018 by which the bid of the petitioner has been rejected and that of the respondent No. 8 has been accepted is not sustainable in law and accordingly the same is set aside and quashed. Consequently, it is directed that the settlement of No. 1/77 Didgdar Brahmaputra Fishery be made with the petitioner society at the price offered by it. The said settlement has to be for the period which was mentioned in the NIT dated 24.05.2018 which is seven years. The aforesaid process be completed expeditiously and in any event, within a month from the date of receipt of a certified copy of the order.

30. Writ petition accordingly stands allowed. Records of the case are returned herewith to



Shri B.J. Talukdar, learned Additional Senior Government Advocate, Assam.

JUDGE

Comparing Assistant