



GAHC010303102019

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

Case No. : WP(C)/9225/2019

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

A REGISTERED FISHERY CO-OPERATIVE SOCIETY, NIZ-GOBARDHAN, P.O.
CHANDRAPUR, DIST. KAMRUP, ASSAM, AND IS REP. BY ITS SECRETARY
SRI JAGADISH BARMAN, OF NIZ-GOBARDHAN, P.O. CHANDRAPUR, DIST.
KAMRUP, ASSAM

2: JAGADISH BARMAN
S/O LT. JAY GOVINDA BARMAN
SECRETARY OF NO. 11 PART-V
KOLONG NADI LTD. ANCHALIK MEEN SAMABAI SAMITY LTD. R/O NIZ
GOBARDHAN
P.O. CHANDRAPUR
DIST. KAMRUP, ASSAM.(BOTH THE PETITIONER HAVE COMMON
INTEREST AND COMMON CAUSE OF ACTION.

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPTT. DISPUR, GUWAHATI-6

2:THE SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT. DISPUR
GUWAHATI-6
KAMRUP (M)
ASSAM

3:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT. DISPUR
GUWAHATI-6
KAMRUP (M)
ASSAM



4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
REVENUE DEPTT. DISPUR
GUWAHATI-6

5:THE REGISTRAR OF CO-OPERATIVE SOCIETIES
ASSAM
GUWAHATI-1
KAMRUP (M)
ASSAM

6:THE ASSISTANT REGISTRAR OF CO-OPREATIVE SOCIETIES
ASSAM
GUWAHATI KAMRUP (M)
ASSAM

7:THE DEPUTY COMMISSIONER
KAMRUP (M)
DIST. KAMRUP(M)
ASSAM

8:THE CIRCLE OFFICER
CHANDRAPUR REVENUE CIRCLE
CHANDRAPUR
KAMRUP (M)
ASSAM

9:THE DISTRICT FISHERY DEVELOPMENT OFFICER
KAMRUP (M)
GUWAHATI
ASSAM

10:NO. 1 (A) AND 2 UPPER PART BRAHMAPUTRA FISHERY CO-OPERATIVE
SOCIETY LTD.
PANIKHAITI
PRAGJYOTISHPUR
REP. HEREBY ITS SECREATRY SRI DWIJEN HAZARIKA AGED ABOUT 65
YEARS
S/O NABIN HAZARIKA
R/O M.C. ROAD
UZAN BAZAR
P.O. UZAN BAZAR
P.S. LATASHIL DIST. KAMRUP (M)
ASSA



Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : MR. D K SHARMA(ADDL SR.GA, ASSAM)

Linked Case : WP(C)/8174/2019

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

A REGISTERED FISHERY CO-OPERATIVE SOCIETY

NIZ-GOBARDHAN

P.O. CHANDRAPUR

DIST. KAMRUP

ASSAM AND IS REP. BY ITS SECRETARY SRI JAGADISH BARMAN

OF NIZ-GOBARDHAN

P.O. CHANDRAPUR

DIST. KAMRUP

ASSAM

2: JAGADISH BARMAN

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SECRETARY OF NO. 11 PART-V KOLONG NADI ANCHALIK MEEN SAMABAI
SAMITY LTD. R/O NIZ-GOBARDHAN

P.O. CHANDRAPUR

DIST. KAMRUP

ASSAM.(BOTH THE PETITIONERS HAVE COMMON INTEREST AND
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THE STATE OF ASSAM AND 9 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
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GUWAHATI-6

2:THE ADDITIONAL SECRETARY

TO THE GOVT. OF ASSAM

FISHERY DEPTT. DISPUR

GUWAHATI-6

KAMRUP (M)

ASSAM

3:THE REGISTRAR

CO-OPERATIVE SOCIETIES

ASSAM

GUWAHATI-1

KAMRUP (M)

ASSAM

4:THE ASSISTANT REGISTRAR



OF CO-OPERATIVE SOCIETIES

ASSAM

GUWAHATI

KAMRUP (M)

ASSAM

5:THE COMMISSIONER AND SECRETARY

TO THE GOVT. OF ASSAM

REVENUE DEPTT. DISPUR

GUWAHATI-6

6:THE DEPUTY COMMISSIONER

KAMRUP (M)

DIST. KAMRUP (M)

ASSAM

7:THE ADDITIONAL DEPUTY COMMISSIONER

KAMRUP (M)

ASSAM

8:THE CIRCLE OFFICER

CHANDRAPUR REVENUE CIRCLE

CHANDRAPUR

KAMRUP(M)

ASSAM

9:THE DISTRICT FISHERY DEVELOPMENT OFFICER

KAMRUP (M)

GUWAHATI

ASSAM

10:No.1

1(A) AND 2 UPPER PART BRAHMAPUTRA FISHERY CO-OPERATIVE
SOCIETY LTD.

PANIKHAITI

PRAGJYOTISPUR

REPRESENTED BY ITS SECY. SRI DWIJEN HAZARIKA AGED ABOUT 65
YEARS

S/O LT. NABIN HAZARIKA

R/O M.C. ROAD

UZAN BAZAR

P.O. UZAN BAZAR

P.S. LATASIL

DIST. KAMRUP(M)

ASSAM

Advocate for : MR. J I BORBHUIYA

Advocate for : MS. K PHUKAN (GA

ASSAM

(R-1

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6

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8 & 9)) appearing for THE STATE OF ASSAM AND 9 ORS.

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **27.04.2023**

Date of Judgment : **14.06.2023**

JUDGMENT & ORDER

The fairness and transparency which are the hallmark of a process involving distribution of State largesse is once again the issue which has arisen for determination in the present two writ petitions instituted by the same petitioners. The matter pertains to settlement of the Kamrup Prajgyotishpur Brahmaputra Meen Mahal (hereinafter "Fishery"). Since both the writ petitions are connected and pertain to the same settlement process, those were heard analogously and are disposed of by this common judgment and order.

2. Before going to the issue to be decided, it would be convenient to place the facts of the cases in brief.

3. The petitioner no. 1 is a Samabai Samity whereas the petitioner no. 2 is its Secretary. The petitioner no. 1 is a registered Co-Operative Society and all its Members belong to the Scheduled Castes Community of 100% actual fishermen in the neighborhood of the Fishery in question. A tender process was initiated vide notice dated 10.06.2019 in which the petitioner no. 1 had participated and had emerged as the highest bidder. However, the petitioners allege that the Additional Deputy Commissioner, Kamrup (M) had passed an order dated 23.09.2019 allowing the earlier lessee to run the Fishery on daily basis by holding that the neighborhood certificate of the petitioner no. 1, Society is incorrect. It has further been held that none of the villages where the members of the petitioner no. 1 reside are within the area of

operation of the Fishery. The aforesaid order has been said to be passed in compliance with an order dated 19.07.2019 passed by this Court in WP(C)/4774/2019. The aforesaid order dated 23.09.2019 is the subject matter of challenge in the first writ petition.

4. The second writ petition being WP(C)/9225/2019 pertains to a challenge made to an order dated 18.11.2019 by which the Fishery in question was settled with the private respondent in spite of the fact that the bid of the said private respondent was the lowest whereas the bid of the petitioner no. 1 was the highest.

5. The respondents including the private respondent contend that the impugned action has been taken in accordance with law and by taking into consideration all the relevant facts and circumstances. It is contended that the findings arrived at that the petitioner no. 1 is not in the neighborhood are factual matters which cannot be gone into by this Court in exercise of its writ jurisdiction. It is also contended that the requirement is to be a "valid" highest bidder and simply because the financial bid offered by a party is higher, that by itself would not be the determining factor.

6. I have heard Shri JI Borbhuiya, learned counsel for the petitioners in both these writ petitions. I have also heard Shri DK Sarmah, learned Additional Senior Government Advocate, Assam; Ms. G. Hazarika, learned Standing Counsel for the Revenue Department and Ms. YK Konyak, learned counsel appearing for the Co-operation Department. Shri S. Borthakur, learned counsel has appeared for the private respondent. The materials placed before this Court have been carefully examined.

7. Shri Borbhuiya, learned counsel for the petitioners submits that the findings by which the petitioner no. 1 has been held to be disqualified are perverse. He has referred to the certificates issued by the various authorities, namely, the Registration Certificate, Certificate regarding Neighborhood, 100% Actual Fisherman Certificate and Certificate regarding Scheduled Castes Community. A list of members of the petitioner no. 1 Society has also been annexed to the writ petition with their

addresses. Another Certificate issued by the Assistant Registrar of Co-Operative Society, Guwahati has been annexed.

8. It is submitted that vide an order dated 08.10.2018 issued by the Fishery Department, the earlier lessee Upper Part Brahmaputra FCS Ltd. (private respondent) whose term of seven years had expired on 08.08.2018 was allowed to run the Fishery temporarily on daily basis till regular settlement of the Fishery done by tender system. The ground cited was that it may take some more time to complete the process of regular settlement. The order also reflects that the petition by which the private respondent had sought extension was forwarded by the PS to the Hon'ble Minister, Fishery Department.

9. Thereafter, a Notice Inviting Tender dated 10.06.2019 was issued for the Fishery in question in which the petitioner no. 1 had participated along with all requisite documents. At this stage, the private respondent had instituted WP(C)/4774/2019 with the allegation that the bid of the petitioner no. 1 was defective. This Court vide an order dated 19.07.2019 had disposed of the said writ petition by directing examination of the complaint made in this regard and to dispose of the same by a speaking order.

10. Since the order was passed at the motion stage itself, the petitioner no. 2 herein had preferred a review being Review.Pet./12/2019. This Court vide order dated 06.09.2019 had directed that both the parties be given proper opportunity of presenting their cases before any final order is passed.

11. The Additional Deputy Commissioner, Revenue Fishery Branch, Kamrup thereafter passed a Speaking Order dated 23.09.2019 whereby the Neighborhood Certificate submitted by the petitioners was found to be incorrect as none of the villages having operational area is situated on the bank of the Fishery in question. It has further been held that the majority of the Society share holders reside in village Niz Gobordhon which is situated in the bank of river Kolong which is 01 KM distance

from the Fishery in question. The learned counsel for the petitioners has also referred to the Comparative Statement from which it would appear that the bid submitted by the petitioners was Rs.60,71,789/- whereas the bid submitted by the private respondent is Rs.38,63,184/-. The remark so far as the petitioners are concerned is however that the information in the Neighborhood Certificate is not correct.

12. Assailing the aforesaid order dated 23.09.2019 and also against the remarks made in the Comparative Statement, the writ petitioners had instituted the first WP(C)/8174/2019 in which notice was issued on 08.11.2019 with an observation that the prayer for interim order would be considered on the returnable date which was fixed on 29.11.2019 and further that the process of settlement of the Fishery in question undertaken by the respondents shall abide by further orders that may be passed in the case.

13. However, even before the returnable date, an order was passed on 18.11.2019 settling the Fishery with the private respondent. Though the impugned order records that bid offered by the petitioner was Rs.60,71,789/- which was the highest, the 100% Actual Fisherman Certificate was issued by the DFDO, Kamrup instead of the ARCS, Kamrup and that another Certificate though issued by the Circle Officer, Chandrapur that the Society consisted of 100% Fishermen, both the Certificates were not as per format. It has further been recorded that on the neighborhood issue there was a complaint by the private respondent on the authenticity of the Certificate dated 17.02.2012 issued by the Circle Officer in favor of the petitioners in which the High Court had passed an order dated 19.07.2019 directing examination of the complaint. Accordingly, the authorities had examined the same and passed a speaking order dated 23.09.2019 holding that while the private respondent was on the bank of the Fishery, the petitioner society was located at the distance of 01 KM. Reference has also been made to Rule 12 of the Assam Fishery Rules, 1953 and the finding is that though three contenders appear to be under the zone of consideration, the fourth highest bidder was found to be more suitable as the members of the Society reside on

the bank of the river whereas the other two are located at the a distance of 01 KM. Accordingly, the Government had settled the Fishery with the private respondent with a direction to the Deputy Commissioner, Kamrup and to take necessary action for handing over the possession of the Fishery to the private respondent. The order has been said to be passed in terms of the interim order of this Court dated 08.11.2019.

14. Shri Borbhuiya, learned counsel for the petitioners have submitted that the impugned order dated 18.11.2019 is absolutely unreasonable, arbitrary and based on extraneous considerations and irrelevant factors. He submits that a reading of the impugned order reveals that the rejection of the bid of the petitioners is mainly on two grounds- firstly, the 100% Actual Fishermen Certificate issued by the DFDO and not the ARCS and secondly the same is not as per format. The first objection is a perverse one inasmuch as, the concerned Certificate was indeed issued by the ARCS which is also annexed to the writ petition as Annexure-6. As regards the second ground, it is submitted that no specific format has been prescribed for such Certificate and it is only the substance of the Certificate which would matter and not the format.

15. On the issue of neighborhood, the learned counsel for the petitioners submits that there is no mathematical formula for ascertaining the said issue. He submits that the same would depend on case to case basis and in the instant case, it cannot be said that the petitioner society is not in the neighborhood of the Fishery in question. In connection with the said submission, reliance has been placed on the following case laws:

- i. 1996 (3) GLT 547 [Mangaldoi Pioneer Fishery Co-Op Society Ltd. Vs. State of Assam & Ors.]***
- ii. 2001 (1) GLT 139 [Pljupara Haridova Paharpara Jaljally Matchya Babysai Sampradai Samittee Ltd. Vs. State of Assam & Ors.]***
- iii. 2003 (1) GLT 155 [DB] [Brahmaputra Part-II Mach Mahal SS Ltd. Vs. State of Assam & Ors.]***

iv. 2009 (4) GLT 909 [Manash Padmabari Jiniram Fishery CS Ltd. Vs. State of Assam & Ors.]

16. In the case of **Mangaldoi Pioneer (supra)**, it has been laid down that the requirement under Rule 12 of the Assam Fishery Rules, 1958 (hereinafter Rules) is to be in the neighborhood. It has further been explained that the expression "neighborhood" is distinct from expression "area of operation".

17. In the case of **Pljupara Haridova (supra)**, it has been held that the requirement is to reside in the neighborhood of the Fishery in question which may not be fulfilled merely by having an Office of the society in the neighborhood.

18. In the case of **Brahmaputra Part-II (supra)**, the Hon'ble Division Bench of this Court had explained the meaning of neighborhood by laying down that such requirement cannot be measured by a mathematical precision. It would be beneficial to extract certain observations made in that case which is as follows:

“(13) Turning to the aspect of neighbourhood, we feel that the expression needs interpretation so as to advance the object and purpose of the rules and not to frustrate it. As observed earlier, in a given fact situation, there may be more than one society in the neighbourhood of the fishery. It may so happen that a society fulfilling the other conditions of the proviso and which is more deserving for such settlement is, distant wise, slightly further away from the fishery, than the other eligible societies. Will the object and purpose of the proviso be served if the former society is discarded only on the ground that though it is more deserving, the other societies are nearer to the fishery? In other words, is the word 'neighbourhood' to be interpreted in terms of inches, feet and yards or a more pragmatic and purposive, interpretation has to be provided thereto. The Black law's Dictionary defines the word 'neighbourhood' as a place near; an adjoining or surrounding district; a mere minimum vicinity; vicinage... In ordinary and common usage 'locality' is synonymous in meaning

with 'neighbourhood'. In the law Lexicon by P. Ramanatha Aiyer, the word 'neighbourhood' has been defined to signify nearness as opposed to remoteness.

“whether a place is in the neighbourhood of another place depends upon no arbitrary rule of distance or topography. One house may be said to be in the neighbourhood of another house and not structurally adjoin it.....”

(14) The term 'neighbourhood' does not express any definite idea of distance. A few feet or several 100 yards or even a greater distance from an object would be in its neighbourhood.

(15) Thus, no mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word as above, there is evidently an element of flexibility and, therefore, while dealing with the proviso to Rule 12 as above, it would, in our opinion, neither be permissible nor desirable to ascertain the -neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery co-operative society is in the vicinity and 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 outiose in a given fact situation.

(16) It would be appropriate at this stage to extract the observations of this Court on the aspect of neighbourhood as contained in its decision in Majorati Min samabai Samity Ltd. (supra) wherein, this Court observed as follows:

“the question of neighbourhood and area of operation has been the subject matter of debate and discussions in several judgments and even the learned Single Judge has also made a reference to it, towards end of the judgment, indicating as to what is meant by neighbourhood in the

context of Rule 12. Without disputing the proposition, here again, the question that falls for consideration is one of the extent and scope of judicial review whether this Court in exercise of its power under Article 226 examine the question of neighbourhood with such minutest factual details as to measure every inch of the distance at which a Society is situated. It is not something to be measured in foot and inches, all that this Court extending the writ jurisdiction such an extent would be nothing sort being violent to the Article 226 of the constitution, all that the Court can examine as to whether the condition and requirements of neighbourhood, as prescribed under the rules, it was present to the mind of the settling authority. It is not expected that the writ Court would be the Surveyor and measure the distance in meter and centimeter. If the Settling authority is alive to the requirements of the rules and the same is reflected in the order of settlement of a fishery, the writ Court will not be justified in undertaking and exercise of measuring the distance between two competent claimants. After all 'neighbourhood' is a relative term which is to be taken into account alongwith other conditions. It is not the intent of rules to treat neighbourhood with geometrical altitude and procedure."

(17) We are in respectful agreement with the views expressed as above."

19. In the case of **Manash Padmabari (supra)**, it has been laid down that the objective of the requirement to be the neighborhood of the Fishery is to take care of the means of livelihood of the actual fishermen in the neighborhood.

20. The learned counsel for the petitioners has submitted that Condition No. 2 in the NIT itself makes it clear the requirement and the eligibility which is in tune with Rule 12 of the Rules. He submits that the petitioner no. 1 society fulfills all the eligibility criteria.

21. The learned counsel for the petitioners has also raised questions on the eligibility of the private respondent. By referring to the affidavit-in-opposition filed on 10.02.2020 in WP(C)/9225/2019, he submits that the Secretary of the respondent Society is himself a resident of Uzanbazar, Guwahati which itself would show that members of the private respondent is not in the neighborhood of the Fishery. Further, in the additional affidavit dated 01.03.2023, the Secretary has stated himself to be the resident of MC Road, Uzanbazar, PS-Barbali, District-Lakhimpur.

22. Dealing with the affidavit-in-opposition dated 27.01.2020 filed by the Fishery Department, Shri Borbhuiya, learned counsel for the petitioners by referring to the objections made in paragraph 4 has submitted that as per the Department, itself the Assistant Registrar of Cooperative Societies of the concerned district is the competent authority to issue 100% Actual Fisherman Certificate and in this case, such Certificate is available for the petitioner society which has also been annexed to the writ petition as Annexure-6. He accordingly submits that the present is a fit case wherein interference of this Court is warranted.

23. *Per contra*, Shri DK Sarmah, learned Additional Senior Government Advocate, Assam submits that the impugned order contains reasons and therefore no interference may be made. Shri Sarmah has however candidly and fairly submitted that the 100% Actual Fisherman Certificate in favor of the petitioner no. 1 issued by the concerned ARCS was available in the records. By referring to the records in original, the learned State Counsel has also made a startling revelation that as per the Report by the Circle Officer, the recommendation to settle the Fishery was actually in favor of the petitioner which however has been ignored by the Department. The said Report has been marked as Flag-X in the original records.

24. Both learned counsel for the Co-operation Department as well as learned Standing Counsel for the Revenue Department submit that they do not have much role in these matters and would go by the submissions made on behalf of the State.

25. Defending the action of the respondents in rejecting the bid of the petitioners and making the settlement in favor of the private respondent, Shri S. Borthakur, learned counsel for the private respondent has submitted that since the records has revealed that the 100% Actual Fisherman Certificate in favor of the petitioner by the concerned ARCS was there, he would not join issues so far as the argument regarding the first ground of rejection is concerned. However, he submits that the ground of neighborhood on which the bid of the petitioners has been rejected is a substantial ground. By referring to the Certificate issued by the ARCS which has been heavily relied upon by the petitioners, it has been therein stated that the petitioner society is in the neighborhood of certain Fisheries, namely, No. 25 Dhepujijan, No. 28 (eligible) / No. 104 Malia Group Fishery. He accordingly contends that the said Certificate is not in respect of the present Fishery.

26. Shri Borthakur has elaborated his submissions that the villages of the petitioner society are not in the neighborhood. By referring to the additional affidavit filed on 01.03.2023, he submits that along with the said affidavit, a communication dated 03.08.2010 has been annexed as per which the distances of four numbers of villages from the Fishery in question has been given which ranges from 14 KMs to 24 KMs. A further communication dated 11.08.2020 has been referred to regarding the distance of four villages which ranges from 12 to 14 KMs.

27. Shri Borthakur, the learned counsel accordingly submits that the aforesaid factors are relevant which were taking into consideration before the decision was taken. He further submits that the Settling Authority found the bid of private respondent more suitable and such discretion should not be interfered with, more so, in absence of any allegation of *mala fide*. He further submits that the bid of his client is commercially viable and therefore, no interference is called for.

28. Rejoining his submission, Shri Borbhuiya, learned counsel for the petitioners has contended that the objections raised by the private respondent by taking recourse to



certain documents are not at all relevant inasmuch as, the list of the members of the petitioner society contains the names of the villages of each of the petitioners. He further submits that even assuming that villages where one or two members resides are not in the immediate neighborhood, the same shall not determine the requirement of the members to be in the neighborhood. He further submits that when the impugned order itself clarifies that the distance from the concerned Fishery is 01 KM, the submissions made by the private respondent are not relevant at all as such documents cannot override the official document.

29. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have also been duly examined. The records in original which have been placed before this Court have also been examined.

30. The rejection of the bid of the petitioners vide the impugned order dated 18.11.2019 is basically on two grounds: namely, 100% Actual Fisherman Certificate was not issued by the appropriate authority i.e. ARCS of the concerned district and secondly, the ground of neighborhood with the finding that majority of the share holders of the petitioner society reside at village Niz Gobordhon which is situated at 01 KM distance from the Fishery. So far as the first ground is concerned, the same appears to be a perverse ground inasmuch as, such Certificate issued by the ARCS has not only been annexed to the writ petition but there is also a fair disclosure by the learned State Counsel that the original records indeed contain such a Certificate. An attempt has been made by Shri Borthakur that the said Certificate annexed as Annexure-6 to the writ petition, the same states that the members of the society are in the neighborhood of certain Mahals which do not contain the name of the present Fishery. However, the purpose of the said Certificate and the objections raised pertains to the question of issuing authority as well as the purpose. In the instant case, the issuing authority is the ARCS of the concerned district and the purpose is to certify that all the members of the petitioner no. 1 are 100% actual fishermen. Therefore,

the objection raised by Shri Borthakur may not be relevant.

31. As regards the second ground, namely, “neighborhood”, the findings arrived at in the impugned order is that majority of the share holders of the petitioner society reside at village Niz Gobordhon which is situated at 01 KM distance from the Fishery. The list of the members along with their address would show that other than the village Niz Gobordhon, there are other villages also where the members of the petitioner society reside. The mere fact that certain members are residing at a distance of 01 KM cannot governed the fate of the society. Further, the decisions relied upon by the petitioners have laid down in clear terms that while ascertaining the requirement of neighborhood, the same cannot be done with minute mathematical precision and the requirement is only that the actual fishermen belonging to the Scheduled Castes Community residing in the vicinity should get the benefit. In the opinion of this Court such requirement cannot be tested in golden scales and would depend on case to case basis. This Court is in humble agreement with the interpretation of the expression “neighborhood” in the context of Rule 12 made by the Hon’ble Division Bench of this Court in the case of ***Brahmaputra Part-II Mach Mahal (supra)***, the relevant extracts of which has already been quoted above in the judgment. This Court is of the view that the purpose of the requirement is to advance the objective of the Rules and not to frustrate the same. The Hon’ble Division Bench has also laid down that the term “neighborhood” does not express any definite idea of distance.

32. This Court is also concerned with the public interest involving in the settling process. It is a settled position of law that in matters concerning distribution of State largesse which are mainly for earning revenue, the public interest is to be given a priority. This however may not be interpreted to mean that a bid which is grossly defective and not meeting the essential criteria should also be considered. However, in the instant case, while rejecting the bid of the petitioner no. 1 on the grounds which appear to be unsustainable and trivial, the aspect of public interest has been totally

overlooked by the Department. A bare perusal of the financial bids offered by the petitioner and the private respondent would reveal that there is a difference of about Rs.22 lakhs and this is a relevant factor that should have been taken into consideration.

33. This Court in the case of ***Tarun Bharali vs. State of Assam & Ors.***, reported in **(1991) 2 GLR 296** had held that in settlement which involves fetching of revenue, the amount of revenue is of paramount importance. The said view is also endorsed by a Division Bench of this Court in the case of ***Jogeshwar Doley Vs State of Assam*** reported in **1991 2 GLJ 333**.

34. This Court has also taken a note of the fact that the original records contain a report from the Circle Officer, who had recommended the settlement in favor of the petitioner no. 1, whose bid is the highest. Not to talk about assigning of any reasons for discarding such report, there is not even a reference to the said report in the impugned order dated 18.11.2019.

35. Under the aforesaid facts and circumstances, this Court is of the unhesitant opinion that the impugned action of the respondent authorities in rejecting the bid of the petitioner no. 1 and accepting the bid of the private respondent for the settlement of the Fishery in question vide the impugned order dated 18.11.2019 is unsustainable in law and accordingly, the same is set aside. The authorities are accordingly directed to grant the settlement with the petitioner no. 1 at his offered price.

36. It is further made clear that the settlement has to be for a period which was mentioned in the NIT. Further, since the offer of the petitioner no. 1 is almost Rs.22 lakhs more than the amount which was accepted by the authorities vide the impugned order, the requirement of enhancing the rates will not arise.

37. Both these writ petitions stands allowed.

38. No order as to cost.



39. Records, in original be returned to the learned State Counsel.

JUDGE

Comparing Assistant