



GAHC010131752022

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

Case No. : WP(C)/4450/2022

M/S DHIR BEEL FISHERMAN CO OPERATIVE SOCIETY LTD.
REPRESENTED BY ITS PRESIDENT PARIMAL DAS, AGED ABOUT 48
YEARS, SON OF LT PRALLHAD DAS, RESIDENT OF SATYAPUR, P.O. AND
P.S. CHAPAR, DISTRICT- DHUBRI, PIN- 783371, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERIES DEPARTMENT, DISPUR, GUWAHATI,
PIN- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERIES DEPARTMENT
DISPUR
GUWAHATI
PIN- 781006.

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERIES DEPARTMENT
DISPUR
GUWAHATI
PIN- 781006.

4:DEPUTY COMMISSIONER
DHUBRI
P.O. AND P.S.- DHUBRI
DISTRICT- DHUBRI
PIN- 783301
ASSAM.

5:M/S DHARNAD BRAHMAPUTRA FISHERY CO-OPERATIVE SOCIETY LTD.



DHUBRI
REPRESENTED BY ITS SECRETARY SRI BIMAL DAS
SON OF BROJEN DAS
RESIDENT OF WARD NO. 16
R.K. MISSION ROAD
DHUBRI
P.O. BIDYAPARA
P.S.- DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783324

Advocate for the Petitioner : MR. A D GUPTA

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/3736/2022

M/S KACHUDOLA FISHERY CO OPERATIVE SOCIETY LTD
A REGISTERED FISHERY COOPERATIVE SOCIETY
KACHUDOLA
P.O- KHELUWAPARA
DIST- BONGAIGAON
ASSAM

REP. BY THE SECRETARY
SONI RAM DAS

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
FISHERIES DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6

2:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERIES DEPARTMENT
ASSAM



DISPUR
GUWAHATI-6
3:THE DEPUTY COMMISSIONER
DHUBRI

DIST-DHUBRI
ASSAM

PIN-783301
4:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST- BONGAIGAON
ASSAM

PIN-783380
5:THE DEPUTY COMMISSIONER
GOALPARA
DIST- GOALPARA
ASSAM

PIN-783101
6:M/S- DHARNAD BRAHMAPUTRA FISHERY COOPERTIVE SOCIETY LTD.
REP. BY THEIR SECRETARY SRI BIMAL DAS

WARD NO. 16
R.K MISSION ROAD
DHUBRI

P.O- BIDYAPARA
DIST- DHUBRI
PIN-783324

Advocate for : MR. N C DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

For the Petitioners : Shri A. Dasgupta, Sr. Advocate,
(appearing in WP(C) 4450/2022)
Ms. M. Devi
(appearing in WP(C) 3736/2022)

For the Respondents : Shri D. Das, Sr. Advocate,



Shri H.K. Nath.
(appearing for the private respondent)
Shri D.K. Sarmah, Addl. Sr. GA, Assam
(appearing for the official respondents)

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Judgment & Order

Date : 22-05-2023

Both these writ petitions being filed challenging the same order of settlement of a Fishery in favour of the private respondent, the same were heard analogously and are being disposed of by this common judgment and order. The principal ground of challenge is that the bids of the petitioners which were higher than the bid of the private respondent were rejected on irrelevant consideration and untenable grounds and the settlement was made with the said private respondent which was the third highest bidder. The petitioners have also alleged violation of the observations made by this Court in earlier rounds of litigation pertaining to the settlement process.

2. Before going to the issue which requires adjudication, it would be convenient if the facts of the cases are narrated in brief.

3. A Notice Inviting Tender (NIT) dated 17.12.2018 was floated by the Deputy Commissioner, Dhubri for settlement of the Group No. 1 Dhar Brahmaputra Fishery which covers the districts of Goalpara, Bongaigaon and Dhubri. Pursuant to the same, seven intending bidders submitted their bids. Both the petitioners claim that they had submitted valid bids and their offers were also higher than that of the private respondent, namely, M/S Dharnad Brahmaputra Fishery Cooperative Society Ltd. For

the sake of convenience, the rates of the relevant parties are given below.

i) Petitioner in WP(C)/3736/2022	-	Rs.1,74,78,313/-
ii) Petitioner in WP(C)/4450/2022	-	Rs.3,13,43,949/-
iii) Private respondent	-	Rs. 1,22,50,000/-

4. As there was some delay in finalizing the settlement, three numbers of writ petitions were filed before this Court, those being WP(C)/6903/2019, WP(C)/8837/2019 and WP(C)/3913/2022. This Court vide a judgment and order dated 15.02.2022 had directed the settling authority to complete the entire exercise within a period of 45 days and till such time, allowed a particular Fishery Cooperative Society to operate the Fishery on daily basis.

5. Pursuant to the aforesaid order, the matter for settlement was taken into consideration and vide the impugned order dated 24.03.2022, the private respondent was settled with the Fishery for a period of 7 years at the offered rate of Rs. 1,22,50,000/-, terming the same to be the highest valid bid. While the bid of the petitioner in WP(C)/3736/2022, which was second highest, was rejected on the ground that the petitioners-Society hailed from another district, the bid of the petitioner in WP(C)/4450/2022, which was the highest, was rejected on the ground that the Society was not within the neighbourhood of the Fishery in question. The aforesaid action which had culminated in the order dated 24.03.2022 is the subject matter of challenge in both the writ petitions.

6. On the other hand the version of the Department is that simply because of the fact that a particular bidder has offered a higher amount, that by itself, would not make the said bidder entitled for the settlement as the bid offered, has to be a 'valid' bid. The Department submits that in the instant case, though the prices offered by the petitioners were higher than

that of the private respondent, their bids were defective as those did not meet the requisite criteria of the conditions of the NIT. The action has been defended by submitting that it is only the valid highest bid which is required to be taken into consideration. The private respondent has also defended the action by contending that there is no infirmity in the impugned action.

7. I have heard Shri A Dasgupta, learned Senior Counsel for the petitioner in WP(C)/4450/2022 and Ms. M Devi, learned counsel for the petitioner in WP(C)/3736/2022. I have also heard Shri DK Sarmah, learned Addl. Senior Government Advocate, Assam for the State respondents whereas the private respondent is represented by Shri D Das, learned Senior Counsel assisted by Shri HK Nath, learned counsel.

8. Shri Dasgupta, learned Senior Counsel for the petitioners in WP(C)/4450/2022 submits that the entire action of holding the petitioner to be ineligible is most unreasonable, arbitrary and not sustainable in law. He further submits that on the contrary, the bid of the private respondent was not even eligible for consideration, apart from the fact that the price offered by the private respondent was also much below than that of his client. By elaborating his submission, the learned Senior Counsel submits that the private respondent was not even registered as a Cooperative Society under the Assam Cooperative Societies Act, 2007 (Act) rather, it was registered under the District Fishery Development Office, Dhubri. By referring to the provisions of Section 11 (2) of the Act, the learned Senior Counsel submits that though it is a fact that subsequently, the private respondent was registered under the Act, such registration was only on 03.10.2019 whereas the NIT in question was dated 17.12.2018. He submits that when the private respondent was not even a registered Society at the time of submission of his bid, the same was not even liable to be considered.

9. By drawing the attention of this Court to the earlier judgment and order dated 15.02.2022 of this Court, it is submitted that in paragraph 27 of the said judgment, it has been specifically directed that the bids of the seven bidders were to be considered in terms of the provisions of the Assam Fishery Rules, 1953, more particularly, Rule 12 thereof and by taking into consideration the terms and conditions contained in the NIT dated 17.12.2018.

10. The learned Senior Counsel for the petitioner submits that a bare reading of the impugned order dated 24.03.2022 would reveal that the consideration was not based on relevant factors and were, rather based on extraneous and irrelevant factors. He submits that in the discussion on the bid of the petitioner, it has been recorded that the registration certificate was not submitted by the petitioner and instead, a certificate by the ARCS, Dhubri dated 20.06.2018 has been submitted certifying that the Society was registered vide Certificate No. D-3/74-75, dated 14.02.1975. It is also recorded that vide application dated 27.02.2019, the authorities were informed that the original registration certificate was damaged in the floods of 1988 and a duplicate certificate was applied for, which was yet to be issued. In any case, the petitioner was held to have met the same criterion. As regards the PAN Card, the PAN in the name of the Secretary of the Society was submitted along with an acknowledgement receipt for applying of PAN in the name of the Society. The Bakijai Certificate dated 26.06.2018 submitted by the petitioner did not, however, mention the validity period and under those circumstances, the said period was taken to be for 90 days which, as per the authorities, had spent its force as on the last date of submission of the tender which was 02.01.2019 and therefore, the same was held to be invalid. The Call Deposit of the petitioner was also not accepted as the same was issued in the name of the Secretary of the Society and not in the name of the Society which was required as per Clause 4 (Unga) of the NIT. Fault was attributed also in the audited accounts which

were required for the preceding 3 years as per Clause 4 (Jha) of the NIT and instead of the years 2015-16, 2016-17 and 2017-18, the petitioner had submitted audited accounts for the years 2012-13, 2015-16 and 2016-17. Regarding the issue of neighbourhood, a report of the Circle Officer was relied upon, as per which, three villages in which the members of the Society reside are located at distances of 1.5 km to 2.5 km from the Fishery.

11. The learned Senior Counsel submits that with regard to the requirement of PAN, a Division Bench of this Court in the case of ***Katahguri Meen Samabai Samittee Ltd. Vs. State of Assam & 2 Ors.***, vide judgment and order dated **14.06.2016** in **WA/415/2013** has settled the said issue. The Hon'ble Division Bench has laid down that the purpose of submitting the PAN Card is only to ensure that the unit is an income tax assessee. It may be mentioned that in the said case, whereas there was a requirement for submitting a PAN Card, the incumbent had submitted an income tax clearance certificate. Reference has also been made to another **order dated 29.09.2011** of the Hon'ble Division Bench in the case ***Abu Talib Vs. AFDC & Ors.*** passed in **WA/294/2011** wherein, it has been held that Bakijai clearance certificate could not be taken as a rigid requirement. Reliance has also been placed upon a judgment dated 02.11.2021 of this Court passed in **WP(C)/3314/2019 (*Malegarh Gobindapur Fishery Cooperative Society Ltd. Vs. State of Assam & Ors.*)** wherein in paragraph 28, the importance of the price offered has also been laid down. It has been observed that price is one of the paramount factors to be considered in Tenders which are floated for collection of revenue. The learned Senior Counsel, Shri Dasgupta submits that the difference of price in this case is almost Rs. 2 crores. Further, in paragraph 22 of the said judgment, reference was made to the order of the Division Bench in the case of ***Abu Talib (supra)*** pertaining to the Bakijai clearance certificate. This Court has also been informed that the Hon'ble Division Bench has upheld the aforesaid judgment in an appeal preferred by dismissing **WA/306/2021 (*Pub***

Goalpara Fishery Co-operative Society Vs. The State of Assam & 7 Ors.) vide judgment dated **27.04.2022**.

12. By referring to the Gazette notification dated 18.01.2018 which has been brought on record in the affidavit-in-opposition filed by the respondent no. 5 on 21.09.2022, learned Senior Counsel for the petitioner submits that a Gazette notification cannot be given precedence over the statute holding the field. In this connection, reliance has been placed in the case of ***GJ Fernandez Vs. State of Mysore***, reported in **AIR 1967 SC 1753**. The Hon'ble Supreme Court has laid down that Article 162 of the Constitution of India does not confer any authority on the State Government to issue statutory rules and it only provides for the extent and scope of the executive power of the State Government which coincides with the legislative power of the State Legislature. It has further been clarified that under the said Article, the State Government can take executive action in all matters in which the Legislature of the State can pass law but the said Article itself, does not confer any Rule making power upon the State. Shri Dasgupta, learned Senior Counsel submits that in view of the said settled position of law, the notification dated 18.01.2018 is only an administrative order which is not enforceable in law.

13. Since the notification dated 18.01.2018 was sought to be relied upon by the respondents, Shri Dasgupta, learned Senior Counsel has also relied upon the landmark judgment of ***Her Majesty The Queen Vs. Burah***, reported in **1878 (5) Ind App 178**. In the said case, the question arose whether an Act can be made applicable to other areas by a notification. The Privy Council answered the issue by stating that the same would be permissible only when the Act provides for such procedure. By drawing the analogy to the facts of the case, the learned Senior Counsel has submitted that when the statutory rules, namely, the Assam Fishery Rules, 1953 do not permit such enlargement of the scope by a notification, the present notification dated 18.01.2018

shall not have any application. In this connection, reliance has also been placed on a decision of the Hon'ble Supreme Court in the case of ***Ramesh Brich Vs. Union of India***, reported in **AIR 1990 SC 560** in which judgment, the aforesaid case of ***Burah*** (*supra*) was also taken into consideration. It has been laid down that the power of the Parliament to entrust legislative powers to some other body or authority is not unbridled or absolute and it must lay down essential legislative policy and indicate the guidelines to be kept in view by that authority in exercising the delegated powers. It has further been stated that Parliament cannot abdicate its legislative functions in favour of such authority.

14. Reliance has also been placed in the case of ***Gulf Goans Hotels Company Ltd. &Anr. Vs. Union of India &Ors.***, reported in **(2014) 10 SCC 673**. In paragraph 21 of the judgment, an earlier case of ***State of Uttranchal Vs. Sunil Kr. Vaish***, reported in **(2011) 8 SCC 670** has been approved. For ready reference, the said paragraph is extracted hereinbelow:

“21. In the absence of due authentication and promulgation of the guidelines, the contents thereof cannot be treated as an order of the Government and would really represent an expression of opinion. In law, the said guidelines and their binding effect would be no more than what was expressed by this Court in State of Uttaranchal v. Sunil Kumar Vaish in the following paragraph of the report:

‘23. It is settled law that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in the manner specified in the rules made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. In

other words, unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order on behalf of the Government.

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

15. As regards the fault founded with the audited balance sheet, the learned Senior Counsel submits that at the time of submission of the bid, the audit for the year 2017-18 was not even done. However, Shri Dasgupta submits that it was subsequently done and is very much in possession. He further submits that that the aforesaid defect, if at all, can be termed as a curable defect and in this connection, he has relied upon a decision of this Court rendered in the case of ***M/S Gauripur Cooperative Fishery Society Ltd. Vs. State of Assam*** [WP(C)/6885/2022 – order dated 11.11.2022]. It is submitted that all the aforesaid explanations have been elaborately pleaded in the additional-affidavit filed by the petitioner on 17.01.2023.

16. Endorsing the arguments made on behalf of the petitioner in WP(C)/4450/2022, Ms. M Devi, learned counsel for the petitioner in WP(C)/3736/2022 has submitted that the rejection of the bid is on wholly irrelevant factors and extraneous considerations. By referring to the impugned order dated 24.03.2022, Ms. Devi, learned counsel has submitted that the same would reveal that fault has been attributed on the following counts:

- i) The Experience Certificate issued by the DFDO, Bongaigaon is in the name of the Secretary of the Society and does not cover all the members as required under Clause 4 (ka) of the NIT,
- ii) The Demand Draft submitted as security has been purchased by one Jai Ram Das who is not an authorized person of the Society as per resolution and therefore, there is violation of Clause 4 (unga),
- iii) The Society belongs to Bongaigaon district and not eligible to participate in the present tender process.

17. Ms. Devi, learned counsel submits that none of the aforesaid three grounds are tenable to reject the bid of the petitioner. As regards the Experience Certificate, the observation is *ex facie* erroneous inasmuch as, the certificate is in the name of the petitioner-Society. She submits that when the Fishery itself, is admittedly spread out between three districts, namely, Bongaigaon, Goalpara and Dhubri which are, in fact the opposite banks of the river Brahmaputra, the bid of the petitioner could not have been rejected. She submits that the other two grounds are trivial in nature and will not have any impact on the validity of the bid.

18. Ms. Devi, learned counsel relies upon a report dated 10.02.2006 issued by the

Deputy Commissioner, Dhubri to the Fishery Department on the subject of the present Fishery in question and the letter was issued with regard to a tender process for the same initiated in the year 2006. The same discloses that the said Fishery was earlier settled with the petitioner for 5 years and the Fishery covers three districts, namely, Goalpara, Bongaigaon and Dhubri.

19. Ms. Devi, learned counsel relies upon the case of ***Dimbeswar Das & Anr. Vs. State of Assam & Ors.***, reported in **2019 (5) GLT 399** wherein, this Court has clarified that in case a Fishery covers more than one district, a prospective bidder may be from any of such districts. It is further clarified that the requirement is to be in the neighbourhood of the Fishery which may not necessarily be in one district.

20. Reliance has also been placed upon the case of ***Pub Goalpara Fishery Co-operative Society*** (*supra*) in which, the Hon'ble Division Bench has upheld the judgment passed in the case of ***Malegarh Gobindapur Fishery Cooperative Society Ltd.*** (*supra*).

21. On the other hand, Shri DK Sarmah, learned Addl. Senior Government Advocate, Assam has submitted that the order dated 24.03.2022 has been passed pursuant to the remand order dated 15.02.2022 by this Court. He submits that the order is an elaborate one wherein grounds have been cited for arriving at the decision. He submits that since the reasons assigned are cogent, this Court may not substitute the said view and decision which was a plausible one.

22. The State Counsel submits that the grounds of rejection of the bids of the petitioners have been explicitly mentioned which may not need any interference. As regards the difference in price, he submits that though the price is an important aspect, the price has to be from a valid bidder and in the instant case, the bid of the

private respondent was found to be the highest valid bid.

23. Shri D Das, learned Senior Counsel for the private respondent has fully endorsed and adopted the submissions of the learned State Counsel. He further submits that the Gazette notification dated 18.01.2018 is only to supplement and not supplant the statutory rules. The same being issued only to make certain aspect transparent, the same would have a binding effect and based upon the same, the impugned decision has been taken and therefore, the same would not warrant any interference by this Court. He further submits that once the notification has been published in the official Gazette, it takes the shape of a sub-ordinate legislation which would have a statutory colour. He further submits that in neither of the two writ petitions, the said notification dated 18.01.2018 has been put to challenge.

24. He submits that the rejection of the bid of the petitioner in WP(C)/4450/2022 is on four counts, namely, PAN Card, Bakijai Certificate, Call Deposit and three years' Audited Balance Sheet and the reasons cited are relevant. Similarly, so far as WP(C)/3736/2022 is concerned, the rejection is on three counts, namely, Experience Certificate, submission of Demand Draft which was purchased by an individual and the Society belonging to the Bongaigaon district. He submits that all the grounds are germane and therefore, the rejections of the bids of the petitioners are fully justified.

25. Shri Das, learned Senior Counsel for the private respondent further submits that the report of the Deputy Commissioner, Dhubri dated 10.02.2006 cannot be relied upon, as the same pertains to another tender process.

26. The learned Senior Counsel for the private respondent has placed reliance upon the following case laws:

i) (1987) 1 SCC 658, **BK Srinivasan & Ors. Vs. State of Karnataka & ors.**

ii) (2003) 9 SCC 519, **Shankar K. Mandal & Ors. Vs. State of Bihar & Ors.,**

iii) (2005) 3 SCC 157, **Laxmi Sales Corporation Vs. Bolangir Trading Company & Ors.,**

27. The case of **BK Srinivasan** (*supra*) has been cited in support of the submission on the enforceability of the Gazette notification dated 18.01.2018. In the said case, the Hon'ble Supreme Court has clarified that delegated or sub-ordinate legislation is all pervasive. It has further been stated that if the sub-ordinate legislation does not prescribe the mode of publication or if the prescription given is plainly unreasonable, it will take effect only when it is published in the official Gazette or some other reasonable mode of publication. The learned Senior Counsel submits that the notification dated 18.01.2018 being published in the official Gazette, the same has met the requirement of law.

28. The case of **Shankar K. Mandal** (*supra*) has been cited in support of the submission that it is the date of advertisement or last date of receiving application that a candidate is required to fulfill the eligibility criteria. This case has been referred in view of the non-fulfillment of submitting the three years' Audited Balance Sheet by the petitioner and possessing the same at a later stage. The case before the Hon'ble Supreme Court was, however, with regard to a recruitment process wherein, the age of the candidate was the subject matter of dispute.

29. The case of **Laxmi Sales Corporation** (*supra*) has been cited to bring home the

submission that conditions mentioned in the advertisement are mandatorily required to be fulfilled. In the said case, there was a requirement to produce supporting documents in proof of turnover of the firm over the last two relevant years.

30. The rival submissions made by the learned counsel for the respective parties have been duly considered and materials placed before this Court have been carefully perused.

31. In order to come to a just and consistent conclusion, it is required to take into consideration the directions of this Court passed in the earlier rounds of litigations pertaining to the same tender process initiated vide the NIT dated 17.12.2018. The Hon'ble Single Judge had disposed of the three writ petitions vide judgment and order dated 15.02.2022 and in paragraph 27 of the same, the following directions have been issued:

“27. The Court is of the considered view that while settling the Fishery for a period of 7 [seven] years, the tender settling authority has to evaluate the bids of all the 7 [seven] participating bidders in terms of the provisions of the Assam Fishery Rules, 1953, more particularly, Rule 12 thereof and qua the terms and conditions contained in the Tender Notice dated 17.12.2018. It is made clear that while applying its mind for the settlement of the Fishery, it should not allow itself to be influenced in any manner by the observations made by the tender inviting authority and/or for that matter, the Scrutiny Committee constituted by the tender inviting authority. While undertaking such exercise for settlement of the Fishery, the tender settling authority shall also have to consider the issue of validity of registration of M/s Dhir Beel Society, as has been raised by the petitioner in W.P.[C] no. 3913/2020. It is also made clear that this Court has not made any observation on the merits of the bids of any of the participating bidders. It is accordingly directed. The entire exercise for settlement of the

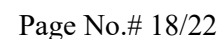
Fishery shall be brought to its logical conclusion as expeditiously as possible, but not beyond a period of 45 [forty five] days from today. It is provided that till regular settlement of the Fishery is made, the petitioner in the writ petition, W.P. [C] no. 6903/2019, M/s Gauripur Society shall be allowed to run the Fishery.”

32. This Court had made it clear that the process is required to be finalized by strictly following the provisions of the Assam Fishery Rules, 1953, more specifically, Rule 12 and the terms and conditions of the tender notice. The eligibility of the various tenderers was also directed to be examined.

33. The impugned order dated 24.03.2022 would reveal that the petitioner in WP(C)/4405/2022 was the highest bidder quoting an amount of Rs.3,13,43,949/-, the petitioner in WP(C)/3736/2022 was the second highest bidder with an amount of Rs. 1,74,78,313/- and the private respondent had quoted an amount of Rs. 1,22,50,000/- which was the third highest. The said finding is not disputed by any of the parties.

34. The bids of the two petitioners have, however, been rejected on certain grounds pertaining to the eligibility criteria and therefore, the Department has arrived at a conclusion that the third highest bid of the private respondent was the “valid highest bid”. There is no dispute in the proposition that simply being the highest without fulfilling the requirement would not make a bid eligible for consideration and fulfillment of the criteria laid down is a requirement. What is required to be seen is whether there has been substantial fulfillment of the criteria and whether any non-fulfillment would be of such serious consequence that the bid can be treated to be invalid.

35. As mentioned above, the bid of the petitioner in WP(C)/4450/2022 has been



36. So far as the objection regarding Bakijai Certificate of the petitioner in WP(C)/4450/2022 is concerned, the same is only pertaining to the validity period. However, the Hon'ble Division Bench in the case of ***Abu Talib*** (supra) has already laid down that the requirement of Bakijai Certificate cannot be treated to be a mandatory one as, there would be no impact on the level playing field. For ready reference, the relevant part of the judgment in ***Abu Talib*** (supra) 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. In exercise of jurisdiction under Article 226 of the Constitution of India this Court does not sit in appeal over the decision of an administrator in giving a contract unless there is illegality, irrationality or procedural irregularity as laid down by the Hon’ble Supreme Court in Tata Cellular vs. Union of India, AIR 1996 SC 11. If after taking into account all relevant considerations a decision has been taken to award contract, the Court has to be slow in interfering with the decision. In the present case, there was no compelling need for interference in absence of any illegality, mala fides or loss of public revenue. For the above reasons, we are of

the view that the order passed by the learned Single Judge cannot be sustained. This appeal is allowed and the writ petition filed by the respondent is dismissed.”

37. The rejection on the ground of Call Deposit being in the name of the Secretary of the Society and not in the name of the Society is a trivial ground which cannot have any impact on the decision making process. The matter would have been different if the requirement of Call Deposit was not fulfilled at all. Regarding Audited Balance Sheet for preceding three years, the explanation has been given that for the year 2017-18, the audit was not done at the time of submission of bids which, however, was subsequently done. Further, this Court in the case of **M/S Gauripur Cooperative Fishery Society Ltd.** (*supra*) has held that such defect is a curable one and therefore, the same cannot be a reason for rejection.

38. The impugned order makes it clear that the issue of registration of the petitioner-Society was examined in terms of the direction of this Court in the earlier judgment and order dated 15.02.2022 and the same was found to be in order. The same further reveals that the rejection is not on the ground of neighbourhood.

39. Accordingly, this Court has come to a conclusion that the rejection of the bid of the petitioner in WP(C)/4450/2022 is not sustainable and consequently, the order of settlement in favour of the private respondent no. 5-M/S Dharnad Brahmaputra Fishery Co-operative Society Ltd. is interfered with. Consequently, the discussion with regard to the second writ petition, namely, WP(C)/3736/2022 would be an academic one inasmuch, as the financial bid of the petitioner in WP(C)/4450/2022 was the highest. However, since an independent writ petition was filed which was prior in point of time, this Court deems it fit to record certain findings.

40. The rejection of the bid of the petitioner in WP(C)/3736/2022 vide the impugned order dated 24.03.2022 were on two counts, namely, Experience Certificate being in the name of the Secretary and the Demand Draft being purchased by one Jai Ram Das, who is stated to be an unauthorized person. So far as the first ground is concerned, the same is *ex-facie* erroneous as the Experience Certificate is, indeed in the name of the Society which covers all the members. As regards the second ground, the same is not relevant to the issue and even if, it is held to be a defect, the same would be a curable one. Thus, even the petitioner in WP(C)/3736/2022 is better placed than the private respondent no. 5 with its bid higher than the private respondent.

41. With regard to the price bids, as noted above, there is huge difference in the prices offered by the petitioners and the private respondent which is about 2 crores with the highest bidder. It is a settled position of law that price is one of the paramount factors in determining a tender process. In this connection, one may gainfully refer 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. Further, in the case of ***Tarun Bharali Vs. State of Assam & Ors.***, reported in **(1991) 2 GLR 296**, it has been laid down that in matters of settlement which fetch revenue for the Government, the paramount factor is public interest.

42. Much arguments were made on behalf of the private respondent taking support of the Gazette Notification dated 18.01.2018. There is no manner of doubt that the said notification is not a law passed by the Legislature of the State but an executive instruction. This Court finds force in the submission made on behalf of the petitioners that unless, the statute itself provides for issuance of subsequent notification, such notification shall not be enforceable in law. The Hon'ble Supreme Court in the case of

GJ Fernandez (*supra*) has endorsed the view of the Hon'ble Privy Council in the case of **Burah** (*supra*).

43. Having said so, this Court is also of the view that since in the earlier round of litigations, it has been observed that the said notification dated 18.01.2018 is supplementary in nature and cannot supplant the Rules, no further discussion is required.

44. However, there is an important point which has rather intrigued this Court. Though much argument has been made on the applicability of the Gazette Notification dated 18.01.2018, neither the NIT dated 17.12.2018 nor the impugned order dated 24.03.2022, even mention the said notification which was in prior existence. In that view of the matter, there is, actually no occasion to go into the aspect of applicability of the notification dated 18.01.2018 in the instant case. In any event, while disposing the earlier three writ petitions, vide the order dated 15.02.2022, in paragraph 27, the following has been laid down:

“27. The Court is of the considered view that while settling the Fishery for a period of 7 [seven] years, the tender settling authority has to evaluate the bids of all the 7 [seven] participating bidders in terms of the provisions of the Assam Fishery Rules, 1953, more particularly, Rule 12 thereof and qua the terms and conditions contained in the Tender Notice dated 17.12.2018.”

45. In view of the aforesaid discussions, this Court is of the considered opinion that the impugned order dated 24.03.2022 issued by the Fishery Department by which, the bids of the petitioners were rejected and the settlement was granted in favour of the private respondent is unsustainable in law and accordingly, set aside. Consequently, the settlement is directed to be made with the highest bidder, which is the petitioner-



M/S Dhir Beel Fisherman Co-operative Society Ltd. in WP(C)/4450/2022 in accordance with law. In case, the said petitioner declines to accept the settlement for any reasons, the offer has to be given to the petitioner-M/S Kachudola Fishery Co-operative Society Ltd. in WP(C)/3736/2022.

46. The writ petitions, accordingly, stand allowed. No order as to costs.

JUDGE

Comparing Assistant