

GAHC010028052020



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

Case No. : WP(C)/941/2020

M/S. SAIKHOWA SADIYA MIN SAMABAI SAMITI LTD.
A REGD. FISHERY CO-OPERATIVE SOCIETY HAVING ITS REGD. OFFICE AT
HATIGHULI, DHOLA, IN THE DIST. OF TINSUKIA, ASSAM. REP. BY ITS
SECY., SRI MAINA BISWAS, AGED ABOUT 61 YEARS, S/O- LT. MALADHAR
BISWAS, R/O- VILL. HATIGHULI, P.O. SAIKHOWAGHAT, P.S. DHOLLA, DIST.
TINSUKIA (ASSAM).

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY., FISHERY DEPTT., DISPUR, GHY.- 06.

3:THE ADDL. DY. COMMISSIONER (INCHARGE)
SADIYA SUB-DIVISION
CHAPAKHOWA
ASSAM.

4:SUB-DIVISIONAL OFFICE (C) SADIYA
CHAPAKHOWA (FISHERY BRANCH).

5:M/S DIBRU DANGARI RIVER PART-I MIN SAMABAI SAMITI LTD.
A REGISTERED FISHERY CO-OPERATIVE SOCIETY HAVING ITS
REGISTERED OFFICE AT DIGHALTARANG
IN THE DIST. OF TINSUKIA
ASSAM
REPRESENTED BY ITS SECY.
P.O. GUIJAN
IN THE DIST. OF TINSUKIA
ASSAM

Advocate for the Petitioner : MR. P K R CHOUDHURY, MR. M DUTTA, MS. S DEV, MR. N G KUNDU

Advocate for the Respondent : GA, ASSAM, MR. N K KALITA (R5),SC, FISHERY,MR H K NATH (R5),MR D DAS (R5),MR D J MEDHI,FOR CAVEATOR

Linked Case : WP(C)/737/2022

DIBRU PART-I MEEN SAMABAI SAMITI LTD. AND ANR.
A REGISTERED FISHERY CO-OPERATIVE SOCIETY SITUATED AT GUIJAN
P.S.TINSUKIA
DIST. TINSUKIA
AND IS REPRESENTED BY ITS SECRETARY SRI BIJAY MALLAH
S/O NANTUN MALLAH
HILIKHA GHAT
P.O- BORHAPJAN
DOOMDOOMA
HILIKHA T.E. 265 WL
P.O. RANGAGORAH
P.S. TINSUKIA
DIST. TINSUKIA
ASSAM

2: SRI BIJAY MALLAH
SON OF NANTUN MALLAH
SECRETARY OF DIBRU PART-I MEEN SAMABAI SAMITI LTD.
R/O HILIKHA GHAT
P.O- BORHAPJAN
DOOMDOOMA
HILIKHA T.E. 265 WL
P.O- RANGAGORAH
P.S- DOOMDOOMA
DIST- TINSUKIA
ASSAM.
VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
FISHERIES DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
FISHERIES DEPARTMENT
DISPUR

GUWAHATI-6.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

REVENUE DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE ADDITIONAL SECRETARY
TO THE GOVT. OF ASSAM
FISHERIES DEPARTMENT
DISPUR
GUWAHATI-6
KAMRUP (M)
ASSAM

5:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
FISHERIES DEPARTMENT
DISPUR
GUWAHATI-6
KAMRUP (M)
ASSAM

6:THE DEPUTY COMMISSIONER

TINSUKIA
DIST. TINSUKIA
ASSAM

7:THE ADDITIONAL DEPUTY COMMISSIONER

I/C SADIYA SUB-DIVISION
DIST. TINSUKIA
ASSAM

8:THE DISTRICT FISHERY DEVELOPMENT OFFICER

TINSUKIA
DIST. TINSUKIA
ASSAM

9:M/S DIBRU-DANGORI PART-I MEEN SAMABAY SAMITY LTD.
REP. BY ITS SECRETARY
SRI BIKASH DAS
S/O LATE SACHINDRA MOHAN DAS
R/O DIGHALTARANG
TINSUKIA-786151

DIST. TINSUKIA
ASSAM

Advocate for the petitioner(s): Mr. M Dutta
(in WP(C)No.941/2020) Mr. NG Kundu
 Mr. PKR Choudhury
 Mr. S Dev

Advocate for the petitioner(s): Mr. JI Borbhuuya
(in WP(C)No.737/2022) Mr. L Mohan

Advocate for the respondent(s): Mr. D Nath
Senior Government Advocate, Assam
Mr. NK Kalita
For the respondent No.5.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER(ORAL)

Date : 26-11-2024

Heard Mr. M Dutta, the learned counsel appearing on behalf of the writ petitioner in WP(C)No.941/2020 and Mr. L Mohan, the learned counsel appears on behalf of the writ petitioner in WP(C)No.737/2022. Mr. D Nath, the learned Senior Government Advocate, Assam, appears on behalf of the Fishery Department, Government of Assam and Mr. NK Kalita, the learned counsel appears on behalf of the private respondent No.5.

2. At the outset, it is relevant to take note of that Mr. L Mohan the learned counsel appearing on behalf of the writ petitioners in WP(C)No.737/2022 had submitted that the petitioner had given instruction(s) to him to withdraw the writ petition being WP(C)No.737/2022. Accordingly, WP(C)No.737/2022 stands

closed on withdrawal.

3. In the above backdrop, therefore, the writ petition which requires adjudication is WP(C)No.941/2020.

4. The petitioner herein has assailed the order dated 26.12.2019 whereby the Brahmaputra Part I and the Dibang River Fishery was settled with the private respondent for a period of 7(seven) years. The petitioner had challenged the legality of the said order. To ascertain as to whether in the present facts, this Court should exercise its power under Article 226 of the Constitution, it is relevant to briefly take note of the facts which led to the filing of the instant writ petition.

5. From a perusal of the materials on record, it reveals that on 04.10.2019, a sale notice was issued by the Additional Deputy Commissioner, I/C Sadiya Sub-Division for settlement of the Brahmaputra Part I and the Dibang River Fishery (the fishery in question) i.e. from 2019-2020 to 2025-2026 by a tender system. Pursuant to the said bid, 5(five) tenderers had submitted the bids, they were:

- (1). M/s. Dibru Part I MSS Ltd.
- (2). M/s. Dibru dangori River Part I MSS Ltd. – Private respondent
- (3). M/s. Sadiya Saikhowa MSS Ltd. – Writ petitioner
- (4). M/s. Rangagorah FCS Ltd.
- (5). M/s. Dibrugarh FCS Ltd.

6. Upon such tenders being submitted, on being scrutinized it was found that M/s. Dibru Part I MSS Ltd. did not submit the neighbourhood certificate in terms of Clause 2 of the Notice Inviting Tender (for short, NIT).

7. The petitioner, who offered the third highest bid did not submit the following:

- (i). Fishing Experience Certificate in terms with Clause 4(Ka) of the NIT;
- (ii). PAN or any certificate from the competent authority of IT Department in terms with Clause 4(Cha) of the NIT; and
- (iii). Neighbourhood Certificate in terms with Clause 2 of the NIT.

8. M/s. Rangagorah FCS Ltd., who offered the 4th highest bid did not submit the Call Deposit as well as it had submitted an expired Bakijai Certificate on the date of the submission of tender.

9. M/s. Dibrugarh FCS Ltd., who offered the 5th highest bid did not submit:

- (i). Call deposit in terms with Clause 4(Unga);
- (ii) Fishery Experience Certificate in terms with Clause 4(Ka);
- (iii). 100% Actual Fisherman Certificate in terms with Clause 2;
- (iv). Bakijai Certificate in terms with Clause 4(Kha);
- (v). PAN in terms with Clause 4(Cha).

10. However, as regards the private respondent, who submitted the second highest bid had submitted all the documents in terms with the NIT, except the Bakijai Certificate, which was submitted only in the name of the Secretary of the Society. Subsequently, the Society had submitted a petition dated 07.12.2019 along with a copy of the certificate issued by the ADC, Tinsukia dated 06.12.2019 to the effect that the certificate issued to the Society dated 21.10.2019 which was in the name of the Secretary of the Society was actually in the name of the Society. The said Certificate dated 06.12.2019 clarified that the Certificate dated 21.10.2019 may be treated in the name of the Society.

11. On the basis of the above, the Tender Committee after making scrutiny found that except the private respondent, the bids of all other tenderers were not valid in terms with the NIT and, accordingly, vide the order dated 26.12.2019, it was decided that the Fishery in question would be settled with the private respondent at the bid value of Rs.25,97,000/- for 7(seven) years being the highest valid bidder in terms with the NIT.

12. It is under such circumstances, the petitioner in the present writ petition had approached this Court.

13. The record further reveals that various pleadings have been filed in the instant proceedings by the private respondent as well as by the State respondents. The reference to the same shall be made, while dealing with the respective submissions made by the counsels appearing on behalf of the parties.

14. Mr. M Dutta, the learned counsel appearing on behalf of the petitioner submitted that taking into account, Rule 12 of the Assam Fishery Rules 1953 (for short, the Rules of 1953) in the NIT, there was a requirement that if a bidder is a member of a Cooperative Society, then his name and full address is required to be submitted. In addition to that, the resolution authorizing the person to submit the bid on behalf of the Cooperative Society is also required to be submitted. Mr. M Dutta, the learned counsel submitted that the private respondent is a cooperative society and on 01.04.2017, the said society was dissolved. This dissolution was put to challenge before the before the Register of Cooperative Societies and the Assistant Register of Cooperative Societies by the order dated 26.09. 2019 had set aside the said dissolution.

15. The learned counsel for the petitioner by referring to Section 31 of the Assam Cooperative Societies Act 2007 (for short, the Act of 2007) read with Section 42 of the said Act of 2007 submitted that the tenure of a Society is only for 5(five) years from the date of election. The learned counsel further submitted that the date of election of the said society was on 27.05.2012 and, as such, by operation of law, the Society was dissolved as on 26.05.2017. Therefore, the resolution which was submitted dated 20.10.2019 was a *non est* document, for which, the tender of the private respondent ought to have been rejected by the authorities concerned.

16. In addition to that, Mr. M Dutta, the learned counsel for the petitioner submitted that the respondent authorities have also differentially treated the petitioner by not giving an opportunity to the petitioner to rectify the defects in the tender, though the private respondent was given such opportunity.

17. Mr. D Nath, the learned Senior Government Advocate, Assam appearing on behalf of the Fishery Department submitted that vide the order dated 26.09.2019, the order by which the respondent Society was dissolved was set aside and thereby restored the Board of the Directors of the respondent No.5, Society.

18. The learned Senior Government Advocate submitted that immediately thereupon on 20.10.2019, the resolution was adopted, whereby the Secretary of the said Society was authorized to submit the tender. He further submitted that this very resolution was submitted by the private respondent along with the bid.

19. The learned Senior Government Advocate further submitted that there is no challenge to the said resolution as well as there is no challenge to the order dated 26.09.2019, by which, the Board of the private respondent's Society was restored. He further submitted that it was only on 14.09.2020, the One-Man Committee was appointed by the Cooperation Department in terms with Section 41(6) of the Act of 2007. He, therefore, submitted that the submission of the tender by the private respondent was in terms with the NIT. In addition to that, the learned Senior Government Advocate submitted that the question of differential treatment to the petitioner *vis-à-vis*, the private respondent did not arise, *inasmuch as*, the petitioner did not submit the various documents, which the petitioner was required to submit. On the other hand, the private respondent had duly submitted the Bakijai Certificate. However the said Bakijai Certificate being in the name of the Secretary of the Society which was clarified by the ADC, Tinsukia by his letter dated 06.12.2019.

20. Mr. NK Kalita, the learned counsel for the private respondent had made similar submissions to what was made by Mr. D Nath, the learned Senior Government Advocate and for the sake of brevity and to avoid repetition, this Court is not reiterating the same.

21. In the background of the above submissions, this Court had duly heard the learned counsels appearing on behalf of the petitioner as well as the private respondent and have also perused the materials on record, including the records which were directed to be produced.

22. From a perusal of the records so produced by Mr. D. Nath, the learned Senior Government Advocate, during the course of the hearing, it appears that a resolution dated 20.10.2019 was duly submitted by the private respondent. It is also clear that on 26.09.2019, the said private respondent Society was reinstated by the Cooperation Department. There is no challenge to the said reinstatement of the Board of Directors of the private respondent by any person. In addition to that, there is also no challenge to the resolution dated 20.10.2019.

23. The authorities concerned have duly taken note of the said resolution dated 20.10.2019 and have accepted the same to be in conformity with the tender conditions. Under such circumstances, this court would not like to exercise its powers of judicial review, taking into account that the respondent authorities have duly taken into consideration the said resolution dated 20.10.2019 which held the field and there was no challenge to the said resolution.

24. Now coming to the question of differential treatment, it is seen that the case of the petitioner is completely different from that of the private respondent. The petitioner admittedly did not submit the various documents as stated hereinabove, which were requisite documents to be submitted along with the tender documents. On the other hand, the private respondent duly submitted the Bakijai Certificate and the subsequent clarifications, made it clear that the Bakijai Certificate was issued in the name of the Society. The tender authority, however, in its discretion, had accepted the said clarification. The acceptance of the said clarification at the subsequent stage being within the realm of the Tender Committee, it would not be proper on the part of this Court

to exercise the powers under Article 226 of the Constitution in the present facts.

25. Accordingly, this Court finds no ground for interference with the impugned settlement dated 26.12.2019 made in favour of the private respondent, for which, the writ petition stands dismissed.

26. The record so produced by Mr. D Nath, the learned Senior Government Advocate, Assam is returned back.

JUDGE

Comparing Assistant