

GAHC010052792023



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

Case No. : WA/88/2023

PAKORIDUBA MATSYAJIBI SAMABAI SMITY LTD.
REPRESENTED BY ITS PRESIDENT, SRI HARILAL DAS,
RESIDENT OF VILLAGE BURABURI, PS MAYONG, DIST MORIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPARTMENT, DISPUR, GUWAHATI 781006, ASSAM

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI 781006

3:THE DEPUTY COMMISSIONER
MORIGAON
MORIGAON
ASSAM

4:TETELIGURI NAVAJYOTI MATASYAJIBI SAMABAY SAMITY LIMITED
CO OPERATIVE SOCIETY REGISTERED UNDER THE SOCIETIES
REGISTRATION ACT
1949 REPRESENTED BY ITS PRESIDENT
SRI PARESH BISWAS
65 YEARS
SON OF LATE GAGAN BISWAS
A RESIDENT OF VILLAGE HATIBHANGI
PO RAJAMAYONG

PS MAYONG
DIST MORIGAON
ASSA

For the Appellant : **Mr. K.N. Choudhury, Sr. Adv.**

Ms. R.R. Kakaty, Adv.

For the Respondents:

Mr.R.K. Bora, Addl. Sr. GA, Assam.

Mr. S. Borthakur, Adv.

BEFORE

**HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 28/05/2024.

Date of judgement : 28/05/2024.

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

1. Heard Mr. K.N. Choudhury, learned senior counsel assisted by Ms. R.R. Kakaty, learned counsel for the appellant. We have also heard Mr. R.K. Bora, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos. 1, 2 & 3 and Mr. S. Borthakur, learned counsel for the respondent no. 4.

2. This intra-court appeal is directed against the judgement and order dated 15/02/2023 passed by the learned Single Judge disposing of 2 (two) writ petitions, i.e. WP(C) No. 3215/2021 and WP(C) No. 3372/2021, thereby interfering with the order of settlement of fishery dated 08/03/2021 passed by the Government of Assam in favour of the appellant.

3. The facts and circumstances giving rise to the filing of the present appeal, are briefly narrated herein below:-

(i) Pursuant to a consent order dated 05/01/2021 passed by the Division Bench of this Court in WA No. 142/2020 granting leave to the Fishery Department to float a tender for settlement of Dhipujijan/Garanga/Garchak, Malia Group Fishery in the district of Morigaon, the Deputy Commissioner of

Morigaon i.e. the respondent no.3 herein had floated NIT dated 19/01/2021 inviting bids for settlement of the aforesaid fishery for a period of 7 (seven) years. The NIT had clearly mentioned that the fishery in question falls within 60% category and the total revenue for the last year was 11,51,205/-.

(ii) In response to the aforesaid NIT, several tenderers including the appellant and the respondent no. 4 had submitted their bids. The private respondent had quoted an amount of Rs. 2,62,59,529/- @ Rs. 37,51,360/- per annum, which was the highest amount. The appellant had quoted Rs. 1,99,85,000/- for 7 years @ Rs. 28,55,000/- per annum, which was the 5th highest amount. No.11 Part-V Kalong Nadi Anchalik MSS Ltd. had quoted Rs. 1,82,03,857/- for 7 years @ Rs. 26,00,551/- per annum and was the 8th highest bidder.

(iii) It appears from the record that there were 12 bidders in total. After evaluating the bids submitted by all the bidders, the authorities had found that the bid submitted by the respondent no. 4, which had quoted highest amount, was technically nonresponsive. So also was in the case with the other tenderers quoting higher price than the appellant. However, the tender of the appellant was found to be free from all defect. Accordingly, the appellant was held to be the highest valid bidder and on such count, the settlement of the fishery was granted to the appellant by the order dated 08/03/2021.

4. Assailing the order dated 08/03/2021, the respondent no. 4 herein, viz. M/s. Teteliguri Navajyoti Matasyajibi Samabay Samity had approached this Court by filing WP(C)3215/2021. No. 11 Part-V Kalong Nadi Anchalik MSS Ltd., which was the 8th highest bidder, had also assailed the order of settlement dated 08/03/2021 by filing WP(C) No. 3372/2021. By the impugned judgement and order dated 15/02/2023, the learned Single Judge had held that the rejection of the bid of the respondent no. 4 on the grounds mentioned in the order of settlement were untenable in the eyes of law in view of the law laid down by this Court in the case of **Malegarh Gobindapur Fishery Cooperative Society Ltd. Vs. State of Assam & Ors.** reported in **2021 (5) GLT 107**, which decision was upheld by the Division Bench vide judgement dated 27/04/2022 passed in Writ Appeal No.

306/2021 [***Pub Goalpara Fishery Cooperative Society Vs. The State of Assam and 7 others***].

5. By referring to the decisions in the case of ***Dhaniram Gogoi Vs. State of Assam*** reported in ***1988 (4) GLT 37*** and ***Tarun Bharani Vs. State of Assam & ors.*** reported in ***(1991) 2 GLR 296***, the learned Single Judge has further observed that in matters of settlement, which earns revenue for the Government, the paramount consideration is price which is in public interest. Having held as above, the learned Single Judge had set aside the order of settlement dated 08/03/2021, thus, allowing the WP(C) No. 3215/2021 and issued a direction for settling the fishery with the writ petitioner in WP(C) No. 3215/2021 i.e. the respondent no. 4 herein. However, since the price quoted by the respondent no. 4 was higher than the writ petitioner in WP(C) No. 3372/2021, which was the 8th highest bidder, hence, in view of the determination made by the Court, WP(C) 3372/2021 was held to be infructuous. Being aggrieved by the judgement and order dated 15/02/2023, the present appeal has been preferred by the settlement holder.

6. It is to be noted herein that the writ petitioner in WP(C) 3372/2021 has not preferred any appeal against the judgement and order dated 15/02/2023. As such, in this appeal, we are only concerned with the claim of the respondent no. 4/writ petitioner in WP(C) 3215/2021 and the appellant vis-à-vis the order of settlement dated 08/03/2021.

7. It appears from the materials on record that on 18/01/2018, the Government of Assam, through the Fishery department, had issued a notification bearing no. *FISH-19/65/2017-fishery/I(eCF No. 50022)*, in the name of the Governor of Assam, laying down certain guidelines/criteria which were required to be followed for submission of tender documents. The criteria laid down by the notification dated 18/01/2018 are as follows :-

“(i) Documents to be submitted to DC/SDO(Civil) along with tender documents by the tenderers :-

The following documents shall be insisted upon with the Tenders while floating a NIT for settlement of a Fishery by the DC/SDOs:

1. 100% Actual Fishermen Certificate : Submission of 100% Actual Fishermen certificate of Fishermen Cooperative Society, SHGs, NGOs issued by the ARCS indicating that all the members of the Fishermen Cooperative

Society, SHGs, NGOs are actual fishermen belonging to Schedule Caste Community or Maimal Community of erstwhile Cachar district of Assam.

2. Neighbourhood certificate : Neighbourhood Certificate to issued by the concerned Revenue Circle Officers only against Fishermen Cooperative Society, SHGs, NGOs with clear indication of specific distance of the Fishermen Cooperative Society, SHGs, NGOs to the concerned Fishery. If the fishery falls under more than one Revenue Circle, then such certificates are to be furnished by all such Circle Officers.

3. Fishermen experience certificate : Experience certificate of Fishermen Cooperative Society, SHGs, NGOs is to be issued by the DFDOs indicating that all the Members of Fishermen Cooperative Society, SHGs, NGOs have ample experience in fishing and relating activities and they are fully involved in such activities.

4. Bakijai clearance certificate : Bakijai clearance certificate is to be furnished by the Bakijai authority under the concerned Deputy Commissioner where the Society/NGO is registered which should invariably be in the name of the Society/NGO/SHG and not in the name of the office bearers of the Society/NGO/SHG.

5. Security Deposit : The security amount to be deposited in the form of Call deposit clearly pledging the same in favour of the concerned DC/SDO(Civil) with name of the Bidder Society in case of 60% Govt. Fishery which shall not be less than one-tenth of the revenue of the fishery for first year of the full term of settlement.

6. Society Registration : The Society/NGO/SHG Registration Certificate issued by competent authority should be up to date as on date of submission of tender date with renewal where applicable.

7. PAN CARD: PAN card issued by Income Tax Authority is to be in the name of Fishermen Cooperative Society, SHGs, NGOs and not individual PAN card in the name of the office bearers of the Society/NGO/SHG.

8. Passport size photograph : The passport size photograph of authorized person (Secy/President of the Fishermen Cooperative Society, SHGs, NGOs)

is to be submitted.

9. Balance sheet and profit loss account : Balance sheet and profit loss account for consecutive preceding three years shall be submitted duly verified by Competent Authority of Cooperative Department in respect of Coop Societies and by Chartered Accountants in respect of NGOs/SHGs.

(ii) Documents to be submitted by DC/SDOs while forwarding the tender documents to the Fishery Deptt.

1. The bid opening certificate shall also be signed by the respective bidders present in addition to the Members of the Advisory Committee constituted by DC/SDO.

2. While preparing the Comparative Statement, the above mention points (1-9) shall be taken into consideration and such Comparative Statement should be signed by the authorized officer duly authenticated by DC/SDO as the case may be with specific comments against each bid along with proceedings of the meeting of the Tender Committee.

(iv) Settlement of 40% Govt. Fishery:

The instructions vide Para 1 above shall be followed by Deputy Commissioners/SDO(Civil) so far applicable in case of 40% Govt. Fisheries which are under administrative control of DC/SDO(C).

The above instructions shall come into force with immediate effect."

In the notification dated 18/01/2018, it has further been mentioned that the clauses/criteria laid down by the notification are required to be included in the Notice Inviting Tender (NIT) for settlement of 60% Govt. Fisheries.

8. By taking note of the criteria laid down in the notification dated 18/01/2018, the bids submitted by the tenderers, in response to the NIT dated 19/01/2021, were evaluated. Upon such evaluation, the tender of the appellant was found to be in order. However, certain technical deficiencies were noticed in the bid submitted by the respondent no. 4. The observations made by the Tender Evaluation Committee in the order dated 08/03/2021 pertaining to the deficiencies in the bid submitted by the highest bidder i.e. the respondent no. 4, are reproduced herein below for ready reference :-

“Teteliguri Navajyoti MSS Ltd. Dist. Morigaon.

The Society has offered bid value of Rs. 2,62,59,529.00 @ Rs. 37,51,360.00 PA which is 1st highest.

(i) The Fishing Experience Certificate is issued by one Fishery Extension Officer instead of District Fishery Development Officer, Morigaon in the name of President of the society and does not cover all the members of the society.

(ii) The Neighbourhood certificate is issued by the DFDO, Morigaon. But concerned Revenue Circle Officer is only competent to issue such certificate as per Govt. Circular dated 18.1.2018.

(iii) No attested Resolution of the society authorizing the President (sic Present) to submit tender is found with the tender.”

9. In so far as the first deficiency on account of non-submission of Fishery Experience Certificate by the respondent no. 4 is concerned, the learned Single Judge has held that the said observation is untenable in law in view of the fact that the NIT did not specify the authority which was required to issue such a certificate. As regards the third ground pertaining to non-submission of Resolution by the Society authorizing the President of the Society to submit the tender, the learned Single Judge had found fault with the said objection of the authority as well and has observed that in the absence of a complaint lodged with the authorities on such count by the members of the Society, the same could not have been valid a ground to reject the tender. However, in so far as the finding of the Tender Evaluation Committee regarding the second ground pertaining to non-submission of Neighbourhood Certificate issued by the competent authority is concerned, although the learned Single Judge has observed that the said ground was also incorrect, yet, no reason has been mentioned in the impugned judgement and order for arriving at such a conclusion.

10. By referring to the impugned judgement and order dated 15/02/2023, Mr. K.N. Choudhury, learned senior counsel appearing for the appellant has submitted that the notification dated 18/01/2018 having been published in the Official Gazette, the clauses laid down therein would be binding on the departmental authorities as well as the bidders. Since

the respondent no. 4 has failed to submit necessary documents issued by the competent authority along with the tender, as such, the tender submitted by the respondent no. 4 was evidently defective and hence, had been rightly rejected. Contending that price would be a relevant factor only if the tender is found to be free from defect, Mr. Choudhury submits that in case of 60% Govt. Fishery, price is not the only criteria for issuing the order of settlement.

11. In so far as the plea raised by the writ petitioner that the clauses laid down in the notification dated 18/01/2018 would not be applicable since those were not specifically incorporated in the NIT, Mr. Choudhury has placed reliance on a decision of the Hon'ble Supreme Court rendered in the case of ***B.K. Srinivasan and others Vs. State of Karnataka and others*** reported in ***(1987) 1 SCC 658*** to argue that whether, it is a statute of the Parliament or the Legislative Assembly or a subordinate legislation, the same will take effect from the date of publication of the statute/legislation by prescribed mode of publication. Since publication in the official gazette is a prescribed mode of publication of subordinate legislation, hence, the respondent no. 4 cannot plead ignorance of the said notification so as to overcome the deficiencies in its tender.

12. Responding to the above arguments, Mr. S. Borthakur, learned counsel for the respondent no. 4 has argued that had the authorities incorporated the conditions laid down in the notification dated 18/01/2018 in the NIT itself, there would have been no occasion for the tenderers including his client not to comply with the same. Contending that the respondents cannot apply the notification dated 18/01/2018 in a selective manner, Mr. Borthakur has submitted that since the relevant clauses were not included in the NIT, as mandated by the notification itself, the same could not have been applied by the authorities while evaluating the tender of the respondent no. 4. The learned counsel for the respondent no. 4 has, however, submitted in his usual fairness that there is no dispute about the fact that the notification dated 18/01/2018 was duly published in the Official Gazette and that the tender submitted by his client did not comply with the requirements of the said notification.

13. Mr. R.K. Bora, learned Government Advocate, Assam has supported the order of settlement dated 08/03/2021 to submit that the said order has been issued on the basis of a transparent evaluation process and, therefore, the learned Single Judge was wholly unjustified in interfering with the order of settlement.

14. As has been noted herein above, there is no controversy about the fact that the

respondent no. 4 did not comply with the conditions laid down in the notification dated 18/01/2018 in so far as submission of documents along with the tender is concerned. It is also not in dispute that the tender submitted by the appellant was in total conformity with the requirement of the conditions laid down in the notification dated 18/01/2018. If that be so, the only question that would arise for consideration of this Court in the present proceeding would be as to whether, the authorities could have relied upon the criteria laid down in the notification dated 18/01/2018 without incorporating the same in the NIT.

15. As noted above, the Additional Chief Secretary to the Government of Assam, Fishery Department, Dispur, had issued a notification dated 18/01/2018 laying down the conditions pertaining to the documents that shall be insisted upon with the tender while floating an NIT for the settlement of 60% category fishery. The said notification issued in the name of the Governor of Assam has been published in the official gazette. If that be so, there will be a presumption that members of the public were aware of the aforesaid notification. As such, we find force in the submission of Mr. Choudhury that the respondent no. 4 cannot plead ignorance about the need to comply with the notification dated 18/01/2018. The view expressed by the Supreme Court in the case of ***B.K. Srinivasan and others (supra)*** relied upon by Mr. Choudhury also support such a conclusion.

16. It is not the case of the respondent no. 4 that the notification dated 18/01/2018 has not been published in the official gazette. If that be so, we are of the considered view that merely because the conditions laid down in the notification were not specifically incorporated in the NIT, the same cannot be a ground to hold that the department was not entitled to apply the notification dated 18/01/2018 while evaluating the bids.

17. In this case, the evaluation of bids had been admittedly carried out by strictly following the guidelines laid down in the notification dated 18/01/2018. Hence, we are of the opinion that the decision making process leading to the issuance of the order of settlement dated 08/03/2021 does not suffer from any infirmity warranting interference by this Court.

18. Having held as above, we have also taken note of the fact that the learned Single Judge has not recorded any reason in the impugned order dated 15/02/2023 while arriving at a conclusion that the second ground on which the bid of the respondent no. 4 was found to be non-compliant, was not tenable in the eyes of law, thus having a vitiating effect on the judgement.

19. In so far as the decision rendered in the case of ***Malegarh Gobindapur Fishery Cooperative Society Ltd (Supra)*** relied upon by the learned Single Judge is concerned, we find that although the Notice Inviting Tender in that case was dated 24/05/2018 and the order of settlement was issued on 20/12/2018, yet, while rendering the judgement in that case, the learned Single Judge did not take cognizance of the notification dated 18/01/2018. As such, unlike in the present case, the decision in the case of ***Malegarh Gobindapur Fishery Cooperative Society Ltd (Supra)*** was not rendered in the context of the notification dated 18/01/2018. If that be so, the ratio laid down in the aforesaid decision, in our opinion, would not have any bearing in the facts and circumstances of the present case.

20. Coming to the last issue pertaining to the higher price quoted by the respondent no.4 and the element of public interest recognized by the learned Single Judge in the matter, we may note herein that it is trite law that price will be a relevant factor only if the bid is found to be technically responsive [see ***Girin Deka Vs. State of Assam reported in 2014 (5) GLR 629***].

21. It is no doubt correct that while processing tenders pertaining to settlement of fisheries etc., the interest of revenue cannot be lost sight of. However, price would become a determining factor only if the tender submitted by the highest bidder is found to be in conformity with the tender specification as well as the relevant criteria holding the field. In the present case, the tender of the respondent no. 4 was not found to be in conformity with the specifications laid down in the notification dated 18/01/2018. Considering the fact that the authorities have applied the notification dated 18/01/2018 uniformly in case of all the bidders including the appellant and the respondent no.4 herein, we do not find any illegality or arbitrariness in the decision making process. If that be so, we are of the considered opinion that there was no scope for the learned Single Judge to interfere with the order of settlement dated 08/03/2021 merely on account of the fact that the respondent no. 4 had quoted higher price than the other bidders.

22. In the result, this writ appeal succeeds and is hereby allowed. The judgement and order dated 15/02/2023 passed by the learned Single Judge stands set aside.

23. We are informed that during the pendency of the writ petitions, the appellant was operating the Fishery in terms of the order of settlement dated 08/03/2021. After the impugned judgement and order dated 15/02/2023 was passed, the Division Bench had

passed an interim order dated 15/03/2023 in the present writ appeal granting interim relief to the appellant. Accordingly, the appellant is continuing to run the fishery till date. As such, no further direction is called for in this case.

Parties to bear their own costs.

JUDGE

CHIEF JUSTICE

Sukhamay

Comparing Assistant