

GAHC010010362023



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

Case No. : WP(C)/305/2023

BACCHU DUTTA
S/O- LATE PRAMULYA CHANDRA DUTTA, R/O- VILL.- MALUGRAM, DEVI
PRASAD SCHOOL ROAD, P.O. SILCHAR, P.S. SILCHAR, DIST. CACHAR,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, INLAND WATER TRANSPORT DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DIRECTOR

INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI-781007.

3:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
CHANDMARI
TARAPUR
P.O. SILCHAR
DIST. CACHAR
ASSAM

4:FAKHAR UDDIN BARBHUIYA
S/O- LATE HARUN RASHID BARBHUIYA
R/O- GOSSAIPUR
PART-III
UDHARBAND

DIST. CACHAR
ASSAM
PIN- 788030

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : SC, IWT

Linked Case : WP(C)/835/2023

BACCHU DUTTA
S/O LT. PRAMULYA CHANDRA DUTTA R/O VILL. MALUGRAM DEVI PRASAD
SCHOOL ROAD P.O. SILCHAR P.S SILCHAR DIST. CACHAR ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
INLAND WATER TRANSPORT DEPTT. DISPUR GUWAHATI 6

2:THE DIRECTOR
INLAND WATER TRANSPORT ASSAM ULUBARI GUWAHATI 781007
3:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION CHANDMARI TARAPUR P.O.
SILCHAR DIST. CACHAR ASSAM
4:THE DEPATRMENTAL TENDER COMMITTEE
INLAND WATER TRANSPORT DEPTT. HEADED BY THE DIRECTOR INLAND
WATER TRANSPORT ASSAM ULUBARI GUWAHATI 781007
5:FAKHAR UDDIN BARBHUIYA
S/O LT. HARUN RASHID BARBHUIYA R/O GOSSAIPUR PART III
UDHARBAND DIST. CACHAR ASSAM PIN 788030

Advocate for : MR J I BARBHUIYA
Advocate for : SC
IWT appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/1606/2023

BACCHU DUTTA
S/O LT. PRAMULYA CHANDRA DUTTA R/O VILL. MALUGRAM DEVI PRASAD

SCHOOL ROAD P.O. SILCHAR P.S SILCHAR DIST. CACHAR ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
INLAND WATER TRANSPORT DEPTT. DISPUR GUWAHATI 6

2:THE DIRECTOR
INLAND WATER TRANSPORT ASSAM ULUBARI GUWAHATI 781007
3:THE EXECUIVE ENGINEER
INLAND WATER TRANSPORT DIVISION CHANDMARI TARAPUR P.O.
SILCHAR DIST. CACHAR
ASSAM
4:THE DEPARTMENTAL TENDER COMMITTEE
INLAND WATER TRANSPORT DEPTT. HEADED BY THE DIRECTOR INLAND
WATER TRANSPORT ASSAM ULUBARI GUWAHATI 7
5:FAKHAR UDDIN BARBHUIYA
S/O LT. HARUN RASHID BARBHUIYA R/O GOSSAIPUR PART III
UDHARBAND DIST. CACHAR ASSAM PIN 788030

Advocate for : MR. J I BORBHUIYA
Advocate for : SC
IWT appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/8323/2022

FAKHAR UDDIN BARBHUIYA
S/O- LATE HARUN RASHID BARBHUIYA
R/O- GOSSAIPUR
PART III
UDHARBAND
DIST. CACHAR
ASSAM
PIN- 788030.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-06.

2:THE DIRECTOR

INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI-781007
KAMRUP(M).

3:EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
CHANDMARI
T.V. STATION ROAD
TARAPUR
SILCHAR
PIN- 788003
DIST. CACHAR.

4:BACCHU DUTTA
S/O- LATE PRAMULLYA CHANDRA DUTTA
R/O- DEVI PRASAD ROAD
MALUGRAM
SILCHAR
DIST. CACHAR
ASSAM
PIN- 788002.

Advocate for : MR. P MAHANTA
Advocate for : SC
TRANSPORT appearing for THE STATE OF ASSAM AND 3 ORS

Advocates :

For Petitioner

In W.P.[C] no. 305/2023,

In W.P.[C] no. 835/2023,

In W.P.[C] no. 1606/2023 &

Respondent no. 4 in W.P.[C] no. 5323/2022 : Mr. J.I. Borbhuiya, Advocate.

For Petitioner

In W.P.[C] no. 8323/2022,

For Respondent no. 4

In W.P.[C] no. 305/2023,

For Respondent no. 5

In W.P.[C] no. 835/2023 &

In W.P.[C] no. 1606/2023 & : Mr. P. Mahanta, Advocate

For Respondent nos. 1, 2 & 3

In W.P.[C] no. 8323/2022 &

In W.P.[C] no. 305/2023,

For Respondent nos. 1, 2, 3 & 4

In W.P.[C] no. 835/2023 &

In W.P.[C] no. 1606/2023 : Ms. M.D. Borah, Standing Counsel,
Transport Department

Date of Hearing, Judgment & Order : 09.11.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

All these 4 [four] writ petitions, instituted under Article 226 of the Constitution of India, have been preferred in respect of competitive bidding processes undertaken by the respondent Directorate of Inland Water Transport, Assam for settlement of 2 [two] ferry services viz. [i] Jatinga Ferry Service, and [ii] Rajnagar Ferry Service. As the subject-matter of all the writ petitions are connected with each other, all the four writ petitions are taken up together at the admission stage at the request of the learned counsel for the parties for the purpose of adjudicating the common issues involved in the writ petitions.

2. I have heard Mr. J.I. Borbhuiya, learned counsel for the writ petitioner in the writ petitions, W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & In W.P.[C] no. 1606/2023 and the respondent no. 4 in the writ petition, W.P.[C] no. 5323/2022 and Mr. P. Mahanta, learned counsel for the writ petitioner in the writ petition, W.P.[C] no. 8323/2022, for the respondent no. 4 in the writ petition, W.P.[C] no. 305/2023, and for the respondent no. 5 in the writ petitions, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023. I have also heard Ms. M.D. Borah, learned Standing Counsel, Transport Department for the respondent nos. 1, 2 & 3 in the writ petitions, W.P.[C] no. 8323/2022 & W.P.[C] no. 305/2023, and for the respondent nos. 1, 2, 3 & 4 in the writ petitions, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023.

3. The common background facts can be narrated, in brief, as follows :- By a Tender Notice dated 18.07.2022, the Executive Engineer, Inland Water Transport Division, Silchar invited bids for leasing out 22 [twenty two] nos. of ferry services in two-cover bid system from persons having experience in ferry business. The two ferry services viz. [i] Jatinga Ferry Service, and [ii] Rajnagar Ferry Service were amongst those 22 [twenty two] ferry services for which bids were called for by the Tender Notice dated 18.07.2022.

3.1. As per the Tender Notice dated 18.07.2022, the Base Value for Jatinga Ferry Service for the period: 2022 – 2024 [per year] was fixed at Rs. 2,28,392/-. In respect of Jatinga Ferry Service, the Tendering Authority received 4 [four] nos. of bids from [i] Abdur Rahman Mazumder, [ii] Bacchu Dutta [the writ petitioner in W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023], [iii] Fakar Uddin Borbhuiya [the writ petitioner in W.P.[C] no. 8323/2022] & [iv] Khairul Islam Borbhuiya.

3.2. In respect of Rajnagar Ferry Service, the Tendering Authority received 4 [four] nos. of bids from [i] Abdur Rahman Mazumder, [ii] Bacchu Dutta [the writ petitioner in W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023], [iii] Fakar Uddin Borbhuiya [the writ petitioner in W.P.[C] no. 8323/2022] & [iv] Khairul Islam Borbhuiya. In the Tender Notice dated 18.07.2022, the Base Value for Rajnagar Ferry Service for the period : 2022 - 2024 [per year] was fixed at Rs. 1,30,445/-.

3.3. The writ petitioner in the writ petitions, W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & In W.P.[C] no. 1606/2023 and the respondent no. 4 in the writ petition, W.P.[C] no. 5323/2022 on one hand and the writ petitioner in the writ petition, W.P.[C] no. 8323/2022, for the respondent no. 4 in the writ petition, W.P.[C] no. 305/2023, and for the respondent no. 5 in the writ petitions, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023, on the other hand, are hereinafter referred to hereinafter by their respective names, for the sake of easy reference.

4. After receipt of the bids, both in the on-line and the off-line modes, the Departmental Tender Committee constituted for the purpose of evaluation of the bids, held one of its Meetings on 13.10.2022 in the office of the Director, Inland Water Transport, Assam in Guwahati. After scrutiny of the technical bids of the 4 [four] participant bidders in respect of Jatinga Ferry Service and preparation of a Comparative Statement, the Departmental Tender Committee found the technical bids of [i] the

petitioner – Bacchu Dutta; [ii] the petitioner – Fakar Uddin Borbhuiya; and [iii] Khairul Islam Borbhuiya; compliant to the terms and conditions of the Tender Notice. Observing so, the Departmental Tender Committee decided to accept the bids of those three bidders and the technical bid of the 4th bidder viz. Abdul Rahman Mazumder was rejected on the ground that he failed to submit a proper Land Valuation Certificate.

4.1. Similarly, after scrutiny of the technical bids of the 4 [four] participant bidders in respect of Rajnagar Ferry Service and preparation of a Comparative Statement, the Departmental Tender Committee found the technical bids of [i] the petitioner – Bacchu Dutta; [ii] the petitioner – Fakar Uddin Borbhuiya; and [iii] Khairul Islam Borbhuiya; compliant to the terms and conditions of the Tender Notice. Observing so, the Departmental Tender Committee decided to accept the bids of those three bidders and the technical bid of the 4th bidder viz. Abdul Rahman Mazumder was rejected on the ground that he failed to submit a proper Land Valuation Certificate.

5. After the Meeting of the Departmental Tender Committee, held on 13.10.2022, the petitioner – Bacchu Dutta submitted a complaint dated 23.12.2022 before the Director, Inland Water Transport, Assam and the said complaint was received under seal of the office of the Director, Inland Water Transport, Assam on 26.12.2022. In the said complaint, the petitioner – Bacchu Dutta had alleged that the Land Valuation Certificate submitted by the petitioner – Fakar Uddin Borbhuiya along with his bid, in respect of a plot of land, covered by Dag no. 86 & Patta no. 26, situate at Mouza – Gossaipur, Pargona – Udharband was not in conformity with the zonal valuation of land fixed by the Revenue Department of the Government of Assam. It was alleged that in the said Land Valuation Certificate, the valuation was shown at a much higher rate than the actual rates of zonal valuation. A complaint containing allegations of similar nature was also submitted by another participant bidder viz. Khairul Islam Borbhuiya before the Director, Inland Water Transport, Assam on 22.12.2022, which was received at the office of the Director, Inland Water Transport, Assam on 26.12.2022. The petitioner – Fakar Uddin Borbhuiya had also submitted a complaint before the State Minister, Transport Department alleging *inter alia* that despite submission of improper documents by the petitioner – Bacchu Dutta, which was not in conformity with Condition no. 7 of the Tender Notice, the Departmental Tender Committee had accepted both the bids of the petitioner – Bacchu Dutta for the two ferry services viz. [i] Jatinga Ferry Service, and [ii] Rajnagar Ferry Service. By lodging the complaint, the petitioner – Fakar Uddin Borbhuiya had submitted that the bids of the petitioner –

Bacchu Dutta should have been rejected as non-compliant. The said complaint lodged by the petitioner – Fakar Uddin Borbhuiya was forwarded to the office of the Director, Inland Water Transport, Assam in due course.

6. On receipt of the complaint from the petitioner – Fakar Uddin Borbhuiya by the Director, Inland Water Transport [IWT], Assam, the Director, IWT, Assam by a Letter dated 16.11.2022 requested that Deputy Commissioner, Cachar to look into the land documents submitted by the petitioner – Bacchu Dutta with the bids submitted for settlement of the two ferry services, that is, [i] Jatinga Ferry Service and [ii] Rajnagar Ferry Service. By forwarding a copy of the complaint received from the petitioner – Fakar Uddin Borbhuiya, the Director, IWT, Assam had thereby, requested the Deputy Commissioner, Cachar to submit a verification report on the land documents of the petitioner – Bacchu Dutta for further necessary action. The copies of the land documents submitted by the petitioner – Bacchu Dutta along with his bids, were also forwarded with the Letter dated 16.11.2022 [supra].

7. On receipt of the two complaints from the petitioner – Bacchu Dutta and the other participant bidder - Khairul Islam Borbhuiya as regards the alleged deficiencies in the land documents submitted by the petitioner – Fakar Uddin Borbhuiya, the Director, IWT, Assam forwarded the said two complaints too to the Deputy Commissioner, Cachar by a Letter dated 03.01.2023 along with the complaints and enclosures submitted therewith, with the request to inquire into the matter and to forward a report to the Director, IWT, Assam for taking further necessary action on the complaints submitted by the petitioner – Bacchu Dutta and the other participant bidder - Khairul Islam Borbhuiya.

8. It is the case of the writ petitioner in the writ petition, W.P.[C] no. 8323/2022, Fakar Uddin Borbhuiya that the land documents required to be submitted in terms of Clause 4 of the Tender Application Form and Clause 7 of the Detail Terms and Conditions of the Tender Notice in respect of the technical bids of the petitioner – Bacchu Dutta [the writ petitioner in W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023] were not shown in the Portal when technical bids of the bidders were opened on 09.08.2022. The contention of the petitioner – Fakar Uddin Borbhuiya is that as per Clause 4 [v], which had been further clarified in Clause 7 of the Detail Terms and Conditions of the Tender Notice, a bidder had to submit a Land Revenue Clearance Certificate from the concerned Mouzadar. It has been contended by the petitioner in the writ petition, W.P.[C] no. 8323/2022 – Fakar Uddin Borbhuiya that he had to submit a complaint thereafter, before the Tendering Authority alleging

inter alia to the effect that the technical bids of the rival bidder i.e. the petitioner – Bacchu Dutta could not have been accepted as he did not submit the specific document in compliance of Clause 4 of the Tender Application Form read with Clause 7 of the Detail Terms and Conditions of the Tender Notice.

9. It is apposite here to refer to the relevant parts of the Tender Application Form as well as the Detail Terms and Conditions of the Tender Notice dated 18.07.2022.

9.1. As per the Tender Application Form, a participant bidder had to submit the following land documents :-

- [i] Periodic patta/Jamabandi.
- [ii] Land Valuation Certificate issued from DC/ADC/SCO[S]/SDO[C].
- [iii] N.O.C. of Co-Pattadar in the form of an affidavit duly signed by Notary.
- [iv] Non Encumbrance Certificate issued from Sub-Register office.
- [v] Land Revenue Clearance certificate.

9.2. As per clause 7 of the Detail Terms and Conditions of the Tender Notice for leasing out of ferry services for the Financial Years : 2022 – 2024, a bidder had to submit a Certificate in support of periodic patta land in his own name within the District or the Sub-Division of value not less than the bid/tender money from the Deputy Commissioner[DC]/Additional Deputy Commissioner[ADC]/Sadar Sub-Divisional Officer of the District [SDO Sadar] or Sub-Divisional Officer [Civil] of the Sub-Division concerned [SDO-Civil]. A bidder had to submit an up-to-date Non-Encumbrance certificate regarding the land under periodic patta from the DC/ADC/SDO Sadar/SDO[Civil] of Sub-Division concerned. In addition, a bidder was also required to submit a Land Revenue Clearance certificate from the concerned Mouzadar. It was set forth that if there were more than one pattadar, a No Objection Certificate from the co-pattadar had to be submitted. The land documents and the land valuation of a successful bidder against any ferry service would not be accepted in respect of other ferry service if the valuation did not cover the total bid amount. Clause 2 thereof had laid down that the bidders had to submit the bid documents through e-procurement portal via on-line mode only and with all requisite documents mentioned in the Detail Terms and Conditions of the Tender Notice. As per Clause 23 thereof, the bidder had to participate through on-line e-procurement portal only. Clause 24 had prescribed that the bids submitted would be opened only on-line through the e-procurement portal and

the participant bidders could attend the same by logging into the e-procurement portal. In Clause 25, it was prescribed that the participant bidders were also required to submit hard copies of their bid documents which were uploaded in the portal to the office of the Executive Engineer, Inland Water Transport Division, Silchar. It was clearly specified therein that the bids would be finalized only on the basis of the documents submitted in the on-line portal.

10. The allegations leveled by the petitioner – Bacchu Dutta as regards the land documents submitted by the petitioner – Fakar Uddin Borbhuiya were enquired into by the Deputy Commissioner, Cachar and an Enquiry Report was forwarded by the office of the Deputy Commissioner, Cachar to the Director, Inland Water Transport, Assam by a Letter dated 18.02.2023. In the Letter dated 18.02.2023, it was reported that the matter was enquired by the Deputy Commissioner, Cachar through the Executive Engineer, Inland Water Transport Division, Silchar and the Circle Officer, Udharbond Revenue Circle. The Deputy Commissioner, Cachar with his Letter dated 18.02.2023, had also forwarded the Reports submitted by the Executive Engineer, Inland Water Transport Division, Silchar and the Circle Officer, Udharbond Revenue Circle. In [i] the Letter dated 18.02.2023 of the Deputy Commissioner, Cachar; [ii] the Report dated 04.02.2023 of the Executive Engineer, Inland Water Transport Division, Silchar; and [iii] the Report dated 02.02.2023 of the Circle Officer, Udharbond Revenue Circle, it had been stated that the petitioner – Fakar Uddin Borbhuiya had a landed property measuring 1 Bigha, 4 Katha, 4 Chattak, covered by Dag no. 86 & 2nd R.S. Patta no. 26, at Ph - Udharbond, Mouza – Gossaipur Part-II and he purchased the said landed property by way of Sale Deed no. 273 dated 31.01.1993. It had been reported that the said landed property is in possession of the petitioner – Fakar Uddin Borbhuiya. The Reports had mentioned that the value of the landed property which the petitioner – Fakar Uddin Borbhuiya had offered was Rs. 7,27,500/- and as per zonal valuation of the year 2021, the zonal value of the said land was fixed at Rs. 6,00,000/- per Bigha.

11. After receipt of those Reports, the Departmental Tender Committee had decided to hold a Review Meeting to evaluate the bids of the participant bidders in respect of the two Ferry Services, that is, [i] Jatinga Ferry Service and [ii] Rajnagar Ferry Service. The Review Meeting of the Departmental Tender Committee was held accordingly, in the office of the Director, Inland Water Transport, Assam on 12.01.2023.

11.1. The Revised Comparative Statements prepared by the Executive Engineer, Inland Water

Transport Division, Silchar in respect of Jatinga Ferry Service were placed before the Departmental Tender Committee recording the comments as regards responsiveness or otherwise of the technical bids of the participant bidders. In the said Review Meeting, the Departmental Tender Committee after going through the bids of the 4 [four] participant bidders, had found the technical bids of bidders viz. [i] Fakar Uddin Borbhuiya [the petitioner in W.P.[C] no. 8323/2022]; and [ii] Khairul Islam Borbhuiya compliant to the terms and conditions of the Tender Notice. The Departmental Tender Committee had found the bids of the other two bidders, that is, [i] Abdur Rahman Mazumder and [ii] Bacchu Dutta [the petitioner in W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023] non-compliant to the terms and conditions of the Tender Notice dated 18.07.2022. In the Minutes of the Departmental Tender Committee Meeting held on 12.01.2023, it was observed that the petitioner – Bacchu Dutta failed to submit the Land Revenue Clearance certificate.

11.2. In respect of the Rajnagar Ferry Service also, the Departmental Tender Committee had found the bids of the petitioner – Bacchu Dutta and another participant bidder – Abdur Rahman Mazumder non-compliant to the terms and conditions of the Tender Notice dated 18.07.2022. The ground for non-acceptance of the technical bids of the petitioner – Bacchu Dutta in respect of Rajnagar Ferry Service was similar to the ground of rejection of his technical bid in respect of Jatinga Ferry Service.

11.3. For ready reference, the excerpts of the Minutes of the Review Meeting of the Departmental Tender Committee, held on 12.01.2023, in respect of [i] Jatinga Ferry Service, and [ii] Rajnagar Ferry Service, are extracted herein below :-

1. Jatinga Ferry Service

As per the Revised Comparative Statement submitted by the Executive Engineer, IWT Division, Silchar, it is found that 4 [four] bides have participated in the tendering process for settlement of Jatinga Ferry Service for the financial year 2022-24. All the bidders have deposited their required amount of earnest money along with the tender. The estimated value of the ferry service is Rs. 2,28,392.00 per year.

The name of the bidders and documents submitted are mentioned below :-

Name of bidders Documents Submitted/Not Submitted

[i] Abdur Rahman Mazumder - Failed to submit proper Land Valuation Certificate

- [ii] Bacchu Dutta - Failed to submit Land Revenue clearance certificate
- [iii] Fakar Uddin Borbhuiya - All document submitted as per NIT.
- [iv] Khairul Islam Borbhuiya - All document submitted as per NIT.

Also, the name of the qualified bidders and offered amounts are as mentioned below:-

Name of bidders Offered amount

- 1. Fakar Uddin Borbhuiya - Rs. 3,82,700.00
- 2. Khairul Islam Borbhuiya - Rs. 2,33,000.00

It is also mentioned that Fakar Uddin Borbhuiya has lodged a complaint against the land documents of Bacchu Dutta and both Bacchu Dutta and Khairul Islam Borbhuiya have lodged complaint against the land documents of Fakar Uddin Borbhuiya. All the complaint petitions were sent to the Deputy Commissioner, Cachar for verification.

Decision :- Tender committee re-viewed it's earlier decision and decides to accept the tenders of Fakar Uddin Borbhuiya and Khairul Islam Borbhuiya and rejected the tenders of Bacchu Dutta and Abdur Rahman Mazumder and recommends the name of Fakar Uddin Borbhuiya for settlement of Jatinga ferry service at his bid amount of Rs. 3,82,700.00 per year for the remaining period of the financial year 2022-24. The proposal for settlement of the ferry service will be sent to the Government after receiving the favourable report of land documents of Fakar Uddin Borbhuiya from the Deputy Commissioner, Cachar.

2. Rajnagar ferry service

As per the Revised Comparative Statement submitted by the Executive Engineer, IWT Division Silchar, it is found that 4 (four) bidders have participated in the tendering process for settlement of Jatinga Ferry Service for the financial year 2022-24. All the bidders have deposited their required amount of earnest money along with the tender. The estimated value of the ferry service is Rs. 1,30,445.00 per year.

The name of the bidders and documents submitted are mentioned below:-

Name of bidders Documents Submitted/Not Submitted

- [i] Abdur Rahman Mazumder - Failed to submit proper Land Valuation Certificate
- [ii] Bacchu Dutta - Failed to submit Land Revenue Clearance Certificate
- [iii] Fakar Uddin Borbhuiya - All document submitted as per NIT

[iv] Khairul Islam Borbhuiya - All document submitted as per NIT

Also, the name of the qualified bidders and offered amounts are as mentioned below:-

[i] Fakar Uddin Borbhuiya - Rs. 3,44,700.00

[ii] Khairul Islam Borbhuiya - Rs. 2,77,000.00

It is also mentioned that Fakar Uddin Borbhuiya has lodged a complaint against the land documents of Bacchu Dutta and both Bacchu Dutta and Khairul Islam Borbhuiya have lodged complaint against the land documents of Fakar Uddin Borbhuiya. All the complaint petitions were sent to the Deputy Commissioner, Cachar for verification.

Decision:- Tender committee re-viewed it's earlier decision and decides to accept the tenders of Fakar Uddin Borbhuiya and Khairul Islam Borbhuiya and to reject the tenders of Bacchu Dutta and Abdur Rahman Mazumder and recommends the name of Fakar Uddin Borbhuiya for settlement of Rajnagar ferry service at his bid amount of Rs 3,44,700.00 per year for the remaining period of the financial year 2022-24. The proposal for settlement of the ferry service will be sent to Government after receiving the favourable report of land documents of Fakar Uddin Borbhuiya from the Deputy Commissioner, Cachar.

12. The Detail Terms and Conditions of the Tender Notice/Tender Documents and the Tender Application Form qua the technical bids of the petitioner – Fakar Uddin Borbhuiya and the documents submitted by him along with his bids go to indicate that he had periodic patta land in his own name. the bid values offered by the petitioner – Fakar Uddin Borbhuiya for the two ferry services viz. [i] Jatinga Ferry Service and [ii] Rajnagar Ferry Service were Rs. 3,82,700/- and Rs. 3,44,700/- respectively, meaning thereby, he had offered a total of Rs. 7,27,400/- in seeking settlement of the two ferry services. As reflected from the Enquiry Reports [supra], which were based on the basis of Zonal Valuation of 2021, the land value of the periodic patta land offered by the petitioner – Fakar Uddin Borbhuiya was Rs. 7,27,500/-. Thus, the bid values offered by the petitioner – Fakar Uddin Borbhuiya was lesser than the amount of land value of his periodic patta land recorded in the Land Valuation Certificate and the same is found to have complied with the condition, which stipulated that the land valuation of a successful bidder against a ferry service should cover the total bid amount.

13. Mr. Borbhuiya, learned counsel for the petitioner – Bacchu Dutta has submitted that the petitioner

– Bacchu Dutta had submitted land revenue deposit challans with his bids at the time of submission of the bids for the two ferry services on 09.08.2022. By referring to the Challan Form dated 16.07.2022, annexed to the case papers, Mr. Borbhuiya has strenuously urged that the petitioner – Bacchu Dutta has owned periodic patta land measuring 3 Bighas and the petitioner – Bacchu Dutta had paid the entire land revenue in respect of the said periodic patta land he had offered while seeking settlement of the two ferry services in his favour. From the counter-affidavit filed by the Director, IWT, Assam, it has emerged that the petitioner – Bacchu Dutta had submitted the copy of the Land Revenue Clearance Certificate at the Office of the Executive Engineer, Inland Water Transport Division, Silchar with the hard copies of his bids. It has been categorically asserted in the said counter affidavit that the petitioner – Bacchu Dutta did not submit the Land Revenue Clearance Certificate with his on-line bid, as mandated by Clause 25 of the Tender Notice. The said stand of the Tendering Authority, that is, the Director, IWT, Assam has not been specifically traversed by the petitioner – Bacchu Dutta.

14. It has been sought to contend, by referring to the Challan Form dated 16.07.2022, that the petitioner – Bacchu Dutta had complied with Condition no. 4 of the Tender Application Form and Clause 7 of the Detail Terms and Conditions of the Tender Notice. The learned Standing Counsel for the State Transport Department respondents and Mr. Mahanta have contended that the document which the petitioner – Bacchu Dutta has referred to is only a Challan Form evidencing deposit of land revenue. On perusal of the document on which the petitioner – Bacchu Dutta has heavily relied on to substantiate his case it is found that the same is a Challan Form dated 16.07.2022 by which the petitioner – Bacchu Dutta had deposited an amount towards land revenue in respect of the periodic patta land he had offered to the Tendering Authority while seeking settlement of the two ferry services. A Challan Form like the one the petitioner – Bacchu Dutta has referred to only indicates that the amount quoted therein had been deposited towards land revenue in respect of the plot of land mentioned therein. The deposit of land revenue cannot be equated with a Land Revenue Clearance Certificate, which was to be issued by the concerned Mouzadar. A Land Revenue Clearance Certificate from the concerned Mouzadar goes to indicate that the land revenue in respect of the land mentioned therein has been paid up-to-date but a Challan Form evidence deposit of a certain amount is not indicative of a situation that the land revenue in respect of the land mentioned therein has been paid up-to-date. What the Detail Terms and Conditions of the Tender Notice and the Tender Application Form required was that the bidder had cleared the land revenue in respect of the periodic patta land standing in his name he had offered while seeking settlement of the ferry services and such Land Revenue

Clearance Certificate must be from the concerned Mouzadar. In such view of the matter, the submission advanced by the petitioner – Bacchu Dutta that the Challan Form evidencing deposit of land revenue in respect of his periodic patta land is to be equated with a Land Revenue Clearance Certificate issued by the concerned Mouzadar cannot be countenanced. A contention has been advanced by Mr. Borbhuiya, learned counsel for the petitioner – Bacchu Dutta that the petitioner – Fakar Uddin Borbhuiya had also deposited a Challan Form evidencing deposit of land revenue at the time of submission of his on-line bids like the one submitted by the petitioner – Bacchu Dutta. On query made to Mr. Borbhuiya as to whether such a plea has been taken in any of the three writ petitions preferred by the petitioner – Bacchu Dutta, he has fairly submitted that such a plea has not been taken in any of the 3 [three] writ petitions. The technical bids were opened in the e-procurement portal and the documents submitted by the participant bidders in respect of two ferry services - [i] Jatinga Ferry Service and [ii] Rajnagar Ferry Service were visible to all the participant bidders in the said portal at the time of opening of the technical bids. When the petitioner – Fakar Uddin Borbhuiya made a complaint as regards the deficiency in respect of the Land Revenue Clearance Certificate in respect of the petitioner – Bacchu Dutta, the petitioner – Bacchu Dutta could have raised such a plea in respect of the deficiency, if any, found in respect of the Land Revenue Clearance Certificate submitted by the petitioner – Fakar Uddin Borbhuiya in his complaint lodged and he could have easily included such contention in the complaint filed by him on 23.12.2022. In view of such fact situation, the plea raised at the time of hearing of Mr. Borbhuiya is not acceptable.

15. The Tendering Authority seeking to settle ferry services like the ones under reference here, has the right to rigidly enforce the terms and conditions of the Tender Notice whereby it invited bids from eligible bidders and the Tender Application Form. If the Tendering Authority has rigorously adhered to the Detail Terms and Conditions of the Tender Notice and the Tender Application Form, the court exercising the power of judicial review has to exercise restraint. While exercising the power of judicial review in respect of award of contracts, the court should concern itself primarily with the question whether there has been any infirmity in the decision-making process. The court's jurisdiction under Article 226 in such matters is limited and the court should normally exercise judicial restraint unless illegality or arbitrariness on the part of the Tendering Authority is apparent on the face of the record. The Tendering Authority having authored the Tender Notice and the Detail Terms and Conditions of the Tender Document, is the best person to understand and appreciate the requirements and interpret the Tender Notice and the Tender Document. When a decision taken by the Tendering Authority is

manifestly in consonance with the Tender Notice and the Tender Document and sub-serves the purpose for which the bids were invited, the court only looks into the aspect as to whether the decision is lawful and it is not the purpose of the court to see as to whether the decision is sound. While it is submitted that the total bid values offered by the petitioner – Bacchu Dutta was higher than the total bid values offered by the petitioner – Fakar Uddin Borbhuiya, it is settled that price is not the only criteria in the matter of awarding the settlement, at the expense of transparency and fairness of the process. Such a contention is not available to be raised by the petitioner – Bacchu Dutta as his bids submitted in respect of the two ferry services were found to be non-compliant to the terms and conditions set forth in the Tender Notice and the Tender Document.

16. In view of the discussion made above and for the reasons assigned therein, this Court has found no merit in the three writ petitions filed by the petitioner – Bacchu Dutta, that is, W.P.[C] no. 305/2023, W.P.[C] no. 835/2023 & W.P.[C] no. 1606/2023. The said three writ petitions are accordingly dismissed. Accordingly, the interim order[s] passed in any of these three writ petitions, stand[s] recalled. The writ petition, W.P.[C] no. 8323/2022 preferred by the petitioner – Fakar Uddin Borbhuiya is disposed of with the observation that the Tendering Authority is at liberty to proceed and to bring the process of settlement in respect of the 2 [two] ferry services - [i] Jatinga Ferry Service and [ii] Rajnagar Ferry Service for the remaining period to logical conclusions within an outer limit of 2 [two] weeks from the date of submission of a certified copy of this order by the petitioner – Fakar Uddin Borbhuiya at the office of the Director, IWT, Assam. The interim order passed in W.P.[C] no. 8323/2022 stands merged with the final order. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant