

GAHC010027582020



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

Case No. : 1) WRIT PETITION (C) No. 870/2020

Rangagorah Fishermen Co-operative Society Ltd., a registered Fishery Co-operative Society having its registered office at Guijan, P.O. Rangagorah, District - Tinsukia, Assam, represented by its Secretary, Sri Prassanna Das, aged about 59 Years, S/o Late Parsuram Das, R/o Village - Guijan, P.O. - Rangagorah, P.S. -Tinsukia, District - Tinsukia, Assam.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner and Secretary, Fishery Department, Dispur, Guwahati – 781006.
2. The Deputy Secretary, Fishery Department, Dispur, Guwahati – 781006.
3. The Deputy Commissioner, Dibrugarh, District – Dibrugarh, Assam, Dibrugarh – 786003.
4. The Additional Deputy Commissioner, (Incharge), Sadiya Sub-Division, Chapakhowa, Assam.
5. Sub-Divisional Office [C] Sadiya, Chapakhowa [Fishery Branch].

6. M/s Dibru Dangari River Part-I Mini Samabai Samiti Ltd., a registered Fishery Co-operative Society, having its registered office at Dighaltarang, District – Tinsukia, Assam, Represented by its Secretary, Sri Bikash Das Village – Guijan, P.O. – Guijan, District – Tinsukia, Assam.

.....***Respondents***

WITH

2) **WRIT PETITION (C) No. 1046/2020**

Dibrugarh Fishery Co-operative Society Ltd., Dibrugarh, District – Dibrugarh, Assam, Represented by its Chairman, Sri Bikash Das, S/o Late Bopul Das, R/o North Amolapotty, Dibrugarh Town, District – Dibrugarh, Assam.

.....***Petitioner***

-Versus-

1. The State of Assam, represented by the Commissioner and Secretary, Fishery Department, Dispur, Guwahati - 781006.
2. The Deputy Secretary, Fishery Department, Dispur, Guwahati - 781006.
3. The Deputy Commissioner, Dibrugarh, District – Dibrugarh, Assam, Dibrugarh - 786003.
4. The Additional Deputy Commissioner [Incharge], Sadiya Sub-Division, Chapakhowa, Assam.
5. Sub Divisional Office [C] Sadiya, Chapakhowa [Fishery

Branch].

6. M/s Dibru Dangari River Part-I Min Samabai Samiti Ltd., a registered Fishery Co-Operative Society having its registered office at Dighaltarang, District – Tinsukia, Assam represented by its Secretary, Sri Bikash Das, Village – Guijan, P.O. – Guijan, District – Tinsukia, Assam.

.....Respondents

Advocates :

Petitioner in W.P.[C] no. 870/2020	: Mr. G. Khandelia, Advocate.
Petitioner in W.P.[C] no. 1046/2020	: Mr. S. Banik, Advocate.
Respondent State of Assam	: Mr. D.K. Sharma, Additional Senior Government Advocate
Respondent Society	: Mr. D.J. Medhi, Advocate
Date of Judgment & Order	: 31.05.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

Both the writ petitions - W.P.[C] no. 870/2020 and W.P.[C] no. 1046/2020 - preferred under Article 226 of the Constitution of India, have laid challenge to an order dated 26.12.2019 passed by the Secretary, Government of Assam, Fishery Department whereby a fishery named Brahmaputra Part-1 and Dibang River Fishery within Sadiya Sub-Division, District – Tinsukia has been settled in favour of the respondent Society viz. M/s Dibru Dangari Part-I Min Samabai Samiti Limited.

2. The necessary background facts leading to the institution to the two writ petition can be narrated, in brief, as under : -

2.1. By a Sale Notice published under the hand of the Additional Deputy Commissioner, In-charge, Sadiya Sub-Division, District – Tinsukia on 04.10.2019, tenders were invited under Rule 12 of the Assam Fishery Rules, 1953 from eligible bidders for settlement of the fishery named, Brahmaputra Part-1 and Dibang River Fishery [hereinafter referred to as 'the Fishery', at places, for brevity]. As per the Sale Notice, the last date of submission of bids was up to 02-00 p.m., 24.10.2019. In response to the Sale Notice, 5 [five] nos. of bidders submitted their tenders. The two petitioner societies and the respondent society were amongst those 5 [five] participant bidders. After receipt of the tenders, the Tender Inviting Authority i.e. the Additional Deputy Commissioner, Tinsukia opened the tenders and after verification of the tender papers, forwarded the same, by recording its comments to the Tender Settling Authority under Rule 12 of the Assam Fishery Rules, 195, that is, the State Government in the Fishery Department as the Fishery is a 60% category Fishery. The Tender Settling Authority after scrutiny of the tender papers, passed the impugned order dated 26.12.2019 whereby the Fishery came to be settled in favour of the respondent society for a period of 7 [seven] years at its offered bid value of Rs. 25,97,000/- terming the respondent society as the highest valid bidder in the tender process. The Tender Settling Authority after scrutiny of the tenders of the participant bidders by the order dated 26.12.2019, had declared the bids of the two petitioner societies as invalid ones.

2.2. Assailing the settlement made in favour of the respondent society and aggrieved by the order of settlement dated 26.12.2019 whereby the Fishery had been settled in favour of the respondent society and the bids of the two petitioner societies were declared as invalid ones, the two writ petitions had been instituted seeking setting aside of the impugned order of settlement order dated 26.12.2019.

3. I have heard Mr. G. Khandelia, learned counsel for the petitioner in W.P.[C] no. 870/2020 and Mr. S. Banik, learned counsel for the petitioner in W.P.[C] no. 1046/2020. I have also heard Mr. D.K. Sharma, learned Additional Senior Government Advocate, Assam for the State respondents and Mr. D.J. Medhi, learned counsel for the respondent society.

4. The learned counsel for the petitioners have assailed the order of settlement on the ground that the Tender Settling Authority had allowed the respondent society to submit a Bakijai Clearance Certificate after the last date of submission of tenders was over. It is their contention that the respondent society did not submit Bakijai Clearance Certificate with its bid in its name. Rather, the respondent society had submitted the Bakijai Clearance Certificate only in the name of the Secretary of the respondent society. Subsequently, the respondent society had submitted a petition on 07.12.2019 along with a copy of a certificate issued by the Additional Deputy Commissioner, Tinsukia on 06.12.2019 bearing no. TNB 2/2017. The certificate bearing no. TNB 2/2017 dated 06.12.2019 had stated to the effect that the previous Bakijai Clearance Certificate issued to the respondent society vide memo no. 211022019-001-2477680 dated 21.10.2019, got issued in the name of the Secretary of the

respondent society instead of in the name of the respondent society due to technical mistake. According to the learned counsel for the petitioners, the Tender Settling Authority had gone wrong in accepting a document which was subsequently submitted on behalf of the respondent society i.e. after the last date of submission of bids and as such, the Tender Settling Authority ought not to have settled the Fishery in favour of the respondent society.

5. On perusal of the order of settlement dated 26.12.2019, it has emerged that the petitioner society in the writ petition, W.P.[C] no. 870/2020 offered a bid value of Rs. 18,57,500/- for the period of 7 [seven] years whereas the petitioner society in the writ petition, W.P.[C] no. 1046/2020 had offered a bid value of Rs. 15,90,000/- for the period of 7 [seven] years. The bid value offered by the petitioner society in the writ petition, W.P.[C] no. 870/2020 was the 4th highest. On the other hand, the bid value offered by the petitioner society in the writ petition, W.P.[C] no. 1046/2020 was the 5th highest. The respondent society by offering a bid value of Rs. 25,97,000/- for the period of 7 [seven] years emerged as the 2nd highest bidder. One M/s Dibru Part I Min Samabai Samittee Ltd. by offering a bid value of Rs. 56,07,000/- for a period of 7 [seven] years, emerged as the highest bidder. The Tender Settling Authority after scrutiny of the documents submitted by the highest bidder, found the tender non-compliant to the conditions of the Sale Notice on the premise that the highest bidder did not furnish the Neighborhood Certificate in terms of Clause no. 2 of the Sale Notice. The said highest bidder i.e. M/s Dibru Part I Min Samabai Samittee Ltd. did not challenge its rejection on the afore-mentioned ground by approaching either the Tender Settling Authority or a Court of law.

6. The Tender Settling Authority found the tender of the petitioner society in the writ petition, W.P.[C] no. 870/2020 non-compliant for two reasons, firstly, it did not submit the call deposit; and secondly, the validity of the period of Bakijai Clearance Certificate dated 01.04.2017 submitted by it had expired on the date of submission of the tender. The tender of the petitioner society in the writ petition, W.P.[C] no. 1046/2020 was declared non-responsive due to non-submission of the following documents :- [i] Call deposit in terms of Clause 4 [Unga]; [ii] Fishery Experience Certificate in terms of Clause 4[Ka]; [iii] 100% actual Fisherman Certificate in terms of Clause 2; [iv] Bakijai Clearance Certificate in terms of Clause 4 [Kha]; and [v] PAN in terms of Clause 4 [Cha]. Non-submission of call deposit in terms of the Sale Notice by the two petitioner societies is in clear violation of essential term of the Tender Notice as the requirement to submit call deposit is for the purpose of earnest money.

7. In so far as the challenge made in respect of the tender submitted by the respondent society for non-submission of Bakijai Clearance Certificate in the proper form with its tender at the time of submission is concerned, this Court finds that the submission of Bakijai Clearance Certificate has been decided to be not an essential condition in a number of decisions of this Court. A Division Bench of this Court in a writ appeal, W.A. no. 294/2011 [Abu Talib vs. The Assam Fisheries Development Corporation Ltd. and others], decided on 29.09.2011, has observed that the requirement of submission of a Bakijai Clearance Certificate was not a rigid requirement. The relevant parts of the said order are 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.

Another Division Bench of this Court in Khoraghat Gulihara Fishery Cooperative Society Ltd. vs. State of Assam and others, reported in [2014] 1 GLR 723, has followed the decision in Abu Talib [supra] by observing that non-submission of Bakijai Clearance Certificate was rightly held to be not an essential qualification criteria. The decisions rendered in Gangadhar Fishery Co. Op. Society Ltd. vs. State of Assam and other, reported in [2018] 1 GLR 168 and Malegarh Gobindapur Fishery cooperative Society vs. State of Assam, reported in [2021] 5 GLT 107, are in similar lines. In another decision of a Division Bench of this Court in Bijulibari Multipurpose Development Society vs. State of Assam and others, reported in 2003 [3] GLT 503, it is observed that omission to submit a Bakijai Clearance Certificate along with the tender would render the tender as an invalid one.

8. Reverting back to the facts of the case, it is not the case of the two petitioner societies that the respondent society did not submit any Bakijai Clearance Certificate along with its tender nor it is their case that on the last date of submission of bids, the respondent society was a defaulter in any manner whatsoever. The Tender Settling Authority found the Bakijai Clearance Certificate submitted by the respondent society in the name of the Secretary of the respondent society. The case papers include the Certificate bearing no. TNB.2/2017/ dated 06.12.2019 of the Additional Deputy Commissioner, Tinsukia. On perusal, it is found that by the Certificate, the Additional Deputy Commissioner, Tinsukia certified that the Secretary of the respondent society had applied for a Bakijai Clearance Certificate at the office of the Deputy

Commissioner, Tinsukia on 15.10.2019 on behalf of the respondent society but due to technical mistake, the Bakijai Clearance Certificate stood issued in the name of its Secretary viz. Sri Bikash Das instead of M/s Dibru Dangari River Part-1 Meen Samabay Samiti Limited, Dighaltarang vide Certificate no. 21102019-001-02477680 dated 21.10.2019. It was further certified to the effect that no case was found registered or pending against the respondent society, that is, M/s Dibru Dangari River Part-1 Meen Samabay Samiti Limited, Dighaltarang as on 06.12.2019. The said authority who is the competent authority to issue Bakijai Clearance Certificate had further mentioned that the Certificate dated 21.10.2019 which was correctly issued later on, should be treated as in the name of the respondent society. In the order of settlement, it is reflected that the Tender Settling Authority received the Bakijai Clearance Certificate issued in favour of the respondent society in the prescribed format on 07.12.2019. On the basis of the Bakijai Clearance Certificate issued in the name of the respondent society in correctly prescribed format at a later date, the Tender Settling Authority took the decision to treat the same as the competent authority to issue such a Bakijai Clearance Certificate, had attributed the irregularity in issuance of the Bakijai Clearance Certificate on 21.10.2019, at its end and did not attribute the fault in issuance of the Bakijai Clearance Certificate in the name of the Secretary of the respondent society at an earlier date, to the respondent society. From the Certificate bearing no. TNB.2/2017 dated 06.12.2019, it has clearly emerged that the Secretary of the respondent society had applied for the Bakijai Clearance Certificate on 15.10.2019. It is found that the respondent society applied for the Bakijai Clearance Certificate before the competent authority on 15.10.2019 which was before the last date of submission of bids, 24.10.2019 and the competent authority to issue the Bakijai

Clearance Certificate, had issued the Bakijai Clearance Certificate on 21.10.2019 in in the name of the Secretary of the respondent society, instead of issuing it in the name of the respondent society. The decision in Bijulibari Multipurpose Development Society [supra] was in respect of non-submission of Bakijai Clearance Certificate with the tender, unlike the case in hand where Bakijai Clearance Certificate was submitted with the tender, but not in the name of bidder, an irregularity attributable to the competent authority for issuance of the Bakijai Clearance Certificate. The decision is, therefore, not of any assistance to the case of the petitioners herein.

9. In the above facts and circumstances, it cannot be said that the Tender Settling Authority had proceeded in a manner which can be termed as an act other than bona fide or not in public interest. It is settled position of law that the power of judicial review of administrative action is intended to prevent arbitrariness, irrationality or unreasonableness or bias or mala fide. The power of judicial review is exercisable only to see whether the authority in its decision making process has not taken relevant factors into consideration or has taken irrelevant factors into consideration in arriving at the decision. If the decision making process is found to be not suffering from any arbitrariness or irrationality or unreasonableness or biasness or mala fide, the Court should be slow to interfere with the decision taken in a tender process, that too, at the instance of bidders whose tenders were found non-compliant to the essential terms and conditions of the Sale Notice under reference.

10. At this stage, it is apt to refer to the following observations made by the Hon'ble Supreme Court of India in Jagdish Mandal vs. State of Orissa and

others, reported in [2007] 14 SCC 517 :-

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

- i] Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'

- ii] Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a

tenderer/contractor or distribution of state largesse [allotment of sites/shops, grant of licences, dealerships and franchises] stand on a different footing as they may require a higher degree of fairness in action.

11. When the above observations are considered together with the fact situation obtaining in the case, this Court has found the two petitioner societies offered bid values were much lower than the respondent society's offered bid value. Moreover, the tenders of the two petitioner societies suffered from non-fulfillment of an essential condition of the Sale Notice as it did not even submit the call deposit which was required as an earnest to show earnestness of the bidder and the ability of a bidder to fulfill the requirements of the tender process. This Court has found the answers to the above two questions, posed in Jagdish Mandal [supra] not in the affirmative, there remain no good and sufficient reason to interfere with the order of settlement of the Fishery on 26.12.2019 made in favour of the respondent society at a bid value of Rs. 25,97,000/- at the instance of the two petitioner societies, who had offered much lesser bid values of Rs. 18,57,500/- and Rs. 15,90,000/- respectively, with no element of public interest found to be involved qua such interference. In view of the above discussion, this Court is of the considered view that both the writ petitions lack merit and the same are accordingly dismissed. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant