

GAHC010051852019



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

Case No. : WP(C)/1655/2019

DANGARKUCHI PAKA BETBARI MEEN SAMABAI SAMITTEE LTD.
A REGISTERED CO-OPERATIVE SOCIETY HAVING ITS REGISTERED
OFFICE AT VILLAGE- DANGARKUCHI PAKABETBARI IN THE DIST. OF
BARPETA, ASSAM- REP. BY ITS SECRETARY VIZ. SRI RANGLAL DAS,
AGED ABOUT 58 YEARS, S/O. LT. SRIMANTA DAS, A R/O. VILLAGE-
DANGARKUCHI UNDER P.O. SONKUCHI IN THE DIST. OF BARPETA,
ASSAM, PIN- 781314.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPTT., DISPUR, GUWAHATI-6, KAMRUP(M), ASSAM.

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GUWAHATI-6
KAMRUP(M)
ASSAM.

3:THE DEPUTY COMMISSIONER
BARPETA DISTRICT
BARPETA
ASSAM
PIN- 781301

Advocate for the Petitioner : MR. S KATAKI
Advocate for the Respondent : GA, ASSAM

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

ORDER

1. The validity and legality of an order dated 13.03.2018 passed by the Govt. of Assam was the subject matter of dispute in a writ petition instituted by the petitioner being WP(C) No. 1645/2018. The writ petitioner was successful in the said writ petition whereby an observation was made by this Court to settle the Fishery with the valid highest bidder in accordance with law. However, in spite of the said order vide the impugned order dated 21.02.2019, the settlement was denied to the petitioner and a direction was issued for a fresh tender process. It is the correctness of the order dated 21.02.2019 which is the subject matter of challenge in the present writ petition.

2. Before going to the issue involved, it would be beneficial if the facts of the case are narrated in brief.

3. The petitioner is a Cooperative Society consisting of 100% fishermen. A Notice Inviting Tender was (NIT) issued on 29.06.2017 by the Deputy Commissioner, Barpeta for settlement of No. 2 Chaulkhowa River Meen Fishery wherein the last date was fixed on 14.07.2017 which was also the date for opening of the tender. The petitioner Society being eligible in all respects had submitted its bid alongwith 7 other bidders. In the evaluation made by the competent authority, a comparative statement was prepared wherein only three numbers of bidders were found who have submitted valid tenders which included the bid of the petitioner. While the petitioner was under the legitimate expectation that the settlement would be done in accordance with law, an order dated 13.03.2018 was passed by the Department whereby the said Fishery was settled with one M/s Bampara Fishery Co-operative Society. The comparative statement however had termed the bid of the said party to be an invalid one because of lack of valid documents.

4. Challenging the said order dated 13.03.2018, the petitioner, as indicated above,

had filed WP(C) No. 1645/2018. The aforesaid writ petition was duly contested and this Court vide a judgment and order dated 28.11.2018 had allowed the writ petition. While accepting the prayer of the writ petitioner, this Court had made the following observations:-

“10) In view of the entries made in the comparative statement and the specific stand by the District Commissioner, Barpeta in his affidavit-in-opposition filed in WP(C) 2753/2018 wherein he has admitted that the tender submitted by the respondent No.4 were incomplete and that the tender submitted by the above referred 3 tenderers were found valid for settlement of Fishery as per the terms and conditions of NIT, this Court has no hesitation in setting aside the memo No. FISH-19/39/2017-Fishery/(eCF No.29169) dated 13.03.2018 issued by the Joint Secretary to the Government of Assam, Fishery Department had settled the No.2 Chaulkhowa River Meen Fishery in Barpeta District with the respondent No.4 namely, M/S Bampara Fishery Co-operative Limited for a period of 7 years with effect from the date of delivery of possession of Fishery.

11) Accordingly, the Commissioner and Secretary to the Government of Assam, Fishery Department shall now examine the matter afresh and pass appropriate orders for settlement of the No.2 Chaulkhowa River Meen Fishery to the eligible highest bidder in accordance with law.”

5. The matter having been remanded back, the petitioner expected an order of settlement in its favour. However, vide the impugned order dated 21.02.2019, it appears that a further evaluation was done on the eligibility of the respective parties and none of the parties were found to be eligible and therefore a direction was given to the Deputy Commissioner, Barpeta to take fresh steps for settlement of the Fishery in question. The petitioner alleges that the aforesaid order is absolutely unreasonable and is also in defiance to the direction of this Court dated 28.11.2018.

6. I have heard Shri S. Kataki, learned counsel with Ms. R. Dutta, learned counsel for the petitioner. The State respondents are represented by Shri D. K. Sarmah, learned Addl. Senior Govt. Advocate, Assam.

7. Shri Kataki, the learned counsel for the petitioner has submitted that the

impugned order dated 21.02.2019 is palpably erroneous inasmuch as the authority had not only exceeded its power and jurisdiction but has also erred in exercising such powers. The learned counsel firstly submits that after the clear pronouncement made by this Court in its judgment dated 28.11.2018, there was no scope at all for the authorities to reopen the matter for a fresh evaluation. Without prejudice to his first submission that there has been excess of jurisdiction, the learned counsel has submitted that the reasons assigned for declaring the bid of the petitioner to be invalid is also untenable in law and reflects total non-application of mind. By drawing the attention of this Court to the impugned order dated 21.02.2019, the learned counsel has submitted that the rejection is on account of the bid of the petitioner not accompanied by an audited balance-sheet of the preceding year i.e. 2016-17. The learned counsel has submitted that under Section 81 of the Cooperative Societies Act, an Audit is conducted only as per written order of the Auditor and in the instant case, the letter was issued only on 01.07.2017. A copy of the said letter has also been annexed to the affidavit-in-reply dated 20.10.2022 which has been annexed as Annexure-K.

8. The learned counsel has further referred to the docket on the said letter which shows that it was received only on 29.07.2017. Under those circumstances, it was absolutely impossible on the part of the petitioner to have an audited balance-sheet for the year 2016-17 as the last date of submission of bids was 14.07.2017. Shri Katak, the learned counsel further submits that even otherwise, the same is not a requirement at all under the tender conditions. By drawing the attention of this Court to the NIT dated 29.06.2017, the learned counsel has submitted that under Clause-4 (Jha), there was a requirement to give the yearly balance statement of the Samabai Samittee which was done by the petitioner till the year 2015-16 which was available to that period. He submits that when the Clause concerning such requirement did not specify the period, the concerned authority could not have taken recourse to such

reason only for the purpose to declare the bid of the petitioner as invalid.

9. Shri Katak, the learned counsel for the petitioner further submits that the tender process was initiated by the Deputy Commissioner and the said Authority having held the tender of the petitioner to be valid and the said finding also having endorsed by this Court, the respondents had acted wholly unreasonably and arbitrary in re-evaluating the same which is not permissible in law.

10. In support of his submission, the learned counsel for the petitioner has referred to the case of ***Silppi Constructions Contractors Vs Union of India and Anr*** reported in **(2020) 16 SCC 489**. In the said case, the Hon'ble Supreme Court after referring to the various case laws holding the field has laid down that the authority which had floated the tender would be the best person regarding interpretation of any Clause or how the documents which were required to be submitted can be best interpreted. Learned counsel has also referred to a case of this Court reported in **2016(2) GLT 1177** (Nalirpar Fishery Samabay Samittee Ltd. & Ors) wherein it has been held that after holding a tender of a particular party to be valid by the Court, there would be no scope for the Government to hold a different view.

11. Shri Katak, learned counsel accordingly submits that it is a fit case for interference which should be done in the interest of justice. As regards the tenure/term of the settlement and the rates offered, the learned counsel has fairly submitted that the Rules itself would give a solution even it is held that there has been change in the prices in the meantime. In this connection, Rule 48 of the Assam Fishery Rules, 1953 has been referred to as per which stipulates an increase of 10% per annum in the rates offered.

12. Per contra, Shri Sarmah, the learned Addl. Senior Govt. Advocate has submitted that no error apparent on the face of it is seen in the impugned order dated 21.02.2019. He submits that though it is a fact that the matter was remanded by this Court for concluded the settlement, the Government was well within its authority to make a fresh evaluation and the rejection of the bid of the petitioner appears to be on a vetted ground. The learned State Counsel however fairly submits that perhaps the practical aspect of obtaining audited balance-sheet for the year 2016-17 was not looked into by the said authority. At the same breath, the State Government submits that even if the petitioner is successful in persuading this Court that its rejection is not tenable in law, on the same ground, the rejection of earlier bidders would also have to be taken into consideration by this Court and in that case, the respective financial bid would also have to be considered in which case, the petitioner may not even get the fruits of the litigation. With regard, case law cited namely, ***Silppi Constructions Contractors*** (supra), the learned State Counsel has submitted that there is no dispute to the principles laid down and rather the case law would support the case of the respondents inasmuch as it is the Government and no other party which has interpreted the terms of the NIT and the manner in which a document has to be evaluated.

13. The rival submissions made by the learned counsel for the contesting respondents have been duly considered and the materials placed on record have been carefully examined.

14. Since there has been a judgment of this Court on an earlier occasion in WP(C) No. 1645/2018, the issue which had arisen for consideration in that case is not required to be relooked or even re-examined and as the said judgment had attained finality in absence of any further challenge.

15. Therefore, the role of this Court would be to examine the conduct of the respondents post the judgment dated 28.11.2018 more particularly in passing of the order dated 21.02.2019.

16. As stated above, it is the same petitioner who had successfully challenged the earlier settlement made in favour of a third party dated 13.03.2018 by terming the bid of the third party as an invalid one. The aforesaid submission was accepted by this Court and while doing so, this Court had also made an observation that the Deputy Commissioner, Barpeta in his written stand by way of an affidavit had admitted that three tenderers were found valid which included the bid of the petitioner. Therefore, while setting aside the earlier order of settlement dated 13.03.2018, this Court had remanded the matter to the Department to examine the matter afresh and pass appropriate orders for settlement of the Fishery in question to the eligible highest bidder in accordance with law. The said observation has been quoted above in this judgment.

17. A careful reading of the aforesaid observation would leave no manner of doubt that the function left to the Department, on remand was to examine the matter and pass appropriate orders of settlement and not to reopen the matter from its initiation. This Court is of the view that when the primary authority, namely, the Deputy Commissioner, Barpeta who was entrusted to float the tender had come to a clear finding that the bids of three tenderers including that of the petitioner were found valid and the said finding being a part of the affidavit-in-opposition filed in WP(C) No. 2753/2018, the question of reopening the same will not arise at all.

18. In the opinion of this Court, the only function of the Department was to make the settlement with the highest bidder strictly in accordance with law and out of the three valid tenderers, it was the bid of the petitioner which was the highest. This

Court also finds force in the submission of Shri Kataki, learned counsel for the petitioner that a wholly unreasonable stand has been taken to declare the tender of the petitioner as invalid. This Court agrees with the submission that there was no such requirement in the NIT regarding the year and even assuming that the balance-sheet till the previous year was to be submitted, the balance-sheet for the year 2016-17 was impossible to be obtained as such balance-sheet is prepared after audit is conducted after the written order of the Auditor as per a statutory provision of the Cooperative Societies Act. In the instant case, the letter has also been brought to the record which is dated 01.07.2017 and received on 29.07.2017 and the last dated of submission of tender was 14.07.2017.

19. Further there is no dispute to the fact that balance-sheet of the previous years were submitted by the petitioner.

20. Under those facts and circumstances, this Court does not have any other option but to allow this writ petition. Accordingly, the impugned order dated 21.02.2019 is set aside. It is further directed that the settlement of No. 2 Chaulkhowa River Meen Fishery be immediately made with the petitioner and in any case within an outer limit of 4 (four) weeks from today.

21. At this stage, this Court has put its anxious thoughts to the rate offered by the petitioner which was of the year 2017 in view of the time which has been lapsed in the meantime. Though no fault can be attributed to the petitioner for the time which has elapsed and rather the petitioner had all the rights to approach this Court for enforcement of its rights under the Constitution of India, at the same time, this Court cannot ignore and overlook the aspect of the public revenue connected in this case.

22. This Court in the cases of ***Tarun Bharali vs. State of Assam & Ors.,*** reported in ***(1991) 2 GLR 296*** had held that in settlement which involves fetching of revenue, the amount of revenue is of paramount importance. The said view is also endorsed by a Division Bench of this Court in the case of ***Jogeshwar Doley Vs State of Assam*** reported in ***1991 2 GLJ 333.***

23. In this connection, the learned counsel for the petitioner has fairly drawn the attention of this Court to the Rules in question which itself take care of such a situation, namely enhancement @ 10% per annum which is laid down in newly introduced Rule 48 which was brought to the statute book vide an amendment in the year 2005.

24. Taking a cue from the same, the authorities would have the liberty to work out the rate by enhancing @ 10% per annum to the rate offered by the petitioner and thereafter make the settlement at the prescribed rate for the tenure of 7 years which was the term indicated in the NIT dated 29.06.2017.

25. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant