

GAHC010095092021



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

Case No. : WP(C)/3215/2021

TETELIGURI NAVAJYOTI MATASYAJIBI SAMABAY SAMITY LIMITED
A 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, ASSAM

VERSUS

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

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

3:THE DEPUTY COMMISSIONER
MORIGAON
MORIGAON
ASSAM

4:PAKORIDUBA MATSYAJIBI SAMABAI SAMITY LIMITED

REPRESENTED BY ITS PRESIDENT SRI HARILAL DAS
SON OF LATE MANMOHAN DAS
A RESIDENT OF VILLAGE AND PO BURABURI
PS MAYONG
DIST MORIGAON

ASSA

Advocate for the Petitioner : MR. R PHUKAN

Advocate for the Respondent : GA, ASSAM

WP(C)/3372/2021

NO. 11 PART-5

KALONG NODI ANCHALIK MEEN SAMABAY SAMITY LTD. AND ANR.
A REGD. FISHERY COOPERATIVE SOCIETY HAVING ITS REGD. OFFICE
ADDRESS AT - NIZ- GOBARDHAN

P.O. CHANDRAPUR

P.S.- PRAGJYOTISHPUR

DIST.- KAMRUP (M)

ASSAM

REGD. UNDER THE PROVISIONS OF THE ASSAM COOPERATIVE SOCIETIES
ACT 1949 (ASSAM ACT NO.1 OF 1950) BEARING REGISTRATION NO. G-3/97-
98 OF 1997 REP. BY SRI JAGADISH BARMAN
SECY. OF THE SAID FISHERY SAMABAY SAMITY

2: JAGADISH BARMAN

S/O- LT. JAY GOBINDA BARMAN

SECY. OF NO. 11 PART-5

KALONG NODI ANCHALIK MEEN SAMABAY SAMITY LTD. R/O- NIZ-
GOBARDHAN

P.O. CHANDRAPUR

SUB-DIVISION- PRAGJYOTISHPUR

DIST.- KAMRUP (M)

PIN- 781150

ASSAM

VERSUS

THE STATE OF ASSAM AND 10 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT.

HAVING ITS OFFICE AT DISPUR

GHY-06

DIST.- KAMRUP (M)

ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPTT.

HAVING ITS OFFICE AT DISPUR

GHY-06

DIST.- KAMRUP (M)

ASSAM

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPTT.

HAVING ITS OFFICE AT DISPUR

GHY-06

DIST.- KAMRUP (M)

ASSAM

4:THE DY. COMMISSIONER

MORIGAON

HAVING ITS OFFICE AT MORRIGAN TOWN

DIST.- MORIGAON

ASSAM

5:PAKRIDOBHA MATSHAYAJIBI SAMABAY SAMITY LTD.

DIST.- MORIGAON

ASSAM

REP. BY ITS SECY. SHRI HIRALAL DAS

S/O- SRI MONMOHAN DAS

VILL AND P.O. BARABURI

P.S. MAYONG

DIST.- MORIGAON

PIN-

6:TETELIGURI NAVAJYOTI MSS LTD.

REPRESENTED BY SHRI PARESH BISWAS

S/O LT. GAGAN BISWAS

VILL. HATIBHANGA

MAUZA- POKORIA

P.O. RAJAMAYONG

DIST. MORIGAON.

7:BORAMARI MIN SAMABAI S. LTD.

REPRESENTED BY SHRI BUDHESWAR MANDAL

S/O LT. NANIGOPAL MANDAL

VILL. BORAMARI PAM

P.O. BURAGAON

P.S. MAYONG

DIST. MORIGAON.

8:KASUPAR POKORIA MATSYAJIBI SS LTD.

REPRESENTED BY SHRI ANANDA CH. DAS

S/O LT. PRAFULLA DAS

VILL. KUSUMPUR

P.O. BURABURI

P.S. MAYONG

DIST. MORIGAON.

9:NO. 5 SONAI NODI PART III FISHERY CO-OPERATIVE SOCIETY LTD.
REPRESENTED BY SHRI SANTOSH BARMAN

S/O LT. SURESH CH. BARMAN

VILL. BORDIBATUP GAON

P.O. BHURAGAON

DIST. MORIGAON.

10:DHIPUJIJAN GARANGA GARCHUK AND MALIA MEEN PALAN CO-
OPERATIVE SOCIETY LTD.
REPRESENTED BY SHRI ANANTA LAL DAS

S/O LT. HARILAL DAS

VILL. THENGBHANGA

P.O. BARPAK

DIST. MORIGAON.

11:PACHIM MAYONG HITSADHINI FISHERY SS LTD
REPRESENTED BY SHRI SANJIV BISWAS

S/O LT. NARENDRA BISWAS

VILL. GOBARDHAN

P.O. CHANDRAPUR

MAUZA- MAYONG

P.S. PRAGJYOTISHPUR

DIST. KAMRUP(M).

Advocate for : MR. H. BURAGOHAIN

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 10 ORS.

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

Date : 15-02-2023

Judgment & Order

The settlement of a Fishery to the private respondent is the subject matter of challenge in both these writ petitions. While the petitioner in WP(C)/3215/2021 claims to be the highest bidder, whose bid has been illegally rejected, the petitioner in WP(C)/3372/2021 contends that though its bid is higher than that of the private respondent, the same has been rejected on irrelevant and extraneous considerations. Both the writ petitions being connected, those are heard together and are being disposed of by this common judgment and order.

02. A Notice Inviting Tender (NIT) was issued on 19.01.2021 for settlement of the Dhipujijan/Garanga Garsag/Malia Group Fisheries in the district of Morigaon. The said Fishery is a 60% fishery and the period of settlement was for 7 years. The scheduled rate was also notified to be Rs.11,51,205/- per annum.

03. As indicated above, there are two writ petitions wherein challenge has been made to the settlement in favour of the private respondent. Twelve bidders had participated in the bidding process, including the petitioners and the private respondent. A comparative statement was made regarding the bids submitted by various bidders. Thereafter an order dated 08.03.2021 was passed by which the bid offered by the respondent no. 4 in WP(C)/3215/2021 was held to be the highest valid bid and accordingly, the settlement has been made in favour of the said respondent. It is the contention of the petitioners that their bids have been rejected on extraneous consideration and irrelevant grounds and if their bids were considered in a proper perspective, the settlement could not have been offered to the private respondent.

04. I have heard Shri S Borthakur, learned counsel for the petitioner in WP(C)/3215/2021 as well as Shri H Buragohain, learned counsel for the petitioner in WP(C)/3372/2021 whereas Shri DK Sarmah, learned Addl. Sr. Govt. Advocate represents the State respondents. Also heard Shri MK Choudhury, learned Senior Counsel assisted by Sri P Bharadwaj, learned counsel for the private respondent.

05. Shri S Borthakur, learned counsel for the petitioner in WP(C)/3215/2021 has submitted that a perusal of the impugned order dated 08.03.2021 would show that the bid of the petitioner was rejected mainly on three grounds. Firstly, the Experience Certificate which was issued by the Fishery Extension Officer has been faulted with the remark that the same should have been issued by the District Fishery Development Officer (DFDO). The name in which such certificate has been issued i.e., the President of the Society is also questioned. The second ground of rejection is the Neighbourhood Certificate. The remark is that the Neighbourhood Certificate has not been issued by the concerned Revenue Circle Officer. Thirdly, it has been held that there was no attested resolution of the Society in favour of the President authorizing him to submit the bid. Shri Borthakur, learned counsel for the petitioner submits that as indicated above, there are two writ petitions wherein a challenge has been made to the settlement in favour of the private respondent.

06. Shri Buragohain, learned counsel submits that the price offered by his client, who is the petitioner in WP(C)/3372/2021 was the 8th highest. However, it appears from the impugned order dated 08.03.2021 that the 100% Actual Fisherman Certificate belonging to SC community has been faulted on the reason that the same has been issued by the Revenue Circle Officer instead of the competent authorized officer. It is the submission of the learned counsel for the petitioner that such rejection is wholly unsustainable in law and therefore, the price bid of the petitioner was to be

taken into consideration. Justifying his stand of filing the present writ petition in spite of the fact that there is another writ petition challenging the impugned settlement in favour of the private respondent which has been instituted by the highest bidder, Shri Buragohain, learned counsel for the petitioner has submitted that while challenging the rejection of the bid of his client on technical ground, he has, even pointed out that on a financial comparison of the bid of the petitioner and that of the private respondent, he would adjudge as the highest bidder. Shri Buragohain, learned counsel makes it clear that in case, the petitioner in the other writ petition, viz, WP(C)/3215/2021 is successful in the *lis*, he may not have a case to argue. However, at the same breath, the learned counsel has submitted that the rejection of the bid of the petitioner in WP(C)/3215/2021 has been properly done by the authorities. By making a comparative study regarding the reasons of rejection, Shri Buragohain, learned counsel for the petitioner in WP(C)/3372/2021 has submitted that one of the reasons for rejection of the bid of the petitioner in WP(C)/3215/2021 is that the Neighbourhood Certificate is issued by DFDO, Morigaon whereas the competent authority has been held to be the Revenue Circle Officer as per Government circular dated 18.01.2018. The learned counsel submits that a consistent stand has to be taken by the Department, inasmuch, as the certificate on the same ground which has been given to his client by the Revenue Circle Officer has been founded fault with. He, accordingly submits that when the competent officer has been held to be the Revenue Circle Officer, the certificate of the petitioner by the said Officer cannot be rejected. In support of his submissions, Shri Buragohain, learned counsel has relied upon a case law of ***Jewti NGO Vs. The State of Assam*** decided by this Court vide judgment and order dated **02.08.2017** in **WP(C)/5734/2014 & WP(C)/6308/2014** in which it had been held that the District Fishery Development Officer is a competent authority.

07. Appearing on behalf of the respondent no. 5 in WP(C)/3372/2022, who is also the respondent no. 4 in WP(C)/3215/2022, Shri Choudhury, learned Senior Counsel

submits that in exercise of the powers of judicial review, it is only the decision making process which can be the subject matter of examination and the decision as such, is not required to be examined. He submits that though the NIT did not specify regarding the authorities who would be competent to issue various certificates that by itself, will not authorize any Officer to be such an authority. As regards the submission that there is no requirement in the NIT to authorize the person submitting the bids, the learned Senior Counsel for the private respondent has drawn the attention of this Court to Clause 4 (ja) that there is such a requirement. As regards the submission that the price offered by his client-respondent no. 4 is lower than that of both the petitioners, Shri Choudhury submits that the price offered has to be from a valid tenderer and if a party fails to be qualified in the technical round, the price offered by such a party will not be of any relevance.

08. In the deliberations, the Gazette dated 18.01.2018 has played a major role. While the beneficiary represented by the learned Senior Counsel, Shri MK Choudhury has submitted that though certain conditions have been taken which are not essentially found in the NIT, those conditions are part of the Gazette dated 18.01.2018 which have been published specifically for the said purpose. He further submits that only because of the reason that conditions of the Gazette have not been incorporated in the NIT that by itself, cannot do away with such requirement.

9. With regard to the submission that the Deputy Commissioner having cleared the bid of the petitioner, the settling authority could not have rejected the same, Shri Choudhury, learned Senior Counsel for the private respondent submits that the prescribed authority, either to accept or reject the bid and finalize the tender process is specified in the NIT which is particularly the Department and not the Deputy Commissioner.

10. As regards the ground of rejection of the petitioner in WP(C)/3215/2021, the learned Senior Counsel for the private respondent has submitted that even assuming that the certificate of 100% Actual Fisherman is issued by a valid authority, it is only in the name of the President of such Society which will not cover the other members.

11. On the aspect of judicial review, the Shri Choudhury has relied upon a case law of ***M/S Palahartal Schedule Fishery Cooperative Society Ltd. Vs. The State of Assam & Ors.*** decided by this Court in **WP(C)/5013/2018** vide judgment and order dated **09.04.2019**.

12. As regards the petitioner in WP(C)/3215/2021, the learned Senior Counsel for the private respondent has urged that neighbourhood as such, is not defined and 5 kilometers as such, cannot be a yardstick. With regard to the case law cited in the case of ***Jewti NGO*** (*supra*) by referring to paragraph 24 of said judgment, the learned Senior Counsel has submitted that there is no specific finding of the Court that the DFDO is the authority and therefore, the same cannot be taken to be a precedent to decide the present *lis*. In support of his submissions, Shri Choudhury, learned Senior Counsel has relied upon the following two case laws:

i) *Air India Ltd. Vs. Cochin International Airport Ltd. & Ors.*, (2000) 2 SCC 617, Air India Ltd.

ii) *Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation & Ors.*, (2000) 5 SCC 287, Monarch International.

13. The purpose of citing the case of ***Air India Ltd.*** (*supra*) is that whether it is a private contract or contract with the State, the transaction in question, is essentially a commercial transaction wherein considerations which are paramount are commercial in nature. In the case of ***Monarch Infrastructure (P) Ltd.*** (*supra*), it has been laid

down that the Government is free to enter into any contract with citizens and it would be open to reject even the highest bid where such rejection is not arbitrary or unreasonable.

14. Shri DK Sarmah, learned Addl. Senior Govt. Advocate, Assam has appeared for the State and defended the State's action. Shri Sharma, at the outset, fairly submits that no affidavit-in-opposition has been filed so far as the WP(C)/3215/2021 is concerned. However, he justifies the rejection of the bid of the said petitioner by submitting that the certificate is only in the name of the President and not the Society. As regards, the Neighbourhood Certificate, Shri Sarmah fairly submits that the rejection is rightly done as DFDO will not have any knowledge regarding neighbourhood and it is only the Revenue Circle Officer who is the competent authority to issue such certificate and this is also in consonance with the Government circular dated 18.01.2018.

15. As regards the applicability of the Government circular dated 18.01.2018, the learned State Counsel has submitted that it is not merely a circular but a Gazette notification. Therefore, all the intending bidders are assumed to know about the said circular. He further submits that the present NIT is of the year 2021 whereas the Gazette notification is in operation since January, 2018 and therefore, the submission made that the petitioners were not aware of such notification will not hold good.

16. So far as the rejection of the bid of the petitioner in WP(C)/3215/2021 is concerned, the learned State Counsel has submitted that the Fishing Experience Certificate can be issued only by the DFDO and not by the Revenue Circle Officer and therefore, no interference is warranted with the rejection of the bid of the petitioner in that case. The learned State counsel has, however clarified that so far as WP(C)/3372/2021 is concerned, an affidavit-in-opposition has been filed by the

respondent no. 3. Shri Sharma, learned State Counsel has also referred to the averments made in paragraph 23 of the said affidavit-in-opposition which is extracted hereinbelow:

“ ...

After following due procedure as prescribed in Assam Fishery Rules 1953 as well as instructions issued by Govt. from time to time including the latest Govt. Circular dated 18.01.2018, the process of settlement of the fishery in instant petition has been completed based on tenders submitted to DC, Morigaon who forwarded the same with evaluation of Tender Committee including Comparative Statement Govt. Respondent after scrutiny of the proposal with detailed discussion against each bid including the neighbourhood issue came to the conclusion that the bid offered by the Respondent No. 5 Society was the highest valid bid in terms of NIT and passed the order dated 08.03.2021 settling the fishery in favour of Respondent Society in fair and just manner maintaining transparency. There was nothing illegal in the said order as alleged. On the other hand, the bid of the petitioner was not a valid bid and thus was not under consideration. Govt. Respondent short listed the 3 highest valid bidders in terms of bid offered as well as documents submitted. Finally taking into consideration neighbourhood issue, settled the fishery with Respondent society being highest valid bid amongst the 3 (Three) highest valid bids.”

17. Shri S Borthakur, learned counsel for the petitioner in WP(C)/3215/2021 in his rejoinder has drawn the attention of this Court to the comparative statement. He demonstrates that in column 2 only the name of the representative has been written uniformly for all the bidders and therefore, it cannot be argued that the Society is not the interested party. In any case, the learned counsel submits that a similar issue regarding the certificate in the name of the President has been settled by this Court in the case of **Malegarh Gobindapur Fishery Cooperative Society Ltd. Vs. The State of**

Assam in **WP(C)/3314/2019** vide judgment and order dated **02.11.2021** which view has also been upheld by a Division Bench of this Court vide judgment dated 27.04.2022 passed in **WA/306/2021 (Pub Goalpara Fishery Cooperative Society Vs. State of Assam)**. Shri Borthakur, learned counsel has also placed before this Court the case of **Gauripur Fishery Society Vs. State of Assam**, reported in **2022 (5) GLT 46** wherein this Court has expressed doubts regarding the applicability of the circular dated 18.01.2018 and also regarding its publication in the Gazette.

18. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been duly examined.

19. As indicated above, two of the unsuccessful bidders whose bids were rejected in the technical round are before this Court by means of this two writ petitions.

20. Shri Borthakur, learned counsel also makes a very important contention that as per the Gazette notification, there is a requirement to incorporate the conditions of the circular dated 18.01.2018 in all the NITs which admittedly, have not been done in the instant case. Lastly, he submits that there is a huge difference in the price offered by his client and the private respondent and in matter which fetches revenue, the price offered plays an important factor.

21. To appreciate the contentions, let us first examine the reasons cited to reject the bid of the petitioner in WP(C)/3215/2021.

22. There are apparently three grounds of rejection. It is, however, to be noted that the price bid of the said petitioner is found to be the highest. The three grounds are that the Fishing Experience Certificate is issued by the Fishery Extension Officer instead of DFDO in the name of the President of the Society and does not cover all the

members of the Society. The second ground is that the Neighbourhood Certificate issued by the DFDO, Morigaon and not by the Revenue Circle Officer who is stated to be the competent authority as per Government circular 18.01.2018. Thirdly, no attestation of the resolution of the Society in authorizing the President to submit the tender was found. In response to the said grounds, it is found that the first ground of rejection is squarely covered by the decision of this Court in the case of ***Malegarh Gobindapur Fishery Cooperative Society Ltd.*** (*supra*) which has also been upheld by the Hon'ble Division Bench vide judgment dated **27.04.2022** passed in **WA/306/2021** (***Pub Goalpara Fishery Cooperative Society Vs. State of Assam***).

23. This Court also finds force in the contention made on behalf of the petitioner that the NIT did not specify the authority to issue such certificate and in any case, the Fishery Extension Officer cannot be held to be incompetent to issue such certificate. This Court also finds force in the argument of the petitioner regarding the second ground of rejection on the competency of the DFDO, Morigaon to issue the Neighbourhood Certificate. Regarding the third ground of rejection, Shri Borthakur, learned counsel for the petitioner is correct in asserting that there is no such requirement of the resolution being attested in view of the person who represents the Society. In view of the above, the attestation would be relevance only when there is a complaint with regard to the authority of the representative of the Society from amongst the members of the Society which is not found in the instant case.

24. As regards the Gazette notification dated 18.01.2018 though certain doubts have been expressed by this Court in the case of ***Gauripur Fishery Society*** (*supra*) regarding its application and also the question of its publication in the Gazette, the said notification being placed on record which is in the form of a Gazette notification, this Court is of the opinion that the said point will not act as a hurdle for this Court to acknowledge the said Notification. However, more than its existence, what is to be

decided is the applicability of the conditions of the said Notification in the tender process.

25. Shri Sharma, learned State Counsel has strenuously argued that the Gazette notification is of the year 2018 and the NIT is of the year 2021 and therefore, it cannot be assumed that all the intending tenderers are not aware of the requirement of law. However, having taken that into consideration, this Court also cannot ignore that condition of the Gazette notification which requires that all ensuing tender process have to incorporate the conditions given in the Gazette notification which admittedly, has not been done. It is trite law that while applying a notification, it cannot be done in a way that only those in favour of the State would be made applicable and those which are against cannot be applied. If the Gazette notification is actually held to be applicable, the same has to be made applicable whole hog and not a part of it.

26. It is also a settled position of law that in matters of settlement which are made to fetch revenue, price is one of the paramount considerations. In this connection, one may gainfully referred to the decision of this Court in the case of ***Dhaniram Gogoi Vs. State of Assam*** reported in **1998 (4) GLT 37** wherein, it has been held that public interest is of paramount consideration for settlement. This court in the case of ***Tarun Bharali Vs. State of Assam & Ors.***, reported in **(1991) 2 GLR 296** has categorically held that in matters of settlement which earns revenue for the Government, the paramount consideration is public interest.

27. On the aspect of judicial review, in landmark case of ***Tata Cellular Vs. Union of India***, reported in **(1994) 6 SCC 651**, the Hon'ble Supreme Court laid down as follows:

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision making process itself."

28. Under the above facts and circumstances and the discussions made, this Court is of the unhesitant opinion that the rejection of the bid of the petitioner in WP(C)/3215/2021 is wholly unsustainable in law and is liable to be interfered with. This Court has also taken into consideration the large scale public interest involved, inasmuch, as the price offered by the petitioner was adjudged the highest in spite of which the settlement was sought to be given to a private respondent at a much lower price. Since the rejection of the bid of the petitioner whose financial bid otherwise was adjudged to be the highest, the requirement to examine the challenge made by the petitioner in the other case, namely, WP(C)/3372/2021 whose bid is the 8th highest would not arise.

29. Accordingly WP(C)/3215/2021 is allowed and WP(C)/3372/2021 is held to be infructuous. Consequently, the settlement dated 08.03.2021 made with the respondent no. 4 is set aside and quashed and the settlement has to be made with the petitioner of WP(C)/3215/2021 in accordance with law expeditiously and in any case, within an outer limit of 6 weeks from today. No order as to costs.

JUDGE

Comparing Assistant