

GAHC010188572021



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

Case No. : 1) WRIT PETITION (C) No. 6172/2021

Subrata Sarkar, S/o Sri Kalipad Sarkar, Village - No. 2
Ghatarag Chapari, P.O. - Rangamati, P.S. - Mangaldai,
District - Darrang, Assam, 784125.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner and Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati 781006
2. The Deputy Commissioner, Darrang, Mangaldai, District – Darrang, Assam – 784125.
3. The Additional Deputy Commissioner [Revenue], Darrang, Mangaldai, District – Darrang, Assam, 784125.
4. Mangaldai Scheduled Caste Fisherman Co-operative Society Limited, represented by its President, Sri Haralal Das, a registered Fishery Co-operative Society Vide Registration No. M63/1965-66, having its registered office at Village – Gerimari, P.O. & P.S. – Mangaldai, District – Darrang, Assam, 784125.

.....Respondents

WITH

2) WRIT PETITION (C) No. 2781/2020

Mangaldai Scheduled Caste Fisherman Co-operative Society Ltd., a registered Fishery Co-operative Society Vide Registration No. M63/1965-66, having its registered office at Village – Gerimari, P.O. and P.S. – Mangaldoi, District – Darrang, Assam, duly represented by its President, Sri Haralal Das.

.....Petitioner

-Versus-

1. The State of Assam, represented by the Commissioner and Secretary to the Government of Assam, Fishery Department, Dispur. Guwahati-6.
2. Deputy Commissioner, Darrang, P.O. - Mangaldoi.
3. The Additional Deputy Commissioner [Revenue], Darrang, P.O. - Mangaldoi.
4. Shubrata Sarkar, S/o Kalipada Sarkar, Village - Ghatara AG, P.O. - Garukhuti B.O, P.S. – Mangaldai, District – Darrang, Assam, Pin- 784125.

.....Respondents

Advocates :

Petitioner
in W.P.[C] no. 6172/2021

: Mr. M. Bhagabati, Advocate.

Petitioner
in W.P.[C] no. 2781/2020

: Mr. D.P. Borah, Advocate.

Respondent nos. 1, 2 & 3

: Mr. B. Deuri,
Junior Government Advocate

Respondent no. 5

in W.P.[C] no. 2781/2020

: Mr. M. Bhagabati, Advocate

Respondent no. 4

in W.P.[C] no. 6172/2021

: Mr. D.P. Borah, Advocate

Date of Judgment & Order

: 29.05.2023

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

Heard Mr. M. Bhagabati, learned counsel for the petitioner in the writ petition, W.P.[C] no. 6172/2021 and for the respondent no. 5 in the writ petition, W.P.[C] no. 2781/2020; and Mr. D.P. Borah, learned counsel for the petitioner in the writ petition, W.P.[C] no. 2781/2020 and for the respondent no. 4 in writ petition, W.P.[C] no. 6172/2021. Also heard Mr. B. Deuri, learned Junior Government Advocate, Assam for the respondent nos. 1, 2 & 3 in both the writ petitions.

2. In both the writ petitions, instituted under Article 226 of the Constitution of India, the subject-matter of challenge is a settlement process initiated for settlement of 16 nos. Dandalagi Meen Mahal [‘the Fishery’, for short] situated within the territorial jurisdiction of Mangaldoi Revenue Circle, District – Darrang culminating in an order dated 17.06.2020 of the Additional Deputy Commissioner [Revenue], Darrang whereby the Minutes of a Meeting of Tender Committee, held on 17.03.2020 containing a decision to go for a fresh settlement process for settlement of the Fishery was circulated.

3. By a Tender Notice dated 29.02.2020, tenders were invited for settlement

of the Fishery with last date of submission of tenders up to 03-00 p.m., 16.03.2020. In response to the Tender Notice, three bidders including the two writ petitioners herein, submitted their tenders. On receipt of the tenders of the three participant bidders, the Tender Committee constituted for the purpose by the settling authority, that is, the Deputy Commissioner, Darrang opened the three tenders and examined the same as to whether the tenders were in conformity with the requirements of the Tender Notice. After evaluation of the three tenders, the Tender Committee prepared a Comparative Statement indicating as to whether the tenderers submitted the requisite documents asked for submission by the Tender Notice dated 29.02.2020.

4. The petitioner in the writ petition, W.P.[C] no. 6172/2021 offered a bid value of Rs. 5,50,000/- whereas the petitioner in the writ petition, W.P.[C] no. 2781/2020 offered a bid value of Rs. 4,52,680/-. The other participant bidder offered a bid value of Rs. 4,72,154/-. In the remarks column of the Comparative Statement, by recording the deficiency/deficiencies in respect of each of the three tenders in the Comparative Statement, the Tender Committee in its meeting held on 17.03.2020 in the office of the Deputy Commissioner, Darrang, declared all the three tenders non-compliant to the terms and conditions laid down in the Tender Notice dated 29.02.2020 and a decision was taken for initiating the settlement process afresh by inviting tenders.

5. In the Comparative Statement prepared by the Tender Committee as well as in the Minutes of the meeting of the Tender Committee held on 17.03.2020, the ground for rejection of the tender of the petitioner in the writ petition, W.P. [C] no. 6172/2021 was mentioned as non-affixation of Court-Fee stamps

amounting to Rs. 8.25/- whereas the ground for rejection of the tender submitted by the petitioner in the writ petition, W.P.[C] no. 2781/2020 was shown as non-submission of the balance sheet of the Society for the year : 2018-2019 and financial weakness of the petitioner Society. The Meeting of the Tender Committee in its Minutes had recorded that the petitioner society in the writ petition, W.P.[C] no. 2781/2022 was a defaulter for which a Bakijai case, B.C. Case no. 582/2004-2005 was initiated against it.

6. Mr. Bhagabati, learned counsel for the petitioner in the writ petition, W.P. [C] no. 6172/2021 has submitted that the ground of rejection of the petitioner's bid for non-affixation of court-fee stamps of Rs. 8.25/- is not tenable as the same is only a curable irregularity.

7. Mr. Bora, learned counsel for the petitioner in the writ petition, W.P.[C] no. 2781/2020 has submitted that no bakijai proceeding was pending against the petitioner society on the last date of submission of tenders i.e. 16.03.2020 as the petitioner society had made payment of an amount of Rs. 3,91,655/- on 21.09.2018 and the office of the Deputy Commissioner, Darrang had issued a bakijai clearance certificate on 13.03.2020 in favour of the petitioner society. He has raised another contention to the effect that there was inherent defect in the Tender Notice dated 29.02.2020 itself as the same is not in conformity with Rule 3[a] of the Assam Fishery Rules, 1953.

8. I find sufficient force in the submission of Mr. Bhagabati, learned counsel for the petitioner in the writ petition, W.P.[C] no. 6172/2021 in that non-affixation of court-fee stamps of Rs. 8.25/- in the tender submitted in response

to a Tender Notice published under the provisions of the Assam Fishery Rules, 1953 is a curable defect and an opportunity should have been afforded to the petitioner in the first instance to cure that defect. The issue whether non-affixation of court-fee stamps amounting to Rs. 8.25/- would render the tender of a bidder whose tender was otherwise compliant to all other terms and conditions of a Tender Notice, would be an invalid one due to such non-affixation of court-fee stamps of Rs. 8.25/-. The issue whether such a defect in a tender, that is, non-affixation of court-fee stamps of Rs. 8.25/- is a curable irregularity or not is no longer *res integra* in view of a decision of the Division Bench of the Court in *Jalal Uddin and others vs. State of Assam and others*, reported in 2019 [3] GLT 829.

9. In *Jalal Uddin [supra]*, by a Tender Notice dated 02.06.2018 published by Laharighat Anchalik Panchayat, sealed tenders with affixation of court-fee stamps of Rs. 8.25/- were invited for settlement of a market for the Panchayat Financial Year : 2018 – 2019 as per the provisions of the Assam Panchayat Act, 1994, as amended. The tender of the respondent no. 6 therein, who offered the highest bid value of Rs. 1,35,220/-, was rejected on the ground that his sealed tender was not accompanied by the requisite court-fee stamps amounting to Rs. 8.25/- as he affixed court-fee stamps of Rs. 8.00/- only thereby resulting in a deficit of Rs. 0.25/-. The Division Bench has considered the issue and has held in the following manner :

9. The requirement of affixation of court-fee stamps of Rs. 8.25 has its genesis in the provisions of the Court-Fees Act, 1870, as amended [the Act, in short]. The enactment of the Act is intended to provide revenue to the State. Chapter III of the Act has provided for fees in other courts and in public offices, other than the fees in the High Court and in the Courts of Small Causes at the presidency-towns. As per Section 6, no document of any of

the kinds specified as chargeable in the First or Second Schedule to the Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Chapter V of the Act has laid down the mode of levying fees. Section 25 has, *inter-alia*, prescribed that all fees chargeable under the Act shall be collected by stamps. Court-fee stamps are one kind of adhesive non-postal stamps which are to be affixed on certain kinds of applications made before the Court and other public offices. court-fee stamps are used by public and other departments as processing fees for transactions with Government departments. court-fee stamps of various denominations are available. Second Schedule to the Act has provided for the fixed fees for various kinds of applications. As per Entry 3 of List II of the Seventh Schedule to the Constitution, the Court-Fee is a State subject and many States have, in the meantime, brought State amendments to the provisions of the Act.

10. The Government of Assam has also brought amendments to the First Schedule and the Second Schedule to the Act by the Court-Fees [Assam Amendment] Act, 1972. The said Court-Fees [Assam Amendment] Act, 1972 after receipt of assent of the Governor on 08.12.1972, was published by a Notification in the Assam Gazette Extra Ordinary on 13.12.1972. As per Article 1[f] of the Second Schedule, so amended, a fee of Rs. 8.25 has been fixed for an application or petition when the same is presented to any officer containing prayer for settlement of fishery, ferry, forest produce, forest mahals, elephant mahals, or an officer giving terms for acceptance of Government for any construction or an application for a permit or license to deal in controlled commodities. It is in view of the aforesaid prescription of fixed fee to be paid by court-fees stamps under the Court-Fees [Assam Amendment] Act, 1972, the Tender Notice dated 02.06.2018, in the instant case, had specified that the sealed bid was to be affixed with court-fee stamps of Rs. 8.25.

11. The issue for consideration is as to whether any deficiency in court-fee in a document specified as chargeable in the Second Schedule would entail rejection, like in the instant case. In this regard, a reference may be made to Section 28 of the Act. Section 28 states that no document which ought to bear a stamp under the Act shall be of any validity, unless and until it is properly stamped. The proviso to Section 28, *inter-alia*, mentions that if any such document is through mistake or inadvertence received, filed or used in

any office without being properly stamped, the Head of the office may, if he thinks it, order that such instrument be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative hereto shall be as valid as if it had been properly stamped in the first instance.

* * * * *

14. The provision of Section 28, more particularly, the proviso to Section 28, along with Section 6 of the Act pertains to the specific documents specified as chargeable in the First or Second Schedule to the Act. As per the Second Schedule to the Act, as amended by the Court-Fees [Assam Amendment] Act, 1972, the bids submitted by the bidders in response to the Tender Notice dated 02.06.2018, in the instant case, are documents chargeable with fixed court-fee falling under the purview of Section 6 of the Act. In view of the language employed in Section 28, more particularly, the proviso to Section 28, and in view of the interpretation given to Section 6 in *Tajender Singh Gambhir and another* [supra], we are of the opinion that the defect of deficit court-fee in the bid of the respondent No. 6 was curable in nature and an opportunity should have been provided to the respondent No. 6 at the first instance. His bid, otherwise valid and higher than the bid of the appellant, could have been rejected by the tendering authority only in the event he had failed to deposit the court-fee within the stipulated time period, after being put to notice to make good the deficit within such stipulated time period. In such view of the matter, the rejection of the bid of the respondent No. 6 was arbitrary and unjust.

10. Having regard to the provisions of the Court-Fees Act, 1870, as amended, and the amendments brought to the First Schedule and the Second Schedule to the Court Fees Act, 1870 by the Court Fee [Assam Amendment] Act, 1972, and the decision rendered by the Division Bench in *Jalal Uddin* [supra], this Court is of the unhesitant view that the defect of non-affixation of court-fee of requisite amount in the tender of the petitioner in the writ petition, W.P.[C] no. 6172/2021 was curable in nature and an opportunity should have been provided to him at the first instance to make good the deficit. His bid, otherwise valid and higher than the bid of the other two participant bidders, could have been

rejected by the settling authority only in the event he had failed to deposit the court-fee of Rs. 8.25/- within the stipulated time period, after being put to notice to make good the deposit within a stipulated time period.

11. The next aspect which has fallen for consideration is whether the Tender Notice dated 29.02.2020 issued by the Deputy Commissioner, Darrang was in conformity to the provisions of the Assam Fishery Rules, 1953. The Tender Notice dated 29.02.2020 had indicated that the Fishery viz. 16 nos. Dandalagi Meen Mahal is a 40% category Fishery. Unlike 60% category fishery where the State Government is the settling authority, it is the authorities prescribed under Rule 3 of the Assam Fishery Rules, 1953 are the settling authorities in case of a 40% category Fishery.

12. Rule 3 of the Assam Fishery Rules, 1953 has laid down the procedure for Sale of Fisheries and it reads as under :-

3. Procedure for sale of Fisheries :-

[a] The Deputy Commissioner or the Additional Deputy Commissioner in case of Sadar Sub-Divisions and the Sub-Divisional Officers in case of other Sub-Divisions shall annually fix a date, ordinarily not later than the 15th February, for the sale of all registered fisheries held under leases expiring on the last day of the current year or which at the last previous auctions were reserved from sale under Rule 9. The date fixed shall be proclaimed by the Deputy Commissioner or the Additional Deputy Commissioner or Sub-Divisional Officer at least a month in advance by a written notice in Form No. 101 of the Assam Land Revenue Manual, Volume II, posted at the Sadar or Sub-Divisional Cutchery as the case may be and at the Munsiff and Police Station within the local limits of which the fishery or any part of it is situated. The notice shall state the name of the fishery, the Mouza or Pargana within which it is situated, and any other particulars that may be necessary for its identification; the term and price for which it was sold at the last auction; and the date, place and conditions of sale, and the date, place and conditions of

sale. The contents of this notice shall also [if possible], be made known by beat of drum at the Bazar nearest to the fishery.

[b] The fisheries of the Sadar Sub-Division shall be sold by the Deputy Commissioner or the Additional Deputy Commissioner or if so authorized by them in writing by the Sadar Sub-Divisional Officer and those of other Sub-Divisions shall be sold by the respective Sub- Divisional Officers.

"Provided that the procedure prescribed for fixation of date for the sale of all registered fisheries of proclamation of such date at least a month in advance by a written notice in form No. 101 of the Assam Land Revenue Manual, Volume II as amended hereinafter shall not apply in respect of the sale of such fisheries for the year 1997-72."

13. From a reading of the Rule 3 of the Assam Fishery Rules, 1953, it is clearly discernible that the tender notice whereby tenders are invited to settle a 40% category fishery, must have to mention in clear terms the name of the fishery, the Mouza or Pargana within which it is situated, and any other particulars that would be necessary for its identification; the term and price for which it was sold at the last auction; and the term for which it will now be sold, and the date, place and conditions of sale.

14. When keeping in mind the provisions of Rule 3[a] of the Assam Fishery Rules, 1953, the contents of the Tender Notice dated 29.02.2020 are looked into, it is found that the Tender Notice did not indicate the term for which the Fishery was sought to be sold. Thus, the Tender Notice dated 29.02.2020 was clearly not in conformity with the statutory prescription contained in Rule 3[a] of the Assam Fishery Rules, 1953 whereby it has been made mandatory to indicate the term for which the Fishery is sought to be sold in the Tender Notice itself. It is settled proposition of law that where a power is given by a statute to do a certain thing in a certain way, the thing must be done in that way or not at all.

Other methods of performance are necessarily forbid in [Nazir Ahmed vs. King Emperor, AIR 1936 PC 253]. The distribution of State Largesses in the form of a settlement of a 40% Fishery cannot be for an indefinite period when the statute provides for settlement for a definite and fixed term.

15. In view of the above discussion and for the reasons assigned therein, this Court finds that the Tender Notice dated 29.02.2020 was in violation of the statutory prescription contained in Rule 3[a] of the Assam Fishery Rules, 1953. In such situation, the settling authority i.e. the Deputy Commissioner, Darrang could not have proceeded ahead with the settlement process of the Fishery under reference. Thus, notwithstanding the observations made with regard to the individual tender submitted by the participant bidders responding to the Tender Notice dated 29.02.2020, this Court does not want to interfere with that part of the decision of the Tendering Authority taken in the Minutes of its Meeting held on 17.03.2020 and circulated vide the order dated 17.06.2020 where the decision was taken to initiate the settlement process of the Fishery afresh. With the observations made above, both the writ petitions are disposed of. There shall be no order as to cost.

JUDGE

Comparing Assistant