

GAHC010211732022



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

Case No. : WP(C)/6761/2022

DAULAT MIAH
S/O MD. JANAB ALI, VILL- SAGOLIA PART II, P.O.-SAGOLIA, P.S.-
GOLAKGANJ, DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
DHUBRI
P.O. AND DIST-DHUBRI
ASSAM
PIN-783301

3:THE EXECUTIVE OFFICER
AGOMONI ANCHALIK PANCHAYAT
P.O.-AGOMONI
DIST-DHUBRI
ASSAM
PIN-783335

4:THE AGOMONI ANCHALIK PANCHAYAT
REPRESENTED BY ITS PRESIDENT
P.O.-AGOMONI
DIST-DHUBRI
ASSAM
PIN-783335

5:MD. INSAN ALI
S/O MD. ASANAT ZAMAL
VILL- SAGOLIA PART II
P.O.-SAGOLIA
P.S.-GOLAKGANJ
DIST- DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

Date : 03-04-2023

The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India challenging an Order bearing no. ZPD-231/AAP/Settlement/HGF/2022-23/27 dated 04.08.2022 passed by the respondent no. 2 i.e. the Chief Executive Officer, Dhubri Zilla Parishad and a subsequent Order bearing no. AAP/13Hat/Ghat/Min Mahal-2022-23/3601 dated 22.08.2022 passed by the respondent no. 3 i.e. the Executive Officer, Agomoni Anchalik Panchayat. By the impugned order dated 04.08.2022, the respondent no. 2 did not accord confirmation to the proposal for settlement of a fishery named 'Falimari Beel' ['the Fishery', for short] sent from the Agomoni Anchalik Panchayat, in favour of the petitioner on the premise that the petitioner did not affix the requisite court-fee stamps with his bid with the further observation that if the settlement of the Fishery was made in favour of the petitioner, the same would not be in conformity with Clause 10 of the Notice Inviting Tender dated 23.05.2022 ['the NIT']. The respondent no. 2 had further directed the respondent no. 3 to proceed for settlement of the Fishery in terms of Clause 10 of the Tender Notice and to settle the Fishery to the next higher bidder. By acting in terms of the Order dated 04.08.2022, the respondent no. 3 had passed the order dated 22.08.2022 settling the Fishery in favour of the respondent no. 5 at his offered bid value of ₹ 36,779/-.

2. The factual matrix leading to the passing of impugned Order on 04.08.2022 can be narrated, in

brief, as follows : By a Tender Notice dated 23.05.2022 published by the Agomoni Anchalik Panchayat, sealed bids were invited from interested bidders for settlement of a number of markets/ghats/fisheries falling under its jurisdiction for the Panchayat Financial Year : 2022-2023 and for the period from 01.07.2022 to 30.06.2023 as per the provisions of the Assam Panchayat Act, 1994, as amended. The last date of submission of bids was up to 02-00 p.m. on 15.06.2022. One of the fisheries included for settlement in the NIT dated 23.05.2022 was 'Falimari Beel' ['the Fishery'] under the Agomoni Anchalik Panchayat. The yearly sale value of the Fishery was mentioned as ₹ 32,999/- and the earnest money required to be deposited by a bidder belonging to General Category was mentioned as ₹ 3,300/-. 50% of ₹ 3,300/- was to be deposited by a bidder belonging to Scheduled Caste [SC]/Scheduled Tribe [ST] category as the earnest money.

2.1. In response to the Tender Notice, 8 [eight] nos. of bidders including the petitioner and the respondent no. 5, had submitted their bids quoting different bid values and those bid values, in descending order, were as under :-

Sl.No.	Bidder number	Bid value offered
1	Bidder no. 1	₹ 81,501.00
2	Bidder no. 2	₹ 69,999.00
3	Bidder no. 3 [the petitioner]	₹ 65,561.00
4	Bidder no. 4	₹ 75,0551.00
5	Bidder no. 5	Sic
6	Bidder no. 6 [the respondent no. 5]	₹ 36,779.00
7	Bidder no. 7	₹ 35,999.00
8	Bidder no. 8	₹ 35,777.00

2.2. After receipt of the bids from the participant bidders, the General Standing Committee of the Anchalik Panchayat opened the bids of all the bidders. Thereafter, the General Standing Committee of the Anchalik Panchayat examined the tender papers and recorded their comments in respect of each of the bids in a Comparative Statement prepared in terms of sub-rule [8] of Rule 47 of the Assam Panchayat [Financial] Rules, 2002. The office of the Anchalik Panchayat thereafter, forwarded the tender papers along with the Comparative Statement recording their comments at relevant places therein, to the office of the Dhubri Zilla Parishad for confirmation to the proposal for settlement of the Fishery in favour of the petitioner in terms of sub-section [4] of Section 109[6] of the Assam Panchayat Act, 1994. After forwarding the matter for settlement of the Fishery for confirmation to the Zilla Parishad on 06.07.2022, a notice of settlement was issued to the petitioner by the respondent no. 3 on 08.07.2022 whereby it was informed to the petitioner that a decision was taken to settle the Fishery in his favour at his offered bid value of ₹ 65,561/-, subject to deposit of 20% as 1st installment and 30% of ₹ 65,561/- as the security deposit by way of demand draft and signing of the lease agreement within 7 [seven] days from the date of receipt of the notice.

2.3. In response to the notice dated 08.07.2022, the petitioner had submitted a demand draft dated 14.07.2022 of ₹ 31,524/- in favour of the respondent no. 3. On receipt of the proposal for settlement of the Fishery in favour of the petitioner with approval of the Agomoni Anchalik Panchayat, the General Standing Committee of Dhubri Zilla Parishad had considered the same in its meeting. The General Standing Committee, Dhubri Zilla Parishad examined the Comparative Statement prepared and forwarded by the Agomoni Anchalik Panchayat and on examination, it appeared to the General Standing Committee, Dhubri Zilla Parishad that the petitioner appeared to be the highest bidder with his bid value of ₹ 65,561/-. But, the General Standing Committee, Dhubri Zilla Parishad decided not to accord confirmation to the proposal for settlement of the Fishery in favour of the petitioner as the petitioner did not affix the requisite court-fee stamps with his bid.

2.4. Referring to the Clause 10 of the Tender Notice dated 23.05.2022, the General Standing Committee, Dhubri Zilla Parishad had resolved that if the confirmation to the proposal for settlement of the Fishery in favour of the petitioner was accorded, the same would not be in conformity with Clause 10 of the Tender Notice. After consideration of the remarks made in the Comparative Statement, the respondent no. 2 asked the respondent no. 3 to proceed with the matter of settlement in adherence to Clause 10 of the Tender Notice and as directed in the order dated 04.08.2022. The respondent no. 3

had, thereafter, proceeded in terms of the direction contained in the order dated 04.08.2022 of the respondent no. 2 and issued the order of settlement dated 22.08.2022 whereby the Fishery came to be settled in favour of the respondent no. 5 at his offered bid value of ₹ 36,779/-.

2.5. Aggrieved by the denial of settlement to him and by the order of settlement issued in favour of the respondent no. 5, the petitioner has approached this Court by this writ petition challenging the same on the grounds *inter alia* that the Fishery had been settled in favour of the respondent no. 5 despite the petitioner quoting a higher bid value than the respondent no. 5 and in settling the Fishery, the respondent Zilla Parishad ought not to have adhered to the condition incorporated in Clause 10 of the Tender Notice.

3. I have heard Mr. D.A. Kaiyum, learned counsel for the petitioner and Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1 - 4. As per the order dated 17.02.2023 of the Lawazima Court, notice was duly served upon the respondent no. 5. Despite service of notice upon the respondent no. 5, none has appeared for the respondent no. 5 to represent him in the instant writ proceedings.

4. Mr. Kaiyum, learned counsel for the petitioner has submitted that Clause 10 incorporated in the Tender Notice dated 23.05.2022 is not in conformity with the statutory provisions contained in the Assam Panchayat Act, 1994 and the Assam Panchayat [Financial] Rules, 2002, more particularly, Rule 47[10] thereof. As per Rule 47[10] of the Assam Panchayat [Financial] Rules, 2002, a market/ghat/fishery under an Anchalik Panchayat is to be settled with the highest valid bidder. It has emerged from the Comparative Statement prepared by the Agomoni Anchalik Panchayat that the bids of the first two bidders who had offered higher bid values than the petitioner, were defective on many counts. The petitioner who had offered the 3rd highest bid value, did not affix the court-fee stamps of ₹ 8.25 due to inadvertence. But, the General Standing Committee, Dhubri Zilla Parishad could not have declared the bid of the petitioner as invalid due to non-affixation of court-fee stamps of ₹ 8.25.

4.1. Mr. Kaiyum has referred to the decision of the Division Bench of this Court in **Jalal Uddin and others vs. State of Assam and others**, reported in **2019 [3] GLT 829**, to submit that non-affixation of court-fee stamps while submitting a bid in response to a Tender Notice published under the Assam Panchayat Act, 1994, is a curable defect and an opportunity should have been afforded

to the petitioner at the first instance to cure the defect. It is his further submission that since the offered bid value of the highest valid bidder was less than ₹ 1,00,000/-, the power, authority and jurisdiction to settle the Fishery is reserved in the concerned Anchalik Panchayat and the authority of the jurisdictional Zilla Parishad is limited to according or not according confirmation to such proposal. The impugned order dated 04.08.2022 was, thus, clearly in contravention of the provisions of the Assam Panchayat Act, 1994.

5. Mr. Dev Nath, learned Standing Counsel, P&RD Department has placed a Communication bearing no. AAP-20/WP[C] No. 6761/2022/22-23/538 dated 31.12.2022 of the respondent no. 3, which contained para-wise comments. No counter affidavit has been filed by the respondent authorities in the Panchayat & Rural Development Department. Mr. Dev Nath has submitted that the para-wise comments have amply reflected the stand of the respondent authorities in the Panchayat & Rural Development Department. He has submitted that it is true that the bids of the 1st highest bidder and the 2nd highest bidder were defective in terms of Clause 7 of the Tender Notice dated 23.05.2022 as they did not even deposit the requisite earnest money along with their bids. Hence, the General Standing Committee of the Agomoni Anchalik Panchayat by rightly rejecting the bids of the 1st highest bidder and the 2nd highest bidder, decided to settle the Fishery in favour of the 3rd highest bidder i.e. the petitioner treating his bid *prima facie* as a valid one. When after issuing the notice of settlement to the petitioner on 08.07.2022, the Anchalik Panchayat received the Order dated 04.08.2022 from the jurisdictional Zilla Parishad, the order of settlement dated 22.08.2022 had consequently been issued in favour of the respondent no. 5. He has submitted that against the court-fee stamps of ₹ 8.25 prescribed by the Tender Notice, the petitioner had affixed revenue stamps of ₹ 2.00 only. Affixation of revenue stamps in place of court-fee stamps had made the bid of the petitioner an invalid one which earlier escaped the notice of the General Standing Committee, Agomoni Anchalik Panchayat, and the jurisdictional Zilla Parishad had rightly took the decision not to give confirmation to the proposal for settlement of the Fishery in favour of the petitioner, forwarded by the Anchalik Panchayat to the Zilla Parishad, due to such shortcoming.

6. I have duly considered the submissions of the learned counsel for the parties and also perused the materials on record including the averments made in the writ petition and the para-wise comments of the respondent no. 3, placed before this Court by the learned Standing Counsel, Panchayat & Rural Development Department.

7. On perusal of the Comparative Statement prepared by the General Standing Committee, Agomoni Anchalik Panchayat in terms of sub-rule [7] of Rule 47 of the Assam Panchayat [Financial] Rules, 2002 [‘the Rules, 2002’, for short], it has emerged that in respect of the Fishery [‘Falimari Beel’], 8 [eight] nos. of bids, as mentioned above, were received and opened. After opening of those bids, the General Standing Committee, Agomoni Anchalik Panchayat examined those bids and after examination, recorded its remarks in respect of each of the bids. From the Comparative Statement prepared by the Agomoni Anchalik Parishad, it is noticed that the General Standing Committee, Anchalik Panchayat found the bid of the petitioner with offered bid value of ₹ 65,561/- compliant to the terms and conditions of the Tender Notice dated 23.05.2022. The petitioner offered the 3rd highest bid value by offering an amount of ₹ 65,561/-. As the 1st highest bid and the 2nd highest bid were defective on many counts including non-deposit of requisite earnest money in terms of the Tender Notice, the General Standing Committee, Agomoni Anchalik Panchayat had considered the bid of the petitioner as the highest valid bid and took the decision to settle the Fishery with the petitioner at ₹ 65,561/- for the Panchayat Financial year : 2022-2023. The said decision of the General Standing Committee, Agomoni Anchalik Panchayat was followed by the notice of settlement dated 08.07.2022.

8. Rule 47[1] of the Rules, 2002 has **inter alia** provided that such fisheries as are vested in or placed under the control and administration of the Panchayat under Section 109 shall be settled by inviting sealed tenders. As per Rule 47[5], the bids shall be opened, processed and settled by the Committee as provided under Section 52[1][a] or Section 81[a], as the case may be. Rule 47[7] has cast an obligation on the concerned General Standing Committee to prepare a Comparative Statement setting forth full details of the bids received.

8.1. Sub-Rule [10] of Rule 47 of the Assam Panchayat [Financial] Rules, 2002 reads as follows :-

Rules and Procedures for the Sale and Settlement of Markets, Ferries, Fisheries and Ponds Rule 47[10] – The tender of highest bidder shall be accepted. Acceptance of

tender other than the highest bid shall require the 'Government' prior and formal approval.

9. Rule 47[10] has been incorporated in the Rules, 2002 so that the settling authority cannot deviate arbitrarily from the norm of settling ordinarily a fishery with the highest valid bidder without prior approval of the higher authority, that is, the State Government. In a case where the highest bidder is sought to be not given the settlement and the settlement is sought to be offered to a next higher bidder, prior and formal approval of the Government is required to be obtained. In the event no prior and formal approval is taken by the Zilla Parishad while issuing the settlement order in favour of a bidder who is not the highest valid bidder, then the settlement given to such a bidder would not be sustainable, being violative of Rule 47[10] of the Rules, 2002.

10. As per the provision of Section 52[1][a] of the Assam Panchayat Act, 1994, an Anchalik Panchayat shall have a General Standing Committee and such General Standing Committee has to perform functions relating to the establishment matters, communication, buildings, rural housing, relief against natural calamities water supply and all miscellaneous residuary matters. Section 81[a] of the Assam Panchayat Act, 1994 has provided for constitution of a General Standing Committee in the Zilla Parishad and Section 83[1] of the Assam Panchayat Act, 1994 has likewise mentioned the functions of the said Committee. As per Section 109[1] of the Assam Panchayat Act, 1994, all fisheries within the territorial jurisdiction of Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat Financial Year by inviting tenders at the office of the Anchalik Panchayat by its President. Sub-section [3] of Section 109 has laid down that the powers of examination and final acceptance of bids is vested in the General Standing Committee constituted under Section 52[1][a] and as per sub-section [4] of Section 109, all settlement made under sub-section [3] is subject to confirmation of the Zilla Parishad. Section 109[6] has inter alia provided the fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than ₹ 1,00,000/- shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial Year as under Section 109, in the manner prescribed. The powers of examination and final acceptance of such tenders is vested in the General Standing Committee constituted under Section 81 of the Assam Panchayat Act, 1994.

10.1. At this stage, it is apposite to refer to the observations made by the Full Bench of this Court made

in **Harez Ali and another vs. State of Assam and others**, reported in **2009 [2] GLT 561**. In **Harez Ali** [supra], the provisions of Section 109[6] of the Assam Panchayat Act, 1994 **inter alia** came up for consideration. It has considered the significance of the expression, 'yearly sale value' appearing in Section 109[6] of the Assam Panchayat Act, 1994. As the observations made in Paragraph 29 in **Harez Ali** [supra] are of relevance, the same are quoted herein below for ready reference :-

“[29] Further, we also respectfully disagree with the view taken by the Single Bench in *Khalilur Ramhan vs. State of Assam* [supra], to the effect that 'the question of jurisdiction between Zilla Parishad and Anchalik Panchayat would remain indecisive till the submission and opening of the tender papers', as because the procedure laid down by 'the Act', is precisely clear that all NITs, in respect of Ghats, Hats and Fisheries, irrespective of the 'yearly sale value' of such property in question, are required to be floated by the Anchalik Panchayat. However, after submission of all tender papers before the Anchalik Panchayat, if the bid value offered by the eligible highest bidder is found to be more than rupees one lakh, the Standing Committee of Anchalik Panchayat, constituted under Section 52 of the Act, shall immediately forward all such tender papers submitted by the bidders together with comparative chart prepared and processed as per procedure prescribed, to the Zilla Parishad concerned, for doing needful at their end, in accordance with law. However, in case the bid value offered by eligible highest bidder is less than rupees one lakh, the Standing Committee of the Anchalik Panchayat shall accept tender value offered by eligible highest bidder and forward such recommendations for confirmation by the Zilla Parishad. We hasten to add here that if any given case, the highest bidder is not found suitable, law prescribed, for such eventuality will have to be followed.”

11. The relevant provisions of the Assam Panchayat Act, 1994 relating to settlement of markets, ghats, fisheries, etc., and Rule 47[10] of the 2002 Rules came to be considered by this Court in **W.P. [C] no. 5992/2014 [Durga Charan Mandal vs. the State of Assam & others]**, wherein the judgment and order was rendered on 18.03.2015. The Court has observed as under :-

“22. ‘Process’, in the context of a notice inviting tender, encompasses within its ambit, amongst others, preparation of a comparative statement, evaluation of the tenders and

rejection of tenders not conforming to the requirements of the Notice Inviting Tender. Sections 105[3], 106[3] also provide for examination of tenders by the General Standing Committee. The highest tender, after examination and evaluation, in a given case, may be rejected. Once rejected, such a tender cannot come into consideration for the purpose of acceptance or settlement. If the words, 'highest bidder' occurring in Rule 47[10] of the Rules is given literal meaning, examination or evaluation of tenders, as contemplated in the Act, will be rendered meaningless and it will result in a situation of acceptance of a tender, irrespective of the fact as to whether or not the tenderer fulfils the eligibility criteria and other terms and conditions. Surely, this is not what the legislature contemplated. The expression, 'the tender of the highest bidder shall be accepted' would, by necessary implication, mean that the highest 'valid' tenderer will be considered for acceptance or settlement and, therefore, Rule 47[10] of the Rules has to be understood to mean that the tender of the highest 'valid' tender shall be accepted and that acceptance of tender, other than the highest valid tenderer, shall require prior and formal approval of the government."

11.1. This Court in the case titled **Debajit Hazarika vs. the State of Assam and others**, reported in **2022 [2] GLT 337**, has held that an order of settlement made in favour of a bidder other than the highest valid bidder, in violation of the statutory prescription contained in Rule 47[10] of the Rules, 2002 is a vitiated one and the decision in **Debajit Hazarika** [supra] is affirmed by the Division Bench in **Writ Appeal no. 59/2022 [Sri Puneshwar Saikia vs. the State of Assam and others]**, decided on 14.02.2022.

12. References to Clause 10 of the Tender Notice on one hand and Clause 11 to Clause 17 of the Tender Notice on the other hand are found necessary. The afore-mentioned Clauses were worded in the following manner :-

10. The quotation mentioning highest bid amount for any Bazar/Hat/Ghat/Fishery/Pound will be accepted for consideration and if it is found that the bidder of the highest bid amount has not submitted the necessary documents [except Court Fee and Earnest Money], then the said bidder will be given three days time for the submission of the same and if he/she fails to submit the necessary

documents within the said stipulated 3 days, his quotation will be rejected and his earnest money will be forfeited and the quotation of the bidder of second highest bidder will be considered for the settlement, subject to some terms and conditions.

Part-II

11. a) 10% of the earnest money in the form of Fixed Deposit for a minimum period of one year either in Assam Co-operative Apex Bank or Assam Gramin Bikash Bank or any of the nationalized bank, should be pledged to Chief Executive Officer of Zilla Parishad by each bidder for a Bazar/Ghat/Minmahal whose bid amount is more than ₹ 1,00,000/-. Bidders belonging to S.C. and S.T. will get 50% relaxation on the earnest money and they must enclose attested copies of the caste certificates along with their quotations.

b) 10% of the earnest money in the form of Fixed Deposit for a minimum period of one year either in Assam Co-operative Apex Bank or Assam Gramin Bikash Bank or any of the nationalized bank, should be pledged to Ex-Officio Secretary and the Executive Officer of Anchalik Panchayat as Fixed Deposit for a minimum period of one year by each bidder for bazaar/hat/ghat/fishery whose bid amount is less than ₹ 1,00,000/-. Bidders belonging to S.C. and S.T. will get 50% relaxation on the earnest money and they must enclose attested copies of the caste certificates along with their quotations.

12. The bidder must enclose a passport size photograph duly attested by a gazette officer, along with the quotation.

13. The bidder and his guarantor must enclose the Tax Clearance Certificates and No Default Certificates issued by the concerned Zilla Parishad, Anchalik Panchayat and Gaon Panchayat along with the quotation.

14. The bidder or his guarantor must place a plot of land as surety against the value of the tender [a] Jamabandi copy and [b] Non-Encumbrance Certificate and valuation certificate issued by the concerned Deputy Commissioner/Sub-Divisional Officer/Circle Officer in respect of the land placed as surety must be enclosed along with the quotation. The guarantor must also sign in the quotation. Bank Guarantee on the value of the bid amount will also be accepted in lieu of the land documents as surety. One guarantor/bidder of a Bazar/Hat/Ghat/Fishery/Pound cannot stand as the guarantor for any other Bazar/Hat/Ghat/Fishery. If the land placed as the surety

has co-pattadars, then their consents will also be necessary.

15. The bidder and the guarantor must submit affidavit declaring the documents submitted by them along with the quotations to be genuine ones.

16. The successful bidder must deposit the installment amount of the Bazar/Hat/Ghat/Fishery/Pound in the office of Zilla Parishad if the tender value is above ₹ 1,00,000/- and in the office of the Anchalik Panchayat if the tender value is below ₹ 1,00,000/- as mentioned in the Paragraph 20 on time.

17. If conditions mentioned para No. 1 to 16 of the Part-I and Part-II are not fulfilled, then the tender application will be rejected.

13. Presence of Clause 10 along with Clause 11 to Clause 17 in a Tender Notice for settlement of markets/ghats/fisheries, *prima facie* contradictory from one another, came up for consideration in **Abdus Samad vs. State of Assam and others**, reported in **[2023] 2 GLR 914**. After considering the matter in its entirety, the Court has observed as under :-

20. In the light of the discussion made above, it has clearly emerged that Clause 10 is a standalone provision and the procedure prescribed therein is incompatible to the other terms and conditions incorporated in the Tender Notice. Clause 17 of the Tender Notice has *inter alia* set forth that in the event a bidder does not meet the terms and conditions incorporated in Clause 11 to Clause 16, the bid would entail rejection. Clause 11 to Clause 16 of the Tender Notice required the bidder to submit a number of documents, described therein, to accompany the bid. If the procedure indicated in Clause 10 is required to be followed, as has been contended on behalf of the petitioner, one could also contend that the same would be abhorrent to a competitive bidding process as there would not be any fairness, transparency, definitiveness and rationality. One way of interpretation of Clause 10 could be that a bidder at the time of submission of his sealed bid in response to the Tender Notice need not submit any other documents except the prescribed tender form, Court fee of ₹ 8.25 and earnest money, as quoted in the Tender Notice. If his bid value emerges as the highest then he would be called by the tendering authority to submit all the other requisite documents. If he manages to submit all the requisite documents within the stipulated period of 3 [three] days then he becomes the highest valid bidder which he otherwise, at the time

of submission of bid, was not. In the event he fails, then his bid would be rejected at the cost of forfeiture of the earnest money. One could also visualise a situation where about 'n' number of bidders participated in response to the Tender Notice by submitting only the Court fee stamps and earnest money and if after granting opportunities to these 'n' number of bidders to submit the documents a period of 3 [three] days each all of them fail then by that time, a period of 'n x 3' days will expire whereas the period of settlement is only for one-year. If all the bidders who have offered higher bid values are to be given opportunities of meeting the deficiencies one after the other, than there would be no requirement of meeting the eligibility criteria by the bidders on the last date of submission of the bids. There could be many others like situations all of which cannot be envisaged now.

21. From the above, it is certain that if Clause 10 of the Tender Notice is made applicable then the same would for the benefit of the bidders whose bids were invalid at the time of their submission and the same would be to the prejudice to those bidders whose bids were compliant to the terms and conditions of the Tender Notice at the time of their submission. The issue of acceptance or rejection of a bid of the bidder is to be examined not only from the points of view of both the tendering authority and such a bidder but also from the point of view of all other participant bidders. The said situation is clearly opposed to the principle of equality enshrined in Article 14 of the Constitution of India. The same would clearly be discriminatory inasmuch as it would result in an anomalous situation where unequals would be treated equally giving them an unjust benefit over a bidder who is otherwise the highest 'valid' bidder in terms of the provisions of the Assam Panchayat Act, 1994 and Rule 47 [10] of the 2002 Rules, merely because they had quoted higher bid values. Such a situation cannot be envisaged in a competitive bidding process on the touchstone of Article 14 of the Constitution of India and in view of Rule 47[10] of the Rules, 2002.

14. The above observations made, in the considered view of this Court, are applicable on all fours in respect of Clause 10 of the Tender Notice dated 23.05.2022, involved in the case in hand.

15. From the para-wise comments of by the respondent no. 3, it has emerged that the petitioner did not affix court-fee stamps of ₹ 8.25 with his bid and instead, he had affixed revenue stamps of ₹ 2.00 only with his bid. The said defect of non-affixation of court-fee stamps of ₹ 8.25 was noticed by the jurisdictional Zilla Parishad when the matter was placed before the General Standing Committee, Dhubri Zilla Parishad for confirmation in accordance with the provision contained in sub-section [4] of Section 109 of the Assam Panchayat Act, 1994. After examination, the General Standing Committee, Dhubri Zilla Parishad took the decision not to accord confirmation to the proposal for settlement of the Fishery received from the Agomoni Anchalik Panchayat in favour of the petitioner, as reflected in the impugned Order dated 04.08.2022.

16. Thus, the other issue that has fallen for consideration before this Court is as to whether non-affixation of court-fee stamps of ₹ 8.25 would render the bid of a bidder whose bid was otherwise compliant to all other terms and conditions of the Tender Notice, as an invalid one or such non-affixation of court-fee stamps of ₹ 8.25 with the bid is a curable irregularity. The position is no longer *res integra* in view of the decision of the Division Bench in *Jalal Uddin* [supra]. In *Jalal Uddin* [supra], pursuant to a Tender Notice dated 02.06.2018 published by Laharighat Anchalik Panchayat requiring submission of sealed bids, by affixation of court-fee stamps of ₹ 8.25, 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 bid of the respondent no. 6 therein, who offered highest bid value of ₹ 1,35,200/- was rejected on the ground that his sealed bid was not accompanied by the requisite court-fee stamps of ₹ 8.25 as he affixed court fee stamps of ₹ 8.00 thereby resulting in a deficit of ₹ 0.25. The Division Bench has considered the issue and has held in the following manner :-

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.

17. Thus, from the decision in **Jalal Uddin** [supra], it has clearly emerged that the defect in the form of deficit court-fee stamps in the bid of a bidder is curable in nature and an opportunity is to be provided to such a bidder at the first instance. In case of the bid of the petitioner, otherwise valid and higher than the other bidders, the proper course for the jurisdictional Anchalik Panchayat is to afford a time-period to the petitioner to make good the defect/deficit in respect of the court-fee stamps. The Anchalik Panchayat and/or for that matter, the Zilla Parishad should declare such a bid as an invalid one only in the event such bidder fails to deposit the court-fee stamps within a stipulated time period, after being put to notice to make good the deficit within such stipulated time period.

18. In view of the discussion made above, more particularly, with regard to Clause 10 of the Tender Notice and as regards the deficit in court-fee stamps in the bid of the petitioner, this Court is of the considered view that the decision of the General Standing Committee, Dhubri Zilla Parishad to reject the bid of the petitioner as an invalid bid is clearly erroneous and untenable. The bid of the petitioner is

to be considered as an irregular one and the petitioner ought to have been given an opportunity to make good the deficit in court-fee stamps within a stipulated time period. It is only in the event the petitioner fails to make good the deficit in court-fee stamps within a stipulated time period, the settling authority will have the authority and jurisdiction to treat the bid of the petitioner as an invalid one. In such view of the matter, the decision of the Agomoni Anchalik Panchayat conveyed by the impugned Order dated 04.08.2022 is liable to be set aside and quashed. It is accordingly ordered. As a result of setting aside of the impugned Order dated 04.08.2022, the consequential Order dated 22.08.2022 passed by the respondent no. 3 is also set aside and quashed.

19. By interim order dated 26.10.2022, this Court had stayed the order dated 04.08.2022 until further orders. As the Order dated 04.08.2022 has been set aside, the interim order dated 26.10.2022 stands accordingly merged with this order. As a corollary, the respondent no. 2 is directed to proceed with the matter of settlement of the Fishery, that is, 'Falimari Beel' in terms of the observations made above, on the aspect of non-affixation of court-fee stamps by the petitioner, by putting him on notice to make good the deficit court-fee stamps, within a stipulated time period from the date of receipt of a certified copy of this order. In the event the petitioner satisfies the condition of making good the deficit court-fee stamps then the General Standing Committee, Dhubri Zilla Parishad will take its decision as regards according or not according confirmation to the proposal for settlement of the Fishery, forwarded by the Agomoni Anchalik Panchayat, in favour of the petitioner in accordance with law for the remaining period of settlement of the Fishery up to 30.06.2023. The respondent authorities are also directed to ensure compliance of the observations made in respect of Clause 10 of the Tender Notice.

20. The writ petition stands allowed to the extent, indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant