

GAHC010264472022



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

Case No. : WP(C)/8226/2022

KAJAL KUMAR DAS
S/O. KALI MOHAN DAS, R/O. VILL. SRIPUR PART-I, P.O. FULBARI, DIST.
CACHAR, ASSAM, PIN-788802.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REP. BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DEPT. OF FISHERIES, DISPUR, GUWAHATI-06.

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION (AFDC) LTD.

VIP ROAD
CHACHOL
GUWAHATI-36
DIST. KAMRUP (M)
ASSAM
REP. BY ITS MANAGING DIRECTOR.

3:THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION (AFDC) LTD.
VIP ROAD
CHACHOL
GUWAHATI-36

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER

CACHAR
SILCHAR
PIN-788801

Advocate for the Petitioner : MR. B J GHOSH

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/4053/2022

KAJAL KUMAR DAS
S/O- KALI MOHAN DAS
RESIDENT OF VILL. SRIPUR PART-I
P.O. FULBARI
DIST.- CACHAR
ASSAM
PIN- 788802.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVT. OF ASSAM
DEPARTMENT OF FISHERIES
DISPUR
GUWAHATI- 6.

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION (AFDC) LIMITED
VIP ROAD
CHACHOL
GUWAHATI-36
DIST.- KAMRUP METRO
ASSAM
REPRESENTED BY ITS MANAGING DIRECTOR.

3:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION (AFDC) LIMITED
VIP ROAD
CHACHOL
GUWAHATI- 36.

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
CACHAR
SILCHAR
PIN- 788801.

Advocate for : MR. B J GHOSH

Advocate for : SC

AFDC appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

15.02.2024

1. Heard Mr. B.J. Ghosh, learned counsel for the petitioner. Also heard Mr. P. Sarmah, learned counsel appearing for the AFDC and Mr. G. Bokaliyal, learned counsel for the Fishery Department.

2. The two writ petitions are being disposed of by this common order in view of the fact that the issue pertains to the settlement of the same fishery, i.e., 37 No. Fulbari Anua/Fishery in Cachar District, Assam (hereinafter referred to as 'the Fishery.'

3. In WP(C) No. 4053/2022, the petitioner has prayed for setting aside the Re-tender Notice No.4/2022 dated 03.06.2022 and in WP(C) No.8226/2022, the petitioner has prayed for setting aside the Re-Tender Notice No.20/2022 dated 17.12.2022.

4. The petitioner's case is that the petitioner along with two other bidders participated in the Tender Notice No. 1/2022 dated 14.03.2022 for settlement of the Fishery for 7 years. The technical bid was opened on 22.04.2022, whereupon, one of the bidders was disqualified. According to the petitioner, the financial bid of the two remaining bidders was opened on 26.04.2022 in their presence, wherein the petitioner's bid was found to be the highest. However, instead of settling the Fishery with the petitioner, Re-Tender Notice No. 4/2022 dated 03.06.2022 was issued, by which the respondents sought to undertake a

fresh settlement of the Fishery. The Re-Tender Notice No. 4/2022 dated 03.06.2022 was put to challenge in WP(C) No. 4053/2022 and this Court vide order dated 20.06.2022, passed an interim order directing that though the petitioner could participate in the Re-Tender Notice No. 4/2022 dated 03.06.2022, no final decision should be made pursuant to the Re-Tender Notice dated 03.06.2022.

5. While the interim order dated 20.06.2022 passed in WP(C) No. 4053/2022 was still in operation, the respondents issued Re-Tender Notice No. 20/2022 dated 17.12.2022 in respect of the same fishery, which has been put to challenge in WP(C) No.8226/2022.

6. The petitioner's counsel submits that no reasons have been given by the State respondents, as to why the Fishery has been re-tendered time and again. He submits that the financial bids of the valid tenderers in the first Tender Notice No. 1/2022 dated 14.03.2022 should be acted upon and the Fishery should be settled in terms of the bids submitted therein. He also submits that this Court in the Case of ***Deben Das Vs. State of Assam & Ors.,*** reported in ***2018 (5) GLT 1*** had decided the question whether the State respondents were justified in cancelling the tender and going for a re-tender, after the petitioner had remained as the single valid tenderer, after the technical evaluation stage. He submits that in the said order passed by this Court, the Court had directed the respondents to consider the technical bid of the remaining lone tenderer and had set aside the re-tender notice. He accordingly submits that a similar direction should be passed in this case.

7. Mr. P. Sarmah, learned counsel appearing for the AFDC submits that the

decision to go for a re-tender of the Fishery has not been made only in the petitioner's case, but also with regard to Rupaibail Beel, Cachar as well as Baskandi Anua Beel, Cachar, where only two bidders remained after the technical evaluation stage. He submits that the policy decision taken by the State should not be disturbed, as the purpose for going for a re-tender, was to ensure that more tenderers participated in the tender process. Mr. Sarmah further submits that the financial bids of the bidders in the first Tender Notice No. 1/2022 dated 14.03.2022 have not been opened till date.

8. I have heard the learned counsels for the parties.

9. In the case of ***Deben Das (supra)***, this Court was to decide whether the bid of the single valid tenderer, after disqualification of other tenderers in the technical evaluation stage, could be considered for settlement of the Fishery. This Court held in the above case that as there was no averment in the Affidavit of the respondents, imputing any motive behind the withdrawal of bids made by the other bidders to give an unfair advantage to the petitioner or that there was collusion between the bidders, the remaining bidder could not be faulted for being left in the fray post the tender evaluation stage. This Court accordingly set aside the re-tender notice and the respondents were directed to supply the formal supply order to the lone remaining bid.

10. The operative portion of the judgment of this Court in the case of ***Deben Das (supra)***, which is at para 21, 22 and 23, is reproduced below as follows:-

“21. At this stage, it would be relevant to mention that there is no averment in the affidavit of the Director imputing any motive behind withdrawal of bids by the three bidders. It is not the case of the Director

that the bids were withdrawn to give unfair advantage to the petitioners or that there was collusion between the bidders leading to withdrawal of bids leaving the petitioners as the sole valid tenderers in fray. Only reason or justification given for the decision to go for re-tender was that because of disqualification and withdrawal of bids, there remained only one valid bidder i.e. the petitioners. Taking the view that this resulted in a situation of having a single bid, it was decided to go for re-tender.

22. *I am afraid, the logic behind such decision does not appear to be sound. The concept of single tender requiring re-tender would ordinarily arise when after opening of the bids, i.e., after opening of technical bids in two bid system or opening of bids in a single bid system, there is only one tenderer in the fray. In such a situation, the tendering authority would be well within its right to go for re-tender; firstly, to eliminate possibility of unfair or collusive tendering and, secondly, to ensure a better bargain for the tendering authority. On the other hand, if it is found that there are more than one tenderer who had submitted their tenders but after scrutiny or after evaluation of technical bids, tenders of some of them are found to be invalid while some others have withdrawn their bids, even if it leads to a situation where there is only one valid tenderer in the fray, such a consequential scenario cannot be treated at par with a scenario where there is only one tenderer at the threshold. The two situations stand apart and, therefore, consequences flowing therefrom would also be different.*

23. *In so far the present case is concerned, it is not the fault of the petitioners that bids of two of the bidders were found to be invalid. Moreover, as noticed above, there is no allegation or averment in the affidavit of the Director that there was collusion between the bidders*

leading to withdrawal of bids by three of them thereby giving unfair advantage to the petitioners. If this is not the case, then petitioners cannot be faulted for being left in the fray post tender evaluation as the single valid tenderers.”

11. In the present case also, there is nothing to show that there was any collusion between any of the bidders or that any unfair advantage had been given to the petitioner, only because two valid bidders are apparently left in the fray.

12. On considering the above facts, this Court does not find any justification for calling for a re-tender of the Fishery. The reason given by the respondents that re-tender has been made not only in respect of the present fishery, but also with two other fisheries, does not, in the view of this Court, give justification for re-tendering the present Fishery, when there are two valid tenderers still left in the fray.

13. In view of the above reasons, this Court is of the view that the financial bid evaluation, pursuant to the Tender Notice No. 1/2022 dated 14.03.2022, would have to be taken to its logical conclusion. Further, while there was a stay on the finalization of the Re-tender Notice No. 4/2022 dated 03.06.2022, the respondents had issued a 3rd tender notice, by way of Re-tender Notice No. 20/2022 dated 17.12.2022, which has apparently been withdrawn, in view of WP(C) No.8226/2022 having been filed against the same.

14. On considering the above factors, this Court finds that the Re-tender Notice No. 4/2022 dated 03.06.2022 is without any reason and as such,

arbitrary. Accordingly, the same is set aside. The AFDC is given the liberty to open the financial bids of the remaining valid tenderers pursuant to the Tender Notice No. 1/2022 dated 14.03.2022 immediately and take the same to its logical conclusion as per law, for the remaining period of the settlement of the fishery.

15. The writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant