

GAHC010162322019



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

Case No. : WP(C)/4910/2019

PARGHAT KARHAPARIA MEEN SELF HELP GROUP AND ANR.
PARGHATGAON, P.O. AND P.S. GHILAMARA, DIST. LAKHIMPUR, ASSAM
REP. BY ITS PRESIDENT SRI KHIRESWAR DAS.

2: KHIRESWAR DAS
S/O. LT. SARUA DAS
R/O. PARGHAT GAON
P.O. GHILAMARA
P.S. GHILAMARA
DIST. LAKHIMPUR
PIN-784525
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, IN THE
FISHERY DEPTT., DISPUR, GUWAHATI-06.

2: THE JOINT SECRETARY
FISHERY DEPTT. GOVT. OF ASSAM
DISPUR
GUWAHATI-781006.

3: THE DY. COMMISSIONER

LAKHIMPUR
DIST. LAKHIMPUR
PIN-787001.

4: THE SUB-DIVISIONAL OFFICER (CIVIL)
DHAKUAKHANA SUB-DIVISION
DHAKUAKHANA DIST. LAKHIMPUR
PIN-787001.

5:KATHALPARA PUTHIKHATI S.C. SELF HELP GROUP
VILL. PUTHIKHATI
P.O. BATAMARI
DHAKUAKHANA
DIST. LAKHIMPUR
PIN-787001
ASSAM

Advocate for the Petitioner : MR. N C DAS, MR. A DAS,MR. A DEY,MS. M DEVI

Advocate for the Respondent : GA, ASSAM, FOR CAVEATOR,MR A HAWARI,MR. S ISLAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (Oral)

Date : 09.08.2024

Heard Ms. M. Devi, learned counsel for the petitioner. Also heard Mr. S. R. Baruah, learned Government Advocate appearing for the respondents no. 1 to 4 and Mr. S. Islam, learned counsel appearing for the respondent no. 5.

2. The challenge made in the present proceeding is to an order dated 03.07.2019, issued by the Joint Secretary to the Government of Assam, Fishery Department, settling Karha Part-I Fishery, Dhakuakhana, Lakhimpur, with the respondent no. 5, herein.

3. As projected in the writ petition, a Notice Inviting Tender (NIT), issued by the Sub-Divisional Officer, Karha Part-I Fishery under Dhakuakhana Sub-Division, Lakhimpur; the petitioner herein along with three others, including the respondent no. 5, had submitted their respective bids. The bids on being opened, a comparative statement came to be made by the authorities on the date so fixed for the purpose. It is contended that in terms of the

Comparative Statement so made although the respondent no. 5, herein, was the highest bidder, a deficiency in the form of non-submission of 100% actual fishermen certificate and up-to-date Registration Certificate was so noticed and the same was so reflected in the Comparative Statement. Insofar as the petitioner is concerned, it was noticed that the petitioner had not submitted the 100% actual fishermen certificate along with the Bakijai Clearance Certificate. The matter on processing came to be placed before the Government of Assam in the Fishery department. Thereafter, upon hearing the bidders, including the petitioner and the respondent no. 5 and on perusal of the materials available on record, including an examination of the eligibility of the bidders, the Joint Secretary to the Government of Assam, Fisheries Department, vide an order dated 03.07.2019, proceeded to settle the fishery with the respondent no. 5, herein, by holding that it was the highest bidder and had submitted all requisite documents. As a consequence to the above noted order, the respondent no. 5 was settled with the said Fishery for a period of 7(seven) years and he is contended to operating the same, as on date, w.e.f. 10.07.2019 by paying the requisite Kist money.

4. Being aggrieved by the settlement so effected in respect of the respondent no. 5, the petitioner has instituted the present proceedings.

5. Ms. M. Devi, learned counsel for the petitioner, by relying upon the Comparative Statements so prepared by the tender issuing authority, has submitted that the respondent no. 5 being a Self Help Group (SHG), had admittedly, not submitted its up-to-date Registration Certificate and the same being a mandatory document, the bid of the respondent no. 5 could not have been held to be responsive in absence of the same.

6. As regards the non-submission of the Bakijai Clearance Certificate by the petitioner, is concerned, the learned counsel for the petitioner has submitted that although applications were made for being furnished with the said Bakijai Clearance Certificate, the concerned authorities had not issued the said certificate to the petitioner till 06.02.2019. Accordingly, the petitioner had submitted an affidavit in the matter, wherein it is categorically contended that no Bakijai proceeding is pending against the petitioner Self Help Group and also the fact that the certificate in this connection was not issued by the concerned authority.

7. The learned counsel for the petitioner further proceeds to contend that the Bakijai Clearance Certificate was issued to the petitioner Self Help Group, on, 06.02.2019; and therein, the veracity of the contentions as made by the petitioner in the affidavit filed along with the tender, was established. The learned counsel for the petitioner further submits that the Bakijai Clearance Certificate dated 06.02.2019, having been so issued to the petitioner Self Help Group before the settlement of the Fishery in question with the respondent no. 5; the respondent authorities ought to have reckoned the same for the purpose of considering the responsiveness of the bid as submitted by the petitioner, in the matter.

8. The learned counsel for the petitioner, in the above premises, has submitted that the up-to-date registration certificate of the petitioner not being submitted and the non-submission of the Bakijai Clearance Certificate, having been adequately explained by the petitioner in the affidavit filed along with bid of the petitioner and the same being subsequently affirmed by the Bakijai Clearance Certificate, issued on 06.02.2019, by the concerned authorities, the bid of the petitioner ought to have been reckoned as

responsive and the Fishery was mandated to be settled with the petitioner Self Help Group.

9. Mr. S. R. Baruah, learned Government Advocate, appearing for the State respondents by relying on the original records as produced today, has submitted that the respondent no. 5 Self Help Group, had submitted the Registration Certificate, issued by the jurisdictional Block Development Officer. It was contended that the petitioner, as well as the respondent no. 5 SHGs, were not registered with the Co-operative Societies but, were so registered as a Self Help Group with the jurisdictional Block Development Officer and accordingly, the Registration Certificate issued by the jurisdictional Block Development Officer, were reckoned by the respondent authorities for the purpose of considering the responsiveness of the bids submitted by the petitioner, as well as the respondent no. 5.

10. Mr. S. R. Baruah, learned Government Advocate has further submitted that the responsiveness of the bids as submitted by the bidders in pursuance to the NIT dated 10.12.2018, were again verified by the Joint Secretary to the Government of Assam, Fisheries Department and after hearing the bidders, participating in the bidding process had proceeded to issue the order dated 03.07.2019; and therein, had by bringing on record the facts coming to notice on such verification in respect of each of the bidders participating, proceeded to hold the respondent no. 5, herein, to be responsive and accordingly, considering the highest bid submitted by it in the matter, the settlement in question came to be so effected with it.

11. Mr. S. R. Baruah, learned Government Advocate, further submits that the petitioner had admittedly, not submitted the Bakijai Clearance Certificate in the matter along with its bid and the Bakijai Clearance Certificate as

obtained by the petitioner on 06.02.2019, admittedly, being after the last date of submissions of bids in pursuance to the NIT dated 10.12.2018, the same cannot be reckoned for the purpose of determining the responsiveness of the bids submitted by the petitioner, herein. Accordingly, Mr. Baruah, submits that there exists no error in the reasonings as recorded in the order dated 03.07.2019 and accordingly, the order dated 03.07.2019 would not mandate an interference from this Court.

12. Mr. S. Islam, learned counsel appearing for the respondent no. 5, by adopting the arguments of the learned Government Advocate appearing in the matter, has further submitted that the respondent no. 5 is a registered body and a certificate in this connection was already issued by the BDO, Dhakuakhana Development Block, which was also submitted along with its bid. It is also contended that on the date of submission of the bid by the respondent no. 5, in pursuance to the NIT dated 10.12.2018; the registration was a valid one. Accordingly, he submits that the settlement of the Fishery in question with the respondent no. 5, vide the order dated 03.07.2019, would not call for any interference by this Court.

13. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

14. The grievance of the petitioner, pertaining to the bid submitted by the respondent no. 5, is with regard to the non-submission by the respondent no. 5 of its up-to-date Registration Certificate, which according to the petitioner renders the bid submitted by the respondent no. 5 to be non-responsive.

15. The bids as received, in pursuance to the NIT dated 10.12.2018; on

being opened, a Comparative Statement came to be so prepared by the tender issuing authorities, and therein, in respect of the petitioner, it was recorded that its bid was not accompanied by a 100% actual fishermen certificate, a photo of a bidder and a Bakijai Clearance Certificate. In respect of the respondent no. 5, it was recorded in the said Comparative Statement that its bid was not accompanied by a 100% actual fishermen certificate and an up-to-date Registration Certificate as a Self Help Group.

16. At the outset, the contention of the petitioner with regard to the bid as submitted by the respondent no. 5, herein, is being so considered.

17. It is clear that in the Comparative Statement so prepared of the bids received in pursuance to the NIT dated 10.12.2018, it was recorded that the respondent no. 5 had not submitted a 100% actual fishermen certificate and an up-to-date Registration Certificate as a Self Help Group.

18. As regards the non-submission of 100% actual fishermen certificate, it is evident that the respondent no. 5 had submitted a certificate, issued by the Scheduled Caste Development Board, Dhakuakhana, in this connection, it is seen that a similar certificate was also submitted in the matter by the petitioner, issued from the same very authority. Accordingly, the said certificates being accepted by the authorities, on examination, this Court refrains from examining the validity of the said certificates.

19. As regards the contention of the petitioner pertaining to the non-submission of an up-to-date Registration Certificate of the respondent no. 5 Self Help Group, it is seen from the Comparative Statement so prepared that therein, it was recorded that such certificate was not so furnished by the respondent no. 5. However, from the records as produced, it is seen that a

Registration Certificate of the respondent no. 5 Self Help Group, issued by the BDO, Dhakuakhana Development Block was submitted along with its bid and the same is available on record.

20. The Registration Certificate being admittedly submitted by the petitioner and a perusal of the said certificate having not demonstrated that the same was so issued for a prescribed period of time, which had lapsed by the time of submission of bid by the respondents, the contentions as raised by the petitioner in this connection cannot be accepted.

21. Having noticed the above position, with regard to the bid submitted by the respondent no. 5, the inconsistencies highlighted in the said Comparative Statement with regard to the bid submitted by the petitioner is now being considered.

22. As regards the non-submission of the Bakijai Clearance Certificate, the petitioner, in the writ petition has categorically admitted the non-submission of the said certificate, however, it was contended that the said certificate could not be annexed with its bid at the time of its submission, on account of the fact that the authorities competent to issue such certificate has not issued the same. The petitioner has contended that an affidavit in lieu of the said certificate, highlighting that no Bakijai case was pending against the petitioner Self Help Group was enclosed along with its bid submitted in pursuance to the NIT dated 10.12.2018.

23. It is to be noted here that the last date for submission of the bids in pursuance to the NIT dated 10.12.2018 was 26.12.2018, till 2:00 PM. The Bakijai Clearance Certificate, in respect of the petitioner, herein; admittedly, was issued only on 06.02.2019 and on the date of submission of the bid in

question by the petitioner, the said certificate was not in existence. Accordingly, the Bakijai Clearance Certificate being one of the mandatory documents requisite to be submitted along with its bid by a bidder, in pursuance to the NIT dated 10.12.2018, non-submission of such Bakijai Clearance Certificate by the petitioner has the effect of rendering its bid non-responsive.

24. The affidavit as submitted in the matter by the petitioner in lieu of such Bakijai Clearance Certificate cannot be construed to have satisfied the eligibility criterias specified in this connection, in the NIT dated 10.12.2018 and accordingly, such affidavit would be of no consequence and basing thereon, the bid of the petitioner, herein cannot be held to be responsive.

25. The further contention of the petitioner is that the Bakijai Clearance Certificate, on being received by the petitioner on 06.02.2019, was furnished to the authorities and the same having been so submitted by the petitioner before the settlement of the Fishery in question had been so granted, the respondent authorities were required to reckon the same, for determining the responsiveness of the bid submitted by the petitioner.

26. The said contention is noticed only to be rejected, inasmuch as, it is a settled position of law that the documents as requisite to be submitted along with a bid has to be in existence on the last date of submission of the bids in question and any documents coming into effect after the last date of submission of such bids, would not be reckonable for the purpose of determining as to whether the bids submitted by such bidder would be responsive.

27. Having drawn the above conclusions with regard to the inconsistencies

as highlighted in the comparative statement as regards the bids submitted by the petitioner, as well as the respondent no. 5, this Court would now examine the order dated 03.07.2019, issued by the Joint Secretary, Government of Assam, Fisheries Department settling the Fishery in question with the respondent no. 5.

28. A perusal of the said order dated 03.07.2019, issued by the Joint Secretary, Government of Assam, Fisheries Department, brings to the forefront that the authority concerned had examined the bids as submitted by the respective bidders and thereafter, had come to a conclusion that the bid as submitted by the respondent no. 5, was responsive and accordingly, it being the highest bidder, the settlement of the Fishery in question was so made with it. The competent authority, in the order dated 03.07.2019, had also noticed the fact that 100% actual fishermen certificate submitted by the petitioner and the respondent no. 5, herein, were so issued by the Scheduled Caste Development Board, Dakhuakhana, inasmuch as, neither the petitioner nor, the respondent no. 5 was a Co-operative Societies and accordingly, the said certificates could not have been issued by the jurisdictional Assistant Registrar of Co-operative Societies.

29. The bid of the petitioner was held to be non-responsive on account of non-submission of Bakijai Clearance Certificate and such conclusion, as noticed herein above, is not erroneous.

30. In view of the above position and the reasoning as recorded in the order dated 03.07.2019, being not perverse to the records of the case, the order dated 03.07.2019 is required to be upheld. Consequently, the settlement made vide the order dated 03.07.2019; in respect of the Fishery in question with the respondent no. 5, herein, would not call for any

interference by this Court.

31. It is to be noted that in pursuance to the order dated 03.07.2019, the Fishery was settled with the respondent no. 5 and on completion of the requisite formalities involved, the possession of the Fishery i.e., the Karha Fishery Part-I was handed over to the respondent no. 5 Self Help Group for a period of 7(seven) years w.e.f. 10.07.2019; and as contended in the bar, the same is being operated by the respondent no. 5 after payment of due Kist money.

32. In view of the above conclusions, the writ petition is held to be devoid of any merit and accordingly, stands dismissed. However, there would be no order as to costs.

JUDGE

Comparing Assistant