

GAHC010164512023



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

Case No. : WP(C)/4269/2023

JUBARAJ DAS
S/O- LATE JOY KUMAR DAS,
VILLAGE- BOLAHIGAON,
P.O.- DEOLIGAON,
P.S.- GHILAMARA,
DIST.- LAKHIMPUR, ASSAM,
PIN- 787053.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF FISHERY,
DISPUR, GUWAHATI, KAMRUP(M), ASSAM.

2:ASSAM FISHERIES DEVELOPMENT CORPORATION
CHACHAL
SIXMILE
V.I.P. ROAD

KAMRUP(M)
ASSAM.

3:MANAGING DIRECTOR OF ASSAM FISHERIES DEVELOPMENT
CORPORATION LTD.
GUWAHATI-36
V.I.P. ROAD

KAMRUP(M)
ASSAM.

4:ANIL DAS
S/O- DULAL/ DULESWAR DAS

VILL- SANATAN GAON
LAKHIMPUR

P.O.- NORTH LAKHIMPUR

DIST.- LAKHIMPUR
ASSAM
787001

Advocate for the Petitioner : J SHARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

29.01.2024

1. Heard J. Sharma, learned counsel for the petitioner. Mr. M. Chetia, learned counsel appears for the respondent no.1; Mr. P. Sarma, learned counsel appears for the respondent nos.2 & 3 and Mr. N. Borah, learned counsel appears for the respondent no.4.

2. By publishing a tender notice, vide Tender Notice no. 5/2022, the respondent AFDC invited bids for settlement of a number of fisheries with the last date of submission of bids as 08.07.2022. One of the fisheries sought to be so settled, was Bolahi Champora Fishery, District – Lakhimpur [‘the Fishery’, for short]. In response to the Tender Notice no. 5/2022, a number of bidders including the petitioner and the respondent no. 4, submitted their bids. After scrutiny and evaluation of the bids, the respondent AFDC settled the Fishery in

favour of the respondent no. 4 at his offered bid value of Rs. 32,32,202/- by an order of settlement dated 23.08.2022. The case of the petitioner is that though the Fishery has been settled with the respondent no. 4, who offered the highest bid value at the time of the tender process, his bid ought to have been declared non-compliant to the terms and conditions of the Tender Notice in that, firstly, different documents indicating different names as the father of the respondent no.4 were submitted by the respondent no. 4. Secondly, the Bakijai Clearance Certificate submitted by the respondent no. 4 was of 11.07.2022 which was beyond the last date of submission of bids i.e. 08.07.2022. It is the further case of the petitioner that the respondent no. 4 after taking over possession of the Fishery, had handed over the Fishery to a third party. As a result, the settlement made in favour of the respondent no. 4 was liable to be terminated. Though a complaint by the petitioner highlighted those deficiencies in respect of the respondent no. 4, was submitted on 19.06.2023, the same did not evoke any response. The petitioner was thus compelled to institute the present writ petition. The petitioner's counsel submits that the writ petition can be disposed of, if a direction is issued to the respondent no.3 to examine and dispose of the petitioner's complaint/representation dated 19.06.2023.

3. Mr. P. Sarma, learned counsel appearing for the respondent AFDC submits that though the respondent no.4 had not submitted the Bakijai Clearance Certificate at the time of submission of his bid, the same had been submitted at the time of opening of the financial bid of the respondent no.4. The respondent no.4, at the time of filing of his bid, had submitted the receipt/acknowledgement of the application for issuance of the Bakijai Clearance Certificate from the Office of the Deputy Commissioner, North Lakhimpur. He

further submits that the fact that the father's name of the respondent no.4 was different in different documents has been clarified by way of an affidavit submitted by the respondent no.4. The respondent no.4's father's name which had been wrongly recorded as Duleswar Das in some documents had been clarified by stating that Duleswar Das and Dulal Das were one and the same person. He also submits that with regard to the allegation of subletting of the fisheries made by the petitioner, no proof of the same had been shown to him till date.

4. Mr. N. Borah, learned counsel for the respondent no.4 submits that the submission of a Bakijai Clearance Certificate cannot be said to be a mandatory/rigid requirement which would entail disqualification of his bid, as the same had been submitted at the time of opening the financial bid of the respondent no.4. He also submits that the same has been clearly laid down by the Division Bench of this Court in the case of *Abu Talib vs. The Assam Fisheries Development Corporation Limited and Others* in WA 294/2011 and in the case of *Pub Goalpara Fishery Co-operative Society vs. The State of Assam and & Others* in WA 306/2021. He also submits that the wrong recording of respondent no.4's father's name as Duleswar Das in Electoral Photo Identity Card and Aadhar Card was clarified by the respondent no.4, by submitting an affidavit to the authorities stating that the name Duleswar Das and Dulal Das pertained to one and the same person. He also submits that there is no subletting of the fisheries by the respondent no.4 to any other person.

5. The counsels for the respondents submit that they have no objection if the prayer of the petitioner's counsel is allowed, i.e., if a direction is issued to the

respondent no.3 to examine and dispose of the petitioner's complaint/representation dated 19.06.2023.

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

7. In view of the consent of the parties, this writ petition is disposed of with a direction to the respondent no.3, to examine and dispose of the petitioner's complaint/representation dated 19.06.2023 at the earliest and preferably within a period of 2 (two) months from the date of receipt of a certified copy of this order. The decision taken by the respondent no.3 shall thereafter be communicated to the petitioner.

JUDGE

Comparing Assistant