

GAHC010189002024



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

Case No. : WP(C)/4679/2024

NIRMAL KR. ROY

S/O- LATE SANTI RAM ROY, R/O- VILL.- BAMUNDI, P.O. R.B. HAAT, P.S.
SARTHEBARI, DIST. BARPETA, ASSAM, PIN- 781311.

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION AND ANR
REPRESENTED BY THE MANAGING DIRECTOR, ASSAM FISHERIES
DEVELOPMENT CORPORATION, CHACHAL, VIP ROAD, GUWAHATI, DIST.
KAMRUP(M), ASSAM, PIN- 781036.

2:THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION
CHACHAL
VIP ROAD
GUWAHATI
DIST. KAMRUP(METRO)
ASSAM
PIN- 781036

Advocate for the Petitioner : MR H GUPTA, MR. S BANIK,MR Y. BARBHUIYA

Advocate for the Respondent : SC, FISHERY,

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

12-09-2024

Heard Shri S. Banik, learned counsel for the petitioner. Also heard Shri P. Sharma, learned Standing Counsel, AFDC.

2. The matter relates back to a tender process for the Borkona Fishery in the district of Barpeta which was initiated vide a Tender Notice No. 9/2022. As per the facts projected though the petitioner had participated in the said tender process, the highest bid was offered by a third party. However, due to pendency of a writ petition, namely, WP(C)/2920/2022, the highest bidder could not immediately take over possession and subsequently, he had declined to accept. However, in terms of Clause 13.1 of the tender notice, the offer was made to the petitioner at the rate offered by the highest bidder.

3. Shri Banik, the learned counsel for the petitioner has submitted that though his client had accepted the said offer so far as the rate was concerned, it was insisted that the rate offered by the petitioner should be accepted and the matter be settled with him. However, without responding to the counter offer of the petitioner, a fresh tender notice has been issued being Tender Notice No. 7/2024. The case of the petitioner is that in the new tender notice the annual minimal revenue of Rs.16,37,130/- (Rupees Sixteen Lakh Thirty Seven Thousand One Hundred Thirty) only has been notified. The learned counsel for the petitioner contends that since his offer *qua* the earlier Tender Notice No. 9/2022 has been made public, the present tender notice would cause immense

prejudice so far as the aspect of a fair competition is concerned. It is also submitted that whereas the counter offer of the petitioner was Rs.97,00,000/- (Rupees Ninety Seven Lakhs) only approximately, the annual minimum revenue has been fixed as noted above.

4. Shri P. Sharma, the learned Standing Counsel has on the other hand submitted that the projection made by the petitioner is not entirely correct. Apart from the aspect that Clause-13.1 of the tender notice is not under challenge, the petitioner had in fact declined the offer made to him vide the communication dated 26.07.2024.

5. The learned Standing Counsel has also submitted that so far as Clause-13.1 is concerned, the validity of the same has been upheld by this Court in a recent judgment dated 11.09.2024 in WP(C)/7555/2023 (**Ganakpara Fishery Co-Operative Society Limited Vs The State Of Assam And 2 Ors.**

6. After considering the facts and circumstances and the submissions advanced, this Court is of the view that the offer made to the petitioner vide communication dated 26.07.2024 is in accordance with Clause 13.1 of the tender notice which is not the subject matter of challenge. It was within the domain of the Corporation to make such an offer at the rate of the highest bidder in terms of the said Clause and if the petitioner was interested, he could have opted to accept.

7. This Court in the above referred case of **Ganakpara Fishery Co-Operative Society Limited** (supra) has also held that such offer cannot be a compulsion and it is only a choice given to the bidder.

8. So far as the new Tender Notice No. 07/2024 is concerned, the stipulation

of the annual minimum revenue cannot be linked with the offer made by the petitioner in the earlier Tender Notice No. 09/2022 which has been superseded by the new tender notice. It is upto the petitioner to make his fresh offer as per his own assessment and in case such an offer is made, the same is to be considered at par along with the others in accordance with law.

9. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant