

GAHC010292642023



2024:GAU-AS:9087

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

Case No. : WP(C)/7555/2023

GANAKPARA FISHERY CO-OPERATIVE SOCIETY LIMITED
REPRESENTED BY ITS SECRETARY SRI GOVINDA SARKAR, S/O- MONO
SARKAR, R/O- VILL.- GANAKPARA, P.O. MAKRIKUCHI, DIST. BARPETA,
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF FISHERIES, DISPUR, GUWAHATI-781006.

2:THE ASSAM FISHERY DEVELOPMENT CORPORATION
REPRESENTED BY THE CHAIRMAN
CHACHAL
VIP ROAD
SIXMILE
GUWAHATI-781036
ASSAM

3:THE MANAGING DIRECTOR

ASSAM FISHERY DEVELOPMENT CORPORATION
CHACHAL
VIP ROAD
SIXMILE
GUWAHATI-781036

Advocate for the Petitioner : MR B D DAS, MRS R DEKA,MR. F A HASSAN

Advocate for the Respondent : SC, AFDC,

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri BD Das, Sr. Counsel
Ms. R. Deka

Advocate for the respondents : Shri P. Sarmah, SC.AFDC

Date of hearing : **11.09.2024**

Date of Judgment : **11.09.2024**

JUDGMENT & ORDER

The present dispute raised in this petition filed under Article 226 of the Constitution of India is with regard to settlement of a fishery, namely, Singra Beel in the district of Barpeta.

2. The case in hand has a chequered history. For the settlement of the aforesaid fishery, at various times tender process were initiated vide NITs dated 02.05.2022, 11.08.2022 and 19.09.2022. The said NITs had certain clauses which prohibits settlement of more than one fishery with a single bidder and as per the other clause, if the bid of the first highest bidder is cancelled, the second highest bidder would be entitled to get the settlement at the rate quoted by the first highest bidder. The aforesaid clauses were the subject matter of challenge filed by the petitioner in three writ petitions, namely, WP(C)/5442/2022, WP(C)/6039/2022 and WP(C)/6637/2022. However, since the tender processes were cancelled, the aforesaid issue could not be adjudicated. It is also averred that so far as WP(C)/6637/2022 is concerned, this Court has passed an order dated 30.09.2022 whereby the petitioner was allowed to take part in the tender process. However, during the pendency of the said writ petition, even the said tender was cancelled and the subsequent

WA/450/2023 preferred by the petitioner was also disposed of on 19.12.2023 as infructuous. Subsequent thereto, a fresh Tender Notice No. 14/2023 was issued on 09.12.2023. The said notice also contained the same clauses which have been numbered as 3.8 and 12.1. As per the petitioner, both the aforesaid clauses are unreasonable and arbitrary and in violation of the constitutional provisions. Under those circumstances, the instant writ petition has been filed.

3. I have heard Shri BD Das, learned Senior Counsel assisted by Ms. R. Deka, learned counsel for the petitioner. I have also heard Shri P. Sarmah, learned Standing Counsel, AFDC as well as the Fishery Department.

4. Shri Das, the learned Senior Counsel for the petitioner has submitted that though the offending clauses were the subject matter of challenge in the earlier writ petitions, since the tender processes were cancelled, adjudication could not be done. He submits that the clauses are absolutely unreasonable and arbitrary and violative of Article 14 of the Constitution of India as well as Article 19(1)(g). He submits that so far as the first clause namely, clause 3.8 restraining the settlement of more than one fishery with one party, the same has already been settled by this Court in the judgment passed in the case of ***Malegarh Gobindapur Fishery Cooperative Society Ltd. Vs. State of Assam and Ors.*** reported in ***2021 (5) GLT 107***. He accordingly submits that there may not be any requirement for further adjudication in that issue. So far as the other clause, namely, clause 12.1, it is the submission of the learned Senior Counsel that a bidder cannot be forced to accept a particular rate as it would affect the rights of the bidder to choose his own rate. It is submitted that such an action, apart from being irrational, would also amount to coercion upon the bidder to accept a rate which may not be viable as per his assessment.

5. He has also drawn the attention of this Court to an order dated 19.07.2024

passed in this proceedings, as per which the tender process was directed to be finalized with the highest bidder and if the same is declined, the adjudication of this petition would be done. It is submitted that the process was taken forward in which the highest bidder had declined. It is the submission of the petitioner that once the highest bidder had declined, the settlement should be given with the petitioner at the rate offered by him. It is emphasized that on previous three occasions, the tender processes were cancelled and therefore, interest of justice would demand that the settlement be given in favor of the petitioner at the rate offered. The learned Senior Counsel has also submitted that the petitioner being a Co-operative Society, it is entitled to certain preference both under the Fisheries Rules and as per the observations made by the Hon'ble Full Bench in the case of ***M/s. 129 Haria Dablong Min Mahal Sambat Samity Ltd. Vs. Assam Fisheries Development Corporation Ltd. & Ors.*** reported in ***(2021) 2 GLR 333***. In the aforesaid case, the Hon'ble Full Bench, in the context of the preference to be given to the Co-operative Society, it has laid down as follows.

“26. In view of our foregoing discussion and decisions, we answer the question raised as follows:

(1) ...

(3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Maimal community of Cachar. Hence the AFDC is

directed to lay down the definite guidelines in the matter so that there is no ambiguity.

..."

6. *Per contra*, Shri Sarmah, learned Standing Counsel has submitted that both the clauses impugned have been incorporated in the interest of public. He has also submitted that though the earlier tender processes were withdrawn, the same was not done on merits. It is submitted that due to inadvertence the tender processes were initiated the pendency of the stay order and therefore, those were withdrawn. He has however submitted that so far as clause 3.8 is concerned, he would not make further submissions in view of the judgment in the case of ***Malagar Gobindapur*** (supra). However, so far as clause 12.1 is concerned, it is submitted that the Department cannot be forced to accept a lower rate and in any case, it is only in respect of the present fishery that the settlement could not be completed, whereas so far as more than 150 fishery are concerned, settlements have been done by following the same process. He has also informed this Court that when the highest bidder in this case had declined to accept the offer, steps as per law have been taken including forfeiture of the EMD. He submits that the Department may be allowed to go for a fresh process in case the petitioner declines to accept the rate of the highest bidder. He has also submitted that no coercion is put on the petitioner to accept the rate of the highest bidder and it is only a choice given.

7. The rival submissions have been considered and the materials placed before this Court including the original records have been carefully perused.

8. Though, it appears that prior to the present NIT No. 14/2023 dated 09.12.2023, three earlier NITs were floated, it has been clarified that the intervening NITs were issued due to inadvertence and were accordingly

withdrawn. This Court has also noticed that so far as clause 3.8 is concerned, in the case of **Malegarh Gobindapur** (supra) it has been held that if a society was held eligible, there is no scope for rejecting the bid of the petitioner on the other grounds. So far as the remaining offending clause is concerned in the form of clause 12.1, this Court is of the view that when a highest tenderer declines, the authority cannot be forced to accept a bid of the second highest bidder which may not be viable. The scope of forming a cartel would also arise if such a view is endorsed by this Court. At the same time, the second highest bidder cannot be forced to accept the bid of the first highest bidder who has declined to accept the work. As informed, the Corporation has taken steps in accordance with law including forfeiture of the EMD so far as the highest bidder in this case is concerned who had declined to accept the offer.

9. The aspect of the observation of the Hon'ble Full Bench in the case of **Haria Dablong** (supra) to give preference to a Cooperative society has also been examined. The question of preference would come when all other things are at par. In any case, in consonance with the objective of the statute, weightage which are to be given to a Cooperative Society and have been emphasized by the Hon'ble Full Bench that the said benefits should be conferred when such settlement is made by the Corporation has already been laid down by the Hon'ble Full Bench.

10. In that view of the matter, while it is held that the petitioner cannot be forced to accept the rate of the first highest bidder, the Department also cannot be given a direction to offer a rate of the second highest bidder if it is not viable to the Department. Accordingly, the writ petition is disposed of by directing the Corporation to take immediate steps for settlement of the fishery in question in accordance with law and the observations made in this order.

11. The records in original be returned back.

JUDGE

Comparing Assistant