(2006) 08 GAU CK 0025

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3006 and 2796 of 2006

Baramari Min Samabai Samity Ltd. APPELLANT

Vs

Assam Fisheries Development Corporation Ltd.and Ors. RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Citation : (2007) 3 GLT 186

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Advocate : B.Bora, A.Sarma, B.Sarma, G.Uzir, H.N.Sarma, M.P.Goswami, R.Chakraborty, S.Banik, A.K.Goswami, Advocates appearing for Parties

Judgement

1. Both the writ petitions involving the same fishery, one seeking implementation of the settlement order and the other seeking interference with the same, have been heard together and are being disposed of by this common judgment and order. For convenience, the WHO No. 2796/2006 is described as the first writ petition, while WHO No. 3006/2006 is described as the second writ petition.

2. The tender notice dated 4,2.2006 was issued inviting tenders from the intending tenderers for settlement of the fishery called "55 No. Pakaria Meen Mahal" in the district of Nagaon for the period 200607 to 201213 (period ending 31.4.2013). In the tender notice it was indicated that the tender documents and other related information would be available in the office of the corporation. The minimum revenue was fixed as follows :

200607 2,01,000

200708 2,21,100

200809 2,43,200

200910 2,67,500

201011 2,94,300

201112 3,23,700

201213 3,56,100

Total Rs. 19,36,000

3. Both the writ petitioners along with two others submitted tenders with the respective bids as follows :

Petitioner in the first writ petition 19,84,000

Petitioner in the second writ petition 36,43,000

Sri Swapan Chandra Das 19,17,000

Sri Raimohon Chandra Das 19,10,500

4. Although, the petitioner in the second writ petition quoted the highest rate of Rs. 36,43,000, but, at the time of opening the tender, it was found that its tender did not a ccompany the earnest money and accordingly, it was found to be invalid. After such elimination of the second writ petitioner, the rate quoted by the first writ petitioner having been found to be the second highest with all valid documents and thus, it was the expectation of the petitioner that he would be settled with the fishery. However, no action having been taken by the respondents, the petitioner approached this court by filing the writ petition being WTO) No. 2068/2006 and the writ petition was disposed of by order dated 12.4.2006 providing for disposal of the representation submitted by the petitioner within 10 days. Thereafter, by the impugned communication dated 22.5.2006, the petitioner has been settled with the fishery for/the settlement period at the highest bid of Rs. 36,43,000. In response to the offer so made, the petitioner submitted his letter of acceptance and deposited kist money etc. However, inspite of observing the formalities, when actual possession of the fishery was not given, the petitioner i.e. the first writ petitioner approached this court by filing the writ petition.

5. The second writ petition has been filed by the petitioner making a grievance against the aforesaid offer of settlement made in favour of the first petitioner. While entertaining the writ petition, an order to maintain status quo having been passed, the possession of the fishery could not be given in favour of the first petitioner. In this writ petition the grievance of the petitioner is that, the earnest money in the form of call deposit amounting to Rs. 50,000 bearing No. 009454 dated 5.2.2006 drawn in favour of the Managing Director of the Corporation was in fact submitted alongwith the tender papers, but at the time of opening the tender, same was found missing. The petitioner lodged an FIR on 24.2.2006. Copies of the FIR and the call deposit have been annexed to the writ petition. The certificate issued by the bank certifying issuance of the same to the petitioner has also been annexed to the writ petition.

6. According to the petitioner, on the last date of submission of tender, i.e., 15.2.2006, there was a chaotic situation prevailing in the office of the

corporation where the tenders were received, as some interested persons wanted to block the tender process itself. In such circumstances, the tenders could not be opened on that day and were opened on 24.2.2006. Be that as it may, the petitioner made representations for a decision in the matter as it was its case that the call deposit in fact accompanied the tender papers and the reason for nonavailability of the same with the tender papers was required to be ascertained. It appears that the petitioner prayed for inquiry in the matter and submitted representation to the Commissioner &. Secretary to the Government of Assam in the Fishery Department as well as to the Minister, Fishery, Government of Assam. Some hearing also took place and eventually, when the petitioner could come to know about the first writ petition approached this court by filing the writ petition,

7. In the counter affidavit filed by the corporation, it is their definite stand that the tender submitted by the second writ petitioner did not accompany the call deposit and consequently its tender could not be accepted and the first petitioner being the second highest bidder with all valid documents has been settled with the fishery at the highest bid value of the second petitioner. They have also stated about the enquiry made in respect of the complaint of the second petitioner.

8. The respondent No. 4 has also filed his counter affidavit justifying the action of the corporation in settling the fishery with him. He has stated that the police on the basis of the FIR lodged by the second petitioner enquired into the matter by observing all necessary formalities and eventually submitted final report on 28.3.2006 with the finding that there was no possibility of disappearance of the call deposit from the tender box and it could not be proved that the call deposit was enclosed alongwith the tender papers. Thus, according to the first petitioner, there being no proof of furnishing the call deposit alongwith the tender papers by the second petitioner, the corporation rightly decided to reject its tender and settled the fishery with him. In the reply affidavit filed by the second writ petitioner while reiterating the stand in the writ petition, it has been contended that submission of final report by the police cannot conclusively establish that the petitioner did not submit the call deposit towards depositing the earnest money.

9. I have heard Mr. A. Sarma, learned counsel appearing for the first writ petitioner. I have also heard Mr. A.K Goswami, learned senior counsel, assisted by Mr. S. Banik, learned counsel for the second writ petitioner. Mr. G. Uzir, learned Standing Counsel, AFDC has also been heard. He has also produced the records and I have gone through the same.

10. But for the plea of furnishing the earnest money through the call deposit and the allegation that the same was missing for the reason not known to the petitioner, in the normal circumstances its tender having not accompanied the earnest money through call deposit which was the basic requirement of submission of valid tender, there is nothing wrong in settling the fishery with the first writ petitioner, whose tender was valid in all respect, at the highest bid of

Rs. 36,4300 offered by the second writ petitioner. Let us now examine as to how this plea has been taken and projected.

11. As per the averments made in the writ petition, the second writ petitioner submitted its tender with all valid documents including the call deposit. However, when the tenders were opened on 24.2.2006, the call deposit allegedly submitted by the petitioner alongwith his tender paper was found missing. The petitioner lodged an FIR on the same date. In support of the claim of the petitioner that the call deposit was intact submitted alongwith the tender papers, the petitioner has annexed the photocopy of the same as well as the bank statement certifying drawl of the call deposit. Although a statement has been made that attempts were made by certain interested persons to stall the tender process itself, but is not the case of the petitioner that it could not submit its tender or there was any obstruction in submitting the tenders. Needless to say that tenders are submitted in sealed cover/envelope and the tender box in sealed in presence of all the tenderers. There is no question of anybody taking out the call deposit from the sealed envelope. It is also not its case that there is any foul play on the part of the corporation. It is also not the case of the petitioner that there is any tampering in tender documents and/or the sealed envelope containing the tenders. No reason has been assigned as to how the call deposit could be missing except expressing surprise that the call deposit was found missing while tender papers were opened.

12. The petitioner has not attributed any mala fide and/or arbitrary exercise of power on the part of the corporation and any foul play resulting in detachment of the call deposit from its tender papers. The petitioner has only stated about the FIR and the enquiry carried out; by the corporation as well as the Secretary and the Minister of the Department on the basis of the representation made by him. There may be hustle bustle on the last date of submission of tenders, but the same cannot necessarily lead to the inference that in the process the call deposit of the petitioner was misplaced, more particularly when the tender papers were in sealed cover/sealed envelope. It is the sealed envelopes containing the tender papers, which are required to be put inside the tender box. None of the tenderer has made any complaint relating to the tender process. The petitioner has also not made any complaint in respect of the tender process, but his only grievance is that the call deposit was found missing from his tender paper. As noticed above, the petitioner has not stated anything as to who could be responsible for the same.

13. Maintaining transparency, fair play and principles of natural justice, corporation processed the complaint of the petitioner so as to find out the truth or otherwise of the plea of the petitioner. The relevant file (File No. AFDC 27/2002/Pt.) which Mr. Uzir, learned Standing Counsel, AFDC has produced, has revealed that the matter was processed at all level. As per note in the file, which was given pursuant to the enquiry conducted, no office bearer of the petitioner society had submitted the tender, but the tender papers in the sealed envelope

was sent through one Shri Gogoi. If the petitioner did not take the responsibility to submit the tender of its own and had sent it through a messenger and if in the process something happened, the petitioner will have to thank itself. The definite finding recorded in the enquiry is that the sealed envelope of the petitioner was found unbroken at the time of opening the tender box. As noticed above, the petitioner has also not attributed any foul play on the part of either the corporation or any of the tenderers except the statement that on the last date of submission of tenders, there was a chaotic situation as some interested persons wanted to stall the tender process. However, the petitioner has not named anyone. Contrary to such claim of the petitioner, it is on record that the police personnel were present from the nearby police station and no complaint was lodged with the police regarding any obstruction by anybody. Throughout the writ petition, except expressing its surprises, the petitioner has not stated anything as to how could be responsible for missing of the call deposit.

14. Much has been emphasized on the photocopy of the call deposit and the certificate issued by the bank certifying drawl of the call deposit by the petitioner. The amount indicated in the call deposit is Rs. 50,000. On the other hand all other tenderers submitted call deposits amounting to Rs. 30,150. As per the requirement of the tender clause, the call deposit should be 15% of the first year''s revenue fixed by the corporation. The first years revenue fixed by the corporation is Rs. 2,01,000 and 15% of the same is Rs. 30,150. All the tenderers except the petitioner deposited call deposits of Rs. 30,150. The petitioner allegedly submitted the call deposit amounting to Rs. 50,000. It is not understood as to how this amount was calculated by the petitioner. Even if, his offered revenue for the first year, i.e., 200607 which is Rs. 5,05,000 is taken to be the basis for calculation towards depositing the call deposit of Rs. 50,000, then also the amount comes to Rs. 75,750.

15. It is true that it can very well be argued that when as per the first year''s revenue fixed by the corporation required call deposit is of Rs. 30,150, there was nothing wrong in depositing Rs. 50,000. However,, the matter will have to be considered in the context in which the writ petition is founded. It can also be argued that the call deposit of Rs. 50,000 was drawn by the petitioner''s society for some other purpose and not for the particular tender process. Be that as it may it may also happen that the person through whom the petitioner society had sent the tender papers has done the mischief. If that be so, it will be sole responsibility of the petitioner and none else. This is precisely the reason as to why the petitioner has not attributed any fault to any other. It is also not its case that there is any arbitrary, mala fide and/or colorable exercise of power on the part of the corporation.

16. After the first highest bid came to be rejected on the aforesaid ground, the first petitioner became the first highest valid tenderer and the corporation has settled the fishery with him at the highest bid offered by the second writ petitioner. Thus, there is also no loss of revenue.

17. In the case of Mis. S. Ali v. Union of India, (1995) 1 GLT458, the Division Bench of this court, while reiterating the principles relating to submission and opening of tenders, observed that even if a presumption is drawn that a particular party was in fact obstructed and could not submit tender, that would not provide a valid ground for accepting the tender at a later date. In another case, reported in 2000 (1) GLT 657 (Sailen Konwar Dutta v. Satya Capital (P.) Ltd.), the Division Bench of this court has observed that the administrative decision in matters as in the instant case be better left to the administrative authority, unless it is shown that it suffered from the vice of discrimination or arbitrariness.

18. Considering the matter in its entirety, I am of the considered opinion that the writ petition being WP(C) No. 3006/2006 merits dismissal and WP(C) No. 2796/2006 needs to be allowed, which I accordingly do. Interim order passed in the second writ petition, i.e., WP(C) No, 3006/2006 stands vacated.

19. The writ petitions are answered in the above manner. WP(C) No. 3006/2006 is dismissed and WP(C) No. 2796/2006 is allowed. There shall be no order as to costs.

