(2024) 05 GAU CK 0023

In the Gauhati High Court

Case No : Writ Petition (C) No. 3454 Of 2020

Basu Dev Biswas APPELLANT

Vs

State Of Assam And 6 Ors RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Citation : (2024) 05 GAU CK 0023

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Disposed Of

Judgement

[1.] Heard Mr. H. Ali, learned counsel for the petitioner, Ms. U. Das, learned Addl. Senior Govt. Advocate for respondent Nos. 1, 3, 4 & 6, Mr. P. Sarma, learned Standing Counsel, AFDC for respondent No. 2 and Mr. B.D. Das, learned Senior Counsel assisted by Mr. A.D. Choudhury, learned counsel for the respondent No. 7.

[2.] The issue involved in the instant writ petition is regarding settlement of No. 58 Lao Pani Meen Mahal in the district of Nagaon. Tender Notice No. 01/2020 was floated by the Managing Director, Assam Fisheries Development Corporation, Nigam Ltd., Guwahati (respondent No. 2) on 18.02.2020 for settlement of Meen Mahal for a period of seven (7) years staring from the financial year of 2020-2021 through an agreement. According to the petitioner, there were five (5) tenderers who participated in the bidding process and after qualifying in the technical bid, his bid was found to be the highest in the financial bid. Despite the same, the respondent authorities contemplated awarding the tender to the respondent No. 7, and therefore the petitioner filed the instant writ petition praying for setting aside and quashing the settlement of the Meen Mahal given in favour of the respondent No. 7 and for a direction to the respondents to settle the same in his favour for being the highest bidder. The writ petition was considered and disposed of vide order dated 19.04.2022 by setting aside the settlement issued in favour of the respondent No. 7 vide Memo No. AFDC/486/2020/121 dated 22.05.2020 while remanding the matter back to the respondent No. 2 to take a fresh decision in respect of the settlement of the Meen Mahal in terms of the NIT dated 18.02.2020 within a time frame of 30 days from the date of receipt of a certified copy of the order.

[3.] The said decision was arrived at by this Court by taking into consideration the decision of a Division Bench of this Court in Writ Appeal Nos. 8 & 27/2021 vide order dated 05.02.2021. Following the disposal of the writ petition, vide order dated 19.04.2022, the petitioner came to be settled with the Meen Mahal vide order dated 21.06.2022. The respondent No. 7 being aggrieved filed Writ Appeal No. 248/2022 against the order dated 19.04.2022 passed by this Court in the writ petition. The Writ Appeal was disposed of vide order dated 01.06.203 by the Division Bench after coming into the conclusion that no discussion was made by the learned Single Bench for drawing a parity with the facts discussed by the Court in WP(C) No. 2762/2020 and WP(C) No. 3420/2020 which was affirmed by the Division Bench by a common judgment and order dated 05.02.2021 passed in Writ Appeal Nos. 8 & 7/2021 set aside the order dated 19.04.2022 and restored the writ petition for fresh consideration. That is how the writ petition has come up for consideration before this Court.

[4.] Mr. H. Ali, learned counsel for the petitioner by referring to the order dated 22.05.2020 by which the Meen Mahal was settled in favour of the respondent No. 7 submits that the only reason why the tender of the petitioner was rejected was because the petitioner was found to have quoted an abnormaly high bid amount which was likely to cause lapses or default at the time of payment of revenue resulting loss to the fisherman engaged by the petitioner. The bid amount quoted by the petitioner was therefore found to be unreasonable and unlikely to be fulfilled in view of the ecological aspect of the Beel. The learned counsel submits that the same cannot be the ground for rejecting the tender of the petitioner while he being the highest bidder in the tender process. The learned counsel draws support to his submission by referring to the common judgment & order dated 05.02.2021 rendered by the Division Bench of this Court in W.A Nos. 8 & 27/2021 wherein it was observed that there was no reason to reject the highest bidder on account of apprehension of loss of revenue in view of Clause 10.1 of the tender condition which provides that the Corporation may ask for three (3) times the minimum value as security in the form of Bank guarantee/FDR from the bidder with whom the settlement is made. The learned counsel submits that the technical bid of the petition was accepted and in the financial bid, he being the highest bidder and capable of generating more revenue for all stake holders, the Meen Mahal should be settled with the petitioner.

[5.] The learned counsel submits that after the disposal of the writ petition vide order dated 19.04.2022, the petitioner was settled with the Meen Mahal on 21.06.2022 and since then, he was operating the fishery till the settlement in his favour was suspended by the respondent No. 2 vide order dated 15.06.2023. The learned counsel submits that under the facts and circumstances, the petitioner being the highest bidder and in view of the decision of the Division Bench of this Court in W.A Nos. 8 & 27/2021, the respondents may be directed to settle the Meen Mahal with the petitioner.

[6.] Mr. P. Sarma, learned Standing Counsel, AFDC appearing for the respondent No. 2 on the other hand submits that a copy of the settlement made in favour or the respondent No. 7 vide order dated 22.05.2020 (Annexure-1 of the affidavit-in-opposition of the respondent No. 2 filed on 04.08.2021), despite all effort is not traceable in the records of the Corporation. He submits that otherwise both the technical bid and financial bid were considered together and it was only thereafter that a settlement was made in favour of the respondent No. 7. However, the petitioner being the highest bidder and in view of the judgment & order of the Division Bench of this Court in W.A Nos. 8 & 27/2021, the petitioner should be settled with the Meen Mahal.

[7.] Mr. B.D. Das, learned Senior Counsel for the respondent No. 7 draws the attention of this Court to Clause 10.4 of the tender notice which provides that the financial tender of only those tenderers whose technical tenders are found correct and acceptable in all respect will be opened. He submits that as indicated in the order dated 22.05.2020 by which the respondent No. 7 was selected and awarded the tender, out of five (5) tenderers, three (3) tenderers were found to be technically defective due to there being default in the DPR and Beel development and also due to excessive/exaggerate rate quoted which included the petitioner. Although according to the counsel for the respondent No. 2, the order dated 22.05.2020 annexed as Annexure-1 to the affidavit-in-opposition of the respondent No. 2 filed on 04.08.2021 is not available on record but even in the order dated 22.05.2020 by which the respondent No. 7 was awarded the tender and which is annexed by the respondent No. 2 in their affidavit filed on 21.09.2023, the bid amount quoted by the petitioner was found abnormaly high which could cause lapses or default at the time of payment of revenue and would result in loss for the fisherman engaged by the petitioner. Further, the rate quoted by the petitioner was found to be imaginary and without any knowledge and without compliance of the plan and estimate of the technical bid. It was therefore after such consideration that the tender was settled with the respondent no. 7.

[8.] The learned Senior Counsel submits that DPR submitted by the petitioner is very vague and that he has failed to give the details of the proposed developmental works to be undertaken by the fishery amongst others which is mandatory. The respondent No. 7 on the other hand has given the details of the proposed developmental schemes sought to be executed in the DPR submitted by him. Referring to paragraph No. 19 of the affidavit-in-opposition filed by the respondent No. 2 on 04.08.2021, the learned Senior Counsel submits that according to the respondent No. 2 from the plan report for developments of fishery submitted by the petitioner, it was observed that the petitioner estimated the fish production in the Beel will be 27,350 kilograms in the total water area of 40 hectares whereas, the respondent No. 7 has estimated the same to be 32,000 kilograms in the total water area of 40 hectares. Therefore, upon considering all the relevant factors, the respondent authorities decided to settle the tender with the respondent no. 7. The learned Senior Counsel also submits that the petitioner has not challenged the order dated 22.05.2020 and in the absence of a challenge, no relief can be granted to the petitioner.

[9.] Ms. U. Das, learned Addl. Senior Govt. Advocate appearing for the respondent Nos. 1, 3, 4, 5 & 6 submits that the matter is between the petitioner, respondent No. 7 and respondent No. 2 and therefore, the respondents she represents are merely a proforma respondents and therefore, she has nothing much to submit in the matter

[10.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The petitioner filed the instant writ petition on the ground that despite being the highest bidder for the tender that was floated, the respondent No. 7 was sought to be awarded the tender by showing undue favour. This Court upon considering the judgment rendered by the Division Bench of this Court in W.A Nos. 8 & 27/2021 disposed of the writ petition by setting aside the settlement made in favour of the respondent No. 7 and remanded the matter back to the respondent No. 2 for taking fresh decision. The respondent No. 7 then filed W.A No. 248/2022 which was disposed of vide order dated 01.06.2023 by remanding the matter back to the Single Bench for deciding the case afresh as per law after coming to a finding that the order dated 19.04.2022 did not discuss the reason for drawing a parity with WP(C) Nos. 2762 & 3420/2020 which was upheld by the Division Bench of this Court in W.A Nos. 8 & 27/2021.

[11.] The respondent No. 2 in its affidavit-in-opposition filed on 04.08.2021 at paragraph No. 6 have taken the stand that the bid of the petitioner was found to be technically defective due to default in the DPR of Beel development and excessive/exaggerate of fish production. Out of the five (5) tenderers, three (3) tenderers including that of the petitioner were found to be defective. The respondent No. 2 has also placed reliance upon Clause 3.1 and Clause 10.2 of the technical and financial tender to contend that only those whose technical tender is found to be correct and acceptable will qualify for the financial tender to be opened. Further, the learned counsel for the respondent No. 2 submits that both the technical and financial bids were opened together.

[12.] The stand taken in the affidavit is that the petitioner had quoted a price which was too high and therefore the Corporation has the discretion to look into all aspects of the matter and to take a final decision to accept or reject such tender. The respondent No. 2 at paragraph No. 19 of the same affidavit has also observed that the fish production in the Beel as submitted by the respondent No. 7 would be 32,000 kilograms in the total water area of 40 hectares compared to

27,350 kilograms in respect of the petitioner. Therefore, the bid submitted by the respondent No. 7 having been found to be realistic and viable, the Beel was settled with the respondent No. 7.

[13.] The respondent No. 2 after the matter was remanded back by the Writ Appellate Court vide order dated 01.06.2023 has filed an affidavit-in-opposition on 21.09.2023. Although the cause title indicates that the affidavit is filed on behalf of the respondent Nos. 1, 3, 4, 5, 6 & 7 but the learned counsel for the respondent No. 2 submits that the same is only a mistake and it is only an affidavit-in-opposition of the respondent No. 2. The stand taken in the said affidavit at paragraph Nos. 3, 4, 5, 6, 7 & 8 may be abstracted hereunder:-

"3. That the instant case was pending before Your Hon'ble Court since the time of the predecessor of the present Managing Director. The earlier Managing Director had filed an affidavit in opposition on 3rd of August before Your Hon'ble Court and which is a matter of record. During the time of filing the Affidavit by the earlier Managing Director the counsel of the Corporation was different and who was disengaged later on.

4. That on being engaging a new counsel when the case came up for hearing on 19.04.2022 order was passed in line with W.A. No. 8/2021 and the copy of the said order is annexed herewith.

5. That after passing of the order dated 19.04.2022 the Managing Director settled the fishery to the petitioner Sri Basudeb Biswas vide Memo No. AFDC/ 496/2020/1793-1800 dated 21.06.2022 considering the fact the case in hand is in parity with W.A. No. 8/2021 and cancelled the earlier settlement awarded to Paban Hazarika. The Managing Director awarded the fishery to Sri Basudeb Biswas considering the fact that Sri Basudeb Biswas had quoted Rs.77,50,000/- and Sri Paban Hazarika has quoted only Rs. 52,50,000/- for seven years and the bid of Basudeb Biswas was rejected considering it to be unreasonable and the facts of the case resembles in line with the order passed in W.A. 8/2021.

6. That Paban Hazarika had approached in the appellate court by way of W.A. 248/2022 and Hon'ble Court had passed an order on 01.06.2022 and pursuant to that the Managing Director, AFDC had stayed the settlement order issued to Basudeb Biswas by way of an order dated 15.06.2023 vide Memo No.496/2020/1551-1561.

7. That the earlier affidavit in opposition filed by erstwhile Managing Director was not available with the annexures in the office record and as such it was not supplied to the present engaged counsel and who after collecting it inquired to the Managing Director regarding the annexure- 1 of the Affidavit in opposition filed by earlier Managing Director vide order dated 22.05.2022 vide Memo No. AFDC-486/2022/121-A. On inquiring in the office no record regarding the order dated 22.05.2022 vide Memo No. AFDC-486/2022/121-A is available and the said facts is placed before Your Hon'ble Court for proper adjudication of the instant case.

8. That from the record it was found that the settlement order issued to Paban Hazarika is found to be vide Memo No. AFDC/2020Pt./121-A dated 22.05.2020 which is a part of the record and the record will be placed before Your Hon'ble Court during the time of hearing for proper adjudication of the case.”

[14.] From the above abstract, it may be seen that according to the respondent No. 2, there has been a change of hands in the post of Managing Director in the Corporation and also with the engaged counsel of the Corporation. Further, the order dated 22.05.2022 issued vide Memo No. AFDC-486/2020/121-A is not available in the office record and what is available is Settlement order of the same date but under Memo No. AFDC-486/2020/Pt/121-A. It is not understood as to how there can be two (2) orders of the same date and under the same Memo number except for ‘Pt’ awarding the tender in favour of the respondent No. 7. There may be change of hands in the post of Managing Director of the Corporation and also the engaged counsel but the records cannot vary and should be the same. The tender which was floated on 18.02.2020 amongst others provides for scrutiny and selection of tender at Clause-10. Clause 10.4 provides that the financial tender of only those tenderers whose tenders are found correct and acceptable in all respect will be opened. Below Clause 20 of the tender notice under the heading ‘Mandatory’, it has been provided that the tenderer will have to submit detailed estimate for increasing production of fish and revenue for seven (7) years with the tender. The details of proposed developmental works is to be undertaken in the fishery, the tentative production of fish and profit and the revenues to the Corporation in every year should be clearly reflected in the estimate.

[15.] On perusal of the records, no such scrutiny about the tender documents can be seen. However, the order dated 22.05.2020 by which the respondent No. 7 was settled with the Beel which is annexed to the affidavit-in-opposition of the respondent No. 2 dated 27.09.2023 speaks of a detailed analysis. The same analysis is not available in the order of settlement made in favour of the respondent No. 7 dated 22.05.2020 which is annexed to the counter affidavit of the respondent No. 2 filed on 04.08.2021. The learned counsel for the respondent No. 2 has however produced the Minutes of discussion of selection of tenderers for [16.] The Division Bench of this Court in W.A Nos. 8 & 27/2021 had observed that the Corporation is not bound to accept the highest bidder but if the same is not accepted, an explanation should be called and reason should be sought as to why the rates have been quoted at such high rate. This apart, Clause 10.1 of the tender condition protects the Corporation by providing that the Corporation can take three settlement of Beel for 2020-2021, purportedly to be dated either 22nd or 25th of May, 2022 and that too, overwritten by hand.

[16.] The Division Bench of this Court in W.A Nos. 8 & 27/2021 had observed that the Corporation is not bound to accept the highest bidder but if the same is not accepted, an explanation should be called and reason should be sought as to why the rates have been quoted at such high rate. This apart, Clause 10.1 of the tender condition protects the Corporation by providing that the Corporation can take three (3) times of the minimum value as security in the form of a Bank Guarantee/FDR of the bidder with whom the settlement is made. The petitioner in the instant case no doubt is the highest bidder but having regard to the stipulation in the tender notice as already discussed herein above, the respondent No. 2 Corporation in making the final selection will have to adhere to the same. The learned counsel for the respondent No. 2 is unable to show from the records when and how a meticulous examination was done by the Corporation in making the selection except show a meeting minutes as already reflected in paragraph No. 15 of this order and which does not seem to be a part of the record. Since the records do not reveal such exercise in the form of authentic documents and appropriate notings in the note-sheets, this Court is of the considered view that the respondent No. 2 Corporation should once again undertake the exercise of considering all the relevant materials submitted by the petitioner and the respondent No. 7 in terms of the guidelines and provisions provided in the NIT and also in light of the decision of the Division Bench of this Court in W.A Nos. 8 & 27/2021.

[17.] The submission made by the learned counsel for the petitioner for setting aside the order dated 19.04.2022 by which the Meen Mahal was settled in favour of the respondent No. 7 is resisted by the learned Senior Counsel for the respondent No. 7 on the ground that the same has not been specifically challenged. However, the fact remains that the petitioner has made a prayer to that effect in the prayer portion of the writ petition although the order Memo number and date has not been specifically quoted. Having come to the conclusion as reflected in the preceding paragraphs, such technicality in the considered view of this Court should not come in the way of passing an appropriate order. Accordingly, the settlement issued in favour of the respondent No. 7 for the Meen Mahal in question vide order dated 22.05.2020 is hereby set aside.

[18.] In the result, the respondent No. 2 Corporation is directed to undertake the said exercise as already stated in the preceding paragraph No. 16 within a period of four (4) weeks from the date of receipt of a certified copy of this Order in accordance with law and thereafter settle the Beel to either of the parties in terms of the decision taken. It is also provided herein that settlement made would be for the remaining term of the original period of seven (7) years starting from the financial year 2020-2021.

[19.] With the above observations and directions, the writ petition stands disposed of. No cost.

