

(2011) 05 GAU CK 0015

In the Gauhati High Court

Case No : WP (C) No (s) . 1937, 839 and 1314 of 2011

Dharnad Brahmaputra Part 1 and Satakuri Nodi Fishery Co-operative Society Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-05-2011

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12, 12(8)

Citation : (2011) 4 GLR 535

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : D.K. Sarmah and Mr. P.S. Lakhar, for the Appellant; R. Chokraborty, Z. Hussain and N. Begum, for the Respondent

Final Decision : Allowed

Judgement

B.k. Sharma, J.—All the writ petitions being in respect of the settlement of Government registered fishery River group No, 2/88 Dharnad Brahmaputra Parts II and III and the issue raised being one and the same have been heard together and are being disposed of by this common judgment and order.

2. The Deputy Commissioner, Dhubri by his notice dated 25.11.2010 invited tenders for settlement of the said fishery for the period from 22.11.2010 to 21.11.2017. Such a course of action was adopted on expiry of the earlier settlement for the period from 22.11.2004 to 21.11.2010. Be it stated here that the Petitioner in WP(C) No. 1314/2011, i.e., M/s. Chandakhola Beel Fishery Co-operative Societies Ltd., was the settlement holder for the said period. One of the conditions stipulated in the said settlement was that the settlement holder must be in the neighbourhood of the fishery.

3. In response to the aforesaid NIT, tenders were submitted by as many as nine tenderers including these three writ Petitioners. It is an admitted position that the Petitioner in WP(C) No. 1314/2011 is the highest bidder while the Petitioner

in WP(C) No. 1937/2011 who was originally third highest bidder is the 2nd highest bidder, when the said 2nd bid was found defective. On the other hand, the Petitioner in WP(C) No. 839/2011 is the 8th highest bidder. Their respective bids are Rs. 56,00,707, Rs. 56,00,007 and Rs. 22,40,000.

4. All the writ petitions have been filed claiming settlement of the fishery in favour of the respective Petitioners. While it is the plea of the Petitioner in WP(C) No. 1314/2011 that it being the highest bidder and having fulfilled all the requisite criteria as would be evident from the records including the comparative statement, it should be settled with the fishery, the stand of the other two writ Petitioners in WP(C) No. 1937/2011 and WP(C) No. 839/2011 is that the highest bidder, i.e. the Petitioner WP(C) No. 1314/2011 having not mentioned its distance from the fishery as per the requirement of the NIT clause, its tender ought to have been rejected and resultantly, the fishery ought to have been settled with them. It is the stand of the two writ Petitioners that their neighbourhood certificates are only acceptable and that the neighbourhood certificate submitted by the highest bidder is not acceptable.

5. From the above, what is seen is that the whole controversy is in respect of the neighbourhood of the Petitioners from the fishery.

6. I have heard Mr. D.K. Sarmah along with Mr. N. Pathak, Learned Counsel for the Petitioner in WP(C) No. 1314/2011 as well as Mr. Z. Hussain, Learned Counsel appearing for the Petitioner in WP(C) No. 1937/2011 and Mr. A. Sarma, Learned Counsel for the Petitioner appearing in WP(C) No. 839/2011. I have also heard Ms. R. Chakraborty, learned Addl. Senior Government Advocate who has also produced the relevant records and I have gone through the same.

7. Both Mr. A. Sarma and Mr. Z. Hussain, Learned Counsel appearing for 2nd and 8th highest bidders, i.e., in WP(C) No. 839/2011 and WP(C) No. 1937/2011, submit that their certificates of neighbourhood being specific of the distance as per the requirement of the NIT, their bids are required to be accepted and the bids offered by the highest bidder, i.e., the Petitioner in WP(C) No. 1314/2011 is liable to be rejected as the neighbourhood certificate submitted by the said bidder did not indicate the distance of the fishery from the co-operative society. Be it stated here that all the Petitioners are co-operative societies claiming to be in the neighbourhood of the fishery. As noted above, the better claim for settlement of the fishery by the Petitioners in WP(C) No. 839/2011 and WP(C) No. 1937/2011 is on the basis of the distance mentioned in their respective certificates.

8. The neighbourhood certificate in respect of the Petitioner in WP(C) No. 1314/2011, i.e., the highest bidder, has been issued by the Assistant Registrar of the Co-operative Societies, Dhubri and the same is dated 24.12.2010. On the other hand, the neighbourhood certificate issued in favour of the 2nd highest bidder which is the Petitioner in WP(C) No. 1937/2011 has been issued by the Circle Officer, Dhubri Revenue Circle and the same is dated 9.12.2010. It has

also been placed reliance on another certificate issued by the District Deputy Registrar of Cooperative Societies, Dhubri and the same is dated 7.12.2010.

9. The two neighbourhood certificates on which the 8th bidder, i.e., WP(C) No. 839/2011 has placed reliance both dated 10.12.2010 which have been issued by the Circle Officer, South Salmara Revenue Circle and the District Fishery Development Officer, Dhubri.

10. In the certificate of neighbourhood submitted by the highest bidder there is no mention of the distance of the Co-operative Societies from the fishery. On the other hand, in the neighbourhood certificates, submitted by the 2nd and the 8th highest bidders who are the Petitioners in WP(C) No. 1937/2011 and WP(C) No. 839/2011, the distance of the villages has been indicated.

11. It is on the basis of the above, i.e., indication of the distance, the 2nd and 8th highest bidders claim that their bids should be accepted and the bid offered by the highest bidder should be rejected it having not mentioned the actual distance of the villages from the fishery.

12. Rule 12 of the Assam Fishery Rules, 1953 reads as follow:

12. Except those referred to in sub-rule No. 8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale auction:

Provided that the Government shall settle a 60% category fishery with special category of cooperative Societies, Non-Government Organization and Self-Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.

13. Rule 12 quoted above was amended in 2005 vide notification 31.3.2005. It is submitted by the Learned Counsel for the parties that by the aforesaid amendment of 2005, the tender system was effected and prior to that settlement was to be made by way of direct settlement. Whether it was by way of direct settlement or by tender system, one of the requirements is that the Co-operative Societies in question must be in the neighbourhood of the fishery. While the Learned Counsel for the Petitioners appearing for the 2nd and 8th highest bidders submit that the expression "neighbourhood" should be measured in terms of the actual distance, the Learned Counsel for the highest bidder submits that the expression "neighbourhood" cannot be qualified with that of the distance of the village from the fishery. In this connection, he has placed reliance on the Division Bench decision of this Court reported in *Brahmaputra Part-II Mach Mafia Samabai Samity Ltd. v. State of Assam and Ors.* 2003 (1) GLT 1551 in which this Court dealing with the expression "neighbourhood" held that the distance in regard, to neighbourhood is not required to be measured with mathematical precision and that the said expression needs interpretation so as to advance the object and purpose of the rules. In this connection, it has been observed, thus:

13. Turning to the aspect of neighbourhood, we feel that the expression needs interpretation so as to advance, the object and purpose of the rules and not to

frustrate it. As observed earlier, in a given fact situation, there may be more than one society in the neighbourhood of the fishery. It may so happen that a society fulfilling the order conditions of the proviso and which is more deserving for such settlement is, distance wise, slightly further away from the fishery, than the other eligible societies. Will the object and purpose of the proviso be served if the former society is discarded only on the ground that though it is more deserving, the other societies are nearer to the fishery? In the other words, is the word "neighbourhood" to be interpreted in terms of inches, feet and yards or a more pragmatic and purposive, interpretation has to be provided thereto. The Black Law's Dictionary defines the word "neighbourhood" as place near; an adjoining or surrounding district; a mere minimum vicinity; vicinage. In ordinary and common usage "locality" is synonymous in meaning with "neighbourhood". In the Law Lexicon by P. Ramanatha Aiyer, the word "neighbourhood" has been defined to signify nearness as opposed to remoteness. "Whether a place is in the neighbourhood of another place depends upon no arbitrary rule of distance or topography. One house may be said to be in the neighbourhood of another house and not structurally adjoin it.

14. The term "neighbourhood" does not express any definite idea of distance. A few feet or several 100 yards or even a greater distance from an object would be in its neighbourhood.

14. In the NIT, one of the requirements was the certificate of distance/neighbourhood. It is in this context, it is the stand of the 2nd and 8th highest bidders that the certificate must mention the actual distance irrespective of whether the bidder is in the neighbourhood of the fishery. I am afraid, such an interpretation cannot be accepted. In the rules referred to above, there is no mention of any distance relatable to neighbourhood. What is mentioned is the neighbourhood and not the actual distance. If the narrow interpretation as has been sought to be given by the Petitioners involved in WP(C) No. 830/2001 and WP(C) No. 1937/2011 is accepted/same will lead to chaos and confusion and there, will be litigation on the point of actual distance of the villages from the fisheries. Once it is established that the Petitioner in WP(C) No. 1314/2011 is in the neighbourhood of the fishery, there is no question of measuring the distance by mathematical precision so as to find out what is the distance of the villages from the fishery. It will also be pertinent to mention here that the highest bidder was the earlier settlement holder of the fishery for the period from 2004-10 in consideration of its neighbourhood.

15. In addition to the above, I have verified the records produced by the learned State counsel. On perusal of the records, it appears that in the comparative statement it was recorded that the Petitioner in WP(C) No. 1314/2011 is the highest bidder and it has fulfilled all the requirements. After the tender committee approved the said highest bidder, the matter went to the Government and the departmental Commissioner and Secretary approved the said Petitioner for settlement of the fishery. Thereafter, the matter was placed before the

concerned Minister who opined that neighbourhood certificate submitted by the highest bidder was not as per the NIT as the distance of the society from the fishery was not mentioned. On the other hand, it was opined that since the Petitioner in WP(C) No. 1937/2011, i.e., the 2nd highest bidder, in its certificate mentioned the distance of the society from the fishery, it should be considered for settlement.

16. The aforesaid view of the Minister is not tenable. The documents annexed along with the tender were accepted by all the authorities up to the stage of Commissioner and Secretary in the jurisdictional department. Nowhere it was mentioned that the neighbourhood certificate submitted by the highest bidder was not as per the NIT. In. NIT clause as has been noted above/there is no requirement of submission of certificate indicating the distance of Co-operative Society from the fishery.

17. Above being the position, there is no escape from the conclusion that on the basis of the tender documents and the fact that the Petitioner in WP(C) No. 1314/2011 is the highest bidder in respect of the fishery in question, it is entitled to get the settlement of the same for which there was recommendation all through out till the file came to the Minister. The Minister by his note dated 17.2.2011 directed for settlement of the fishery in favour of the Petitioner in WP(C) No. 1937/2011 on the aforementioned ground of non-mentioning of the distance by the highest bidder. The view taken by the Minister being not in conformity with the Rules mentioned above as well as the tender clause, I am of the considered opinion that the said view is not sustainable in law. Consequently, the writ petition being WP(C) No. 1314/2011 is allowed directing the authority to settle the fishery in favour of the Petitioner.

18. The other two writ petition being WP(C) No. 839/2011 and WP(C) No. 1937/2011 are dismissed. There shall be no order as to costs.