

**(2021) 09 GAU CK 0021**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 763, 2477 Of 2021

Kusumpur Pakaria Matchyajibi S.S. Ltd.

APPELLANT

Vs

State Of Assam

RESPONDENT

**Date of Decision :** 09-09-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Assam Fishery Rules, 1953 — Rule 12

**Citation :** (2021) 09 GAU CK 0021

**Hon'ble Judges :** Manish Choudhury, J

**Bench :** Single Bench

**Advocate :** K.N. Choudhury, R.M. Deka, T.J. Mahanta, P.P. Dutta, K. Goswami, M.K. Choudhury, P. Bharadwaj

**Final Decision :** Dismissed

## Judgement

1. In both the writ petitions, W.P.(C) no. 763/2021 and W.P.(C) no. 2477/2021, preferred under Article 226 of the Constitution of India, the subject-matter of challenge is an order of settlement dated 22.01.2021, whereby, No. 38 Morisuti Fishery in Morigaon District ['the Morisuti Fishery', for short] has been settled with the respondent M/s 129 No. Haria Dablang Meen Samabai Samity Ltd. ['the respondent society', for short], impleaded as respondent no. 5 and the respondent no. 6 respectively in the two writ petitions, for a period of 7 [seven] years at its offered bid value of Rs. 38,85,000/- i.e. Rs. 5,55,000/- per annum w.e.f. the date of handing over possession of the Morisuti Fishery, subject to observance of all required formalities as laid down in the Assam Fishery Rules, 1953, as amended ['the Fishery Rules', for short]. By the same order of settlement dated 22.01.2021, the settling authority has declared both the bids submitted by the two writ petitioners, both registered cooperative societies, as non-compliant to the Notice Inviting Tender dated 02.01.2020.

2. For appreciation of the issues raised in these two writ petitions, it may be useful to state the background facts, in brief, sans the unnecessary details. By a

Notice Inviting Tender ['NIT', for short] dated 02.01.2020, the Deputy Commissioner, Morigaon invited sealed bids for settlement of the Morisuti Fishery for a period of 7 [seven] years from the date of settlement by the Fishery Department. The said NIT mentioned that the sealed bids would be received in the office of the Deputy Commissioner, Morigaon upto 02-00 p.m. on 20.01.2020. As per the terms and conditions of the NIT, a number of documents were required to be submitted along with the sealed bid. Amongst the certificates/documents which were required to be submitted along with the sealed bid by a bidder the documents viz. (a) fishing experience certificate; (b) bakijai clearance certificate from the Deputy Commissioner; (c) photocopy of PAN card issued by the Income Tax Department, were included. The NIT had further prescribed that 15% of the minimum annual revenue fixed by the Government for the 1st year had to be deposited by the bidder as security deposit in the form of call deposit.

3. In response to the NIT, 6 [six] nos. of bidders, all registered societies, had submitted their bids quoting different bid values in total as well as year-wise. After expiry of the time of submission of the bid, the bids were opened. After organizing the tender papers submitted by all the participating bidders, the Tender Committee, constituted by the Deputy Commissioner, Morigaon, scrutinized the same. After scrutinization, a comparative statement was prepared by the Tender Committee keeping in view the terms and conditions of the NIT dated 02.01.2020. A chart of the bid values, offered by the participating bidders in descending order, was also prepared. The bid values quoted by the 6 [six] participating bidders were found as under :-

#### Participating bidders

##### Bid value

1

M/s 36/38 Tepari Sonai Morisuti Meen S.S. Ltd.

Rs. 53,27,000/-

2

M/s Kusumpur Pakaria Matshya Jibi S.S. Ltd.

Rs. 42,17,850/-

3

M/s 129 No. Hariya Dablong Meen S.S. Ltd.

Rs. 38,85,000/-

4

M/s Pakoriduba Matshya Jibi S.S. Ltd.

Rs. 36,80,000/-

5

M/s Katahguri Meen S.S. Ltd.

Rs. 35,78,435/-

6

M/s Beramari Meen S.S. Ltd.

Rs. 31,88,675/-

4. The Tender Committee besides mentioning the offered bid values, scrutinized the certificates/documents directed to be submitted with the bid as per Clause no. 4 of the NIT and made their remarks in respect of each of such certificates/documents in the respective columns in the comparative statement. The tender papers along with the comparative statement, were thereafter, forwarded by the Deputy Commissioner, Morigaon to the State Government by a letter dated 12.08.2020 mentioning the bid values offered by the 6 [six] participating bidders for necessary action.

5. The State Government in the Fishery Department examined the tender papers forwarded from the end of the Deputy Commissioner, Morigaon and after evaluation of the tender papers, the settling authority found the bids of M/s 36/38 Tepari Sonai Morisuti Meen S.S. Ltd. i.e. the petitioner in W.P.(C) no. 763/2021 and M/s Kusumpur Pokoria Matshya Jibi S.S. Ltd. i.e. the petitioner in W.P.(C) no. 2477/2021 non-compliant to the terms and conditions of the NIT, though they had offered the 1st highest bid value and the 2nd highest bid value respectively. The settling authority found the bid of the 3rd highest bidder, M/s 129 No. Hariya Dablong Meen S?mabai Samity Ltd. i.e. the respondent society compliant to the terms and conditions of the NIT and it decided to settle the Morisuti Fishery in its favour. Accordingly, the order of settlement dated 22.01.2021 came to be issued.

6. Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. R.M. Deka, learned counsel for the petitioner in W.P.(C) no. 2477/2021 and Mr. T.J. Mahanta, learned Senior Counsel assisted by Mr. P.P. Dutta, learned counsel for the petitioner in W.P.(C) no. 763/2021. Also heard Mr. K. Goswami, learned Additional Senior Government Advocate for the State respondents and Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. P. Bharadwaj, learned counsel for the respondent society in both the writ petitions.

7. Mr. K.N. Choudhury, learned Senior Counsel appearing for the petitioner in W.P. (C) no. 2477/2021 has submitted that the bid value offered by the petitioner society ['Kusumpur Pakaria Society', for short] was the 2nd highest. It is his submission that the grounds of rejection mentioned by the settling authority in the impugned order of settlement are untenable. Kusumpur Pakaria Society had quoted a bid value of Rs. 42,17,850/- i.e. Rs. 6,02,550/- per annum for the

Morisuti Fishery in its bid. But the settling authority taking a hyper-technical view that the bid values quoted by Kusumpur Pakaria Society for the 6th year, 2025-2026 and the 7th year, 2026-2027 were Rs. 60,250/-, had rejected the bid. Similarly, the settling authority had found fault with regard to the experience-cum-100% actual fishermen certificate and the PAN card submitted on behalf of Kusumpur Pakaria Society. In the bid, it was clearly mentioned that Kusumpur Pakaria Society had already applied for the PAN card in its name on 23.12.2019 i.e. prior to the last date of submission of bids. According to him, when the primary authority i.e. the concerned Deputy Commissioner who was entrusted with the duty and responsibility to scrutinize the tender papers, did not find any fault in respect of the certificates/documents submitted with the bid and had found Kusumpur Pakaria Society's bid compliant, it was not open for the settling authority to scrutinize the tender papers once again to arrive at a different finding. It is his further submission that the issue of neighbourhood is one of the relevant aspects to be considered and not to be ignored at the time of settling any fishery belonging to 60% category in view of the provisions contained in Rule 12 of the Fishery Rules. Kusumpur Pakaria Society is at a distance of 5 KMs from the Morisuti Fishery whereas the respondent society is found to be situated at a distance of 16 KMs from the Morisuti Fishery. It is his submission that in the process of settlement of a 60% category fishery, the settling authority must have to give due regard to the aspect of neighbourhood and a duty is cast upon the settling authority to record a finding on the aspect of neighbourhood while settling a 60% category fishery. He has assailed the impugned order of settlement for the failure on the part of the settling authority to record any finding on the aspect of neighbourhood. Submitting as such, it has been contended that the entire matter shall be remanded back to the settling authority to record findings on these relevant aspects. It is also his submission that the Morisuti Fishery is required to be settled in order to get the maximum revenue possible and it is substantial compliance, not strict compliance, of the terms and conditions of the NIT which is to be considered while making settlement.

8. Mr. T.J. Mahanta, learned Senior Counsel appearing for the petitioner society in W.P.(C) no. 763/2020 ['Tepari Sonai Society', for short] has submitted that the settling authority had found Tepari Sonai Society's bid deficient only in respect of bakijai clearance certificate. He has submitted that prior to submission of bid by Tepari Sonai Society, the petitioner society had approached the office of the Deputy Commissioner, Morigaon for issuance of a bakijai clearance certificate and the office of the Deputy Commissioner, Morigaon had issued a bakijai clearance certificate certifying that the petitioner society did not have any bakijai case pending against it as on 04.12.2019 i.e. the date of issuance of the bakijai clearance certificate. When the bid values were initially scrutinized by the Tender Committee, it had recorded a finding that necessary bakijai clearance certificate had been submitted by Tepari Sonai Society. It was on the basis of a subsequent complaint submitted by a bidder, the matter was re-opened. When a notice was received in that regard by the petitioner society i.e. Tepari Sonai Society and the

matter was enquired at the office of the Deputy Commissioner, Morigaon, it came to the knowledge of the petitioner Tepari Sonai Society only then that at an earlier point of time, some amounts had remained unpaid. Having learnt about the same, it immediately deposited the said outstanding dues and upon deposit of the same, receipts acknowledging deposit of the entire outstanding dues were issued on 03.03.2020. Those receipts were duly submitted before the respondent authorities but the settling authority declaring the petitioner Tepari Sonai Society as a defaulter, rejected its bid despite the petitioner Tepari Sonai Society quoting the 1st highest bid value. He has also raised the issue of neighbourhood from the Morisuti Fishery by referring to the distances between the petitioner Tepari Sonai Society which is at 5 KMs, vis-à-vis the respondent society which is at 16 KMs. Such ground of rejection, according to Mr. Mahanta, is clearly unsustainable when the difference between the bid values of the petitioner Tepari Sonai Society and the respondent society is substantial over the 7 [seven] years period of settlement.

9. Mr. K. Goswami, learned Additional Senior Government Advocate has supported the impugned order of settlement whereby the Morisuti Fishery has been settled in favour of the respondent society. It is his submission that the bids of the two petitioner societies in these two writ petitions had been rejected on valid grounds. The bids of the two petitioner societies were deficient and non-compliant to the terms and conditions of the NIT and the grounds of rejection have been clearly mentioned in the order of settlement. Producing the records of settlement in original, Mr. Goswami has referred to the documents therein to highlight the point that the issue of neighbourhood was duly considered during the process of settlement. He has submitted that the settling authority is required to consider as to whether a bidder has fulfilled all the terms and conditions of the NIT on the basis of the documents submitted by the bidder in his sealed bid. It is within the authority and jurisdiction of the settling authority to examine an issue when a complaint is received on any of the relevant aspects pertaining to the tender process, more particularly, when the complaint pertains to submission of a document containing incorrect facts like the bakijai clearance certificate of the petitioner Tepari Sonai Society in W.P.(C) no. 763/2021. He has further submitted that on the last date of submission of the bid, the petitioner Kusumpur Pakaria Society did not have a PAN card in its name and it did not submit a valid fishing experience-cum-100% actual fishermen certificate. As such, such a bid was required to be outrightly rejected. The petitioner Kusumpur Pakaria Society had also quoted the bid value in an improper manner. Submitting as such, he has submitted that no interference is called for with regard to the impugned order of settlement.

10. Mr. M.K. Choudhury, learned Senior Counsel appearing for respondent society apart from supporting the submissions of Mr. Goswami, has submitted that the plea taken on behalf of Tepari Sonai Society as regards lack of knowledge about pendency of any bakijai case is not acceptable. A registered co-operative society is a jurisdic entity and any bakijai case will be against such a society only. It is

immaterial as to whether the default had incurred during the tenure of any earlier board of directors of such a society or at a distant point of time. On the last date of submission of the bids and at the time of submission of its bid, Tepari Sonai Society was a defaulter. The said position has been fortified from the fact that it deposited the defaulted dues at a later date, 03.03.2020, which was after the last date of submission of the bids. Tepari Sonai Society's bid was also non-compliant of Clause no. 4(e) of the NIT as it submitted a demand draft, instead of call deposit, towards the earnest money deposit. Further, the said demand draft was made in favour of a non-existent authority i.e. the District Commissioner. As regards deficiencies in the bid of Kusumpur Pakaria Society are concerned, he has submitted that the settling authority had rightly recorded the grounds of rejection. The bid of Kusumpur Pakaria Society was deficient on many counts and the conditions which Kusumpur Pakaria Society faltered to attain were essential conditions. It is submitted by him that the bid of the respondent society was found compliant of all the terms and conditions of the NIT. It is not open for the two petitioner societies whose bids were disqualified, to raise the issue of neighbourhood. In any view of the matter, the respondent society is in the neighbourhood of the Morisuti Fishery, he submits.

11. I have considered the submissions advanced by the learned counsel for the parties and have also gone through the pleadings submitted by the parties. I have also perused the relevant records of settlement, produced by Mr. K. Goswami, learned Additional Senior Government Advocate.

12. The NIT dated 02.01.2020 was published inviting sealed bids for settlement of the Morisuti Fishery located in Mayang Revenue Circle, Mauza - Pakaria, District - Morigaon. While publishing the NIT, the Deputy Commissioner, Morigaon indicated that the Morisuti Fishery is a 60% category fishery and it would be settled for a period of 7 [seven] years. The settlement of a 60% category fishery has to be made as per the proviso to Rule 12 of the Fishery Rules. As per Rule 12, except those referred to in sub-rule 8(b) of the Fishery Rules, all registered fisheries shall be settled under tender system of sale in place of sale auction. As per the proviso to Rule 12, the Government shall settle a 60% category fishery with special category of co-operative societies, non-government organizations and self-help groups consisting of 100% actual fishermen in the neighbourhood of such a fishery. The definition of 'special category' has been provided in Explanation 1 thereto. Explanation 2 has provided that 'a 60% category fishery' means 60% of registered fisheries available in a Civil Sub-Division eligible for settlement in a particular year. It is the State Government in the Fishery Department who is the settling authority in respect of a 60% category fishery.

13. As has been mentioned in paragraph 2 above, a bidder had to submit a number of certificates/documents along with his bid. The Tender Committee constituted for the purpose by the Deputy Commissioner, prepared the comparative statement, mentioned above, by making its remarks in respect of such certificates/documents in the respective columns therein. The Deputy

Commissioner, Morigaon forwarded the tender papers of all the 6 [six] participating bidders along with the comparative statement to the Government in the Fishery Department on 12.08.2020 for taking necessary action for settlement of the Morisuti Fishery.

14. When the matter of settlement was pending at that stage before the Government one of the 6 [six] bidders viz. M/s Pakoriduba Matshya Jibi S.S. Ltd. ['Pakoriduba Society', for short] submitted a complaint before the Fishery Department on 11.09.2020. In the complaint submitted by the President of Pakoriduba Society, it brought in a number of allegations against the three highest bidders and deficiencies in their respective bids. As against Tepari Sonai Society, the complaint had alleged that the bakijai clearance certificate was false as two bakijai cases were pending against it. It was only after the last date of submission of bids, Tepari Sonai Society deposited an amount of Rs. 1,15,573/- on 03.03.2020 to dispose of those cases. It was further alleged that Tepari Sonai Society did not submit the earnest money deposit in call deposit and instead, it deposited a demand draft in the name of District Commissioner, Morigaon. The Indian Postal Order [IPO], submitted by it, did not bear any date and was blank. An allegation about non- submission of the details of members of Tepari Sonai Society was also made. Against the 2nd highest bidder i.e. Kusumpur Pakaria Society, Pakoriduba Society had alleged that the society did not submit the photocopy of the PAN card with its bid. It was alleged that Kusumpur Pakaria Society did not submit the call deposit towards earnest money which was to be 15% of the lowest annual revenue fixed by the Government for the 1st year and instead, the society submitted only a receipt. As against the 3rd highest bidder i.e. the respondent society, Pakoriduba Society had alleged that its bid should be rejected as it was at a distance of 10 KMs from the Morisuti Fishery. By making above allegations, Pakoriduba Society sought rejection of the bids of the three highest bidders and claimed for settlement of the Morisuti Fishery in its favour.

15. On receipt of the said complaint, the Government in the Fishery Department by its communication dated 18.09.2020 had informed the Deputy Commissioner, Morigaon that before proceeding with the process of settlement of the Morisuti Fishery, it would be necessary to inquire into the allegations made in the complaint to find out the authenticity of such allegations and to take follow up action accordingly after examining the validity of each of the bids. The Deputy Commissioner was requested to cause an inquiry into the allegations against the three highest bidders and to forward a report with his views/comments on the genuineness/authenticity of such allegations so as to enable the settling authority to finalize the process of settlement. A further communication was made by the Government in the Fishery Department to the same effect on 25.11.2020 to the Deputy Commissioner, Morigaon requesting him to cause the enquiry and submit a report within 30.11.2020.

16. In deference to the said direction, the Deputy Commissioner, Morigaon through the District Development Commissioner, Morigaon had caused an

enquiry. The representatives of the three highest bidder societies and the complainant Pakoriduba Society were put to notice to attend a hearing before the District Development Commissioner, Morigaon on 12.11.2020. The documents/certificate presented by the representatives of the said societies were examined. In the hearing, the 1st highest bidder society i.e. Tepari Sonai Society submitted its registration certificate and the same was found proper. As regards the security amount, it was found that a demand draft for a sum of Rs. 54,000/- was submitted in the name of the District Commissioner, Morigaon. In the enquiry, it was found that the 2nd highest bidder did not submit the PAN card. The date in the IPO submitted was illegible. As regards the 1st highest bidder society i.e. Tepari Sonai Society, it was found that on the last date of submission of bid a bakijai case against the former secretary of the Society was pending and the pending dues were paid by the present secretary of the Society on 03.03.2020. As regards the respondent society, it was recorded that as per the report of the Circle Officer, Mayong Revenue Circle, the distance of the respondent Society from the Morisuti Fishery is at about 16 KMs. The enquiry report was forwarded by the Deputy Commissioner, Morigaon to the Government in the Fishery Department by a communication dated 24.12.2020.

17. After receipt of the enquiry report, the settling authority considered the same along with the tender papers submitted by the participating bidders. A bidder participating in a tender process has a right to equality and fair treatment in the matter of evaluation of the bid offered by him in response to a notice inviting tender in a free and transparent manner and has a right to the limited extent to ask for a treatment in a fair, equal and non-discriminatory manner. The complaint lodged by Pakoriduba Society who considered its bid as compliant to the terms and conditions of the NIT, alleging non-compliance of the terms and conditions of the NIT on the part of the other bidders who offered higher bid values, is to be looked into in the aforesaid context. By the complaint, the 4th highest bidder, Pakoriduba Society had brought in certain allegations against the other three bidders with supporting documents. Having received the complaint, the settling authority deemed it fit to cause an enquiry about the allegations and it was in such backdrop, the settling authority directed the Deputy Commissioner to cause an enquiry. It is well within the ambit and authority of the Government in the Fishery Department being the settling authority, to direct the primary authority i.e. the Deputy Commissioner who issued the NIT, to cause such enquiry and to reach its own findings on the basis of the tender papers along with any such report as regards compliance or non-compliance of the terms and conditions of the NIT, notwithstanding any remarks made by the primary authority earlier on the tender papers of the participating bidders upon verification. In such view of the matter, the contention advanced to the effect that it was not open for the settling authority to evaluate the tender papers once again to arrive at a different finding than the one arrived at by the primary authority cannot be countenanced.

18. On perusal of the tender papers submitted by Kusumpur Pakaria Society, available in original in the case records, it is noticed that while the Society



mentioned the annual bid values for the years - 2020-2021, 2021-2022, 2022-2023, 2023-2024 and 2024-2025 - at Rs. 6,02,550/- it mentioned the annual bid values for the years - 2025-2026 and 2026-2027 - at Rs. 60,255/-. Though it mentioned the total bid value at Rs. 42,17,850/- if the year-wise annual bid values quoted by it for the 7 years are added one arrives at a figure of Rs. 31,33,260/- instead of Rs. 42,17,850/-. It is the figure Rs. 31,33,260/- which the settling authority had recorded in the impugned order of settlement. In view of such discrepancies, it cannot be discerned from the two figures of Rs. 31,33,260/- and Rs. 42,17,850/- which one of the two figures Kusumpur Pakaria Society had intended to offer as its total bid value for the entire 7 years period of settlement. The PAN card Kusumpur Pakaria Society had deposited with its bid was that of its President and not in the name of Kusumpur Pakaria Society. In its application the Society mentioned that it had applied on-line for the PAN card of the Society and a copy of the application for PAN card had been attached with its bid. The photocopy of the application for PAN card reflects that the Society had applied for PAN card only on 23.12.2019. The Society did not also fill up the space in the tender document against the head about deposit of 15% of lowest annual revenue fixed by the Government for the 1st year leaving it entirely blank. It did not also fill up the space against the head about registration certificate of the cooperative society. The fishing experience certificate the Society had submitted along with its bid was one issued by the District Fishery Development Officer, Morigaon dated 06.09.2018 who certified that Sri Madan Chandra Das belongs to Scheduled Caste (Kaibartta) community and is an actual fish farmer having 4 years of experience. There was no mention of Kusumpur Pakaria Society in the said certificate dated 06.09.2018.

19. The purpose for asking a bidder society to submit photocopy of the PAN card of the Income Tax Department is to ensure that the bidder society is an income tax assessee. The terms and conditions of the NIT has specifically stipulated for submission of the photocopy of the PAN card of the bidder. Rule 12 of the Fishery Rules has prescribed that a 60% category fishery is to be settled only with the special category of co-operative societies, non-government organizations and self-help groups consisting of 100% actual fishermen. It is such society, organization or group which has to be an income tax assessee. Thus, submission of a PAN card in the individual name of Sri Madan Chandra Das who is only the President of Kusumpur Pakaria Society did not fulfill the condition set forth in the NIT. In the similar manner, a fishing experience certificate issued in favour of Sri Madan Chandra Das in his individual capacity and without any reference to the other members of Kusumpur Pakaria Society, cannot be treated to be a valid fishing experience certificate for all the members of Kusumpur Pakaria Society. It also cannot be accepted as a 100% actual fishermen certificate in respect of Kusumpur Pakaria Society. It is further noticed that the Society did not submit any call deposit towards 15% of the lowest annual revenue fixed by the Government for the 1st year along with its bid. Instead, the Society submitted an application dated 24.01.2020 under the seal and signature of its President

stating that when it submitted its bid for settlement earlier on 13.09.2018, a bank draft of Rs. 53,500/- was attached therewith. It further mentioned that due to problem in the internet facility in the bank a new bank draft could not be deposited by the Society along with the bid though it deposited the requisite amount at the bank. The Society requested that by attaching the last year's bank draft, its bid be accepted and if necessary, a new bank draft would be deposited within a week. A bank receipt evidencing deposit of an amount of Rs. 53,000/- was enclosed with the said application. A bank draft is usually of limited validity period of three months. The Society had requested to admit its bid by considering the bank draft which the Society deposited at an earlier point of time on 13.09.2018 along with its bid the validity period of which had already expired. A receipt evidencing deposit of an amount at the bank cannot be equated with a bank draft, not to speak of a call deposit, submitted in favour of the tendering authority. For all the aforesaid reasons, the decision of the settling authority to invalidate the bid of Kusumpur Pakaria Society who offered the 2nd highest bid value, cannot be faulted with. The grounds of rejection of the bid were found recorded in the impugned order of settlement and this Court does not find any element of arbitrariness or irrationality in the decision making process.

20. The 4th highest bidder society, Pakoriduba Society after obtaining the requisite information under the Right to Information Act, had brought in the allegation of defaulter against the 1st highest bidder society, Tepari Sonai Society in its complaint dated 11.09.2020. In the complaint, it was mentioned that one Bakijai Case no. 206/94-95 was pending against Tepari Sonai Society on the last date of submission of bids, 20.01.2020 in response to the NIT dated 02.01.2020. The bakijai case was instituted for an amount of Rs. 1,18,573/- in the name of Tepari Sonai Society. Against the said defaulted amount, an amount of Rs. 3,000/- was deposited on 03.06.2011 and the balance amount of Rs. 1,15,573/- had remained outstanding against Bakijai Case no. 206/94-95 on the last date of submission of bids. As such, the bakijai clearance certificate dated 04.12.2019 did not reflect the actual fact. As per the report of the Additional Deputy Commissioner, Morigaon dated 15.10.2019, the bakijai clearance certificate dated 04.12.2019 came to be issued on the basis of an affidavit sworn by the President of Tepari Sonai Society along with an application dated 25.11.2019. When a complaint was received the matter was enquired into and it was found that Bakijai Case no. 206/94-95 was for a defaulted amount of Rs. 1,18,573/- against Tepari Sonai Society. Out of that defaulted amount of Rs. 1,18,573/-, an amount of Rs. 3,000/- was deposited on 26.03.2011. It was only on 03.03.2020 the present President of Tepari Sonai Society deposited the balance outstanding dues for disposal of Bakijai Case no. 206/94-95. The Additional Deputy Commissioner, Morigaon reported that on the last date of submission of bid for settlement of the Morisuti Fishery, the bakijai case was pending against Tepari Sonai Society. There is admission also in the writ petition, W.P.(C) no. 763/2021 to the effect that two bakijai cases (i) Bakijai Case no. 206/94-95, and (ii) Bakijai Case no. 01/2005, were pending against Tepari Sonai Society. It has been

contended that the said bakijai cases were instituted during the tenure of two previous secretaries of the Society and such fact was not within the knowledge of the present board of directors of the Society. As soon as the present board of directors of the Society came to know about the pendency of bakijai cases, it deposited an amount of Rs. 1,15,573/- against the default shown in Bakijai Case no. 206/94-95 and a further amount of Rs. 91,084/- against the default shown in Bakijai Case no. 01/2005. Both these amounts were deposited on 03.03.2020 with the prayer to dispose of the bakijai cases and the said amounts were received by the authority by issuing receipts. From the aforesaid facts and also admission made by the petitioner Tepari Sonai Society itself it is an admitted fact that the Society was a defaulter on the last date of submission of bids, 20.01.2020 in response to the NIT dated 02.01.2020. The bakijai cases were instituted for defaults made by the Society in depositing Government revenue. A registered cooperative society is a body corporate and a bakijai case is instituted for the liability incurred by such a registered society and not against the secretary of such a society in his personal capacity. Lack of knowledge on the part of the board of directors of the Society about pendency of bakijai cases against the Society, previously instituted, cannot be a ground for the Society to contend that its bid should be treated and accepted as a valid one, ignoring the fact that it was a defaulter on the date of submission of its bid. Deposit of the outstanding dues at a later date, 03.03.2020 which is after opening of the bids, and disposal of the pending bakijai cases on 03.03.2020 upon such deposit do not change the position of defaulter of the petitioner Tepari Sonai Society on the last date of submission of the bids, 20.01.2020 against the NIT dated 02.01.2020. In such view of the matter, no exception can be taken in respect of the decision of the settling authority as regards invalidation of the petitioner Tepari Sonai Society's bid in the impugned order of settlement. As the bid of the petitioner Tepari Sonai Society has been disqualified in view of pendency of a bakijai case due to its default in paying Government revenue, the issue of it offering a higher bid value does not require a consideration. The default in depositing Government revenue reflects on the conduct about its past dealings with the Government revenue.

21. On the aspect of neighbourhood, a Division Bench of this Court in *Majorati Min Samabai Samity Ltd. (M/s) vs. Sukhraj Min Samabai Samity Ltd. and others*, reported in 1998 (1) GLT 405, has observed that all that the Court can in its ambit of jurisdiction under Article 226 of the Constitution of India, examine is as to whether the condition and requirements of neighbourhood, as prescribed under the Fishery Rules, was present in the mind of the settling authority or not. It is not expected that the writ court would be the surveyor and measure the distance in metres and centimetres. If the settling authority is alive to the requirements of the Fishery Rules and the same is reflected in the order of the settlement, the writ court will not be justified in undertaking an exercise of measuring the distance between two competing claimants. The term 'neighbourhood', according to the division bench, is a relative term which is to be

taken into account along with other conditions and it is not the intent of the Fishery Rules to treat neighbourhood with geometrical altitude and procedure. Another Division Bench of this Court in *Brahmaputra Part II Mach Mahal Samabai Samity Ltd. vs. State of Assam*, reported in 2003 (1) GLT 155, has observed that the term 'neighbourhood' does not express any definite idea of distance. No mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word, there is an element of flexibility and, therefore, while dealing with the proviso to Rule 12 of the Fishery Rules, it would neither be permissible nor desirable to ascertain the neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery cooperative society is in the vicinity and the proximity of the fishery as is understood in common parlance, they are deemed to be in the neighbourhood thereof. Any attempt to measure the neighbourhood in terms of inches, feet, yards or centimetres and metres, would render the proviso otiose in a given fact situation.

22. In the impugned order of settlement, while examining the validity of the bids of the 6 [six] participating bidders the settling authority had recorded the distances of the bidder societies radius-wise from the Morisuti Fishery. As has been found from the discussion above and reflected in the impugned order of settlement, the bids of the 1st highest bidder, the 2nd highest bidder, the 5th highest bidder and the 6th highest bidder were found deficient for reasons mentioned therein. The bids of only the 3rd highest bidder and the 4th highest bidder were found compliant to the terms and conditions of the NIT. From the records of settlement, placed before the Court, it is found that the attention was paid on the aspect of neighbourhood by the settling authority prior to issuance of the order of settlement. The only other valid bidder, Pakoriduba Society did not challenge the order of settlement. In view of such position, the assailment made on the aspect of neighbourhood by the two petitioners herein whose bids met the fate of disqualification, which in the considered view of this Court are on valid grounds, should fail and cannot be countenanced.

23. In a tender process initiated by a notice inviting tender, it is the terms and conditions of the notice which govern the matter of qualification or disqualification of a participating bidder. Where a decision is taken by the tendering authority in consonance with the terms and conditions of the notice or sub-serves the purpose for which the tender process is initiated and if the decision making process adopted by the tendering authority is not found fraught with any element of arbitrariness, biasness or discriminatory treatment or is not against any public interest the Court in its discretionary jurisdiction under Article 226 of the Constitution of India should refrain from making any interference. In the light of the above discussion made in respect of the tender process in question, this Court does not find any reason to interfere with the impugned order of settlement. The grounds on which the bids of the two petitioner societies were rejected, by the impugned order of settlement, cannot be termed as arbitrary or irrational. The Morisuti Fishery has been settled in favour of a bidder

i.e. the respondent society whose bid was found in conformity with the terms and conditions set forth in the NIT.

24. Having found both the writ petitions bereft of merits in the above fact situation obtaining in the case, the same are dismissed. There shall, however, be no order as to cost.