(2016) 03 GAU CK 0036

In the Gauhati High Court

Case No : Writ Petition (C) No. 4133 of 2015.

Nalirpar Fishery Samabay Samitee and Others APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12

Citation : (2016) 3 GauLJ 59 : (2016) 2 GauLT 1177 : (2016) 3 NEJ 290

Hon'ble Judges : A.K. Goswami, J.

Bench : Single Bench

Advocate : K.N. Choudhury, Sr. Advocate, D.K. Sarmah, N. Pathak, N. Talukdar, A. Pathak, Advocates, D. Das, Sr. Advocate, U.K. Nair, S. Khound, H. Nath, Advocates, S. Kataki, A. N. Chowdhury, R.M. Das, Advocates and P. Chakraborty, A. Das, Advocate, K. Khan, Advocat

Final Decision : Disposed Off

Judgement

A.K. Goswami, J. - Challenge in WP(C) No.3283/2015, WP(C) No.3835/2015 and WP(C) No.4554/2015 is to an order dated 1st June, 2015 issued by the Secretary to the Government of Assam, Fishery Department, whereby the Governor of Assam, in exercise of powers conferred under Rule 12 of the Assam Fishery Rules, 1953 (in short, ''Rules''), settled the No.3(B) Lower Part Bramaputra and 13-Rupnajaljali, Kholabondha Fishery of Kamrup (R) District (for short, ''Fishery'') with Nalirpar Fishery Samabai Samittee Limited for a period of 7(seven) years from the date of delivery of the possession of the fishery at the offered bid value of Rs.27,33,333/-.

2. In WP(C) No.4133/2015, the challenge is made to an order dated 13th July, 2015 issued by the Deputy Commissioner, Kamrup (R), cancelling the order dated 19th June, 2015 issued in favour of the petitioner, namely, Nalirpar Fishery Samabai Samittee Limited, whereby the petitioner was permitted to operate the fishery for the period of 7(seven) years with effect from 1st June, 2015 to 31st May, 2022.

3. All the aforesaid 4(four) writ petitions being interconnected, they were directed to be tagged together. On the prayer of the learned counsel appearing for the parties, the 4(four) writ petitions are taken up for final disposal at the admission stage and accordingly, by this common judgment and order, the writ petitions are disposed of.

4. A tender notice was issued on 24th January, 2014 inviting sealed tenders from interested Co-operative Societies, Self Help Groups and Non-Governmental Organisations, comprising of Scheduled Caste Members belonging to Fishermen Community for settlement of the fishery in question.

5. In response to the said tender notice, 6(six) tenderers, including the petitioners herein, had submitted their respective tenders. Bids of the petitioners in WP(C) No.4133/2015, WP(C) No.4554/2015, WP(C) No.3835/2015 and WP(C) No.3283/2015 were Rs.27,33,333/-, Rs.21,55,555/-, Rs.15,61,439/- and Rs.47,51,511/-, respectively. By an order dated 17th May, 2014 issued by the Deputy Secretary to the Government of Assam, Fishery Department, it was communicated that the Governor of Assam, in exercise of the powers conferred upon him under Rule 12 of the Rules, was pleased to settle the fishery with the writ petitioner in WP(C) No.3835/2015, namely, Bahari Reserve Gaon Meen Samabai Samity Limited at the bid value of Rs.15,61,439/- for a period of 7(seven) years from the date of delivery of the possession of the fishery. The tenders of writ petitioners in WP(C) No.4133/2015 and WP(C) No.4554/2015 were rejected on the ground that it had not furnished Income Tax Clearance Certificates/Pan Cards. The tender of petitioner in WP(C) No.3283/2015, who had offered the highest bid, was also rejected on the ground of non-furnishing of Income Tax Clearance Certificate/Pan Card and neighbourhood certificate.

6. Against the aforesaid order dated 17th May, 2014, 3(three) writ petitions were instituted: one by the writ petitioner in WP(C) No.4554/2015, registered as WP(C) No.2790/2014, one by the writ petitioner in WP(C) No.3283/2015, registered as WP(C) No.2574/2014 and the other by one Society named and styled as 34 Sathisola Fishery Cooperative Society Limited, registered as WP(C) No.2865/2014. All the aforesaid 3(three) writ petitions were disposed of by an order dated 22nd September, 2014.

7. The petitioner in WP(C) No.3835/2015 preferred an appeal against the said order dated 22nd September, 2014, which was registered as Writ Appeal No.350/2014. After hearing the learned counsel for the appellant and the respondents, the writ appeal was dismissed by order dated 26th November, 2014.

8. At this stage, it will be appropriate to take note of another development that had taken place prior to passing of the impugned order of settlement dated 1st June, 2015. Making a reference to the order dated 22nd September, 2014 in WP(C) No.2574/2014, WP(C) No.2865/2014 and WP(C) No.2790/2014, by an order dated 20th December, 2014, the Joint Secretary to the Government of Assam, Fishery Department had decided to invite a fresh tender for settlement of

the fishery and had directed the Deputy Commissioner, Kamrup (R), Amingaon to invite fresh Notice Inviting Tender (NIT) for settlement of the fishery.

9. The petitioner in WP(C) No.3283/2015 had challenged the said order dated 20th December, 2014 by filing an application under Article 226 of the Constitution of India, which was registered and numbered as WP(C) No.1352/2015. The aforesaid writ petition was allowed by an order dated 20th March, 2015 by setting aside and quashing the order dated 20th December, 2014 and directing the authorities to expeditiously comply with the order dated 22nd September, 2014 passed in WP(C) No.2574/2014, WP(C) No.2865/2014 and WP(C) No.2790/2014, which was affirmed by the Division Bench of this Court in Writ Appeal No.350/2014. It was observed in the said order dated 20th March, 2015 that by the order dated 22nd September, 2014, the authorities were given the liberty to start a de-novo process, if they are unable to make settlement on the basis of the previous NIT and, therefore, it was incumbent on the authorities to have first attempted to re-do the settlement exercise after due verification with application of mind and recourse to issuance of fresh NIT was permitted only if the authorities were unable to make the settlement on the basis of the previous NIT. This Court recorded the finding that no exercise was carried out as ordered by this Court in the order dated 22nd September, 2014 and mechanically a direction was issued to invite a fresh NIT for settlement of the fishery.

10. The aforesaid order dated 20th March, 2015 passed in WP(C) No.1352/2015, laid the stage for eventual consideration in terms of the order dated 22nd September, 2015 of this Court in WP(C) No.2574/2014, WP(C) No.2865/2015 and WP(C) No.2790/2014 and such consideration had culminated in the issuance of the order dated 1st June, 2015, which is presently under challenge in the 3(three) writ petitions, referred to herein above.

11. The order dated 1st June, 2015 came to be challenged, first in point of time, in WP(C) No.3283/2015. On 5th June, 2015, this Court, while directing the State respondents to produce the relevant records including tender documents on 12th June, 2015, also directed maintenance of status-quo as on that date till then. The writ petition was listed on 12th June, 2015. However, on the prayer of the learned counsel for the petitioner, case was directed to be listed on 25th June, 2015. It is important to note that there was no order for maintenance of status quo till 25th June, 2015. On 25th June, 2015, however, earlier order of status quo passed on 5th June, 2015 was directed to be continued and the case was directed to be posted on 3rd August, 2015. In between 12th June, 2015 and 25th June, 2015, as there was no specific order of status quo, order dated 19th June, 2015 was passed giving effect to the order of settlement dated 1st June, 2015 and lease agreement was also executed. Subsequently, after the passing of the order of status quo on 25th June, 2015, the aforesaid order dated 19th June, 2015 came to be cancelled by the order dated 13th July, 2015, which prompted institution of WP(C) No.4133/2015.

12. Ms. P. Chakraborty, learned counsel appearing for the writ petitioner in

WP(C) No.3835/2015 has submitted that though the writ petitioner was settled with the fishery earlier by the order dated 17th May, 2014, while re-doing the exercise of fresh settlement in terms of the order of this Court dated 22nd September, 2014, the case of the petitioner was not even considered and on perverse interpretation of the order of this Court dated 22nd September, 2014, consideration was limited to only the 3(three) highest tenderers. It is submitted that tender of the petitioner was valid in all respects and the tender of the tenderers, whose tenders were considered while passing the order dated 1st June, 2015, were not valid. It is submitted by her that the impugned order of settlement dated 1st June, 2015 was passed in favour of a Co-operative Society, which is not consisting of members belonging to Scheduled Caste Community as the Society is consisting of members belonging to Rajbongshi Community.

13. Mr. S. Kataki, learned counsel for the petitioner in WP(C) No.4554/2015 submits that the Society he represents is the third highest valid tenderer and the petitioner''s Society is located in close proximity of the fishery. Placing reliance on paragraph 18(A) of the writ petition, it is submitted by him that M/s Nalirpara Fishery Samabai Samittee Limited, in whose favour settlement order was passed, is about 11 Kms. away from the fishery and in between the writ petitioner''s Society and the settlement holder Society, there are 2(two) other fisheries and, therefore, it cannot be construed that M/s Nalirpara Fishery Samabai Samittee Limited is in the neighbourhood of the fishery. Drawing attention to Rule 12 of the Rules, learned counsel submits that to be entitled to an order of settlement under Rule 12 of the Rules, society has to be in the neighbourhood of the fishery and, therefore, the settlement order is liable to be set aside and quashed. He has cited 2(two) decisions of this Court: (i) Arabinda Das and Anr. v. State of Assam and Ors., reported in (1982) 1 GLR 280 and (ii) Brahmaputra Part-II Mach Mahal Samabai Samity Limited v. State of Assam and Ors., reported in 2003 (1) GLT 155.

14. Mr. D. Das, learned senior counsel for the petitioner in WP(C) No.3283/2015 has submitted that the impugned order of settlement dated 1st June, 2015 is, ex-facie, bad in law and the same runs counter to the order of this Court dated 22nd September, 2014, which was affirmed in writ appeal. It is submitted that a finding was recorded by this Court in the said order dated 22nd September, 2014 that while a lower bidder was selected for settlement, all the higher bidders were ignored for reasons which are not germane for considering their eligibility and, therefore, there is no question of the bid of the petitioner being considered to be not meeting the requirements to be favoured with an order of settlement. The petitioner being the highest valid tenderer, it is entitled to be settled with the fishery in question. It is contended by him that while issuing the order dated 17th May, 2014, the tender of the petitioner was not considered on the ground that the petitioner had not submitted Income Tax Clearance Certificate/Pan Card and neighbourhood certificate. This time, while passing the order dated 1st June, 2015, tender of the petitioner was rejected, apart from for non-receipt of neighbourhood certificate, on the ground that audited balance-sheet had not

been countersigned by the authorised Government official. It is submitted by him that there is no requirement for the audited balance-sheet to be countersigned under the provisions of the Assam Co-operative Societies Act, 2005 and that apart, tender conditions also did not stipulate that same had to be countersigned. He has also submitted that while the documents produced by the petitioner, received through an application made the Right to Information Act, 2005, had indicated that there was counter signature of the Sub-Registrar, Co-operative Societies in the return of audit fees, which was deposited on 15th October, 2013, the records produced by the learned State counsel did not contain such endorsement of the Sub-Registrar and as such, this Court had directed the State Information Officer-cum-Assistant Registrar as well as the State Public Information Officer and the Additional Deputy Commissioner, Kamrup, to file their individual affidavits. It is pointed out by him that consequent thereto, affidavits were filed and the Court had taken note of such affidavits in the order dated 5th August, 2015. This Court recorded the stand taken in the affidavit that from the Xerox copies kept from the originals, which were sent to the Government, copies were furnished to the petitioner including the audited balance-sheet duly countersigned by the Sub-Registrar. He has contended that the aforesaid controversy with regard to countersigning in the return of audit fees will be of no consequence as the balance-sheet was duly audited and signed by the authorised officer. It is further submitted that in view of the clear determination made, as recorded in paragraph 7 of the order dated 22nd September, 2014, wherein it is specifically recorded by the Court that record had contained a report of the Circle Officer, Nagarbera dated 6th May, 2014, the observations in the order dated 1st June, 2015 that no such letter is available, cannot be accepted and tender of the petitioner could not have been rejected on the ground that the authorities had not received neighbourhood certificate along with the tender documents. He has further submitted that the tender notice did not require the tenderers to submit a neighbourhood certificate.

15. Mr. K.N. Choudhury, learned senior counsel appearing for M/s Nalirpar Fishery Samabai Samittee Limited, in whose favour the order of settlement was issued, has submitted that in clear terms, this Court, in its order dated 22nd September, 2014 had confined consideration of the tenders of the 3(three) highest tenderers and, therefore, the argument of Ms. P. Chakraborty, learned counsel appearing for the petitioner in WP(C) No.3835/2015 that the said petitioner Society was illegally and arbitrarily not considered for settlement, is misconceived. He has relied on a judgment rendered in Revenue Appeal No.90(M)/60 of this Court in the case of Jatindra Nath Das v. Commissioner, Plains Division, Assam to contend that the society is consisting of members, who are of Scheduled Caste Community. It is submitted by him that the question of neighbourhood has to be addressed in a pragmatic manner as it does not have any definite idea of distance and, therefore, the submission of Mr. S. Kataki, learned counsel for the petitioner in WP(C) No.4554/2015 that the petitioner Society in the said writ petition being in the proximity of the fishery, is entitled to

settlement, cannot be countenanced.

16. Mr. Choudhury, learned senior counsel has submitted that no conclusive finding had been recorded by this Court in its order dated 22nd September, 2014 holding that petitioner in WP(C) No.3283/2015 is in the neighbourhood of the fishery and on the contrary, direction was issued to the tendering authority to account for the neighbourhood aspect as per departmental verification exercise. Admittedly, the petitioner in WP(C) No.3283/2015 did not submit, at the time of submission of its tender, a neighbourhood certificate. In absence of any finding in the aforesaid order that belated submission of neighbourhood certificate would cure the defect, the observations to that effect made by the Division Bench of this Court in its order dated 26th November, 2014 in Writ Appeal No.350/2014, at best, is an orbiter and the same is of no moment. With regard to the audited balance-sheet, while not disputing that tender notice did not stipulate submission of audited balance-sheet duly countersigned, placing reliance on Sections 81 and 84 of the Co-operative Societies Act, 2005, the learned senior counsel submits that though not expressly indicated, having regard to the provisions as laid down, countersigning of the audited balance-sheet by an authorised officer is implicit therein. Mr. Choudhury has placed reliance in the case of State of U.P. and Anr. v. Synthetics and Chemicals Limited and Anr., reported in (1991) 4 SCC 139.

17. Mr. R.K. Bora, learned State counsel has produced 2(two) files relating to settlement of the fishery. He has submitted that the records do not contain report dated 6th May, 2014 of the Circle Officer, Nagarbera, which is referred to in the judgment and order of this Court dated 22nd September, 2014. He has submitted that though records reveal that a survey report was called for regarding neighbourhood status of the tenderers, records do not reveal receipt of such report.

18. I have considered the submissions advanced by the learned counsel appearing for the parties and have perused the records of the case as well as the records produced by Mr. Bora, learned State counsel.

19. As during the course of hearing, the learned counsel appearing for the parties have repeatedly referred to paragraphs 6, 7, 10 and 11 of the order dated 22nd September, 2014, in support of their contentions, it is considered appropriate to quote paragraphs 6, 7, 10 and 11 hereunder:-

"6. The settlement records are produced by the Govt. advocate and upon due scrutiny, I find that in their tender papers, the settlement holder i.e. the Bahari Reserve Gaon Min Samabay Samity Limited had not furnished the acknowledgement of I.T. return relating to the society. Instead the enclosed acknowledgement pertaining to one individual assesse i.e. Ram Prasad Malo Das, who is the Secretary of the Society. From this it can be easily gathered that the relevant I.T. return for the tendering society was not furnished and therefore in my considered opinion the I.T. return of the Secretary of the Society cannot be the basis for considering the Bahari Reserve Gaon Min Samabay Samity Limited to be responsive in their tender as they hadn''t enclosed any I.T. clearance certificate with their tender.

7. On the neighbourhood aspect, the records indicate that this qualification criterion was being verified for all the tendering societies by the settling authorities and in fact for the highest bidder, the Circle Officer, Nagarbera, in his report dated 06.05.2014 indicated that the members of the Pijupara, Haridowa, Paharpara, Jaljali Matshya Bebasaya S.S. Ltd. are in the neighbourhood of the fishery.

10. In the instant cases, one of the lowest bidder was selected for settlement and all the higher bidders were ignored for reasons which are not germane for considering their competence/eligibility. Therefore, I quash the settlement order dated 17.05.2014, whereby settlement was un-deservingly granted to the 5th lowest bidder. Consequently the matter is remitted back to the settling authority to decide afresh by considering that the 3 higher bidders to have furnished valid tender. However the neighbourhood aspect of all the tenderers would be accounted for, as per the departmental verification exercise.

11. For the above reasoning and conclusion after quashing the settlement order dated 17.05.2014, the matter is remitted back to re-do the settlement exercise after due verification and application of mind in accordance with law. The authorities are also at liberty to start a de-novo process if they are unable to make the settlement on the basis of the previous NIT. It is ordered accordingly."

20. It will also be appropriate to quote the order dated 26th November, 2014 rendered in Writ Appeal No.350/2014 in its entirety in view of the interpretations sought to be advanced by the learned counsel appearing for the parties veering on observations made therein. The order reads as follows:-

"Heard the appellant and the respondents.

The appellant and the contesting respondent both submitted their tenders. It appears that the contesting respondent did not furnish the neighbourhood certificate along with his tender, it was submitted belatedly but before finalisation of the tender. The appellant quoted Rs.15 lakh-odd while the contesting respondent 47 lakh-odd. The tender of the contesting respondent was rejected. The contesting respondent filed the writ petition WP(C) No.2574/2014.

The learned single Judge found that the belated submission of the neighbourhood certificate would not invalidate the claim of the contesting respondent for considering his tender. The order of settlement in favour of the appellant is set aside. The learned single Judge also observed that insistence of income tax clearance certificate is not necessary because the department has stopped issuing such certificates, therefore an impossible condition cannot be insisted by the tendering authority. The learned single Judge remanded the matter to the settling authority for reconsideration of the claims.

We do not find any good reason to interfere in the order.

The counsel for the appellant submitted that belated submission of neighbourhood certificate will not cure the defect in submission of the tender of the contesting respondent and when the neighbourhood certificate is not submitted along with the tender it would not be a valid tender for consideration.

We do not find any good reason to agree with the contention of the counsel for the appellant. The view taken by the learned single Judge is sound and proper. No ground for interfering in the order is made by the learned single Judge. Accordingly the appeal is dismissed."

21. From a perusal of the order dated 22nd September, 2014 and, more particularly, paragraph 10 thereof, it does not appear to the Court that this Court had directed consideration of the tenders of only 3(three) bidders, whose bids were 3(three) highest bids. All that the Court had observed was that the authorities shall consider the 3(three) highest bidders taking it that they had furnished valid tender. This becomes clear from the observation of the Court that the neighbourhood aspects of all the tenderers are to be accounted for as per the departmental verification exercise. If the consideration was limited only to 3(three) highest bidders, than there would have been no occasion for the Court to have directed verification of the neighbourhood aspect in respect of all the tenderers. Therefore, I am inclined to accept the submission of Ms. P. Chakraborty that on a wrong interpretation of the order of this Court, dated 22nd September, 2014, tender of the petitioner in WP(C) No.3835/2015 was not considered. But the Court hastens to add that right of consideration has to be understood in the context of the case bearing in mind that the settlement order in favour of the petitioner in WP(C) No.3835/2015 was set aside on the ground that the settlement was granted to it un-deservingly and the higher bidders were ignored for reasons not germane. However, the submission of Ms. Chakraborty that the bids the of tenderers, whose bids were considered while passing the order dated 1st June, 2015, were not valid, cannot be accepted, in view of the directions contained in the order dated 22nd September, 2014 to treat the tenders of the 3(three) highest bidders as valid inasmuch as the said order had attained finality. The plea advanced by Ms. P. Chakraborty that Nalirpar Fishery Samabay Samitee Limited, in whose favour the order of settlement dated 1st June, 2015 was passed, is not consisting of 100% members belonging to Scheduled Caste Community, is not even otherwise sustainable, in view of the judgment of this Court in Jatindra Nath Das (supra), wherein this Court had repelled the submission that Rajbongshis cannot be regarded as members of Scheduled Caste.

22. The tender notice dated 24th January, 2014 required the following documents to be filed along with the tender:-

(a) Certificate of fishing experience;

(b) Non-encumbrance certificate;

(c) Scheduled Caste certificate;

(d) Rs.10/- postal order or Bank Draft;

(e) Number, date and Bank name of the call deposit, if deposited, being the 15% of the minimum revenue fixed for the first year;

(f) Attested copy of the certificate of registration;

(g) 2(two) attested photographs of the applicant;

(h) Audited balance-sheet; and

(i) Attested copies of balance-sheet and profit and loss account (applicable to Co-operative Society/NGO/Self Help Group).

23. Rejection of the tender of writ petitioner in WP(C) No.3283/2015 on the grounds of non-receipt of neighbourhood certificate and audited balance-sheet having not been countersigned by the authorised Government official, are also not tenable, in view of the fact that this Court had treated the tender of the writ petitioner in WP(C) No.3283/2015, who is the highest tenderer, as a valid tender. Even otherwise, in view of the tender conditions, submission of neighbourhood certificate was not a condition, let alone an essential condition of a valid tender. Likewise, the tender notice did not require that the audited balance-sheet had to be countersigned by any authority. There is also no requirement under the provisions of the Co-operative Societies Act, 2005 that audited balance-sheet has to be countersigned. The arguments of Mr. K.N. Choudhury that though Sections 81 and 84 of the Co-operative Societies Act, 2005 did not expressly indicate countersigning of the audited balance-sheet, such requirement has to be read into the provision, is without any merit.

24. Section 81 of the Co-operative Societies Act, 2005 requires the Registrar to audit or cause to be audited by auditors of the Department or by some person authorised by him the accounts prepared by every registered society and society under liquidation once at least in every year. It also provides that the co-operative society shall have the option to get the accounts audited by an auditor out of the panel of auditors consisting of Chartered Accountants maintained by the State Government, subject to the condition that accounts of such co-operative society shall have to be audited by departmental auditors at least once in 3(three) years. Sub-Section 3 of Section 81 provides that in respect of every audit of accounts, a registered society shall pay such audit fee as may be prescribed by the Registrar of Co-operative Societies and such fee shall be deemed to be outstanding dues of the society. Section 84 provides submission of audit report, which must include statements as enumerated therein.

25. It is not in dispute that the petitioner in WP(C) No.3283/2015 had submitted an audit report. The said audit report was signed by the Senior Inspector/Auditor of the Co-operative Societies. Dispute raised with regard to countersigning by the Sub-Registrar or by the lack of it in the return of audit fees submitted by the

petitioner society in WP(C) No.3283/2015 is not really material. The society had paid the audit fees vide treasury challan dated 5th October, 2013 towards the Government audit fees for the year 2012-13, relevant for the settlement process in question, long before the tender notice was issued on 24th January, 2014.

26. At this stage, it will be appropriate to deal with the contentions of Mr. K.N. Choudhury with regard to the order dated 26th November, 2014 passed in Writ Appeal No.350/2014. The Division Bench had, in clear terms, rejected the contention of the appellant that belated submission of neighbourhood certificate will not cure the defect of the tender of the contesting respondent. It is appropriate to remember that there was no requirement of submission of neighbourhood certificate. The Division Bench also held that the view taken by the Single Bench to be sound and proper. Reliance placed in the judgment of the Apex Court in Synthetics and Chemicals Limited and Anr. (supra) by Mr. Choudhury to emphasise that a decision which is not express or is not founded on reasons cannot be deemed to have a binding effect, is not attracted in the facts and circumstances of the case.

27. The concept of "neighbourhood" is relevant as the proviso to Rule 12 of the Rules mandates settlement of 60% category fishery with special categories of Co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the tender system and thus, to be eligible to be settled with a 60% category fishery, a Co-operative Society, a Non-Government Organization or a Self Help Group must consist of 100% actual fishermen in the neighbourhood of the fishery concerned.

28. In Arabinda Das (supra), in the context of Rule 12, as it was then existing, a Full Bench of this Court had laid down that society being in the neighbourhood of the fishery concerned, is one of the conditions precedent to be eligible to get direct settlement. It is to be noted that in view of subsequent amendments, the power of direct settlement is no longer available with the State Government.

29. In Brahmaputra Part-II Mach Mahal Samabai Samity Limited (supra), this Court while considering the issue of neighbourhood in the context of the proviso to Rule 12, whereby the State Government could settle any registered fishery, otherwise than tender system, had stated in paragraphs 13, 14 and 15 as follows:-

"(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 other 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 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 a 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.

(15) Thus, no mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word as above, there is evidently an element of flexibility and, therefore, while dealing with the proviso to Rule 12 as above, it would, in our opinion, neither be permissible nor desirable to ascertain the neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery co-operative society is in the vicinity and 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 centimeters and metres, would render the proviso outiose in a given fact situation."

30. Thus, the concept of neighbourhood cannot be expressed with any definite idea of distance and there is an element of flexibility. There should not be any attempt to measure neighbourhood by a measuring tape and the aspect of neighbourhood has to be considered in a pragmatic manner so as to advance the object and purpose of the Rules.

31. Although in the order dated 22nd September, 2014, there is mention of a report of the Circle Officer, Nagarbera on the neighbourhood aspect, but as submitted by Mr. Bora, the same is not found by him in the files. This Court also did not find such report. It is to be noted that despite recording availability of a report of the Circle Officer, Nagarbera on neighbourhood aspect, this Court vide order dated 22nd September, 2014 had directed that neighbourhood aspect of all the tenderers would be accounted for as per the departmental verification exercise.

32. File No.FISH.70/2008/Pt, produced by Mr. R.K. Bora, learned State counsel, from pages 211 to 213, indicate that by letter dated 4th March, 2014, the Deputy Secretary to the Government of Assam, Fishery Department requested the Deputy Commissioner, Kamrup (R) to conduct a survey regarding the neighbourhood status of the tenderers and furnish survey report to facilitate

settlement of the fishery within 1(one) month. In response thereto, the Additional Deputy Commissioner, Kamrup (R), Amingaon vide his letter dated 18th March, 2014 requested the Circle Officer, Nagarbera/Chamaria Revenue Circle under Kamrup District and the Circle Officer, Baghbar/Chenga/Barpeta Revenue Circle under Barpeta District to conduct a survey in respect of all the 6(six) tenderer societies within their respective jurisdiction as to whether they belong to the neighbourhood of the concerned fishery and to furnish report within 1(one) week from the date of receipt of the letter. By another letter dated 28th April, 2014, the Deputy Secretary to the Government of Assam, Fishery Department, requested the Deputy Commissioner, Kamrup (R) to submit information regarding neighbourhood status of all the tendering societies within 15(fifteen) days. Similar letter was issued as "reminder II/most urgent" to the Deputy Commissioner, Kamrup (R) for submission of required information regarding neighbourhood status of all tendering societies. Note-sheet at page 22 of the said file indicates that neighbourhood certificate was not received and as the fifth highest tenderer fulfils all the requirements, a note was put up for granting settlement to it. Accordingly, order dated 17th May, 2014 was issued settling the fishery with the petitioner in WP(C) No.3835/2015.

33. Thus, it is seen from the records that the settling authority had sought for survey report on the neighbourhood status of the tenderers to facilitate settlement of the fishery within 1(one) month from the date of issuance of the letter dated 4th March, 2014, which, however, was not received and without receipt of such report, the order of settlement dated 17th May, 2014 was passed in favour of the writ petitioner in WP(C) No.3835/2015. Records do not reveal undertaking of any such exercise by the settling authorities, as directed by this Court vide order dated 22nd September, 2014. The impugned order dated 1st June, 2015 also does not refer to undertaking of any exercise with regard to the neighbourhood aspect in question.

34. In view of the above discussions, the impugned order of settlement dated 1st June, 2015 is liable to be interfered with and as such, the same is set aside and quashed. The settling authority will consider the cases of all the tenderers and it will not be open for the settling authority to question the validity of the first 3(three) highest tenderers, as this Court, by the order dated 22nd September, 2014, passed in WP(C) No.2790/2014, WP(C) No.2574/2014 and WP(C) No.2865/2014 had directed their tenders to be valid. The settling authority, in terms of the order of this Court dated 22nd September, 2014, will account for neighbourhood aspect of all the tenderers by obtaining appropriate reports and then settle the fishery in accordance with law, within a period of 45(forty-five) days from the date of receipt of a certified copy of this order.

35. Consequently, WP(C) No.4554/2015, WP(C) No.3835/2015 and WP(C) No.3283/2015 are allowed in terms of the observations and directions contained herein-above. As the settlement order in respect of the writ petitioner in WP(C) No.4133/2015 is set aside, this writ petition is dismissed. No costs.

36. Records produced by Mr. R.K. Bora, learned State counsel, be returned back to him.

