(2006) 08 GAU CK 0030

In the Gauhati High Court

Palan Chandra Barman APPELLANT

Vs

Assam Fisheries Development Corporation and Others RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Citation : (2007) 2 GLR 631

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This matter was heard in the column of motion hearing on 31.7.2006. Upon hearing the parties on the basic plea of the petitioner that the settlement of the fishery called Tariachara Group Min-Mahal, in the district of Dhubri has been made with the caveator/respondent No. 4 on irrelevant and extraneous consideration at the behest of the Minister, Fishery, Government of Assam. Mr. G. Uzir, learned Standing Counsel, Assam Fishery Development Corporation (AFDC) representing the respondents Nos. 1. 2 and 3 was requested to obtain the records for perusal of this court.

2. Mr. Uzir, learned Standing Counsel, AFDC has produced the file and the learned Counsel for the petitioner as well as the respondent No. 4 have made their submissions after going through the file and have agreed for final disposal of the writ petition on the basis of the materials on record.

3. The petitioner is a contender for settlement of the fishery and so also the respondent No. 4. In response to a tender notice inviting tenders for settlement of the fishery fixing the last date as 7.4.2006 was issued, the petitioner and others submitted their tenders. The settlement was to be made for 7 years. The corporation received altogether 8 tenders. Their respective names with the bid value are indicated below:

4. From the above, it will be seen that the fight in the instant writ proceeding is between the 3rd and the 4th highest bidders i.e. the petitioner and the

respondent No. 4. As per the averments made in the writ petition supported by the Annexure-1 and 2 letters dated 26.5.2006 and 17.6.2006, upon opening the tenders on 24.5.2006, some anomalies were detected in the tender process and accordingly, some of the tenderers submitted representation before the respondent No. 2 i.e. the Managing Director of the Corporation for initiating fresh tender process. However, the settlement having been made in favour of the respondent No. 4 at his quoted rate of Rs. 21,37,000 for the period of 7 years i.e. from 2006-07 to 2012-2013, the petitioner has filed the instant writ petition.

5. The grounds on which the settlement order has been challenged is that the settlement has been made on irrelevant and extraneous consideration and at the behest of the Minister of Fishery, whose interference in such matter of the corporation, an autonomous body is unwarranted. Another ground urged is that the petitioner''s bid being higher than the respondent No. 4, he could not have been ignored without assigning any reason.

6. Having regard to the nature of grievance raised in respect of the settlement made in favour of the respondent No. 4, the records were called for and I have gone through the records (File No. AFDC 595/06) to ascertain the correctness or otherwise of the allegations made. The records have revealed that the committee constituted for scrutiny of the tenders found all the aforesaid 8 tenders valid and accordingly put up a note to that effect on 9.6.2006. While processing the matter, it was recorded in the file that the bid offered by the tenderer are in the much higher side compared to the last year''s bid. It was also recorded that although the tenders were to be opened on 24.5.2006, but the same was not done and there was some complaints for belated opening of tenders. An apprehension was expressed that there might be default in payment of kist money, revenue by the settlement holder having regard to the high bid value. It was also recorded that compared to last settlement for 5 years at a revenue of Rs. 4,94,520 with the yearly average revenue of Rs. 98,904, the rates quoted by the tenderers for the present term was much in the higher side.

7. With the aforesaid note dated 15.6.2006, the file was put up to the Minister for his necessary order, who in turn asked the Secretary, Fishery Department to examine the matter. The Secretary by his note dated 14.7.2006, while broadly agreeing that all the 8 tenderers have quoted very excessive rates, which might eventually result in default in payment, but favoured the respondent No. 4 without assigning any reason. Only reason assigned is that his rate is reasonable, which on the face of it contrary to his own finding that all the tenderers have quoted excessive rates. On the basis of this note, the Minister, ordered for settlement of the fishery with the respondent No. 4 and the Secretary, in turn ordered the Managing Director of the Corporation to issue order in favour of the respondent No. 4. This is how, the impugned settlement order has been issued.

8. From the above, it will be seen that all the three grounds on which the writ petition is founded towards assailing the impugned settlement order have been established. Firstly, no reason has been assigned towards preferring the 4th

highest bidder over the 1st, 2nd and 3rd highest bidder. If the corporation was interested in revenue, the 1st highest bidder ought to have been preferred. Secondly, the Secretary, himself having said that the rates quoted by all the 8 tenderers are by far excessive, could not have held the rate offered by the respondent No. 4 to be reasonable. If his rate was reasonable, it is not understood as to how the rates offered by others including the petitioner and excluding the 1st and 2nd highest bidder could be unreasonable.

9. This now leads us to the basic allegation that there was extraneous consideration at the behest of the Minister. There is no dispute that the corporation is an autonomous body and interference in such matter by the Secretary, Fishery Department and the Fishery Minister is unwarranted. In the matter of settlement of fishery and for that matter in any kind of settlement through tender system, it is always advisable to have a tender committee to evaluate the tenders and the viability of the rates offered and thereafter to make recommendation in favour of the most suitable tenderer. In the instant case, the three members committee simply forwarded the tenders indicating the rates offered and stating that all the tenders were valid. Thereafter, the file was put up before the Minister, who in turn asked the Secretary, Fishery Department to furnish note. The reflection in the note has been indicated above. Thus, the entire process was initiated and finalized at the behest of the Minister without any say of the corporation. The Managing Director of the Corporation was only made instrumental for issuance of the settlement order, after the aforesaid note of the Secretary was approved by the Minister.

10. It is in the above context, it is the specific case of the petitioner that the settlement has been made as per the dictation of the authority outside the purview of the functioning of the corporation. Even if, it could be shown that the Secretary, Fishery Department as well as the Minister, Fishery have some control over the corporation, I am of the considered opinion that the settlement could not have been made in favour of the respondent No. 4 in the manner and method in which it has been so done. No apparent valid reason has been assigned towards making the settlement in favour of the respondent No. 4. While holding all the rates to be by far excessive compared to the rate of the earlier period of settlement, the Secretary could not have held in the same breath that the rate offered by the respondent No. 4 was a reasonable one and that too without considering the rates offered by others.

11. In view of the above, the writ petition deserves to be allowed on all counts, which I accordingly do. The impugned order of settlement dated 27.7.2006 settling the Tariachara Group Min-Mahal in favour of the respondent No. 4 is set aside and quashed. The respondent/corporation shall now initiate fresh process for settlement of the fishery in accordance with law and it is expected that there would be no interference with the independence of the corporation except in accordance with law.

12. Writ petition is allowed. There shall be no order as to costs.

