(2005) 04 GAU CK 0069

In the Gauhati High Court

Case No : Writ Petition (C) No. 1004 of 2005

Raja Das APPELLANT

Vs

Assam Fisheries Devp. Corporation and Others RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Citation : (2005) 3 GLT 544

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : P.C. Deka, N. Saikia and N. Deka, for the Appellant; S.C. AFDC, G. Uzir and B.D. Goswami, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—This writ petition has been filed by the Petitioner, who was the highest bidder, challenging the settlement of Bazduar Khaoli Fishery in the District of Lakhimpur by the Assam Fisheries Development Corporation in favour of Respondent No. 3.

2. The fact leading to the filing of the present writ petition is that a notice inviting tender was issued by the Assam Fisheries Development Corporation (hereinafter referred to as "the Corporation") for settlement of Bazduar Khaoli and Bordubimudoi Fishery on 27.12.2004 for a period of 7 (seven) years i.e. from the financial year 2005-2006 to 2011-2012, alongwith the said notice inviting tender, the terms and conditions of the tender notice was also issued governing the conditions of the tender. The Petitioner and also the Respondent No. 3, namely, the Bapkhat Jibikapath Meen Samabai Sarnity Ltd. alongwith 4 Ors. submitted the tender. Both the writ Petitioner and Respondent No. 3 claiming to be the registered co-operative societies, submitted their tenders offering Rs. 6,37,007/- and Rs. 5,23,118/- respectively. The Corporation, thereafter vide order dated 12.1.2005 settled the said fishery in favour of Respondent No. 3 at Rs. 6,37,007 that is the amount, which was offered by the writ Petitioner. Hence, the present writ petition has been filed by the Petitioner

challenging the said order of settlement passed by the Corporation in favour of Respondent No. 3.

3. I have heard Mr. N. Deka, learned Counsel for the Petitioner, Mr. Gautatn Uzir, learned standing Court appearing on behalf of the Corporation and Mr. B.D. Goswami, learned Counsel for the Respondent No. 3.

4. Mr. Deka, learned Counsel for the Petitioner submits that the tender submitted by the Petitioner being valid in all respect, as he has fulfilled all the conditions stipulated in that notice inviting tender, the Corporation has arbitrarily rejected his tender papers oil the ground that the same does not bear the signature of a Gazetted Officer. According to Mr. Deka as the requirement of having tender papers counter signed by a gazetted officer is not a condition stipulated in the tender notice, the same cannot be a ground for rejection of the tender. In any case, Mr. Deka, learned Counsel for the Petitioners submits that even if the requirement of having tender papers counter signed by a gazetted officer is taken as the condition for submission of tender papers, the same being not an essential condition, his tender paper cannot be rejected by the Corporation. The value quoted by the Petitioner being the highest, the fishery in question ought to have been settled in his favour and the Corporation having rejected the tender papers submitted by the Petitioner and settled the fishery in favour of Respondent No. 3 acted arbitrarily and unreasonably.

5. Mr. Uzir, learned Counsel appearing on behalf of the Respondent Corporation submits that though it is not stipulated in the terms and conditions of the NIT that the tender papers must be signed in presence of the gazetted officer and the same has to be counter signed by such an officer, as the tender forms has that stipulation, any tender papers submitted by any tenderer without the same being counter signed by such gazetted officer cannot be treated as a valid tender and hence, the Corporation has rightly rejected the tender papers submitted by the Petitioner as invalid though the Petitioner offered the highest bid. According to Mr. Uzir, the Corporation with a view not to loose the revenue has decided to settle the fishery in favour of Respondent No. 3; he being the valid highest tenderer, at the rate offered by the Petitioner. According to Mr. Uzir, the object of having the counter signature of the gazetted officer in the tender papers and the requirement of putting the signature by the tenderer before such gazetted officer being to ascertain the genuineness of the tenderer, the said condition cannot be termed as non-essential condition and therefore the Petitioner''s tender was rightly rejected by the Corporation.

6. Mr. B.D. Goswami, learned Counsel appealing on behalf of Respondent No. 3 submits that through there were 6 Nos. of tenderers, who submitted tenders for settlement of the fishery in question, the Respondent No. 3 was found to be the highest valid tenderer and therefore the authority has rightly passed the order of settlement in favour of Respondent No. 3 by rejecting the tender papers submitted by the Petitioner as the same does not bear the signature of the gazetted officer and as the same was a condition for valid tender. Mr. Goswami

has further submitted that the Corporation with a view not to loose any revenue has, in fact, settled the fishery in favour of Respondent No. 3 at a bid offered by the Petitioner, which was the highest bid. Therefore, no illegality has been caused by the Corporation in passing the order of settlement.

7. I have considered the submissions put forward by the learned Counsel for the parties and also perused the pleadings of the parties including the records produced by the Corporation.

8. The Corporation on 27.12.04 issued the notice inviting tenders for settlement of two fisheries including Bazduar Khaoli and Bordubimudoi Fishery for the financial year 2005-2006 to 2011-2012 i.e. for 7 (seven) years. In the said notice inviting tender, it was informed to all the intending tenderers that the terms and conditions for such tender could be available in the office of the Managing Director. The terms and conditions of such tender requires the filling up of the requisite form giving full details and enclosing the following documents:

(a) Certificate showing that he is an experienced fisherman (Experience certificate of catching fish),

(b) Bakijai clearance certificate from the Deputy Commissioner of the District,

(c) Certificate of belonging to schedule caste/Maimal community and certificate of being professional fisherman/fisheries,

(d) Indian Postal order of Rs. 10/-

(e) Earnest Money Deposit of 15% of the minimum fixed rate of the 1st year of the Corporation,

(f) Registration Certificate of the Co-operative society,

(g) Income Tax Clearance certificate,

(h) Passport size photograph of the Individual tenderer. If the tenderer is a cooperative society, photograph of the authorized person,

(i) The balance sheet and profit and loss account of the previous year of the cooperative society. If the aforesaid documents are not submitted, the tender may be rejected. A tender of a tenderer indebted either to the Corporation or the Government shall not be considered.

9. It has further been stipulated that the tender must be submitted in sealed envelope and to be deposited in the box kept in the office of the Managing Director of the Corporation. There is Anr. clause stipulating that the Corporation shall have the right to accept or reject any tender without assigning any reason and the decision of the Corporation in that regard shall be final.

10. The Corporation in terms of the directions issued by the Full Bench of this Court in 129 Haria Dablong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Devp. Corporation Ltd. and Others, framed the guidelines in the meeting of the

Board of Directors held on 14.9.2001. The said guidelines for settlement of fishery is quoted below:

1. As per the judgment of this Court, the management of the fisheries would also mean settlements of the fisheries.

2. The fisheries should be given settlement for five years.

3. Minimum revenue should be fixed for every fishery and in no case settlement should be given below the minimum revenue.

4. All the fisheries should be given settlement by tender system and on satisfaction of the conditions of the tenders, the settlement should be given to the highest bidder.

5. The settlement of the fisheries will remain open for the Co-operative societies comprised of 100% fisherman communities and for actual fisherman of scheduled caste communities. However as regards the fisheries of the Barak Valley, the societies comprised of fisherman of ''Maimal'' community will be eligible for submitting tender.

6. On satisfaction of all the conditions of tender, preference will be given to the societies comprised of 100% actual scheduled caste fisherman (Maimal community wherever applicable) provided the tender value of the society is within 7.5% of the highest bid and if the society is selected, the settlement is to be taken on the highest bid value.

7. If more than one society submitted tenders then on satisfaction of the Clause 6, the society of highest bid will be selected.

8. Even on calling for tenders for settlement of a fishery, if no tender is received from societies comprised of scheduled caste or maimal community, settlement may be given to person or society of other community by tender.

9. In no circumstances direct settlement be given.

10. No settlement be given to the defaulter of the Government or the corporation.

11. Yearly revenue be paid in four instalments. 1st instalment be paid at the time of settlement @ 15% of the total revenue, 2nd instalment of 35% be paid within the month of September, 3rd instalment of 25% be paid within 31st October and the last instalment of 25% be paid within 30th November. Moreover alongwith the tender, 15% of the minimum revenue of the first year be deposited as earnest money. If instalments are not paid timely, the period of payment of instalment may be enhanced to a maximum period of one month if the settlement holder makes an application asking for time for payment of instalments and he is agreeable to pay the due revenue with interest @ 15% per annum as fine.

12. The tenderer should belong to the district in which the fishery is situated.

13. Alongwith the tender the Bakijai certificate, income tax certificate, caste certificate, registration, experience certificate, photograph of the tenderer (in case of society the photograph of the authorized representative), in case of society the account of the previous year alongwith the Audit Report should be submitted.

14. It would be compulsory for the settlement holder to apply improved method of fishery and violation of this condition would mean violation of the contract.

15. In no circumstances the earnest money of 15% deposited by the selected tenderer shall be adjusted with the instalments of revenue. This amount shall be considered for being released after receipt of report of proper maintenance of the fishery from the officer-in- charge of the fishery and concerned engineer. In case it is not proved that the fishery was properly managed, the said earnest money shall be confiscated and the settlement of the fishery for the next year shall not be renewed.

16. It will be compulsory to do insurance of the engaged fisherman for their social security.

17. The share of the fisherman shall not be less than 50% of the total income of the fishery.

18. Only the fishing community people shall be engaged for the fishery. The income of the local fisherman can not be hampered by bringing fisherman from outside.

19. Ordinarily the settlement period of no fishery shall be extended. However, in appropriate cases, on satisfaction of certain conditions, the extension of settlement period may be considered for a maximum period of 2-3 (Two to Three) years.

If application is received for extension of settlement period due to incurring losses in the fisheries the settlement shall be extended increasing the revenue after making due enquiry of the reasons for losses and on getting reports from the Deputy Commissioner and Deputy Project Director (AFDC), the Technical Manager and only after taking permission of the Chairperson of the Corporation and Managing Director and getting approval of the Board of Directors thereon, if the past activity of the settlement holder is satisfactory and it is in the interest of the fisherman and the technical aspect of the fishery.

20. In no circumstances revenue shall be exempted.

21. In the event of cancellation of settlement for failure to give revenue or for any other reason, if the settlement expires within the year for which the settlement was given, for the rest of the period of the said year, settlement can be given to other persons temporarily by the Managing Director of the Corporation on payment of revenue at the earlier rate of revenue, to look after the fishery for the rest of the year, taking into account the fishing period and the

interest of the Corporation. But in no circumstances, the period of the settlement shall exceed the last date of the financial year.

The guidelines shall not be applicable for the fisheries, which had already been given settlement if the Court has not given verdict otherwise. These new guidelines shall be fully applicable in case of new settlement. The Board of Directors shall be authorized to add, amend or change these guidelines and any amendment or changes made from time to time shall be applicable.

22. As regards extension of the settlement period of fishery and in giving settlement of fisheries, the Managing Director shall take action after taking approval of the chairperson to all the record.

11. A bare perusal of the terms and conditions of the NIT as well as the guidelines framed by the Corporation for settlement of fisheries reveals that there is no condition either in the terms and conditions of the NIT or in the said guidelines requiring any tenderer putting his signature before the gazetted officer and requiring such tender papers to be countersigned by such gazetted officer. The guidelines framed by the Corporation also stipulates that all the fisheries should be given settlement by tender system and on satisfaction of the conditions of tender, settlement would be given to the highest bidder. Therefore, tender papers submitted by any of the tenderer be held to be invalid if any of the conditions stipulated in the terms and conditions of the tender is violated or not fulfilled by any tenderer.

12. In the instant case, it is evident from the record produced by the Corporation that the amount offered by the Petitioner, though was the highest, the same was rejected as invalid and the settlement was not given in his favour only on the ground that the tender papers submitted by the Petitioner was not counter signed by the gazetted officer. It is also evident from the tender paper issued by the Corporation that there is a provision for signing the tender papers to be submitted by the tenderers in presence of Gazetted Officer and in token of which the gazetted officer is required to put his signature.

13. Now it is to be seen whether such stipulation in the tender papers requiring the tenderer to put his signature in the tender papers in presence of the gazetted officer and countersigning the same by such gazetted officer is a requirement for having a valid tender and whether such condition was stipulated in the terms and conditions of the NIT issued by the Corporation. It is evident from the NIT that it does not have any such condition, nor the guidelines framed by Corporation for settlement of the fishery has any condition requiring any tenderer to put the signature in the tender papers in presence of a gazetted officer and requiring such gazetted officer to put his signature in token thereof.

14. The tender papers submitted by any tenderer can be invalid only, if any of the conditions of the NIT or the guidelines issued for that purpose has been violated. The tenderers and also the Corporation are bound to adhere to the terms and conditions of such NITs and also the guidelines. Tire Corporation

cannot put any condition to treat a tender paper invalid, unless such condition is reflected in the terms and conditions of the NIT or in the guidelines issued for that purpose by the Corporation. The terms and conditions of the NIT must also stipulate that in case of violation of such condition, the tender paper submitted by any of the tenderer is liable to be rejected as being not valid. As discussed above, there is absolutely no condition either in the NIT or in the guidelines issued by the Corporation for that purpose requiring any of the tenderer to put his signature in presence of a gazetted officer and the counter signature of such tended paper by any of the gazetted officer.

15. As per the guidelines framed by the Corporation the sealed tenders are required to be invited for settlement of any fishery. The Corporation accordingly invited the tender in sealed cover. The object of inviting such tender in sealed cover is to maintain the secrecy about the rate offered by any tenderer. Even assuming that the tenderer has to put his signature in the tender papers in presence of a gazetted officer and such gazetted officer is required to counter sign the same, as mentioned in the tender papers, such condition cannot be held to be the essential conditions for the purpose of making a tender papers valid. As stated above, the terms and conditions of the NIT stipulates that the tender paper must be filled up in the requisite form giving full details. The Petitioner, in fact, has given full details in the tender papers, but his tender paper was not accepted and was rejected solely on the ground that it does not bear the signature of the gazetted officer. The very purpose of having the sealed tender would be defeated if such requirement of having the tender papers submitted countersigned by a gazetted officer, is accepted as an essential condition for a valid tender as in that case, there is every possibility that the rate quoted by any of the tenderer would be known to other, which would be contrary to the object of having sealed tender and in that case there would absolutely be no secrecy about the rate quoted by any of the tenderer. That being the position, the requirement of having counter signed by a gazetted officer or putting the signature by a tenderer before such gazetted officer cannot be termed as an essential condition for a valid tender. Therefore action on the part of the Respondent in rejecting the tender papers submitted by the Petitioner on the said ground cannot be held to be legal and valid. Moreover, there is no condition in the NIT or in the guidelines framed by the Corporation for that purpose for having such counter signature by any gazetted officer and hence, the tender papers submitted by the Petitioner also cannot be rejected for not complying with such requirement.

16. The Corporation in the guidelines framed by it for the purpose of settlement of the fishery has decided to settle the fishery in favour of the highest bidder on satisfaction of the condition of the tender. It has already been held that the requirement of having the counter signature of the gazetted officer is not a condition of the tender as the same has not been stipulated in the terms and conditions of the NIT or in the guidelines and therefore the tender papers submitted by the Petitioner cannot be held to be invalid. The action on the part of

the Corporation in rejecting the tender paper submitted by the Petitioner is therefore arbitrary.

17. In view of the above discussion, the contention of the learned Counsel for the Corporation as well as the Respondent No. 3 could not be accepted.

18. In view of the above, the order of settlement dated 12.1.2005 is liable to be set aside, which I hereby do. The Corporation is directed to reconsider the tender papers submitted by the tenderers and to pass fresh order of settlement by scrutinizing all the tender papers strictly in terms of the notice inviting tender and also the guidelines issued by the Corporation in that regard. Such decision is directed to be taken within a period of one month from today. For the said period of one month, as the Respondent No. 3 is in the possession of the fishery, he maybe allowed to continue with the possession of such fishery.

19. The Writ petition is accordingly allowed with the above observations and direction.

20. No costs.

