

(2024) 04 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 7384 Of 2018

Subhas Das

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Citation : (2024) 04 GAU CK 0042

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M. Mahanta, S.R. Barua, P. Sarma, A.K. Sahewalla

Final Decision : Disposed Of

Judgement

1. Heard Mr. M. Mahanta, learned counsel for the petitioner. Also heard Mr. P. Sarma, learned Standing Counsel, AFDC for the respondent nos.2, 3 & 4. Mr. S.R. Barua, learned counsel appears for the respondent nos.1 & 6, while Mr. A.K. Sahewalla, learned counsel appears for the respondent no.7. No one appears for the respondent no.5 despite the counsel having appeared earlier and the respondent no.5 having filed affidavit-in-opposition.

2. The challenge in the writ petition is to the settlement of the Gelachinga Fishery with the respondent no.5 for a period of 7 (seven) years, w.e.f. 01.04.2018 till 31.03.2025, at the respondent no.5's bid amount of Rs.1,13,05,000/-.

3. The respondent no.5 has submitted his affidavit dated 22.08.2019. However, the AFDC, i.e. the respondent nos.2 to 4 have not submitted any affidavit till today, even though the writ petition was filed on 10.10.2018. This Court has granted the AFDC, i.e. the respondent nos.2 to 4, four opportunities to produce the official records for disposal of the case. Today, Mr. P. Sarma, learned Standing Counsel, AFDC submits that the official records are untraceable and accordingly, vide letter dated 22.04.2024, the Project Manager, AFDC has submitted an FIR with the police for registration of a case, in respect of the untraceable official

records pertaining to the present case.

4. Considering all the above facts and keeping in view the fact that the writ petition has been pending in this Court for the last 6 (six) years, this Court is of the view that the present matter should be decided on the basis of the materials on record, as has been reflected in the order dated 02.04.2024 passed by this Court.

5. The petitioner's counsel submits that the bid of the respondent no.5 for settlement of the Gelachinga Fishery pursuant to the Tender Notice No.01/2018 dated 25.05.2018 (hereinafter referred to as the NIT) was Rs.1,13,05,000/-. On the other hand, the petitioner's bid amount was Rs.99,40,000/-.

6. The NIT dated 25.05.2018 was for settlement of the fishery for seven years. The case of the petitioner is that the petitioner and the respondent no.5 had passed the Technical Bid Evaluation Stage and it was only due to the higher bid amount offered by the respondent no.5 that the fishery was settled with the respondent no.5.

7. The petitioner's counsel submits that the fishery could not have been settled with the respondent no.5, as the respondent no.5's tender documents were not in compliance with the eligibility criteria provided in the NIT. He submits that the respondent no.5 did not have the required 3 (three) years experience for running a fishery/fish farming, as required under Clause 2.7 of the NIT. Further, the respondent no.5 was a defaulter, as he was having a Bakijai case before the Certificate Officer, Golaghat. Thus, the Bakijai Clearance Certificate given by the respondent no.5 was doubtful and as such, he could not have cleared the hurdle of Clause 5.4 of the NIT. He also submits that the Comparative Statement made at the time of opening of the Technical Bid, was to be signed by the official of the Corporation and the tenderer in terms of Clause 9.2 of the NIT. However, the Comparative Statement made by the State respondents did not contain the signature of the respondent no.5. Further, the affidavit to be submitted by the tenderers was to be made on Non-Judicial Stamp Paper of Rs.20/-, while the affidavit of the respondent no.5 was made on Non-Judicial Stamp Paper worth Rs.15/-. He submits that as the mandatory/essential conditions of the tender documents were not complied with, the fishery could not have been settled with the respondent no.5. He accordingly prays that the settlement of the fishery with the respondent no.5, along with any subsequent contract agreement executed by the parties, should be set aside and the petitioner who is the second highest tenderer, should be given settlement over the fishery, for the remaining period of the term pursuant to the NIT.

8. The affidavit of the respondent no.5 is basically to the effect that there is no requirement of furnishing Experience Certificate for operating a fishery/fish farming for a minimum period of three years in terms of Clause 5 or Clause 2.7 of the NIT. Further, Clause 2.7 of the NIT is not a mandatory or essential condition, for being eligible to participate in the tender process. With regard to

the Bakijai proceeding against the respondent no.5, the affidavit of the respondent no.5 states that a compromise settlement in respect of a loan amount taken by the respondent no.5 from the SBI, Dergaon Branch, Golaghat, had been made before the National Lok Adalat on 22.04.2018. Though the respondent no.5 had offered to deposit the outstanding dues in the Bank, the Bank had taken some time to close the loan account of the respondent no.5, which was ultimately closed on 07.08.2018.

9. Mr. P. Sarma, learned Standing Counsel, AFDC submits that Clause 2.7 of the NIT is a mandatory/essential condition, which all the tenderers would have to qualify. He however submits that the Certificate dated 28.01.2019 issued by the District Fishery Development Officer, Golaghat certifying that the respondent no.5 has experience in fishing at various Beels managed by other lessees, may cover the case of the respondent no.5 in terms of Clause 2.7 of the NIT. He however submits that the respondent no.5 had been settled with the fishery due to the respondent no.5's bid being the highest bid. He also submits that the official records being untraceable, the matter has been reported to the police for investigation and necessary action.

10. Mr. S.R. Barua, learned counsel for the respondent nos.1 & 6 submits that on going through the Certificate issued by the Assam Fishery Development Corporation Limited in vernacular, in favour of the petitioner, regarding his experience for management of a fishery, coupled with Clause 2.7 of the NIT, which is in vernacular, shows that the tenderer has to have experience in the management/running of a fishery/fish farming.

11. Mr. A.K. Sahewalla, learned counsel for the respondent no.7 submits that he has got no comments to make in this case.

12. Clause 2.1, 2.7, 5.4 and 9.2 of the NIT states as follows :

"Clause 2.1 - The tenderer must be an actual fisherman belonging to Schedule Cast Community/Maimal Community of Barak Valley.

Clause 2.7 - The tenderer must have at least 3 (three) years of minimum experience of running a fishery/fish farming.

Clause 5.4 – Upto date Bakijai Clearance Certificate.

Clause 9.2 - The documents submitted along with the tenders will be announced at the time of opening the tender and the information will be recorded by the Corporation. A corporative statement is to be prepared containing information about the documents received by the Corporation from the tenderers by the Corporation and shall be jointly signed by the official of the Corporation and the tenderer and a copy of the same will be given to the tenderer. If any complaint regarding missing and tempering of document is filed subsequently, the Corporation shall not be liable and in this regard, the tenderer shall not be institute any case before the Hon'ble Courts. However the information/certificates mentioned in the comparative statement will be treated to be

received along with the tenderers only. But about the correctness of these information or certificates shall not be treated as recognized by the Corporation. Because at the subsequent stage, the viability of the same will be explained by the Tender Selection Committee."

13. A perusal of Clause 2.1 and 2.7 of the NIT clearly shows that not only must the tenderer be an actual fisherman who knows fishing, but he should also have experience in running a fishery/fish farming i.e, the tenderer must also have experience in the management/running of a fishery/fish farming.

14. The Experience Certificate submitted by the respondent no.5, which has been issued by the District Fishery Development Officer, Golaghat on 28.01.2019 states as follows :

"TO WHOM IT MAY CONCERN

This is to certify that Sri Rabindra Das S/o Late Munindra Das of Village : Upper Temera, P.O.:- Badulipar under Bokakhat Development Block District : Golaghat has experience in fishing at various beels, fisheries etc. since last 3 (three) years as certified by the Govt. Gaon Burha, Lessee of Sankar Beel as well as an affidavit has been submitted by Sri Narayan Das, Lessee Sankar Beel in this regard.

I wish him success in his life."

15. A perusal of the Certificate issued by the District Fishery Development Officer (DFDO) shows that the respondent no.5 has experience in fishing in two fisheries, which had been leased out to the Government Gaonburah and to Sri Narayan Das. The said Certificate does not show that the respondent no.5 has been a lessee of any fishery/fish farming or has been operating/running a fishery/fish farming. The Certificate of the DFDO implies that the respondent no.5 has been working for some persons, who are the lessees/operators of the fishery/fish farm. As Clause 2.7 is a mandatory condition of the NIT, the settlement of the fishery with the respondent no.5, who has not furnished any proof of experience of managing/running a fishery, is not sustainable, as the respondent no.5 has not fulfilled Clause 2.7 of the NIT.

16. In respect of whether the respondent no.5 was a defaulter and whether his tender should have been disqualified, for not being in compliance with Clause 5.4 of the NIT, it is seen that the NIT dated 25.05.2018 required the tenderers to submit their bids on or before 20.06.2018. On the other hand, the petitioner's submission that the respondent no.5 could not have submitted his tender due to being a defaulter on the basis of the Bakijai proceedings before the Certificate officer, Golaghat shows that the Bakijai proceedings pertain to the month of July, 2018. In terms of paragraph-10 of the affidavit-in-opposition filed by the respondent no.5, a compromise settlement in respect of the loan amount taken by the respondent no.5 from the SBI, Dergaon Branch, Golaghat had been made before the National Lok Adalat on 22.04.2018 and the loan amount ultimately

closed on 07.08.2018. In view of the Bakijai proceedings having started against the respondent no.5 only from 12.07.2018, as per Annexure-11 of the writ petition, it cannot be said with certainty that the respondent no.5 was a defaulter at the time of submission of the tender documents.

17. With respect to the stand taken by the petitioner that the respondent no.5 did not sign the Comparative Statement at the time of opening of the Technical Bid, the said issue could have been clarified only when the official records were looked into. However, as stated in the earlier paragraphs, the official records are untraceable.

18. With respect to the stand of the petitioner that the respondent no.5 did not submit his affidavit on Non-Judicial Stamp Paper of Rs.20/-, the respondent no.5 in his affidavit has denied that there was any defect in the tender documents submitted by him. The respondent no.5, in his affidavit-in-opposition, has not made any categorical averment with regard to whether the affidavit submitted by him was made on Non-Judicial Stamp Paper of Rs.20/- or Rs.15/-.

19. The above being stated, the fact remains that Clause 2.7 of the NIT was a mandatory/essential condition which all the tenderers were required to fulfill. As the respondent no.5 did not fulfill Clause 2.7 of the NIT, the settlement of the fishery with the respondent no.5 is not sustainable. The same is accordingly set aside. The settlement order dated 19.07.2018 and any consequential agreement or orders issued thereafter are also set aside.

20. Any dues that are payable between the AFDC and the respondent no.5 should be settled as per law. In view of the reasons stated above, the State respondents are directed to consider settlement of the fishery with the petitioner for the remaining period, i.e. till 31.03.2025 and take a decision on the same within a period of 3 (three) weeks from the date of receipt of a certified copy of this order.

21. The writ petition is accordingly disposed of.