

(2024) 02 GAU CK 0007

Gauhati High Court

Case No: Writ Petition (Civil) No. 1891, 2749, 4205 Of 2021

Darrang Matshyajibi Society

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision: Feb. 6, 2024

Acts Referred:

- Bengal Public Demand Recovery Act, 1913 - Section 4
- Assam Co-operative Societies Act, 2007 - Section 102, 103
- Indian Fisheries Act, 1897 - Section 6
- Assam Land
- and Revenue Regulation, 1886 - Regulation 155, 156

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: K. K. Mahanta, K. Singha, S. Munir, J. Payeng, M. Dutta, M. Nath, D. P. Borah, S. K. Talukdar, B. J. Talukdar, P. Sharma

Judgement

1. Heard Mr. K. K. Mahanta, the learned Senior counsel appearing on behalf of the Writ Petitioner in WP(C) No.1891/2021; Mr. M. Dutta, the learned counsel appearing on behalf of the Writ Petitioner in WP(C) No.4205/2021 and Mr. J. Payeng, the learned counsel appearing on behalf of the Writ Petitioner in WP(C) No.2749/2021. I have also heard Mr. P. Sarmah, the learned Standing Counsel appearing on behalf of the Fishery Department of the Government of Assam; Mr. B. J. Talukdar, the learned Standing counsel appearing on behalf of the District Commissioner, Darrang; Mr. S. K. Talukdar, the learned Standing counsel appearing on behalf of the Assistant Registrar of Cooperative Societies, Darrang; Mr. M. Nath, the learned Senior counsel assisted by Mr. D. P. Borah, the learned counsel appearing on behalf of the Private Respondent.

2. All the three writ petitions are taken up jointly for disposal taking into account the similarity of the facts and the issues involved.

3. It reveals from the records that on 07.10.2020, the Deputy Commissioner, Darrang had issued a Notice Inviting Tender for Settlement of No.1, Darrang Brahmaputra Fishery (for short "the fishery in question"). In terms with the said Notice Inviting Tender, the last date of submission was 22.10.2020 and the tenders were to be opened on 28.10.2020 from 4 PM onwards. The terms and conditions stipulated that various certificates were required to be submitted and the manner in which the bid was required to be submitted. The Clauses (Ka) to (Dha) of the Notice Inviting Tender having relevance are reproduced herein under:

“(ka) Certificate signed by the Assistant Registrar of Co-operative Societies that members of the co-operative society, self help group, NGO is consisting of 100% actual fishermen of Schedule Caste or Maimal community (erstwhile Cachar district).

(kha) Neighbourhood certificate from the concerned revenue circle.

(Actual distance of the co-operative society, self help group, NGO from the meen mahal shall be mentioned).

(Ga) Fishing experience certificate from the District Fishery Development Officer.

(Gha) Bakijai Clearance certificate from the Deputy Commissioner office.

(Unga) Tenderer should submit the earnest money in the form of call deposit (in favour of Deputy Commissioner) along with their tender. The earnest money deposited shall not be less than 10% of the revenue offered for the first year by the tenderer.

(Cha) Attested copy of the registration certificate of Fishery Co-operative Societies. (shall be renewed if applicable)

(Chha) PAN Card (in the name of Fishermen co-operative society, self help group, NGO). Individual PAN Card shall not be accepted.

(Jaa) Photocopy of the person authorized to submit tender on behalf of the fishery co-operative society.

(Niya) Copy of the balance sheet and profit and loss account for 3 (three) years.

(Duly verified by the competent authority).

(taa) Tenderer should mention the name of the meen mahal in the overleaf of the sealed envelope and shall drop the tender in the allotted box.

(thaa) The successful bidder in addition to the annual revenue fixed should pay additional fishery revenue in accordance with the rules and regulation of the Government.

(da) Indian Postal Order/Banker's Cheque/Banker draft of Rs.10.00 (Ten) should be attached.

(dha) The undersigned shall have all the right to cancel the tender and shall not be liable to be answered for the same."

4. The record reveals that five societies participated in the said tender process. The Petitioner in WP(C) No.2749/2021 quoted an amount of Rs.5,15,20,000/- for 7 years @ Rs.73,60,000/- per annum. The Petitioner in WP(C) No.1891/2021 quoted an amount of Rs.4,06,03,500/- for 7 years @ Rs.58,00,500/- per annum. The Petitioner in WP(C) No.4205/2021 quoted an amount of Rs.3,15,00,000/- for 7 years @ Rs.45,00,000/- per annum. The Private Respondent had quoted an amount of Rs.2,94,10,231/- for 7 years with a 10% increase over the 1st year's revenue of Rs.31,00,000/- which was fourth highest bid. The other tenderer namely Roumari Fishery Society Ltd. had quoted an amount of Rs.2,93,96,507/- for 7 years @ Rs.41,99,501/- per annum.

5. It is relevant to take note of that the Petitioner in WP(C) No.2749/2021 who was the highest bidder failed to submit the Bakijai Certificate at the time of submission of the bid. This aspect of the matter is apparent from a perusal of Annexure-XIV to WP(C) No.2749/2021 inasmuch as the Bakijai Clearance Certificate was dated 29.10.2020 and the last date for submission of the document was 22.10.2020. The record reveals that the Petitioner in WP(C) No.1891/2021 has lodged a complaint before the Deputy Commissioner, Darrang that the Private Respondent did not consist of 100% actual fishermen. The said complaint was lodged on 28.10.2020. Further to that, the said Petitioner had also lodged complaint to the Commissioner and Secretary to the Government of Assam, Fishery Department that the Private Respondent did not consist of 100% actual fisherman. On 28.12.2020, the Deputy Commissioner, Darrang issued a comparative statement regarding settlement of the fishery in question. From the said comparative chart, it reveals that there were remarks against the writ petitioner in WP(C) No.1891/2021 and WP(C) No.2749/2021 that there were allegations that the said societies were defaulters in repayment of the Government loan. As regards the Private Respondent, the allegation was that 100% of the society members were not actual fishermen. However, from the comparative chart, it reveals that there was no remarks insofar as the writ petitioner in WP(C) No.4205/2021. It is however relevant to take note of from the documents enclosed by the Petitioner in WP(C) No.1891/2021 that there was a loan amount however, the same was liquidated completely on 30.10.2020. In that regard, a certificate dated 02.11.2020 issued by the Assistant Registrar of Co-operative Societies, Mangaldai was enclosed as Annexure-7 to WP(C) No.1891/2021.

6. The records further reveals that on 25.02.2021, the Fishery Department of the Government of Assam passed an order whereby the fishery in question was settled with the Private Respondent for a period of 7 years @ Rs.2,94,10,231/- w.e.f. the date of handing over the possession of the fishery. All the three writ petitioners therefore being aggrieved have challenged the order dated 25.02.2021 by way of the present writ petitions.

7. This Court has duly perused the impugned order dated 25.02.2021 which based its decision on a report being submitted by the Deputy Commissioner, Darrang on 18.11.2020. It was observed in the said impugned order that from the report of the Deputy Commissioner, Darrang, it revealed that the Petitioners in WP(C) No.1891/2021 and WP(C) No.2749/2021 and another bidder namely Roumari Co-operative Fishery Society Ltd. were defaulters of Government loan under the Co-operation Department, Government of Assam and all of them cleared such loan on 30.10.2020 i.e. only after the last date of submission of the tender on 22.10.2020 and after the opening of the tender on 28.10.2020 as per the report of the Assistant Registrar of Co-operative Societies, Darrang. It was further observed that the said three bidders along with the writ petitioner in WP(C) No.4205/2021 quoted exorbitant high rates in the tender which were not backed up by financial status of such societies in the audited accounts. It was however opined that though the said was a relevant issue but was not legally tenable as no such condition was incorporated in the NIT for rejection of the tender for quoting high rates nor supported by financial status of such society as per the audited accounts. As regards the private Respondent, it was mentioned that although there were various allegations that the said society was not a Maimal Community of the erstwhile Cachar District but the Deputy Commissioner, Darrang had relied on the instructions of the Government vide letter No.FISH/104/91/516 dated 16.06.2016 as the matter had already been decided by the Supreme Court in Civil Appeal No.4672-47 of 1998. Further to that, as regards the allegation of default, it was reported by the Deputy Commissioner, Darrang that the said society cleared all dues. In respect to the Petitioner in WP(C) No.4205/2021, it was mentioned that the Chartered Accountant Firm in its certificate only vouched for the arithmetical accuracy of accounts and declined to comment on accuracy of transaction and as such did not express any audit opinion. Therefore, on the basis thereof, the impugned order was passed that the settlement be made in favour of the private respondent who had quoted an amount of Rs.2,94,10,231/- for the period of 7 years inasmuch as the said was the highest valid bid.

8. It is also relevant herein to take note that the private respondent herein was granted temporary settlement prior to the tender process and as such, it was mentioned in the impugned order that the temporary settlement order dated 12.05.2020 would be withdrawn from the date of formally handing over possession of the fishery by the

Deputy Commissioner, Darrang in terms with the impugned order. The said aspect therefore would show that the Private Respondent was in possession of the fishery in question as on the date of passing the impugned order. This aspect assumes importance which would be seen in the later segments of the instant judgment.

9. This Court has also perused the affidavits which have been filed by the Official Respondents as well as the Private Respondents. From the affidavit filed by the Respondent No.5 (the private Respondent) in WP(C) No.1891/2021, it reveals that on 31.10.2020, the Assistant Registrar of Cooperative Societies had provided information to the Deputy Commissioner, Darrang. The relevant portion of the said document is reproduced herein under:

“Subject Present status of Government Loan dues in respect of (1) Rowmari Cooperative Fishery Society Ltd., (2) Mangaldoi Pioneers Cooperative Fishery Society Ltd. (3) Sati RAdhika Motchyajibi Samabay Samitte Ltd. (4) Baghpari Maimal Min S.S. Ltd.

Reference Your verbal direction on 28.10.2020

Sir

With humble submission, I beg to furnish the following information on present status of government loan in respect of the referred Cooperatives as follows –

Sl. No.	Name of the Cooperative	Status of Loan	Amount of Loan (Prin. & Interest)	Date Paid on
1.				30-10-2020
2.	Mangaldoi Pioneers Cooperative Fishery Society Ltd.	Do	Prin. 20429.00 Interest 64003.00	30-10-2020
3.		Do		30-10-2020

10. From the above document, it would reveal that the Petitioner in WP(C) No.1891/2021 and the Petitioner WP(C) No.2749/2021 had taken a working capital loan and the outstanding as on 28.10.2020 was Rs.84,432/- and Rs.1,70,295/- respectively which were duly paid on 30.10.2020. As regards the private Respondent, there was no loan. At this stage, this Court finds it relevant to take note of that documents which were required to be submitted at the time of submission of the tender, amongst others, the requirement of submission of a Bakijai Clearance Certificate from the Deputy Commissioner Office [Clause (Gha)] and copy of the balance sheet and profit and loss account for 3 (three) years (duly verified by the competent authority) [Clause (Niya)].

11. This Court also finds it pertinent to take note of Annexure-B to WP(C) No.4205/2021 which are the certificates issued by the M/S JRP and Associates, Chartered Accountants on 15.10.2020 wherein it was certified that the annexed receipts and payment

accounts, income and expenditure and statement of affairs of the Petitioner in WP(C) No.4205/2021 were in conformity with the records maintained and produced for the Chartered Accountant's verification and as per the information and explanation given to them. It was further mentioned that the said certificate should not be taken that the Chartered Accountants vouched for accuracy of transactions and that they did not express any audit opinion and had merely checked and verified arithmetical accuracy of the above. The receipts and payment accounts for the last three years were duly verified as could be seen from the signature and the stamp of the Chartered Accountant in question.

12. In the backdrop of the above, if this Court peruses the impugned order, the only reason why the Petitioner in WP(C) No.1891/2021 and WP(C) No.2749/2021 were held to be not valid bids was that they were defaulters of Government loan under the Cooperative Department and the same were cleared on 30.10.2020 after the last date of submission of the tender on 22.10.2020. As regards the Petitioner in WP(C) No.4205/2021, the only reason why the bid of the said Petitioner was held to be not valid as the certificate of the Chartered Accountant only vouched for arithmetical accuracy of the accounts and declined to comment on accuracy of transaction and consequently did not express any audit opinion.

13. This Court has duly heard the learned counsels appearing on behalf of the parties. Mr. K. K. Mahanta, the learned Senior counsel appearing on behalf of the writ Petitioner in WP(C) No.1891/2021 submitted that as per the tender condition, the requirement was for submission of a Bakijai Certificate issued by the concerned Deputy Commissioner's Office. He submitted that there is no requirement as per the Notice Inviting Tender that the No Due Certificate was required to be submitted. He therefore submitted that the reason on the basis of which the Petitioner's bid was rejected was contrary to the tender conditions and was malicious action on the part of the Respondent Authorities to favour the Private Respondents who had quoted almost half of the bid what the Petitioner in WP(C) No.1891/2021 had quoted.

14. Mr. M. Dutta, the learned counsel appearing on behalf of the writ Petitioner in WP(C) No.4205/2021 submitted that as per the tender conditions, the requirement was for submitting the copy of the balance sheet and profit and loss account for 3 (three) years (duly verified by the competent authority). This was duly done so and it was duly certified by the Chartered Accountants. He further submitted that it is the usual practice as adopted by the Chartered Accountants not to vouch for the accuracy of transaction and not to express any audit opinion unless sought for. The learned counsel further submitted that the requirement as per the conditions of the tender was only the copy of the balance sheet and the profit and loss account for 3 (three) years which was done. The other contents of the said certificate has no relevance with the tender conditions and as such the Respondent Authorities could not have rejected the

bid of the Petitioner on that ground. He further submitted that the receipts and payments accounts for the three years were duly certified by the Chartered Accountants who were the competent authority.

15. Mr. J. Payeng, the learned counsel appearing on behalf of the writ Petitioner in WP(C) No.2749/2021 submitted that he is the highest bidder. He submitted that the ground on which the Petitioner's bid was rejected was totally unwarranted taking into account that the conditions stipulated in the Notice Inviting Tender did not require submission of a No Due Certificate rather it required a Bakijai Certificate which was duly submitted on 29.10.2020. He further submitted that though it was a requirement for submission of Bakijai Certificate at the submission of the bid, but it was on account of the delay on the part of the Office of the Deputy Commissioner, Darrang, in issuance of the Bakijai certificate which had led to delay in submission of the Bakijai Certificate. He however submitted that the rejection of the bid of the Petitioner was not on account of non-submission of the Bakijai Certificate but on irrelevant consideration. He further submitted that a perusal of the NIT would show that the bid in question was a single bid and as such the submission of the Bakijai Certificate is only directory in view of the law laid down by the Division Bench of this Court in the case of Abu Talib Vs. The Assam Fisheries Development Corporation Ltd. and Pub Goalpara Fishery Co-operative Society Vs. State of Assam reported in (2022) 5 GLR 135. He further submitted that in the case of Sanjit Chandra Das Vs. Assam Fisheries Development Corporation Ltd. reported in (2023) 5 GLT 409, the learned Division Bench of this Court had duly clarified that in a single bid system, submission of Bakijai Certificate was directory however in a dual bid system, it was mandatory.

16. Per contra, Mr. M. Nath, the learned Senior counsel appearing on behalf of the private Respondents submitted that as per the Fishery Rules, there is no requirement of a Bakijai Certificate. However, the said Bakijai Certificate is sought for by the tendering authority in order to take into account that the bidders who submit their bids are not in arrears of payment of dues to the Government. The learned Senior counsel submitted that the said Bakijai Certificate has to be taken in the context of a No Due Certificate and in that regard, referred to the judgment of the Division Bench in the case of Pub Goalpara Fishery Co-operative Society (supra). The learned Senior counsel therefore submitted that as there were dues to be paid to the Government by the Petitioners in WP(C) No.1891/2021 and WP(C) No.2749/2021, the Respondent Authorities therefore rightly rejected the bid of the said Petitioners. Further to that, the learned Senior counsel further submitted that the bid of the Petitioner in WP(C) No.4205/2021 was also rightly rejected as the balance sheet and profit and loss account of the society was required to be verified by the competent authority and in the instant case, the Chartered Accountants have categorically stated that they do not vouch for the accuracy of transactions and they did not express any audit opinion. He therefore

submitted that the contents of the balance sheet containing the profit and loss account having not been duly verified by the competent authority, the concerned Respondent Authorities were therefore justified in coming to an opinion that the bid of the writ petitioner in WP(C) No.4205/2021 was invalid.

17. I have also heard Mr. P. Sarmah, the learned Standing counsel appearing on behalf of the Fishery Department, Government of Assam as well as Mr. B. J. Talukdar, the learned Standing counsel appearing on behalf of the District Commissioner, Darrang. The said counsels appearing on behalf of the Respondent Authorities categorically admitted that as per the Notice Inviting Tender, there was a requirement of submission of the Bakijai Clearance Certificate issued by the Deputy Commissioner and the writ petitioner in WP(C) No.1891/2021 had duly submitted the said Bakijai Certificate prior to the time of submission of the tender. During the course of hearing, they also admitted that there was no condition in the Notice Inviting Tender for submission of a No Due Certificate certifying that the bidder had no dues pending against the Government or any financial institution.

18. This Court also finds it very pertinent at this stage to take note of the order passed by this Court on 29.01.2024 whereby the Assistant Registrar of the Cooperative Societies was directed to file a short affidavit as to whether there was any Bakijai proceedings initiated by the Office of the Assistant Registrar of the Cooperative Societies, Darrang against the Petitioner in WP(C) No.1891/2021 in respect to the dues pertaining to Rs.84,432/- on the basis of which the report dated 18.11.2020 was made by the Deputy Commissioner, Darrang. This Court had also directed the Deputy Commissioner, Darrang to produce the records on the basis of which the communication dated 18.11.2020 was issued to the Commissioner and Secretary to the Government of Assam, Fishery Department.

19. The record reveals that an affidavit was filed by the Assistant Registrar of the Cooperative Societies, Mangaldoi stating inter alia that the Bakijai Officer of the Cooperative Societies, Mangaldoi had certified that there is no Bakijai proceedings instituted against the writ petitioner in WP(C) No.1891/2021. In that regard, a certificate issued by the Bakijai Officer of the Cooperative Societies has been enclosed as Annexure-R1 to the said affidavit. It is also relevant herein to mention that this Court though directed the District Commissioner, Darrang to produce the records forming the basis on which the report dated 18.11.2020 was submitted but today, when the matter has been taken up, the District Commissioner, Darrang has placed before this Court the report dated 18.11.2021 and two challans which shows that the Petitioner in WP(C) No.1891/2021 had paid the amount of Rs.84,432/- on 30.10.2020. It is however disturbing to note that in spite of the specific directions, the District Commissioner, Darrang for the reasons best known, did not produce the records as sought for.

20. This Court has duly heard the learned counsels for the parties and had also perused the materials on record. From the above, two points for determination have arisen for consideration which are:

(i) Whether the impugned order dated 25.02.2021 requires any interference in the present facts?

(ii) What relief(s) the parties herein are entitled to?

21. In the foregoing analysis of the facts and more particularly taking note of the conditions stipulated in the Notice Inviting Tender dated 07.10.2020, it is seen that amongst various documents, there is a requirement of submitting the Bakijai Clearance Certificate issued from the Office of the Deputy Commissioner of the concerned district. There is no mention in the tender conditions of submitting a No Due Certificate. In the case of the writ petitioner in WP(C) No.1891/2021, the Bakijai Certificate dated 15.10.2021 was issued by the Office of the Deputy Commissioner, Darrang. The said certificate has not been cancelled or there is any stand taken by the Respondent Authorities to the effect that the said Bakijai Clearance Certificate was issued by playing fraud. Therefore, the bid submitted by the Petitioner in WP(C) No.1891/2021 has to be construed to be a valid bid. As regards the writ petitioner in WP(C) No.2749/2021, the record clearly reveals that the Bakijai Certificate was obtained on 29.10.2020 which therefore shows that at the time of submission of the bid, the writ petitioner in WP(C) No.2749/2021 did not submit the Bakijai Clearance Certificate. Be that as it may, non-submission of the Bakijai Clearance Certificate is not the ground for rejection of the bid of the said Petitioner but on the ground that there was working capital loan. This Court has taken note of the condition (Niya) which stipulates that the copy of the balance sheet and profit and loss account for 3 (three) years to be submitted which was required to be duly verified by the Competent Authority. This Court has also taken note of Annexure-8 to WP(C) No.4205/2021 which shows that the Receipt and Payment Accounts for the last 3 (three) years were duly certified by the Chartered Accountants. The said certificates though mention that the Chartered Accountants in question do not vouch for the accuracy of the transactions and accordingly, do not express any audit opinion but the said sentence used in the said certificate is in the form of a disclaimer which do not touch upon the authenticity of verification being made. Further to that, as the requirement as per the Clause (Niya) was only that the copies of the balance sheet and the profit and loss account for 3 (three) years were required to be submitted which needs to be verified by the competent authority and nothing further, in the opinion of this Court the said certificates so enclosed as Annexure-8 to the writ petition in WP(C) No.4205/2021 is in accordance with the tender conditions. Accordingly, the bid of the Petitioner in WP(C) No.4205/2021 has also to be taken as a valid bid.

22. In the above perspective, this Court duly takes note of the communication which has been issued by the Assistant Registrar of the Cooperative Societies to the Deputy Commissioner, the contents of which have already been quoted hereinabove. The said communication dated 31.10.2020 nowhere shows that the Petitioner in WP(C) No.1891/2021 or the Petitioner in WP(C) No.2749/2021 are defaulters or are in arrears or for that matter have not been able to defray the installments of the loan. It merely stipulates that there is a working capital loan and as on 28.10.2020, an amount of Rs.84,432/- and Rs.1,70,295/- is outstanding to be paid by the writ petitioner in WP(C) No.1891/2021 and WP(C) No.2749/2021 respectively and the same were duly paid on 30.10.2020.

23. This Court upon perusal of the terms and conditions of the NIT as well as the documents which were required to be submitted along with the tender do not find that there is a requirement of submission of any document to the effect that the bidders had not taken any loan or for that matter have not paid any loan. It is also relevant to take note of that the Bakijai proceedings are initiated under the provisions of Bengal Public Demand Recovery Act, 1913 (for short "the Act of 1913") on the satisfaction that the public demand payable to the Collector is due, Schedule-I of the Act of 1913 stipulates what constitutes Public demands. A perusal of the Schedule-I of the said Act of 1913 read with Section 4 of the said Act would show that for initiation of a proceedings, there has to be a public demand payable to the Collector which is due.

24. This Court further finds it very pertinent to observe that the communication on the basis of which the bid of the Petitioner in WP(C) No.1891/2021 and WP(C) No.2749/2021 have been held to be invalid, is a communication by the Assistant Registrar of Co-operative Societies. The said communication therefore has to be tested within the purview of Chapter-X of the Assam Co-operative Societies Act, 2007 and more particularly Sections 102 and 103. Section 102 of the Assam Cooperative Societies Act, 2007 categorically mandates that there has to be a default by the member so that a cooperative demand certificate for recovery of any amount can be granted. The communication dated 31.10.2020 does not stipulate that the Petitioner in WP(C) No.1891/2021 or the Petitioner in WP(C) No.2749/2021 had defaulted.

25. From the above analysis, it would therefore be clear that the rejection of the bid of the writ petitioners in WP(C) No.4205/2021, WP(C) No.1891/2021 and WP(C) No.2749/2021 are based upon irrelevant considerations inasmuch as the rejection was based on a condition which was not in the Notice Inviting Tender or for that matter even Assam Fishery Rules, 1953. As in the instant case, the bids of the Petitioners in the three writ petitions have been illegally, arbitrarily, unreasonably and irrationally rejected vide the impugned order dated 25.02.2021, the same is required to be interfered with. The above therefore decides the first point for determination.

26. In the backdrop of the above, let this Court take into consideration the second point for determination as to what relief(s) the parties herein are entitled to. In the earlier segments of the instant judgment, while deciding the point for determination No.(i), this Court held that the impugned order dated 25.02.2021 is required to be interfered with. Accordingly, this Court therefore sets aside the impugned order dated 25.02.2021. The consequence of setting aside the impugned order dated 25.02.2021 is that the settlement so made in favour of the Private Respondent is required to be interfered with for which the said settlement made in favour of the Private Respondent in respect to the fishery in question is set aside and quashed.

27. Now, the question arises as to what consequential direction this Court can pass in view of the fact that the counsels for the Petitioners submitted that directions be issued to the Respondent Authorities to settle the tender in favour of the Petitioners for whom they are representing. This Court would deal with this aspect at the later stage but first finds it relevant to observe that the Notice Inviting Tender issued for settlement of a fishery is issued on the basis of the Assam Fishery Rules, 1953. These Rules have been framed under the powers conferred under the Regulations 155 and 156 of the Assam Land and Revenue Regulation, 1886 read with Section 6 of the Indian Fisheries Act, 1897. Therefore, when a bid is being considered, the provisions of the Assam Fishery Rules, 1953 has to be taken into consideration as the provisions of the said Rules are deemed to be a part and parcel of the Notice Inviting Tender irrespective of whether the said Notice Inviting Tender mentions about the Assam Fishery Rules, 1953. In other words, there can be no settlement made in conflict with the Assam Fishery Rules, 1953.

28. This Court further finds it pertinent to observe that the impugned order dated 25.02.2021 has been set aside on the ground that the bids in respect to the writ petitioners in WP(C) No.1891/2021 and WP(C) No.2749/2021 were rejected on a condition which was not a part of the Notice Inviting Tender or for that matter such ground for rejection is not available in the Assam Fishery Rules, 1953. This Court had interfered with the impugned order dated 25.02.2021 in respect to the Petitioner in WP(C) No.4205/2021 on the ground of rejecting the said bid in spite of the fact that the document so submitted by the said Petitioner was inconformity with the condition (Niya). However, this Court has not dealt with any other aspect of the bids of the writ petitioner of the instant proceedings or for that matter as to whether the writ petitioners confirmed to the other terms and conditions of the Notice Inviting Tender or as to whether the bids in question are in consonance with the Assam Fishery Rules, 1953.

29. At this stage, this Court finds it very pertinent to mention that the Petitioner in WP(C) No.2749/2021 did not submit the Bakijai Clearance Certificate on or before the last date of submission of the tender or for that matter before the opening of the tender on 28.10.2020 and this aspect of the matter is clear from the fact that on

29.10.2020, the said Petitioner was issued the Bakijai Clearance Certificate by the Office of the Deputy Commissioner, Darrang. Now, therefore a question arises as to whether the bid of the said Petitioner was a valid bid or not, which aspect of the matter the concerned Respondent Authorities have not taken into consideration inasmuch as the rejection of the bid of the writ petitioner in WP(C) No.2749/2021 is on the basis of the certificate issued by the Assistant Registrar of Co-operative Societies, Darrang on 31.10.2020. This aspect assumes importance in view of the fact that the Petitioner in WP(C) No.2749/2021 as per the materials available on record is the highest bidder. This Court further finds it very pertinent to take note of that in the case of Abu Talib (supra), the learned Division Bench of this Court had observed that the Bakijai Clearance Certificate cannot be taken as a rigid requirement and this view was again subscribed by another learned Division Bench of this Court in the case of Pub Goalpara Fishery Co-operative Society (supra). However, in the case of Sanjit Chandra Das (supra), the learned Division Bench of this Court distinguished the judgments in the case of Abu Talib (supra) and Pub Goalpara Fishery Co-operative Society (supra), on the basis that in the case of Abu Talib (supra), it was the case of single bid i.e. the technical bid and the financial bid were to be opened simultaneously whereas in the case of Sanjit Chandra Das (supra), it was the case of a dual bidding whereby after being technically qualified, the price bid would be opened. Paragraph Nos. 10, 11 and 12 of the said judgment in the case of Sanjit Chandra Das (supra) being relevant are quoted herein under:

“10. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record. We have also perused the judgment rendered by learned Single Bench. The only contention advanced by Mr. Das, learned senior counsel representing the appellant for questioning the decision of the tendering authority in disqualifying the appellant on technical bid evaluation was that Abu Talib's judgment works in favour of the appellant and the decision to disqualify the appellant as his Bakijai Clearance Certificate had expired is illegal. In this regard, our attention is drawn to the Single Bench judgment in the case of Mosiur Rahman v. Assam Fisheries Development Corporation Ltd., [WP(C) No. 5545/2010] decided on 29.08.2011, which was subjected to challenge in WA No. 294/2011 (Abu Talib's case). On a perusal of the said judgment, it is discernible that the said was a case of single bid, i.e. the technical bids and financial bids were to be opened simultaneously. After opening the bids, the tendering authority found that the financial bid of Abu Talib was significantly higher. However, his Bakijai Certificate had expired. Thus, in the public interest, a decision was taken to give time to Abu Talib for removing the deficiency while accepting his bid. The said decision of the tendering authority was challenged by Mosiur Rahman by filing the writ petition (supra), which was accepted by the learned Single Judge holding that the highest bidder Abu Talib could not have been given opportunity to remove the deficiency in the technical

bid. The said view of the learned Single Judge was reversed by the Division Bench in WA 294/2011 (supra) by accepting the appeal filed by Abu Talib. Since the case of Abu Talib dealt with a single bid NIT, the ratio thereof has to be restricted to that specific fact scenario. In the present case, there is no dispute that the tenders were invited through a dual bidding system, i.e. to say technical bid and financial bid. We are of the firm opinion that in a dual bid process, each bidder must satisfy the conditions of technical qualification. In the extant tender process, submission of a valid Bakijai Clearance Certificate was an inviolable requirement. The Bakijai Clearance Certificate is demanded to ensure the financial stability of the bidders. The appellant cannot be allowed to take a plea of ignorance of this mandatory technical criterion after having participated in the tender process. The Bakijai Clearance Certificate filed by the appellant had admittedly expired and thus, he cannot be allowed to retrace his steps and claim that requirement of furnishing the Bakijai Clearance Certificate was not mandatory as per the tender conditions. If at all, the appellant/writ petitioner was aggrieved by the said condition existing in the NIT, the same could have been challenged before participating in the tender process. The law is well settled that a party having participated in the tender process cannot be allowed to retrace its steps and take a u-turn and claim that the conditions of the NIT are illegal or unjustified after the process is over.

11. In the present case, the tender process was based on a dual bidding system and thus, a strict evaluation of the technical bids so as to ensure compliance of the criterion laid down therein, which included the submission of a valid Bakijai Clearance Certificate, was inviolable. The tendering authority upon evaluation of the technical bids found that the appellant's Bakijai Clearance Certificate had expired and thus, there was no option with the authority but to disqualify the appellant on the technical criterion. Level playing field was provided to the prospective bidders and thus, after opening of the technical bids, none of the bidders can be allowed to claim indulgence of relaxation in the technical criterion, which precisely is the prayer of the appellant herein.

12. In the case of Abu Talib (supra) on which reliance was heavily placed by Mr. Das, learned senior counsel for the appellant, the prevailing facts were that the tender process was based on a single bid system wherein the technical bids and the financial bids were opened simultaneously. On opening of the bids, it was found that the technical bid of the appellant Abu Talib was deficient on the aspect of Bakijai Clearance Certificate, however, the financial bid of Abu Talib was almost double that of the bidder who qualified on technical aspect. In those peculiar circumstances, Division Bench of this Court ruled in favour of acceptability of the higher bid offered by Abu Talib rather than allowing the respondents to accept

the significantly lower bid of the successful bidder. Furthermore, in the case of Abu Talib, the deficient bid had been accepted by the authorities and on opening the bids, it was found that the bid offered by Abu Talib was the highest bid offering Rs. 1,00,300/- as compared to the other three bidders whose bids were rated at Rs. 59,200/-, Rs. 52,000/and Rs. 60,200/-, respectively, and thus, a conscious decision was taken in the interest of the public exchequer and the highest bidder Abu Talib was given time to submit the latest Bakijai Clearance Certificate. Manifestly, in the said case, the tendering authority interpreted the conditions of the NIT and ruled in favour of the highest bidder even though there were some technical shortcomings in his bid. Thus, Abu Talib's case travels on its own peculiar facts and circumstances and would have no application in a dual bid scenario."

30. In view of the above proposition of law, the question therefore arises as to whether the settlement Authority would deal with the non-submission of the Bakijai Clearance Certificate at the time of submission of the bid rigidly or in a directory manner inasmuch as the Petitioner in WP(C) No.2749/2021 admittedly submitted the said Bakijai Clearance Certificate pursuant to obtaining the same on 29.10.2020. This aspect of the matter requires a consideration to be made by the concerned Respondent Authorities which have a great bearing on the outcome of the settlement proceedings. It is under such circumstances, this Court therefore is of the opinion that this Court cannot direct the concerned Respondent Authorities to settle the tender in favour of any of the writ petitioners. Under such circumstances, this Court therefore is further of the opinion that the direction ought to be issued to the concerned Respondent Authorities to re-examine the materials de novo on the basis of the above observations and taking into account the conditions of the Notice Inviting Tender and the Assam Fishery Rules, 1953 and thereupon pass a Speaking Order for settlement.

31. Accordingly, this Court therefore disposes of all the three writ petitions with the following observations and directions:

(i) The impugned order dated 25.02.2021 is set aside and quashed. Consequently, the settlement so made in favour of the Private Respondent i.e. M/S Baghpori Maimal Meen Samabai Samity Ltd. is set aside and quashed.

(ii) The Respondent Authorities more particularly the Commissioner and Secretary to the Government of Assam, Fishery Department or his delegatee is directed to pass a Speaking Order by taking into account the bids of all the 5 (five) bidders in respect to the fishery in question on the basis of observations made hereinabove, the conditions of the Notice Inviting Tender and the Assam Fishery Rules, 1953. The said exercise be completed within a period of 15 days from the date of service of the certified copy of the instant judgment to the Commissioner and Secretary to the Government of Assam,

Fishery Department.

(iii) The observations made in the instant judgment that the bids of the writ petitioners in all the three writ petitions are valid has to be considered in the backdrop of the order dated 25.02.2021 and it shall be open to the concerned Respondent Authority to consider the bids of all the five bidders on the basis of the Notice Inviting Tender and the Assam Fishery Rules, 1953. It is however clarified that the bids of the Petitioners in WP(C) No.2749/2021 and WP(C) No.1891/2021 cannot be rejected on the ground that they had an outstanding loan which was made the basis of the order dated 25.02.2021. Similarly, the bid of the Petitioner in WP(C) No.4205/2021 cannot also be rejected on the ground that the submission of the copy of the balance sheet and the profit and loss account for three years was not duly verified by the competent authority.

32. Before parting with the records, this Court finds it relevant to observe that the Private Respondent herein was earlier settlement holder whose period ended and thereupon the Respondent Authorities had allowed the Private Respondent to run the fishery in question on daily basis w.e.f. 12.05.2020. This was done so at that that relevant point of time due to COVID restrictions for which the fresh settlement process could not be initiated. A question though arises as to why the settlement process was not initiated prior to the period of expiry of the earlier settlement. If that would have been done, then a continuity could have been there inasmuch as the Settlement Authorities very well knew when the earlier settlement period would end. Be that as it may, it was only on 17.10.2020 when the fresh settlement process was initiated vide the Notice Inviting Tender. The impugned order was passed on 25.02.2021 i.e. almost four months from the initiation of the fresh settlement proceedings. The said impugned order was challenged before this Court in the three writ petitions which this Court is presently dealing. In WP(C) No.1891/2021, this court had issued notice on 22.03.2021 making it returnable by 4 (four) weeks. This Court further directed that the status quo in respect to the possession of the fishery be maintained as on 22.03.2021. There was no order passed by this Court staying the impugned order dated 25.02.2021 or for that matter any stay as regards the settlement made in favour of the Private Respondent. However, in view of the status quo order in respect to the possession so directed, the Private Respondent who was allowed to run on daily basis continues to run on daily basis till today. In other words, a fishery which has a settlement period of 7 (seven) years, the Private Respondent continues to run on daily basis for more than half of the settlement period though there was no stay to the settlement order. It is also relevant to mention that the status quo order dated 22.03.2021 was valid for a period of 4 (four) weeks as the notice was made returnable by 4 (four) weeks. However, the record reveals that the Respondent Authorities even did not attempt to seek any clarification from this Court. Be that as it may, WP(C) No.1891/2021 was listed before this Court on 09.06.2022 and the interim order dated 22.03.2021 was not extended. Then also the

Respondent Authorities did not take steps and continued to allowed the Private Respondent to run the fishery in question till date on daily basis.

33. Now, a question arises as to how the Respondent Authorities should act in a situation like the present when the settlement order is put to challenge. No doubt, the Respondent Authorities can adopt interim measures for running the fishery in question on daily basis but in doing so, the Respondent Authorities being the custodian of the Public Revenues is required to take steps so that the Public Exchequer is least affected. It is the opinion of this Court that the Respondent Authorities at least from the date of the impugned order of settlement, ought to have permitted the Private Respondent to run the fishery in question on daily basis at such rate which would commensurate to the bid submitted by the Private Respondent. If such steps are not resorted to, it would be allowing the Private Respondent to run the same fishery at a much lesser rate than what it would have paid, if the settlement order was not challenged.

34. This Court cannot also be unmindful of the fact that the fishery in question is for settlement for a period of 7 (seven) years. The rates quoted are on the basis of these 7 (seven) years. Therefore, delay in handing over the possession cannot lead to extension of the period of the fishery settlement on the bids invited inasmuch as if the settlement is prolonged on the basis of the delay in delivery of possession, it would result in loss to the Public Exchequer and wrongful gain to the bidders who even did not quote their bids for that period.

35. These observations made hereinabove are very relevant for the Respondent Authorities to take into consideration in future so that the Public Exchequer is least affected on account of a settlement order being put to challenge.

36. The Registry is directed to serve a copy of the instant judgment to Mr. P. Sharma, the learned Standing counsel for needful compliance.