

GAHC010029252023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/792/2023

KHANDAKAR MOSTAK AHMED
S/O LATE NOIMUDDIN AHMED, R/O- VILL- ADHIKARY, P.O- MANGALDAI,
DIST- DARRANG, ASSAM, PIN- 784529

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY COMMISSIONER AND TO THE GOVT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT, DISPUR, GHY- 06

2:THE DARRANG ZILLA PARISHAD
MANGALDAI
REP. BY ITS PRESIDENT
DIST- DARRANG
ASSAM
PIN- 784129

3:THE CEO
DARRANG ZILLA PARISHAD
MANGALDOI
DIST- DARRANG
ASSAM
PIN- 784129

4:THE PASCHIM MANGALDOI ANCHALIK PANCHAYAT BANGLAGARH
REP. BY ITS PRESIDENT
P.O- MANGALDOI
DIST- DARRANG
ASSAM
PIN- 784129

5:THE EXECUTIVE OFFICER
PASCHIM MANGALDAI ANCHALIK PANCHAYAT
BANGLAGARH

P.O- MANGALDOI
DIST- DARRANG
ASSAM
PIN- 784129

6:BIRINCHI SAHARIA
S/O- NAGIRAN SAHARIA
VILL- RAMHORI CHUBA
P.O- MANGALDAI
DIST- DARRANG
ASSAM
PIN- 78412

Advocate for the Petitioner : MR. B RAHMAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.05.2023

1. Heard Shri B. Rahman, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, P&RD Department whereas Ms. R. Baruah, learned counsel has appeared for the respondent no. 6. While Shri Dutta, the learned Standing Counsel has produced the records of the case, Ms. Baruah, the learned counsel for the respondent no. 6 has submitted that on 26.03.2023, an affidavit has been filed by serving copy on the learned counsel for the petitioner.

2. Considering the subject matter and also the fact that the impugned settlement is for a period of one year which is expiring in June, 2023, this writ petition is taken up for disposal at the admission stage.

3. An NIT dated 25.04.2022 was floated for settlement of Deonagaon Weekly Market for the period 2022-2023. It is the case of the petitioner that he along with other bidders including the respondent no. 6 had submitted their respective bids. It is

admitted that while the amount quoted by the petitioner was Rs. 4,16,000/- (Rupees Four Lakh Sixteen Thousand) the amount of the respondent no. 6 was Rs. 5,68,000/- (Rupees Five Lakh Sixty Eight Thousand). However, the challenge is on the validity of the bid of the respondent no. 6.

4. Shri Rahman, the learned counsel for the petitioner submits that there is a requirement of the tender that the 10 % Security Deposit has to be in the form of fixed deposit of any Nationalized Bank. Though the said requirement has been termed as Earnest Money as per Clause 11 (Ka) of the NIT, this Court has verified from the vernacular statement (original) which actually talks about the Security Deposit. The second ground of challenge is that the surety of the land of the guarantor has not been given and the document annexed is of another person.

5. Shri Rahman, the learned counsel accordingly submits that the bid submitted by the respondent no. 6 being invalid, the settlement could not have been granted in favour of the respondent no. 6.

6. Shri Dutta, the learned Standing Counsel for the Department however submits that the projection made by the petitioner apart from being incorrect, the petitioner was himself not eligible in the tender process and therefore, he does not have any locus to maintain the present challenge. By drawing the attention of this Court to the comparative statement, the learned Standing Counsel submits that the translated version at Page 68 is an incomplete one which would be revealed from a comparison with the copy of the original comparative statement which is in vernacular and has been annexed at Page 69 of the writ petition.

7. In any case, Shri Dutta, the learned Standing Counsel has also produced the original comparative statement which, apart from the comparison of the respective

bids and the criteria required to be fulfilled, in the remarks column, there is a specific remark with regard to the bid of the petitioner himself. It has been remarked that the value of the land shown by the petitioner is less than what has been stated by him. It is further stated that there is mismatch of the Dag No. of the land shown by the petitioner.

8. The learned Standing Counsel accordingly submits that when the bid of the petitioner itself is defective, the present challenge is not liable to be entertained.

9. Shri Dutta, the learned Standing Counsel has also dealt with the financial aspect of the matter by submitting that the bid of the respondent no. 6 is much higher than the bid of the petitioner and therefore, there is no illegality in the decision making process inasmuch as revenue is an important aspect to be taken into consideration in matters of settlement which are mainly for fetching revenue for the State.

10. While endorsing the submissions of the learned Standing Counsel of the Department, Ms. Barua, the learned counsel for the respondent no. 6 submits that all along in the writ petition, the projection is that there was defect in the bid of the respondent no. 6 pertaining to the Earnest Money Deposit. She submits that the purpose of Earnest Money is a limited one only to show the eagerness of a party to have the work allotted.

11. She further submits that the defect is of curable nature and the aspect of the bid of the respondent no. 6 being higher than that of the petitioner is also a relevant consideration. The learned counsel for the respondent no. 6 finally submits that the settlement period is almost over and any interference made by this Court may not be in the interest of justice.

12. The rival submission made by the learned counsel for the parties have been duly considered.

13. While this Court is of the opinion that the grounds of challenge taken by the petitioner may be valid ground, what is required to be seen is at whose instance this adjudication process is being initiated. As would reveal from the original comparative statement produced before this Court, a copy of which has also been annexed in Page 69 of the writ petition (vernacular), the bid of the petitioner itself has been termed to be defective due to mismatch pertaining to the value of the land offered and also mismatch in the Dag No. of such land. This Court is of the firm view that any challenge made by ineligible bidder is not liable to be entertained due to want of locus.

14. This Court is also of the view that in matters of settlement which are primarily for fetching revenue of the State, the price is one of the essential consideration. This Court in the case of ***Tarun Bharali vs. State of Assam*** reported in ***1991 2 GauLJ 361*** has laid down that price is of paramount importance in such matters of settlement.

15. This Court is also of the view that since the settlement period is almost over, any interference made in this stage, may not be in the interest of justice.

16. In that view of the matter, this Court is of the opinion that this writ petition is liable to be dismissed and accordingly the same is dismissed.

JUDGE

Comparing Assistant