

GAHC010036412023



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

Case No. : WP(C)/1019/2023

MD. RUHUL AMIN
S/O LT. ADUL KHALEQUE VILL. RAMPUR SHATRA P.S BATADRAVA DIST.
NAGAON ASSAM PIN 782122

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP .BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT. DISPUR GHY 6

2:THE DIRECTOR
PANCHAYAT AND RURAL DEVELOPMENT DEPTT. ASSAM JURIPAR
PANJABARI GHY 37

3:THE NAGAON ZILLA PARISHAD
REP BY THE CHIEF EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT NAGAON DIST. NAGAON ASSAM

4:BATADRAVA ANCHALIK PANCHAYAT
REP. BY THE EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT
NAGAON
ASSAM

5:DEB NATH DAS
S/O- DIMNESWAR DAS

VILL AND P.O- SENCHOWA

P.S- BATADRAVA
DIST- NAGAON
ASSAM

PIN-78200

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

12.04.2023

Heard Shri AM Ahmed, learned counsel for the petitioner. Also heard Shri S Dutta, learned Standing Counsel, Panchayat and Rural Development (P&RD) Department, Assam whereas Ms. P Hazarika, learned counsel has appeared for the respondent no. 5.

2. Considering the subject matter in dispute and as agreed to by the parties, this writ petition is taken up for disposal at the admission stage.

3. The petitioner has put to challenge an Office Order dated 07.02.2023 passed by the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department. By the said order, the appeal preferred by the respondent no. 5 was disposed of with a direction to the Chief Executive Officer, Nagaon Zilla Parishad to take steps immediately for settlement of the Balisatra Bi-Weekly Market with the highest bidder for the remaining period of the Panchayati year. The said order is followed by an order dated 14.02.2023 whereby the Market in question is resettled in favour of the respondent no. 5 by cancelling the settlement of the petitioner.

4. It is the case of the petitioner that pursuant to an NIT dated 10.05.2022 for settlement of the aforesaid Market for the year 2022-23, the petitioner as well as the respondent no. 5 had submitted their bids. The petitioner alleges that the bid of the

respondent no. 5 was defective and in spite of notices, the defects could not be rectified and accordingly, vide an order dated 01.07.2022, the settlement was given to the petitioner who was the second highest bidder as his bid was found to be the valid highest. The respondent no. 5 thereafter had filed an appeal before the Government followed by a writ petition before this Court, being WP(C)/192/2023 for direction to consider the appeal. This Court on the said facts and circumstances and taking into consideration that the prayer was only for taking up the appeal had passed an order dated 10.01.2023 at the motion stage directing consideration and disposal of the appeal. Subsequent to such direction, the appeal was taken up which was disposed of vide order dated 07.02.2023 followed by the impugned cancellation order and the settlement in favour of the respondent no. 5.

5. It is the specific case of the petitioner that while considering and disposing of the appeal by the Government, no notice, whatsoever was issued to the petitioner and an adverse action has been taken without affording him any opportunity. Alleging gross violation of the principles of natural justice, Shri Ahmed, learned counsel for the petitioner has submitted that the petitioner was deprived of the basic opportunity to defend his case, as a result of which, there has been grave miscarriage of justice. He further submits that the appeal has been filed by suppressing material facts and those could have been highlighted if the petitioner was afforded an opportunity.

6. Shri Dutta, learned Standing Counsel, P&RD Department, however submits that the appeal was taken up for consideration in compliance of the order dated 10.01.2023 passed by this Court wherein all the relevant factors had been taken into consideration. The learned Standing Counsel, however candidly admits that notices were not issued and the petitioner was not heard before disposing of the said appeal.

7. Ms. Hazarika, learned counsel for the respondent no. 5 submits that there is no manner of doubt that the financial bid of the respondent no. 5 was the highest and the rejection was only because of the facts that certain documents could not be annexed which are curable in nature. She further submits that the respondent no. 5 was not aware of the notices requiring him to submit the said documents.

8. After hearing the parties and on perusal of the records, this Court is of the opinion that without even entering into the *inter-se* merits of the contesting parties, only on the ground that the impugned order dated 07.02.2023 has been passed without affording a reasonable opportunity to the petitioner who is an affected party, this writ petition is liable to be allowed. It is a trite law that any action which may have any adverse civil consequences requires to be taken after giving the affected parties an opportunity to place their respective cases and denying of such opportunity would vitiate the proceedings.

9. In view of the above, the impugned Office Order dated 07.02.2023 which had culminated in the order dated 14.02.2023 by the Chief Executive Officer, Nagaon Zilla Parishad are interfered with and accordingly set aside. The matter is accordingly remitted back to the Department to consider the appeal of the respondent no. 5 afresh by hearing both the respondent no. 5 as well as the petitioner who was the then lessee.

10. Further, considering that the period of settlement is 1 year, out of which hardly 2 months are remaining, the appeal may be taken on board and disposed of expeditiously and preferably within a period of 15 days from the date of receipt of a certified copy of this order. To simplify the things, let the petitioner and the respondent no. 5 appear before the Principal Secretary, Department of Panchayat and Rural Development Department, Government of Assam or any other appropriate

authority to be designated by him on 25.04.2023 from which date, the Principal Secretary of the Department or his delegate authorized by him may take charge of the proceeding and fix an appropriate date for hearing of the parties.

11. Considering the limited period left, the appeal be disposed of by 10.05.2023. Till the date fixed i.e., 10.05.2023, *status quo* as on today shall be maintained.

JUDGE

Comparing Assistant