

GAHC010107272022



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

Case No. : WP(C)/3688/2022

ANOWAR HUSSAIN
S/O- LT. ABED ALI, VILL. AND P.O.- BALI KURI, DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF PANCHAYAT AND RURAL DEVELOPMENT DEPTT.,
DISPUR, GUWAHATI-6.

2:THE BARPETA ZILA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
BARPETA
DISTRICT- BARPETA
ASSAM.

3:THE ZILA PARISHAD BARPETA
REPRESENTED BY ITS PRESIDENT
BARPETA ZILA PARISHAD
DISTRICT BARPETA
ASSAM.

4:THE MONDIA ANCHALIK PANCHAYAT
REPRESENTED BY ITS EXECUTIVE OFFICER
P.O. MONDIA
DIST.- BARPETA
ASSAM.

5:THE PRESIDENT OF MONDIA ANCHALIK PANCHAYAT
PO- MONDIA
DISTRICT- BARPETA
ASSAM

Advocate for the Petitioner : MR. H ALI

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

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER [ORAL]

Date : 25-04-2023

Heard Mr. H. Ali, learned counsel for the petitioner and Mr. N.K. Deb Nath, learned Standing Counsel, Panchayat & Rural Development Department for all the respondents.

2. By this writ petition instituted under Article 226 of the Constitution of India, the petitioner has assailed the action on the part of the respondent authorities in the Panchayat and Rural Development Department in not refunding the security amount deposited by the petitioner pursuant to a Notice of Acceptance of Tender dated 31.07.2021 offering settlement of a ghat named Ananda Bazar Mazid Bhita Parghat, pursuant to a competitive bidding process initiated for the same by a Tender Notice dated 10.05.2021. The petitioner is also aggrieved by non-disposal of a Representation dated 26.05.2022 stated to have been submitted by the petitioner before the Chief Executive Officer, Barpeta Zilla Parishad [the respondent no. 2].

3. By the Tender Notice dated 10.05.2021 published by Mandia Anchalik Panchayat, District – Barpeta, sealed bids were invited from interested bidders for settlement of a number of markets/ghats/fisheries within its jurisdiction for the Panchayat Financial Year : 2021 – 2022 and for the period from 01.07.2021 to 30.06.2022. As per the Tender Notice, the last date of submission of bids was up to 02-00 p.m., 23.06.2021. Amongst the ghats sought to be settled vide the Tender Notice dated 10.05.2021 was a ghat named Ananda Bazar Mazid Bhita Parghat under Baghbor Gaon Panchayat. In the Tender Notice, the yearly sale value for Ananda Bazar Mazid Bhita Parghat [hereinafter also referred to as ‘the Ghat’, for easy reference at places] was fixed at ₹ 10,000/- and the earnest money required to be deposited

by a bidder was fixed at ₹ 1,000/-.

4. In response to the Tender Notice, 7 [seven] nos. of bidders including the petitioner, had submitted their bids quoting different bid values. The names of the bidders including their bid values, in descending orders, were as follows :

Sl. No	Name of the bidders	Bid value offered
1.	Anowar Hussain [the petitioner]	₹ 1,55,505.00
2.	Badar Uddin	₹ 1,00,000.00
3.	Rafikul Islam	₹ 63,000.00
4.	Kashem Ali	₹ 47,999.99
5.	Kalush Ali	₹ 40,005.00
6.	Majidul Islam	₹ 33,000.00
7.	Fajlur Rahman	₹ 25,110.00

5. After receipt of the bids from the participant bidders, the General Standing Committee of the Anchalik Panchayat opened the tender papers of all the bidders. Thereafter, the General Standing Committee of the Anchalik Panchayat examined the tender papers and recorded their comments in respect of each of the bids in a Comparative Statement prepared for the purpose, as mandated by Rule 47[7] of the Assam Panchayat [Financial] Rules, 2002.

6. The learned Standing Counsel, Panchayat & Rural Development Department has produced the records of settlement in original including the Comparative Statement prepared by the General Standing Committee of Mandia Anchalik Panchayat.

7. The General Standing Committee of Mandia Anchalik Panchayat forwarded the tender papers along with the Comparative Statement recording its comments at relevant places therein, to the office of Barpeta Zilla Parishad in terms of the provisions of Section 109[6] of the Assam Panchayat Act, 1994, as amended, for consideration of the General Standing Committee of Barpeta Zilla Parishad as the bid values of the purportedly highest valid bidder was found to be above ₹1,00,000/-. After receipt of the tender papers along with the

Comparative Statement, the General Standing Committee of Barpeta Zilla Parishad evaluated the bids and after such evaluation, the General Standing Committee decided to offer settlement of the Ghat, that is, Ananda Bazar Mazid Bhita Parghat in favour of the highest bidder in terms of Clause 10 of the Tender Notice dated 10.05.2021.

8. From the records of settlement, it has emerged that on 31.07.2021, a Notice of Acceptance of Tender for settlement of the Ghat was issued by the Chief Executive Officer, Barpeta Zilla Parishad [the respondent no. 2] offering the settlement of Ananda Bazar Mazid Bhita Parghat to the petitioner, who had offered the highest bid value of ₹ 1,55,505/- with a direction to him to furnish the requisite documents mentioned in Clause 22, Clause 23 and Clause 24 of the Tender Notice and to deposit the security amount @ 30% of the bid value plus 1st installment amount @ 20% of the bid value within a period of 7 [seven] days from the date of issue of the Notice of Acceptance of Tender, with the condition that in the event of failure to furnish the requisite documents and to deposit the amounts within the stipulated time period of 7 [seven] days, the offer for settlement of the Ghat would be cancelled with forfeiture of earnest money and the settlement would be offered to the next highest bidder. According to the petitioner, he on receipt of the Notice of Acceptance dated 31.07.2021, deposited security deposit of 30% of the bid value amounting to ₹ 46,651/- and 1st installment kist money of ₹ 12,921/-, that is, ₹ 59,572/- in total on 12.08.2021 and the receipt of the said amount was duly acknowledged by the respondent no. 2. The petitioner stated to have deposited the 2nd installment kist money of ₹ 12,921/- on 21.09.2021. It is the further case of the petitioner that after the Notice of Acceptance of Tender dated 31.07.2021 and deposit of amount of ₹ 59,572/-, the petitioner asked the respondent authorities to hand over the possession of the Ghat to him and thereafter, he has stated to have operated the Ghat for only 1 [one] month, that is, the month of August, 2021. The petitioner has contended that in spite of giving settlement of the Ghat in his favour and receiving the amount of ₹ 59,572/- in terms of the Notice of Acceptance of the Tender, the petitioner could not operate the Ghat beyond August, 2021 as he was stopped arbitrarily by the respondent authorities without assigning any reason.

9. From the records, it has emerged that when the petitioner was offered the settlement of the Ghat, that is, Ananda Bazar Mazid Bhita Parghat by the Notice of Acceptance of Tender dated 31.07.2021 with a further direction to furnish the requisite documents and to deposit the security amount of 30% of bid value @ ₹ 46,651/- and 1st installment kist amount of ₹ 12,921/-, the petitioner did not deposit the security amount @ 30% of the bid value @ ₹ 46,651/- and 1st installment kist amount of ₹ 12,921/- within the stipulated time period of 7 [seven] days from 31.07.2021. The records of settlement reveal that the petitioner deposited the amount of ₹ 59,520/- only on 12.08.2021. Thus, it is clear that the petitioner failed to adhere to the condition to deposit the security amount and 1st installment kist money, as per the Notice of Acceptance of Tender dated 31.07.2021.

10. The respondent no. 2 and the respondent no. 3 in the counter affidavit have averred that the petitioner failed to submit the up-to-date documents mentioned in Clause 22, Clause 23 and Clause 24 of the Tender Notice like boat registration certificate, latest fitness certificate of boat, insurance of boat and passengers, etc. within the stipulated period of 7 [seven] days from 31.07.2021. It is asserted that the petitioner did not submit those documents at the time of submission of the bid.

11. Clause 10 of the Tender Notice mentioned that the bid mentioning the highest bid amount for any market/ghat/fishery would be accepted for consideration and if it was found that the bidder of the highest bid amount had not submitted the necessary documents [except Court Fee and Earnest Money Deposit], then the said bidder would be given 3 [three] days' time for submission of the same and if he/she fails to submit the necessary documents within the said stipulated time period of 3 days, his bid would be rejected and his earnest money would be forfeited and the bid of the bidder of next highest bidder would be considered for the settlement, subject to the same terms and conditions.

12. In view of the condition incorporated in Clause 10 of the Tender Notice and failure on the part of the petitioner to furnish the requisite documents, as asked for by the Notice of Acceptance of Tender dated 31.07.2021, within the stipulated time period, the same would

entail cancellation of his bid and also forfeiture of the earnest money deposited by him with his bid.

13. In this connection, it is apposite to refer to Rule 47[11] and Rule 47[13] of the Assam Panchayat [Financial] Rules, 2002. Rule 47[11] and Rule 47[13] of the Assam Panchayat [Financial] Rules, 2002 read as under :

[11] On acceptance of the tender, the Panchayat concerned shall inform the selected tenderers concerned requiring the tenderers to submit within seven days from the date of issuing the acceptance letter to –

[i] Deposit with the Panchayat concerned not less than thirty percent of his quoted amount in his tender as security. The amount of security shall be recorded in the Register in Form No. 12 and accept a duly stamped lease in a Form as specified in Annexure-8 of the Schedule of these rules; [ii] The Panchayat concerned shall provide the Form of lease and stamps papers at the concerned lessee's cost.

* * * * *

[13] Failure of the tenderer to comply with the condition set forth in sub-clause [11] [i], [ii] shall result in forfeiture of his earnest money deposited in concerned Panchayat's Fund.

14. From a conjoint reading of Rule 47[11] and Rule 47[13] of the Assam Panchayat [Financial] Rules, 2002, it is clear that after acceptance of the bid of a bidder, the settling authority in the concerned Anchalik Panchayat /Zilla Parishad, as the case may be, shall have to inform the selected bidder by an acceptance letter to him to [i] deposit not less than 30% of his offered bid value as security amount; and [ii] to execute a lease deed in duly stamped paper, within 7 [seven] days from the date of issuance of Notice of Acceptance to him. Clause 47[13] has laid down that in the event of failure on the part of the bidder to comply with the condition set forth in Rule 47[11], the same would result in forfeiture of his earnest money

deposited at the time of submitting his bid. Other than the forfeiture of the earnest money, neither the Tender Notice nor any rules of the Assam Panchayat [Financial] Rules, 2002 has envisaged forfeiture of the security amount, if any, deposited by a bidder on receipt of the offer of settlement in terms of Rule 47[11] of the Assam Panchayat [Financial] Rules, 2002. The Notice of Acceptance of Tender dated 31.07.2021 had also mentioned that in the event of failure on the part of the petitioner to furnish the requisite documents, mentioned therein, and deposit the security amount and 1st installment amount, mentioned therein, the offer for the settlement would be cancelled along with the forfeiture of the earnest money only and it did not mention that any security amount to be deposited by the petitioner would be forfeited if the petitioner fails to fulfill the conditions therein within a period of 7 [seven] days. The stand taken by the respondent nos. 2 and 3 in the counter affidavit is to the effect that due to failure on the part of the petitioner to comply with the conditions incorporated in the Notice of Acceptance of Tender dated 31.07.2021, the security amount would stand forfeited by the Zilla Parishad is not sustainable in law. Such forfeiture was neither authorized by the provisions of the Assam Panchayat Act, 1994, as amended, nor by the Assam Panchayat [Financial] Rules, 2002, nor by any of the terms and conditions of the Tender Notice dated 10.05.2021. In such view of the matter, other than the earnest money deposited by the petitioner, any other amount retained by the respondent Mandia Anchalik Panchayat / Barpeta Zilla Parishad is found to be unauthorized and the same are required to be returned to the petitioner, who failed to fulfill the conditions stipulated by the Notice of Acceptance of Tender dated 31.07.2021 issued by the Chief Executive Officer, Barpeta Zilla Parishad [the respondent no. 2] offering the settlement of the Ghat, Ananda Bazar Mazid Bhita Parghat to the petitioner.

15. According to the petitioner, he had deposited – [i] an amount of ₹ 46,651/- on 12.08.2021 as 30% of the bid value of ₹ 1,55,505/- as security deposit; [ii] ₹ 12,921/- towards 1st installment kist money on 12.08.2021; [iii] and ₹ 12,921/- as 2nd installment kist money on 21.09.2021. As per his own admission, the petitioner had operated the Ghat, Ananda Bazar Mazid Bhita Parghat for a period of 1 [one] month in August, 2021 despite the fact that he was not offered the final settlement in view of his failure to comply with the

conditions in the Notice of Acceptance of Tender dated 31.07.2021. The respondent authorities have operated that after issuance of the Notice of Acceptance of Tender dated 31.07.2021, the petitioner unauthorizedly operated the Ghat, Ananda Bazar Mazid Bhita Parghat for a period of 1 [one] month. In such view of the matter, apart from the forfeiture of earnest money, the petitioner is liable to pay an amount for unauthorizedly operating the Ghat, Ananda Bazar Mazid Bhita Parghat during August, 2021 proportionate to the bid value of ₹ 1,55,505/- offered by him for settlement. In view of such fact situation, while allowing the writ petition to the extent indicated above, the respondent Barpeta Zilla Parishad is directed to refund the balance amount after forfeiture of the earnest money deposit made by the petitioner and the proportionate amount for operating the Ghat, Ananda Bazar Mazid Bhita Parghat to the bid value of ₹ 1,55,505/- within a period of 4 [four] weeks from the date of receipt of a certified copy of this order by the office of the respondent no. 2. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant