

GAHC010146982022



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

Case No. : WP(C)/4823/2022

BABU RAM BRAHMA
S/O- LATE ANANDA BRAHMA, VILL.- DALAKATI DALBARI, P.O. DALAKATI
BORO BAZAR, DIST. UDALGURI, ASSAM.

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 5 ORS.
REPRESENTED BY ITS PRINCIPAL SECRETARY, KOKRAJHAR, ASSAM.

2:THE JOINT SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM.

3:THE CHAIRMAN
MARKET SETTLEMENT COMMITTEE
BTC
KOKRAJHAR
ASSAM.

4:THE JOINT SECRETARY BTR (MARKET AND FAIR)
KOKRAJHAR
ASSAM.

5:THE BLOCK DEVELOPMENT OFFICER
DALGAON SIALMARI DEVELOPMENT BLOCK

KHARUPETIA.

6:LAKHI BASUMATARY
S/O. LAPORAM BASUMATARY

R/O. JHAKUAPARA

P.O. KOUPATI

DIST.- UDALGURI
ASSAM

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : SC, BTC

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.01.2023

- 1.** Heard Shri R. Das, learned counsel for the petitioner. Also heard Shri S. Bora, learned Standing Counsel, BTC whereas the respondent no. 6 is represented by Shri M. Biswas, the learned counsel.
- 2.** This Court in its last order dated 07.12.2022 while fixing today had made an observation that since the tenure of the market is 11 months, an endeavour would be made to dispose of the writ petition.
- 3.** The learned counsel for the parties was accordingly heard.
- 4.** Before going to the issue to be decided, the minimum facts of the case are as follows. A Notice Inviting Tender was floated on 21.06.2022 by the authorities for various markets, parking, ferries etc including the Koupati Weekly Market in the district of Udalguri. It is the case of the petitioner that he was one of the bidders along with the respondent no. 6 and two more persons. However, the bids submitted by the other two persons were not found to be eligible due to lack of essential documents and it

was only the bid of the petitioner and the respondent no. 6 which were held to be the valid bids. It is the specific case of the petitioner that while the offer of the petitioner was Rs.8,91,651/-, (Rupees Eight Lakh Ninety One Thousand Six Hundred Fifty One), the bid of the respondent no. 6 which is much lower i.e., Rs.5,17,500/- (Rupees Five Lakh Seventeen Thousand Five Hundred) has been accepted and the allotment of the market was given to him vide the impugned order dated 15.07.2022.

5. Shri Das, the learned counsel for the petitioner has drawn the attention of this Court to the NIT and more specifically Clause 11 thereof as per which there is an obligation on the competent authority to make the settlement with the highest bidder if all necessary documents and Government Revenues are found in order. The Clause further stipulates that in case the settlement is not made with the highest bidder, reasons in writing are required to be recorded. The competent authority is also given discretion to make necessary enquiry with regard to the attending circumstances and also to keep in mind the public interest as well as the absurdity of rates offered by the intending tenderers. The tender documents itself provide a rate which shall be charged from petty vendors and there cannot be any violation of the prescribed rate.

6. The learned counsel submits that since these are matters by which revenue is fetched by the State authorities, the amount in question would play a pivotal role and therefore, the impugned order of allotment in favour of the respondent no. 6 is liable to be set aside.

7. *Per contra*, Shri S. Bora, learned Standing Counsel, BTC submits that it is only the interest of public which has played a paramount role in the decision making process as the rate offered by the petitioner is much higher than the schedule rate which is Rs.3,45,000/- (Rupees Three Lakh Forty Five Thousand). By drawing the attention of this Court to the comparative statement, the learned Standing Counsel

has submitted that the scheduled rate of the market in question is Rs. 3,45,000/- (Rupees Three Lakh Forty Five Thousand) and in case the bid of the petitioner which is Rs.8,91,651/- (Rupees Eight Lakh Ninety One Thousand Six Hundred Fifty One) was selected, the burden would have been shifted to the petty vendors / consumers in which case the interest of public would be jeopardized. The learned Standing counsel however fairly submits that in terms of the interim order passed by this Court, the market is presently being run by the BTC Authorities departmentally.

8. Shri M. Biswas, learned counsel for the beneficiary - respondent no. 6 submits that while the allotment order dated 15.07.2022 has been put to challenge, the decision making process which was in a Minutes of meeting is not put to challenge. The learned counsel therefore, develops an argument that the petitioner is not at all aggrieved by such decision making process and in that case, whether the writ petition is itself maintainable would be a debatable issue. Coming to the merits of the case, the learned counsel for the respondent no. 6 has submitted that the scheduled rate of the market in question being Rs. 3,45,000/- (Rupees Three Lakh Forty Five Thousand), acceptance of the rate of the petitioner would apparently lead to a situation of chaos whereby the petty vendors and consumers would be put to grave distress as the only objective of the allottee would be to extract the amount as much as possible. The learned counsel for the respondent no. 6 also raises a question concerning the validity of the tender process inasmuch as one of the requirement of the NIT is to have a Sales Tax Clearance Certificate. The learned counsel for the respondent no. 6 submits that as on date, there is no such mechanism and the entire process has been replaced by the GST and on this point itself, a case for remand is made out to have the tender process done afresh in accordance with law.

9. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court is duly examined.

10. There is no dispute to the fact that the rate offered by the petitioner is higher than the rate of the respondent no. 6 and in the attending facts and circumstances, the bid of the petitioner is the highest valid bid as two other bidders whose bids were financially higher than that of the bid of the petitioner were found to be defective. The question, therefore, arises as to whether the discretion granted to the authorities by Clause 11 has been properly discharged or not. Clause 11 mandates the competent authority to make settlement with the highest bidder, provided all necessary documents and Government Revenues are found in order and in case of a disagreement, reasons are to be recorded in writing. While doing so, the authority is required to enquire into the attending facts and circumstances, the absurdity of the rates. The Clause also stipulates that rates are provided in the tender itself which are to be charged from the vendors which cannot be violated.

11. The impugned order dated 15.07.2022 is accompanied by a direction from the BTC authority to the competent authority of respective Blocks to go ahead with the allotment of the markets in question. Pursuant to the said communication, the allotment order has been done in favour of the respondent no. 6 though on a temporary basis. Neither of the aforesaid two communications contains any statement as to why the valid highest bid of the petitioner was not accepted. In the course of argument, the learned counsel for the respondents have tried to make out a case that the rate of the petitioner was an exorbitant one as a result of which the petty vendors would be put to distress. However, this argument is belied by the condition attached to Clause 11 itself as per which such rates are fixed and cannot be deviated from. The concept of viability of a rate not being specifically mentioned in the tender condition, the said factor also cannot be taken into consideration. In fact, in the present case, such consideration does not even appear to have been taken. Shri Biswas, the learned counsel for the respondent no. 6 had made a submission that the tender process itself

appears to be defective inasmuch as a Clause was introduced which could not have been performed by anybody namely requirement of Sales Tax Clearance. Though the aforesaid point would have been relevant in case of an independent challenge, a beneficiary to the impugned process of allotment cannot, in the opinion of this Court raise such a point as a respondent.

12. This Hon'ble Supreme Court as well as this Court in a catena of judgments has laid down that transparency and fairness are the hallmarks in matters of the distribution of State largesse and for contracts which fetches revenue, the quantum is of paramount importance. In the instant case, when the offer of the petitioner was Rs.8,91,651/- (Rupees Eight Lakh Ninety One Thousand Six Hundred Fifty One), there is no reason to reject the same and accept the offer of the respondent no. 6, that too without citing any reasons. As discussed above, the stipulation of hardships being caused to the petty vendors is also not substantiated inasmuch as Clause 11 itself takes care of such a situation where rates are already fixed from which there cannot be any deviation.

13. This Court in the case of ***Tarun Bharali vs. State of Assam & Ors.,*** reported in **(1991) 2 GLR 296** has laid down that in matters of settlement, revenue to be earned by the State would play a major role. In the instant case, as observed earlier, the bid of the petitioner is higher by almost 40%.

14. In view of the above, this Court is of the considered opinion that the impugned order dated 15.07.2022 is not sustainable in law and accordingly set aside. Shri Biswas, the learned counsel for the respondent no. 6 at this stage submits that the entire amount was deposited before the authority. While it is directed that the market be allotted to the petitioner whose bid is the valid and highest, the respondent authorities would take steps to refund the amount to the respondent no. 6 for the

period from which the allotment of the market was taken over by the authorities. Since the tenure is of 11 months, the new process be completed within a period of 15 days from today.

15. Writ Petition accordingly stands disposed of.

16. No order as to cost.

JUDGE

Comparing Assistant