

GAHC010148312022



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

**Case No. : WP(C)/4897/2022**

BISWAJIT DEKA  
S/O UDAY DEKA  
RESIDENT OF KHATARBORI, PO BHURBANDHA, PS AND DIST MORIGAON,  
ASSAM 782104

VERSUS

THE STATE OF ASSAM AND 5 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPT. DISPUR,  
GUWAHATI 781006

2:THE MORIGAON ZILLA PARISHAD  
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER  
MORIGAON ZILLA PARISHAD  
PO  
PS AND DIST MORIGAON  
ASSAM 782105

3:THE CHIEF EXECUTIVE OFFICER

DARRANG ZILLA PARISHAD  
PO  
PS AND DIST MORIGAON  
ASSAM 782105

4:THE BURBANDHA ANCHALIK PANCHAYAT  
REPRESENTED BY THE EXECUTIVE OFFICER  
PO BHURBANDHA  
PS AND DIST MORIGAON  
ASSAM

5:THE EXECUTIVE OFFICER

BHURBANDHA ANCHALIK PANCHAYAT  
PO BHURBANDHA  
PS AND DIST MORIGAON  
ASSAM 782104

6:SATRAM KONWAR  
S/O LATE MANDHAN KONWAR

VILLAGE OUGURI  
PO BHURBANDHA  
PS AND DIST MORIGAON  
ASSAM 78210

**B E F O R E**

**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

**JUDGMENT & ORDER**

Advocate for the petitioner : Shri M.K. Hussain, Advocate

Advocates for respondents : Shri S. Dutta, SC, P&RD  
Shri P. Deka, Advocate.

**Date of hearing : 02.01.2023**

**Date of judgment : 02.01.2023**

1. Heard Shri M.K. Hussain, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, P&RD Department, Government of Assam whereas Shri P. Deka, learned counsel has appeared for the private respondent no. 6.

2. It is seen that both the contesting respondents have filed their affidavit-in-

opposition. The petitioner however has not filed any rejoinder-affidavit.

3. Considering the nature of the grievance and also the fact that this Court has disposed of a number of cases concerning a similar issue, this case has been taken up for disposal at the admission stage.

4. The learned counsel for the petitioner however at the outset submits that facts are distinguishable in the present case which he will elaborate in the course of arguments.

5. The issue hinges around the settlement of a market namely the Bhurbandha Weekly Market. A Notice Inviting Tender was issued on 10.05.2022 for settlement of the said market pursuant to which the petitioner had submitted his bid along with other bidders including the respondent no. 6. In the said notice, there is a specific clause being Clause No. 10 that if the highest bidder was found to be lacking in certain documents except Court Fee and Earnest Money, 3 days time would be allotted to give an opportunity to produce the same and rectify the bids. The specific case of the petitioner in the instant case is that though the bid of the petitioner no. 6 was found to be the highest, the bid was lacking for non-submission of two mandatory documents namely Land Valuation Certificate and Non-Encumbrance Certificate. The petitioner's case is that while exercising the powers under Clause No. 10, there has been arbitrariness inasmuch as the power was exercised on two occasions.

6. Shri Hussain, the learned counsel clarifies that the power vested on the authorities under Clause 10 is not *per-se* under challenge but the manner in which the said power has been exercised is questioned in this proceedings. The learned counsel accordingly submits that the bid of the respondent no. 6 has been dealt with by giving undue benefit and favour and the same is vitiated and therefore, liable to be

interfered with.

7. Shri Hussain, the learned counsel has also drawn the attention of this Court to an earlier order dated 26.09.2019 pertaining to the same market and the said respondent no. 6 whereby, his offer was cancelled as he had failed to submit the requisite Land Valuation Certificate (within the given date) and Duty Stamped Lease.

8. On the other hand, Shri Dutta, the learned Standing Counsel for the Department submits that the entire objective of the Clause is to secure the maximum revenue as contract of this nature are to fetch revenue for the State. By referring to the bids offered by the parties, the learned Standing Counsel submits that while the rate of the respondent no. 6 is Rs.1,84,351/- (Rupees One Lakh Eighty Four Thousand Three Hundred Fifty One) per month, that of the petitioner is Rs. 31,111/- (Rupees Thirty One Thousand One Hundred Eleven). In other words, the bid of the private respondent is almost six times the bid of the petitioner.

9. Secondly, Shri Dutta, the learned Standing Counsel also raised a preliminary objection on the maintainability of the writ petition questioning the locus of the petitioner as in between the bid of the respondent no. 6 and the petitioner, there are other bidders and even if the petitioner is successful in this writ petition, no fruits can be enjoyed out of the litigation by the petitioner and on the behest of such a party, the adjudication itself is not required to be done. Finally, defending the decision of the Department, Shri Dutta, the learned Standing Counsel submits that the documents which were submitted on a later stage are not the two essential documents mentioned in the said Clause namely Court Fee and Earnest Money but certain other documents which were called for from the respondent no. 6 on two occasions. The learned Standing Counsel accordingly submits that the writ petition be dismissed.

10. Shri Dutta, the learned Standing Counsel has placed before this Court a recent judgment and order dated 23.11.2022 passed in a bunch of writ petitions, the lead case being WP(C)/4377/2022 [***Suruj Jamal & Ors. vs. The State of Assam & Ors.***] wherein the validity of the said clause has been upheld. The learned Standing Counsel has also placed reliance upon the case of the Hon'ble Supreme Court reported in **(2011) 5 SCC 103 [Glodyne Technoserve Ltd. vs. State of M.P. & Ors.]** wherein it has been laid down that judicial intervention should be kept at its minimal while adjudicating matters wherein exercise of discretion by the authorities are concerned in contractual matters.

11. Shri P. Deka, learned counsel for the respondent no. 6 while endorsing the submission of the learned Standing Counsel for the Department submits that the present challenge is not at all maintainable at the behest of an unsuccessful bidder, more so when there are bidders whose bids are above the bid of the petitioner. He submits that though it is a fact that the two documents namely Land Valuation and Non-Encumbrance Certificate could not be submitted along with the bid as those were not available, the authorities itself had exercised the discretion by issuing two notices, the first dated 28.06.2022, pursuant to which the Land Valuation Certificate was submitted and thereafter, again on 02.07.2022, notice was issued for the Non-Encumbrance Certificate which was also deposited within 3 (three) days i.e., 04.07.2022. He submits that the bid offered by the respondent no. 6 being about 6 (six) times more than that of the petitioner, the said factor would have a relevant role in the adjudication of this case.

12. In his reply, Shri Hussain, the learned counsel for the petitioner has submitted that decision of this Court in the case of ***Suruj Jamal*** (supra) may not be directly applicable in this case inasmuch as the validity of the said Clause is not the subject matter of the challenge. He further submits that when the bid of the respondent no. 6

itself is defective, the financial part of the same would not have much relevance.

13. The rival submissions made by the learned counsel for the parties have been duly considered.

14. As contended by the learned Standing Counsel, the *vires* / validity of the Clause in question has been upheld by this Court in the case of ***Suruj Jamal*** (supra). The only difference in this case is that the aforesaid power to give an opportunity to the highest bidder was exercised twice. The exercise of the said discretion vested on the authority need to be tested on the facts and circumstances of each case. In the instant case, there is no dispute that the bid of the respondent no. 6 was the highest. There is also no dispute that the bid was defective because of Court Fee or Earnest Money and therefore, it is a fit case wherein the discretion under Clause 10 could be exercised. The only question which arises is whether the opportunity can be given on two occasions.

15. This Court is of the view that the entire objective of including a Clause in the nature of Clause 10 is to secure the maximum revenue. In the decided case of ***Suraj Jamal*** (supra) this Court has also taken into consideration the earlier case laws of ***Tarun Bharali vs. State of Assam*** reported in ***1991 2 GauLJ 361*** wherein it has been laid down that in matters where revenue is concerned, the quantum is of paramount importance.

16. The Hon'ble Supreme Court in the case of ***Fasih Chaudhary v. D.G., Doordarshan***, reported in **(1989) 1 SCC 89** has laid down that the employer should be given some leverage for making the decision and there should be free play in joints. The relevant paragraph is extracted hereinbelow:

*“6. While, as mentioned hereinbefore, fair play in action in matters like the present one is an essential requirement, similarly, however, “free play in the joints” is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere as the present one. Judged from that standpoint of view, though all the proposals might not have been considered strictly in accordance with order of precedence, it appears that these were considered fairly, reasonably, objectively and without any malice or ill-will.”*

17. The aforesaid expression “free play in joints” has, again been reiterated in the land mark case of ***Tata Cellular Vs. Union of India***, reported in **(1994) 6 SCC 651** wherein the following has been laid down:

*“94. The principles deducible from the above are:*

- (1) The modern trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) The Government must have freedom of contract. In other words, a*

*fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

18. This Court is further of the opinion that there being bidders whose bid are more than that of the petitioner but have chosen not to raise the present challenge, no fruitful purpose would be served if there is any intervention on behest of the petitioner.

19. To a specific query, this Court has been informed that till now there is no default in payment of the *kist* money by the respondent no. 6 as there is no stay order from this Court.

20. Taking all the aforesaid facts and circumstances into consideration, this Court is of the opinion that no case for intervention is made out and accordingly, this writ petition stands dismissed.

**JUDGE**

**Comparing Assistant**