



THE GAUHATI HIGH COURT

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

Writ Petition (Civil) 5410/2022

Gohin Das
Son of Late Nabin Das,
Resident of Jamuna Road,
New Colony, Ward No. 2, Sivasagar,
District- Sivasagar, Assam, Pin- 785640.

.....Petitioner

-Vs-

1. The State of Assam,
Represented by the Commissioner and Secretary to the Govt.
of Assam, Panchayat and Rural Development Deptt., Dispur,
Guwahati, Pin- 781006, Assam.
2. The Deputy Commissioner, Sivasagar,
Dist- Sivasagar, Assam.
3. The Sivasagar Zilla Parishad,
Represented by Chief Executive Officer,
Sivasagar Zilla Parishad,
P.O. and P.S.- Sivasagar,
Dist- Sivasagar, Assam,
Pin- 785640.
4. The Chairman, Sivasagar Zilla Parishad,
P.O. and P.S.- Sivasagar,
Dist.- Sivasagar, Assam,
PIN- 785640.
5. The Chief Executive Officer,
Sivasagar Zilla Parishad,
P.O. and P.S.- Sivasagar,
Dist.- Sivasagar, Assam,
Pin- 785640.
6. The Sivasagar Anchalik Panchayat,
Represented by the Executive Officer,
P.O. and P.S.- Sivasagar,
Dist.- Sivasagar, Assam,
Pin- 785640.
7. The President, Sivasagar Anchalik Panchayat,
P.O. and P.S.- Sivasagar,
Dist.- Sivasagar, Assam,
Pin- 785640.
8. The Executive Officer,
Sivasagar Anchalik Panchayat,
P.O. and P.S.- Sivasagar,
Dist.- Sivasagar, Assam,
Pin- 785640.

9. Dinanath Taye,
S/o Sri Ratneswar Taye,
R/o Lepay Sumoni Gaon,
P.O- Dichangmukh,
Dist- Sivsagar, Pin- 785640.

.....Respondents

Advocates :

Petitioner : Mr. G.N. Sahewalla, Senior Advocate
Mr. H.K. Sarma, Advocate

Respondent nos. 1, 3, 4, 5, 6 & 8 : Mr. N.K. Dev Nath
Standing Counsel, Panchayat & Rural
Development Department

Date of Judgment & Order : 09.03.2023.

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

This writ petition under Article 226 of the Constitution of India has been preferred assailing the action on the part of the Sivasagar Zilla Parishad and Sivasagar Anchalik Panchayat in settling a fishery named *Chakala Beel* in favour of the respondent no. 9 **inter alia** on the ground that the bid value offered by the petitioner for the said fishery was higher than the bid value offered by the respondent no. 9 and despite the bid submitted by the petitioner was found compliant to the terms and conditions of the Tender Notice dated 10.05.2022, his bid was illegally not accepted on an irrelevant ground, thereby, making the decision-making process leading to the settlement of the fishery named *Chakala Beel* illegal and unsustainable in law.

2. The facts which are necessary for adjudication of the issues raised in this writ petition can be exposited, in brief, as follows :-

2.1. A Tender Notice dated 10.05.2022 was published under the hands of the President, Sivasagar Anchalik Panchayat and the Chief Executive Officer, Sivasagar Anchalik Panchayat whereby sealed bids were invited from intending bidders for settlement of a number of markets/fisheries/ghats for the Panchayat Financial Year :

2022-2023, as per the Assam Panchayat Act, 1994, as amended, i.e. the period from 01.07.2022 to 30.06.2023. One of the fisheries in respect of which bids were called for, was *Chakala Beel* [‘the Fishery’, for short], located within the territorial jurisdiction of Sivasagar Anchalik Panchayat and Sivasagar Zilla Parishad. As per the Tender Notice, the yearly sale value of the Fishery was fixed @ ₹ 1,05,000/- with 21.06.2022 the last date of submission of bids.

3.1. It is an admitted position, as revealed from the Comparative Statement prepared by the General Standing Committee of Sivasagar Anchalik Panchayat, that in response to the Tender Notice for settlement of the Fishery, a total of 8 [eight] nos. of bids were received from the bidders quoting different bid values. The bid values, in descending order, quoted by the 8 [eight] nos. of bidders were as under :-

Sl. No.	Bidder number	Bid value offered
1	Bidder no. 1 [the petitioner]	₹ 4,00,900/-
2	Bidder no. 2 [the respondent no. 9]	₹ 4,00,501/-
3	Bidder no. 3	₹ 3,57,108/-
4	Bidder no. 4	₹ 3,50,101/-
5	Bidder no. 5	₹ 2,90,201/-
6	Bidder no. 6	₹ 2,60,501/-
7	Bidder no. 7	₹ 2,15,257/-
8	Bidder no. 8	₹ 2,10,101/-

3.2. After submission of the bids, the sealed bids were opened in the presence of the representatives of the respective bidders by the General Standing Committee of Sivasagar Anchalik Panchayat and the Comparative Statement, as mentioned above, was prepared. After preparation of the Comparative Statement, the final outcome, according to the petitioner, was not declared by the respondent authorities without assigning any reason. As the bid of the petitioner emerged as the highest valid bid, according to him, the petitioner was waiting in expectation that the Fishery would be settled in his favour by an order of settlement in due course. At a later point of time, the petitioner was verbally informed that a complaint was lodged against him and in view of such complaint, the bid of the petitioner was likely to be not accepted. On 12.07.2022, the petitioner submitted an application before the Deputy Commissioner, Sivasagar [the respondent no. 2] ventilating his grievance and apprehension. The petitioner had also

approached the respondent authorities to provide him a copy of the complaint lodged against the bid of the petitioner. Finally, a copy of the complaint dated 07.07.2022 was furnished to him on 06.08.2022. With the apprehension that the petitioner's bid would be rejected on the basis of the complaint dated 07.07.2022 and the Fishery would be settled in favour of the next highest bidder or any other bidder, the petitioner approached this Court by this writ petition seeking **inter alia** a direction not to give effect to the verbal order of rejecting the petitioner's valid highest bid and also for a direction to grant settlement of the fishery named *Chakala Beel* in favour of the petitioner.

4. I have heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. H.K. Sarma, learned counsel for the petitioner and Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 3, 4, 5, 6 & 8.

5. The order of the Lawazima Court dated 20.12.2022 had reported that the notices sent to the respondent no. 7 and the respondent no. 9 were duly delivered to them on 03.11.2022 and 26.10.2022 respectively and it was, thus, observed that the notices were duly served upon the respondent no. 7 and the respondent no. 9. Though the notices were duly served upon the respondent no. 7 and the respondent no. 9, none has appeared on behalf of the respondent no. 7 and the respondent no. 9.

6. Mr. Sahewalla, learned Senior Counsel appearing for the petitioner has submitted that the bid value offered by the petitioner was the highest and was, thus, more than the bid value offered by the respondent no. 9. He has referred to the provisions of Section 52[1][a], Section 53[1], Section 81[a], Section 83[1] and Section 109 of the Assam Panchayat Act, 1994 and also Rule 47 of the Assam Panchayat [Financial] Rules, 2002 [‘the Rules, 2002’, for short], to submit that there was no prior and formal approval of the Government in settling the Fishery in favour of the respondent no. 9 at a lesser bid value ignoring the highest valid bid of the petitioner. He has further submitted that the ground on which the bid of the petitioner was rejected is not tenable and arbitrary for the fact that the petitioner's bid was rejected only on the ground that the petitioner was not a resident of the territorial jurisdiction of the Sivasagar Anchalik Panchayat. He has submitted that such rejection is clearly in violation of Article 19[1][g] of the Constitution of India.

7. Mr. Dev Nath, learned Standing Counsel, Panchayat & Rural Development Department who has also produced the records of settlement, has submitted that on receipt of a complaint dated 07.07.2022 to the effect that the petitioner is not a resident of Sivasagar Anchalik Panchayat, the matter was enquired into and on enquiry, the allegation made in the complaint was found out to be true. The petitioner is a resident within the territorial jurisdiction of Ward no. 2, Sivasagar Municipal Board. As the respondent no. 9 is a resident of the territorial jurisdiction of the Sivasagar Anchalik Panchayat and the difference between the bid values was merely ₹ 400/-, the decision was taken to settle the Fishery in favour of the respondent no. 9.

8. I have considered the submissions of the learned counsel for the parties and have also perused the materials brought on record. I have also perused the records of settlement produced by the learned Standing Counsel, P&RD Department.

9. From perusal of the records, it is noticed that by an order of settlement dated 14.07.2022 issued under the hand of the respondent no. 5, the Fishery i.e. *Chakala Beel* came to be settled in favour of the respondent no. 9 for the Panchayat Financial Year : 2022–2023 at his offered bid value of ₹ 4,00,501/-. The order of settlement was preceded by a decision of the respondent Sivasagar Zilla Parishad not to accept the highest valid bid.

10. On perusal of the proceedings of the General Standing Committee of the Sivasagar Anchalik Panchayat, it transpires that in respect of the fishery named *Chakala Beel*, 8 [eight] nos. of bids, as mentioned above, were received and opened. After opening of those bids, the General Standing Committee of the Sivasagar Anchalik Panchayat examined those bids and after examination, recorded its remarks in respect of each of the bids in the Comparative Statement. From the Comparative Statement prepared by the Sivasagar Anchalik Panchayat, it is noticed that the General Standing Committee of Sivasagar Anchalik Panchayat found the bid of the petitioner with offered bid value of ₹ 4,00,900/-, compliant to all the terms and conditions of the Tender Notice dated 10.05.2022. Similarly, the bid of the respondent no. 9 was also found compliant to the terms and conditions of the Tender Notice dated 10.05.2022. In the proceedings, the General Standing Committee of the Sivasagar Anchalik Panchayat had reported in the remark column of the Comparative Statement to the effect that the highest bidder

i.e. the petitioner was a resident of Sivasagar Municipal Board and on enquiry, the same was found out to be true. With such remark, the matter was forwarded to the higher authority i.e. the Sivasagar Zilla Parishad for consideration in accordance with law.

11. The proceedings of the General Standing Committee of the Sivasagar Zilla Parishad, recorded on 14.07.2022, go to show that the 1st highest valid bid of the petitioner was not accepted on the ground that the petitioner is a resident of Ward no. 2, Sivasagar Municipal Board and preference should be given to a person who is a resident of a village/panchayat area to facilitate proper implementation of the development works. The decision was taken on the premise that as per the policy of the Panchayat & Rural Development Department, the development works are undertaken in village areas and not in town areas and since the respondent no. 9 is a resident of Disangmukh Gaon Panchayat, the General Standing Committee decided to settle the Fishery in favour of the respondent no. 9 as the Fishery is located within the areas of Disangmukh Gaon Panchayat. Another reason cited for granting preference to the respondent no. 9 is that the difference between the bid values of the petitioner and the respondent no. 9 was merely ₹ 400/-.

12. As per the provision of Section 52[1][a] of the Assam Panchyat Act, 1994, an Anchalik Panchayat shall have a General Standing Committee and such General Standing Committee has to perform functions relating to the establishment matters, communication, buildings, rural housing, relief against natural calamities water supply and all miscellaneous residuary matters. Section 81[a] of the Assam Panchayat Act, 1994 has provided for constitution of a General Standing Committee in the Zilla Parishad and Section 83[1] of the Act has likewise mentioned the functions of the said Committee. As per Section 109[1] of the Assam Panchayat Act, 1994, all fisheries within the territorial jurisdiction of Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat Financial Year by inviting tenders at the office of the Anchalik Panchayat by its President. Sub-section [3] of Section 109 has laid down that the powers of examination and final acceptance of bids is vested in the General Standing Committee constituted under Section 52[1][a] and as per sub-section [4] of Section 109, all settlement made under sub-section [3] is subject to confirmation of the Zilla Parishad. Section 109[6] has inter alia provided the fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than Rs. 1,00,000/- shall be settled by

the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial Year as under Section 109, in the manner prescribed. The powers of examination and final acceptance of such tenders is vested in the General Standing Committee constituted under Section 81 of the Assam Panchayat Act, 1994.

13. Rule 47[1] of the Rules, 2002 has **inter alia** provided that such fisheries as are vested in or place under the control and administrative of the Panchayat under Section 109 shall be settled by inviting sealed tenders. As per Rule 47[5], the tender shall be opened, processed and settled by the Committee as provided under Section 52[1][a] or Section 81[a], as the case may be. Rule 47[7] has cast an obligation on the concerned General Standing Committee to prepare a Comparative Statement setting forth full details of the tenders.

13.1. Sub-Rule [10] of Rule 47 of the Assam Panchayat [Financial] Rules, 2002 reads as follows :-

Rules and Procedures for the Sale and Settlement of Markets, Ferries, Fisheries and Ponds

Rule 47[10] – The tender of highest bidder shall be accepted. Acceptance of tender other than the highest bid shall require the ‘Government’ prior and formal approval.

14. Rule 47[10] has been incorporated in the Rules, 2002 so that the settling authority cannot deviate arbitrarily from the norm of settling ordinarily the fishery with the highest valid bidder without prior approval of the higher authority, that is, the State Government. In a case where the highest bidder is sought to be not given the settlement and the settlement is sought to be offered to a next higher bidder, prior and formal approval of the Government is required to be obtained. In the event no prior and formal approval is taken by the Zilla Parishad while issuing the settlement order in favour of a bidder who is not the highest valid bidder, then the settlement given to such a bidder would not be sustainable, being violative of Rule 47[10] of the Rules, 2002.

14.1. At this stage, it is apposite to refer to the observations of the Full Bench of this Court made in **Harez Ali and another vs. State of Assam and others**, reported in **2009 [2] GLT 561**. In Harez Ali [supra], the provisions of Section 109 of the Assam Panchayat

Act, 1994 inter alia came up for consideration. It has considered the significance of the expression, 'yearly sale value' appearing in Section 109[6] of the Assam Panchayat Act, 1994. As the observations made in Paragraph 29 in Harez Ali [supra] are of relevance, the same are quoted herein below for ready reference :-

“[29] Further, we also respectfully disagree with the view taken by the Single Bench in **Khalilur Ramhan vs. State of Assam** [supra], to the effect that 'the question of jurisdiction between Zilla Parishad and Anchalik Panchayat would remain indecisive till the submission and opening of the tender papers', as because the procedure laid down by 'the Act', is precisely clear that all NITs, in respect of Ghats, Hats and Fisheries, irrespective of the 'yearly sale value' of such property in question, are required to be floated by the Anchalik Panchayat. However, after submission of all tender papers before the Anchalik Panchayat, if the bid value offered by the eligible highest bidder is found to be more than rupees one lakh, the Standing Committee of Anchalik Panchayat, constituted under Section 52 of the Act, shall immediately forward all such tender papers submitted by the bidders together with comparative chart prepared and processed as per procedure prescribed, to the Zilla Parishad concerned, for doing needful at their end, in accordance with law. However, in case the bid value offered by eligible highest bidder is less than rupees one lakh, the Standing Committee of the Anchalik Panchayat shall accept tender value offered by eligible highest bidder and forward such recommendations for confirmation by the Zilla Parishad. We hasten to add here that if any given case, the highest bidder is not found suitable, law prescribed, for such eventuality will have to be followed.”

15. The relevant provisions of the Assam Panchayat Act, 1994 relating to settlement of markets, ghats, fisheries, etc., and Rule 47[10] of the 2002 Rules came to be considered by this Court in **W.P.[C] no. 5992/2014 [Durga Charan Mandal vs. the State of Assam & others]**, wherein the judgment and order was rendered on 18.03.2015. The Court has observed as under :-

“22. 'Process', in the context of a notice inviting tender, encompasses within its ambit, amongst others, preparation of a comparative statement, evaluation of the tenders and rejection of tenders not conforming to the requirements of the Notice Inviting Tender. Sections 105[3], 106[3] also provide for examination of tenders by the General Standing Committee. The highest tender, after examination and

evaluation, in a given case, may be rejected. Once rejected, such a tender cannot come into consideration for the purpose of acceptance or settlement. If the words, 'highest bidder' occurring in Rule 47[10] of the Rules is given literal meaning, examination or evaluation of tenders, as contemplated in the Act, will be rendered meaningless and it will result in a situation of acceptance of a tender, irrespective of the fact as to whether or not the tenderer fulfils the eligibility criteria and other terms and conditions. Surely, this is not what the legislature contemplated. The expression, 'the tender of the highest bidder shall be accepted' would, by necessary implication, mean that the highest 'valid' tenderer will be considered for acceptance or settlement and, therefore, Rule 47[10] of the Rules has to be understood to mean that the tender of the highest 'valid' tender shall be accepted and that acceptance of tender, other than the highest valid tenderer, shall require prior and formal approval of the government."

15.1. The decision in **Jalal Uddin and others vs. State of Assam and others**, reported in 2015 [2] GLT 1097 has reaffirmed the view in **Durga Charan Mandal** [supra]. This Court in the case titled **Debajit Hazarika vs. the State of Assam and others**, reported in 2022 [2] GLT 337, has held that an order of settlement made in favour of a bidder other than the highest valid bidder, in violation of the statutory prescription contained in Rule 47[10] of the Rules, 2002 is a vitiated one and the decision in **Debajit Hazarika** [supra] is affirmed by the Division Bench in **Writ Appeal no. 59/2022 [Sri Puneshwar Saikia vs. the State of Assam and others]**, decided on 14.02.2022.

16. It is not the case of the respondent authorities that the bid of the petitioner submitted in respect of the Fishery was invalid and non-compliant on any count. It was accepted by the respondent authorities, as revealed from the proceedings of the General Standing Committee of the Sivasagar Anchalik Panchayat and the General Standing Committee of the Sivasagar Zilla Parishad that the bid value offered by the petitioner was the highest one. The respondent authorities have failed to refer to any condition incorporated either in the Tender Notice dated 15.05.2022 or in the Assam Panchayat Act, 1994, as amended, or in the Assam Panchayat [Financial] Rules, 2002 whereby a resident within the concerned jurisdictional Anchalik Panchayat is to be preferred for settlement of the markets/ghats/fisheries located within the territorial areas of the said Anchalik Panchayat.

17. It is settled that the bidders who participate in a competitive bidding process have a right to equality and fair treatment in the matter of evaluation of competitive bids offered by them in response to a notice inviting tender in a transparent manner and in accordance with the terms and conditions of such notice inviting tender. The bidders are entitled to be treated in a fair, equal and non-discriminatory manner in the matter of evaluation of their bids. It is settled that the bidders have an enforceable right to that limited extent before the Court and if an assailment is made by any participant bidder that he has been treated unfairly or discriminatory manner, this Court in exercise of its power of judicial review under Article 226 of the Constitution of India, can examine the issue. In matters relating to distribution of State largesses, and more particularly, grant of settlement, the State and/or the authorities entrusted with the responsibility to make such settlement, are bound to adhere to the norms, standard and procedure laid down by them and it is not permissible for such authorities to make a departure in an arbitrary manner. It is settled that a decision taken by the authorities is not amendable to judicial review but the Court while exercising its power of judicial review can examine the decision making process and interfere if it is found vitiated on the ground of unreasonableness, arbitrariness or mala fide. The test for the Court is to examine whether there is any infirmity or arbitrariness in the decision making process. The purpose of judicial review in contractual matters is to examine as to whether principles laid down in Article 14 of the Constitution of India have been kept under consideration while accepting or refusing the bids of the participant bidders and is to ensure that all the participant bidders receive fair treatment at the hand of the authorities. The Court while exercising its power of judicial review and examine a matter of grant of distribution of State largesses to satisfy itself as to whether the authority which has been vested with the power to take the decision has adopted a procedure satisfying the test of Article 14 of the Constitution of India or inconformity with the statutory provisions governing the matter which is the Assam Panchayat Act, 1994, as amended, in the case in hand. If in a particular case, the settling authority is required to adhere to certain statutory prescriptions then in that case, the settling authority is under obligation to adhere to those statutory prescriptions and it is not permissible for the settling authority to make any aberration and a departure from the procedure laid down by the statutory provisions.

18. No counter affidavit has been filed by any of the respondents. The learned Standing Counsel, P&RD Department has not been able to refer any provision which

requires giving of preference to a resident of the jurisdictional gaon panchayat in the matter of settlement of markets/ghats/fisheries under the Assam Panchayat Act, 1994, notwithstanding the fact that the bid value offered by such bidder is not the highest valid bid.

19. When the matter of settlement of the Fishery is regulated by the statutory prescription contained in Section 47[10] of the Assam Panchayat [Financial] Rules, 2002, the respondent authorities are duty bound to adhere to the same and cannot resort to irrelevant factors like the ones which were taken to grant the settlement in favour of the respondent no. 9 in the case in hand, firstly, a difference of ₹ 400/- between the bid values; and secondly, the highest valid bidder i.e. the petitioner is not a resident of the jurisdictional Anchalik Panchayat. The grounds so taken by the respondent authorities in not accepting the highest valid bid of the petitioner in the absence of prior and formal approval of the Government, is not only found in violation of Rule 47[10] of the Rules, 2002, but also found to be violative of Article 19[1][g] of the Constitution of India. As the challenge in the writ petition is made with regard to the rejection of the bid of the petitioner vis-à-vis the settlement of the Fishery i.e. *Chakala Beel* pursuant to the Tender Notice dated 10.05.2022 on the premise that the Rule 47[10] of the Rules, 2002 was not followed in making the settlement of *Chakala Beel*, which is a mandatory statutory prescription, the action of the respondent authorities in the Sivasagar Anchalik Panchayat and Sivasagar Zilla Parishad in rejecting the bid of the petitioner is found unsustainable in law and as such, the same is liable to be set aside.

20. In view of the discussions made above and for the reasons assigned therein, more particularly, in view of violation of Rule 47[10] of the Rules, 2002 on the part of the General Standing Committee of the Sivasagar Anchalik Panchayat and the General Standing Committee of the Sivasagar Zilla Parishad in settling the Fishery, *Chakala Beel*, the process of settlement resulting into the Order of Settlement dated 14.07.2022 in favour of the respondent no. 9 is found to be vitiated one due to taking into account irrelevant factors in the decision making process and non-compliance of the statutory prescription contained in Section 47[10] of the Rules, 2002. Thus, the aforesaid actions in rejecting the bid of the petitioner submitted for the settlement of the Fishery, *Chakala Beel* by the General Standing Committee of the Sivasagar Anchalik Panchayat and the General Standing Committee of the Sivasagar Zilla Parishad are set aside and as a corollary, the consequential order of settlement dated 14.07.2022 made in favour of the

respondent no. 9 is also set aside and quashed. Consequently, the respondent authorities in the Sivasagar Anchalik Panchayat and Sivasagar Gaon Panchayat are directed to revisit the matter of settlement once again on the basis of the records containing the tender documents of the participant valid bidders and to arrive at a fresh decision for settlement of *Chakala Beel* for the subsequent period upto 30.06.2023 as indicated in the Tender Notice dated 10.05.2022, in compliance of Rule 47[10] of the Rules, 2002. The entire exercise shall be undertaken and completed on or before 22.03.2023.

21. At this stage, Mr. Dev Nath has submitted that the respondent no. 9 has been operating the Fishery pursuant to the order of settlement dated 14.07.2022 and thus, he may be allowed to operate the Fishery till 22.03.2023. In view of the direction given above, the respondent no. 9 may be permitted to operate the Fishery upto 22.03.2023 and if after that any excess amount of installment is found to be refunded to the respondent no. 9 due to deposit already made, the same shall be refunded by the respondent authorities forthwith thereafter.

22. With the observations made and the directions given above, the writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

23. A copy of this order be furnished to Mr. Dev Nath, learned Standing Counsel, Panchayat and Rural Development Department for doing the needful from his end.

JUDGE

Comparing Assistant