

GAHC010172712023



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

Case No. : WP(C)/4524/2023

JANARDAN KALITA
S/O- BIPIN CHANDRA KALITA, R/O- VILLAGE- PHULOGURI, NEAR
JAGANNATH MANDIR, P.O. MAJBAT, PIN- 784507, P.S. MAJBAT, DIST.-
ODALGURI, BTR, ASSAM

VERSUS

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

2:PRINCIPAL SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
BTR
ASSAM
PIN- 783370

3:MARKET SETTLEMENT COMMITTEE
BTR
REPRESENTED BY ITS CHAIRMEN KOKRAJHAR
ASSAM
PIN- 783370

4:THE DEPUTY COMMISSIONER
ODALGURI DISTRICT
BTR
ASSAM
PIN- 784507

5:CIRCLE OFFICER
MAZBAT REVENUE CIRCLE

MAZBAT
DISTRICT- ODALGURI
ASSAM
PIN- 785621

6:BLOCK DEVELOPMENT OFFICER
MAZBAT DEVELOPMENT BLOCK
MAZBAT
ODALGURI
P.O. AND P.S. MAZBAT
BTR
PIN- 785621

7:SRI SWRANGSHA DAIMARY
S/O- KEMI DAIMARY
R/O- VILLAGE- NO.1 KHUSURABARI
P.O. MAJBAT
PIN- 784507
P.S. MAJBAT
DIST.- ODALGURI
BTR
ASSA

For the Petitioner (s) : Mr. H. C. Sarma, Advocate.

For the Respondent (s) : Mr. P. Handique, SC (P & RD Deptt.)

Mr. S. Bora, SC. BTC.

Date of hearing & Judgment : **21.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition is filed by the Petitioner being aggrieved by the settlement made in favour of the Respondent No. 7 who was the second highest bidder in respect to Mazbat Weekly Open Market and also for a direction upon the Respondents to settle the Mazbat

Weekly Open Market with the Petitioner for the year 2023-24. From a perusal of the materials on record, it reveals that the Joint Secretary, Bodoland Territorial Council, Kokrajhar had invited bids vide a tender notice bearing Memo No.CHD/Market-01/2020/Pt-I/98-(A) dated 20.05.2023 for settlement of Mazbat Weekly Open Market alongwith other Markets/Go-Hats/Parking /Parghat/Fisheries/Cattle Pounds for the year 2023-24 under the Mazbat Development Block, Udalguri thereby fixing 17.06.2023 as the last date for submission of the bids. The Petitioner alongwith other bidders duly participated pursuant to the said tender process.

2. It appears from the comparative statement enclosed as Annexure-II to the writ petition that the Petitioner alongwith the Respondent No. 7 and one Amor Brahma had submitted the tender in respect to the Mazbat Weekly Open Market.

3. It further reveals that the Petitioner had deposited an amount of Rs.6,52,790/- vide a Demand Draft dated 16.06.2023 whereas the Respondent No. 7 had deposited Rs. 4,90,000/- vide a Demand Draft of the same date. It is also seen from the comparative statement that the said Shri Amor Brahma did not submit any deposit.

4. It further reveals that pursuant to the said comparative statement prepared, the Mazbat Weekly Open Market was settled with the Respondent No.7 at the settlement rate of Rs.4,90,000/- for the

year 2023-24 w.e.f. 1st July, 2023 to 30th of June, 2024 as informed vide the Communication dated 03.07.2023 issued by the Block Development Officer, Mazbat Development Circle. The Petitioner being aggrieved by the settlement of the Mazbat Weekly Open Market in favour of the Respondent No. 7 who was the second highest bidder and for not settling the said Mazbat Weekly Open Market in favour of the Petitioner had approached this Court by filing the instant writ petition.

5. Before proceeding further, this Court finds it is relevant to take note of some of the terms and conditions of the said Notice Inviting Tender taking into consideration the submissions made on behalf of the parties. Clause-8 of the said Notice Inviting Tender stipulates that the tenderer shall attach to the tender the various documents. The said Clause 8 for the sake of convenience is quoted hereinunder :

“8. The tender shall attach the tender with the following documents. :-

(a) Bank Draft of the value of the offered rate in terms of Clause 5.

(b) Original Land Patta and Jamabandi Copy.

(c) Land Revenue Clearance Certificate,

(d) ST/SC Caste Certificate.

(e) Land Valuation Certificate against the mortgage property.

(f) GST Clearance, if applicable.

(g) Non Incumbency Certificate.

(h) Pan/Aaadhar Card

(i) 2 (two) copies of the passport photo of the tenderer.

(h) Tax Clearance Certificate from the Block

Development Officer."

6. This Court further finds it relevant to take note of Clause 11 of the said Tender Notice which stipulates that the competent authority shall make the settlement with the highest bidder if all the necessary documents and the Government revenue are found in order. It was further stipulated that in case the settlement is not made with the highest bidder, the competent authority shall record reasons in writing for their decision. Further to that, Clause 11 stipulates that the competent authority before awarding the settlement shall make necessary enquiry keeping in mind the genuiness, eligibility and seriousness of the parties.

7. In the backdrop of the said Clause 8, this Court finds it relevant to take note of that in the comparative statement of the rates prepared in respect to the tenderers, it reveals that the Petitioner did not submit the SC/ST caste certificate, the clearance certificate as regards the income tax, bank, Samabai as well as the Bakijai. The Respondent No. 7 did not submit the bank certificate.

8. In the backdrop of the above, this Court further finds it relevant

to take note of that vide an order dated 09.08.2023, this Court had issued notice and further directed the Standing Counsel for the BTC to produce the relevant records of settlement reflecting the grounds of denial of settlement to the Petitioner as well as the grounds for settling the market in favour of the Respondent No. 7 on the next date. It reveals from the records that inspite of receipt of notices, none of the Respondents have chosen to file any affidavit-in-opposition. The writ petition was listed on 13.10.2023 and 20.11.2022. On 20.11.2023, taking into account the urgency shown and delay in disposal of the writ petition would render the instant proceedings infructuous, this Court fixed the matter again on 21.11.2023.

9. Let this Court now take note of the respective submissions of the parties. The learned counsel appearing on behalf of the Petitioner submitted that all the documents which are necessary as per Clause 8 of the Tender Notice were duly submitted and the Petitioner being the highest bidder quoting an amount of Rs.6,52,790/- and having deposited the said bank draft, the Respondent Authorities ought to have settled the Mazbat Weekly Open Market in favour of the Petitioner. The learned counsel for the Petitioner further submitted that the Respondent Authorities in violation of the terms and conditions of the tender and in order to favour the Respondent No. 7 have settled the market in favour of the Respondent No. 7 at an

amount of Rs. 4,90,000/- which was much below the amount which was deposited by the Petitioner. He further submits that there are even no reasons assigned as to why the Respondent No. 7 was favoured with the settlement who admittedly quoted a lower rate though it was the specific mandate of Clause 11 to record such reasons.

10. I have heard Mr. S. Bora, the learned counsel appearing on behalf of the BTC who submits that if the Petitioner have duly submitted the documents as per Clause 8 of the Tender Notice and apparently as the Petitioner was the highest bidder, the Respondent Authorities could have made the settlement in favour of the Respondent No. 7 for reasons to be recorded. However, he submitted that the concerned Respondents did not furnish to him the instructions on what basis the Respondents made the settlement in favour of the Respondent No. 7 inspite of the fact that the Petitioner was the highest bidder. He further submitted that the records were also not furnished to him inspite of the order passed by this Court on 9.8.2023.

11. Mr. P. Handique, the learned counsel appearing on behalf of the P & RD Department submits that the Petitioner in the instant case did not submit the income tax clearance certificate which was required in terms with Clause 8(j) wrongly referred to as Clause 8 (h) in the Tender Notice for which Clause 11 cannot be made applicable

inasmuch Clause 11 of the Tender Notice would be applicable when the highest bidder had submitted all the documents.

12. The record of the instant writ petition reveals that the service upon the Respondent No. 7 is complete but the Respondent No. 7 is neither represented nor have filed any affidavit-in-opposition. This Court have duly heard the learned counsels for the parties. In the backdrop of the above submissions and the materials on record, let this Court analyse the case set out by the respective parties. It appears from a perusal of Clause 8 as quoted hereinabove that the documents which are required are (i) the Bank Draft of the value of the offered rate in terms with Clause 5, (ii) Original Land Patta and Jamabandi Copy, (iii) Land Revenue Clearance certificate, (iv) ST/SC Certificate, (v) Land Valuation Certificate against the mortgage property, (vi) GST Clearance, if applicable, (vii) Non Incumbency Certificate, (viii) Pan/Aaadhar Card, (ix) 2 (two) copies of the passport photo of the tenderer and the (x) Tax Clearance Certificate from the Block Development Officer.

13. The learned counsel appearing on behalf of the Petitioner submitted that as the Petitioner does not belong to the ST/SC community, the Petitioner cannot produce the ST/SC Certificate. He further submitted that from a perusal of the said tender notice, it would be seen that the said tender was a open tender for all categories taking into account Clause 1 of the Tender Notice which

stipulates that Rs.50.00 (Rupees fifty) was to be paid for ST/SC tenderers and Rs.200/- (Rupees two hundred) for general category tenderers. He further submitted that the requirement of Income Tax Clearance Certificate is not mentioned in Clause 8. What has been mentioned is a Tax Clearance Certificate from the Block Development Officer which the Petitioner had duly submitted. The learned counsel further referred to Clause 18 of the said Tender Notice which stipulates what is a Tax Clearance Certificate from the Block Development Officer. This Court is of the opinion that the said submission of the learned counsel for the Petitioner has due merit. This Court upon perusal of the Tender Notice as well as the comparative statement is therefore of the opinion that the Petitioner had duly submitted the documents in question.

14. It is further seen from the comparative statement that the Petitioner was the highest bidder quoting an amount of Rs.6,52,790/- which was higher than the Respondent No. 7 who had quoted only Rs.4,90,000/-. Under such circumstances, unless there existed good reasons, to deny the Petitioner which as per the mandate of Clause 11 of the Tender Notice was required to be recorded, the settlement of the tender ought to have been made in favour of the Petitioner.

15. The learned counsel appearing on behalf of the BTC who was directed by this Court to produce the records vide order dated 9.8.2023 have also failed to produce any records/documents to show

that there existed any reasons which were recorded to deny the Petitioner the award of the contract and the consequent awarding of the contract to the Respondent No. 7.

16. It is the opinion of this Court that non disclosure of reasons and any justification being shown to award the contract in favour of the Respondent No. 7 renders the award of the settlement in favour of the Respondent No. 7 illegal, arbitrary, unreasonable, irrational as well as against the public interest.

17. In that view of the matter, the impugned order dated 03.07.2023 by which the Mazbat Weekly Open Market was settled in favour of the Respondent No. 7 is bad in law and accordingly the same is set aside and quashed.

18. Now the question arises as to whether this Court can direct the Respondent Authorities to settle the tender in favour of the Petitioner taking into account that the Petitioner was the highest bidder and in the meantime, almost 5 months have elapsed.

19. This Court have also duly taken note of the submissions made by the learned counsel appearing on behalf of the Petitioner that the Petitioner is willing to run the Mazbat Weekly Open Market by depositing the proportionate amount as per the bid submitted, for the remaining period. This Court have also heard Mr. S. Bora, the learned counsel appearing on behalf of the BTC who submitted that the

Petitioner could be settled with the said tender and the Petitioner prior to the offer of settlement has to deposit the proportionate amount of the payment on the basis of the bid submitted for the remaining period. This Court is also of the opinion that the Petitioner being the highest bidder ought to be granted the settlement subject to the Petitioner depositing the proportionate amount as per his bid for the remaining period. This opinion of this Court is based on the premises that if the direction is given for a fresh tender, it would only result in delay which eventually would effect the public revenue.

20. Taking into account the above, this Court grants the liberty to the Petitioner to submit the proportionate amount for the remaining period by way of a bank draft in favour of the Principal Secretary, BTC, Kokrajhar within 10 days from today alongwith the certified copy of the instant judgment and on the basis of the same, the Respondent Authorities shall do the needful for issuance of a settlement order in favour of the Petitioner for the remaining period. The said direction to offer the settlement in favour of the Petitioner is subject to the Petitioner depositing the proportionate amount for the remaining period as per his bid within 10 days from today.

21. The learned counsel for the Petitioner submitted that liberty may further be granted to the Petitioner for return of the original bank draft which was submitted of an amount of Rs.6,52,790/- which have by now become non-negotiable as the period of the bank draft had

already expired.

22. The Petitioner would be at liberty to approach the Respondent Authorities for return of the said non-negotiable bank draft of the amount of Rs.6,52,790/- and the Respondent Authorities shall return the same upon deposit of the bank draft for the proportionate amount for the remaining period as directed hereinabove.

23. With the above observations and directions, the instant writ petition stands allowed.

JUDGE

Comparing Assistant