

GAHC010184532022



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

Case No. : WP(C)/6078/2022

BASED ALI
S/O- LT. RAHIZUDDIN, VILL AND P.O. BALIKURI, DIST.- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE PRINCIPAL SECY., TO THE GOVT. OF ASSAM, PANCHAYAT
AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM

3:THE BARPETA ZILA PARISHAD
REP. BY THE CHIEF EXECUTIVE OFFICER
BARPETA
DIST.- BARPETA
ASSAM

4:THE BARPETA ZILA PARISHAD
REP. BY ITS PRESIDENT
BARPETA ZILA PARISHAD
DIST.- BARPETA
ASSAM

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

6:THE PRESIDENT OF MONDIA ANCHALIK PANCHAYAT
P.O. MONDIA

DIST.- 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 : 24-03-2023

The instant writ petition under Article 226 of the Constitution of India has been instituted by the petitioner seeking inter alia a direction in the nature of mandamus for directing the respondent authorities in the Barpeta Zilla Parishad to settle a market named Balikuri Market located within the territorial jurisdiction of Sonapur Rubhi Gaon Panchayat under the Mondia Anchalik Panchayat as the petitioner emerged as the highest valid bidder in the competitive bidding process initiated by and undertaken for settlement of the market i.e. Balikuri Market pursuant to a Tender Notice dated 03.08.2022.

2. I have heard Mr. H. Ali, learned counsel for the petitioners and Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department for the respondent nos. 1, 3, 4 & 5; Mr. K. Gogoi, learned Senior Government Advocate, Assam for the respondent no. 2.

3. As per the office note dated 16.12.2022, the service of notice upon the respondent no. 6 is complete. Despite service of notice, none has appeared for the respondent no. 6 till date.

4. The factual matrix of the case lies in a narrow compass. By a Tender Notice dated 03.08.2022, the Mondia Anchalik Panchayat invited sealed bids for settlement of a market named Balikuri Market [‘the Market’, for short] located within the Sonapur Rubhi Gaon Panchayat for the Panchayat Financial Year : 2022-2023 and for the period from 16.08.2022 to 30.06.2023, with 12.08.2022 as the last date of submission of bids. In response to the Tender Notice, three bidders including the petitioner, participated in the bidding process. After opening of the bids, the General Standing Committee of Mondia Anchalik Panchayat evaluated the bids and prepared a Comparative Statement in terms of the provisions of Rule

47[7] of the Assam Panchayat [Financial] Rules, 2002. As per the Comparative Statement prepared by the General Standing Committee of the Mondia Anchalik Panchayat, the petitioner emerged as the highest valid bidder at his offered bid value of ₹ 91,100/-. When the General Standing Committee of the Mondia Anchalik Panchayat forwarded the entire matter to the Barpeta Zilla Parishad for confirmation in terms of sub-section [4] of Section 105 of the Assam Panchayat Act, 1994, as the bid value offered by the highest valid bidder was below ₹ 1,00,000/-, the General Standing Committee of the Barpeta Zilla Parishad considered the same in its meeting held on 25.08.2022. In its said meeting, the General Standing Committee considered the fact that the bids were invited for the third occasion after failure to settle the Market subsequent to the bidding processes undertaken by two previous Tender Notices. The General Standing Committee had further observed that on the third occasion, only three bids were received in response to the Tender Notice dated 03.08.2022 and the highest bidder had offered only an amount of ₹ 91,100/- which bid value was much lesser than the bid value offered by the settlement holder of the Market during the previous Panchayat Financial Year : 2021 – 2022 @ ₹ 6,65,000/-. Having considered these aspects, the General Standing Committee of Barpeta Zilla Parishad decided not to give confirmation for settlement of Balikuri Market in favour of the highest valid bidder i.e. the petitioner @ ₹ 91,100/-. The General Standing committee, Barpeta Zilla Parishad had taken a decision to ask the Chief Executive Officer of the Zilla Parishad to issue an order to the Executive Officer of the Mondia Anchalik Parishad to operate the Market for collection of toll, etc. as per the provisions of sub-section [5] of Section 105 of the Assam Panchayat Act, 1994, as amended. The said decision of the General Standing Committee of the Barpeta Zilla Parishad was carried out by the Chief Executive Officer, Barpeta Zilla Parishad by a letter dated 26.08.2022 whereby the Executive Officer, Mondia Anchalik Parishad was asked to manage the Market directly by the Anchalik Panchayat in terms of the provisions of Section 105[5] of the Assam Panchayat Act, 1994, as amended.

5. Though it is contended by the learned counsel for the petitioner that since the petitioner has emerged as the highest valid bidder after evaluation of the bids of three participant bidders, the tendering authority in the Mondia Anchalik Panchayat and the confirming authority in the Barpeta Zilla Parishad required to act in conformity with Rule 47[10] of the Assam Panchayat [Financial] Rules, 2002. The said submission advanced on behalf of the petitioner cannot be countenanced in view of the fact that Rule 47[10] of the Assam Panchayat [Financial] Rules, 2002 has provided that the tender of the highest bidder is to be accepted ordinarily, but in case the tender of any other bidder, other than highest bidder, is to be accepted then the same mandatorily requires Government's prior and formal

approval. In the case in hand, the General Standing Committee of the Zilla Parishad had decided not to confirm the highest valid bid received in response to the Tender Notice dated 03.08.2022 and as such, it is not a case where the concerned authorities had decided to accept the bid of the bidder other than the highest valid bidder.

6. Sub-Section [5] of Section 105 of the Assam Panchayat Act, 1994, as amended, has provided that failure to settle any hat [market] for want of adequate value, the Anchalik Panchayat, as may be decided by the Zilla Parishad, may be entrusted with the direct management of such hat [market] by the Anchalik Panchayat.

7. It is settled proposition of law that just because a bidder has emerged as the valid bidder in a tender process, such bidder has no enforceable right to institute a writ petition seeking a direction to the tender inviting/settling authorities to accept his bid. If the decision making process undertaken by the tender inviting/settling authority leading to the decision not to accept the bid of the highest valid bidder is in valid exercise of the power, authority and jurisdiction vested in it under the governing statute which is Assam Panchayat Act, 1994 in the case in hand, the Court ordinarily in exercise of its power of judicial review has to show restraint. It is also settled that the power exercised by the State and/or its instrumentalities/agencies in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party. Submission of a tender in response to a notice inviting tender is no more than making an offer which the State or its instrumentalities/agencies are under no obligation to accept. The bidders participating in the tender process cannot insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. A bidder who has participated in a competitive bidding process only has a right to equality and fair treatment in the matter of evaluation of the competitive bid offered by him in response to a notice inviting tender in a manner which is transparent and free from any discreet and hidden agenda and in that respect, he is entitled to be treated in a fair, equal and non-discriminatory manner in the matter of evaluation of his bid. A bidder only has an enforceable right to that limited extent before the Court and the Court can examine the issue as to whether the bidder has been treated unfairly or discriminated against.

8. In *State of Jharkhand vs. CWE-SOMA consortium*, reported in [2016] 14 SCC 172, the Hon'ble Supreme Court of India has examined the issue of availability of administrative discretion to

the tendering authority to discharge/cancel a tendering process. The matter of dispute therein related to construction of dam in the State of Jharkhand. Pursuant to the NIT and a pre-bid meeting where 10 [ten] bidders participated, only three bidders finally submitted their bids. It is observed that in case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. So long as the bid has not been accepted, the highest bidder acquires no vested right to have the process concluded in his favour.

8.1. The Hon'ble Supreme Court in *CWE-Soma Consortium* [supra] has observed in the following manner :-

“13. In case of a tender, there is no obligation on the part of the person issuing tender notice to accept any of the tenders or even the lowest tender. After a tender is called for and on seeing the rates or the status of the contractors who have given tenders that there is no competition, the person issuing tender may decide not to enter into any contract and thereby cancel the tender. It is well-settled that so long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour [vide *Laxmikant vs. Satyawani*, [1996] 4 SCC 208; *Rajasthan Housing Board vs. G.S. Investments*, [2007] 1 SCC 477; and *Uttar Pradesh Awas Evam Vikash Parishad vs. Om Prakash Sharma*, [2013] 5 SCC 182].

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23. The right to refuse the lowest or any other tender is always available to the government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of tender committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender.”

8.2. It has been observed by the Hon'ble Supreme Court of India in the oft-quoted decision in *Tata Cellular vs. Union of India*, reported in [1994] 6 SCC 651, that the principles of judicial review would

apply to the exercise of contractual powers by Government or its instrumentalities/agencies in order to prevent arbitrariness or favouritism. It has been specifically observed therein that there are inherent limitations in exercise of the power of judicial review. The Government or instrumentalities/agencies of the State are guardians of the finances of the State and they are expected to protect the financial interests of the State. The right to refuse the lowest or any other tender is always available to the Government or its instrumentalities/agencies. But the principles laid down in Article 14 of the Constitution of India have to be kept in view while accepting or refusing a tender. There is no question of infringement of Article 14 if the Government or its instrumentality/agency tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. But the said power is not to be exercised for any collateral purpose. If it is found that the power is exercised for any collateral purpose the exercise of that power has to be struck down.

8.3. It has been held by the Hon'ble Supreme Court of India in **Silppi Constructions Contractors vs. Union of India and another**, reported in [2020] 16 SCC 489, that the decision to cancel a tender process is purely an administrative decision and it is not required to give reasons even if it be a State or an instrumentality/agency within the meaning of Article 12 of the Constitution of India. These kinds of decisions are neither judicial nor quasi-judicial. It has been held that if reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this arena. It has been further observed that the State or its instrumentalities/agencies are entitled to give reason in the counter to the writ petition. It has been held in the case of **State of Gujarat vs. Meghji Pethraj Shah Charitable Trust**, reported in [1994] 3 SCC 552, that the termination is not a quasi-judicial act by any stretch of imagination and it was not necessary to observe the principles of natural justice and the decision to terminate a tender process is also not an administrative or executive act to attract the duty to act fairly.

8.4. The principle deducible from the decision in **South Delhi Municipal Corporation vs. Ravinder Kumar and another**, reported in [2015] 15 SCC 545 is to the effect that the tendering authority is well within its right to satisfy itself about the reasonableness of the rates quoted by the bidders keeping in view the prevalent market rates in the area nearby the tendering authority. It is also within the scope of an authority to maintain an internal system for financial checks and to examine the reasonableness of the rates quoted by the bidders by comparing them with the rates at which other

similar works were awarded in the recent past in favour of the successful bidders. Such steps are necessary to be carried out for the reason that an instrumentality of the State is also a custodian of public money and its intention has to be aimed at getting the best price. If the actions of the tendering authority towards cancellation of a tender process, are preceded by such factors then the Court in exercise of its power to judicial review under Article 226 of the Constitution of India should not interfere.

9. Reverting back to the facts of the case in hand, it was distribution of State largesses in the form of settlement of a market. The prime consideration for settling the Market is to generate maximum revenue for the Panchayati Raj Institution [PRI] and to augment the fund of the PRIs. The General Standing Committee of the Zilla Parishad took note of the fact that during the previous Panchayat Financial Year : 2021 – 2022, the Market was settled at an offered bid value of the highest bidder @ ₹ 6,65,000/-. Despite publication of the Tender Notice for three occasions, the highest bid value offered was much lesser in comparison to the settlement amount for the previous year @ ₹ 6,65,000/-. The General Standing Committee of the Zilla Parishad having found the highest bid value offered and received for Panchayat Financial Year : 2022 – 2023 was much lesser than the settlement amount for the previous Panchayat Financial Year : 2021 – 2022, decided to exercise the option of managing the Market directly by the Anchalik Panchayat in terms of the provisions of Section 105[5] of the Assam Panchayat Act, 1994, an amended. If the decision making process undertaken by the tender inviting/settling authority had led to the decision not to accept the bid of the highest valid bidder in valid exercise of the authority and jurisdiction vested in it by Section 105[5] under the governing statute, that is, the Assam Panchayat Act, 1994 in the case in hand, and the apparent object behind the decision to protect the financial interests, the Court in exercise of its power of judicial review is to show restraint as this Court does not sit on any appeal over any such decision to substitute its own view. The decision not to settle the Market at a bid value which was much lesser in comparison to the settlement amount of the Market and the decision to direct the Anchalik Panchayat to manage the Market directly cannot, by any stretch, be termed as arbitrary and against the public interest.

10. In view of the discussion made above and for the reasons assigned therein, this Court is of the considered view that this writ petition lacks merit and is liable to be dismissed. It is accordingly ordered. As the bid of the petitioner was not accepted by the respondent authorities, the respondent authorities shall refund the earnest money deposited by the petitioner at the time of submission of his

bid within a period of 4 [four] weeks from the date of receipt of a certified copy of this order, if not returned till date. No cost.

JUDGE

Comparing Assistant