

GAHC010184982022



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

Case No. : **Writ Petition (Civil) no. 6020/2022**

Anowar Hussain
S/o - Late Nur Hussain,
Resident of Kabaitary Pt. IV,
P.S.- Jogighopa,
District - Bongaigaon,
Assam, PIN - 783382.

.....Petitioner

-Versus-

1) The Government of Assam
Represented by the Commissioner and Secretary
To The Government of Assam,
Panchayat and Rural Development Department,
Dispur, Guwahati, Assam, PIN- 781006.

2) The Joint Secretary
To The Government of Assam,
Panchayat and Rural Development Department,
Dispur, Guwahati,
Assam, PIN- 781006.

3) The Commissioner,
Panchayat and Rural Development,
Assam, Juripar,
Panjabari, Guwahati- 37.

4) The Deputy Commissioner, Bongaigaon,
District – Bongaigaon,
Assam, PIN- 781171.

5) The Chief Executive Officer,
Bongaigaon Zilla Parishad,
Bongaigaon, Assam.

6) The Executive Officer,
Baitamari Anchalik Gaon Panchayat,
Baitamari,
District – Bongaigaon, PIN- 781369.

7) Joydev Sharma,
S/o - Robin Sharma,
Village- Chalantapara Pt-I,
P/S- Jogighopa,
District – Bongaigaon, Assam.

.....Respondents

Advocates :

For the Petitioner

Mr. N. Ahmed, Advocate

For the Respondent nos. 1, 2, 3, 5 & 6

Mr. S. Dutta, Standing Counsel, Panchayat & Rural Development Department

For the Respondent no. 4

Mr. J. Handique, Junior Government Advocate, Assam

For the Respondent no. 7

Mr. N.C. Das, Advocate

Date of Hearing and Judgment & Order

16.02.2023

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

By a Tender Notice dated 04.05.2022, the Baitamari Anchalik Panchayat under the Bongaigaon Zilla Parishad invited sealed bids for settlement of a nos. of markets/ghats/fisheries for the Panchayat Year : 2022-2023, that is, for the period from 01.07.2022 to 30.06.2023. One of the markets in respect of which sealed bids were invited was Kabaitary Half-Weekly Market ['the Market', for short]. As per the Tender Notice, the last date of submission of bids was up-to 02-00 p.m., 18.06.2022. In response to the Tender Notice dated 04.05.2022, 6 [six] nos. of bidders submitted their bids for the Market. The petitioner and the respondent no. 7 were amongst those 6 [six] nos. of bidders. After submission of the bids, the General Standing Committee of the Anchalik Panchayat evaluated the bids and thereafter, a comparative statement was prepared recording the remarks therein in respect of each of the bids. As the bid value of the highest valid bidder was found more than Rs. 1,00,000/-, the Baitamari Anchalik Panchayat after identifying the higher valid bidder, forwarded the tender papers to the Bongaigaon Zilla Parishad for confirmation in compliance of the provision contained in sub-section [6] of Section 109 of the Assam Panchayat Act, 1994. On receipt of the tender papers from the Anchalik Panchayat, the Bongaigaon Zilla Parishad issued the order of settlement on 04.07.2022 in favour of the respondent no. 7, thereby, settling the Market at his offered bid value of Rs. 30,15,000/-. By the order of settlement dated 04.07.2022, the successful bidder i.e. the respondent no. 7 was directed to execute a lease deed on stamp-papers and to deposit the requisite amount towards security deposit within the stipulated time period, mentioned therein.

2. The petitioner has instituted the writ petition under Article 226 of the Constitution of India assailing the order of settlement dated 04.07.2022 and seeking a direction to the respondent authorities to make a fresh settlement order with the 2nd highest bidder or to issue a fresh Tender Notice for settlement of the Market.

3. I have heard Mr. N. Ahmed, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat and Rural Development Department for the respondent nos. 1, 2, 3, 5 & 6; Mr. J. Handique, learned Junior Government Advocate, Assam for the respondent no. 4; and Mr. N.C. Das, learned counsel for the respondent no. 7.

4. Mr. Ahmed, learned counsel for the petitioner has advanced his submissions on three aspects. Firstly, he has contended that the uncle of the respondent no. 7, without however disclosing the uncle's name and details, was a defaulter in the previous term of settlement of the Market and when the respondent no. 7 was found to have participated in the bidding process, the petitioner submitted a complaint dated 24.06.2022 before the respondent authorities. It is, thus, the contention of the Mr. Ahmed that the respondent no. 7 ought to have been declared as ineligible to participate in the bidding process for the Market in terms of Clause no. [1] of the Tender Notice. He has further contended that the respondent no. 7 did not deposit 30% of the settlement amount as security deposit with the respondent Anchalik Panchayat within the stipulated time period, which entailed cancellation of the offer of settlement. The respondent no. 7 had also failed to execute a lease deed, as required by

the Tender Notice as well as the provisions of the Assam Panchayat Act, 1994 r/w the Assam Panchayat [Financial] Rules, 2002 within 7 [seven] days from the order of settlement. Mr. Ahmed has further contended that the above alleged irregularities were also brought to the notice of the respondent no. 1 by submitting a complaint in writing on 05.08.2022.

5. Mr. Dutta, learned Standing Counsel, Panchayat and Rural Development Department has referred to the statements and averments made in the counter affidavit filed on 09.01.2023 on behalf of the respondent no. 5 in the writ petition, W.P.[C] no. 6020/2022. He has submitted that on receipt of the complaint alleging defaulter status of the previous settlement holder of the Market, the respondent no. 5 had requested the respondent no. 6 to cause an enquiry as regards the alleged defaulter status of the previous settlement holder. In the Enquiry Report submitted by the respondent no. 6, it has been reported that the previous settlement holder was not a family member of the respondent no. 7. As regards the contention of the petitioner that 30% of the settlement amount towards security deposit was not deposited by the respondent no. 7 as the successful bidder, he has submitted that the successful bidder had deposited the requisite security money with the respondent authorities. In so far as the contention regarding non-execution of the lease deed is concerned, the execution of the lease deed is for the purpose of safeguarding the interest of the Panchayat authorities and a lease deed had already been executed, though a bit belatedly.

6. Mr. Das, learned counsel appearing for the respondent no. 7 has adopted the submissions of Mr. Dutta, learned Standing Counsel, Panchayat and Rural

Development Department. He has reiterated that the respondent no. 7 as the successful bidder, had immediately deposited 30% of the settlement amount as security deposit with the respondent authorities and the respondent authorities had duly acknowledged the same. At present, the respondent no. 7 is operating the Market, complying with all the conditions of the Tender Notice.

7. I have duly considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

8. Before dilating on the aspects raised by the learned counsel for the parties, it is apposite to mention that as per Clause no. [1] of the Tender Notice dated 04.05.2022, a previous settlement holder who had defaulted in paying the requisite installments in time, would not be eligible to participate in the bidding process for the Market. Any of the family members of such defaulting settlement-holder was also not permitted to submit any bid. It further mentioned that the settlement holder, who was operating the Market at the time of publication of the Tender Notice, would have to deposit all his current dues prior to submission of his bid. Clause no. [18] of the Tender Notice had referred to Rule 47 [11] and Rule 47 [16] of the Assam Panchayat [Financial] Rules, 2002 and those clauses mandated that the successful bidder had to execute a lease deed on requisite stamp-papers and register the same at the office of the concerned Sub-Registrar within a period of 1 [one] week from the date he was granted settlement of the Market. Clause no. [20] of the Tender Notice mandated that the successful bidder had to deposit 30% of the settlement amount as security deposit at the office of the concerned respondent authority

within a period of 7 [seven] days from the date of settlement of the Market.

9. In the counter affidavit filed on behalf of the respondent no. 5, an Enquiry Report dated 30.06.2022, submitted by the respondent no. 6 before the respondent no. 5, is found annexed. In the Enquiry Report, it has been reported that the respondent no. 7 is not a direct family member of the previous settlement holder of the Market viz. Sri Bhabesh Sharma. It has, however, reported that one Sri Mangla Sharma, who is the guarantor of the respondent no. 7, is a brother of the previous settlement holder of the Market viz. Sri Bhabesh Sharma. In so far as the deposit of the settlement amount for the previous Panchayat Year : 2021-2022 by the previous settlement holder of Kabaitary Half-Weekly Market viz. Sri Bhabesh Sharma is concerned, the respondent no. 5 has categorically asserted that in the previous Panchayat Year : 2021-2022, the market named Kabaitary Half-Weekly Market was settled at a settlement amount of Rs. 21,11,000/- and the settlement holder for the Panchayat Year : 2021-2022 had cleared all his installments in respect of the settlement amount of Rs. 21,11,000/-. The said assertions made by the respondent no. 5 have not been controverted and traversed by the petitioner by filing any affidavit-in-reply to the said counter affidavit filed by the respondent no. 5. In the absence of any cogent materials on record in rebuttal to the aforesaid assertions regarding non-defaulting status of the previous settlement holder of the Market, the contention raised on behalf of the petitioner as regards of violation of Clause no. [1] of the Tender Notice is found to have made without any basis. As has been indicated above, the contention as regards defaulting status of the previous settlement holder in the writ petition is found made, conspicuously, without even disclosing the name of the previous

settlement holder, who had allegedly defaulted in depositing the settlement amount. Thus, this Court is of the considered view that the allegation made by the petitioner herein is only a bald allegation and the same cannot be acceptable to the Court.

10. The respondent no. 7 in his affidavit-in-opposition has annexed the copies of two money receipts, dated 04.07.2022 & dated 30.08.2022. On perusal of the two money receipts, it is noticed that on 04.07.2022, the respondent no. 7 had deposited an amount of Rs. 4,50,000/- towards a part of the security deposit for the Panchayat Year : 2022-2023. On perusal of the money receipt dated 30.08.2022, it is noticed that the respondent no. 7 had deposited an amount of Rs. 4,54,500/- towards the balance part of the security deposit. Thus, the respondent no. 7 deposited a total amount of Rs. 9,04,500/- [= Rs. 4,50,000/- + Rs. 4,54,500/-] as security deposit, which is 30% of the settlement amount of Rs. 30,15,000/-. The same demonstrates that the respondent no. 7 had deposited 30% of the settlement amount towards security deposit, though a bit beyond the stipulated time period. With the respondent authorities accepting the security deposit, the Court likes to refrain itself from making any observation in that connection as the one of the objects behind seeking security deposit is to safeguard the interests of the settling authority.

11. The respondent no. 7 in his counter affidavit has categorically asserted that he had executed a lease deed with the respondent authorities and in terms of the conditions contained in Section 47 [11] & Section 47 [16] of the Assam Panchayat [Financial] Rules, 2002. It is further averred by the respondent no. 7 that a copy of the executed lease deed has not been furnished to him by the

respondent authorities and because of the said reason, he is not in a position to produce the same before this Court.

12. It is an admitted position that both the petitioner and the respondent no. 7 participated in the bidding process initiated for settlement of the Market by the Tender Notice dated 04.05.2022. Amongst the 6 [six] participant bidders, the petitioner emerged as the 4th highest bidder whereas the respondent no. 7 emerged as the 1st highest bidder. After examination of the bids of the participant bidders by the General Standing Committee of the Baitamari Anchalik Panchayat, a committee constituted under Section 52[1][a] of the Assam Panchayat Act, 1994, and after acceptance of the bid of the respondent no. 7 as the highest valid bid by the said Committee, the entire tender papers were forwarded to the Bongaigaon Zilla Parishad for confirmation of the bid of the highest valid bidder i.e. the respondent no. 7 by the General Standing Committee of the Bongaigaon Zilla Parishad, a committee constituted under Section 81 [a] of the Assam Panchayat Act, 1994. It was after confirmation by the General Standing Committee of the Bongaigaon Zilla Parishad, the order of settlement in respect of the Market and in favour of the respondent no. 7 was issued.

13. From the records produced by the learned Standing Counsel, Panchayat and Rural Development Department, it has emerged that the petitioner had offered a bid value of Rs. 22,95,880/- against the bid value of Rs. 30,15,000/- of the respondent no. 7. There is, thus, a difference of Rs. 7,19,120/- between the bid values of the respondent no. 7 and the petitioner.

14. In respect of the allegation relating to non-execution of the lease deed, it is provided in Rule 47 [11] of the Assam Panchayat [Financial] Rules, 2002 that on acceptance of the Tender, the Panchayat concerned shall inform the successful bidder requiring him to submit within 7 [seven] days from the date of issuing the acceptance letter to – [i] Deposit with the Panchayat concerned not less than thirty percent of his quoted amount in his tender as security. The amount of security shall be recorded in the Register in Form no. 12 and accept a duty stamped lease in a Form as specified in Annexure-8 of the Schedule of the rules; and [ii] the Panchayat concerned shall provide the Form of lease and stamps papers at the concerned leasee's cost. Rule 47 [12] of the Assam Panchayat [Financial] Rules, 2002 has provided that failure on the part of the successful bidder either to deposit 30% of the settlement amount or to accept lease within the stipulated period of 7 [seven] days, the concerned Panchayat shall have to refer the matter to the Government whose decision in that regard shall be final. The consequences of non-compliance have been laid down in Rule 47[13]; Rule 47[14]; and Rule 47[15] of the Assam Panchayat [Financial] Rules, 2002. Rule 47[16] of the Assam Panchayat [Financial] Rules, 2002 has provided that the Panchayat concerned shall take steps to register every lease.

15. From the discussion made above, it has emerged that Clause no. [1] of the Tender Notice is not found applicable in the case in hand. The successful bidder is found to have deposited 30% of the settlement amount as security deposit with the respondent authorities in two installments – Rs. 4,50,000/- on 04.07.2022 and Rs. 4,54,500/- on 30.08.2022 – respectively. There was, however, a delay on the part of the respondent no. 7 as successful bidder in depositing the entire 30% of the settlement amount as security deposit within

the prescribed period of 7 [seven] days from the order of settlement.

16. The execution of a lease deed is a bilateral act. The execution of a lease deed is not entirely dependent upon the successful bidder as it is also dependent upon the concerned Panchayat authorities. The successful bidder has to be ready and willing to execute the lease deed. If the readiness and willingness shown by the successful bidder is not reciprocated by the settling authority with the same degree of readiness and willingness, the matter of execution of the lease deed may get delayed, without there being any fault on the part of the successful bidder. If non-execution of a lease deed is due to reasons beyond control of the successful tenderer, then he cannot be said to be at fault to entail cancellation of his successful bid. An intention in that regard can be gathered from his readiness and willingness to deposit the security money prescribed by Rule 47[11][i] of the Assam Panchayat [Financial] Rules, 2002. In the case in hand, the Court in its extra-ordinary and discretionary jurisdiction, does not want to embark on a roving enquiry to ascertain the veracity or otherwise of an allegation which the allegedly aggrieved person has brought in as bald allegation, and albeit not at the instance of a bidder, when he was not even a bidder immediately next below the successful highest bidder. In the case in hand, the successful bidder has been found to have deposited 30% of the settlement amount after issuance of the settlement order in his favour. Assertion of the respondent no. 7 as the successful bidder in its affidavit-in-opposition is that the lease deed has been executed by him with the respondent Panchayat authorities and the said assertion has not been controverted and traversed by the petitioner by filing any affidavit-in-reply to the affidavit-in-opposition filed by the respondent no. 7.

17. The writ petition has been instituted seeking setting aside of the order of settlement dated 04.07.2022 whereby the Market was settled in favour of the respondent no. 7 for the period from 01.07.2022 to 30.06.2023 and also for a direction to the respondent authorities to make settlement of the Market in favour of the 2nd highest bidder or to issue a fresh Tender Notice in respect of the Market. After the order of settlement dated 04.07.2022, the respondent no. 7 is operating the Market since then and the period is to expire after about 3½ months on 30.06.2022. In the bidding process, the petitioner did not emerge as the 2nd highest bidder. The petitioner in the instant writ petition has not impleaded the other highest bidders who had also participated in the bidding process for the Market but after the order of settlement, the bidders higher than the petitioner, have not mounted any challenge against the order of settlement.

18. The important aspect in this writ petition is that the matter of settlement of a Market is in nature of distribution of State largesses. The main purpose behind initiation of the bidding process for settlement of a market is to fetch the higher amount of revenue. It is settled that when the power of judicial review is invoked in matters relating to Tender or award of contract in the nature of distribution of State largesses certain special features have to be taken into consideration. A contract is a commercial transaction. In *Jagdish Mandal vs. State of Orissa and others*, reported in [2007] 14 SCC 517, it is observed that principles of equity and natural justice are not directly relatable to matters like award of contract. The jurisdiction under Article 226 of the Constitution of India is extra-ordinary and discretionary and the jurisdiction in matters relating to tender or award of contract being limited, the Court should normally exercise

judicial restraint unless illegality or arbitrariness on the part of the tendering authority is apparent on the face of the record. Further, there is a distinction between two stages, that is, one at the threshold of a contract and the other at a stage after emergence of the successful bid. It is settled that at the threshold of a contract, the Court's scrutiny is more intrusive whereas at the other stage, the Court may not ordinarily exercise its extra-ordinary and discretionary jurisdiction of judicial review on mere allegation in absence of supervening public interest. In *Jagdish Mandal* [supra] the Hon'ble Supreme Court of India has observed that a Court before interfering in tender or contractual matters in exercise of power of judicial review, should examine two questions :- [1] Whether the process adopted or decision made by the authority is *mala fide* or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached'; [2] Whether public interest is affected. It has been observed that if the answers to the two questions are in the negative, there should be no interference under Article 226 of the Constitution of India.

19. There is no denial to the fact that the petitioner in the bidding process was not even the 2nd highest bidder. The respondent Panchayat authorities had settled the Market in favour of the highest valid bidder. A substantial difference between the bid values offered by the respondent no. 7 and the petitioner of Rs. 7,19,120/- is noticed. The petitioner has not been able to show how the public interest has been affected or is going to be affected in the case in hand, if an interference with the settlement order is made at this stage. The Court is also of the view that the writ petition has also suffered from non-impleadment

of necessary parties as the petitioner has not impleaded the bidders whose bid values were higher than the petitioner, as party-respondents in the writ petition.

20. Having considered the entire fact situation obtaining in the case in hand and finding none of the grounds urged on behalf of the petitioner to be of merit, this Court finds no good and sufficient reason to interfere with the order of settlement dated 04.07.2022 made in favour of the respondent no. 7. In such view of the matter, the writ petition is found liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant