

GAHC010189452023



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

Case No. : WP(C)/4957/2023

HARENDRA BASUMATARY
S/O LT RAJENDRA BASUMATARY, VILL- BARBENGERA, P.S.-UDALGURI,
P.O.-NALKHAMARA, DIST-UDALGURI, ASSAM, PIN-784509

VERSUS

THE PRINCIPAL SECRETARY BODOLAND TERRITORIAL COUNCIL AND 2
ORS
KOKRAJHAR, PIN-784252

2:THE CHAIRMAN
MARKET APPROVAL COMMITTEE
BTC
ASSAM

3:THE BLOCK DEVELOPMENT OFFICER
KALAIGAON DEVELOPMENT BLOCK
BLOCK-KALAIGAON
UDALGURI
ASSAM

4:BISHNU PRASAD BASUMATARY
S/O NABIN CHANDRA BORO
VILL-JHILKA KHAT
P.S.-KALAIGAON
P.O.-KABIRALI
PIN-78452

Advocates :

Petitioner : Mr. D. Sarmah, Advocate

Respondent nos. 1 - 3 : Mr. S.R. Rabha, Standing Counsel, BTC

Respondent no. 4 : Mr. S. Hazarika, Advocate

Date of Hearing, Judgment & Order : 16.10.2023

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

The instant writ petition under Article 226 of the Constitution of India is preferred to assail an order of settlement dated 02.08.2023 whereby the respondent Bodoland Territorial Council [BTC] authorities have allowed the respondent no. 4 go ahead for collection of tolls, etc. from a market named *Puthimari Weekly Market* w.e.f. 01.07.2023 till issue of regular settlement order.

2. I have heard Mr. D. Sarmah, learned counsel for the petitioner; Mr. S.R. Rabha, learned Standing Counsel, BTC for the respondent nos. 1 – 3; and Mr. S. Hazarika, learned counsel for the respondent no. 4.

3. The factual matrix lies in a narrow compass. By publishing a Tender Notice dated 27.06.2023, the Block Development Officer, Kalaigaon, Udalguri [the respondent no. 3] invited bids for settlement of 10 [ten] nos. of markets including the market named *Puthimari Weekly Market*, for the year : 2023-2024, that is, from 01.07.2023 to 30.06.2024. In response to the Tender Notice, 6 [six] nos. of bidders including the petitioner and the respondent no. 4, submitted their bids for *Puthimari Weekly Market* [the Market' for short]. After opening and scrutiny of the bids, a Comparative Statement was prepared by the Settlement Committee constituted for the purpose, recording remarks about the responsiveness or otherwise of the bids vis-à-vis the documents required to be submitted along with the bid as per the Tender Notice.

4. As per the Comparative Statement prepared by the respondent no. 3, the petitioner's bid was found responsive in all aspects. The petitioner offered the 2nd highest bid value of ₹

5,92,100/- whereas the respondent no. 4 had offered the 3rd highest bid value of ₹ 4,55,100/-. The bid of the respondent no. 4 was also found responsive to the terms and conditions of the Tender Notice dated 27.06.2023. The highest bidder offered a bid value of ₹ 7,90,200/- but his bid was found non-compliant to the terms and conditions of the Tender Notice dated 27.06.2023 as he did not submit land revenue receipt, GST Certificate, etc. As a result, the petitioner emerged as the highest valid bidder in respect of the bidding process initiated for the settlement of market named *Puthimari Weekly Market*.

5. When the respondent authorities had settled the Market in favour of the respondent no. 4 by order of settlement dated 02.08.2023, the petitioner has preferred the instant writ petition to challenge the order of settlement dated 02.08.2023 with the further prayer for a direction to the respondent authorities to settle the market, *Puthimari Weekly Market* in his favour at his offered bid value of ₹ 5,92,100/-.

6. When the writ petition was moved on 30.08.2023, this Court while issuing the notices to the respondents, had asked the learned Standing Counsel, BTC to make endeavour to produce either the relevant records of settlement leading to the decision to settle the Market in favour of the respondent no. 4 or to file counter affidavit on behalf of the respondent BTC authorities traversing the contentions made in the writ petition. Though no counter affidavit has been filed on behalf of the respondent BTC authorities, Mr. Rabha, learned Standing Counsel, BTC authorities has produced the relevant records of settlement.

7. The records produced by the learned Standing Counsel, BTC includes the Minutes of a Meeting of the Market Settlement Committee, Market & Fairs Department, BTC which was held on 26.06.2023 for the purpose of discussing about the settlement of the markets/hats/go-hats/par-ghats/bus parkings, etc. for the year : 2023-2024 in the BTC. From the Minutes of the said Meeting, it is revealed that the Market Settlement Committee took a resolution to the effect that if the offered bid value for a market/hat/go-hat/par-ghat/bus parking, etc. was either less than the scheduled rate or more than three times the scheduled rate, fixed for the market/hat/go-hat/par-ghat/bus parking, etc., then such bids would be rejected. Another resolution was taken to the effect that all the documents submitted by the

bidders would be properly checked by the Market Settlement Committee. It was after the said Meeting of the Market Settlement Committee, the impugned order of settlement dated 02.08.2023 had been issued in favour of the respondent no. 4 allowing the respondent no. 4 to go ahead for collection of tolls, etc. from *Puthimari Weekly Market* w.e.f. 01.07.2023. The impugned order of settlement has mentioned that it had the approval of the Chairman, Market Settlement Committee and such approval was accorded vide Letter bearing no. BTC/Market-01/2020/Pt-I/112 dated 27.07.2023. The respondent no. 4 in the counter affidavit filed by him, has taken a stand that as the petitioner had quoted a bid value of ₹ 5,92,100/-, which was much higher than the scheduled rate fixed for *Puthimari Weekly Market* in the Tender Notice dated 27.06.2023, the Market was not settled in his favour as the bid value offered by him at ₹ 4,55,100/- was found reasonable in comparison to the scheduled rate fixed at ₹ 1,30,399/- in the Tender Notice dated 27.06.2023.

8. It is in the above fact situation, the impugned order of settlement dated 02.08.2023 is required to be examined. It has been specifically set forth in Clause 5 of the Tender Notice that a bidder had to pay the full amount offered by him as bid value in one instalment by way of a demand draft in favour of the Principal Secretary, BTC, Kokrajhar with his bid along with the requisite documents and by fully filling up the Tender Form.

9. It is well settled that a bidder participating in a tender process cannot insist that his bid should be accepted simply because his bid is the highest or lowest depending upon whether the contract is for public property or for execution of works on behalf of the Government. All that a participant bidder is entitled to is a fair, equal and non-discriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. The Government and its agencies have to act reasonably and fairly at all points of time. To that extent the bidder has an enforceable right in the court which is competent to examine whether the aggrieved party has been treated unfairly or discriminated against to the detriment of public interest.

10. A lessee if he is settled with a market under the aegis of the BTC, has to collect

ordinarily, the tolls in the market only at the rates fixed by the Competent Authority in the BTC. The lessee cannot collect the tolls at any higher rates than the rates so fixed by the Competent Authority in the BTC. Thus, the rates of tolls to be collected by the lessee are fixed and such rates of tolls do not vary with the bid value offered by a bidder and there is no correlation between the prescribed rates of tolls to be collected in the market and the lease value at which the market has been settled with. The bidders are considered to be prudent businessmen who prepare their bids by taking into consideration a host of factors including the terms and conditions incorporated in the Tender Notice, the scheduled/base value fixed therein and the quantum of profit they are likely to earn on the basis of the bid values to be offered by them and the rates at which they could collect the tolls, etc. and accordingly, they arrive at the bid values to be offered by them. A bidder prepares his bid to the best of his estimation, by quoting his bid value at a definite amount with the expectation that at such amount he would be able to perform the obligations of the lease if the offer for lease is made in his favour and at the same time, would also be able to earn a particular amount of profit. A number of bidders participate in a bidding process and the bidders tender different bid values but only one of them emerges successful. Thus, a lot of efforts go behind the preparation of the bid and quotation of a bid value and the same are at the risk of rejection of one's bid if the same does not emerge as the highest valid one. From the prospective of the settling authority, earning of the highest revenue is one of the prime considerations and acceptance of a bid of a lower valid bidder would result in lesser revenue to its coffer. Though in certain situations acceptance of a lower bid may be permissible but in case of a settlement of a market, the same is ordinarily required to be settled in favour of the highest valid bidder.

11. Thus, it is quite evident that non-acceptance of the higher bid value offered by the petitioner at ₹ 5,92,100/- who has been declared to be a responsive bidder, and acceptance of a lower bid value at ₹ 4,55,100/-, offered by the respondent no. 4, by the respondent authorities in the BTC for the Market, that is, *Puthimari Weekly Market* by the impugned order of settlement dated 02.08.2023 is found to be arbitrary. The arbitrariness is writ large due to the fact that the petitioner at the time of submission of his bid, had offered the entire amount in favour of the respondent BTC authorities by way of a demand draft. Thus, the matter of earning of the highest revenue from the bidding process for settlement of

Puthimari Weekly Market has already been fully safeguarded for the respondent BTC authorities on receipt of the entire bid value offered by the petitioner by way of a demand draft.

12. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, bias and mala fides. Its purpose is to check whether choice or decision is made lawfully and not to check whether the choice or decision is sound. If the decision relating to award of contract is in public interest, the Court does not ordinarily interfere even if a procedural aberration or error in assessment is made. It was not in the terms and conditions of the Tender Notice, published on 27.06.2023, that a bid which would offer an amount three times higher than the scheduled rate mentioned in the Tender Notice, would entail rejection. The resolution adopted by the Market Settlement Committee in its Meeting, held on 26.06.2023, was not notified to the bidders at any point of time by way of any addendum/corrigendum or by any other mode for the participating bidders notice. Thus, it is clear that the respondent authorities in the BTC had taken the decision not to settle the Market at any bid value three times higher than the scheduled rate indicated in the Tender Notice, was a decision which was taken behind the back of the participant bidders. It has been observed by the Hon'ble Supreme Court of India in **Central Coalfields Limited and another vs. SLL-SML [Joint Venture Consortium] and others**, reported in [2016] 8 SCC 622, that the goal post cannot be rearranged during the bidding process to affect the right of some or deny a privilege to some. The principle is clearly applicable in the case in hand in that by resorting to the decision, a decision not notified, not to offer a lease for the Market at an amount three times higher than the scheduled rates indicated in the Tender Notice, the respondent BTC authorities have prejudicially affected the right of the highest valid bidder i.e. the petitioner.

13. The decision to offer the settlement of the Market to the respondent no. 4 at his offered bid value of ₹ 4,55,100/- has also suffered from arbitrariness from another perspective. Even it is assumed for the sake of argument that the decision of the respondent BTC authorities not to settle the Market at an amount three times higher than the scheduled rate indicated in the Tender Notice is a valid one, then also the respondent BTC authorities could not have settled the Market in favour of the respondent no. 4 as his bid value of ₹

4,55,100/- is also more than three times higher than the scheduled rate indicated in the Tender Notice at ₹ 1,30,399/-. In such a case, the respondent BTC authorities could not have settled the Market at any amount higher than ₹ 3,91,197/- [= ₹ 1,30,399/- X 3].

14. In view of the discussion made above and the reason assigned therein, the process of settlement resulting into the order of settlement dated 02.08.2023 made in favour of the respondent no. 4 is found to be vitiated one due to taking into account irrelevant factors in the decision making process by changing the goalpost during the course of the bidding process and the same is liable to be set aside. It is accordingly set aside. Consequently, the respondent authorities directed to revisit the matter of settlement of *Puthimari Weekly Market* once again on the basis of the records containing the tender documents of the valid participant bidders and to arrive at a decision on the matter of settlement of *Puthimari Weekly Market* for the remaining period upto 30.06.2024, as indicated in the Tender Notice dated 27.06.2023. The entire exercise shall be undertaken and completed within a period of 1 [one] month from today.

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

JUDGE

Comparing Assistant