



THE GAUHATI HIGH COURT

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

WP (C)/7889/2022

Karuna Deury
S/O- Prema Nando Deury,
R/O- Vill- Simla,
P.O. Simla, Dist.- Baksa, Assam- 781330.

.....Petitioner

-Vs-

- 1: The State of Assam
By the Principal Secy., Panchayat and Rural Development, Dispur,
Ghy-781006.
- 2: Principal Secretary Bodoland Territorial Council, Kokrajhar, BTC
Assam-783370.
- 3: Market Settlement Committee BTC Rep. by its Chairman Kokrajhar
Assam-783370.
- 4: Dy. Commissioner, Baksa District, BTC, Assam- 781372
- 5: Circle Officer Jalah Revenue Circle Jalahghat Dist.- Baksa, Assam-
781327.
- 6: Block Development Officer Jalah Development Block Jalahghat Dist.-
Baksa, Assam-781327.
- 7: Kiran Brahma S/O- Lt. Budhon BRAHMA R/O- 1 No. Koklabari
[Singlimari], P.O. Koklabari, P.S. Simla, Pin- 781330, Dist.- Baksa,
Assam.

.....Respondents

Advocates :

Petitioner	:	Mr. K. Sarma, Advocate
Respondent no. 1	:	Mr. S. Dutta, Standing Counsel, Panchayat & Rural Development [P&RD] Department
Respondent nos. 2, 3, 5 & 6	:	Mr. S. Bora, Standing Counsel, Bodoland Territorial Council [BTC]

Respondent no. 4 : Mr. N. Goswami, Junior Government
Advocate, Assam

Respondent no. 7 : Mr. R. Singha, Advocate

Date of Hearing, Judgment & Order : 21.04.2023

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

The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India making assailment of an order dated 29.09.2022, whereby, the competent authority in the respondent Bodoland Territorial Council [BTC] has taken the decision to offer settlement of a market named Simla Weekly Market ['the Market', for short] in favour of the respondent no. 7 at his offered bid value of ₹ 9,01,250.00.

2. By a Tender Notice dated 20.06.2022 published by the respondent no. 6 i.e. the Block Development Officer, Jalah Development Block inviting sealed bids from intending bidders, a number of markets/go-hats/parking/par-ghats/ferry/ cattle pound, etc. were sought to be settled. The market named Simla Weekly Market was one of the markets sought to be settled by the Tender Notice dated 20.06.2022. As per the Tender Notice, the last date of submission of bid was scheduled on 24.06.2022. In response to the Tender Notice dated 20.06.2022, 6 [six] nos. of bidders including the petitioner and the respondent no. 7, submitted their bids by enclosing the documents in terms of the Tender Notice dated 20.06.2022.
- 2.1. It is an admitted position, as revealed from the records of settlement and the comparative statement prepared for the purpose, that in response to the Tender Notice for settlement of Simla Weekly Market, the 6 [six] participant bidders offered the following bid values, in descending order, :-

Sl. No.	Name of the bidder	Amount offered by the bidder
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1	Kiran Brahma [the respondent no. 7]	₹ 9,01,250.00
2	Dipak Das	₹ 9,00,120.00
3	Miniswring Boro	₹ 7,76,731.00
4	Rajib Basumatary	₹ 7,70,729.99
5	Dishnath Basumatary	₹ 7,70,729.99
6	Karuna Deury [the petitioner]	₹ 7,70,729.99/-

3. Thus, it has emerged from the comparative statement that the petitioner and the 2 [two] other bidders offered conspicuously the same bid value of ₹ 7,70,929.99. The respondent no. 7 quoted the highest bid value of ₹ 9,01,250.00. One Sri Dipak Das had offered the 2nd highest bid value of ₹ 9,00,120.00, whereas, Miniswring Boro had offered the 3rd highest bid value of ₹ 7,76,731.00. The petitioner had, thus, emerged as the 4th joint highest bidder for the Market in question.
4. From the records of settlement produced by Mr. S. Bora, learned Standing Counsel, Bodoland Territorial Council [BTC] and the comparative statement prepared on 27.06.2022, it has emerged that the Market Settlement Committee, BTC had remarked that all the 6 [six] participant bidders, save and except Rajib Basumatary, had submitted the requisite documents in conformity with the terms and conditions of the Tender Notice dated 20.06.2022.
5. After evaluation of the tender papers of all the participant bidders, the respondent no. 6 passed an Order on 18.07.2022, whereby, Rajib Basumatary was engaged temporarily for collection of tolls in respect of the Market w.e.f. from 01.07.2022 until issuance of the formal settlement order from the Secretary, BTC, Kokrajhar. The Order dated 18.07.2022 issued in favour of Rajib Basumatary was put to challenge by the petitioner herein in the writ petition, W.P.[C] no. 5187/2022 as well as by the respondent no. 7 herein in another writ petition, W.P.[C] no. 6385/2022. During the pendency of the said two writ petitions, the Order dated 29.09.2022, impugned herein, came to be passed under the hand of the Joint Secretary, BTC, Kokrajhar, as mentioned hereinabove. In view of the issuance of the Order dated 29.09.2022, both the said writ petitions

i.e. W.P.[C] no. 5187/2022 and W.P.[C] no. 6385/2022 were disposed of by an Order dated 21.11.2022.

6. I have heard Mr. K. Sarma, learned counsel for the petitioner; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent no. 1; Mr. S. Bora, learned Standing Counsel, BTC for the respondent nos. 2, 3, 5 & 6; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent no. 4; and Mr. R. Singha, learned counsel for the respondent no. 7.
7. Mr. Dutta, learned Standing Counsel, P&RD Department and Mr. Goswami, learned Junior Government Advocate, Assam have submitted, at the outset, that the said authorities, represented by them, have no role in the matter of settlement of the Market in question and it is the authorities in the BTC, who have offered the settlement of the Market by the Order dated 29.09.2022 to the respondent no. 7.
8. Mr. Sarma, learned counsel for the petitioner has referred to Clause 5 and Clause 8 of the Tender Notice dated 20.06.2022 to make his submissions. He has contended that the demand draft submitted by the respondent no. 7 at the time of submission of bid was not obtained by the respondent no. 7 himself. In fact, the demand draft for the amount of ₹ 9,01,250.00 dated 24.06.2022 was purchased by one Hafijul Islam. He has, thus, contended that the bid of the respondent no. 7 ought to have been declared as a non-responsive one and the respondent authorities in the BTC had illegally bestowed the benefit of settlement to the respondent no. 7.
9. Mr. Bora, learned Standing Counsel, BTC, who has received and produced the records of settlement, has submitted that it was not the requirement of either Clause 5 or Clause 8[a] of the Tender Notice that the bid value offered by a bidder for settlement of the Market in the form of a demand draft must necessarily be purchased in the name of the bidder himself. The demand draft must necessarily be in favour of the concerned authority in the BTC. He has further contended that the final order of settlement has not been challenged in the writ petition. The paramount

consideration for the respondent authorities in settling the Market is maximization of revenue by way of a fair and transparent bidding process.

10. Mr. Singha, learned counsel for the respondent no. 7 while adopting the submissions of Mr. Bora, has also submitted that the demand draft was purchased on behalf of the respondent no. 7 by one Hafijul Islam on 24.06.2022 as the respondent no. 7 could not purchase the demand draft personally due to reasons beyond his control and had asked his employee, Hafijul Islam to purchase the same. He has submitted that in any view of the matter, the Market was settled at the highest bid value of ₹ 9,01,250.00 and the interests of the respondent authorities stood secured as the respondent no. 7 had already deposited the entire amount of ₹ 9,01,250.00, which was the highest amount offered amongst the 6 [six] participant bidders. The writ petition instituted at the instance of a bidder, who had offered a much lesser amount, does not deserve any consideration as the public interest has not been suffered at any stage.
11. I have considered the learned counsel for the parties and have gone through the materials brought on record by the parties through their pleadings as well as the records of settlement in original, produced by Mr. Bora, learned Standing Counsel, BTC.
12. The petitioner has made Clause 5 and Clause 8[a] incorporated in the Tender Notice dated 20.06.2022 as the basis of his assailment in the instant writ petition. For ready reference, Clause 5 and Clause 8 of the Tender Notice dated 20.06.2022 are extracted hereinbelow :-

Clause 5 : The tenderer must have to deposit the offered rate fixed of the concerned Market/Go-hat/parking/Par Ghat/Ferry/Cattle Pound, etc. In the form of Bank Draft which shall be made payable in favour of Principal Secretary of Bodoland Territorial Council at any Nationalized Bank along with tender documents to be a valid tenderer.

Clause 8 : The tenderer shall attached the tender with the following documents –

[a] Bank Draft of the value of the offered rate in terms of the Clause 5.

- [b] Original Patta Land and Jamabandi Copy.
- [c] Land Revenue Clearance Certificate.
- [d] ST/SC Caste Certificate.
- [e] Land Valuation Certificate against mortgage property.
- [f] Sales Tax Clearance.
- [g] Non-Incumbency Certificate. and
- [h] Tax Clearance Certificate from the Block Development Officer.

13. A conjoint reading of Clause 5 and Clause 8[a] goes to indicate that a participant bidder must necessarily deposit the amount offered by him in respect of the Market in the form of bank draft payable in favour of the Principal Secretary, BTC along with the tender documents at the time of submission of his tender. If any bidder did not submit such demand draft along with tender documents before the last date of submission of the tender, such a bidder was to be treated as an invalid bidder. The settlement of the Market offered by the respondent BTC authorities is in the nature of distribution of State largesses and the prime consideration for the respondent BTC authorities is maximization of revenue from such settlement. Clause 5 has made it specific that the bid value offered by a tender in the form of a bank draft must be payable in favour of the Principal Secretary, BTC and such demand draft is to be drawn at any nationalized bank for the entire amount offered by the bidder to get the settlement for the period offered for settlement.
14. In the case in hand, the demand draft submitted by the respondent no. 7 along with his bid on 24.06.2022 was a demand draft for a sum of ₹ 9,01,250.00 dated 24.06.2022, which was the amount offered for settlement by the respondent no. 7 for the entire period of settlement, and the same was made payable in favour of the Principal Secretary, BTC. It was not a specific condition in Clause 5 r/w Clause 8[a] of the Tender Notice that the purchaser of such bank draft must be the bidder himself. From a look at the demand draft bearing no. 27010642 dated 24.06.2022, deposited by the respondent no. 7, it is seen that the demand draft was purchased by one Hafijul Islam. It is asserted by the respondent no. 7 in its counter affidavit that Hafijul Islam is his employee and it was at the instruction of the respondent no. 7, Hafijul Islam purchased the demand

draft on 24.06.2022. Hafijul Islam is not a party-respondent in the instant writ petition. It has not emerged from the records of settlement that Hafijul Islam who had purchased the demand draft, has made any complaint in connection with the demand draft bearing no. 27010642 dated 24.06.2022 drawn for the sum of ₹ 9,01,250.00 from the Union Bank of India.

15. Any competitive bidding process initiated by the State or any of its agency/instrumentality for distribution of State largesses must be a fair transparent and non-arbitrary one. Depending on the nature of settlement, the Court while exercising its power of judicial review under Article 226 of the Constitution of India has to ordinarily show restraint unless it finds the decision-making process adopted by the State or its agency/instrumentality has suffered from mala fide, arbitrariness or irrationality. The Hon'ble Supreme Court of India in its oft-quoted decision in **Tata Cellular vs. Union of India**, reported in [1994] 6 SCC 651 has observed about the limitations relating to the scope of judicial review of administrative decisions and exercise of powers in awarding contracts. It has observed that the modern trend is to exercise judicial restraint in administrative action and while exercising the power of judicial review, in matters of contract, the court does not sit as a court of appeal but merely reviews the manner in which the decision was made. It has further emphasised that the State or its agencies/instrumentalities must have the freedom of contract and a fair play in the joints is permissible for the State or its agencies/instrumentalities. The Court can only examine as to whether the decision is vitiated by the vices of arbitrariness or biasness or mala fide. In **Raunaq International Limited vs. I.V.R. Construction Limited**, reported in [1999] 1 SCC 492, the Hon'ble Supreme Court of India observed that when a writ petition is filed in a High Court challenging the award of a contract by a public authority or a State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. As an example it has cited that if the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. It is also apposite to mention that the matter of settlement is essentially commercial transaction and in arriving at commercial

transaction considerations which are paramount, are commercial considerations.

16. In **Jagdish Mandal vs. State of Orissa and others**, reported in [2007] 14 SCC 517, the Hon'ble Supreme Court of India has held that if the decision relating to award of contract has not suffered from any mala fide and is not against public interest, the Court shall not, in exercise of judicial power, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer is made out. It has been held in the following manner :

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not in exercise of powers of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievance, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual

matters in exercise of power of judicial review, should pose to itself the following questions :

[i] Whether the process adopted or decision made by the authority is male 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”;

[ii] Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse [allotment of sites/shops, grant of licences, dealerships and franchises] stand on a different footing as they may require a higher degree of fairness in action.”

17. Upon consideration of the fact situation obtaining in the case in hand, as discussed above, qua the two questions formulated in paragraph no. 22 in **Jagdish Mandal** [supra] are considered, this Court is of the unhesitant view that the answers are not in the affirmative. There is no public element involved to interfere with the decision of the respondent BTC authorities in settling the Market in favour of the respondent no. 7 at a bid value of ₹ 9,01,250.00 at the instance of the petitioner, who had quoted a bid value of ₹ 7,70,729.99, which was ₹ 1,30,520.01 lesser than the bid value offered by the respondent no. 7. The interests of the respondent BTC authorities, who are primarily guided by the factor of maximization of revenue to the State Exchequer, is already safe guarded and secured with the deposit of the amount of ₹ 9,01,250.00, which was the highest bid value secured in the competitive bidding process initiated by the Tender Notice dated 20.06.2022. In such view of the matter, the writ petition is found not merited and is liable to be dismissed. It is accordingly dismissed. There is no order as to cost.

JUDGE

Comparing Assistant