

GAHC010257672022



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

Case No. : WA/395/2022

SIBARAM DEKA
S/O LT. SISHURAM DEKA R/O VILL. NO. 2 MAJGAON, P.O. AND P.S. DHULA,
DIST, DARRANG, ASSAM, PIN-784146.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GUWAHATI- 6.

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM PANCHAYAT AND RURAL DEVELOPMENT
DEPTT. DISPUR GUWAHATI-6

3:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD DARRANG
MANGALDAI
P.O. AND P.S. MANGAODOI
DIST. DARRANG
ASSAM
PIN-784115

4:THE CHAIRMAN
DARRANG ZILLA PARISHAD DARRANG
MANGALDAI
P.O. AND P.S. MANGAODOI
DIST. DARRANG
ASSAM
PIN-784115

5:THE EXECUTIVE OFFICER PUB NANGALDOI ANCHALIK PANCHAYAT
P.O. AND P.S. DHULA

DIST. DARRANG
ASSAM
PIN-784115

6:THE PRESIDENT
PUB MANGALDOI ANCHALIK PANCHAYAT
P.O. AND P.S. DHULA
DIST. DARRANG
ASSAM
PIN-784115

7:HANIF ALI AHMED
S/O LT. ALIMUDDIN AHMED
R/O VILL- HIRAPARA
P.O AND P.S- DHULA
DIST- DARRANG
ASSAM
PIN- 784125.

8:JAYNAL ABDIN
S/O LT. BABAR ALI
R/O VILL BAGDIA
P.O- BHAKATPARA
P.S- DHULA
DIST- DARRANG
ASSAM

Advocate for the Petitioner : MR F K R AHMED

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 31-05-2023

(A.D. Choudhury, J)

1. Heard Mr. F. K. R. Ahmed, learned counsel for the appellant. Also heard Mr. K. Konwar, learned Additional Advocate General appearing for P&RD, Department, Govt. of Assam.

2. The present intra court appeal is directed against the common judgment and order dated 23.11.2022 passed by the learned Single Judge in WP(C) 3320/2022 and connected appeals whereby the writ petition preferred by the present appellant was dismissed.
3. The aforesaid writ petition was preferred by the appellant assailing Clause-10 of an NIT dated 08.04.2022 floated by Darrang Zilla Parishad for settlement of Hat/Ghat/Min Mahals for the financial year 2022-2023.
4. The aforesaid offending Clause-10 empowers the settling authority to settle a ghat etc. with highest bidder even if the highest bidder had not submitted necessary documents, except Court Fee and earnest money, subject to the highest bidder furnishing such necessary documents within three days time from selection.
5. The offending clause was challenged primarily on the ground that it violates the principle of equality as enshrined under Article 14 of the Constitution of India. It was a further ground that, a learned Single Judge dealing with a challenge to a similar Clause in a similar NIT issued by the same authority held in its judgment dated 17.05.2022 passed in WP(C)/45/2022 (Hasmat Ali –Vs- State of Assam) that Clause-10 if made applicable, then the same would be for the benefit of bidders whose bids were invalid at the time of their submission and the same would be to the prejudice of those bidders whose bids were compliant to terms and conditions of the tender notice at the time of their submissions. Such a situation is opposed to the principle of equality enshrined in Article 14 of the Constitution of India and same would clearly be discriminatory and same would be unjust to a bidder who is

otherwise a “valid” bidder in terms of Rule 47 (10) of the Assam Panchayat Financial Rules, 2002.

6. As many as 5 (five) writ petitions were filed on similar grounds assailing the offending tender clause.

7. Pursuant to the NIT, The writ petitioner submitted bids in respect of two Markets, Tangny Weekly Open Market and Tangny Weekly Cattle Market. It is an admitted fact that the petitioner was placed at 13th position in terms of bid price offered in respect of the said markets against the highest bid of Rs. 10,50,201/- and Rs. 51,15,501/- respectively.

8. The learned Single Judge has declined to examine the issues raised by the present appellant/writ petitioner for the reason that even if such issues raised are answered in favour of the petitioner, the same is not going to have any effect whatsoever on the petitioner.

9. The learned counsel for the appellant basically assails the judgment of the learned Single Judge on the ground that the learned Single Judge while deciding the issue raised, had failed to consider the ratio laid down in ***Hasmat Ali*** (supra) and did not entertain such challenge to Clause-10 relying on the judgment of the Hon’ble Apex Court in ***Michigan Rubber (India) Ltd. –Vs- State of Karnataka*** reported in **(2012) 8 SCC 216** and held that no malafide or favouritism has been made out as the offending Clause is a general one.

10. From the pleadings made in the writ petition and from the impugned order, it is clear that the petitioner without raising any

challenge to the offending Clause of the NIT, participated in the tender process in respect of two markets in question and when he became unsuccessful, turned around and challenged the Clause-10 of the tender. The law is well settled that when a tenderer participates in a tender process without objection and subsequently found to be not successful, a challenge to the process is precluded. Such a tenderer cannot be allowed to turn around and contend that the process was unfair by virtue of existence of a Clause in the NIT.

11. This Court cannot also find fault with the decision of the learned Single Judge in not entertaining the writ petition preferred by the appellant for the reason that the issues raised by the petitioner even if answered in his favour, same will have no effect on him inasmuch as this Court is in total agreement with such view in the given facts of the present case.

12. So far relating to the issue that there are two divergent views by two learned Single Judge in respect of the validity of the offending Clause-10, this Court is not inclined to entertain such an issue at the behest of the present appellant for the reasons discussed hereinabove and same may be dealt with in an appropriate case, if necessity arises.

13. In view of the aforesaid discussions, reasons, this Court finds no merit in the present appeal, accordingly, the same stands dismissed.

JUDGE