

GAHC010163662023



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

Case No. : WP(C)/4293/2023

ABDUL BAREK
SON OF LATE KOLIM UDDIN,
VILLAGE- GANDA PUKHURI,
P.O.- LALPOOL, P.S.- DALGAON,
DIST.- DARRANG, ASSAM,
PIN- 784514.

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DEPUTY COMMISSIONER
DARRANG
MANGALDAI

DIST. DARRANG
ASSAM

PIN- 784125.

3:THE DARRANG ZILLA PARISHAD
MANGALDAI

REPRESENTED BY ITS PRESIDENT

P.O.- MANGALDAI
DIST.- DARRANG

ASSAM

PIN 784125.

4:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
MANGALDAI
DIST. DARRANG

ASSAM
PIN- 784125.

5:THE BECHIMARI ANCHALIK PANCHAYAT
REPRESENTED BY ITS EXECUTIVE OFFICER

P.O.- BECHIMARI
P.S.- DALGAON

DIST.- DARRANG
ASSAM

PIN- 784514.

6:THE EXECUTIVE OFFICER
BECHIMARI ANCHALIK PANCHAYAT
P.O.- BECHIMARI
P.S.- DALGAON

DIST.- DARRANG
ASSAM

PIN- 784514.

7:JAINUDDIN AHMED
(PRESIDENT OF BECHIMARI ANCHALIK PANCHAYAT)
SON OF LATE HAZRAT ALI

VILL. NO. 4 BARUARJHAR

PO- BECHIMARI
DIST. DARRANG

ASSAM
PIN- 784514.

8:ALHAJ SANA ULLAH
SON OF LATE ROIZ UDDIN

VILL- MADHUPUR
P.O. LALPOOL

DIST.- DARRANG
ASSAM.
PIN- 784514

Advocate for the Petitioner : MR J ABEDIN

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

Linked Case : WP(C)/4309/2023

SAYED ALI
S/O LATE SAHED ALI
VILL- NO. 1 CHIKANMATI
P.O.-BECHIMARI
P.S.-DALGAON
DIST- DARRANG
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7:JAINUDDIN AHMED
(PRESIDENT OF BECHIMARI ANCHALIK PANCHAYAT)
S/O LATE HAZRAT ALI
VILL- NO. 4 BARUAHJHAR
P.O.-BECHIMARI
DIST- DARRANG
ASSAM
PIN-784514

8:JELLUL HOQUE
S/O ROHIM UDDIN
VILL- NO. 2 MAJGAON
P.O.-LALPOOL
DIST- DARRANG
ASSAM
PIN-784514

Advocate for : MR J ABEDIN
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 7 ORS

Linked Case : WP(C)/4312/2023

JINNAT ALI
S/O LATE SAHED ALI
VILL- NO. 1 CHIKANMATI
P.O.-BECHIMARI
P.S.-DALGAON
DIST- DARRANG

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7:JAINUDDIN AHMED
(PRESIDENT OF BECHIMARI ANCHALIK PANCHAYAT)
S/O LATE HAZRAT ALI

VILL- NO. 4 BARUAHJHAR
P.O.-BECHIMARI
DIST- DARRANG
ASSAM
PIN-784514
8:TALEB ALI
S/O AJGOR ALI
VILL- BARUARJHAR
P.O.-BECHIMARI
DIST- DARRANG
ASSAM
PIN-784514

Advocate for : MR J ABEDIN

Advocate for : SC

P AND R.D. appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocates for the petitioner : Mr. J. Abedin, Advocate

For the respondents : Mr. S. Dutta, SC, P&RD
Ms. U. Das, Addl. Sr. G.A. (for respondent No.2)
Mr. A.R. Bhuyan, Advocate (for respondent No.8)

Dates of hearing : 21.03.2024

Date of Judgment : 02.04.2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. J. Abedin, learned counsel for the petitioners in all the three writ petitions. Also heard Mr. S. Dutta, learned Standing Counsel for the P&RD Department and Ms. U. Das, learned Addl. Sr. Government Advocate appearing for the respondent No.2 in all the cases. Mr. A.R. Bhuyan, learned counsel appears for the respondent No.8 in all the three writ petitions.

2. The grievance of the petitioners are that they had not been able to submit their bids pursuant to the tender notice dated 11.04.2023 issued by the Bechimari Anchalik Panchayat for settlement of the (1) Lalpool Weekly Cattle Market (hereinafter referred to as the 'market') (2) Bechimari Weekly Cattle Market (hereinafter referred to as the 'cattle market') and (3) Bechimari Daily Vegetable Market (hereinafter referred to as the 'vegetable market') for the settlement period from 01.07.2023 to 30.06.2024.

The Lalpool Weekly Cattle Market pertains to WP(C) No.4293/2023, while the Bechimari Weekly Cattle Market relates to WP(C) No.4312/2023. The Bechimari Daily Vegetable Market pertains to WP(C) No.4309/2023.

3. The above 3 markets have been settled with the respondent No.8 of the concerned writ petitions. The prayer of the 3 writ petitioners in all the writ petitions is that the 3 markets had been settled with the private respondents for a total amount of Rs.18,02,373/- for the year 2023-24, though the 3 markets had been settled for the year 2022-23, for a total value of Rs.1,09,48,745/-. Thus, the State respondents had mischievously prevented the petitioners from submitting their bids, so that they could give favours to their blue eyed boys, which resulted in a loss of approximately Rs.90 lakhs to the Public Exchequer.

4. The petitioners have thus prayed for setting aside the orders settling the markets with the private respondents and to cause an enquiry regarding the action of the Bechimari Anchalik Panchayat in preventing the petitioners from submitting their tender documents in the tender box on 06.06.2023. They have also prayed for making a fresh settlement of the markets by issuing fresh tenders.

5. The issues raised by all the 3 writ petitioners being similar in nature, all the 3 writ petitions are being disposed of by this common judgment and order.

6. The petitioners case is that the last date for submission of the bids for the markets in terms of the tender notice dated 11.04.2023 was 06.06.2023. However, on the said date, the tender box was put out for submitting the bids of the tenderers at 1 p.m. only, instead of 10 a.m and the bids were allowed to be submitted till 2 p.m. The initial timing given for submission of the bids was from 10 a.m. to 2 p.m. Though the petitioners were standing in a line to submit their bids, the tender box was brought out from the office at 1 p.m only on 06.06.2023 and the dropping of the tender documents into the tender box was closed at 2 p.m. Accordingly, the petitioners could not submit their tender documents, as there were a number of persons in front of them, who also could not drop their tender documents in the tender box.

7. As the petitioners could not submit their bids in the bid/tender box, the petitioners filed WP(C) 3689/2023. WP(C) 3689/2023 was disposed of vide order dated 28.06.2023, with a direction being issued to the Deputy Commissioner, Darrang to make a report with regard to the grievance of the petitioners. Subsequent to the above events, the markets were settled with the private respondents No.8. The petitioners being aggrieved by the fact that the settlement had been made in favour of the private respondents and as the order dated 28.06.2023 passed in WP(C) 3689/2023 had not been complied with, the petitioners have filed the present writ petitions.

8. In WP(C) 4293/2023, the Lalpool Weekly Cattle Market has been settled with the respondent No.8 for the year 2023-24, i.e., from 01.07.2023 to

30.06.2024 at the quoted rate of Rs.6,02,375/-, though the said market had been settled for the year 2022-2023 with one Mr. Saddam Hussain, at the quoted rate of Rs.23,23,323/-. For the year 2021-2022, it was settled @ Rs.12,50,000/- with one Moijuddin Ahmed. For the settlement of the market for the year 2022-2023, i.e., from 01.07.2022 to 30.06.2023 and for the year 2023-2024, the State respondents had fixed the minimum base rate of Rs.5,04,570/-.

9. The petitioner's counsel submits that the petitioner was ready to deposit Rs.33,40,000/- for settlement of the market for the year 2023-24. However, the said tender documents could not be submitted due to the reasons stated above.

10. In respect of WP(C) No. 4312/2023, which pertains to settlement of the Bechimari Weekly Cattle Market, the cattle market had been settled with the respondent No.8 at his quoted rate of Rs.2,99,999/-, while the said cattle market had been settled for the year 2022-2023 for Rs.22,22,222/- in favour of one Lal Fakir. The said cattle market was settled with one Omar Ali at his quoted amount of Rs.3,50,100/- for the year 2021-2022. The State respondents had fixed the base/minimum rate for the cattle market @ Rs.2,46,235/- for the year 2022-23 and 2023-24. The petitioners counsel submits that the petitioner was ready to deposit Rs.23,33,333/- for settlement of the said cattle market for the year 2023-24. However, the said tender documents could not be submitted due to the reason stated earlier.

11. In WP(C) 4309/2023, which pertains to settlement of the Bechimari Daily Vegetable Market, the vegetable market had been settled with the respondent No.8 for the year 2023-24 at the quoted rate of Rs.8,99,999/-. The market was settled with one Abdul Samad for the year 2022-23 at the quoted rate of

Rs.64,03,200/-. The same market was settled for the year 2021-22 with one Abul Karim for Rs.11,00,000/-. The base/minimum price fixed by the State respondents for the vegetable market for the year 2021-2022 was Rs.6,59,450/-, for the year 2022-23 @Rs.7,25,395/- and for the year 2023-24 @Rs.7,97,934/-. The petitioners counsel submits that the petitioner was ready to deposit Rs.78,91,999/- for settlement of the vegetable market for the year 2023-24. However, the said tender documents could not be submitted due to the reason stated earlier.

12. During the pendency of this case, the District Commissioner, Darrang gave a report dated 10.08.2023, which basically states that though the tender/drop box had been placed outside the office to allow the tenderers to drop their tender papers at 10 a.m., the dropping of tender documents into the tender box could only be done from 1 p.m.

13. The petitioner's counsel submits that the petitioner not being able to submit his tender documents due to the reasons stated above, the Government has suffered a huge loss. He accordingly submits that the settlement orders issued by the respondent No.4 in favour of the private respondents no.8, in all the writ petitions, should be set aside and the respondents should be directed to cause an enquiry into the matter. He further submits that the entire system had been manipulated by the concerned officials of the Anchalik Panchayat, in connivance with the respondent No.8, which required the scam to be unearthed and the law should be allowed to take its own course.

14. Mr. A.R. Bhuyan, learned counsel for the three respondents No.8, on the other hand, submits that the setting of the base price is the responsibility of the

Anchalik Panchayat and the respondent No.8 has got no role to play in the same. He further submits that no wrong has been done by the respondent No.8, as they had submitted their bids on time. He submits that the petitioners not having submitted their bids on time, the petitioners do not have any locus standi to file the present writ petitions. He further submits that if this Court is of the view that the issue raised by the petitioners is to be decided by the Government in terms of Section 105(4) of the Assam Panchayat Act, 1994 (hereinafter referred to as the '1994 Act') the markets that have been settled with the respondent No.8 should not be interfered with, unless the Government cancels the settlement of the markets with the private respondents. Further, the enquiry report to be made in terms of Section 105(4) of the 1994 Act should be concluded within a very short period of time.

15. Mr. S. Dutta, learned Standing Counsel for the P&RD Department and Ms. U. Das, learned Addl. Sr. Government Advocate for the respondent No.2 submit that in terms of the report made by the District Commissioner, relating to the dropping of the tender papers by the tenderers in the tender box, it is quite apparent that the time limit for submitting the tenders had been shortened from "10 a.m. to 2 p.m." to "1 p.m. to 2 p.m." However, the report further states that for those tenderers who were still standing in line, waiting to drop their tender papers in the tender box, they were given coupons to enable them to drop their tender papers even beyond 2 p.m on 06.06.2023. They further submit that the issue raised by the petitioner needs an enquiry, in view of the fact that the settlement of the market had been done at a considerably lower rate than the previous years. They submit that as there is an alternative remedy for settling the issue raised by the petitioner in terms of Section 105(4) of the 1994 Act, the present issue should be referred to the Principal Secretary to the Government of

Assam, P&RD Department for his decision.

16. At this stage, the petitioner's counsel has vehemently denied that any coupon system was followed for submission of the tender documents beyond 2 p.m on the said date.

17. I have heard the learned counsels for the parties.

18. The following issues have arisen which are to be decided by this Court :

(i) Whether the petitioners were prevented from submitting their tender documents in the tender box on 06.06.2023 ?

(ii) Whether there has been any loss caused to the public exchequer while settling the markets for the year 2023 – 2024 ?

19. The findings of the Deputy Commissioner in his report dated 10.08.2023, regarding the petitioners' complaints that they had been prevented from dropping their tender documents in the tender box is to the following effect-

“In context to the above the following were the findings: -

1. From the statements of all of the above Petitioners and Respondents it is clear that tender for the weekly Bazar of Bechamari and Lalpool were called and opened on 06/06/2023. It is also clear that the time for dropping of tender in the tender box was from 10 AM but the process for dropping of tender was started from 1 PM. As per the version of the petitioners, there was no tender box found in the office when they came to drop their tender papers but the dependents have stated that the tender box were placed for dropping tender from 10 AM. However, it is clear from the statement of both the petitioners and the dependents that the tender process started at 1 PM.

2. As per the version of the petitioners they were obstructed in dropping the tenders by some of the people engaged by the President of the Anchalik Panchayat of Bechimari. But the respondent i, e both the BDO and the Anchalik Panchayat President have stated that all were given the opportunity to participate in the tender process. Even extra time was given for submitting their tender as per the direction of the Deputy Commissioner, Darrang by issuing numbered coupons from the rear side who were standing in queue for submission of their tender papers. All together 12 nos of participants could submit their tender after the scheduled time of closing the tender papers.

3. In regards to the above it is not known why and how the Petitioners could not submit the tender papers even after the presence of police personals in the spot on the sald day. In the videography it is clearly visible that the police personals were on duty and the petitioners could have reported the same to the police personals for help but the petitioners have no where mentioned that they approached the police personal for help, if the Anchalik Panchayat President of Bechimari and the BDO or their people had opposed the Petitioners in participating the tender process

Therefore, this authority is of the opinion that the complaint petition of the petitioners could not be ascertained on the basis of their submitted documents and the tender process of Bechimari Anchalik Panchayat completed on 06/06/2023 cannot be ruled out."

20. The report of the Deputy Commissioner is basically to the effect that the stand of the petitioners that they could not submit their tender papers on time due to they being obstructed from submitting their tender papers, besides the tenderers being allowed to put the tender papers in the tender box only from 1:00 p.m to 2:00 p.m, could not be ascertained. Thus, the disputed question of fact still remains a disputed question of fact, despite the Deputy Commissioner's report.

21. The relevant last paragraph of the Deputy Commissioner's report dated 10.08.2023 is again reproduced below, as follows :

Therefore, this authority is of the opinion that the complaint petition of the petitioners could not be ascertained on the basis of their submitted documents and the tender process of Bechimari Anchalik Panchayat completed on 06/06/2023 cannot be ruled out."

22. With regard to whether any loss had been caused to the public exchequer in settling the markets at a lower rate for the year 2023 – 2024, than the settlement rates made in the previous years, a chart showing the rates of settlement of the 3 markets for the last 3 years is made as follows:-

Sl. No.	Writ petition No. & Market Name	Settlement rate in 2021-2022	Settlement rate in 2022-2023	Settlement rate in 2023-2024
1.	WP(C) 4293/2023 Lalpool Weekly Cattle Market	Rs.12,50,000/-	Rs.23,23,323/-	Rs.6,02,375/-
2.	WP(C) 4312/2023 Bechimari Weekly Cattle Market	Rs.3,50,100/-	Rs.22,22,222/-	Rs.2,99,999/-
3.	WP(C) 4309/2023 Bechimari Daily Vegetable Market	Rs.11,00,000/-	Rs.64,03,200/-	Rs.8,99,999/-

23. A perusal of the above chart clearly goes to show that the Anchalik Panchayat has settled the market at a considerably lower rate than the previous years. The 3 markets that had been settled for the previous year 2022-23 at a total value of Rs.1,09,48,745/-, has now been settled for the year 2023-2024 for

a total amount of Rs.18,02,373/-, thus entailing a loss of approximately 90 lakhs. In fact, the settlement rate for the year 2023-2024 is even lower than the settlement rate for the year 2021-2022.

24. The lowering of the settlement rate of the markets does not appear to be justified. It is the view of this Court that this huge anomaly in the fall in the rates for settlement of the markets would have to be enquired into and a decision taken by the Government, as to whether any mischief has occurred in the settlement of the markets at such a low rate vis-à-vis the settlement rates for the previous years.

25. The above being said, it is apparent that while the tenderers were to be allowed to drop their tender papers in the tender box between 10 a.m. to 2 p.m. on 06.06.2023, they were only allowed to submit their tender papers in the tender box from 1 p.m. only. There is no proof as to whether the petitioners were prevented from submitting the tender papers, even though it is clear that the State respondents should have adjusted the time period for submission of their tender papers, as the tender papers could not be submitted for 3 hours between 10 a.m. to 1 p.m. The time period for submitting tender papers should have accordingly been adjusted/ extended from 1 p.m. to 5 p.m.

26. Be that as it may, the period of settlement of the markets is from 01.07.2023 to 30.06.2024. As such, only 3 months remain before expiry of the settlement period of the markets.

27. Section 105(4) of the 1994 Act states as follows:-

“105. Settlement of Hats by Anchalik Panchayats.-

(4) All settlement made under sub-section (3) shall be subject to the confirmation of the Zilla Parishad:

Provided that in case of any dispute, the Anchalik Panchayat may refer such case to the Government and the aggrieved party may appeal to Government whose decision in this regard shall be final."

28. On considering the fact that there are disputed questions of facts involved, despite the Deputy Commissioner's report dated 10.08.2023, this Court is of the view that the huge loss caused to the Government due to the low rate of settlement of the markets for the year 2023 – 2024, compared to the settlement rates for the year 2022 – 2023, the Government has to take the issue seriously and cause an enquiry as to why the markets had been settled at such low rates. The enquiry conducted would have to look into whether there was connivance of the concerned Government officials and Panchayat members with the successful tenderers, for settling the markets at such low rates.

29. Accordingly, this Court directs the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department, to cause an enquiry as to why the above three markets have been settled at such low rates, compared to the settlement rates for the year 2022-2023 and the settlement rates for the year 2021-2022. If the Principal Secretary to the Government of Assam, Panchayat & Rural Development Department comes to a finding that there has been some mischief on the part of concerned Government officials/ Panchayat members, in connivance with the private respondents, in causing loss to the Government, proper action, including criminal cases may be initiated, against those errant officials/persons, which may include sending the enquiry findings of the Principal Secretary to the concerned Anti Corruption Authority of the State, including the Chief Minister's Vigilance Cell. The initiation of the enquiry and decision to be taken by the Principal Secretary to the Government of Assam,

Panchayat & Rural Development Department shall be concluded within a period of 10 (ten) weeks from the date of receipt of a certified copy of this order, as a fresh/new settlement of the markets is to take place from 01.07.2024, for the year 2024-25. The validity of the existing settlement of the markets will depend upon the inquiry report to be made by the Principal Secretary.

30. The writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant