

GAHC010173762023



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

Case No. : WP(C)/4432/2023

BABU RAM BRAHMA
S/O- LATE ANANDA BRAHMA

VILL- DALAKATI BORO BAZAR

DIST- UDALGURI
ASSAM

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 4 ORS
REP. BY ITS PRINCIPAL SECRETARY
KOKRAJHAR
ASSAM

2:THE CHAIRMAN
MARKET SETTLEMENT COMMITTEE
BTC

KOKRAJHAR
ASSAM
3:THE JOINT SECRETARY
BTC

KOKRAJHAR
ASSAM
4:THE BLOCK DEVELOPMENT OFFICER
DALGAON SIALMARI DEVELOPMENT BLOCK
KHARUPETIA
5:MANESWAR BASUMATARY
S/O- NAGEN BASUMATARY

R/O- CHENGELIMARI

P.O- GERUA BAZAR
DIST- UDALGURI
ASSAM

Advocate for : MR. J LASKAR

Advocate for : SC

BTC appearing for THE BODOLAND TERRITORIAL COUNCIL AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

06.02.2024

1. Heard Mr. J. Laskar, learned counsel for the petitioner. Also heard Ms. R.B. Bora, learned Standing Counsel, BTC for the respondent nos.1, 2, 3 & 4. No one appears for the respondent no.5, though the order dated 04.12.2023 passed by this Court states that service of notice upon the respondent no.5 is deemed to be complete.

2. The petitioner's case is that by a Tender Notice dated 24.05.2023, the respondent no. 4 invited sealed tenders for settlement of a number of markets/go-hats/parkings/par-ghats/ferries/cattle pounds, etc. for the year 2023-2024. One of the markets sought to be so settled was 'Koupati Weekly Cattle Market' ['the Market', for short] and the Scheduled Rate for the year : 2023-2024 was fixed @ Rs. 3,96,750/-. In response to the Tender Notice, 4 [four] nos. of bidders including the petitioner and the respondent no. 5 submitted their tenders. The office of the respondent no. 4 after scrutiny of the tender papers, prepared a comparative statement and forwarded the matter of

settlement of the Market to the respondent no. 3. As per the comparative statement, the petitioner was the 3rd highest bidder with his offered bid value of Rs. 11,76,751/- and the respondent no. 5 was the 4th highest bidder with his offered bid value of Rs. 6,94,500/-.

3. Mr. Laskar, learned counsel for the petitioner has submitted that the 1st highest bid and the 2nd highest bid were non-compliant to the Tender Notice and as such, the petitioner had emerged as the highest valid bidder, as he had complied with all the terms and conditions of the Tender Notice. Disregarding the higher valid bid of the petitioner, the respondent BTC authorities had granted approval on 03.07.2023 for settlement of the Market in favour of the respondent no. 5 at his offered value of Rs. 6,94,500/-. Pursuant thereto, the respondent no. 4 has passed the impugned order of settlement dated 27.07.2023 in favour of the respondent no. 5, thereby, settling the Market for the period from 01.07.2023 to 30.06.2024.

4. The petitioner's counsel thus prays that the approval order dated 03.07.2023 and the settlement order dated 27.07.2023 should be set aside. Consequently, the respondents should be directed to settle the market with the petitioner.

5. Ms. R.B. Bora, learned Standing Counsel for the respondent nos.1, 2, 3 & 4 submits that the Market Settlement Committee has not accepted the bids of the 1st, 2nd and 3rd highest bidders, as their bids were exorbitant, as their bids were nearly more than three times the Government schedule rate. As such, the Market Settlement Committee did not invoke Clause 11 of the Tender Notice

dated 24.05.2023 and approved the selection of the respondent no.5 as the successful tenderer. She also submits that even if the writ petition was allowed, in terms of Clause 11 of the Tender Notice, the market cannot be settled with the petitioner, as he was the 3rd highest bidder.

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

7. As can be seen from the affidavit-in-opposition filed by the BTC, the three highest bidders were disqualified on the ground that their bids were exorbitant. While the 1st and 2nd highest bidders have not made a challenge to their non-selection as successful bidders, the petitioner who had given the 3rd highest bid has made a challenge to the same. Clause 11 of the Tender Notice dated 25.05.2023 states as follows :

“11. The competent authority shall make settlement with the highest bidder if all the necessary documents and Government revenue are found in order. In case settlement is not made with the highest bidder, the competent authority shall record reasons in writing for their decision. The competent authority before awarding the settlement shall make necessary enquiry keeping in mind genuiness, eligibility and seriousness of the parties.

The competent authority shall also keep in mind the public interest as well as to the absurdity of the rates offered by the intending tenderers.

*The tender documents itself provides the rate which shall be charged from petty vendors by the successful bidder and no one shall charge a single penny more than the prescribed rate causing burden to the poor vendors who come to sell their crops and other items in the market. **The competent authority shall reserve all the rights of accepting or rejecting the tender paper without citing any reason at any point of time.**”*

8. A reading of the above Clause 11 shows that settlement of the market has to be done with the highest bidder, if all the bidder's documents and Government revenue are found in order. However, the competent authority has been given the liberty to reject absurd rates offered by the intending tenderers, keeping in mind that no successful tenderer can charge a single penny more from petty vendors than the prescribed rate made by the authorities, when they come to sell their crops and cattle in the market. In the present case, there is nothing to show that the petitioner would charge higher rates than that prescribed by the authorities from the petty vendors, who come to sell their crops and cattle in the market. Further, there is no reserve price or upper ceiling made by the State respondents, beyond which bids offered by the bidders would result in their rates not being accepted.

9. In the case of *Babu Ram Brahma vs. The Bodoland Territorial Council and 5 Others*, WP(C) 4823/2022, this Court vide order dated 03.01.2023, had directed the respondent authorities to allot the market to the highest bidder. The reason for coming to the said decision was that transparency and fairness were the hallmarks in matters of distribution of State largesse and for contracts which fetches revenue, the quantum of revenue was of paramount importance. Further, in the case of ***Tarun Bharali vs. State of Assam & Others***, reported in **(1991) 2 GLR 296**, this Court held that in matters of settlement, revenue to be earned by the State would play a major role.

10. In the case of *Saitya Barman vs. The State of Assam & 4 Others*, WP(C) 3476/2014, this Court vide order dated 13.05.2015, had observed that if the State respondents wanted to put a ceiling on the maximum amount that can be

quoted by a tenderer, then such a decision or ceiling ought to have been notified in clear terms to the bidders. Even assuming that the said exercise could not have been carried out for any valid reason before the submission of the bids, fairness demanded that the highest bidders ought to have been given an option to reduce their price, so as to match the condition imposed by the authorities.

11. In the present, the Tender Notice pursuant to which the petitioner and others had participated in, does not contain any ceiling on the maximum amount that can be quoted by a tenderer. However, the schedule rate for the market fixed by the authorities was Rs.3,96,750/-. While the respondent no.5 had quoted an amount of Rs.6,94,500/-, the petitioner had offered Rs.11,76,751/-. What can be inferred from the above is that there is an apprehension on the part of the respondent authorities that tenderers with very high bids, if selected, would be charging the vendors rates beyond the prescribed rates made by the authorities. In the view of this Court, the said issue can always be verified by the authorities at the time when the market is run by the settlement holder. However, in the present case, there is nothing to show as on date, that the petitioner would be charging rates from the vendors beyond the prescribed rates. As such, this Court is of the view that the State respondents would have to settle the bid with the highest valid bidder in terms of Clause 11 of the Tender Notice. Though the petitioner is the 3rd highest bidder in pursuant to the Tender Notice, the State respondents would have to consider the petitioner as the highest bidder as on date, in view of the fact that the first highest bidder and second highest bidder have not made a challenge to the selection of the respondent no.5 as the settlement holder of the market.

Thus the 1st and 2nd highest bidder having waived their right to make a challenge to the selection of the respondent no.5 as the settlement holder of the market, the State respondents would have to consider the petitioner's bid to be the highest bid.

12. In view of the reasons stated above, this Court is of the view that the settlement of the market with the respondent no.5 being in violation of Clause 11 of the Tender Notice, the same is not sustainable in law and is accordingly set aside. Consequently, the impugned approval order dated 03.07.2023 and the settlement order dated 27.07.2023 are hereby set aside. In view of the fact that the settlement period of the market is from 01.07.2023 to 30.06.2024, the settlement of the market for the remaining period till 30.06.2024 in favour of the petitioner should be completed by the State respondents within a period of 1 (one) week from the date of receipt of a certified copy of this order. The respondent authorities shall also take steps to refund the appropriate amount of deposit made by the respondent no.5 for running the market, after calculating the period the respondent no.5 had run the market.

13. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant