

GAHC010185362023



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

Case No. : WP(C)/4885/2023

ABDUL RAHMAN
S/O- MONUHAR ALI,
R/O- VILLAGE- ISLAMPUR (NIZ BAGHMARI),
P.O.- BURIGANG, P.S.- GINGIA,
DISTRICT- BISWANATH, ASSAM,
PIN- 784176.

VERSUS

THE STATE OF ASSAM AND 8 ORS
THROUGH-
THE PRINCIPAL SECRETARY,
TO THE GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, ASSAM,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM
JURIPAR
PANJABARI
GUWAHATI- 781037.

3:THE DEPUTY COMMISSIONER
SONTIPUR
TEZPUR
DISTRICT- SONITPUR

ASSAM.

4:THE ADDITIONAL DEPUTY COMMISSIONER
SONITPUR

AT BISWANATH CHARIALI

DISTRICT- SONITPUR
ASSAM.

5:BISWANATH ZILLA PARISHAD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER

P.O.- BISWANATH

DISTRICT- SONITPUR
ASSAM

PIN CODE

6:THE PRESIDENT
BAGHMARA ANCHALIK PANCHAYAT
ROWTA
DISTRICT- SONITPUR

ASSAM
PIN CODE

7:THE CHAIRPERSON
BAGHMARA ANCHALIK PANCHAYAT
ROWTA
DISTRICT- SONITPUR

ASSAM
PIN CODE

8:THE CHIEF EXECUTIVE OFFICER
BISWANATH ZILLA PARISHAD
BISWANATH CHARIALI
DISTRICT- SONITPUR
ASSAM.

9:LUPTO DUNGRI
S/O- LATE BUTI DUNGRI

R/O- VILLAGE- BAGHMARI T.E.

PO- BURIGANG
P.S.- GINGIA

DIST. BISWANATH (SONITPUR)

PIN- 784176

Advocate for the Petitioner : MD. I HUSSAIN

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

13.03.2024

Heard Mr. I. Hussain, learned counsel for the petitioner. Also heard Mr. U. Sarma, learned counsel appearing on behalf of Mr. S. Dutta, learned Standing Counsel, P&RD/respondent Nos. 1, 2, 5 & 8. Mr. S.R. Baruah, learned counsel appears for the respondent Nos. 3 and 4. No one appears for the respondent No. 9.

2. The petitioner's case is that pursuant to a tender notice for settlement of the Niz Baghmara Daily Bazar (hereinafter referred to as the 'market'), the Baghmara Anchalik Panchayat invited bids for the same. Though the petitioner's offered bid value for settlement of the market was higher than the bid value submitted by the respondent No.9, the market was settled with the respondent No.9, vide the impugned order dated 18.07.2023.

3. The petitioner's counsel submits that though the petitioner was aware that his bid has been disqualified by the authorities, he was not informed the reason why his bid has been disqualified. It was only after the petitioner had approached this Court that the petitioner was informed that his bid has been disqualified due to the earnest money having been wrongly addressed to the Executive Officer, Anchalik Panchayat, instead of being addressed to the Chief

Executive Officer, Zilla Parishad in terms of Clause 12(1) of the tender notice.

4. The petitioner's counsel submits that even though the petitioner's bid had been disqualified in view of his earnest money not being submitted in terms of Clause 12(1) of the tender notice, the State respondents could not have settled the market with the respondent No.9, as the bid of the respondent No.9 was also defective, inasmuch as, he failed to file requisite documents along with his tender papers, such as Non-Encumbrance Certificate, Income Tax Clearance Certificate etc.

5. He further submits that the bid of the petitioner was much higher than the respondent Nos. 7 & 9 and the settlement of the market with the respondent No.9 has caused a great loss to the Public Exchequer. As such, in public interest, the market should be re-tendered as the respondent No.9 cannot be settled with the market. In this respect, the learned counsel for the petitioner has relied upon the judgment of a coordinate Bench of this Court in the case of **Mukhtar Hussain Vs. The State of Assam and Others**, in **WP(C) No. 4757/2023**, which was disposed of vide order dated 11.01.2024.

6. On the other hand, Mr. U. Sarma, learned counsel appearing for the P&RD Department submits that the petitioner being ineligible for being selected as the successful bidder, he cannot make a challenge to the settlement of the market with the respondent No.9, in terms of the judgment of the Apex Court in the Case of **TATA Motors Limited Vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and Others** in **Civil Appeal No. 3897/2023**.

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

8. As can be seen from the averments made by the counsels for the parties and on perusal of the pleadings, the petitioner's bid had been disqualified due to his earnest money not being submitted in consonance with Clause 12(1) of the tender notice. Without going into the question as to whether the bid of the respondent No.9 was in consonance with the terms and conditions of the tender notice, this Court is of the view that the issue that has to be first decided, is as to whether a disqualified tenderer can make a challenge to the selection of the successful tenderer. In this respect, the decision of the Supreme Court in the case of ***Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Others***, reported in ***(1999) 1 SCC 492*** is relevant, wherein it states that any judicial relief at the instance of a party which does not fulfil the requisite criteria seems to be misplaced.

9. The law laid down by the Supreme Court in ***Raunaq International Ltd (Supra)*** has also been affirmed by a three Judges Bench of the Supreme Court in the case of ***TATA Motors Limited (supra)***, which has been decided on 19.05.2023, wherein it has held that once the High Court had declared the bid of TATA Motors as "non-responsive" and having stood disqualified from the tender process, the High Court should not have entered into the fray of investigating into the decision of Brihan Mumbai Electric Supply & Transport Undertaking (BEST) to declare EVEY as the eligible bidder, as the High Court was not exercising its writ jurisdiction in public interest.

10. In the case of ***Jagdish Mandal Vs. State of Orissa and Others***, reported in ***(2007) 14 SCC 517***, the Supreme Court held that power of judicial

review should not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

11. The coordinate Bench of this Court in ***Muktar Hussain (supra)*** was seized of a matter pertaining to settlement of a weekly market with the private respondent therein, who had submitted a lower bid than the writ petitioner. The bid of the writ petitioner was not considered, as his bid documents did not fulfil all the requirement of the tender notice. The coordinate Bench noticed the deficiency in documents in both the bids of the petitioner as well as the private respondent therein, besides the major difference in price offered by the petitioner and the private respondent. The coordinate Bench held that in matters of distribution of State largesse which are meant for fetching revenue, the price offered is of paramount importance and it accordingly ordered that the interest of justice would be served, by directing the State respondents to redo the exercise of settlement of the market, by issuing a fresh tender notice.

12. On considering the judgment passed by a Co-ordinate Bench of this Court in ***Muktar Hussain (supra)***, it is noticed that the law laid down by the Supreme Court in ***Raunaq International Ltd. (supra)*** and ***TATA Motors Limited (supra)*** had not been brought to its notice and as such, it is the view of this Court that the Co-ordinate Bench was not in a position to consider the law laid down by the Supreme Court.

13. As such, this Court is of the view that the law laid down by the Supreme Court will have to be followed by this Court and the decision passed by the Co-ordinate Bench cannot be applied to this case, especially when the issue of whether the bid of the respondent No.9 was in terms of the tender notice, has

not been gone into. It has only decided the issue of whether the petitioner, whose bid was disqualified, could have made a challenge to the settlement of the market with the respondent No.9. As held by the Supreme Court, in the decisions referred to above, judicial relief at the instance of a party who does not fulfil the requirements of the tender notice cannot be given, inasmuch as, this is not a public interest litigation.

13. In view of the reasons stated above, this Court does not find any ground to exercise its discretion in this case.

14. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant