

GAHC010200402023



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

Case No. : WP(C)/5233/2023

MITHISAR SWARGIARY
S/O- KHANSAI SWARGIARY,
VILL- ROWTA PATHER,
P.O.- BALUKMARI,
DIST.- UDALGURI, ASSAM.

VERSUS

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

2:THE SECRETARY
BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
ASSAM.

3:THE ADDITIONAL CHIEF CONSERVATOR OF FOREST CUM CHD
FOREST DEPARTMENT
BTC
KOKARJHAR
ASSAM.

4:THE DIVISIONAL FOREST OFFICER
DHANSIRI FOREST DIVISION
UDALGURI.

5:THE DISTRICT COMMISSIONER
UDALGURI
ASSAM.

6:SRI RANSAIGWRA BORO

S.O SRI BHOJEN CHANDRA BORO

R/O- VILL.- LADABARI
P.O.- DALAKATI BORO BAZAR
P.S. ROWTA
DIST.- UDALGURI
ASSAM

Advocate for the Petitioner : MR. J LASKAR

Advocate for the Respondent : SC, BTC

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

05.04.2024

Heard Mr. J. Laskar, learned counsel for the petitioner. Mr. K. Gogoi, learned counsel appears for the respondent Nos. 4 & 5, while Ms. H. Baruah, learned counsel appears on behalf of Mr. P. Nayak, learned counsel for the BTC. No one appears for the respondent No.6.

2. The petitioner's case is that he could not participate in the bidding process initiated for settlement of the Dhansiri Sand Gravel Mahal, Udalguri district, pursuant to tender notice dated 05.08.2023, on the ground that the same was put up in the Notice Board only on 28.08.2023 and that the tender notice was not given wide publicity, i.e., it was not publicized in any newspaper having wide circulation in the concerned BTC area of Udalguri district.

3. This Court vide order dated 13.09.2023, while issuing notice, directed the authorities not to issue any work order in respect of the settlement process undertaken for Dhansiri Sand Gravel Mahal vide tender notice dated 05.08.2023.

4. Being aggrieved with the interim order dated 13.09.2023, the respondent No.6 filed an application for modification/vacation/alteration of the ex-parte interim order dated 13.09.2023 vide I.A. (C) No. 3445/2023.

5. I.A. (C) No. 3445/2023 was disposed of vide order dated 06.12.2023, by holding that this Court was unable to accept the submission made on behalf of the writ petitioner regarding lack of wide publicity, more so, when the writ petitioner had failed to show that any prejudice had been suffered by him by the said process. This Court in the order dated 06.12.2023 passed in I.A. (C) No. 3445/2023 also held that there was no dispute in the Bar that the Bodosa newspaper, which contained the tender notice, was widely circulated in the area in question, besides the fact that the petitioner himself belonged to the Bodo Community and hailed from the same area. Consequently, this Court vide order dated 06.12.2023 vacated the interim order dated 13.09.2023 passed in WP(C) No.5233/2023.

6. The petitioner's counsel submits that besides the stand taken by the petitioner that the tender notice was not given wide publicity, he submits that the NIT dated 05.08.2023 had been posted on the Notice Board of the office of the respondent No.4 only on 28.08.2023.

7. To the above averment made by the petitioner's counsel, Mr. K. Gogoi, learned counsel for the respondent Nos. 4 & 5 has submitted the para wise comments furnished to him by the Divisional Forest Officer, Dhansiri Forest Division, Udalguri, which states that the NIT dated 05.08.2023 for the Dhansiri Sand Gravel Mahal, was found in the Notice Board of the office on 05.08.2023. Further, the NIT was advertised and highlighted in the local newspaper Bodosa

on 13.08.2023.

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

9. The NIT dated 05.08.2023 states that the last date of submission of the bids would be 28.08.2023 at 3 p.m. As stated in the foregoing paragraph, this Court in its order dated 06.12.2023 passed in I.A. (C) No. 3445/2023 has held that it was unable to accept the submission made on behalf of the writ petitioner, regarding lack of wide publicity given to the NIT dated 05.08.2023. Paragraph Nos. 8 and 9 of the order dated 06.12.2023 passed in I.A. (C) No. 3445/2023 is reproduced hereinbelow as follows:-

“8. The primary contention raised in the writ petition is lack of proper publicity of the tender process. The writ petition however itself contains an averment that the same was published in the Bodosia newspaper. There is no dispute in the Bar that the said Bodosia newspaper is widely circulated in the area in question and also the fact that the petitioner himself belongs to the Bodo Community and hails from the same area. In that view of the matter, this Court is unable to accept the submission made on behalf of the writ petitioner regarding lack of wide publicity, more so, the writ petitioner has failed to show any prejudice suffered by him by the process. The settlement in question is for a period of 7 years and therefore, there is no reason as to why the interim order which was passed ex-parte should be continued.

9. In view of the above, the interim order dated 13.09.2023 passed in the WP(C)/5233/2023 is vacated.”

10. Thus, in view of the order dated 06.12.2023 passed in I.A. (C) No. 3445/2023, the issue as to whether the NIT was given wide publicity has attained finality as on date. With regard to the second issue raised by the petitioner that the NIT was posted on the office Notice Board only on 28.08.2023, the same is a disputed question of fact, inasmuch as, the

respondent No.4 has taken a stand that the said NIT was posted on the Notice Board on the date it was published, i.e., 05.08.2023. As such, the second issue raised by the petitioner being a disputed question of fact, evidence would have to be adduced by the parties with regard to the above issue, for which the petitioner would have to approach the Civil Court.

11. In view of the reasons stated above, this Court does not find any ground to exercise it's discretion in this case. However, liberty is given to the petitioner to approach the Civil Court to prove that the NIT was posted on the Notice Board only on 28.08.2023.

12. The writ petition is accordingly dismissed.

13. The para wise comments given by the respondent No.4 to Mr. K. Gogoi, learned counsel for the respondent Nos. 4 & 5 is made a part of the record and marked as Annexure-X.

JUDGE

Comparing Assistant