

GAHC010202052023



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

Case No. : WP(C)/5390/2023

MOMINUR ISLAM
S/O- LATE ABU TALEB SK., R/O-VILL.- FERANGIRCHAR (KHALISHAMARI),
P.O. PIAZBARI, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT
DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT
PANJABARI
JURIPAR
GUWAHATI-37.

3:THE CHIEF EXECUTIVE OFFICER

ZILLA PARISHAD
SOUTH SALMARA MANKACHAR AT HAT-SINGIMARI
P.O. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

4:THE GENERAL STANDING COMMITTEE OF ZILLA PARISAD
SOUTH SALMARA MANKACHAR
HATSINGIMARI
REPRESENTED BY ITS CHAIRMAN
P.O. HATSINGIMARI

DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

5:THE EXECUTIVE OFFICER

FEKAMARI ANCHALIK PANCHAYAT
FEKAMARI
P.O. FEKAMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

6:ANOWARUL ISLAM
S/O- SHAHABUDDIN MONDAL
VILL.- KHALISHAMARI (GHUGRAKANDI)
P.O. PIAZBARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783128

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

11.01.2024

Heard Shri M Khan, learned counsel for the petitioner. Also heard Shri NK Dev Nath, learned Standing Counsel, Panchayat & Rural Development (P&RDA) Department, Assam.

2. The subject matter pertains to the settlement of Ghugurakandi Parghat under the Fekamari Anchalik Panchayat in the district of South Salmara Mankachar.

3. It is submitted by Shri Khan, learned counsel for the petitioner that though a notice dated 04.05.2023 was issued notifying bids for various parghats, including the present one, as per the petitioner, nobody had submitted any bids. However, vide the impugned order dated 08.08.2023, the parghat in question has been settled in favour of the respondent no. 6.

4. This Court vide the order dated 04.12.2023 had accepted the office note dated 01.12.2023 regarding completion of service upon the private respondent who has chosen not to appear and contest the proceeding.

5. It is further submitted that settlement can be done only through a validly concluded tender process and accordingly, the impugned order of settlement dated 08.08.2023 is liable to be set aside.

6. *Per contra*, Shri Dev Nath, learned Standing Counsel of the Department has raised two basic issues questioning the *locus* of the petitioner to maintain the present challenge. Firstly, it is contended on behalf of the Department that the petitioner in this case was himself the beneficiary of an illegality by which, he had operated the parghat in question from 13.02.2023 to 30.06.2023. Though as per the pleadings made in the writ petition, such settlement was done by the Executive Officer, Fekamari Anchalik Panchayat vide order dated 10.02.2023, this Court has been apprised that the order was issued by a fraudulent means. The learned Standing Counsel has, in fact placed on record a copy of the order dated 06.01.2024 by which, the concerned employee of the office of the Fekamari Development Block has been placed under suspension for fraudulently issuing such an order. Secondly, it is submitted that the petitioner

did not even offer his bid pursuant to the NIT dated 04.05.2023 and therefore, he would not have the *locus* to raise any dispute with regard to the consequential settlement.

7. Though distribution of State largesse is required to be done in a transparent and fair manner, in the instant case, the objection raised on behalf of the Department are substantial in nature whereby the petitioner himself was the beneficiary of an illegality having the benefit of the settlement for the period from 13.02.2023 to 30.06.2023. In the opinion of this Court, the aforesaid aspect is a relevant factor for a writ court which exercises powers of equity. Further, the fact that the petitioner was not even a bidder pursuant to the NIT dated 04.05.2023 will preclude him from raising any issue with regard to the subsequent settlement.

8. In that view of the matter without going into the merits of the settlement in question, the instant writ petition is rejected on preliminary grounds.

JUDGE

Comparing Assistant