

GAHC010222692023



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

Case No. : WP(C)/5935/2023

RAJEN BASUMATARY AND 2 ORS.

S/O- LATE AMIN BASUMATARY, R/O- VILL.- ROUMARI, P.O. TAPTOLA, P.S.
BHURAGAON, DIST. MORIGAON, ASSAM, PIN- 782121.

2: NARAYAN BISWAS

S/O- LATE RAMDAS BISWAS

R/O- VILL.- JETPARI

P.O. DONGAR PAR

P.S. BHURAGAON

DIST. MORIGAON

ASSAM PIN- 782121.

3: ISMAIL HUSSAIN

S/O- LATE ABBAS ALI

R/O- VILL.- RUPAHIBEEL

P.O. BORALIMARI P.S. BHURAGAON

DIST. MORIGAON ASSAM PIN- 782121

VERSUS

THE STATE OF ASSAM AND 6 ORS.

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE MORIGAON ZILLA PARISHAD

REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER

MORIGAON ASSAM PIN- 782105.

3:THE GENERAL STANDING COMMITTEE OF MORIGAON ZILLA
PARISHAD

REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER

MORIGAON ASSAM

4:THE LAHARIGHAT ANCHALIK PANCHAYAT
REPRESENTED BY ITS PRESIDENT
LAHARIGHAT MORIGAON
ASSAM PIN- 782105.

5:THE PRESIDENT OF LAHARIGHAT ANCHALIK PANCHAYAT
LAHARIGHAT MORIGAON
ASSAM PIN- 782105.

6:THE EXECUTIVE OFFICER
AND EX-OFFICIO SECRETARY OF LAHARIGHAT ANCHALIK PANCHAYAT
LAHARIGHAT
MORIGAON ASSAM
PIN- 782105.

7:DINESWAR NATH
S/O- GANGADHAR NATH
R/O- VILL.- SAHARIGAON
P.O. LENGORIBORI
P.S. BHURAGAON
PIN- 782121 DIST. MORIGAON ASSAM

Advocate for the Petitioner : MR. A SARMA

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 29.01.2024

Heard Mr. A. Sarma, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned counsel for the respondent Nos. 1, 2, 3 & 6 and Mr. F. K. R. Ahmed, learned counsel for the respondent No. 7.

2. The three petitioners have assailed the order of settlement dated 27.06.2023, whereby the Chief Executive Officer, Morigaon Zilla Parishad has settled a market viz. 'Baralimari Bi-Weekly Market' in favour of the respondent no. 7 for the Panchayat Financial Year : 2023 – 2024, that is, from 01.07.2023 to 30.06.2024 at his offered bid value of Rs. 70,000/- per month.

3. It is the case of the petitioners that earlier on 02.05.2023, the respondent Laharighat Anchalik Panchayat published a Tender Notice for settlement of a number of markets, including the Baralimari Bi-Weekly Market ('the Market', for short) fixing the Government Value for the Market @ Rs. 61,629/- per month. Responding to the Tender Notice dated 02.05.2023, the three petitioners along with the respondent no. 7 and others, submitted their bids and the respondent Morigaon Zilla Parishad prepared a Comparative Statement as regards responsiveness or otherwise of the bids of the participant bidders.

4. As per the said Comparative Statement, the respondent No. 7 had offered a bid value of Rs. 70,000/- per month, whereas the three petitioners had offered bid values lesser than the bid value offered by the respondent No. 7, but above the Government fixed value. It transpires from a Short Tender Notice published by the respondent Laharighat Anchalik Panchayat on 23.06.2023 that pursuant to a decision taken by the respondent Morigaon Zilla Parishad on 23.06.2023, the earlier tender process initiated by Tender Notice dated 02.05.2023 had been cancelled and bids were invited again from intending bidders till 28.06.2023. When the three petitioners had gone to submit their respective bids in response to the Short Tender Notice dated 23.06.2023 before the last date, they were informed that by the order of settlement dated 27.06.2023, the Market had already been settled in favour of the respondent no. 7.

5. It is the contention of the petitioners that after cancellation of the Tender process initiated by the Tender Notice dated 02.05.2023, vide order dated 23.06.2023 by the respondent Morigaon Zilla Parishad, the respondent authorities could not have settled the Market again in favour of the respondent no. 7 at his bid value offered earlier in response to the Tender Notice dated

02.05.2023.

6. The counsels for the respondents submit that there is no dispute with regard to the facts in question, inasmuch as, the earlier Tender Notice dated 02.05.2023 was cancelled and in lieu of the same, the subsequent Tender Notice dated 23.06.2023 was published. It is also not disputed that prior to the last date of submission of bids in terms of the subsequent Tender Notice dated 23.06.2023, i.e., on 28.06.2023, the State respondents had selected the respondent No. 7 as the successful tender for settlement of the market, in terms of the earlier cancelled Tender Notice dated 02.05.2023.

7. The respondent's counsel also submits that as on date, the respondent No. 7 is collecting taxes on the market, on the basis of the bid submitted by him, i.e., Rs. 70,000/- per month, pursuant to the earlier Tender Notice dated 02.05.2023.

8. I have heard the learned counsels for the parties. As the facts of the case make it clear that the respondent No. 7 has been selected on the basis of his bid given in the cancelled Tender Notice dated 02.05.2023, i.e., after the second Tender Notice dated 23.06.2023 had been issued, the settlement of the market with the respondent No. 7 is illegal and not sustainable in law.

9. The State respondents have also not given any explanation for settling the market with the respondent No. 7 on the basis of a cancelled tender notice. As a source of power must exist for its exercise, the absence of the source of power in the settlement of the market with the respondent No. 7 pursuant to a cancelled tender notice vide settlement dated 27.06.2023 being illegal, the same is hereby set aside. Though there is no cancellation of the subsequent Tender Notice dated 23.06.2023, this Court is of the view that the said tender notice

should not be acted upon, keeping in view the fact that more than seven months have elapsed and, as such, there is a possibility of change of rates for running the market. Consequently, the State respondents are directed to initiate a fresh tender process for selection of settlement of the market immediately. The same should be completed within a period of one month from today, i.e., on or before 29.02.2024, for settlement of the market for the period from 01.03.2024 to 30.06.2024. With regard to the running of the concerned market place, this Court is of the view that the respondent No. 7 cannot be allowed to continue to run the market on a daily basis, inasmuch as, the settlement of the market in his favour by the State respondent authorities had been done, by abusing the process of law and fair play, as he was selected on the basis of a dead and cancelled tender notice. The Anchalik Panchayat shall accordingly in accordance with Section 105 (5) of the Assam Panchayat Act, 1994, run the market place till selection of the successful bidder is made, in terms of the tender notice to be issued by the State respondents.

10. The para-wise comments submitted by Mr. S. Dutta, learned counsel, through forwarding letter dated 22.11.2023 issued by the CEO, Zila Parishad, Morigaon, is made a part of the record and marked as Annexure-X.

11. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant