



GAHC010136762022

Page No.# 1/7



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

Case No. : WP(C)/4585/2022

KHIROD DEKA
S/O. LT. BABULI DEKA, VILL. RANGAPUKHURI PAR, P.O. DEKARGAON, P.S.
TEZPUR, DIST. SONITPUR, ASSAM, PIN-784501.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, P. AND R.D. DEPTT.,
JANATA BHAWAN, BLOCK C, 1ST FLOOR, DISPUR, ASSAM, PIN-781006.

2:COMMISSIONER AND SECY.
TO THE GOVT. OF ASSAM
P. AND R.D. DEPTT.
PANJABARI
GUWAHATI
PIN-781037.

3:THE SONITPUR ZILLA PARISHAD

REP. BY C.E.O. SONITPUR ZILLA PARISHAD
TEZPUR
ASSAM.

4:C.E.O.

SONITPUR ZILLA PARISHAD
TEZPUR.

5:PRESIDENT

SONITPUR ZILLA PARISHAD
TEZPUR.



6: BALIPARA ANCHALIK PANCHAYAT

REP. BY EXECUTIVE OFFICER
GHORAMARI
P.O. GHORAMARI
PIN-784001.

7: DIGANTA BASUMATARY
S/O. LILAKANTA BASUMATARY
VILL. DHEKIDOL
P.O. TEZPUR
P.S. TEZPUR
PIN-784105

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri MH Choudhury, Sr. Adv.
Shri MK Choudhury

Advocates for the respondents : Shri NK Dev Nath, SC, P & RD

Date of hearing & Judgment : **01.11.2022**

JUDGMENT & ORDER

Two numbers of issues have arisen for determination in the instant case. The principal issue is as to whether the respondent authorities are justified in allotting a market in favour of the respondent no. 7 in spite of the fact that the bid of the petitioner is higher than that of the respondent no. 7. However, before deciding the issue, the preliminary issue which requires determination is as to whether a bidder whose bid is defective is eligible to maintain such a challenge. It is needless to say that if the preliminary issue is decided against the petitioner, there would be no requirement to decide the second question which otherwise also is a settled position in law that it is the highest bidder in a tender pertaining to a settlement of a Mahal etc.

who is generally offered the settlement and in case of deviation, the same has to be justified by cogent and reasonable grounds.

2. However, to decide the aforesaid issues, the bare minimum facts of the case is required to be put on record.

3. The matter pertains to settlement of the Khelmati Weekly Market (hereinafter called the Market) under the Sonitpur Zila Parishad. A NIT was published on 21.05.2022 for settlement of different markets under the Balipara Anchalik Panchayat within the Sonitpur Zila Parishad for the year 2022-23. It is the case of the petitioner that he had submitted his bid for the aforesaid Market on 20.06.2022. Though the petitioner has claimed to have submitted all the required documents along with the bid, he came to learn that his Jamabandi was removed from the set of papers and he had accordingly filed a complaint to the Chief Executive Officer, Sonitpur Zila Parishad. On the same date, the settlement of the Market was made with the respondent no. 7 which is the subject matter of challenge in this writ petition. The petitioner has further contended that the certified copy of the Comparative Statement was itself furnished to the petitioner belatedly.

4. It is the contention of the petitioner that the bid offered by the petitioner is higher than that of the respondent no. 7 and therefore, the impugned action is not sustainable in law and liable to be set aside and a further direction may be issued for settlement of the Market with the petitioner.

5. I have heard Shri MH Choudhury, learned Senior Counsel assisted by Shri MK Choudhury, learned counsel for the petitioner. I have also heard Shri NK Dev Nath, learned Standing Counsel, P & RD Department for the respondent nos. 1 to 6. None has appeared for the respondent no. 7 in spite of completion of service. The records placed before this Court have also been duly perused.

6. Shri Choudhury, the learned Senior Counsel has submitted that in a settlement which earns revenue, the amount involved is of paramount importance. By drawing

the attention of this Court to the pleadings, more specifically, paragraph 4 of the writ petition, it is submitted that whereas the bid of the petitioner was Rs.8,21,951/-, that of the respondent no. 7 was Rs.7,05,071/-. Thus, it is submitted that the difference is more than Rs.1,00,000/- (Rupees One Lac) which is a substantial amount considering the bid in question. It is further submitted that the bid of the respondent no. 7 is defective inasmuch as, he did not meet certain criteria of the tender conditions and there were inconsistencies which is evident from the Comparative Statement. By referring to the said Statement, it is submitted that so far as financial soundness of the respondent no. 7 is concerned, there is a marked inconsistency.

7. Reference is also made to Rule 47(10) of the Assam Panchayat (Financial) Rules which prescribe for granting the settlement with the highest bidder. The learned Senior Counsel submits that being prima facie satisfied, this Court while issuing notice of motion vide order dated 08.07.2022 had passed an interim order staying the impugned order of settlement with a liberty to the Balipara Anchalik Panchayat to collect the revenue by themselves.

8. *Per contra*, Shri Dev Nath, learned Standing Counsel, P & RD Department submits that the contention of the petitioner is not wholly correct inasmuch as, the bid of the petitioner is not a valid bid and has suffered from various major defects. Drawing the attention of this Court to the Comparative Statement, the learned Standing Counsel has submitted that a bare perusal of the same would reveal that the bid of the petitioner suffers from many defects and therefore cannot be treated as a valid bid. The Standing Counsel has specifically submitted that the petitioner has not deposited Collateral / Security Money, Land Valuation Certificate, Jamabandi, Non-Encumbrance Certificate, Land Revenue Clearance Certificate, Income Tax Return, Bakijai Certificate and from the Jamindar, Financial Certificate etc. It is submitted that those requirements are mandatory in nature and therefore, failing to submit the same has rendered the bid of the petitioner defective. It is further submitted that so far as the bid of the respondent no. 7 is concerned, it fulfils all the requirements.



9. As indicated above, the respondent no. 7 has chosen not to contest the writ petition.

10. In his reply, the learned Senior Counsel for the petitioner has submitted that the conclusion reached by the authorities as well as the submissions of the learned Standing Counsel are incorrect. By referring to the Comparative Statement, the learned Senior Counsel has submitted that the requirements are to be fulfilled either by the bidder or his Jamindar and in his case, the shortcomings of the petitioner have been fulfilled by the Jamindar.

11. The rival submissions of the learned counsel for the parties have been duly considered and the records produced before this Court have been carefully examined.

12. The primary contention of the petitioner is that the bid of the petitioner is higher than that of the respondent no. 7 by approximately 15%. Though in a settlement contract revenue, no doubt plays a paramount role, the aspect of validity of a bid cannot be overlooked or ignored. In other words, to compete in the financial aspect, a bid has to first be declared as a valid bid so that the bidder enters into the arena for financial evaluation.

13. In the instant case, the Comparative Statement annexed by the petitioner himself would reveal that the bid of the petitioner lacks in various aspects. Though the learned Senior Counsel for the petitioner is correct in contending that it is the consolidated documents of the bidder / Jamindar, which are to be taken into consideration, in many aspects, it is seen that neither the bidder (petitioner) nor his Jamindar has met such requirement / conditions of the tender. For instance, the requirement of attested copy of Jamabandi is not fulfilled by either of them. So is the case of Income Tax Return and Financial Soundness. The aforesaid requirements of the tender conditions are essential in nature and cannot be overlooked as those are required to assess the capability of the bidder to run the Market in question.

14. Since the petitioner does not fulfil the tender conditions, his bid cannot be

termed as a valid bid and therefore, the financial aspect becomes otiose. It is a settled law that a challenge can be maintained only on the behest of an eligible person which in this case has been held against the petitioner. Nevertheless, even if the ground of challenge against the private respondent no. 7 is considered, the same pertains to a confusion with regard to one of the criteria namely, the Certificate of Financial Soundness. Since there is a finding that such Certificate is submitted by the Jamindar of the respondent no. 7, the contention of the petitioner cannot be held to be correct and even if the challenge is examined on the merits, the ground is without any basis.

15. In the landmark case of ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.***, decided in the year of 1947 by the Kings Bench, Lord Greene, M.R. has held that a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. The aforesaid principle which is more popularly known as "Wednesbury Principle of Reasonableness" has been referred to by the Hon'ble Supreme Court in a catena of decisions. In the case of ***Tata Cellular Vs. Union of India*** reported in ***(1994) 6 SCC 651***, Hon'ble Supreme Court had laid down two other facets of irrationality:

"(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes."

16. By going through the law laid down on the subject of scope of judicial review, what is required to be examined can be summarized into the following facets-



- i. Whether the decision has been taken by the incumbent authorized for the said purpose and having the jurisdiction to do so;
- ii. Whether the decision arrived at is a reasonable one;
- iii. Whether the relevant factors have been taken into consideration before arriving to the said decision;
- iv. Whether the decision is based on irrelevant and extraneous consideration;
- v. Whether the decision is vitiated by bias and *mala fide*.

17. This Court in exercise of powers under Article 226 of the Constitution of India is only to examine the decision making process and not the merits of the decision. In the instant case the records clearly show that the conclusion arrived at in settling the Market with the respondent no. 7 is based on relevant consideration and is a plausible conclusion which appeals to a reasonable mind. Further, no *mala fide* has been able to be made out.

18. In view of the above, the instant writ petition is held to be without merits and accordingly stands dismissed.

19. The interim order passed earlier stands vacated.

20. The records are returned back.

21. No order as to cost.

JUDGE

Comparing Assistant