



GAHC010177512023

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

Case No. : WP(C)/4684/2023

NAIMUDDIN
S/O- LATE TAIMUDDIN,
VILL- SILOCHI,
P.O.- DHARMAPUR,
P.S.- BAGHBAR,
DISTRICT- BARPETA, ASSAM,
PIN- 781308.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI- 781006 .

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

3:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILA PARISHAD
BARPETA
PIN- 781301.

4:THE EXECUTIVE OFFICER
MANDIA ANCHALIK PANCHAYAT
MANDIA
BARPETA



ASSAM

PIN- 781308.

5:SAFIKUL ISLAM KHAN
SON OF NUR ISLAM KHAN
VILL- SATRAKANARA
P.O.- SATRAKANARA
P.S.- BAGHBAR
DISTRICT- BARPETA
ASSAM
PIN- 781308

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner: Shri N. Sarma, Advocate.

Advocates for respondents : Shri S. Dutta, SC, P&RD,
Shri A. M. Khan, Advocate, R-5

Date(s) of hearing : 20.12.2023

Date of judgment : 20.12.2023

JUDGMENT & ORDER

Heard Shri N. Sarma, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, P&RD. Shri A. M. Khan, learned counsel has appeared for the respondent no. 5.

2. Both the Department as well as the respondent no. 5 have filed affidavit-in-oppositions and the petitioner has also filed rejoinders.



3. Considering the facts and circumstances which includes the aspect of settlement of a market for a period of 1 year and as agreed to by the parties, the instant writ petition is taken up for disposal at the admission stage.

4. The case projected is that the Mandia Anchalik Panchayat in the district of Barpeta had published a Notice Inviting Tender (NIT) on 03.05.2023 for settlement of various markets/parghat etc. including the Milijuli Market. The term of the settlement was for a period of 1 year ending on 30.06.2024. It is the case of the petitioner that he being the previous lessee had participated in the same process by submitting all necessary documents. The respondent no. 5 was also one of the bidders. It is however the case of the petitioner that while the bids submitted by the petitioner was valid in all respects, the bid of the respondent no. 5 was defective. In this regard, Shri Sarma, the learned counsel for the petitioner by referring to the comparative statement prepared for evaluation of the bids of the various bidders has submitted that while all the columns in the comparative statement pertaining to the bid of the petitioner has been held to be submitted, many of the columns for the bid of the respondent no. 5 has stated that such requirements were not fulfilled by the respondent no. 5.

5. Be that as it may, on opening of the financial bids, it was found that the bid of the petitioner for an amount of Rs.9,21,102/- (Rupees Nine Lakh Twenty One Thousand One Hundred Two) only was the highest. The financial bid of the respondent no. 5 was however Rs.8,11,905/-(Rupees Eight Lakh Eleven Thousand Nine Hundred Five) which is apparently substantially lower than that of the petitioner.

6. On 06.07.2023, a notice was issued to the petitioner by the authorities communicating the acceptance of his offer. It is the case of the petitioner that such notice was received by him on 10.07.2023 and since he was suffering from illness, on 15.07.2023 he had gone to the office to deposit the *kist* money. On such approach,



the petitioner was informed that on 14.07.2023, a notice was issued to the respondent no. 5 regarding acceptance of the bid of the respondent no. 5 and subsequently, on 19.07.2023, the settlement order was issued to him.

7. Shri Sarma, the learned counsel has submitted that in the affidavit filed by the Department, it has been contended that the notice of acceptance dated 06.07.2023 was received by the wife of the petitioner on the same date. He submits that though the aforesaid statement may be a matter of fact, the assertion that the petitioner was unwell has been wholly ignored and rather in the impugned resolution, it has been stated that no reasons have been cited for the delay in deposit. It is further submitted that so far as the documents are concerned, the guarantor of the petitioner had deposited all such documents on 07.07.2023 and therefore there was no default. It is otherwise submitted that along with the bid, all documents were submitted which is demonstrated by the comparative statement itself. He further submits that the impugned action of not allowing the petitioner to deposit the amount and making the settlement in favour of the respondent no. 5 is wholly unsustainable for more than one reason. He firstly contends that admittedly, the bid of the respondent no. 5 was a defective bid and therefore such offer could not have been given to the respondent no. 5. Secondly, he submits that from the information and documents gathered, the respondent no. 5 could submit a document after 10 days which is beyond the period permitted by the terms of the tender. Thirdly, he contends that the price bid of the respondent no. 5 is substantially less and therefore the impugned action is also against the public interest. He submits that there were cogent reasons for the slight delay in depositing the *kist* by the petitioner which should have been condoned in the interest of justice.

8. Attention of this Court has also been drawn to the relevant Clauses of the NIT, namely, Clauses 10 & 20. As per Clause 10, a period of 3 days is given to the highest



bidder for depositing certain documents which were yet to be deposited. As per Clause 20, a period of a week is given for deposit of the *kist* money. He accordingly contends that even going to the strict interpretation of the Clauses, the petitioner could have made the deposit by 13.07.2023 and therefore there was a delay of only one day which should have been condoned.

9. Shri S. Dutta, learned Standing Counsel of the Department has however defended the impugned action. He has submitted that the action is free from any *mala fide* and has been taken strictly in accordance with law. He submits that the settlement was offered to the petitioner vide notice of acceptance dated 06.07.2023 which was received by his wife. It is further submitted that when the document could be submitted by the petitioner on 07.07.2023, there was no reasons as to why the *kist* money could not have been deposited.

10. By drawing the attention of Clause 20 of the NIT, Shri Dutta, learned Standing Counsel submits that the period prescribed for depositing *kist* money is one week which was admittedly over on 13.07.2023 and therefore on 14.07.2023, a resolution was adopted to offer the settlement to the respondent no. 5 who was the second highest bidder. The learned Standing Counsel accordingly contends that the writ petition be dismissed.

11. Shri A. M. Khan, learned counsel for the respondent no. 5 has endorsed the submission of the learned Standing Counsel. He further submits that as per Clause 10 of the NIT, 3 days time is granted for submission of documents and therefore his bid cannot be held to be defective. The learned counsel for the respondent no. 5 categorically denies the contention of the petitioner that the land document was procured on 24.07.2023. He submits that the documents procured was not required to be manually signed as it was digitally signed and was available and submitted within



the prescribed time.

12. The rival contentions made by the learned counsel for the parties have been duly considered. The original documents which have been placed before this Court by Shri Dutta, learned Standing Counsel have also been carefully perused.

13. From the records made available, it appears that in the process of settlement of the aforesaid market in question which was done through an NIT dated 03.05.2023, amongst others, bids were submitted by the petitioner and the respondent no. 5. There is no manner of doubt that the bid of the respondent no. 5 was not complete in many respects as many of the columns in the comparative statement had indicated that the relevant documents were not submitted. Juxtaposed, the bid of the petitioner was found to be valid in all respects. Apart from the aforesaid aspects, it is also required to be noted that while the price bid of the petitioner was Rs.9,21,102/- (Rupees Nine Lakh Twenty One Thousand One Hundred Two) only, that of the respondent no. 5 was Rs.8,11,905/- (Rupees Eight Lakh Eleven Thousand Nine Hundred Five) only. Therefore, there is a substantial difference in the price bid of the rival parties. The version of the petitioner is that he has received notice of the acceptance dated 06.07.2023 only on 10.07.2023. The said version however is not liable to be accepted inasmuch as the said notice was accepted by his wife on 06.07.2023 itself. However, the mere fact of acceptance may not be the end of the matter. It is the specific case of the petitioner that he was unwell and on recovery from his illness, he had submitted a representation on 15.07.2023 offering the *kist* money. A perusal of the said representation would show that he had also cited the reasons of the delay.

14. This Court has already noted above that as per Clause 20, an incumbent gets a



period of a week for deposit of the *kist* money. Though it may be a fact that such deposit was not offered within a prescribed period of 1 week, the facts and circumstances of a case would give a discretion to the authorities to take an action in a judicious manner. The copy of the resolution adopted on 14.07.2023, denotes that no reasons were assigned by the petitioner for the delay which does not appear to be correct.

15. This Court has also noticed that the bid of the respondent no. 5 was lacking in many respects and therefore could not have been held to be a valid bid. Further Clause 10 which gives a leverage of 3 days for submission of certain documents is only for the highest tenderer and not for anybody else. Though there is a part in Clause 10 regarding the next highest tenderer, such next highest tenderer has to be valid next highest tenderer and in this case, the bid of the respondent no. 5 cannot be held to be a valid next highest tenderer inasmuch as many documents were not submitted as would be evident from the comparative statement.

16. The aforesaid fact of not submitting many documents is also not the subject matter of challenge in any independent proceeding till now.

17. In matters of distribution of State largesse, though interference of this Court is to be a restricted one, the issue of public interest cannot be wholly overlooked. In fact it is the issue which is a paramount importance. The financial bid of the petitioner is substantially higher than that of the respondent no. 5

18. This Court is of the opinion that the decision not to accept the *kist* money offered by the petitioner pursuant to the notice of acceptance dated 06.07.2023 cannot be held to be justified. Consequently, the statement made in favour of the



respondent no. 5 dated 19.07.2023 is interfered with.

19. The writ petition accordingly stands allowed by directing the petitioner to offer the relevant *kist* money for the remaining period on or by 25.12.2023 and on such offer the same is to be accepted and the remaining period of the statement be given in favour of the petitioner in accordance with law.

20. The writ petition accordingly stands allowed.

21. The records in original are handed over back to the learned Standing Counsel.

JUDGE

Comparing Assistant