



GAHC010192172023

Page No.# 1/7



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

Case No. : WP(C)/5000/2023

KESHAB KHAREL

S/O KRISHNA SHARMA VILL. CHONDAMARI BONGALI P.O. KAWRIPATHER
P.S. HELAM DIST. SONITPUR PIN -784170

VERSUS

THE STATE OF ASSAM AND 5 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT. DISPUR GUWAHATI PIN
781006

2:THE BISWANATH ZILLA PARISHAD

REP BY THE CHIEF EXECUTVE BISWANATH ZILLA PARISHAD P.O. AND
P.S. BISWANATH CHARIALI DIST. SONITPUR ASSAM PIN 784176

3:THE CHIEF EXECUTIVE OFFICER

BISWANATH ZILLA PARISHAD P.O. AND P.S. BISWANATH CHARIALI DIST.
SOINTPUR ASSAM PIN 784176

4:THE CHAIDUAR ANCHALIK PANCHAYAT

REP.BY ITHE EXECUTIVE OFFICER GHAHIGAON DIST. SOINTPUR ASSAM
PIN 784170

5:THE EXECUTIVE OFFICER

CHAIDUAR ANCHALIK PANCHAYAT GHAHIGAON DIST. SOINTPUR
ASSAM PIN 784170

6:SAILEN SAIKIA

S/O LT. DHARMASEWAR SAIKIA TONGAGAON WARD NO. 3 GAHPUR
MUNICIPAL BOARD P.O. AND P.S GAHPUR DIST. SOINTPUR ASSAM PIN
78416



B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri M.K. Hussain, Advocate
Advocate for the respondents : Shri S. Dutta, SC, P&RD Department.

Date of hearing : 05.01.2024
Date of judgment : 05.01.2024

Heard Shri M.K. Hussain, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, P&RD Department who has also produced the records in original.

2. As regards the respondent no. 6, there is an order dated 16.11.2023 of the learned Lawazima Court regarding completion of service upon the said respondent no. 6 and the same is accepted. The petitioner had also filed an affidavit dated 20.09.2023 in support of the *dasti* service. The respondent no. 6 has chosen not to contest this writ petition.

3. The issue raised is with regard to the settlement of Kawripathar Weekly Market under the Chaiduar Anchalik Panchayat in the district of Sonitpur.

4. An NIT was floated on 10.05.2023 by the Chaiduar Anchalik Panchayat for various settlement including that of Kawripathar Weekly Market. The period in question was from 01.07.2023 to 30.06.2024.

5. In the said process, as per the petitioner, six nos. of bidders had participated including the petitioner and the respondent no. 6. While it is submitted that the petitioner had furnished all the documents and offered a bid amount of Rs.10,40,000/- so far as the respondent no. 6 is concerned, the documents were not in accordance with the requirement and the offer by the said respondent no. 6 was also less being Rs.7,99,999.99. However, vide the impugned order of settlement dated 07.08.2023, the settlement has been granted in favour of the respondent no. 6.

6. Shri Hussain, the learned counsel for the petitioner has submitted that, apart from the fact that the price offered by the respondent no. 6 is less than that of the petitioner, the said respondent no. 6 does not fulfill the requirements of the tender conditions. Specific reference has been made to Clauses 9 and 13 of the tender document as per which, a bidder is required to be a resident of the concerned Anchalik Panchayat and has to furnish Tax Clearance Certificate from the Zilla Parishad, Anchalik Panchayat and Gaon Panchayat. He submits that from a bare perusal of the comparative statement annexed to the writ petition, it would reveal that the bid of the respondent no. 6, apart from being lower in price would also show that Tax Clearance Certificate is from a Nagar Samity which would mean that the respondent no. 6 is not a resident of the concerned Anchalik Panchayat.

7. *Per contra*, Shri Dutta, the learned Standing Counsel of the Department, by producing the records in original has however submitted that the comparative statement annexed in the writ petition is not a complete one and there are not six but in total eight numbers of bidders. He further submits that the petitioner himself was lacking in fulfilling certain requirements of the tender pertaining to submission of documents. He further submits that the bid of the respondent no. 6 is the valid highest bid and therefore, the order dated 07.08.2023 has been issued in his favour.

8. The rival contentions have been considered and the records in original produced

before this Court have been carefully perused.

9. The records contain two comparative statements – one prepared by the Zilla Parishad and one prepared by the Anchalik Panchayat. In the comparative statement prepared by the Anchalik Panchayat, though in certain columns pertaining to documents, there is blank so far as the petitioner is concerned, there are blanks in many columns so far as the respondent no. 6 is concerned. Further, there is no dispute with the two main allegations made by the petitioner with regard to the difference in price as well as furnishing of tax clearance from the appropriate authority. The records reveal that so far as Tax Clearance Certificate is concerned, the petitioner has furnished such certificate from the concerned Gaon Panchayat whereas the respondent no. 6 has furnished Certificate from the Nagar Samity.

10. In the reasons assigned to support the impugned decision, the Anchalik Panchayat has recorded that the bid of the petitioner was lacking in documents and accordingly the bid of two other bidders at serial nos. 3 & 4 of the comparative statement were considered.

11. This Court has also further noticed that even the bid of the bidder at serial no. 3 is Rs. 9,12,000/- is much higher than the bid of the respondent no. 6. Therefore, the justification sought to be given by the Anchalik Panchayat does not withstand reason and appears to be an arbitrary exercise of powers. The endorsement by the concerned Zilla Parishad to accept the decision of the Anchalik Panchayat also appears to have been taken in a mechanical manner whereby the relevant factors including the price offered have been ignored / overlooked. It is a settled law that in matters pertaining to distribution of State Largesse which fetches revenue, the price offered would be of paramount importance. In this regard, reference may be made to the case of **Tarun Bharali vs. State of Assam & Ors.** reported in **(1991) 2 GLR 296** of this Hon'ble Court.

12. It is further a settled law that in exercise of powers of judicial review, it is not the soundness of a decision but the lawfulness which can be the subject matter of scrutiny. In this regard the celebrated case of ***Tata Cellular vs. Union of India*** reported in **(1994) 6 SCC 651** may be referred to. In the case of ***Jagdish Mandal v. State of Orissa*** reported in **(2007) 14 SCC 517** in the following words:

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”

Therefore, a court before interfering in tender or contractual matters in

exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226."

13. The aforesaid view has been reiterated by the Hon'ble Supreme Court in the case of ***Central Coalfields Limited & Anr. vs. Sll-Sml (Joint Venture Consortium) & Ors.*** reported in ***(2016) 8 SCC 622.***

14. In the instant case, the procedure adopted to chose the respondent no. 6 over the petitioner does not appear to be reasonable.

15. In that view of the matter, this Court is of the unhesitant opinion that the petitioner is able to make out a case for interference. Accordingly, the impugned order dated 07.08.2023 issued by the Chief Executive Officer, Biswanath Zilla Parishad, settling the Kawripathar Weekly Market in favour of the respondent no. 6 is set aside.

16. Consequently, the settlement is directed to be given in favour of the petitioner who was the highest bidder and who has substantially fulfilled the requirement of the tender conditions. Since a substantial period of the tenure in question is already over, the aforesaid exercise be undertaken and completed expeditiously and in any case



within a period of 3 (three) weeks from today.

17. The writ petition accordingly stands allowed.

18. The records produced by the learned Standing Counsel in original are returned herewith.

JUDGE

Comparing Assistant