

GAHC010012632024



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

Case No. : WP(C)/358/2024

HEM CHANDRA SARMA
S/O LATE PADU RAM SARMA,
RESIDENT OF VILLAGE- ADHAMAPARA,
P.O.- RAM HARI, P.S.- MANGALDOI,
DISTRICT- DARRANG, ASSAM,
PIN- 784529.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
TO THE GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI, ASSAM.

2:THE DARRANG ZILLA PARISHAD
MANGALDOI
REPRESENTED BY ITS PRESIDENT
DISTRICT- DARRANG ASSAM.

3:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
MANGALDOI ASSAM.

4:THE PASCHIM MANGALDOI ANCHALIK PANCHAYAT
REPRESENTED BY ITS PRESIDENT
P.O.- MANGALDOI
DISTRICT- DARRANG
ASSAM.

5:THE EXECUTIVE OFFICER
PASCHIM MANGALDOI ANCHALIK PANCHAYAT
PO.- MANGALDOI
DISTRICT- DARRANG ASSAM.

6:SIRAJUL HOQUE
S/O- SOHRAB ALI
R/O - VILLAGE KANAI CHUBA
P.O.- HOWLY MOHANPUR
P.S.- MANGALDOI
MOUZA- RANGAMATI
DISTRICT- DARRANG
ASSAM
(CAVEATOR)

7:BIPUL DAS
ZONAL DEVELOPMENT OFFICER
PASCHIM MANGALDOI DEVELOPMENT ZONE
P.S.- MANGALDOI
DISTRICT- DARRANG ASSAM

Advocate for the Petitioner : MS. RUKMINI BARUA

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

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER**

Date : 13.02.2024

1. Heard Ms. P. Barua, learned counsel for the petitioner. Also heard Mr. P. Handique, learned counsel for the P&RD Department and Mr. P. Rahman, learned counsel for the respondent no.6.

2. The petitioner's case is that pursuant to a NIT dated 11.04.2023, for settlement of the Deonagaon Weekly Market for the year 2023-2024, i.e. from 01.07.2023 to 30.06.2024, run by the Pashim Mangaldai Anchalik Panchayat, the petitioner and the respondent no.6 amongst others submitted their tenders. The name of the respondent No. 6 was not there in the Comparative Statement which was issued in the said Tender related to Deonanagon Market. However, to the surprise of the petitioner, the respondent No.6 along with two members of

the Paschim Mangaldoi Anchalik Panchayat, in collusion with the Zonal Development Officer, produced a new Comparative Statement by including the name of the respondent No.6 in order to be settled with the market vide settlement order dated 23.11.2023. The petitioner's further case is that the respondent no.6 had submitted two bids one amounting to Rs.2,92,000/-, while the other bid was for Rs.99,999.99. However, the same Bank Draft No.029034 dated 06.06.2022 had been used by the respondent no.6 in both the bids, for deposit of the earnest money.

3. The petitioner's counsel submits that the same Bank Draft cannot be used as an earnest money while submitting two bids for the same tender, which in itself is illegal and not as per laws of tender. The petitioner's counsel submits that the petitioner, on the other hand, had submitted a bid price of Rs.99,999/-. The petitioner's counsel submits that as fraud has been committed by the respondent no.6 as per the facts stated above, the settlement of the market with the respondent no.6 for the year 2023-2024, i.e. from 01.07.2023 to 30.06.2024 should be set aside.

4. Mr. P. Handique, learned counsel for the P&RD Department has produced the records. He submits that a complaint had been made by the respondent no.6 with regard to the fudging of the tender documents of the respondent no.6 and accordingly, an inquiry was conducted by the Deputy Chief Executive Officer, Darrang Zilla Parishad. As per the Inquiry Report, it was found that the initial bid value of the respondent no.6 in his tender documents was Rs.2,92,000/-. However, the same had been erased by an eraser and the figure Rs.99,999.99 was overwritten on the same. As the Inquiry Report stated that

there was involvement of the some officials in the Pashim Mangaldai Anchalik Panchayat in the whole episode, the higher authorities may initiate further necessary steps in this regard. The same is reflected in the letter no.DZP/Misc/1216/2023-24/841 dated 06.10.2023 issued by the Deputy Chief Executive Officer, Office of the Darrang Zilla Parishad, Mangaldai. Besides the above, the parawise comments to the present writ petition sent by the Chief Executive Officer, Darrang Zilla Parishad, is to the effect that in view of the bid value of the respondent no.6 being changed from 2,92,000/- and replacing it with Rs.99,999.99, without the knowledge of the respondent no.6, the respondent no.6 was asked to submit a new filled up tender form. Accordingly, a new tender form was filled up and submitted, vide letter dated 01.11.2023, in the office of the respondent no.3.

5. The counsel for the respondent no.6 makes his submission, similar to the submission made by the counsel for the P&RD Department.

6. I have heard the learned counsels for the parties.

7. After hearing the counsel for the parties and on perusal of the records, the facts that have emerged is to the following effect:

The NIT dated 11.04.2023 was published by the Pashim Mangaldai Anchalik Panchayat for settlement of the Deonagaon Weekly Market. The last date for submission of the tenders was 06.06.2023 at 2 p.m. and bids were opened at 3 p.m. on the same day.

8. At the time of opening of bids, there was no complaint made by the petitioner or the respondent no.6, with regard to there being any anomaly in the tender documents or the rates of the respondent no.6 by any tenderers. The respondent no.6 made a complaint to the authorities on 06.07.2023 regarding the fact that he had noticed fudging on his tender documents, wherein the figure of Rs.2,92,000/- had been replaced with Rs.99,999.99. The records also show that the respondent no. 6 submitted another complaint on 09.08.2023 with regard to the same issue. The petitioner submitted his complaint on 29.08.2023. The Inquiry conducted, having found that there had been fudging of the respondent no. 6's tender amount, the respondent no. 6 was made to submit the same tender afresh, which apparently resulted in the same Bank draft being used to show proof of deposit of earnest money. The petitioner also made a complaint against the respondent No.6 on 29.08.2023 regarding the two bids submitted by the respondent no. 6?

9. The petitioner submitted RTI applications regarding details pertaining to tenders submitted pursuant to the NIT dated 11.04.2023 in the month of November, 2023 and on the basis of the replies given to the petitioner, the petitioner filed an FIR.

10. A perusal of the official records and the writ petition does not show that the respondent no.6 had submitted two bid documents with different rates, at the time of opening of the tenders on 06.06.2023. The Inquiry Report conducted showed that there had been fudging of the tender documents of the respondent no.6; without the respondents being able to pinpoint the blame on any particular individual for the said act. The respondents asked the respondent

no.6 to submit a new tender document, inasmuch as, the rates submitted in his tender documents at the time of opening of the tender on 06.06.2023 was Rs. 2,92,000/-, which had apparently been altered to Rs.99,999.99. The above facts go to show that the respondent no.6 had submitted two tender documents, as there was fudging of original tender document of the respondent No.2. This Court is of the view that the respondent no.6 cannot be penalised on the ground that the respondent No.6 had submitted the second bid documents with same earnest money, due to the State respondents asking him to do the same, as the earlier bid amount had been fudged. In any event, in terms of Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002, the market is to be settled with the highest bidder.

11. The facts of the case also show that the market has been settled with the respondent no.6 @Rs.2,92,000/-, while the petitioner's bid was Rs.99,999/-.

12. The above being said, the enquiry report and the letter dated 06.10.2023 issued by the respondent No.3 have not been put to challenge. Even otherwise, if this Court holds that disputed questions of fact remains, the same cannot be decided in a writ Court, keeping in view the letter dated 06.10.2023 issued by the respondent No.3.

13. In view of the above reasons, this Court is not inclined to exercise its discretion in this case. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant