

GAHC010016392024



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

Case No. : WP(C)/511/2024

AMRAN HUSSAIN LASKAR
S/O LATE SAMAR ALI, VILL- HAIDUBI, P.O.-BATAMARI, DIST-NAGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-781006

2:THE NAGAON ZILLA PARISHAD
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
P.O. AND DIST-NAGAON
ASSAM
PIN-782001

3:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
NAGAON
P.O. AND DIST- NAGAON
ASSAM
PIN-782001

4:THE BATADRAVA ANCHALIK PANCHAYAT
REPRESENTED BY ITS EXECUTIVE OFFICER
P.O.-DHING
DIST-NAGAON
ASSAM
PIN-782123

5:THE EXECUTIVE OFFICER
BATADRAVA ANCHALIK PANCHAYAT
P.O.-DHING
DIST-NAGAON
ASSAM
PIN-782123

6:MD. MUKTAR HUSSAIN
S/O MD. HAFIZ UDDIN
VILL- LANGIA
P.O.-JENGONI
DIST-NAGAON
ASSAM
PIN-782122

7:RAIS UDDIN AHMED
S/O LATE TAMUJ UDDIN
VILL- LANGIA
P.O.-JENGONI
DIST-NAGAON
ASSAM
PIN-78212

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the Petitioner : Mr. D.A. Kaiyu. Advocate

For the respondent nos.1 to 5 : Mr. S. Dutta Advocate.

For the respondent no.6 : Mr. A. Sarma Advocate.

Date of hearing : 09.02.2024

Date of judgment : 13.02.2023

JUDGMENT AND ORDER (CAV)

1. Heard Mr. D.A. Kaiyum, learned counsel for the petitioner. Also heard Mr. S.

Dutta, learned counsel for the respondent nos.1 to 5 and Mr. A. Sarma, learned counsel for the respondent no.6.

2. The petitioner has prayed for setting aside and not give effect to Clause 10 of the Tender Notice for 2023-2024 dated 29.04.2024, wherein it has been provided that the tender for all Bazaars/Ghats/Min Mahals/Pounds offering highest bid price will be considered for settlement. It further states that if the tenderer offering the highest bid price does not enclose the relevant papers and documents (except Court Fee and Earnest Money), he/she will be given a period of 3 (three) days for submission of such papers and documents. If he/she fails to submit the papers and documents within the specified period of three days, his/her tender will be cancelled and his/her Earnest money will be forfeited and the next highest bidder shall be considered for settlement within the said terms and conditions.

3. The petitioner took part in the selection process for settlement of the Balisatra Bi-weekly Market (fort short "Market") issued by the Batadrava Ancydhalik Panchayat, in pursuance to the NIT dated 29.04.2023. The petitioner was the 4th highest bidder amongst 33 bidders. The petitioner was selected as the successful bidder for settlement of the Market, on account of the three highest bidders not having the requirement documents in their quotations.

4. Prior to the selection process for considering the successful tenderer, Clause 10 of the NIT dated 29.04.2023 had been stayed by this Court, vide order dated 09.06.2023 passed in WP(C) 3325/2023, which was with regard to the same Market, i.e., Balisatra Bi-weekly Market, as an intending tenderer Ashadud Zaman and two others had made a challenge to the validity of Clause

10 of the NIT dated 29.04.2023.

5. The respondent no.5 then issued a Notice dated 19.06.2023 notifying all tenderers that Clause 10 of the NIT dated 29.04.2023 would not be applicable till further orders, in terms of the order dated 15.06.2023 passed in WP(C) 3325/2023

6. The selection process for settlement of the Market was made during the pendency of the stay order passed in WP(C) 3325/2023 and the said Market was settled in favour of the petitioner for 12 months w.e.f. 01.07.2023 to 30.06.2024 at an amount of Rs.1,52,00,000/-, vide letter dated 30.06.2023 issued by the Chief Executive Officer, Nagaon Zilla Parishad. The said letter dated 30.06.2023 also carried a rider that the settlement would be subject to/depend on the final order of this Court in WP(C) 3325/2023.

7. On coming to know of the challenge made to Clause 10 of the NIT dated 29.04.2023, the petitioner submitted an application for impleadment in WP(C) 3325/2023 on 02.08.2023, vide I.A.(Civil) 2221/2023. The same was allowed by this Court vide order dated 25.08.2023. Consequently, the petitioner was impleaded as respondent No. 7 in WP(C) 3325/2023.

8. The 3rd highest bidder Muktar Hussain filed WP(C) 4757/2023 against the petitioner, on the ground that the market could not have been settled with the petitioner, as Muktar Hussain had submitted a higher bid for the Market than the petitioner. One Rais Uddin Ahmed, who was the 5th highest bidder amongst the tenderers, also made a challenge to the settlement of the Market with the petitioner, vide WP(C) No.7469/2023, on the ground that the petitioner's tender documents did not fulfil the requirement of the tender conditions provided in the

NIT dated 29.04.2023.

9. WP(C) 4757/2023 and WP(C) 7469/2023 were disposed of vide a common order dated 11.01.2024, with this Court holding that it had noticed deficiency in the documents of the bids of Muktar Hussain as well as the petitioner herein. This Court further held in the order dated 11.01.2024 that the difference in the price offered which was Rs.18,00,000/-, could not be termed to be a minor difference, especially in matters of distribution of State largesse, which are meant primarily to fetch revenue for the State. The decision of this Court in WP(C) 3314/2019 (Malegarh Gobindapur Fishery Cooperative Society Ltd. vs. State of Assam & Others) was also quoted, wherein it had been held that in matters of distribution of State largesse which are meant for fetching revenue, the price offered is of paramount importance. This Court, vide the common order dated 11.01.2024, thus directed the respondent authorities to redo the exercise of settlement, by giving the parties to make good any deficiency in their documents, within a period of 5 (five) days from a date to be fixed by the authorities. The settlement order dated 23.06.2023 made in favour of the petitioner was accordingly set aside and a direction was issued that a fresh settlement should be offered, to the valid highest bidder in accordance with law.

10. Being aggrieved by the common order dated 11.01.2024 passed in WP(C) 4757/2023 and WP(C) 7469/2023, the petitioner has put the same to challenge before the Division Bench of this Court, vide WA 21/2024 and WA 23/2024. The writ appeals are apparently still pending before the Division Bench as on date. *Status quo* order was passed by the Division Bench, due to which, the market is being run by the authorities.

11. Pursuant to the above facts, WP(C) 3325/2023 was withdrawn and the

interim order staying Clause 10 of the Tender Notice was vacated, vide order dated 23.01.2024. However, the petitioner herein, who was the respondent No. 7 in WP(C) 3325/2023, was given the liberty to raise his grievance by filing an appropriate application, though there is no record of the grievance of the petitioner in WP(C) 3325/2023. As such, the stay on Clause 10 of the NIT dated 29.04.2023 is not in existence any longer.

12. The issue to be decided is whether Clause 10 of the NIT dated 29.04.2023 can be put to challenge in the present writ petition, as the petitioner had submitted his bid and taken part in the selection proceedings pursuant to the NIT. It is not denied by any of the parties that Notice dated 19.06.2023 was issued by the Executive Officer, (respondent no.5), to the effect that Clause 10 of the NIT dated 29.04.2023 would not be made applicable in view of the order dated 15.06.2023 passed by this Court in WP(C) 3325/2023. It is also admitted by the parties that the settlement order dated 30.06.2023 carried a condition that the validity of the settlement order would depend on the final order to be passed by this Court in WP(C) 3325/2023. It is also not in dispute that WP(C) 3325/2023 was withdrawn and the interim order was vacated vide order dated 23.01.2024. As such, it is now clear that there is no bar on the part of the respondents to settle the market afresh, in terms of the NIT dated 29.04.2023, which also includes Clause 10 of the said NIT. This would naturally be subject to the decision of the Hon'ble Division Bench in WA 21/2024 and WA 23/2024.

13. The petitioner has thus put to challenge the validity of Clause 10 of the tender notice dated 29.04.2023, stating that the said Clause defeats the sanctity of the tender process, which requires fairness transparency in the bid process. He submits that two Classes of bidders would arise if Clause 10 of the NIT is not

set aside. One set of bidders would be those, who submit all the required documents, as mentioned in the tender notice along with their tenders. On the other hand, the other set of bidders would be those who do not submit the required documents along with their tenders. However, in the event of those bidders who have quoted the highest bids, without enclosing the required documents along with their tenders, being selected, they are required to submit the required documents mentioned in the NIT within three days. He submits that the said Clause being in violation of Rule 47 (10) of the Assam Panchayat (Financial) Rules, 2002 (in short, 2002 Rules) and Article 14 of the Constitution of India, the said Clause 10 has to be set aside. In support of his submission that Clause-10 should be set aside, the learned counsel has relied upon the judgment and order dated 17.05.2022, passed by this Court in WP(C) 6902/2021 (Abdus Samad -vs- State of Assam and 7 others), wherein a Co-ordinate Bench of this Court has held that Clause 10 was opposed to the principle of equality prescribed under Article 14 of the Constitution of India and Rule 47(10) of the 2002 Rules.

14. Rule 47(10) of the 2002 Rules states as follows :

“47(10). The tender of highest bidder shall be accepted Acceptance of tender other than the highest bid shall require the "Government" prior and formal approval”

15. On the other hand, learned counsels for the respondents submit that the petitioner had taken part in the tender process without making any challenge to Clause 10 of the tender notice dated 29.04.2023. The challenge made to Clause 10 by some other persons in WP(C) 3325/2023, having been closed due to withdrawal, which resulted in the stay of Clause 10 being lifted, the petitioner

cannot now challenge Clause 10 of the tender notice. They submit that the Division Bench of this Court in WA No. 395/2022 (Sibaram Deka -vs- State of Assam and 7 others), was hearing a matter pertaining to the challenge made to Clause 10 of the NIT. The learned Single Bench had declined to hear the case of the appellant, on the ground that as the appellant therein was placed in the 13th position in terms of the bid offered by him, any decision on Clause 10 would not have any effect whatsoever on the appellant. The Division Bench held in its judgment dated 31.05.2023 that as the appellant had not made a challenge to the offending Clause 10 of the NIT and had participated in the tender process, he could not turn around and challenge Clause 10 of the tender, when he was unsuccessful in the tender process. The Division Bench held as follows :

“The law is well settled that when a tenderer participates in a tender process without objection and subsequently found to be not successful, a challenge to the process is precluded. Such a tenderer cannot be allowed to run around and contend that the process was unfair by virtue of existence of a Clause in the NIT”.

16. The respondents' counsels submit that the case of the petitioner is covered by the judgment of the Division Bench and as such, there is no need to go into the validity of Clause 10 of the tender notice.

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

18. The petitioner had not put to challenge Clause 10 of the NIT dated 29.04.2023 at the time of submission of his tender, knowing fully well that Clause 10 was one of the terms and conditions of the tender notice. The challenge to Clause 10 in WP(C) 3325/2023, having been withdrawn, the stay

order on Clause 10 was also vacated. Thus, a fresh settlement was to be made as per the order dated 11.01.2024 in WP(C) 4757/2023 and 7469/2023, in terms of the tender notice dated 29.04.2023, which includes Clause-10. The facts and circumstances of the case show that the validity of Clause 10 of the tender notice was never an issue between the petitioner and the respondents, as the petitioner had also participated in the tender process without making challenge to Clause 10 earlier. It was only due to a challenge made in WP(C) No.3325/2023 that the petitioner had himself impleaded into the said case as a respondent. However, WP(C) No.3325/2023 was dismissed as withdrawn. In the view of this Court, the judgment of the Division Bench of this Court passed in WA No. 395/2022, would apply to the facts of this case. As such, the petitioner cannot now be allowed to turn around and challenge the validity of Clause 10 in the middle of the selection proceedings, as he did not challenge the same earlier.

19. This writ petition is accordingly dismissed.

JUDGE

Comparing Assistant