(2007) 10 GAU CK 0010

In the Gauhati High Court

Abdul Jalil and Others APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Assam Panchayat Act, 1994 — Section 105, 109(6)

Citation : (2009) 3 GLR 659 : (2007) 4 GLT 882

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Judgement

H.N. Sarma, J.—In this batch of writ petition, the settlement of Rupahi Weekly Market and Rupahi Daily Market falling under the jurisdiction of Nagaon Zilla Parishad is under challenge. W.P. (C) No. 3151/07 and W.P. (C) No. 3156/07 have been filed challenging the settlement of Rupahi Weekly Market in favour of the respondent No. 5 at his offered bid of Rs. 25,99,999/- ignoring the higher bid offered by the respective writ petitioners. Similarly, W.P. (C) No. 3148/07 and W.P. (C) No. 3164/07 have been filed challenging the settlement ofRupahi Daily Market settling with the private respondent No. 5 at his bid value of Rs. 1,70, 111/- ignoring the offered bid by the writ petitioner.

2. I have heard Mr. B. Rahman, learned Counsel appearing for the petitioner in W.P. (C) No. 3151/07 and W.P. (C) No. 3148/07, Mr. D.A. Kaiyum, learned Counsel for the petitioner in W.P. (C) No. 3163/07 and W.P. (C) No. 3164/07 and Mr. A.B. Choudhury, learned Sr. counsel, assisted by Mr. J. Abedin appearing for the settlement holder, respondent No. 5 in W.P. (C) No. 3156/07 and Mrs. H. M. Phukan, learned Govt. Advocate appearing for the official respondents.

3. Rupahi Weekly Market is one of the biggest market in the Nagaon District falling under the Nagacn Zilla Parishad. In order to settle the said market along with other Hats/Bazars/Ghats and Fisheries, the Nagaon Zilla Parishad issued tender notice dated 17.4.07 inviting applications from the intending bidders falling within the said Zilla Parishad and in the tender notice at Clause 3 it is specifically provided that the highest bidder will be given priority for settlement.

In pursuance to the said tender notice as many as 16 candidates submitted their tender papers. The bid offered by Md. Unus Ali, petitioner in W.P. (C) No. 3163/07 was Rs. 45,99,999/- and the bid offered by Md. Ziabur Rahman, petitioner in W.P. (C) No. 3156/07 was Rs. 35,39,551/- whereas the bid offered by Md. Abdul Ml, petitioner in W.P. (C) No. 3148/07 is Rs. 32,99,786/-.

4. hi respect of Rupahi Daily Market, the bid offered by Mr. Tarap Ali is Rs. 4,11,111/- and the bid offered by Mr. Abdul Zalil was Rs. 2,51,786/-. Altogether 22 tenderers submitted their tender papers for settlement of the Rupahi Daily Market.

5. The tender evaluation committee constituted under the provisions of the Act settled the Rupahi Weekly Market in favour of the Respondent No. 5, Md. Habibur Rahman, in W.P. (C) No. 3156/07 at his offered bid of Rs. 25,99,9991-. The Rupahi Daily Market was settled in favour of the Respondent No. 5, Mr. Bappi Debnath in W.P. (C) No. 3148/07 at his offered bid of Rs. 1,70,111/. The period of settlement was for one year under the provision of the Act i.e., from 1.7.07 to 30.6.08. None of the tenders have been rejected on the ground of any other infirmity which means that all the tenderers complied with all the requirement of tender notice and their tenders were found to be regular in accordance with the provisions of law.

6. While the aforesaid writ petitions were pending before this Court challenging the impugned order of settlement of the aforesaid two markets under Nagaon Zilla Parishad, the third bidder Md. Akbar Ali filed a statutory appeal before the appellate authority challenging the impugned order of settlement of Rupahi Weekly Market and the said authority on perusal of the records produced by the Zilla Parishad found the stand of the Zilla Parishad that "the General standing Committee could not consider those higher tenders due to which the bid values were above 10% than the last years settlement value i.e., Rs. 24,75,201/- (Rupees twenty four lakhs seventy five thousand two hundred and one) only as the rates are so exorbitant and opined that if the bazaar is settled with one of the highest bidder then 10% the public would face harassment". The further ground for not settling the market with the higher bidder is that "moreover the General Committee expressed their views that apart from the higher bids reliability and faithfulness regarding payment of kist money are also very much important factors." The appellate authority, going through the various provisions of the Act and relevant Rules, accepted the aforesaid reason and held to be untenable and rejected. The appellate authority further held that the Zilla Parishad is within its powers to assess the capability, reliability, financial position and previous record of the tenderers/parties, but it must clearly record its observations/grounds with sufficient documentary evidence or authentic tone. In the absence of such findings, the appellate authority set aside the order of settlement made in favour of the private respondents in the said appeal and remanded the matter back for fresh settlement by the Zilla Parishad.

7. In pursuance to the said order dated 17.8.07, the Zilla Parishad this time

settled the market in favour of one Ananjit Saha at his offered bid of Rs. 2,99,999/- whose position is 9th as per comparative statement.

8. Learned Govt. Advocate has produced before me a copy of the order dated 24.9.07 passed by the Zilla Parishad as well as the order of the appellate authority dated 17.8.07.

9. As narrated above, Mr. Uuns Ali, petitioner in W.P. (C) No. 3163/07 in respect of two markets, is the highest bidder being Rs. 44,99,999/-. The subsequent order of settlement after remanding the matter vide order dated 24.9.07 does not disclose any reason as to the case of the highest bidder has not been considered. The petitioner in W.P. (C) No 3163/07 has also prayed for issuing a direction upon the respondents/authorities not to settle the market with the private respondent No. 5. The subsequent order of settlement dated 24.09.07 is, however, made subject to the result of this batch of writ petition.

10. The power for settlement of Hats, Ghats, Markets by Anchalik Panchayat and Zilla Paishad is provided under Chapter VII of the Assam Panchayat Act, 1994. Section 109 (6) provides that the settlement of Hats, Ferris and Fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than rupees one lakh is to be settled by the Zilla Parishad concerned for a period of not exceeding one year as under Sections 105,106 and 109 of the Act and in the manner prescribed therein. A set of Rules namely Assam Panchayat (Financial) Rules, 2002 interlia provides the procedures for the sale and settlement of markets, ferries, fisheries and ponds. The aforesaid Rules particularly Rule 47 prescribes the manner and method as to how settlement of markets/ferries/fisheries and ponds are to be made by the Panchayat. Sub-Rule 10 of Rule 47 provides that the tenders of the highest bidder shall be accepted and acceptance of the tender other then the highest bidder shall require the "Government" prior and formal approval. The purpose for settlement of such markets/hats/bazars/fisheries is to augment the revenue. In terms of Section 105 (6) an amount equivalent to twenty percent of the total sale proceeds of Hats, shall be made over to the Zilla Parishad fund and amount equivalent to forty percent of the sale proceeds of Hats shall be equality distributed to all the Gaon Panchayat under the Anchalik Panchayat and remaining forty percent shall be retained in the Anchalik Panchayat Fund. The Act also provides as to how the Gaon Panchayat Fund and Zilla Parishad Fund is to be utilized for public puipose within the locality. With a view to render public duties and functions, the legislature has provided that the tender of the highest bidder is to be accepted. However, this is not exceptional and in order to deviate from it a prior and formal approval of the Government is necessary. Looking into the objective of the Act and the utility of the fund so collected by the authorities, settlement to the highest bidder is the Rule and refusal is an exception.

11. In fact, in such a situation to give preference to the highest bidder in the matter of settlement it has also laid down as one of the conditions in the tender notice. In fact this Court in case of Ashwini Hazarika v. State of Assam reported

in 1994 (1) GLJ 475 accepting the principles laid down in the case of Shri Nurul Islam v. The State of Assam and Ors. held that the settlement in respect of such a lower bidder is absolutely without any authority of law. In Nurul Islam (supra), the Division Bench of this Court interpreting the then existing Rule 28 at paragraph 11 held as follows:

To sum up, we hold that in settling Bazar/Hats under the Rules normally the settling authority should accept the highest bid as such settlement is for augmentation of revenue, of course for good and sufficient ground and in public interest such bid can be rejected. As contemplated under Sub-rule (4) of Rule 28 of the Rules in case of such rejection of the highest or any other higher bids the settling authority must record sufficient and cogent reasons. The appellate authority should also consider whether the settling authority has complied with the provisions of Sub-section (4) of Rule 28 of the Rules by recording such reasons, if any higher bid is rejected.

12. The aforesaid decision was arrived at by the Division Bench of this Court after considering the various decisions of the Apex Court including Ram and Shyam Company Vs. State of Haryana and Others, and Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, and certain other decisions of this Court. In Ashwini Hazarika (supra), this Court rejected said settlement made by the respondents/authorities for not accepting the bid of the highest bidder to the effect that there will be no increase in rent and tools of market and as such there is no justification to accept highest bid and held same to be absolutely fanciful. In a case of Md. Intaz Ali v. State of Assam and Ors. reported in 2000 (1) GLT 573 : (2000) 1 GLR 612 this Court observed that the authority could not settle the market at a lower bid except for good and valid reasons and what is reasonable that must be provided in the tender notice and the range of reasonable rates must also be indicated in the NIT.

13. In the case of Anil Das v. State of Assam reported in 1998 (1) GLT 209 : 1998 (1) GLJ 520, the Division Bench of this Court in Writ Appeal No. 33/98 held as follows:

11. It is admitted position that respondent No. 2 was higher in his bid than the bid offered by the writ petitioner-appellant. Fairness demands that the Committee entrusted with the task of acceptance with the bid should have assigned some reasons for discarding the bid. If in this context the provision of Section 105 are taken into account it is well within the purview of the appellate authority to interfere with such orders as appears to have been done in the instant case.

14. The Division Bench further held as follows:

The source of revenue of the Panchayat is primarily hat, bazar, ghats etc. it is all the more incumbent on the part of the authorities to have assigned some reasons for giving preferential treatment to the writ appellant discarding the highest bid offered day the respondent.

15. In view of the aforesaid provisions of law laid down by this Court and the provisions contained in the statutory Rules making obligatory on the part of the settling authority to accept the highest bid, there is no justifiable reason in not accepting such higher bid when the market in fact fetch such value. The appellate authority rejected the ground assigned by the Zilla Parishad for not accepting highest bid. The subsequent order of settlement also does not disclose any reason as to why highest bid offered by the petitioner was rejected. The settling authority only by referring the matter to the Govt. cannot shirk its responsibility as provided under 47 (10) of the Act and it is incumbent upon the settling authority to disclose the good and reasonable ground for non-acceptance of the highest bid which the market Vs. fetches when the statutory Rule itself provide such a mandate.

16. So far as the settlement of the Rupahi Daily Market is concerned, same and identical stand has been taken by the settling authority as in the case of Rupahi Weekly Market. In fact, today, the learned Govt. Advocate has produced before me a copy of the order of settlement dated 24.09.07 passed by the Chief Executive Officer, Nagaon Zilla Parishad settling the market in favour of the Royal Ahmed at a bid of Rs. 1,85,000/-whose position is 13 ignoring higher bid of two petitioners. The said settlement was also subject to the result of these writ petition.

16.1 In view of the aforesaid facts situation, me entire matter is remanded back to the appellate authority i.e., the Commissioner and Secretary to the Government of Assam and the said authority shall collect the necessary records from the Nagaon Zilla Parishad and on perusal of the records so collected and providing an opportunity of hearing to the subsequent tenderers in whose favour the market in question has been settled by the Zilla Parishad and upon hearing the petitioners and the private respondents shall pass appropriate order in consonance with law. It is noted herein that as no Zilla Parishad is in existence presently and is run by an executive officer, the entire act of settlement is directed to be exercised by the apellate authority, as the power of the appellate authority is coexistence with that of the original authority. In view of the facts and circumstances of the case and taking note of the short period of settlement which is going to expire on 30.6.08, the appellate authority shall settle the market in question with the persons who are entitled for it in terms of the provisions of the Act and Rules and in terms of the tender notice as well as per the observations made by this Court hereinabove. The aforesaid exercise shall be completed as early as possible, preferably within a period of three weeks from the date of receipt of the certified copy of this order.

17. Since the settlement holder and writ petitioners are represented by their respective counsel, it is directed that both the parties shall appear before the appellate authority i.e., the Commissioner and Secretary to Govt. of Assam, Panchayat & Rural Development Deptt., Dispur on 16.10.07 for further orders.

