
(2001) 03 GAU CK 0045
In the Gauhati High Court
Case No : Writ Petition (C) No. 1514 of 2001

Ajit das	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Citation : (2001) 1 GLT 440

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A. Roy, N. Barua, K. Paul and G. Dutta, for the Appellant; G.A., B. Buragohain, I. Handique and A. Das, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—Heard Mr. A. Roy. learned senior Counsel for the Petitioner, Mr. G.N. Sahewalla, learned Counsel for the Respondent No. 4 and Mr. B.P. Katak, learned Counsel for the Respondent No. 3. Heard also the learned State counsel.

2. This petition has been filed for quashing the impugned order dated 27.2.2001 issued by the Respondent No. 3 granting settlement of the Kendriya Bazar, Sibsagar Ward No. 8 under Municipal Board, Sibsagar for the year 2000-2002 in favour of the Respondent No. 4 and for further direction to consider the case of the Petitioner for settlement of the said bazar.

3. The Municipal Board, Sibsagar issued a notice inviting tenders on 12.1.2001 for settlement of the aforesaid bazar for the year 2001-2002. The writ Petitioner along with Ors. submitted tender papers and eventually the Petitioner's papers were rejected and the impugned order has been passed by the Municipal Board, Sibsagar settling the said bazar with the Respondent No. 4.

4. The settlement order has been challenged on the ground that the tender documents of the Respondent No. 4 suffered from various defects for being not in accordance with the requirement of NIT. An affidavit has been filed by the Respondent No. 4 and similar objections has also been raised with regard to

tender documents of the Petitioner.

5. It would appear that the Petitioner's bid for the aforesaid bazar was Rs. 22,00,021/- and that of the Respondent No. 4 was Rs. 23,25,000/-. Obviously, the writ Petitioner was not the highest bidder. The Board in its meeting dated 16.3.2001 rejected the tender of the Petitioner on the ground that the tender papers have not been signed by the Petitioner in every page as per requirement of the N.I.T. The Board, after consideration of the tender papers of the Respondent No. 4 and particularly for the higher amount quoted by him passed the impugned order of settlement.

6. Mr. A. Roy, learned Counsel for the Petitioner highlighted the defects in the tender documents of the Respondent No. 4. He pointed out that the R.R.C. submitted by the Respondent No. 4 was not signed by the Additional Deputy Commissioner who is the competent authority to issue such certificate. That apart, the discrepancies in the non-encumbrance certificate with regard to patta number has also been pointed out. Besides, objection has been raised on the ground that the properties of the guarantor, namely Sri Bijoy Hazarika, has been over-valued and he is not the exclusive owner thereof.

7. Mr. G.N. Sahewalla, learned senior Counsel, submitted that the requirement of signature in every page of the tender form is a fundamental requirement of the N.I.T. and under no circumstances, the Board could ignore the omission detected in the tender paper. Mr. Sahewalla also highlighted the various Ors. infirmities in the documents of the Petitioner.

8. The copy of the proceedings of the Board has been placed before this Court during the course of arguments. It is clear from the proceedings that the tender papers of the Petitioner were rejected as the writ Petitioner did not put his signature in each and every page of the tender form as per requirement specified in the NIT. Thereafter, the Board after examination of the tender papers of the Respondent No. 4 decided to settle the bazar with him. The requirement of signature in each and every page of the tender paper cannot be treated as a secondary condition in view of the fact that the amount to be quoted is to be reflected in the first page of the document. Therefore, signature put only on the 3rd page cannot cure the defect. This Court cannot embark upon an enquiry in respect of Ors. discrepancies as pointed out in the affidavit-in-opposition as these call for evaluation of factual details. The rejection of the tender documents of the writ Petitioner for not fulfilling the essential requirement specified in the NIT with regard to signature, in my opinion, was sufficient enough for the Board to reject the same.

9. With regard to P.R.C. submitted by the Respondent No. 4, it may be stated that the P.R.C. has been issued by the Extra Assistant Commissioner on behalf of the Additional Deputy Commissioner. It is the District Administration who is to be blamed for the alleged irregularity, if any. The Respondent No. 4 cannot be penalised for a defect committed by the authority. Moreover, the certificate was

signed on behalf of the Additional Deputy Commissioner, and the Board was satisfied that the aforesaid certificate was issued from the office of the competent authority. The objection with regard to discrepancies in the Patta Number, in my considered opinion, has no significance as Ors. particulars furnished alongwith the tender form were sufficient enough to identify the land. The Board was apparently satisfied, perhaps because of authenticity of the Jamabandi where correct Patta Number was mentioned. The objection with regard to the guarantor is a matter to be considered by the Board. When the Board is satisfied that the property of the guarantor was sufficient enough to satisfy the requirement of the NIT, it would not be desirable for this Court to re-evaluate the property to upset the satisfaction of the Board.

10. The requirement of P.R.C, non-encumbrance certificate and valuation certificate are not fundamental requirements of the NIT and these are matters to be looked into by the Board. If the Board is satisfied with the papers submitted by the tenderer, this Court will not interfere with the decision merely because a different view could have been possible. It is pertinent to mention here that the market, pound etc. are settled by the Board for the purpose of raising revenue. Here, the Board has selected the highest bidder and issued the settlement order. The decision taken has a nexus with the objective sought to be achieved.

11. Mr. A. Roy, learned Counsel for the Petitioner pointed out the rules and procedures prescribed for the sale of pounds and markets by the Municipal Boards and Town Committee in Assam. It appears that provisions have been made for preferential treatment to the candidates belonging to SC and ST for a settlement at a price 7 1/2% below the highest bid. Mr. Roy, learned Counsel argued that the Petitioner was entitled to settlement in view of above rule which provide for preferential treatment. The provision incorporated in this behalf appears to be directory in nature. It is because the preferential treatment would entail loss of revenue to the Board. In such cases, discretion should always be there with the authority. Since it is a question of revenue, it is for the Board to take a decision as to whether the aforesaid provisions for settlement of the market at a concessional rate would be restored to or not. Moreover, there was no indication in the NIT document that preference will be given to the SC and ST candidates upto the limit of 7 1/2% below the highest bid. Where a tender is floated without indicating such preferential treatment, it would be impermissible to assail the decision taken on that count.

12. In the circumstances, this writ petition appears to be devoid of merit and hence, dismissed. Consequently, the stay order dated 20.3.2001 also stands vacated.