
(2002) 06 GAU CK 0019
In the Gauhati High Court
Case No : WP (C) No. 5100 of 2000

Bud International and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Citation : (2003) 2 BC 589 : (2003) 1 GLR 193 : (2002) 3 GLT 430

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : K.P. Sarma and B. Das, for the Appellant; B.M. Choudhury and Saikia, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Sri K.P. Sarma, learned Senior Counsel for the petitioners, Sri B.M. Choudhury, learned counsel for the Assam Tourism Development Corporation Ltd. hereinafter referred as "ATDC" and Sri Saikia, learned Government Advocate.

2. The facts that the petitioner, M/s Bud International, Guwahati, hereinafter referred as petitioner submitted a proposal to "ATDC" for setting up a mini Appu Ghar at Guwahati sometime in the month of July, 1994. The then Managing Director, ATDC directed the petitioner to submit his detailed plan, estimate, terms and conditions etc. and accordingly, petitioner submitted his proposal on 19th of August, 1994 vide Annexure-B. the said proposal was forwarded to the Govt. of Assam by the ATDC on 16.11.1994 and thereafter, Govt. of Assam wrote a correspondence to the Director of Tourism on 29th August, 1998, Annexure - D1, a copy of the said letter was forwarded to the petitioner by the Director of Tourism vide Annexure - D dated 17th September, 1998. The petitioners, thereafter made certain correspondence, but the matter rested there.

3. On 28th March, 2000, the ATDC issued a tender notice-advertisement for co-promoter for construction of Amusement park at Amingaon, Guwahati.

4. The case of the writ petitioner is that the ATDC had made a commitment to them for establishment of Amusement Park at Guwahati and as such, inviting tender on 28th March was fragrant violation of their commitment and as the petitioner has acted on the promise made by the ATDC, the said tender notice is liable to be quashed. The petitioner had filed this present writ petition and prayed for an interim order for stay, but the same was denied. Thereafter, during the pendency of this writ petition, the respondent-authority -ATDC issued a fresh notification on 18.7.2001 on the above matter. The writ petition was amended at the instance of the petitioner and the notice dated 18.7.2001 had also been challenged now.

5. The respondent - ATDC had filed an affidavit-in-opposition stating inter alia that there was no commitment either from the ATDC or the Government with the petitioners for establishment of Amusement Park at Amingaon, although some correspondence was made and it is further stated that the entire project runs into cores and as such, there was no scope for deciding the matter in hasty manner with one party without floating tender. The respondent-state had also filed an affidavit-in-opposition disputing the claim of the petitioner. It is further stated that in the year 1994 - 98, there was no scope for entering into an agreement by the petitioner for setting up of such Amusement Park/Appu Ghar, as the land was allotted for the purpose only on 22.6.2000.

6. In view of the pleadings of the parties, as stated above, the moot point for consideration is whether the ATDC or the State of Assam had entered into any agreement or had made any commitment with the petitioner for establishment of Mini Appu Ghar/Amusement Park at Amingaon, as claimed by the petitioner.

7. In this case, admittedly, there is no agreement in between the petitioner with ATDC or the State Government on the matter or for construction of Amusement Park/Appu Ghar at Amingaon. The petitioner has based his claim on Annexure - D dated 17.9.1998 issued by the Director of Tourism and addressed to the Managing Director, ATDC and the petitioner, which reads as follows :-

"No. Dt-P/44/92/38 Dt. Guwahati, the 17th September, 1998

From : Shri K. Goswami, ACS Director of Tourism, Assam Guwahati-781 001

To : (1) The Managing Director, Assam Tourism Development Corporation

(2) Shri M.P. Jalan Propriator, M/s Bud International, B.R. Phukan Road, Kumarpura, Guwahati - 9.

Sub : Construction of an Appu Ghar in Guwahati.

Ref : (1) ATDC's Letter No. ATDC 378/94/25/407, dt. 8.5.1998

(2) Bud Internationals Proposal No, Bud/TD/97/105 Dt. 8.8.1997.

Sir,

With reference to the above, I have the honour to enclose herewith a copy of

letter No. TSM. 107/94/71 dt. 29.8.1998 which is self explanatory for four necessary action. Necessary follow up action for setting up a new company in joint venture and also for registration of the same as per Companies Act, 1956 may be taken from your and as per Govt. observation.

Yours faithfully, Sd/- Director of Tourism, Assam, Guwahati- 1."

8. As seen from the above, the copy of the letter dt. 29.8.1998 received from the State Government was forwarded along with the above letter. Hence, we can have a look at Annexure - D1, which reads as follows :

No. TSM. 107/94/71 Dt. Dispur, the 29th August 1998

From : Shri M. K. Dutta. Under Secretary to the Govt. of Assam, Tourism Department.

To : The Director of Tourism, Assam, Station Road, Guwahati - 1

Sub : Construction of an Appu Ghar in Guwahati.

Ref. : No.DT-p/143/92/10/6494dated 16.11.1994

Sir,

I am directed to refer to your letter cited above and endorsement dated nil in Tourism Deptt. File No. TSM 107/ 94 on the subject and to request you to take action on the lines suggested below :-

1. This could be a joint venture between ATDC and the promoter.
2. The market value of land should be assessed and this could be taken as Govt. contribution as Share Capital for the project.
3. A new Joint Sector company can be formed after ascertaining the credentials of the private promoters.

You are also requested to take follow up action on the lines suggested above and submit report to this Deptt. immediately. Yours faithfully, Sd/-

Under Secretary to the Govt. of Assam, Tourism Department."

9. When we read both the above letters, i.e., Annexures - D & D1 together, we find that the State Government had taken a decision for construction at Amingaon and this can be in a joint venture in between the ATDC and the promoter and the market value of the land may be share capital of the ATDC in such a joint venture. Sub-clause 3 as quoted above, is very pertinent wherein it is stated that new joint sector company shall be formed after ascertaining the credentials of the private promoters. Further, the Director of Tourism as well as the Managing Director, ATDC were requested to take up follow up action and to submit a report to the Department. By no stretch of imagination, it can be said that by Annexure - D1, the State Government accepted the proposal of the petitioner or made any commitment to the petitioner that this joint venture will

be with him alone. However, while forwarding the copy of the letter to the petitioner, the Director of Tourism failed to interpret the letter and messed up the things by making the observation in second para of the letter as quoted above. When this fact was brought to the notice of the State Government, the Commissioner and Secretary to the Govt. of Assam, Tourism Department sent Annexure - J dated 17th June, 2000, which reads as follows :-

"To

The Director of Tourism, Assam, Station Road, Guwahati - 1.

Sub: Setting up of Amusement Park.

Ref.: No. DT-p/44/89/50/683, dtd, 29.5.2000

Sir,

With reference to the above I am directed to say that as per letter No. TSH.107/94/71 dtd. 29.8.1998 there is no Govt. direction to form a joint sector project with any particular party for setting up of an Amusement Park. In this connection normal procedure of calling tenders etc. for selecting co-promoter is to be followed. In 1994, proposals for setting up Amusement Park was received from three parties and as per records no tender has been called earlier. If any party interested in being a co-promoter should participate in the tender called for by ATDC. Therefore, your letter No. DT.p/44/92/38/2181-82 dtd. 17.9.1998 is to be immediately withdrawn and report compliance on the matter.

It is to be informed that the allotment of land is yet to be made. Further necessary directions will be issued after allotment of the land in the name of Tourism Department.

Yours faithfully. Commissioner & Secretary to the Govt. of Assam, Tourism Department, Dispur".

Accordingly, Annexure-1 was issued by the Director of Tourism to the petitioner withdrawing the letter dated 17.9.1998

10. AS stated above, the letter dated 17.9.19978 does not creat any right in favour of the petitioner, as there was no commitment from the State or the ATDC. Moreover, as stated above, the copy of the Government letter was enclosed along with the letter dt. 17.9.1998 and the Government letter was very specific and unambiguous. There should not be any doubt in the mind of the petitioner regarding such negotiation or corospondence. The learned counsel for the respondent - ATDC has further submitted that even the petitioner himself in his proposal dated 19.4.1994 has provided as follows :

"To

Sri J N Goswami, ACS Managing Director, Assam Tourism Development Corporation Ltd. Station Road, Guwahati

Sub : Mini Appu Ghar at Guwahati;

Ref: Your letter No. ATFC 378/94/7131 Dated 22nd July.

Dear Sir,

With reference to your above referred letter and in compliance thereof we are submitting the particulars and information as required by you which are as follows :-

(1) We want to start a Mini-Appu-Ghar at Guwahati same as and in the line which is at Delhi and Bombay. The creation of Appu Ghar shall not only attract the citizen of Guwahati and entire North Eastern Region but also from other States and thereby increasing the tourist in our region. Moreover, due to the same not less than 80 to 90 people shall get direct employment and about 300 people shall get indirect employment.

(2) In the proposed Appu-Ghar we shall high technology and most sophisticated equipments of Italian make for enjoyment of children as well as their parents. In the complex we shall provide other facilities such as : -

- (a) Mini Toyo Train & Ropeway.
- (b) Shopping Centre.
- (c) Boat Club
- (d) Parking Place
- (e) Restaurants Fountain Garden
- (f) Toilets and Drinking water facilities
- (g) Rest House for tourist.
- (h) Other public utility services.

(3) The Appu-Ghar shall cost about 17.44 crores for the development of site and to provide all the facilities as narrated above and basically the cost is allocated on cost to cost basis considering the present market price.

(4) The work shall be executed by us by formation of public limited company after approval from your goodself as well as the ministry level. The land is to be allotted by the Government of Assam to extent of 50 to GO Bighas preferably at Amingaon opposite to the newly constructed Government park for better utilisation and easy approach of people. The means and ways for funding the costs of 17.44 crores is as detailed below :-

1. Contribution by the promoters, their friends, relatives etc. as promoters share capital 44

2. Contribution by subscription by way of public issue of shares (Out of which shares to the extent of 1 crore share be kept reserve for the promoters, their

friends, relatives and employees) - 7.00

3. Contribution towards share capital by Govt. of Assam-Tourism-Deptt. excluding the value of land -7.00

4. Term Loan from financial Institutions/Bank etc. -3.00

17.44

5. On subscription of 7 crores by the Govt. of Assam the project shall be automatically become a joint venture project nominated Directors of Govt. of Assam. The shares of the company shall be enlisted with stock exchanges of Guwahati, Calcutta, Delhi, Madras and Bombay. In the event of profits, the Govt. shall get divided and may also sale their state of shares to any person or persons without any hesitation. In case of losses, the Government shall not be liable to share the losses.

6. We hope from the above you can understand the basis on which the project shall be implemented. In case any other information or clarification is required, we shall be glade to submit the same for your desire the needful.

Thanking you,

Yours faithfully, For BUD International, Sd/- Proprietor,"

11. Thus, we find that it was in the knowledge of the petitioner that proposal for setting up of Amusement Park or Mini Apu-Ghar, requires approval of the State Government and also the approval of the ATDC.

12. The learned counsel for the petitioner has submitted that while withdrawing the earlier letter dt. 17.9.1998, no notice or show cause was issued to the petitioner and it amounts to violation of principal of nature justice. The learned counsel has also submitted that this is a case of promissory estoppel, as because, petitioner had acted on the promise of the respondent - ATDC. In view of what has been stated above, this is not a case of promissory estoppel, as at no point of time, either the ATDC or the State Government had promised the petitioner anything or there was any commitment that the work will be entrusted to the petitioner only. Hence, there is no question of violation of principle of natural justice or violation of the principle of promissory estoppel.

13. As regards the submission of Sri Chourdury, learned counsel, that considering the nature vastness of the project and the amount involved, neither the ATDC nor the Government could have entered into any private negotiation with the petitioner without inviting tender. The learned counsel for the petitioner has placed reliance on the decision of the Hon"ble Rajasthan High Court in the case of R. Tej Singh Sarupriya v. Rajasthan State Mines & Minerals Ltd. reported in AIR 2001 Rajasthan 225. The Hon"ble High Court observed as follows :-

"From the above observations, it becomes clear that the issuance of public advertisement inviting people at large to offer their prices or to apply for

entrustment of contract, is not an absolute or invariable rule. A joint venture project is always based on mutual trust and confidence and after examining the investment capacity, experience and capability and human resources available with the partner and other material, such a decision of the Government or its instrumentality cannot be assailed as invalid except in a case where the decision of the State or its instrumentality is not bona fide, reasonable and in public interest. If the terms and conditions of the contract and surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote private interest of someone at the cost of the State, the Court will undoubtedly interfere but so long as the state action is bona fide and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publicity made or tenders invited."

14. The Hon'ble Rajasthan High Court had relied on the decision of the Apex Court in the case of G.D. Zalani and another etc. Vs. Union of India and others, wherein the Apex Court held that the normal method of auction or inviting tender was not feasible. A technical tie-up with joint venture can be formed and such exceptional circumstances adopting such course, i.e., inviting public auction or inviting tender may not be insisted upon.

15. In the instant case, we find that the State Government has taken a decision that tenders are required to be invited and petitioner has prayed that this process should be abandoned and the matter should be settled with the petitioner alone, in view of Annexure - D & D1. As stated above, there was no commitment to the petitioner either vide Annexures - D & D1. In this case, it is seen that on consideration of the material, the State Government decided that for establishment of Amusement Park/Mini Appu Ghar, tenders should invite, so that all contended parties may give their offer to the State Government and the State Government may choose the best at the most competitive rate. The petitioner was tried to deprive others from participating in such process. The petitioner has failed to establish any case that the State Government is bound to consider the case of the petitioner alone for the above construction of an Appu Ghar at Amingaon and thereby precluded from issuing tender or inviting bids from other eligible person.

16. At this stage, we may refer to the following observation of the Hon'ble Supreme Court in the case of Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, the Apex Court observed :-

"As regard the merits of Cambatta's proposal, it was contended by Mr, Andhyarujina that all the three offers of Cambatta were superior in terms of parameters laid down by CIAL than Air India's offer. He submitted that even after CIAL unilaterally raised the licence fee of Air India from 17 per cent to 20 per cent in the 10th year to match Cambatta's offer and imposed a condition that Air India would not subcontract, it did not become comparable with the offer of Cambatta as Air India did not offer to pay 2 per cent bonus in license fee. It was also submitted that Air India's representation that it would be able to bring

more traffic was illusory and for that reason also Air India's proposal cannot be regarded as superior or even comparable with the proposal of Cambatta. We do not think that CIAL did any wrong in taking into consideration the fact that AIR India is an Airline and being a national carrier would be in a position to bring more traffic of Air India and other domestic lines if it was awarded the contract. As regards the merits of the rival offers, we do not think it proper to look at only the financial aspect and hold that CIAL did not accept Cambatta's offer, even though it was better, because it wanted to favour Air India or that it had acted under the influence of Air India and the Ministry of Civil Aviation. In a commercial transaction of a complex nature that may appear to be better, on the face of it, may not be considered so when an overall view is taken. In such matters the court cannot substitute its decision for the decision of the party awarding the contract. On the basis of the material placed in record we find that CIAL bona fide believed that involving a public sector undertaking and a national carrier would, in the long run, prove to be more beneficial to CIAL. For all these reasons, it is not possible to agree with the finding of the High Court that, CIAL had acted arbitrarily and unreasonably and was also influenced by extraneous considerations during Its decision making process."

In view of what has been stated above, there is absolutely no merit in this writ petition which seems to have been filed for delaying the matter unnecessarily. Writ petition, is accordingly dismissed. At this Stage, Sri Choudhury, learned counsel has submitted that bid was invited by them in two parts i.e. technical bid and commercial bid. Technical bid had already been opened and commercial bid has not yet been opened, although, there was no stay order from this court. The ATDC may proceed with the process of tender.