

(2022) 03 GAU CK 0056

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2154 Of 2022

Dharmendra Mazumder

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Municipal Act, 1956 — Section 148, 148(2), 298, 299, 299(b)

Citation : (2022) 03 GAU CK 0056

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : R Goswami

Final Decision : Disposed Of

Judgement

1. Heard Mr. R. Goswami, the learned counsel for the petitioner and Ms. S. Sarma, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 5.

2. Taking into consideration that issuance of notice at this stage insofar as the respondent Nos. 3 and 4 is concerned would neither be in the interest of the petitioner nor the respondent Nos. 3 and 4, this Court therefore dispenses with the notice upon the respondent Nos. 3 and 4 more so in view of the reasons given hereinunder.

3. The case of the petitioner in brief is that the Dhing Municipal Board collects parking fees for Dhing-Borbhogia Parking Stand through lessees appointed by the Dhing Municipal Board. At present the said is being carried out by the Government of Assam through its Executive Officer. It is the case of the petitioner that the Dhing Municipal Board floated a tender and the petitioner being the highest bidder was approved and allotted work for the financial the year 2020-21 with effect from 01.04.2020 to 31.03.2021. The Executive Officer of Dhing Municipal Board floated a tender on 18.02.2021. However, on account of

the Election Commission of India's announcement of the general elections to the Assam Legislative Assembly, 2021 on 26.03.2021 and the Model Code of Conduct coming into force immediately from the date of announcement, the said tender dated 18.02.2021 could not be proceeded for which the lease to the said Parking Stand was extended in favour of the petitioner for a period of 3(three) months i.e. with effect from 01.04.2021 to 30.06.2021 vide an order dated 25.03.2021.

4. It is the further case of the petitioner that on account of the National Lockdown due to the COVID-19 pandemic, the petitioner requested for granting of an extension. But such extension was not granted and the Dhing Municipal Board floated a fresh NIT on 25.06.2021. The petitioner participated in the said tender process and was granted the settlement for the year 2021-22 with effect from 01.08.2021 to 31.03.2022 vide an order dated 26.07.2021 at an amount of Rs. 94,500/-. While the period of settlement was coming to an end, the petitioner again filed another application seeking extension on the ground that the petitioner suffered on account of the COVID-19 pandemic. However, the respondent No. 4 did not take into consideration the said representation and on the other hand floated a fresh NIT bearing No. DMB.70/PS/2018-19/676 dated 14.03.2022.

5. It is the specific case of the petitioner that the said Notice Inviting Tender dated 14.03.2022 has been issued without taking into consideration the petitioner's representation for extension to which the petitioner was at least entitled for consideration. The petitioner further submitted that the petitioner is an intending tenderer but as the tender was issued for only 15(fifteen) days, which as per the Rules for Procedure for Sale of Pounds and Markets by Municipal Board and Town Committees in Assam, the said Notice Inviting Tender ought to have been for a period of 1(one) month the petitioner's rights as an intending tenderer has been effected. It is relevant to note that the impugned Notice Inviting Tender is a notice for a period of 15(fifteen) days and the closing date is 29.03.2022. It is on the basis of the aforementioned two contentions that the petitioner is before this Court under Article 226 of the Constitution challenging the Notice Inviting Tender dated 14.03.2022.

6. I have heard the learned counsels for the parties and given my anxious consideration to the matter. Section 148 of the Assam Municipal Act, 1956 (for short "the Act of 1956") empowers the Municipal Board to grant a lease for collection of rents, tolls and fees in municipal markets and parking lots at the rates prescribed by the Board under sub-Section (2) of Section 148 of the Act of 1956. Section 298 of the Act of 1956 stipulates the power of the State Government to dissolve the Board in the circumstances mentioned therein. Section 299 of the Act of 1956 stipulates the consequences of dissolution and relevant for the purpose of the instant case is Section 299(b) which stipulates that all the powers and duties under the Act of 1956 may be exercised and performed by such person as the State Government may direct till the Commissioners and Chairman are elected. It is by virtue of the powers under

Section 299(b) that the Executive Officer had issued the Notice Inviting Tender dated 14.03.2022 and as such as the Executive Officer is an appointee of the State Government and the State Government being duly represented by its counsel, the interest of the respondent No. 4 is being taken care of by the counsel appearing on behalf of the State Government. The presence of the respondent No. 3 has no relevance for the instant dispute as the respondent No. 3 is under dissolution and the Executive Officer appointed by the State Government by virtue of Section 299(b) is exercising the duties of the Board.

7. The counsel for the petitioner had submitted that on account of the pandemic he had incurred huge losses for which he had submitted a representation which the respondent No. 4 did not consider and instead issued the Notice Inviting Tender. The said submission of the petitioner does not appeal to this Court taking into consideration that the petitioner had been granted the lease in respect to the parking stand in question since 01.04.2020 and had also been granted extension as would appear from a perusal of the writ petition. Further to that a perusal of the Notice Inviting Tender dated 25.06.2020 clearly shows that the official bid amount was Rs. 92,500/- for the parking stand in question and the petitioner was granted the said lease at an amount of Rs. 94,500/-. Not being able to profit cannot be a ground to withhold a tender process. Accordingly, this Court does not find any illegality in the issuance of the Notice Inviting Tender dated 14.03.2022.

8. Now coming to the next question as regards the violation of the Rules for Procedure for Sale of Pounds and Markets by the Municipal Boards and Town Committees in Assam as notified vide a Notification No. LML51/58 dated 24.06.1958, it has been clearly mandated vide Clause 3 of the said notification that public auction shall be held by giving a public notice of 1(one) month previously and not later than 14th day of February of the financial year. Clause 3 of the said notification is quoted herein below:

"3. The sale by public auction of the right to levy fines and charges in respect of any pounds and to collect the authorized fees in respect of any market shall be held, public notice having been given one month previously, not later than the 14th day, of February in the financial year preceding that in which the lease is to take effect."

At this stage it is also relevant herein to mention that a Coordinate Bench of this Court in the case of Dipak Das V. State of Assam & Ors. [WP(C) No. 2193/2018] vide a judgment and order dated 15.12.2018 had categorically held that the said Rules duly apply in the case of parking lots and the same yardstick as stipulated in the said Rules ought to followed. A perusal of the said Notification and Clause 3 therein, it is apparent that the public auction notice should be for a period of 1(one) month and the same is required to be issued not later than the 14th day of February of the financial year. The counsel appearing for the respondents have not placed any notification to the effect that the Notification issued in the year 1958 have been superceeded by reducing the period of public notice.

9. This court is, therefore, of the opinion that the Notice Inviting Tender dated 14.03.2022 giving a public notice for only 15(fifteen) days violates the mandate of Clause 3 of the said Notification as quoted herein above. Consequently this Court is of the further opinion that the interest of justice would be met in the present facts and circumstances, if the respondent No. 4 issues a Corrigendum thereby extending the period of the Notice Inviting Tender dated 14.03.2022 by a further period of 15(fifteen) days from 29.03.2022 thereby meeting the requirement of Clause 3 of the said Notification. Accordingly, this Court therefore directs that the respondent No. 4 shall issue a Corrigendum to the Notice Inviting Tender bearing tender No. DMD.70/PS/2018-19/676 dated 14.03.2022 thereby extending the period for submission of the bids by another period of 15(fifteen) days from 29.03.2022.

10. Before parting with the records, it is observed that this situation would not have arisen had the respondent No. 4 issued the said Notice Inviting Tender in terms with Clause 3 of the said Notification i.e. within the 14th day of February of the financial year. Consequently it is therefore directed that henceforth the respondent authorities shall issue the Notice Inviting Tenders strictly in terms with Clause 3 of the Notification, unless and until the said Notification dated 24.06.1958 stands superceeded or had superceeded. It is made clear that in view of the instant order the period of the Notice Inviting Tender dated 14.03.2022 stands extended by another 15(fifteen) days and consequently a void is created for a period of 15(fifteen) days from the date of ending of the settlement of the petitioner i.e. on 31.03.2022 and granting of a fresh settlement. As such during this period the respondent No. 4 would be at liberty to run the market in question either through its own machinery or make ad hoc arrangement(s) for this period of 15(fifteen) days as per law only.

11. With the above observations and directions the petition stands disposed of. The Registry is directed to serve a copy of the instant order forthwith to Ms. S. Sarma, the learned counsel for the respondents to communicate the instant order to the respondent No. 4.