

(2021) 06 GAU CK 0171

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3090 Of 2021

Dul Bora And 10 Ors

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 25-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Panchayat (Financial) Rules, 2002 — Rule 47(2), 47(3)

Citation : (2021) 06 GAU CK 0171

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : A Sarma

Judgement

1) Heard Mr. R. Mazumdar, learned counsel for the petitioners. Also heard Mr. M. Nath, learned standing counsel for the P&RD Department,

respondent nos.1 to 4 and 7 and Ms. M. Barman, learned Junior Govt. Advocate appearing for State respondent nos. 5 and 6.

2) On the ground that the NIT issued by the respondent no.4 under Memo No. BAP/02/Hat/Bazar/Minmahal/2021-22 dated 10.05.2021 for settlement

of all the bazar/ hat/ Minmahal under respondent no.4, i.e. Batadraba Anchalik Panchayat for the year 2021-22 w.e.f. 01.07.2021 to 30.06.2022 on the

ground that it was dehors the Rules, having been issued on 05.06.2021, the present writ petition has been filed under Article 226 of the Constitution of

India.

3) The learned counsel for the petitioners has submitted that though the NIT contains the date of issue as 10.05.2021, but various documents annexed

to the writ petition indicate that the said notice had been issued on 05.06.2021 and that the last date of receipt of tender by the Anchalik Panchayat

was till 02:00 pm of 26.05.2021 to be opened on the same date. It is projected that in view of above, the respondents have played a fraud so as to

bypass and/ or overcome the requirement of Rule 47(2) of the Assam Panchayat (Financial) Rules, 2002, having not been given wide publicity as

prescribed under Rule 47(3) of the Assam Panchayat (Financial) Rules, 2002. In support of his statement, the learned counsel for the petitioners has

relied on Annexure 2, 3 and 4 by the (1) Circle Officer, Dhing, Nagaon, (2) President, Upper Doomdumia Gaon Panchayat, and (3) Anchalik

Panchayat Member, Upper Doomdumia Gaon Panchayat. It is projected that complaints were filed before the Circle Officer, Dhing Revenue Circle

and Deputy Commissioner, Nagaon, but no action has been taken. It is also submitted that in view of the Covid-19 pandemic guidelines issued by the

District Administration and the Assam State Disaster Management Authority, the Government Offices are closed and/ or functioning with few

skeleton staff, for which the petitioners could not collect documents to submit their respective bids.

4) The learned departmental counsel and the learned Junior Government Advocate submit that there is nothing on record to show that as to which

document the petitioners could not collect and that before which authority they had respectively applied. Moreover, it is submitted that if notice of

motion is issued, there would be a position to apprise the Court as to the date when the NIT was actually published and given wide publicity.

Moreover, it is submitted that during this pandemic period, the issuance of tender had got delayed and therefore, the tenders have been belatedly called

and that without regular settlement, the respondents would have no option but to go for ad-hoc arrangement, which does not help anyone.

5) It has been brought to the notice of the Court that under somewhat similar circumstances, this Court by order dated 18.06.2021 passed in WP(C)

3082/2021- Shekhar Ch. Paul & 2 Ors. Vs. the State of Assam & several others, on being agreed to by the learned counsel for the appearing parties,

had disposed of the said writ petition at the motion stage by granting 10 (ten) days time w.e.f. day of the order to the three writ petitioners to submit

their tenders with a direction to the respondents not to open the bids till 28.06.2021 so as to permit the petitioners in the said case to submit their bids.

A similar option was offered by the Court to the learned counsel for the petitioners. It may be mentioned that although both the learned State counsel

had agreed to the proposal, but the learned counsel for the petitioners that he is inclined to make his submission on the strength of the merit in his case.

6) In view of the nature of grievance raised in the present writ petition, it appears that this is a fit case for examining the matter. Hence, let a notice of motion including notice on the prayer for interim relief returnable on 19.07.2021 be issued. The learned standing counsel for the P&RD Department representing the respondent nos.1-4 and 7 is directed to produce the original records including original record of proof of giving wide publicity relating to the NIT in question. It is made clear that if the Batadraba Anchalik Panchayat (respondent no.4) does not ensure production of record on the next date of listing, the said authority is put to notice that appropriate orders for taking coercive measures to secure production of records would be passed on the next date fixed. As all the respondents are represented, requisite additional copies of the writ petition be furnished to the respective learned counsel for the respondents within 2 (two) days.

7) Considered the prayer for ad-interim relief at this stage. It is seen that the petitioners have submitted one representation before the Circle Officer and the Deputy Commissioner on 07.06.2021. However, for the reasons best known to the petitioners, no complaint has been made by the petitioners before the respondent no.4, the authority which had issued the NIT. However there is absence of any statement in the writ petition to show that on which particular date and at what time the respected petitioners had visited any particular office and found it not entertaining applications for supply of requisite document. It is also not pleaded that which of the 11 (eleven) petitioners would have participated in any particular or all of the 15 markets/hats/ Minmahal covered by the NIT. Therefore, the plea of the petitioners is found to be absolutely vague and bereft of material particulars.

Moreover, the petitioners have not annexed any notification from the Office of the District Magistrate-cum- Deputy Commissioner, Nagaon or from any other competent authority of closing down the total functioning of Government offices, which is otherwise authorised to issue any document that was required by the petitioners to be annexed with their tenders. It is quite possible that a particular office might have been functioning with low staff, truncated timing, etc., but it is not the case of the petitioners that they had visited any particular office and that their application was refused to be

accepted.

8) Accordingly, when there is no record that the petitioners had applied for supply of any document, the Court is unable to accept that the petitioners are persons aggrieved. Therefore, the Court finds that no prima facie case is made out for stay of the tender process at this stage. However, in the event the Court finds that the NIT was pre-dated and issued and that such issuance is to overcome the requirement of Rule 47(2) of the Assam Panchayat (Finance) Rules, 2002, the Court would not be powerless to grant appropriate relief to the petitioners. Accordingly, it is provided that the settlement of all the bazar/ hat/ Minmahal under respondent no.4 would be subject to any further order that may be passed by the Court. Therefore, the respondent no.4 is also directed to inform all the bidders/ successful bidders that the settlement of the 15 nos. of bazar/ hat/ Minmahal under respondent no.4 mentioned in NIT No.BAP/02/Hat/Bazar/Minmahal/2021-22 dated 10.05.2021 has been made subject to outcome of this writ petition.

9) List on 19.07.2021.