(2015) 03 GAU CK 0048

In the Gauhati High Court

Case No : WP(C) 5992 of 2014

Durga Charan Mandal — APPELLANT

Vs

The State of Assam and Others — RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Assam Panchayat Act, 1994 — Section 105, 105(2), 105(3), 105(4), 106

Citation : (2015) 2 GLD 328

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : S.K. Sinha, for the Appellant; B.J. Talukdar, Government Advocate and M.I. Hussain, Advovate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arup Kumar Goswami, J.—I have heard Mr. S.K. Sinha, learned counsel for the petitioner. Also heard Mr. B.J. Talukdar, learned State counsel, appearing for the respondent Nos. 1, 2 and 4; and Mr. M.I. Hussain, learned counsel appearing for respondent No. 5. None has appeared for the respondent No. 3, who is the President of Mayong Anchalik Panchayat.

2. A tender notice was issued by the President, Mayong Anchalik Panchayat, inviting tenders for settlement of Hats, Fisheries and Ferries, including Teteliguri Ferry, under Mayong Anchalik Panchayat for the financial year 2014-2015, with effect from 01.07.2014 to 30.06.2015, also specifying the terms and conditions for submission of tender. The last date for receipt of tenders was fixed on 13.06.2014, up to 2-00 P.M., and the tenders were to be opened on that day itself in the office of the Mayong Anchalik Panchayat.

3. The case of the petitioner, briefly, is that he submitted his tender quoting an amount of Rs. 8,505.00, per month, for the Teteliguri Ferry. He was not provided with the comparative statement, but from the list of bids which he could collect, it transpired that one Biswanath Mandal offered the highest monthly bid of Rs.

15,000.00. Total nine tenderers had submitted tenders and the bid offered by the petitioner was the 4th highest. It is averred that the highest bid offered by Biswanath Mandal was rejected. The respondent No. 5 did not submit documents, such as, certificates of clearance of loan, tax and revenue of Zilla Parishad, Gaon Panchayat and Anchalik Panchayat as required under Clause-3 of the tender notice and as such his tender was defective. However, the Chief Executive Officer, Morigaon Zilla Parishad (respondent No. 2) issued an order dated 14.10.2014 settling the Ferry, in question, with the respondent No. 5 for the period from 15.10.2014 to 30.06.2015, i.e. for a total period of 8 months 15 days at a monthly revenue of Rs. 11,381.00.

4. It is stated that the settlement made by the Morigaon Zilla Parishad is not sustainable in law as it is the Mayong Anchalik Panchayat, who is the settling authority as per provisions of the Assam Panchayat Act, 1994 (for short, ''the Act''). It is also stated that the authorities accepted the tenders up to 16.06.2014 and also opened the tenders on 16.06.2014 in violation of the tender notice dated 02.05.2014. The authorities did not issue any notice informing the public about the acceptance of tenders up to 16.06.2014 and also opening of tenders on 16.06.2014.

5. The respondent No. 2 filed an affidavit asserting that the respondent No. 5 had submitted all the mandatory documents required to be submitted in terms of the tender notice and that the petitioner''s bid was, otherwise, 5th highest. It is stated that in terms of the provisions of the Act, the yearly bid value being more than Rs. 1 lakh, the Zilla Parishad was the competent authority to issue the order of settlement.

6. The respondent No. 4, i.e., Executive Officer, Mayong Anchalik Panchayat, in his affidavit, has stated that 13.06.2014 was declared a government half-holiday and, therefore, the process of acceptance and opening of tenders was postponed to 16.06.2014 and the same was notified in the notice board. He has also asserted that the tender of the respondent No. 5 was complete in all respects and, in terms of the provisions of the Act, the tender papers were forwarded to the Zilla Parishad for settlement of Teteliguri Ferry.

7. Reply affidavits were filed by the petitioner against the aforesaid affidavits of respondent Nos. 2 and 4. With regard to the affidavit-in-opposition of the respondent No. 2, it is stated by the petitioner that the order of settlement is also violative of Rule 47 of the Assam Panchayat (Financial) Rules, 2002 (for short, ''the Rules''). With regard to the stand taken in the affidavit of the respondent No. 4, it is sought to be highlighted that there was no government holiday on 13.06.2014 as per the Holiday List of 2014 and that no notice of any kind was hung in the notice board informing the public about the deferment of acceptance and opening of tenders till 16.06.2014. It is further stated that the bid value offered by the respondent No. 5 for the period of 8 months 15 days is Rs. 96,738.50 and, therefore, Clause 26, stipulating that Zilla Parishad will give order of settlement beyond Rs. 1 lakh is not applicable.

8. Mr. Sinha, learned counsel for the petitioner has submitted that as the tenders were opened on 16.06.2014 and not on 13.06.2014, the entire process is vitiated. It is also submitted that the respondents had not disclosed on what account there was a declaration of a half-holiday. His further submission is that, in the instant case, the total bid value for 8 months 15 days, which is the final period of settlement with the respondent No. 5, being Rs. 96,738.50, which is less than Rs. 1 lakh, the order of settlement could not have been issued by the Zilla Parishad and, therefore, the order of settlement is passed without jurisdiction. Mr. Sinha has further submitted that the respondent No. 5 being not the highest tenderer, the settlement granted in his favour without taking prior and formal approval of the government, is violative of Rule 47(10) of the Rules. He concludes his argument by submitting that the tender of the respondent No. 5 was also defective and, on these counts, therefore, the impugned order of settlement is liable to be set aside.

9. Mr. B.J. Talukdar, learned State counsel, by producing the records, has submitted that the allegation that the respondent No. 5 did not submit the documents, as required by the tender notice, is wholly incorrect inasmuch as the respondent No. 5 had submitted all the required documents and the comparative statement also reflected the said position. He has submitted that the bid of the respondent No. 5 being Rs. 11,381.00 per month, the same clearly exceeds Rs. 1 lakh towards yearly sale value and, therefore, the contention advanced by the petitioner with regard to the competency of the Zilla Parishad to settle the Ferry is not correct. He has also submitted that Rule 47(10) of the Rules is attracted in a case where the highest tenderer is not sought to be given the settlement for some reason and the settlement is sought to be offered to a next higher bidder. In a case where the highest bid is rejected for non-fulfillment of the conditions of the tender, the same is not to be considered as the highest bid and the same being the position in the instant case, Rule 47(10) of the Rules is not attracted, he contends. Learned State counsel has further submitted that there is no allegation that any manipulations had been done by deferring the acceptance and opening of the tenders to 16.06.2014. While conceding that it would have been appropriate to disclose the reason for declaring a half-holiday on 13.06.2014, he has contended that the same will not vitiate the tendering process in absence of any vitiating factor like mala fides and/or manipulation of records.

10. Mr. M.I. Hussain, learned counsel for respondent No. 5 has also endorsed the submissions of the learned State counsel.

11. I have considered the submissions of the learned counsel for the parties and have perused the materials on record as well as the records produced by Mr. Talukdar.

12. Sections 105(2), 106(2) and 109(2) of the Act provide for settlement of Hats, Ferries, and Fisheries, respectively, under the Anchalik Panchayat in the manner prescribed. Rule 47 of the Rules prescribes the procedures regarding sale

and settlement of Hats, Ferries, Fisheries and Ponds.

13. Section 109(6) of the Act provides that the Hats, Ferries 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, shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as prescribed under sections 105, 106 and 109 of the Act. The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee constituted under section 81(1)(a).

14. The expression "yearly sale value", as appearing in Section 109(6) of the Act ("Yearly Sale Value" is not defined in the Act), came to be considered by a Full Bench of this Court in the case of Harez Ali and Another etc. Vs. State of Assam and Others etc., AIR 2009 Guw 132 : (2009) 5 GLR 1 : (2009) 2 GLT 561 . The Full Bench held that "yearly sale value" of a property, put on sale through a tender system, for one year, would be the amount of money which will be received after the highest bid value of the eligible bidder, is accepted by the authority concerned. The Full Bench in the aforesaid case held that there is no provision to allow and/or permit any other authority, except the office of the Anchalik Panchayat by its President, the power to invite tenders for settlement of Hats, Ferries and Fisheries falling within its territorial jurisdiction and there is no scope to interpret that Section 109(6) of the Act gives absolute power to Zilla Parishad to invite tenders, examine and scrutinize and, then, finally to accept and approve the highest eligible bidder for the purpose of issuance of settlement order. The Full Bench also held that the procedures prescribed in sub-Rule 9(5) and sub-Rule (7) of Rule 47 of the Rules, for opening, processing and settling of the tenders, cannot vest the Zilla Parishad with the power to invite tenders and that Section 109(6) only empowers the Zilla Parishad to examine and finally accept such tenders if the "yearly sale value" is more than Rs. 1 lakh. The Full Bench had laid down that after having floated a tender, if the bid value of the eligible highest bidder is less than Rs. 1 lakh, the Standing Committee of Anchalik Panchayat concerned, constituted under Section 52 of the Act, will examine and accept the tender of the highest eligible bidder and forward it to the Zilla Parishad for confirmation in terms of Section 105(4), 106(4) and 109(4) of the Act, as the case may be. However, after submission of all tender papers before the Anchalik Panchayat, if the bid value offered by the highest eligible bidder is found to be more than Rs. 1 lakh, the Standing Committee of the Anchalik Panchayat, shall immediately forward such tender papers submitted by the bidders, together with the comparative chart prepared and processed as per the procedure prescribed, to the Zilla Parishad concerned for doing the needful at their end.

15. Admittedly, respondent No. 5 had submitted his tender for the period from 01.07.2014 to 30.06.2015. His tender was accepted and his bid value for the period of 12 months was more than Rs. 1 lakh and, therefore, it was obligatory on the part of the Anchalik Panchayat to have forwarded the tender papers to the

Zilla Parishad for examining and finally accepting such tenders. The fact that the period of settlement finally granted will result in collection of revenue less than Rs. 1 lakh is of no consequence. The determining factor would be at the stage of opening of and examination of tenders by the Anchalik Panchayat and, therefore, the contention of Mr. Sinha that, in the instant case, the Zilla Parishad did not have the jurisdiction to settle the ferry, in question, is without any merit.

16. Rule 47(10) of the Rules reads as follows:

"The tender of the highest bidder shall be accepted and that acceptance of tender other than the highest bidder shall require prior and formal approval of the government."

Thus, Rule 47(10) of the Rules provides that the tender of the highest bidder shall be accepted and that acceptance of tender other than the highest bidder shall require prior and formal approval of the government. The provision is founded on the principle that that there should be maximization of revenue collection while distributing State largesse.

17. The intention of the legislature is normally to be gathered from the language used and attention has to be paid to what has been said as also what has not been said. But in discharge of the function of the court with regard to interpretation of statutes, the court can correct obvious drafting errors and it will be permissible in suitable cases for the court to add words or omit words or substitute words. It is permissible to supply by implication words which appear to have accidentally been omitted or in a situation where adoption of a construction deprives certain existing words of all meaning. A departure from the rule of literal construction may be legitimately made to avoid any part of the statute becoming meaningless.

18. It is trite that a judge must not alter the material out of which the Act is woven, but he can and he should try to iron out the creases and folds so as to give force and life to the intention of the legislature by supplementing the written words.

19. In the case of Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, AIR 1959 SC 198 : (1959) 1 SCR 1287 , the Apex Court had laid down that in construing the provisions of a statute, the court should be slow to adopt a construction, which tends to make any part of the statute meaningless or ineffective and where literal meaning of the words used in a statutory provision would manifestly defeat its objective.

20. In Sirajul Haq Khan (supra), the Apex Court had occasion to consider Section 5(2) of United Provinces Muslims Waqf Act, 1936, which read as follows:

"The mutuwalli of a waqf or any person interested in a waqf or a Central Board may bring a suit in a civil court of competent jurisdiction for a declaration that any transaction held by the Commissioner of waqfs to be a waqf is not a waqf, or any transaction held or assumed by him not to be a waqf is a waqf, or that a waqf held by him to pertain to a particular sect does not belong to that sect, or that any waqf reported by such Commissioner as being subject to the provisions of this Act is exempted under Section 2, or that any waqf held by him to be so exempted is subject to this Act."

The Apex Court held that "any person interested in a waqf" cannot be construed in their strict literal meaning as if the said words are given their strict literal meaning, suits for declaration that any transaction held by Commissioner to be a waqf is not a waqf can never be filed by a mutuwalli of a waqf or a person interested in a waqf. Observing that the legislature had definitely contemplated that the decision of the Commissioner of the Waqf that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision and that this class of persons are obviously intended to be covered by the words "any person interested in a waqf", the Apex Court held that the expression "any person interested in a waqf" must mean "any person interested in what is held to be a waqf".

21. Rule 47(5) provides that the tender shall be opened, processed and settled by the Committee as provided in sub-section (1)(i) of Section 22 or sub-section 1(a) of Section 52 or sub-Section (a) of Section 81 of the Act. As per Concise Oxford English Dictionary (12th Indian Edition), the dictionary meaning of the word "process" is a series of actions or steps towards achieving a particular end, or to perform a series of operations to change or preserve, or to deal with using an established procedure.

22. "Process", in the context of a notice inviting tender, encompasses within its ambit, amongst others, preparation of a comparative statement, evaluation of the tenders and rejection of tenders not conforming to the requirements of the Notice Inviting Tender. Sections 105(3), 106(3) and 109(3) also provide for examination of tenders by the General Standing Committee. The highest tender, after examination and evaluation, in a given case, may be rejected. Once rejected, such a tender cannot come into consideration for the purpose of acceptance or settlement. If the words, "highest bidder" occurring in Rule 47(10) of the Rules is given literal meaning, examination or evaluation of tenders, as contemplated in the Act, will be rendered meaningless and it will result in a situation of acceptance of a tender, irrespective of the fact as to whether or not the tenderer fulfills the eligibility criteria and other terms and conditions. Surely, this is not what the legislature contemplated. The expression, "the tender of the highest bidder shall be accepted" would, by necessary implication, mean that the highest "valid" tenderer will be considered for acceptance or settlement and, therefore, Rule 47(10) of the Rules has to be understood to mean that the tender of the highest "valid" tenderer shall be accepted and that acceptance of tender, other than the highest valid tenderer, shall require prior and formal approval of the government.

23. Admittedly, in the instant case, the tenderer, whose tender was highest, was rejected and, consequently, the respondent No. 5 became the highest valid

tenderer in the fray. That being the position, prior and formal approval of the government was not required to be taken before accepting the tender of the respondent No. 5.

24. From a perusal of the comparative statement, it is seen that the respondent No. 5 had submitted all the documents as required by the tender notice. I have also perused the tender documents submitted by the respondent No. 5 and I am of the opinion that the contention advanced by the petitioner that the tender of the respondent No. 5 was defective has not merit.

25. With regard to the submission relating to the deferment of the last date of acceptance and opening of tender from 13.06.2014 to 16.06.2014, it is to be noted that the writ petition was filed on 12.11.2014, i.e., after the order of settlement was issued in favour of the respondent No. 5. The petitioner did not assail such action immediately and fancied his chances to get settlement and has raised the aforesaid objections only after the order of settlement was issued. 14.06.2014 and 15.06.2014 were, otherwise, holidays being second Saturday and Sunday, respectively.

26. It is not uncommon that on many occasions, holidays or half-holidays are declared by authorities, though such holidays or half-holidays are not listed as such in the Holiday List drawn up at the beginning of the year. Merely because the State respondents had not indicated on what account there was a half-holiday, or that no half-holiday was mentioned on 13.06.2014 in the Government Holiday List, in absence of any prejudice caused to the petitioner and in absence of any allegation of any wrong doing with the tender process by deliberately postponing the date of acceptance and opening, in my opinion, in the facts and circumstances of the case, the order of settlement cannot be interfered with.

27. In view of the above discussions and for the reasons aforementioned, I am of the considered opinion that there is no merit in this writ petition and, accordingly, the same is dismissed. No cost.

