
(2015) 03 GAU CK 0047

In the Gauhati High Court

Case No : WP(C) 4038, 5103, 5373 and 5415 of 2014

Fakar Uddin Ahmed and Others

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Assam Panchayat Act, 1994 — Section 52

Citation : (2015) 03 GAU CK 0047

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : R. Ali, J. Ahmed, Advocates and I.H. Saikia, for the Appellant; B.J. Talukdar, Government Advocate, Advocates for the Respondent

Judgement

Arup Kumar Goswami, J.—Heard Mr. R. Ali, learned counsel for the petitioner in WP(C) 4038/2014 and WP(C) 5415/2014; Mr. I.H. Saikia, learned counsel for the petitioner in WP(C) 5373/2014; and Mr. J. Ahmed, learned counsel for the respondent No. 7 in all the aforementioned three writ petitions and who also represents the petitioner in WP(C) 5103/2014. Also heard Mr. B.J. Talukdar, learned State counsel, appearing for the State respondents.

2. As agreed to by the learned counsel for the parties, all these writ petitions have been taken up for disposal at the admission stage. Since the grievances raised in all these writ petitions relate to the same settlement order, the writ petitions are heard together and are being disposed of by this common judgment and order.

3. The subject-matter of dispute in all the writ petitions is in connection with settlement of Kadong Sonapur Beki Nadir Parghat, falling under the jurisdiction of the Mandia Anchalik Panchayat, for the year 2014-2015, commencing from 01.07.2014 to 30.06.2015.

4. A Notice Inviting Tender (for short, "NIT") was issued by the President and the Executive Officer of Mandia Anchalik Panchayat, on 30.05.2014, for settlement of

Hats, Ghats and Ferries, including Kadong Sonapur Beki Nadir Parghat (hereinafter referred to as the "Ferry"), falling under the jurisdiction of the Anchalik Panchayat, for the year 2014-2015, commencing from 01.07.2014 to 30.06.2015. The last date of submission of tender was fixed at 2-00 P.M., on 17.06.2014, and the date and time of opening of the tenders was fixed on 17.06.2014 at 2-30 P.M. The minimum value of the Ferry was fixed at Rs. 40,000.00.

5. It will be appropriate to briefly narrate the facts of each of the writ petitions, in seriatum, beginning from the first of the writ petitions filed in connection with settlement of the aforesaid Ferry.

A. WP(C) 4038/2014

6. The case projected in WP(C) 4038/2014, which is filed by Fakar Uddin Ahmed, is that he had submitted his tender along with all necessary documents for grant of settlement of the Ferry, in question, in his favour offering his bid at Rs. 3,44,404.00 and the tenders were opened on 17.06.2014 in presence of the tenderers. After opening of the tenders, the bid value of the respective tenderers were declared, but Comparative Statement was not prepared on that day. The General Standing Committee, as provided under Section 52 of the Assam Panchayat Act, 1994 (for short, "the Act"), was constituted on 26.06.2014 and the Committee examined the documents of each of the tenderers on 04.07.2014 and a Comparative Statement was prepared on that day. The tender of the petitioner was accepted by the General Standing Committee as withdrawn although the petitioner never submitted any application for withdrawal of his tender. The petitioner, accordingly, submitted an application on 14.07.2014 before the Executive Officer of the Anchalik Panchayat stating that he had not submitted any application for withdrawal of his tender and also applied for a copy of the application which was stated to have been filed by him and, on such request of the petitioner, the Executive Officer of the Anchalik Panchayat furnished to him a copy of the application dated 01.07.2014, whereby the petitioner purportedly had prayed for withdrawal of his tender. From a perusal of the application, it was clear to him that the signature of the petitioner was forged.

7. Twenty-one numbers of tenders were rejected by the General Standing Committee on various grounds. The Ferry was settled in the previous year at Rs. 2,74,404.00 and the General Standing Committee initially decided to accept the bid of Abdus Sabur at his bid value of Rs. 46,404.00. The tender of the respondent No. 7 was rejected on the ground that he had not submitted Earnest Money in his name.

8. After receipt of the application dated 14.07.2014, indicating that he had not filed any application for withdrawal of his tender, the matter was discussed again in the meeting of the General Standing Committee and, thereafter, another Comparative Statement was prepared on 06.08.2014, however, without informing three members of the General Standing Committee and the tender of

the respondent No. 7 was accepted though he had not submitted Earnest Money in his name. Though respondent No. 7 had submitted Bank Draft No. 776442, dated 12.06.2014, the State Bank of India, Kolgachia Branch had issued a statement stating that the Bank Draft bearing the aforesaid number had been issued against one Javed Ali. The Comparative Statement was not signed by all the members and without placing the same before the General Standing Committee, the same was forwarded to the Zilla Parishad for approval of the settlement.

9. The petitioner submitted a representation dated 11.08.2014 before the Chief Executive Officer, Barpeta Zilla Parishad, as his tender had been illegally rejected on the basis of a forged application. Three members of the General Standing Committee, whose signatures were not obtained while preparing the Comparative Statement on 06.08.2014, had submitted a complaint before the Chief Executive Officer, Barpeta Zilla Parishad, requesting him not to accept the Comparative Statement and to return the same. However, without considering the complaint, approval was granted for settlement of the Ferry in favour of respondent No. 7.

10. It was in the aforesaid factual matrix that the writ petition was filed praying for setting aside and quashing the Comparative Statement prepared on 06.08.2014 and the approval granted by the Barpeta Zilla Parishad to settle the Ferry with the respondent No. 7 and also praying for a direction to settle the Ferry in favour of the petitioner as he is the highest valid bidder.

11. On 22.08.2014, while issuing notice of motion, this Court passed an interim order restraining the respondent No. 7 from operating the Ferry on the basis of temporary settlement order issued by the Anchalik Panchayat.

12. An affidavit-in-opposition was filed by the respondent No. 7 stating that, in all, 25 numbers of tenderers had submitted tenders and he had submitted his bid for Rs. 47,000.00. It is stated in the affidavit-in-opposition that 17 numbers of tenderers, including the petitioner, had submitted applications for withdrawal of their tenders and the withdrawal application of the petitioner was countersigned by the Anchalik Panchayat Member of No. 83 Sonapur Rubhi Gaon Panchayat and that the same was also received by the President of the Anchalik Panchayat. The allegation of the petitioner that he had not submitted any application for withdrawal of his tender was denied. It is stated that Annexure-7, enclosed with the writ petition, which is an application addressed to the President/Chief Executive Officer, Barpeta Zilla Parishad, was prepared after the General Standing Committee of the Anchalik Panchayat had taken a decision. The signature appearing in the application filed by the petitioner on 14.07.2014 is not same as in Annexure-7. It is also stated that the respondent No. 7 was the highest bidder amongst the valid tenderers and, therefore, the settlement was rightly offered to him. The tenderers at Serial Nos. 2 to 4, 6 to 11, 13 to 16 and 18 to 20 had withdrawn their tenders and the tenders submitted by the tenderers at Serial Nos. 5, 17 and 21 were found defective for non-submission of

required documents. It is also stated that out of 6 members of the General Standing Committee, 4 members were present in the meeting held on 06.06.2014 and absence of 2 members is of no consequence. In the said affidavit, it was also mentioned that regular order of settlement in respect of the Ferry was issued in his favour.

13. The Chief Executive Officer, Barpeta Zilla Parishad, in his affidavit, stated that petitioner's application for withdrawal was countersigned by the Anchalik Panchayat Member of 83 No. Sonapur Rubhi Gaon Panchayat. It is also stated that respondent No. 7 had emerged as the highest valid tenderer. Tenderers at Serial Nos. 1 to 4, 6 to 11 and 18 to 20 of the Comparative Statement had withdrawn their tenders and the tenders of the tenderers at Serial Nos. 5, 12, 17 and 21 were found to be defective.

B. WP(C) 5103/2014

14. The respondent No. 7 in WP(C) 4038/2014 filed WP(C) 5103/2014 stating that in pursuance to the NIT, 25 numbers of tenderers had submitted tenders and out of them, 17 tenderers subsequently submitted applications for withdrawal of their tenders and the General Standing Committee of the Mandia Anchalik Panchayat, in its meeting held on 06.08.2014, adopted a resolution vide Resolution No. 1 to the effect that applications filed by the tenderers for withdrawal of their respective tenders, would be accepted, but their security amount would be forfeited. It was also noted that four tenderers, namely, Mohir Uddin, Ali Akbar Ahmed, Nosim Uddin and Fakar Uddin, son of Elahi Mia, who had submitted applications for withdrawal of their tenders, again filed applications to treat the tenders as valid tenders, but the General Standing Committee decided to reject such applications. The tenderers at Serial Nos. 2 to 4, 6 to 11, 13 to 16 and 18 to 20 of the Comparative Statement had withdrawn their tenders and the tenders of the tenderers at Serial Nos. 5, 7 and 21 were found to be defective for non-submission of the required documents.

15. On 08.08.2014, the Executive Officer, Mandia Anchalik Panchayat wrote a letter to the Chief Executive Officer, Barpeta Zilla Parishad, submitting tender papers along with the relevant documents and the Comparative Statement for confirmation of the settlement made in favour of the petitioner and, by a letter dated 12.08.2014, the Zilla Parishad communicated to the Executive Officer of the Anchalik Panchayat about the confirmation of the settlement of the Ferry made in favour of the petitioner. However, no formal settlement order was issued to the petitioner. Subsequently, the petitioner came to learn that one Mahir Uddin filed a writ petition, being WP(C) 3726/2014, in which this Court had, while issuing notice by order dated 06.08.2014, passed an interim order to the effect that pendency of the case shall not be a bar for the Settling Authority to regularly settle the ferry with the most deserving bidder. The said writ petition was subsequently withdrawn by the petitioner.

16. While the aforesaid writ petition, namely, WP(C) 3726/2014, was pending,

another writ petition was filed by one Fakar Uddin Ahmed, which was registered as WP(C) 4038/2014, and this Court, while issuing notice by order dated 22.08.2014, had also passed an interim order restraining the petitioner in WP(C) 5103/2014 [i.e., respondent No. 7 in WP(C) 4038/2014] from operating the Ferry on the basis of temporary settlement granted by the Anchalik Panchayat. It is stated that no such temporary settlement was granted in favour of the petitioner in WP(C) 5103/2014.

17. It is in the aforesaid factual matrix that the writ petition was filed by Abdul Kuddus Ali praying for a direction to the respondents for issuing a formal settlement order.

18. On 25.09.2014, this Court, while issuing notice, provided that the settlement of Ferry is permitted to be made through regular process instead of operating the same through ad hoc arrangement.

C. WP(C) 5373/2014

19. Another tenderer, namely, Abdul Sabbar, filed writ petition numbered as WP(C) 5373/2014 stating that the Comparative Statement was prepared on 06.06.2014, in which the petitioner figured at Serial No. 23 and the respondent No. 7 [writ petitioner in WP(C) 5103/2014] figured at Serial No. 22. On 08.08.2014, three members of the General Standing Committee submitted a complaint before the Chief Executive Officer, Barpeta Zilla Parishad, alleging illegalities in the matter of settlement of the Ferry in question. Another complaint was made by the said members stating that an illegal Comparative Statement had been prepared by the Chairman of the Anchalik Panchayat. It was also alleged by them that the tender of the respondent No. 7 should have been cancelled because the Bank Draft, attached to his tender papers, had been issued in the name of another person, who had deposited the money in the bank. It is pleaded that the Money Receipt amounting to Rs. 50.00 was not enclosed with the tender paper of the respondent No. 7 and up-to-date revenue payment receipt of the Zamindar (Guarantor) was also not enclosed along with the tender papers and, as such, the tender of the private respondent was defective and the petitioner being the highest valid tenderer with his bid at Rs. 46,404.00, he should be granted the settlement after setting aside and quashing the order of settlement made in favour of the respondent No. 7.

20. In the affidavit filed, the Executive Officer of the Anchalik Panchayat has taken the same stand as taken by the Chief Executive Officer, Barpeta Zilla Parishad in his affidavit filed in WP(C) 4038/2014. Additionally, it is stated that while the respondent No. 7 did not endorse his money receipt of Rs. 50.00 in his tender, he had purchased the tender papers by paying Rs. 50.00.

21. In the affidavit filed by the respondent No. 7, he has, more or less, reiterated the stand as reflected in his writ petition, registered as WP(C) No. 5103/2014. The projected case in WP(C) 5103/2014 has already been discussed and, therefore, the stand taken is not elaborated herein. Suffice it is to say that he

has asserted that he had submitted all documents required under the NIT and he denied that he had not enclosed Money Receipt of Rs. 50.00 along with his tender and the Revenue Payment Receipt.

D. WP(C) 5415/2014

22. WP(C) 5415/2014 is filed by one Fakar Uddin, who is also the petitioner in WP(C) 4038/2014, challenging the order of settlement dated 30.09.2014, Resolution Nos. 4 and 5 adopted by the General Standing Committee of the Anchalik Panchayat in the meeting held on 06.08.2014, and praying for a direction to the respondent authorities to settle the Ferry with the petitioner for the year 2014-2015.

23. In the writ petition, apart from the allegations on which he had filed the other writ petition, being WP(C) 4038/2014, it is stated that the tender of the respondent No. 7 was defective because respondent No. 7 had not submitted Bank Draft, as required under Clause 3(ka) of the NIT, and also had not submitted Money Receipt as required under Clause 21 of the NIT.

24. While issuing notice on 27.10.2014, this Court passed an interim order suspending the settlement order dated 30.09.2014. It was, however, provided that the Ferry can be made operational in public interest without involvement of either the petitioner or the respondent No. 7.

25. Mr. R. Ali, learned counsel for the petitioner in WP(C) 4038/2014 and WP(C) 5415/2014 submits that the petitioner never submitted any application for withdrawal of his tender and he, having come to know that somebody had played mischief by submitting such an application, submitted a representation on 14.07.2014 to consider his bid and the General Standing Committee having met only on 06.08.2014, it was necessary and incumbent on its part to have taken into account his bid for the purpose of settlement and it acted illegally, with oblique motive and extraneous consideration, in not accepting the request made by the petitioner to take his tender into consideration. Mr. Ali has drawn the attention of the Court to the Comparative Statement prepared on 06.08.2014, which is signed by only three members of the General Standing Committee to contend that there are no signatures of five other members. He submits that the settlement of the Ferry in favour of respondent No. 7 at a paltry sum of Rs. 47,000.00, as compared to the bid of the petitioner at Rs. 3,44,404.00, is illegal and unsustainable in law and, as such, the Resolution Nos. 4 and 5 adopted on 06.08.2014 in the meeting of the General Standing Committee of the Anchalik Panchayat as well as the order of settlement dated 30.09.2014 made in favour of the respondent No. 7 are liable to be set aside and quashed. That apart, he has submitted that it is manifest from the certificate issued by the bank [Annexure-4 to WP(C) 5415/2014] that the Bank Draft No. 776442, dated 12.06.2014, was issued in the name of one Javed Ali. The further submission of Mr. Ali is that the respondent No. 7 did not enclose the Money Receipt along with his tender as provided under Clause 21 of the NIT.

26. Mr. I.H. Saikia, learned counsel for the petitioner in WP(C) 5373/2014 has advanced similar submissions as submitted by Mr. Ali that the tender of the respondent No. 7 is defective on the ground of the Bank Draft having not been purchased by the respondent No. 7 and he having not enclosed the Money Receipt of Rs. 50.00 along with the tender documents as required under Clause 21 of the NIT. He has further submitted that the respondent No. 7 did not submit Land Holding Certificate of the guarantor and up to date Revenue Receipt of the guarantor in violation of Clause 3 (gha) of the NIT. In support of his submission, Mr. Saikia has placed reliance on the following judgments:

(i) A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, AIR 2007 SC 1546 : (2007) 4 JT 186 : (2007) 2 RCR(Civil) 431 : (2007) 4 SCALE 88 : (2007) 4 SCC 221 : (2007) 3 SCR 603 : (2007) AIRSCW 2212 : (2007) 2 Supreme 837 .

(ii) K.D. Sharma Vs. Steel Authority of India Ltd. and Others, (2008) 4 BC 557 : (2008) 8 JT 57 : (2008) 10 SCALE 227 : (2008) 12 SCC 481 .

27. Mr. J. Ahmed, learned counsel appearing for respondent No. 7 in WP(C) 5415/2014, WP(C) 4038/2014 and WP(C) 5373/2014, who is the petitioner in WP(C) 5103/2014, has submitted that the bid of Abdul Kuddus Ali, who was settled with the Ferry in question is valid in all respects and, therefore, there is no illegality in grant of settlement in his favour. He has submitted that the letter dated 14.07.2014, which was enclosed with WP(C) 4038/2014 and WP(C) 5415/2014, had not been submitted by the petitioner of the said two writ petitions on 14.07.2014. He has also submitted that Annexure-11 to WP(C) 5415/2014 had also not been submitted before the Zilla Parishad. There is also no receipt thereof indicating that the same was received by the Barpeta Zilla Parishad. He has further submitted that whether or not the petitioner in WP(C) 5415/2014 and WP(C) 4038/2014 had submitted any application for withdrawal of his tender is a disputed question of fact. It is also on record that many tenderers had submitted applications for withdrawal of their tenders and, subsequently, some of them had submitted applications for withdrawing the applications filed seeking withdrawal of tenders. In the circumstances, the General Standing Committee committed no illegality in deciding not to entertain request made by such tenderers subsequently.

28. Mr. B.J. Talukdar, learned State counsel has submitted that though the respondent No. 7 (petitioner in WP(C) 5103/2014) had purchased Money Receipt, the same was not deposited along with the tender for grant of settlement of the Ferry in question. He has also produced the records for the perusal of the Court.

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

30. On a perusal of the records produced by Mr. Talukdar, it is found that in

pursuance of Section 52 of the Act and as per Resolution No. 7 of the meeting of the Anchalik Panchayat held on 30.04.2014, the General Standing Committee was constituted on 26.06.2014 with the President of the Mandia Anchalik Panchayat as the Chairman and five other Anchalik Panchayat Members as the Members of the said General Standing Committee. Thus, there are six members in the said General Standing Committee including the Chairman. Twenty-five tenderers had submitted tenders seeking settlement of the Ferry. In the Comparative Statement, the serial numbers of the tenderers have been made on the basis of the value of the bids offered by them. The Comparative Statement was signed by four members including the Chairman. The tenderers at Serial Nos. 1 to 4, 6 to 11, 13 to 16 and 19 and 20 withdrew their bids by filing applications and, accordingly, their applications were accepted by forfeiting their Earnest Money. The petitioner in WP(C) 4038/2014 and WP(C) 5415/2014 figured at Serial No. 10 of the Comparative Statement. The tenders of the tenderers at Serial No. 5, 12, 17 and 21 were rejected. The tender of the respondent No. 7, who is the petitioner in WP(C) 5103/2014, was found to be valid and, accordingly, settlement was given in his favour.

31. The petitioner in WP(C) 5373/2014, namely, Abdul Sabbar, figured at Serial No. 23. There is no indication as to whether the tender of Abdus Sabur was valid. Abdus Sabur had submitted 11 documents along with his tender, which included the tender form. In respect of the tenders of the tenderers at Serial Nos. 24 and 25 also, no remarks have been offered with regard to validity of the tenders.

32. Clause 1(2), 3(ka), 3 (gha), 3 (da) and Clause 21 of the NIT being relevant for the purpose of these writ petitions, the same are quoted below:

"Clause 1(2): The prescribed tender form and NIT may be collected from the office of the Anchalik Panchayat by depositing payment of Rs. 50.00 during office hours till the last date of receipt of tenders.

Clause 3(ka): Tenderers should enclose the following certificates and documents along with the tender.

Earnest Money against the name of the Hat/Ghat/Ferry mentioned in the list enclosed should be deposited by means of bank draft of any Gramin Bank/ Nationalised bank in favour of the Executive Officer of the Anchalik Panchayat. A tender without the Bank Draft will not be accepted.

Clause 3(gha): It is essential that the intending tenderer and his guarantor should have Periodic Patta land in their own names. The tenderer must enclose along with the tender documents relating to their having Periodic Patta land in their own names as well as revenue payment clearance certificate till the current year. The certificate relating to land should be obtained from the concerned Revenue Circle Officer and current land revenue clearance certificate must be obtained from the concerned Mauzadar and the same shall be enclosed along with the tender. A person can be guarantor for one tender only.

Clause 3(da): No tenderer can withdraw tender submitted. In case a tenderer withdraws his tender, his Earnest Money will be forfeited and, treating him to be a defaulter, his tender will be rejected in respect of other Hats. Highest valid tenderer cannot withdraw his tender. If, for some reason the highest bidder withdraws his bid, the subsequent highest valid tenderer would be given the settlement and, in such an event, the difference between the amount of the highest tenderer and the amount at which the settlement is made shall be recovered as arrear of land revenue from the highest tenderer under the Bengal Public Demand Recovery Act, 1934, by institution of Bakijai case.

Clause 21: Every tenderer should deposit an amount of Rs. 50.00 (non-refundable) as Earnest Money to the Anchalik Panchayat and the Money Receipt of the same should be enclosed with the tender. Otherwise, the tender will not be accepted. For every Hat, separate receipt will have to be deposited."

33. The guarantor of Abdul Kuddus Ali, in whose favour the settlement was granted, is one Musaraf Hussain. It appears that Musaraf Hussain is the brother of Abdul Kuddus Ali and he himself was a tenderer in the fray.

34. Abdul Kuddus Ali enclosed eight numbers of documents along with his tender forms and the number of the total documents along with the tender comes to nine. He had submitted a document indicating that he has a plot of land measuring 8 Lechas, covered by Dag No. 13 of Periodic Patta No. 36. The certificate of the Mauzadar, however, shows that the land revenue was paid in respect of Periodic Patta No. 192 and not in respect of Patta No. 36. There is, thus, discrepancy with regard to the certificate relating to payment of revenue and the Land Holding Certificate. There is no Land Revenue Payment certificate in respect of the guarantor and, as such, the tender of the respondent No. 7 could not have been treated to be valid in view of Clause 3(gha) and Clause 3(da). The certificate issued by the State Bank of India shows that the Bank Draft, which the respondent No. 7 had submitted, had been issued to one Javed Ali and, thus, the respondent No. 7 had not purchased the Draft himself and that explains why the Money Receipt of Rs. 50.00 was not enclosed by him along with his tender. The explanation offered in the affidavit of the State respondents that the respondent No. 7 had purchased the tender paper by paying Rs. 50.00 though the receipt was not enclosed, does not answer the question with regard to respondent No. 7 not enclosing Money Receipt of Rs. 50.00 paid for purchase of the Bank Draft, a requirement under Clause 21 of the NIT. Therefore, the stand of the respondent authorities that the respondent No. 7 submitted all requisite documents and therefore, his tender is valid is not sustainable in law.

35. For the reasons mentioned above, the tender submitted by respondent No. 7 is held to be defective and, therefore, the settlement made in favour of respondent No. 7 in WP(C) 5415/2014, WP(C) 4038/2014 and WP(C) 5373/2014, who is the writ petitioner in WP(C) 5103/2014, is set aside and quashed.

36. The petitioner in WP(C) 5415/2014 and WP(C) 5373/2014 acknowledges that

he had submitted an application, on 14.07.2014 (Annexure-4 and Annexure-7, respectively, of WP(C) 5103/2014 and WP(C) 4038/2014) to the Executive Officer of Mandia Anchalik Panchayat informing that by forging his signature somebody had submitted an application for withdrawing the tender submitted by him. By the said letter, he had asserted that he was ready to take settlement of the Ferry in question. In respect of Annexure-4 and Annexure-7, respectively, of WP(C) 5103/2014 and WP(C) 4038/2014, which is one and the same document, there is no endorsement of the Anchalik Panchayat and these documents are disputed as not having been submitted before the Anchalik Panchayat. In the application dated 14.07.2014, which is in the records produced by Mr. Talukdar, Fakar Uddin stated that for some special reasons he had applied to withdraw his tender and he prayed for rejection of his application for withdrawal and to keep his tender intact. Thus, it is seen that the document which Fakar Uddin has placed on record of the writ petitions as the application dated 14.07.2014 filed by him is not the same which is found on the original records produced by Mr. Talukdar. Having regard to the contents of the application dated 14.07.2014 found on the record, this Court is of the considered opinion that the General Standing Committee committed no illegality in not considering the tender of Fakar Uddin. In view of the facts and circumstances of the cases, this Court does not consider it necessary to discuss the judgments cited by Mr. Saikia, all of which relate to committing of fraud by a litigant.

37. Accordingly, WP(C) No. 4038/2014 and WP(C) No. 5415/2014 are held to be without any merit and, accordingly, same are dismissed.

38. In view of the above discussions, the Anchalik Panchayat will consider the tenders of tenderers at Serial Nos. 23, 24 and 25 of the Comparative Statement and proceed to settle the market in accordance with law within a period of fifteen days from the date of receipt of a certified copy of this order. Till the order of settlement is made, the existing arrangement will continue.

39. Clause 3(da) of the NIT provides that no tenderer can withdraw tender. In case a tenderer withdraws his tender, his Earnest Money will be forfeited and, treating him to be a defaulter, his tender will be rejected in respect of other Hats. Highest valid tenderer cannot withdraw his tender. If for some reason the highest bidder withdraws his bid, the subsequent highest valid tenderer would be given the settlement and, in such an event, the difference between the amount of the highest tenderer and the amount at which the settlement is made shall be recovered as arrear of land revenue from the highest tenderer under the Bengal Public Demand Recovery Act, 1934, by institution of Bakijai case. Perusal of the Comparative Statement has revealed a disturbing feature. In respect of tenderers who withdrew their tenders, it is not indicated as to whether their tenders were, otherwise, valid or not. Even in respect of the highest tenderer, who also withdrew his bid, there is no indication as to whether his bid was valid or not. In absence of a finding by the General Standing Committee that bid of such a highest tenderer is valid, provision made in the NIT for recovery of the

difference in the amount of the highest bid and the price at which settlement was offered by way of arrear of land revenue is rendered redundant. Therefore, in any NIT where there is a clause similar to Clause 3(da) of the instant NIT, it will be obligatory on the part of the General Standing Committee to record its observation regarding validity of each and every tender irrespective of the fact whether a tender is withdrawn or not.

40. In the result, WP(C) Nos. 4038/2014, 5103/2014 and 5415/2014 are dismissed. WP(C) No. 5373/2014 is allowed as indicated above. No cost.