

(1987) 02 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 1175 of 1986

Hemkanta Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Assam Panchayati Raj (Administrative) Rules, 1973 — Rule 28, 28

Citation : (1987) 1 GLR 206

Hon'ble Judges : K.N.Saikia, C.J. and J.M.Srivastava, J

Bench : Division Bench

Advocate : S.S.Dey, P.Prasad, N.Islam, K.K.Mahanta, A.M.Mazumdar, Advocates appearing for Parties

Judgement

Saikia, C.J. (Acting).

1. Heard the learned counsel for the petitioner, Mr. A. M. Mazumdar. Heard also Mr. K.K. Mahanta, the learned counsel for respondent No. 5 as well as Mr. P. Prasad, the learned Senior Government Advocate, Assam.

2. The petitioner impugns the appellate order of the Government of Assam dated 25th September, 1986 (vide AnnexureD to the writ petition) affirming the settlement of Ambagan Biweekly Bazar made by the Nagaon Mahkuma Parisbad with the respondent No. 5, Shri Kirtiuath Borah. Pursuant to a sale notice seven persons submitted tenders for the aforesaid bazar offering the following amounts :

1. Shri Chandiram Deka Rs. 10,125/per month
2. Shri Surendra Chandra Mandal Rs. 9,505/ per month
3. Shri Dinabandhu Mandal Rs. 8,405/ per month
4. Shri Hem Kanta Saikia Rs. 7,205/ per month
5. Shri Ram Nath Mandal Rs. 6,551/ per month

6. Shri Kirtinath Borah Rs. 6,211/ per month

7. Shri Manindra Mazumdar Rs.

5,555/ per month.

While the petitioner offered Rs. 7,205/, the respondent No. 5 offered Rs. 6,211/ only and yet the Mahkuma Parishad settled the bazar with him. On appeal by the petitioner, the State Government in the appellate order observed that the Mahkuma Parishad in its comparative statement showed the petitioner's bid as "exorbitant bid" while that of the respondent No. 5 was found to be "reasonable". The Mahkuma Parishad considered the higher bids similarly exorbitant. Before the appellate authority it was submitted for respondent No. 5 that the bazar in question had been settled in his favour and that in course of running the bazar he wanted to devote himself for the benefit of certain public organisations, such as, Higher Secondary School and Girls' School and that should be considered as noble cause on his part. The appellate authority upheld the finding of the Mahkuma Parishad that the bid of the petitioner was an exorbitant bid; inasmuch as the bid of respondent No. 5 was about 55% above the schedule rate and upheld the settlement with respondent No. 5 and rejected the petitioner's appeal.

3. Mr. Mazumdar assails the appellate order on two grounds firstly that there was no reasonable ground for holding the bid of the petitioner at Rs. 7,205/ to be exorbitant and that of respondent No. 5 at Rs. 6,211/ to be reasonable. Secondly, that the appellate authority ought not to have agreed with the submission that the bazar in question had been settled in favour of respondent No. 5 because in course of running the bazar he wanted to devote himself for the benefit of certain public organisations, which, according to him, was not a relevant consideration in granting settlement of the bazar.

4. Mr. Mahanta answers that whether a bid is exorbitant or not is a question of fact and the Mahkuma Parishad having considering the rate of increase in bids in successive years and having held that the bid of respondent No. 5 was reasonable and that of the petitioner as exorbitant, this Court should not interfere with that finding of fact. As regards devotion to organisations of public benefit, Mr. Mahanta's submission is that the Mahkuma Parishad being a local organisation, has to keep in mind all these aspects while making settlement of a bazar in the interest of development of the locality.

5. Rule 28 of the Assam Panchayati Raj (Administrative) Rules, 1973, prescribes the procedure for sale and settlement of Hats. Under subrule (4) thereof, after preparation of the comparative statements under rule (3), the Chief Executive Council/or shall place such statement along with the tenders before a meeting of the Executive Committee to be convened for the purpose of selecting the suitable tenderers. The Executive Committee shall have the right to reject any tender at their discretion on any reasonable ground recording the ground for such rejection in writing. The question, therefore; is whether the ground that the petitioner's

bid was "exorbitant" can be held to be reasonable. "Exorbitant", according to Black's Law Dictionary, means deviating from the normal or customary course, or going beyond the rule of established limits of right or propriety. "Excessive", according to the same Dictionary, means greater than what is usual or proper : A general term for what rupees beyond just measure or amount. Considering the fact that the bids in the instant case ranged between Rs. 5,555/ at the lowest and Rs. 10,125/ at the highest the Mahkuma Parishad held the second lowest bid of respondent No. 5 to be reasonable and as many as five bids above that as "exorbitant". It cannot be said that the Mahkuma Parishad should or can be totally oblivious of the need for raising revenue to the Parishad. The rejection of the bids ranging from Rs. 6,551/ to Rs. 10,125/smacks of indifference of the Parishad towards raising revenue. At any rate, on consideration of all the seven bids it cannot be said that the bid of Rs. 1,205/ and above were exorbitant. This is more so considering the trend of rising prices in general. The line for holding a bid "exorbitant" should not give the impression that it was more or less to suit a certain bid being oblivious of the need for raising higher revenue to the Parishad.

6. As regards the submission made by the learned counsel for the respondents before the appellate authority that the settlement was made with respondent No. 5 as in course of running the bazar he wanted to devote himself to public organisations, we find that the appellate authority has only cited the submission but has not given any endorsement or finding on that. It is, therefore, not necessary to say that such considerations were not relevant. Even so, considering the fact that large number of bids were rejected as "exorbitant bids", we feel that there is scope for reconsideration of the appeal by the appellate authority.

7. Under the above circumstances, while not setting aside the appellate order, we remand the petitioner's appeal to the appellate authority for considering it afresh in the light of the observations made hereinabove. As only five months are left, let the appellate authority hear the appeal as expeditiously as possible, preferably within one month from the date of receipt of this order. We make it clear that we are not setting aside the impugned order and that it will be open for the appellate authority to decide in accordance with law.

8. In the result this petition is allowed to the extent indicated above. We, however, make no order as to costs.