
(2008) 09 GAU CK 0093
In the Gauhati High Court

Jadav Saikia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Citation : (2009) 5 GLR 55 : (2009) 5 GLT 524

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—All the writ petitions are in respect of settlement of the particular daily and weekly markets. They have been heard analogously and are being disposed of by this common judgment and order.

2. The markets in question are Simoluguri Daily Market and Simoluguri Weekly Market in the district of Sivasagar. While the petitioners in WP(C) No. 2390/08 and 3945/08 are the aspirants for settlement of the daily market for the year 2008-09 (1.4.2008 to 31.3.2009), the petitioner in WP(C) No. 2392/08 is the aspirant for the weekly market. In all the writ petitions, it is the case of the petitioners that since they are the highest valid tenderers, the markets ought to have been settled with them instead of settling the same with the private respondents, whose bid values are lower than that of the petitioners.

3. The respective bids offered by the parties involved in the writ proceeding, in respect of the markets are as follows:

4. The issue relating to the settlement of both the markets earlier came up for consideration before this Court by way of 4 writ petitions being WP(C) No. 1271, 1272, 1156 and 1168 of 2008. It was found that the settling authority, i.e., Simoluguri Town Committee having finalised the matter after issuance offender, etc., had sent the matter to the Director of Municipal Administration for necessary approval. In such a situation, all the writ petitions were disposed of by order dated 11.4.2008 providing that the Director before granting the approval

relating to settlement of the markets would consider the matter in accordance with law. Be it stated here that the Town Committee had recommended the settlements in favour of the private respondents herein.

5. After the aforesaid order of this Court, the Director instead of deciding the matter relating to approval of the recommendation made by the settling authority issued direction vide order dated 22.4.2008 for settlement of both the markets with the petitioner in the first two writ petitions. Being aggrieved, the parties who were favoured with the settlement by the Town Committee approached this Court by filing writ petitions being WP(C) No. 1775, 1681 and 1677 of 2008.

6. The aforesaid writ petitions were disposed of by order dated 22.5.2008 setting aside and quashing the order dated 11.4.2008 passed by the Director and remanding the matter back to the Simaluguri Town Committee, i.e., the settling authority to decide the matter in accordance with law. It was provided that such decisions would be arrived at in accordance with law and taking into account the materials available on record. In the order the power and jurisdiction of the Director in such matter was considered and it was held that the settling authority being the Town Committee, the Director could not have issued direction in the particular manner favouring the case of the petitioners.

7. After the aforesaid order of this Court, the settling authority has passed the impugned orders both dated 2.6.2008 settling the daily market and the weekly market with the private respondents, to be precise, respondent No. 6/4. Being aggrieved, the petitioners have approached this Court by filing the writ petitions.

8. I have heard Mr. S.N. Sarma, learned senior Counsel, assisted by Mr. B.D. Goswami, learned Counsel for the petitioners in the first two writ petitions and Mr. U. Bhuya, learned Counsel appearing in the third writ petition. I have also heard Mr. S. Dasgupta, learned Counsel appearing for the Town Committee as well as Mr. P.J. Saikia and Mr. P.J. Phukan, learned Counsel appearing for the settlement holders. I have also heard Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate, representing the State respondents.

9. In the comparative statement prepared in respect of the daily market detailing the necessary particulars of the tenderers, while it was indicated that the settlement holder, i.e., the private respondent and the petitioner in the third writ petition submitted all the required documents, but the petitioner in the first writ petition did not submit land documents in respect of the Jamindar. Further, in the column pertaining to percentage of bid compared to the Government value, it was indicated that the bid offered by the petitioner was 77.54% above, while it was 48.71% above in respect of the private respondents. So far as the third writ petition is concerned same was 61% above the Government value.

10. So far as the weekly market is concerned, in the comparative statement it was indicated that the petitioner did not submit land documents of the Jamindar, while the private respondent did submit. As regards the percentage, it was

indicated that the bid offered by the petitioner was 28.20% above the Government value, while that of the private respondent was 15% above.

11. On perusal of both the comparative statements, it appears that indication therein was that the tenders submitted by the petitioners in WP(C) No. 2390 and 2392 of 2008 lacked certain documents, but on the other hand, the tenders submitted by the private respondents as well as the petitioner in WP(C) No. 3945/2008 were complete in all respect. While it is the case of the petitioner in the first two writ petitions that such remark of non-submission of land documents of the Jamindar are not correct and that the petitioner being the highest bidder in respect of both the markets, ought to have been settled with the markets, it is the case of the third writ petitioner that he being the highest valid bidder, ought to have been settled with the daily market instead of the private respondent. On the other hand, it is the case of the respondents that the tenders submitted by the petitioner in the first two writ petitions being defective and the rates also being exorbitant compared to the Government value, the markets have been settled with the private respondents. It is their further case that although the tender submitted by the petitioner in the third writ petition in respect of the daily market was complete in all respect, but the bid offered by him was found to be exorbitant.

12. I have considered the submissions made by the learned Counsel for the parties as well as the materials on record. I have also gone through the records including the minutes of the proceedings of the Town Committee towards settlement of the markets. I have given my anxious consideration to the same.

13. The only consideration before this Court is as to whether the decision of the Town Committee to settle the markets with the private respondents is actuated by any mala fide and/or colourable exercise of power. Although, Mr. Sarma, learned Counsel for the petitioners in the first two writ petitions by producing the copies of the tender papers submitted that the tenders submitted by the petitioners were complete in all respect, but on verification of the tenders submitted by the petitioners, it is found that although in the tender form, the petitioner mentioned about the land particulars of the Jamindar, but the supporting documents were not submitted. Thus, without the supporting documents, the statements describing the land of the Jamindar were of no consequence.

14. Although, it was submitted that there was no requirement to submit such documents alongwith the tenders, but on scrutiny of the tenders submitted by the parties including that of the petitioner what is found is that all the tenderers including the petitioner submitted supporting-documents in respect of the statements and/or declaration made in the tender form. The relevance of furnishing the supporting land documents can be judged from two angles. In the tender form there are columns relating to description of own land and that of the Jamindar. All the tenderers including the petitioner understood the Clauses well so as to furnish land documents pertaining to the land standing in their names.

While the other tenderers also submitted land documents pertaining to the land of the Jamindar, the petitioner did not do so. Secondly, mere description of land in the tender form cannot be said to be sufficient unless supported by adequate documents. All the tenderers understood the necessity of submitting the land documents well, but the petitioner while conforming to the requirement in respect of own land, failed to do so in respect of the land of the Jamindar.

15. So far as the petitioner in WP(C) No. 3945/2008 is concerned, he submitted all the documents including the land documents pertaining to the Jamindar. Thus, his tender was complete in all respect. It is in this context, Mr. Bhuyan, learned Counsel submitted that since the tender submitted by the petitioner was the highest valid tender, the daily market ought to have been settled with him instead of the private respondent.

16. The Town Committee, i.e., the settling authority, after remand of the matter by this Court once again proceeded with the matter towards settlement of the markets. A threadbare discussion was made in its meeting held on 31.5.2008. All the members present took part in the discussion, in which, the tenders submitted by the tenderers came up for consideration one by one. At this stage, it will be pertinent to mention here that the petitioner in the first writ petition was the settlement holder in respect of the daily market initially for the year 2005-06 at his bid value of Rs. 8,44,000. He could obtain extension of the term for the year 2006-2007 and again for the year 2007-2008. Extensions were prayed for on account of loss suffered in operating the market.

17. The Town Committee in its aforesaid meeting held on 31.5.2008 discussed all the aspects of the matter including the percentage of rates offered by the bidders compared to the Government bid value. It appears that the Town, Committee while considering the case of the petitioner in WP(C) No. 2390/2008 for settlement of the daily market took note of the fact that his bid value was 77.54% above the Government value and that his tender also did not accompany the land documents. It was also discussed as to how he had obtained extension on earlier two occasions on ground of sustaining loss. So far as the extension for the year 2007-2008, the suggestion made by the Director was to reduce the extension rate to 7.5% as against recommended 20%. That aspect of the matter was also taken into consideration.

18. On perusal of the aforesaid minutes of discussion what has further transpired is that considering all the above aspects of the matter, the Town Committee took a conscious decision to settle the daily market at the particular rate, which although would be above the Government rate, but at the same time would not be exorbitant. The members present expressed their views that in case of settlement of the market at an exorbitant rate, same would lead to serious repercussions including effect on revenue. It was in such considerations, the settling authority decided to settle the daily market with the private respondent.

19. As regards the weekly market, the members of the Town Committee were of

the view that the rate offered by the private respondent, which is 15% above the Government value would be conducive to be accepted. As noted above, the tender submitted by the petitioner was not complete in all respect in absence of the land documents pertaining, to the Jamindar. Further, his bid was 28% above the Government value, which was considered to be in the higher side. The Town Committee taking into account all the practical aspects of the matter including the interest of revenue of the Town Committee adopted resolutions in its meeting held on 31.5.2008 to settle both the markets in favour of the respective private respondents.

20. The above decision making process of the Town Committee cannot be said to be founded on any arbitrary, mala fide and/or colourable exercise of power. The decision was arrived at democratically and honestly. Further, it is not the rule of thumb that a highest bidder must be settled with the market in question unmindful of other hosts of considerations. The authority must be at liberty to deal with the matter in the light of the other conditions applicable to the matter. The Town Committee not only considered the bids offered by the tenderers, but also considered the practical utility of such bids and other attending facts and circumstances including the earlier recommendation of the Director, in which the extension value was reduced to 7 1/2% from 20% recommended; the ground of extension in favour of the petitioner, which was, loss sustained, etc. If upon consideration of the same, the Town Committee arrived at a particular acceptable rate for settlement of the markets, same cannot be said to be a hidden Clause as was contended by the learned Counsel for the petitioners.

21. For all the aforesaid reasons, I do not find any infirmity in the impugned orders passed by the Town Committee towards settlement of the markets in favour of the respective private respondents. Consequently, I do not find any merit in the writ petition and resultantly, all the writ petitions are dismissed. There shall be no order as to costs.