

(2015) 03 GAU CK 0080

In the Gauhati High Court

Case No : WP (C) Nos. 25, 348 and 523 of 2015

Jalal Uddin and Others

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Assam Panchayat Act, 1994 — Section 105(3), 106(3), 109(3), 127

Citation : AIR 2015 Guw 149 : (2016) 1 BC 258 : (2015) 2 GLT 1097

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : A. Sarma, for the Appellant; B.J. Talukdar, Government Advocate, Advocates for the Respondent

Judgement

Arup Kumar Goswami, J—In WP(C) 25/2015, I have heard Mr. A. Sarma, learned counsel for the petitioner, Mr. A. Matin, learned counsel for the respondent No. 8 and Mr. B.J. Talukdar, learned State counsel appearing for the respondent Nos. 1 to 7.

2. In WP(C) No. 348/2015, I have heard Mr. D.A. Kaiyum, learned counsel for the petitioner, Mr. B.J. Talukdar, learned State counsel appearing for the respondent Nos. 2 to 5, Mr. A. Sarma, learned counsel appearing for respondent No. 6, Mr. A. Matin, learned counsel appearing for respondent No. 7 and Mr. M.K. Hussain, learned counsel appearing for respondent No. 8.

3. In WP(C) No. 532/2015, I have heard Mr. R. Singha, learned counsel for the petitioner, Mr. B.J. Talukdar, learned State Counsel appearing for respondent Nos. 1 to 7, Mr. A Sarma, learned counsel appearing for the respondent No. 8 and Mr. A Matin, learned counsel appearing for respondent No. 9.

4. All these three writ petitions are filed in connection with settlement of Balisatra Bi-weekly market and therefore, as agreed to by the learned counsel for the parties, these three writ petitions had been taken up for disposal together and are now being disposed of by this common judgment and order.

5. The pleaded case in WP(C) No. 25/2015 filed by one Jalal Uddin is as follows:

"(i) Batradava Anchalik Panchayat had issued a Notice Inviting Tender, for short, NIT, on 30.4.2014 inviting tenders for settlement of various markets including Balisatra Bi-weekly Market and the petitioner had participated by submitting tender for Balisatra Bi-weekly Market. A total number of 61 tenderers had submitted tenders and the tender papers were opened on 14.6.2014. Being the highest valid bidder, the market in question was settled with him vide settlement order dated 26.9.2014 for the period from 29.9.2014 to 30.6.2015 for an amount of Rs. 20,15,382/-. The petitioner had started running the market and had paid an amount of Rs. 8,30,000/- as kist money to the Government and had also invested substantial amount of money for its overall management. The order of settlement made in favour of the petitioner was challenged in WP(C) No. 5384/2014 filed by the respondent No. 8.

(ii) While issuing notice of motion on 22.10.2014, the order of settlement was made subject to the result of the writ petition. Subsequently, two other writ petitions, namely, WP(C) No. 5212/2014 and WP(C) No. 5330/2014, were also filed challenging the order of settlement made in favour of the writ petitioner. In none of the cases any interim order was passed by this Court and the writ petitions were later on withdrawn. However, while the writ petition filed by the respondent No. 8 was pending before this Court, he had also approached the State respondents by filing a complaint petition.

(iii) By the impugned order dated 2.1.2015, passed by the Secretary to the Government of Assam, Panchayat and Rural Department, the order of settlement made in favour of the writ petitioner was held to be illegal, inappropriate and illegal and accordingly, the order of settlement was quashed and the Chief Executive Officer, Nagaon Zilla Parishad was directed to settle the market with the respondent No. 8."

6. The factual matrix emerging from WP(C) No. 348/2015 filed by Md. Ruhul Amin may be noticed:

"(i) The petitioner had submitted the tender for an amount of Rs. 1,20,000/- per month, further mentioning in the tender that if the market is settled with him, he would deposit the entire kist money within a period of one week from the date of settlement.

(ii) The petitioner had earlier approached this Court by filing WP(C) No. 3256/2014 challenging the Land Valuation Certificates dated 5.5.2007 and 18.6.2014 issued by the Circle Officer, Dhing in favour of the Jamindars (Guarantors) of some tenderers and by an order dated 27.6.2014, while issuing notice of motion, this Court had directed that tenders of respondent Nos. 6 to 29 therein should not be considered for settlement of the market and the settlement of the market may be considered in respect of other tenderers including the petitioner.

(iii) One Bhubaneswar Bora had submitted a Common Land Valuation Certificate dated 25.6.2014 issued by the Circle Officer, Dhing Revenue Circle as Jamindar in respect of 23 numbers of tenderers, who had participated in the settlement process. The same was challenged by one Md. Asadul Zaman by filing writ petition registered as WP(C) No. 3543/2014 and this Court, on 23.7.2014, by way of an interim direction, provided that settlement should not be granted to the respondent Nos. 7 to 29 of the said writ petition on the basis of the Land Valuation Certificate issued by the Circle Officer in respect of Bhubaneswar Bora.

(iv) One Nizamuddin had submitted a Land Valuation Certificate dated 10.10.2013 issued by the Circle Officer, Dhing Revenue Circle as Jamindar in respect of 16 number of tenderers and the same was challenged by one Prahlad Baruah by filing writ petition, which was registered as WP(C) No. 3687/2014.

(v) While issuing notice of motion, by order dated 31.7.2014, an interim order was passed to the effect that settlement of the market should not be granted on the basis of the Land Valuation Certificate dated 10.10.2013 issued by the Circle Officer, Dhing Revenue Circle and thereafter, by an order dated 25.8.2014, the writ petition was disposed of directing Batadrava Anchalik Panchayat to verify the validity of tenders and to pass order of settlement in accordance with law.

(vi) It is further stated that the respondent Nos. 6 and 7 in WP(C) No. 348/2015 had withdrawn their tenders by filing applications on 26.3.2014 and 1.9.2014, respectively. That apart, Jamindar of respondent Nos. 6 and 7, namely, Nizamuddin, had withdrawn his security by filing an application on 12.8.2014 to the Zilla Parishad. The Jamindar of respondent No. 6, Nizamuddin @ Nizam, had filed an ejahar with the officer-in-charge of Dhing Police Station against respondent No. 6 alleging that respondent No. 6 had, while submitting tender, forged his signature.

(vii) Initially the market was settled by the Zilla Parishad with one Miraj Ali by an order dated 12.9.2014 but as he failed to deposit kist money within the stipulated period, his settlement was cancelled by the Zilla Parishad on 25.9.2014 and thereafter, by an order 26.9.2014, the market was settled with the respondent 6 at Rs. 2,23,105/- only per month. In terms of the said order, the respondent No. 6 was required to deposit 30% of his yearly bid value as security and kist money for three months within seven days. However, the same was not deposited by the respondent No. 6.

(viii) Miraj Ali and the respondent No. 7, namely, Md. Harmuj Ali and some other tenderers had preferred appeals to the Government in the Panchayat and Rural Development Department under Section 127 of the Assam Panchayat Act, 1994, for short, the Act, and thereafter, upon was passed by the Secretary to the Government of Assam in Panchayat and Rural Development Department cancelling the order of settlement made in favour of the respondent No. 6 and directing settlement in favour of the respondent No. 7.

(ix) It is pleaded that direction of settlement of the market with the respondent

No. 7, namely, Harmuj Ali, is illegal and arbitrary as his Jamindar, Nizamuddin @ Nizam, had withdrawn his surety. As the respondent No. 8 had withdrawn his tender, the writ petitioner emerges as the highest valid tenderer and therefore, the order of settlement is required to be passed in his favour."

7. The case projected by Md. Fakrul Islam in WP(C) 523/2014 is that he had submitted tender quoting bid value of Rs. 1,00,451/- per month. He has stated that he had not earlier challenged the order of settlement dated 26.9.2014 made in favour of respondent No. 8. However, he became aggrieved by the direction given by the Secretary to the Government of Assam in the order dated 2.1.2015 to settle the market with the respondent No. 9, Md. Harmuj Ali as he had withdrawn his tender on 1.9.2014 and therefore, the petitioner being the highest valid bidder, is entitled to be settled with the market.

8. While the writ petitioner in WP(C) No. 523/2014 has categorically stated that he had jumped into the fray for securing the order of settlement only after order dated 2.1.2015 was passed, the writ petitioner in WP(C) No. 348/2015, does not indicate as to whether he had filed any appeal before the Government. In Paragraph 14 it is mentioned by him that being aggrieved by the order of settlement dated 26.9.2014, Miraj Ali, Md. Harmuj Ali and some others had preferred an appeal. Therefore, it appears that he had not challenged the order of settlement made in favour of the writ petitioner in WP(C) No. 25/2015. After the order of settlement in favour of the writ petitioner in WP(C) 25/2015 was set aside, in the writ petition filed by Md. Ruhul Amin (WP(C) No. 348/2015), he has made a prayer for cancellation of the order dated 26.9.2014, the order by which the writ petitioner in WP(C) No. 25/2015 was granted settlement and which stood cancelled in view of order dated 2.1.2015. If the writ petitioner in WP(C) 348/2015 was in any way aggrieved by the order of settlement made in favour of the writ petitioner in WP(C) No. 25/2015, he ought to have challenged the same at the appropriate time. Therefore, this Court is not inclined to go into the legality and validity of an order which has been set aside by the appellant authority by the order dated 2.1.2015 on certain grounds. If the grounds cited for cancellation of the order of settlement of the writ petitioner in WP(C) No. 25/2015 is found to be valid, then his challenge to the order dated 2.1.2015 to the extent of direction to grant settlement in favour of respondent No. 7, Md. Harmuj Ali, will have to be considered.

9. Similarly, WP(C) No. 523/2015 will be required to be considered only to the extent of direction to grant settlement in favour of the respondent No. 9, therein, namely, Md. Harmuj Ali.

10. Therefore, if the order dated 2.1.2015 cancelling the order of settlement made in favour of the writ petitioner in WP(C) No. 25/2015 is held to be not sustainable in law, there will be no occasion for consideration of WP(C) No. 323/2015 and WP(C) No. 348/2015.

11. A perusal of the order dated 2.1.2015 goes to show that the appellate

authority, in order to sum up "position of tenders from highest to lowest also valid/invalid tenders", had made a chart in respect of five tenderers, who are at serial Nos. 16 (Md. Miraj Ali), 18 (Md. Sahidul Islam), 21 (Md. Jalal Uddin), 26. (Md. Harmuj Ali) and 39. (Ashadul Zaman). Bid of Md. Miraj Ali was held to be invalid because of the Land Valuation of the Jamindar being less than the tender value. The bid of Md. Sahidul Islam was also held to be invalid on the same ground. The tenders of Md. Harmuj Ali and Ashadul Zaman were held to be valid tenders. Apparently, Md. Miraj Ali and Md. Sahidul Islam were the first and second highest tenderers but their tenders were invalid tenders. The tender of the petitioner is shown to be 3rd highest, but held to be invalid on the ground that prior and formal approval of the Government was not obtained and it was stated in Paragraph 6 of the order dated 2.1.2015 as follows:--

"After perusal of the all records submitted by the Chief Executive Officer of Nagaon Zilla Parishad it was found that no prior and formal approval of the Government with regard to settlement of the market with Md. Jalal Uddin has been obtained as required under Section 47(10) of the Assam Panchayat (Financial) Rules, 2002. Hence the settlement of market in favour of Jalal uddin was found inappropriate."

12. The tender of the writ petitioner in WP(C) No. 25/2015 was not found to be suffering from any infirmity. However, the same was held to be an invalid tender on the ground that Government approval was not obtained under Rule 47(10) of the Assam Panchayat (Financial) Rules, 2002, for short, the Rules. A tender cannot be held to be invalid because of settling authority not taking prior and formal approval of the government assuming it was required to be taken. The reasoning is clearly fallacious. It will be another matter if order of settlement is cancelled on that ground.

13. 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."

14. This Court in WP(C) No. 5992/2014 (Durga Charan Mandal v. The State of Assam and ors.), while interpreting Rule 47(10) of the Rules, vide judgment and order dated 18.3.2015, had held as follows:

"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 fulfils 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."

15. In the instant case, all the higher bidders are invalid tenderers and the petitioner, in the circumstances, was the highest valid tenderer and not the "third highest" as noted in the "remarks" column of the impugned order dated 2.1.2015.

16. Thus, the sole ground on which the order of settlement in favour of the petitioner in WP(C) No. 25/2015 was set aside, is clearly not sustainable in law. Once the order of cancellation of the settlement is held to be bad in law and not sustainable, the consequential direction to settle the market in favour of Md. Harmuj Ali shall, necessarily, have to be interfered with.

17. In view of the above discussion, the impugned order dated 2.1.2014 passed by the Secretary to the Government of Assam, Panchayat and Rural Development is set and quashed. WP(C) No. 25/2015 is allowed.

18. In view of the above determination of WP(C) No. 25/2015, no further adjudication is called for in WP(C) No. 348/2015 and WP(C) No. 523/2015 and the aforesaid two writ petitions stand dismissed. No cost.